

BALKAN  
TENDER  
WATQH



# 2023 Comparative Evaluation Report on PUBLIC PROCUREMENT IN THE WESTERN BALKANS

Over 3.8 billion euro spent annually  
under auspices of corruption



This report is developed as part of the project "Balkan Tender Watch" implemented by the Center for Civil Communications and the Balkan Tender Watch Coalition and financially supported by the Foundation Open Society – Macedonia.

Balkan Tender Watch is a regional coalition of CSOs working on fight against corruption in public procurement in the Western Balkans.





BALKAN  
TENDER  
WATQH

**2023**

**Comparative  
Evaluation  
Report on**

**PUBLIC  
PROCUREMENT  
IN THE WESTERN  
BALKANS**

Over 3.8 billion euro spent annually  
under auspices of corruption

December, 2023

**Publisher::**

Center for Civil Communications

**Proofreading:**

Katerina Dimishkovska

**Graphic Design:**

Metodija Andonov, Datapons Skopje

**Print:**

Datapons Skopje

**Circulation:**

200 copies

Free/non-commercial circulation

The content of this publication is sole responsibility of the publisher and its authors and does not reflect the views of the Foundation Open Society - Macedonia.

# Table of Contents

<b>REGIONAL SUMMARY</b> .....	<b>7</b>
<b>INTRODUCTION</b> .....	<b>9</b>
<b>PUBLIC PROCUREMENT IN THE WESTERN BALKANS AT A GLANCE</b> .....	<b>11</b>
ANNUAL VALUE OF PUBLIC PROCUREMENT .....	11
INTENSITY OF COMPETITION IN PUBLIC PROCUREMENT.....	13
SUBJECT AND PROCEDURE STRUCTURE OF PUBLIC PROCUREMENT.....	15
<b>STATE OF AFFAIRS IN PUBLIC PROCUREMENT IN THE WESTERN BALKANS</b>	
– <b>EU PERSPECTIVE</b> .....	<b>17</b>
REGIONAL OVERVIEW .....	17
ALBANIA .....	19
BOSNIA AND HERZEGOVINA .....	20
MONTENEGRO .....	22
KOSOVO .....	22
NORTH MACEDONIA .....	23
SERBIA .....	25
<b>STATE OF AFFAIRS IN PUBLIC PROCUREMENT IN THE WESTERN BALKANS</b>	
– <b>BALKAN TENDER WATCH PERSPECTIVE</b> .....	<b>27</b>
ALBANIA .....	27
BOSNIA AND HERZEGOVINA .....	30
KOSOVO .....	32
MONTENEGRO .....	33
NORTH MACEDONIA .....	34
SERBIA.....	37
<b>IDENTIFIED CORRUPTION RISKS IN PUBLIC PROCUREMENT IN THE WESTERN BALKANS</b> .....	<b>41</b>
KEY RESULT .....	41
ALBANIA .....	42
BOSNIA AND HERZEGOVINA .....	44
KOSOVO .....	46
MONTENEGRO .....	47
NORTH MACEDONIA .....	48
SERBIA.....	50
<b>RECOMMENDATIONS TO IMPROVE PUBLIC PROCUREMENT IN THE WESTERN BALKANS</b> .....	<b>53</b>
ALBANIA .....	53
BOSNIA AND HERZEGOVINA .....	54
KOSOVO .....	55
MONTENEGRO .....	56
NORTH MACEDONIA .....	56
SERBIA.....	57



# Regional Summary

- » **This is the seventh consecutive evaluation report on state-of-affairs in public procurement and corruption risks detected in each stage of public procurement for all Western Balkan countries developed by the Balkan Tender Watch Coalition and based on its unique methodology - the benchmarking tool.**
  - The average score for all six WB countries related to public procurement performance in terms of application of legislative, institutional, systemic and practical anticorruption measures is calculated at 67%, which means that 33% of all public procurements are still implemented under serious threat of corruption.
  - When this score is correlated to the total amount of funds which all six WB countries spend annually on public procurement, i.e. 11.6 billion EUR, it could be inferred that, annually, 3.8 billion EUR are under direct threat of corruption.
- » **While the value of public procurement increases, competition in tender procedures is declining or stagnating.**
  - In 2022, the total value of public procurement in all WB countries, for the first time, exceeded the threshold of 10 billion EUR and amounted to total of 11.6 billion EUR, representing an increase by one quarter compared to the previous year. At the level of individual countries, the total annual value of public procurement has increased in all WB countries, except for North Macedonia.
  - In 2022, the average share of public procurement in the gross domestic product (GDP) of WB countries stands at 8.78%, while its share in total budget expenditure averages at 25.7%.
  - Public procurement competition in WB countries measured as the average number of bids per tender procedure stagnates. In 2022, the number of bids per tender procedure in all WB countries, except for Montenegro, has decreased or remained the same compared to the previous year. The average number of bids per tender procedure for the entire WB region stands at 2.9.
- » **According to the European Commission's Country Reports, all WB countries have made 'limited' or 'some' progress in the area of public procurement over the one-year reporting period.**
  - As regards general preparedness of WB countries in the area of public procurement, the EC assessed Montenegro as the best prepared and Bosnia and Herzegovina as the least prepared. According to the scale used by the EC to assess the country's level of preparedness, Montenegro has moderate-to-good and Bosnia and Herzegovina has some level of preparedness. Kosovo is assessed as some-to-moderately prepared, with remaining WB countries (Albania, North Macedonia and Serbia) falling within the range of moderate preparedness.
  - All WB countries are recommended to improve integrity, fight against corruption and conflict of interests in public procurement, and to ensure consistent implementation of public procurement rules.
- » **Low trust in the public procurement system and widespread attitude that tender procedures are 'rigged' to favour particular participants dominate the general assessments of public procurement in the Western Balkans, as noted in civil society reports.**

- Public procurement in the Western Balkans is characterized by absence of or insufficient competition, incomplete transparency, lack of efficient control across the entire public procurement cycle, especially in respect to contract performance, and lack of integrity.
  - Almost all WB countries suffer from some form of non-alignment of their respective legislative and institutional frameworks, which creates problems in implementation of public procurements.
  - Impunity for violations, abuses and criminal offences committed as part of tender procedures remains the biggest problem in the fight against corruption in public procurement and hinders all and any efforts made towards more efficient public spending.
- » **In addition to country-specific recommendations to improve their public procurement system and reduce corruption, all WB countries are recommended to view public procurement, implementation thereof, control and fight against corruption across the overall public procurement cycle, i.e. in each stage of this cycle.**
- WB countries are recommended to further improve transparency, accountability and liability in public procurement, take specific measures aimed at detecting and preventing conflict of interests, promote integrity in public procurement, as well as process and monitor cases of malpractice and abuse.
  - WB countries should take urgent and enhanced efforts to ensure and promote competition, equal treatment and non-discrimination in public procurement, as well as provide further professional and continuous training for persons involved in public procurement.



# Introduction

This is the seventh annual comparative evaluation report on state-of-affairs in public procurement in the Western Balkans developed by the Balkan Tender Watch, a regional coalition of civil society organizations working on fight against corruption in public procurement. This year's report, for the first time, includes public procurement in Albania after a civil society organization from this country joined the coalition at the beginning of the year.

The report provides a complete overview of state-of-affairs in public procurement for each WB country and is structured around several segments, as follows:

- » numerical overview of the basic public procurement parameters in all WB countries, allowing a more complete image on state-of-affairs in the region, as well as the share of individual countries, with a possibility to follow movements over the years;
- » overview of assessments by the European Commission, according to its annual progress reports for the countries aspiring to join the European Union, with emphasis on weaknesses detected, areas than need improvements, and repetitive recommendations from previous years that remain non-implemented;
- » overview by civil society organizations that participate in the Balkan Tender Watch coalition, representing a form of shadow reports that provide detailed image on state-of-affairs, supported with more and specific examples on practices, weaknesses and consequences observed;
- » corruption risks identified in the overall public procurement cycle by using the unique benchmarking tool for detection of corruption-vulnerable spots within the public procurement systems, developed and applied by the Balkan Tender Watch coalition; and
- » recommendations to improve state-of-affairs in public procurement and narrow the space for corruption, based on all previous assessments and identified risks.

As regards the unique benchmarking tool developed by the Balkan Tender Watch, it is comprised of three segments, as follows:

1. the first segment measures the basic elements of the public procurement systems and their preparedness to identify, process and sanction corruption in public procurement. This segment is focused on national legislation (alignment with the EU rules and main anticorruption principles and mechanisms) and performance of the system in general;
2. the second segment of the tool is focused on the public procurement cycle and draws data from in-depth monitoring of specific public procurement cases. The monitoring sample covers around hundred tender procedures for procurement of same type of items and institutions that organize such procurements in all WB countries. Each tender from the monitoring sample is tested against a set of 43 indicators, enabling collection of standardized data on main features of monitored cases that are of importance to assess their vulnerability to corruption.
3. the third segment of the tool is focused on measuring responsiveness of the institutions responsible to ensure integrity and combat corruption in public procurement.

Formed in 2012, the Balkan Tender Watch is a coalition of civil society organizations from all WB countries profiled in fight against corruption in public procurement.

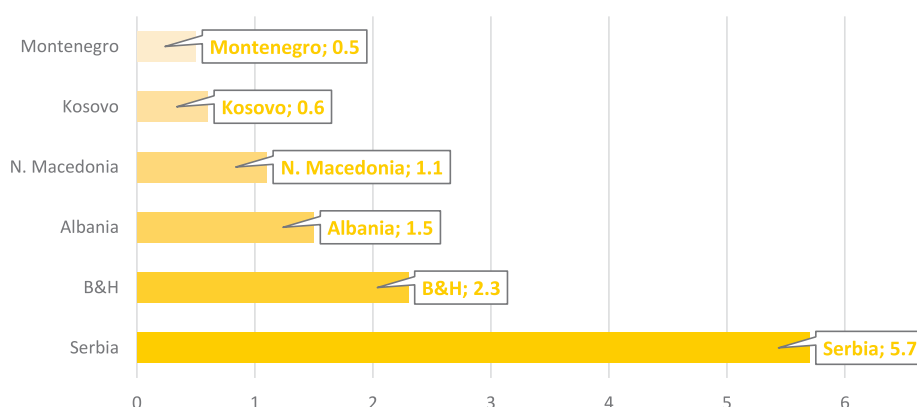
# Public Procurement in the Western Balkans at a Glance

## ANNUAL VALUE OF PUBLIC PROCUREMENT

In 2022, the total value of public procurement in all WB countries, for the first time, exceeded the threshold of 10 billion EUR and accounted for 11.6 billion EUR.

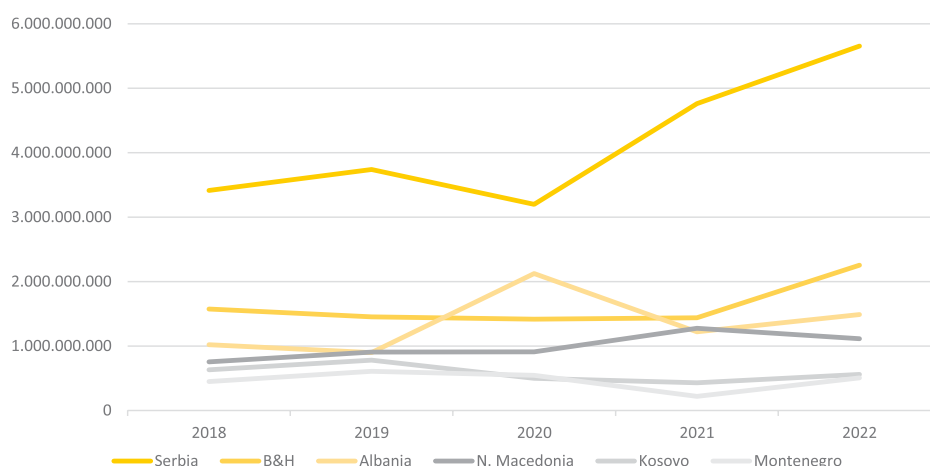
Serbia has the highest public procurement volume of 5.7 billion EUR, followed by Bosnia and Herzegovina with an annual value in the amount of more than 2.3 billion EUR. Annual public procurement values above 1 billion EUR are noted in Albania (1.5 billion EUR) and North Macedonia (1.1 billion EUR). Last in terms of the scope of public procurement are Kosovo (559 million EUR) and Montenegro (507 million EUR).

2022 VALUE OF PUBLIC PROCUREMENT (BILLION EUR) IN THE WESTERN BALKANS



In 2022, public procurement in WB countries is marked by an average annual growth of 24%. North Macedonia is the only country whose value of public procurement was reduced by 13% compared to the previous year, mostly as a result of the energy and financial crisis.

ANNUAL CHANGE TO THE VALUE OF PUBLIC PROCUREMENT (EUR)



As regards movements of the value of public procurement over the years, public procurements in two countries, Serbia and Bosnia and Herzegovina, reached their historically highest level in 2022. Another two countries, Kosovo and Montenegro, had reached their highest value of public procurement in the year before the covid pandemic, i.e. in 2019. On the other hand, public procurement in Albania reached the highest value in the crisis year of 2000, which is also the case with North Macedonia, but in the crisis year of 2021.

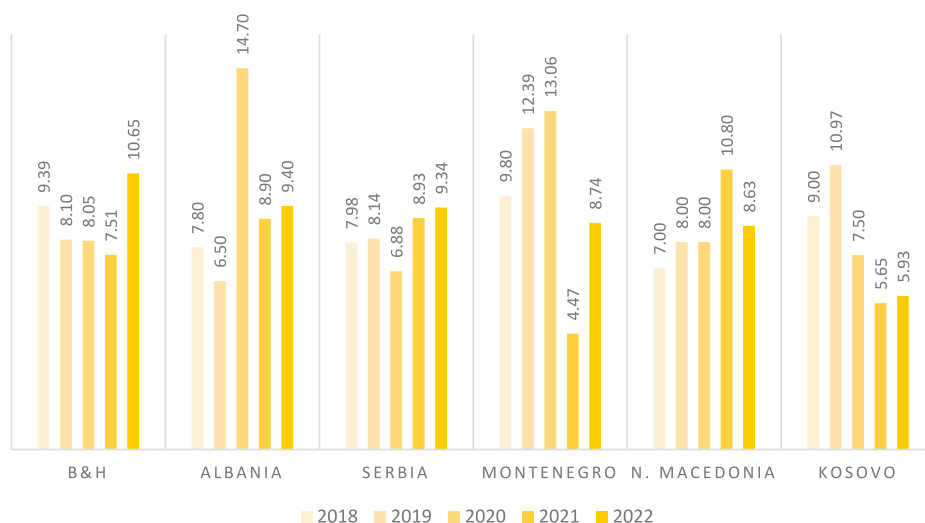
VALUE OF PUBLIC PROCUREMENT (EUR) IN THE WESTERN BALKANS



In 2022, the average share of public procurement in the gross domestic product (GDP) of WB countries accounted for 8.78%.

At the level of individual countries, the biggest share of public procurement in the country's GDP is noted with Bosnia and Herzegovina, accounting for 10.65%. In all other countries, this share is below ten percent, i.e. 9.4% in Albania, 9.34% in Serbia, 8.74% in Montenegro, 8.63% in North Macedonia, and the lowest share of only 5.93% is noted in Kosovo.

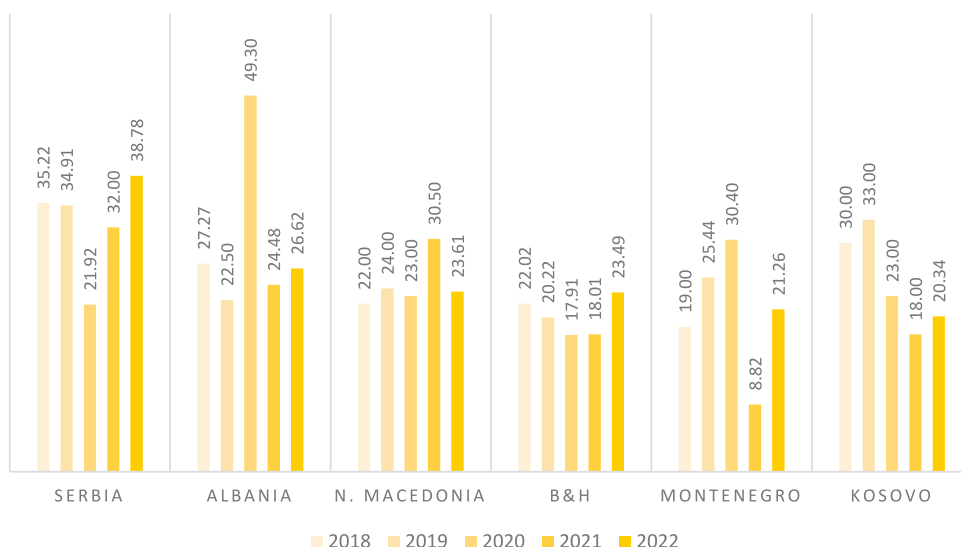
PUBLIC PROCUREMENT AS SHARE OF GDP (%)



Public procurement in WB countries, on average, accounted for one quarter (25.7%) of the country's total budget expenditure in 2022.

At the level of individual countries, the biggest share of public procurement in the country's budget expenditure of almost 39% is noted in Serbia, followed by Albania where this share accounts for 27% of total budget spending, and similar scopes of around 23% of budget expenditure are recorded in North Macedonia and Bosnia and Herzegovina. In Montenegro, public procurement accounted for 21% of the country's budget expenditure, while in Kosovo this share stood at 20%.

PUBLIC PROCUREMENT AS SHARE OF BUDGET EXPENDITURE (%)



## INTENSITY OF COMPETITION IN PUBLIC PROCUREMENT

Public procurement competition in the Western Balkans measured as the average number of bids per tender procedure stagnates. In 2022, the number of bids per tender procedure in all WB countries, except for Montenegro, decreased or remained the same compared to the previous year.

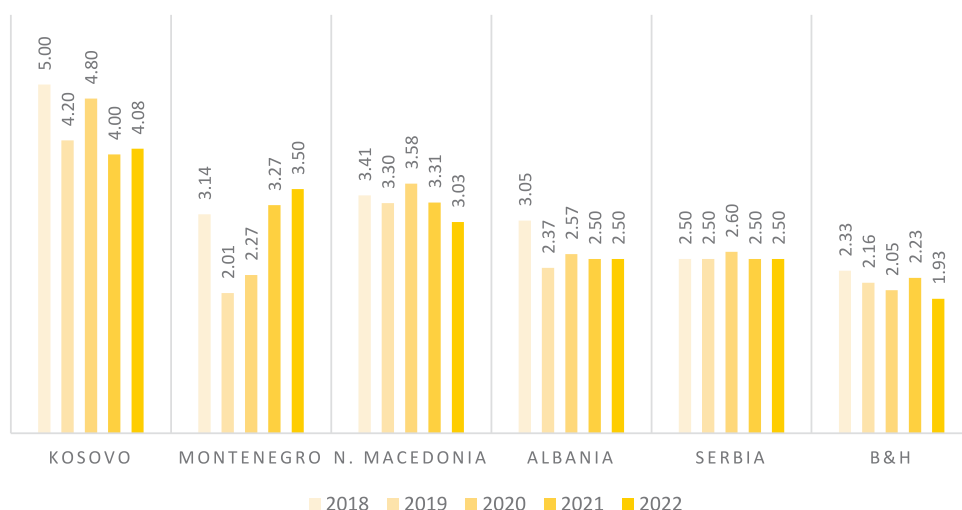
Albania, Montenegro and Kosovo have the same number of bids per tender procedure in 2022 as the average reported in the previous year, while Bosnia and Herzegovina and North Macedonia are marked by decreased competition in tender procedures. Montenegro is the only country with increased competition in public procurements standing at 3.5 bids per tender procedure.

Traditionally, public procurement competition is the lowest in Bosnia and Herzegovina. In 2022, the average number of bids per tender procedure in this country dropped below the threshold of 2 and stands at 1.83. On the other hand, the highest competition level is noted in Kosovo, although it has stagnated in the last two years at around 4 bids per tender procedure.

Albania and Serbia have an almost identical number of bids per tender procedure, i.e. around 2.5 bids, which has persisted over several years.

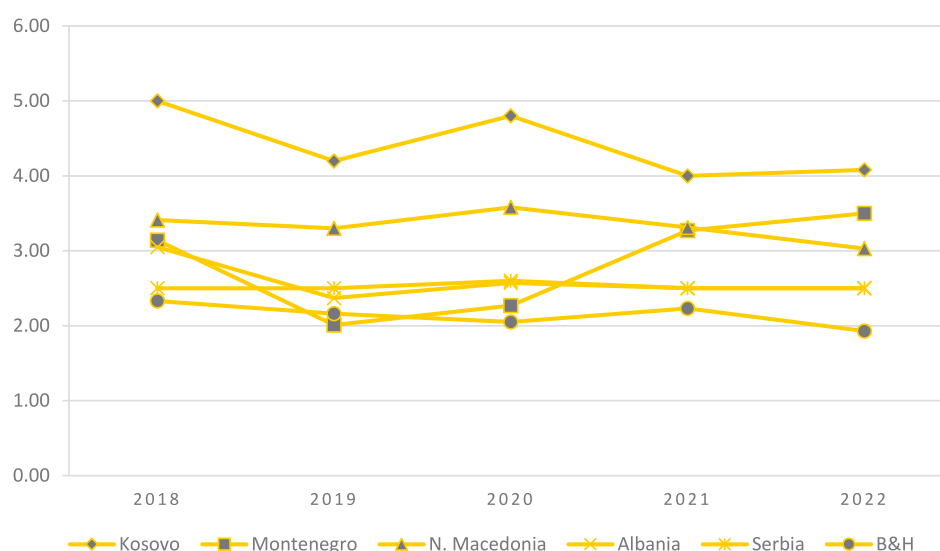
In North Macedonia, competition in public procurement is marked by decline for the third consecutive year, but managed to stay above the threshold of 3 bids per tender procedure.

AVERAGE NUMBER OF BIDS PER TENDER PROCEDURE



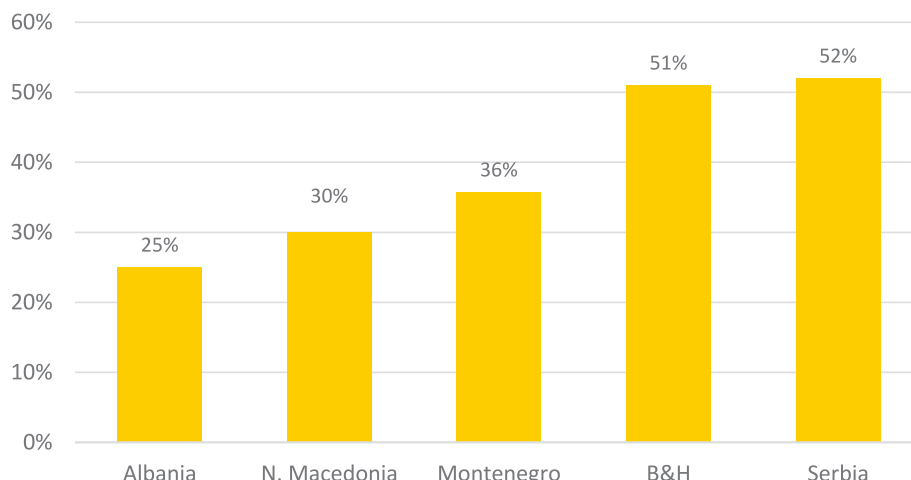
Montenegro is the only country in the WB region that recorded its highest average number of bids per tender procedure in 2022. All other WB countries have recorded their highest number of bids per tender procedure in the previous years, as follows: public procurement competition in Kosovo reached an average number of 5 bids per tender procedure in 2018; in North Macedonia, the highest competition of 3.58 bids per tender procedure was observed in 2020; the highest competition in public procurement in Albania was reached in 2018 and accounted for an average of 3.05 bids per tender procedure; while in the case of Serbia, 2020 was the year of the highest competition level standing at an average of 2.6 bids per tender procedure; and Bosnia and Herzegovina had its record-breaking competition of 2.33 bids per tender procedure in 2018.

AVERAGE NUMBER OF BIDS PER TENDER PROCEDURE



The next indicator on public procurement competition is the share of tender procedures presented with only one bid. The average share for all WB countries is 39%. At the level of individual countries, this share is the highest in Serbia (52%) and the lowest in Albania (25%).

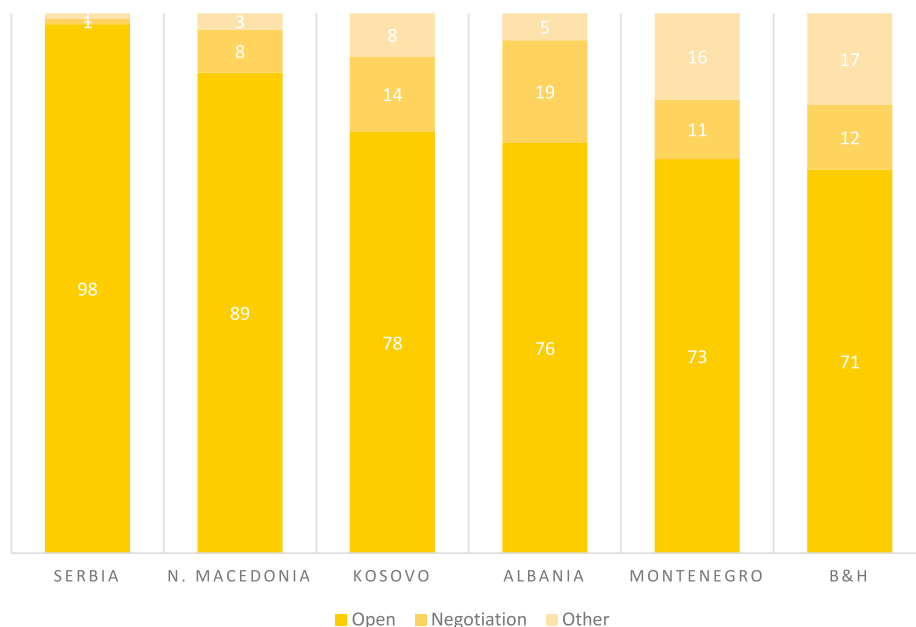
2022 SHARE OF TENDER PROCEDURES WITH ONE BID



## SUBJECT AND PROCEDURE STRUCTURE OF PUBLIC PROCUREMENT

On average, high 81% of all public procurements in the WB countries are organized as open procedures. At the level of individual countries, in 2022, the share of this type of procedures is the lowest in Bosnia and Herzegovina (71%) and the highest in Serbia (98%). In North Macedonia, the share of open procedures in all public procurement is calculated at 89%, Kosovo - 78%, Albania - 73% and Montenegro - 73%.

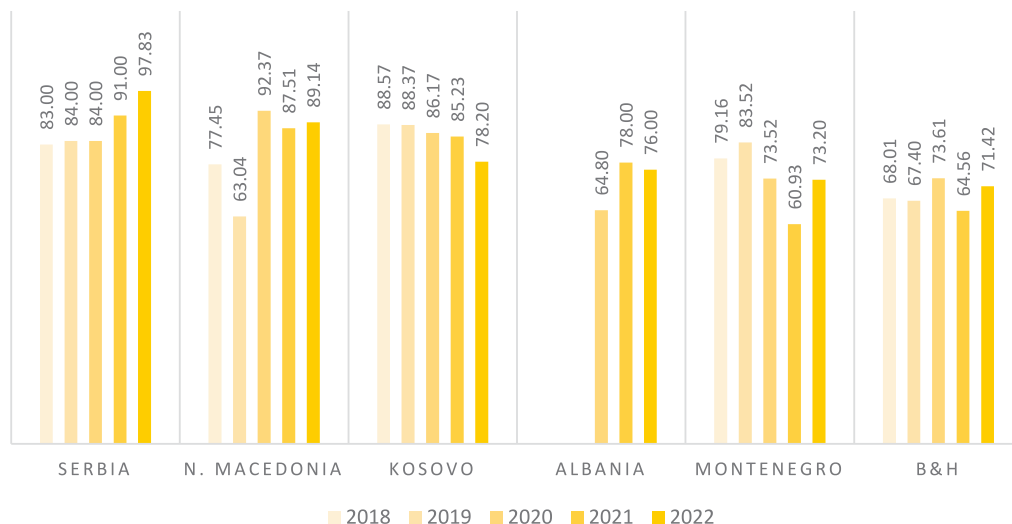
2022 STRUCTURE OF PUBLIC PROCUREMENT PER TYPE OF PROCEDURE (%)



Analysed in the course of time, the share of open procedures is increasing from one to another year only in Serbia and is continuously decreasing only in Kosovo. While all other WB countries are marked variable share of open procedures in all public procurements, Serbia is the only country that reached its historically highest share of open procedures in 2022.

This means that, in the past, the share of open procedures in other WB countries had been higher than the share observed in 2022.

SHARE OF OPEN PROCEDURES IN ALL PUBLIC PROCUREMENTS (%)

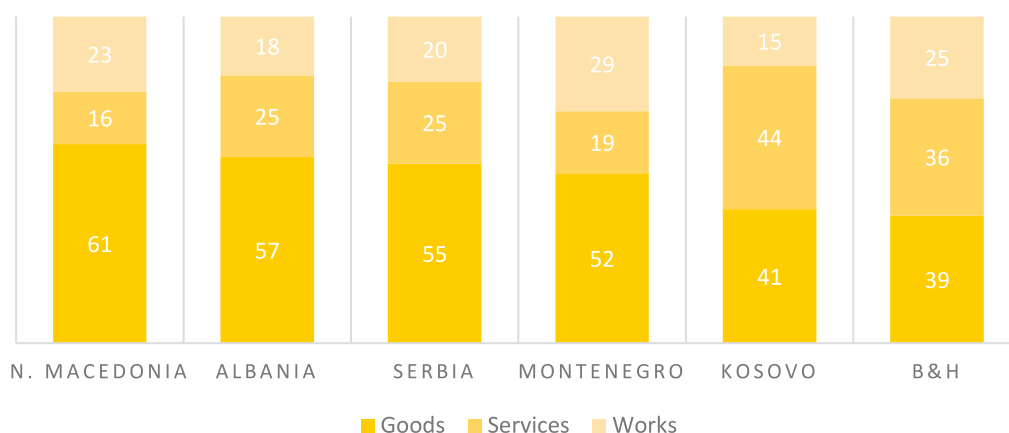


Except for Kosovo, all other WB countries have spent most of their public procurement funds on goods. On average, 51% of the value of public procurement account for purchase of goods. This share is the highest in North Macedonia (61%) and the lowest in Bosnia and Herzegovina (39%).

On average, procurement of services accounts for 27% of the total value of public procurement and this share is the highest in Kosovo where services accounted for record-breaking 44% of all public procurements. The lowest share of this type of procurement subjects in all public procurement is noted in North Macedonia and stands at only 16%.

On average, procurement of works account for 22% of all public procurements in the Western Balkans. The highest share of this type of procurement subject is noted in Montenegro and accounts for 29%, while the lowest share of works in total public procurement is observed in Kosovo and accounts for 15%.

2022 STRUCTURE OF PUBLIC PROCUREMENT PER TYPE OF PROCUREMENT SUBJECT (%)



# State-of-Affairs in Public Procurement in the Western Balkans - EU Perspective

## REGIONAL OVERVIEW

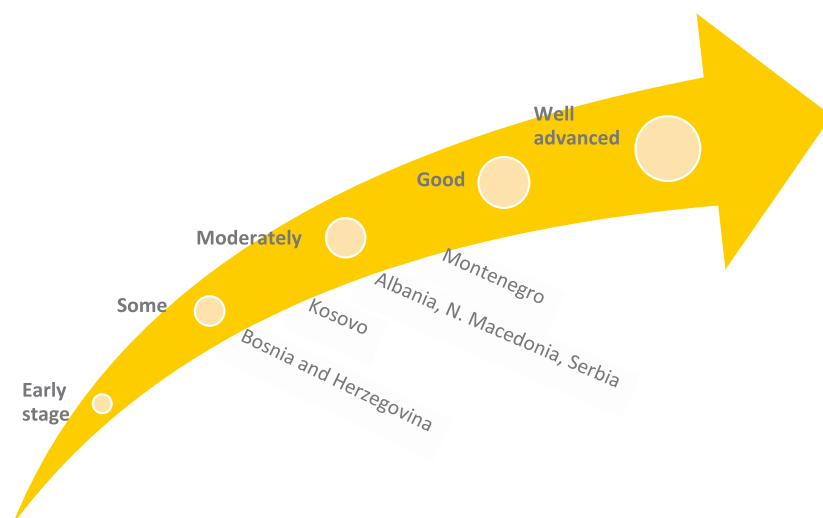
Starting with 2021 country reports and pursuant to the new methodology on accession negotiations from 2020, the European Commission ‘placed’ Chapter 5: Public Procurement in the first cluster of negotiation chapters known as ‘Fundamentals’, thereby assigning greater importance and status of fundamental value to public procurement on the country’s road to EU accession.

In addition to functioning of democratic institutions, public administration reform and market economy, the first cluster on fundamentals, together with the chapter on public procurement, also includes the chapters on the rule of law and fundamental rights, statistics and financial control.

The reporting method on preparedness of the Western Balkans for EU accession and progress made over the last reporting period is the same for all countries, irrespective of the fact that they are in different stages of the accession process. Serbia and Montenegro have started accession negotiations and both countries opened the chapter on public procurement; North Macedonia and Albania are about to formally open the accession negotiations; recommendation to start accession negotiations is made for Bosnia and Herzegovina; and Kosovo has submitted an application for EU membership.

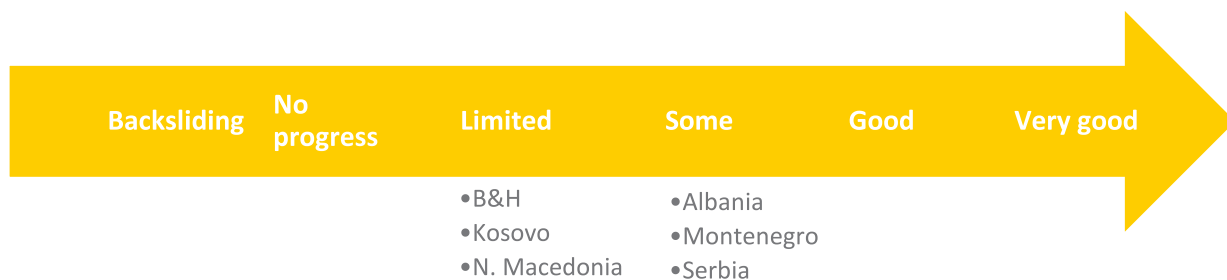
According to the European Commission’s most recent country reports from November 2023, Montenegro is the best prepared country in the area of public procurement among the Western Balkans, while Bosnia and Herzegovina is the least prepared. As regards progress made in this area from June 2022 to June 2023, all WB countries are classified with second and third level of progress, i.e. moderate or some progress.

2023 LEVEL OF PREPAREDNESS OF THE WESTERN BALKANS  
IN THE AREA OF PUBLIC PROCUREMENT





ANNUAL PROGRESS OF THE WESTERN BALKANS IN THE AREA OF PUBLIC PROCUREMENT



The table below provides a brief comparison of the main aspects under Chapter 5: Public Procurement for all WB countries based on this year’s progress reports of the European Commission published in November 2023.

This is followed by summary of the most important aspects of state-of-affairs in public procurement at the level of individual countries from the perspective of the European Commission.

**BRIEF COMPARATIVE OVERVIEW OF PUBLIC PROCUREMENT BASED ON THE EUROPEAN COMMISSION'S 2023 COUNTRY REPORTS**

	Albania	B&H	Kosovo	Montenegro	North Macedonia	Serbia
<b>Level of preparedness</b>	Moderate	Some	Some-Moderate	Moderate-Good	Moderate	Moderate
<b>Annual progress made</b>	Some	Limited	Limited	Some	Limited	Some
<b>Implementation of last year's recommendations</b>	Only partially and remain valid	Remain valid	Only partially	Partially, some remain valid	Not fully, remain valid	/
<b>Key recommendations</b>	<ul style="list-style-type: none"> <li>-To ensure competitive procedures;</li> <li>-Use of MEAT and framework contracts;</li> <li>-Align with the acquis in concessions and PPP;</li> </ul>	<ul style="list-style-type: none"> <li>-Align PPL and concessions with the acquis;</li> <li>-Adopt new PP strategy;</li> <li>-Increase capacities of PP authorities;</li> </ul>	<ul style="list-style-type: none"> <li>-Adopt new PPL and law on concessions in line with the EU acquis;</li> <li>-Increase capacity and cooperation between all PP institutions and CA;</li> <li>-Ensure timely, effective and transparent review process;</li> </ul>	<ul style="list-style-type: none"> <li>-Effective implementation of PP and PPP legislation;</li> <li>-Greatly reduce the number and value of negotiated procedure;</li> <li>-Fully respect PP rules in all cases;</li> </ul>	<ul style="list-style-type: none"> <li>-Adopt PPP law and law on concessions to align with the EU acquis;</li> <li>-Improve coordination and strengthen capacities of key stakeholders;</li> <li>-Increase use of MEAT and improve monitoring of PP procedures;</li> </ul>	<ul style="list-style-type: none"> <li>-Align law on PPP and concessions with 2014 EU Directives to ensure that projects financed from public funds are subject to PP procedures;</li> <li>-Ensure that PP rules under intergovernmental agreements concluded with third countries comply with PP principles, in line with the EU acquis;</li> </ul>
<b>Watch out!</b>	Intergovernmental agreements with third countries	Integrity and conflict of interest in public procurement	Integrity and the fight against conflicts of interest	Use of negotiated procedures without a prior publication of contract notice	Direct award of contract for construction of Corridor VIII and X-d	Exemptions from the Law on Public Procurement
<b>On corruption in public procurement</b>	Strengthen the functioning of the overall system to increase competition, compliance and professionalization	PP remains prone to irregularities and vulnerable to corruption during the procurement process and contract implementation	PP remains prone to irregularities and vulnerable to corruption during both the PP process and in implementation of contracts	To comply fully with the EU rules and standards on fair and transparent public procurement, providing value for money, competition, and strong safeguards against corruption	Insufficient regulatory and institutional mechanisms on integrity and conflict of interest; no risk assessment system in the procurement cycle to ensure timely information on possible corrupt practices or to flag irregularities	PP rules are not always fully compatible with EU standards, particularly in the case of intergovernmental agreements; increasing number of irregularities raise concerns and need to be closely followed

2023 Enlargement Package:  
[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_5633](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5633)

## ALBANIA

According to the EC's 2023 Annual Report, assessment of public procurement in Albania has changed from:

*“**Good progress** was made during the reporting period, in particular by adopting further implementing legislation to the new law on public procurement, launching an electronic appeals and complaint system, developing and implementing of certified training course on public procurement, publishing first monitoring reports on the public procurement strategy and deploying real time ‘open data’ on procurement activities, and including procurement related corruption risks in institutions’ integrity plan“;*

as noted in the EC's 2022 Country Report, to:

*“**Some progress** was made, in particular, through an increased use of the most economically advantageous tender award criteria.“*

The same conclusion is valid in respect to EC recommendations. Notably, in 2021 it was reported that recommendations are **largely** implemented, but in 2022 the EC Report notes that recommendations **were only partially** implemented and remain valid.

In respect to integrity and conflict of interests, the Public Procurement Agency (PPA) issued instructions for declaration of conflict of interests by procurement officials and adopted regulation on preventing conflict of interests in exercise of public functions at PPA. The State Audit Institution (SAI) continues to report irregularities in public procurement at both central and local level.

In 2023, no data are reported on the number of irregularities in public procurement, although the 2022 Country Report featured such statistics. Namely, the State Audit Institution (SAI) reported 64 irregularities in public procurement, with an estimated damage to the state budget of approximately 3.1 million EUR (compared to 2.8 million EUR in 2020, based on smaller sample). In 2021, PPA imposed fines for 102 employees and proposed disciplinary measures for 145 employees.

As regards development of effective system for prevention of corruption in public procurement, Albania should again focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalisation. Albania has laid down a good foundation by significantly improving transparency through its comprehensive electronic system of public procurement and appeals, and by developing its review system to allow participants access to redress.

2022 was a challenging year for the Public Procurement Commission (PPC) in terms of digitalization of services as a whole, which has not changed only access to the review system for economic operators, but also behaviour of interest groups, including PPC. Moreover, digitalization of services accelerated decision-making, whereby only 10.1% of complaints were handled beyond the legal deadline and shortened the deadline for handling complaints from 17 to 12 days. It was observed that, in the course of 2022, contracting authorities avoided repetition of same mistakes/problems. In the same year, PPC continued cooperation with PPA by presenting the latter with motions for in-depth investigation for cases in which PPC had found administrative violations.

The Public Procurement Agency forwarded 10 cases to the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests for further investigation, one of which was referred by the Network of Coordinators Against Corruption.

Moreover, in the course of 2022, administrative fines were imposed on the heads of two contracting authorities on the grounds of non-cooperation with PPC.

In 2022, capacity of PPC and the administrative court to deal with high number of appeals needed to be further improved. As a result of cooperation agreement signed between PPC and the University of Tirana, specialised training courses on public procurement were developed and PPC staff members completed a 13-week certified training course (on various topics) in the period September-December 2021.

Be that as it may, no progress is noted in 2023 as PPC's capacity to deal with appeals still needs to be improved further. In March 2023, the Parliament agreed to increase PPC staff members from 36 to 42, eight of which are still vacant. Extensive training of PPC staff members is based on cooperation agreement with the University of Tirana.

In 2022, Albania's public procurement market accounted for about 9.4% of GDP compared to 10.7% in 2021, 9.4% in 2020 and 4.8 % in 2019. The increased share in the period 2020-2021 was largely driven by post-earthquake reconstruction (November 2019 and onwards) and GDP decline due to the economic effect of the covid pandemic.

## BOSNIA AND HERZEGOVINA

The European Commission's 2023 Country Report notes that *"Bosnia and Herzegovina has some level of preparation in the area of public procurement. There was limited progress... public procurement remains prone to irregularities and vulnerable to corruption. Selective and non-transparent judicial follow-up in cases of corruption in public procurement is a cause of significant concern. The country needs to ensure continued equal treatment of domestic and EU bidders in awarding public contracts in line with SAA provisions."*

The current law was adopted in 2014 and entered into force in November 2014. The legal framework was designed in line with the 2004 EU Directives on Public Procurement, 2007 Directives on Legal Remedies in Public Procurement and 2009 Directive on Procurement in the Defence and Security Sector. In 2018, the Public Procurement Agency (PPA) drafted amendments to the law to address several shortcomings and further align it with the EU acquis, in particular the 2014 EU Directives on Public Procurement. The law amendments were adopted in August 2022. The law is largely aligned with the EU acquis, except for few minor differences in contract award criteria, types of procurement procedures (innovation partnerships), in-house procurements, and in respect to amendments and changes to bids and changes to contracts. However, the EU notes that *"The authorities should increase cooperation between the respective stakeholders active in public procurement to guarantee fair competition and ensure coherent implementation of the legal framework."*

The most recent EC Report reiterated recommendations repeated for several years now, as follows:

- *further align the public procurement law with the EU public procurement acquis, including in the area of concessions;*
- *adopt a new 2023-2027 public procurement strategy and an accompanying action plan that supports its implementation<sup>1</sup>;*
- *increase staffing level and strengthen capacity at the Public Procurement Agency and the Public Procurement Review Body.*

<sup>1</sup> The latest strategic document is the Development Strategy of Public Procurement in Bosnia and Herzegovina for the period 2016-2020, adopted by the Council of Ministers of Bosnia and Herzegovina in October 2016. This strategy expired in 2020.

It should be noted that most recommendations come from OECD SIGMA 2022 Monitoring Report<sup>2</sup>, which also points out that:

- *Public Procurement Law places insufficient emphasis on promotion of social, environmental and innovation/sustainability considerations;*
- *legal provisions do not make it easier for small and medium-sized enterprises (SMEs) to participate in public tenders;*
- *communication and exchange of information are not fully conducted by electronic means, which is a standard under the 2014 EU Directives. The PPL does not foresee electronic submission of requests to participate and tenders, which are still handled in the traditional paper manner;*
- *finally, the PPL lacks clear conditions under which modifications to a contract during its performance require a new procurement procedure and under which modifications are permitted without the need to carry out a new procurement procedure.*

A specific problem that has persisted for over a decade concern the capacity of institutions in the field of public procurement. As of May 2023, the Public Procurement Agency of Bosnia and Herzegovina employs 21 individuals out of a total of 32 job positions in its organizational structure. Among these, 13 officials are specifically engaged in public procurement activities according to their job descriptions. The Procurement Review Body (PRB) has a total of 35 employees out of total of 55 job positions systematized.

**PPA is an independent administrative body responsible for policy-making, proposing legislation, monitoring, advising, and training in the field of public procurement, and managing and developing the Public Procurement Portal. PPA's head office is located in Sarajevo, with branch offices in Banja Luka and Mostar. PRB, with headquarters in Sarajevo and branch offices in Mostar and Banja Luka, acts as an independent and autonomous institution responsible for review of appeals.**

Finally, the EC's 2023 Country Report addresses some corruption issues in public procurement. In particular, it notes that *"There was no new development to improve integrity and conflicts of interest in this area. Public procurement remains prone to irregularities and vulnerable to corruption during the procurement process and contract implementation. The courts have not penalised yet any corruption case in the area of public procurement."*

## MONTENEGRO

According to the EC's Country Reports from the last five years, Montenegro is moderately prepared in the area of public procurement. In the last report, the level of preparedness is assessed as moderate to good. For some years, the European Commission has outlined and criticized limited progress made in this area (2018 and 2019 Reports). At that time, the EC assessed that Montenegro must align its legislative framework on public procurement with the EU acquis in all areas, with special focus on concessions, public-private partnerships and defence procurements. Moreover, Montenegro was recommended to establish and strengthen administrative and institutional capacity at all levels and take adequate measures to ensure law enforcement, as well as demonstrate good track record in respect to fair and transparent functioning of the public procurement system that ensures value for money, competition, and effective protection against corruption.

Other problems addressed by the EC concern the need to further improve the functioning of the remedy system, administrative capacity and IT, as well as infrastructure of the State Commission for Control of Public Procurement.

<sup>2</sup> Monitoring Report for Bosnia and Herzegovina "The Principles of Public Administration", OECD/SIGMA, May 2022.

The last three reports (2020, 2021 and 2022) noted progress made in this regard.

According to the EC, Montenegro has made some progress in respect to the legal framework by improving the remedy system, adopting secondary legislation to laws on public-private partnerships and public procurement and regulation on procurement rules in the defence and security sector, and made improvements to the Electronic Public Procurement System.

The Electronic Public Procurement System was launched in January 2021. It introduces new quality and transparency to Montenegro's public procurement system. The legal framework on public procurement is well aligned with the EU acquis.

Amendments to the Law on Public Procurement entered into force in January 2023. However, the number and value of negotiation procedures without previously announced procurement notice remain very high, accounting for more than 11% of the total value of all procurements organized through EPPS. Use of such procurement procedures by public authorities should be an exception, given the potential for irregularities and corruption.

Capacity building remains a problem and necessitates efforts to strengthen administrative and institutional capacity in the area of control, especially at the Commission for Control of Public Procurement and the Public Procurement Inspectorate, to ensure adequate implementation of the law.

In the next year, Montenegro should, in particular, focus on effective implementation of public procurement and public-private partnership laws, serious reduction of the number and value of negotiation procedures without previously announced procurement notice, and full enforcement of public procurement rules in all cases.

## KOSOVO

The EC's 2023 Progress Report for Kosovo notes that the country has not made significant progress in the area of public procurement, while contract management and commitment controls remain weak. The government's electronic procurement platform is still not connected to the financial management information system at the Treasury. As regards statistics on contracts awarded, the EC's Report outlines that, in 2023, 78.2% of contracts were awarded under open procedure and 94.34% of public procurement procedures used lowest price as selection criterion, with only 5.66% of them (accounting for 31.6 million EUR) used the criterion defined as best price-quality ratio, followed by recommendation to further encourage use of the best price-quality ratio, in line with the EU Directives on Public Procurement.

According to the EC's Report, further improvements are needed in developing technical specifications to better support the quality, efficiency and transparency of public procurement. There is a risk of mismanagement and corruption due to limited enforcement, insufficient managerial accountability, insufficient quality control and limited contract management capacity.

As regards legislation in the field of public procurement, some changes have started, but are not finalized, especially the part of the new legislation on public procurement, as noted in the progress report. The EC has assessed the legal framework on public procurement as partially aligned with the 2014 EU acquis. A new public procurement law is pending adoption by the government for over two years. Authorities have not yet started to draft implementing legislation. A new law on public-private partnerships is also pending governmental approval.

Comparison of EC recommendations put forward in its 2022 report against findings featured in the most recent progress report (2023) allows the conclusion that public procurement is still in its initial phase due to slow progress. Back in 2022, the EC's Progress Report referred to the fact that legislation has not yet been changed and recommended changes to be adopted, but in 2023 Kosovo has still not managed to finalize the new law on public procurement.



Furthermore, the EC's Report notes there are no developments in the area of integrity and fight against conflict of interests. Although a code of ethics in public procurement is in place, it does not monitor compliance. Specialized professional and ethics training should be delivered to all contracting authorities. Further efforts are underway to improve the procurement systems and oversight at the level of local governments. Increasing number of municipalities publish their procurement contracts.

## NORTH MACEDONIA

The fact that, for several years in a row, the European Commission reiterates the same remarks in the area of public procurement (Chapter 5) speaks volumes about the country's status quo in this field. Hence, while the country is assessed as moderately prepared in the area of public procurement, the EC notes that only limited progress has been achieved in the last year. Identical general assessments on 'moderately prepared' and 'limited progress' are made for the third consecutive year.

In its last country report, the EC refers to three general remarks on public procurement in North Macedonia:

1. need for continuous training of all parties involved in public procurement, i.e. key institutions, entities implementing public procurement (contracting authorities) and entities participating in public procurement (economic operators);
2. the authorities should introduce more effective anticorruption measures across the public procurement cycle; and
3. concerns are raised with direct award of contract for construction of the Corridors VIII and X-d, which exempts application of the Law on Public Procurement.

In the short term, the country is recommended to adopt new law on concessions and public-private partnerships to further align the national framework in these areas with the EU acquis. This is an old recommendation, repeated for many years, and it remains unclear why this law has not been aligned with the EU acquis so far and why its adoption was prolonged for such long period. While public procurement regulations fall within the realm of the Ministry of Finance, concessions and public-private partnerships are regulated by the Ministry of Economy. In this regard, the EC notes that the capacity of this ministry to deal with concessions and public-private partnerships remains limited. Also, it reiterates the remark that registers for these two types of contracts remain to be established.

The next short-term recommendation which the EC requires the country to implement in the next year is to improve coordination among key stakeholders and strengthen their capacity to implement the principles of transparency, free competition, equal treatment and non-discrimination. This is another recommendation featured in EC Reports for several years in a row. This apparently short and clear recommendation is possibly the most difficult to implement as it concerns adequate and adherent enforcement of the Law on Public Procurement, which has persisted as problem since the adoption of the new law in 2019.

The third short-term recommendation also concerns one of key segments in enforcement of the new law, i.e. further increase use of 'most economically-advantageous tender' (MEAT) as contract award criterion. While 'most economically-advantageous tender' is the only criterion for selection of the best bid in tender procedures, institutions still use the criterion defined as 'lowest price', albeit with rare exceptions therefrom. At the time when use of 'lowest price' was mandatory under the old law, in force by 2019, both institutions and companies complained that public procurements are poorly implemented due to the fact that they are mandated to use this criterion for contract award. Nowadays, when use of 'lowest price' is not mandatory,

institutions continue to exclusively use this criterion for contract award, while companies continue to complain that 'lowest price' is the biggest problem they are facing in public procurement. The problem is additionally worsened when, in addition to use of 'lowest price' as selection criterion, tender documents do not include sufficient details to describe the procurement subject, combined with organization of electronic auctions to further reduce initially bided prices. Having in mind above elaborated issues, it is difficult to say that public procurement ensures the best value for the money spent. Moreover, this practice allows arrangements among participants in public procurements. The EU notes the need for continuous training on use the contract award criterion defined as 'most economically advantageous tender'.

Together with the recommendation for greater use of 'most economically advantageous tender', the EC's third recommendation involves a demand to improve monitoring of public procurement procedures through reporting and efficient follow-up on irregularities, conflict of interests and fraudulent practices. This demand, together with the second one, does not target only those directly implementing tender procedures, but all entities involved in public procurement. The recommendation requires improvements to monitoring of public procurement, procedures for reporting irregularities, conflict of interests and malpractices, as well as efficient follow-up and processing of such reports.

In that context, the EC recommends the country to enhance capacity of the Bureau of Public Procurement and its competences in respect to monitoring and control of public procurement.

As regards institutional capacity, the EC notes insufficient capacity of the State Commission on Public Procurement Appeals to deal with the number of appeals lodged.

Conflict of interests and prevention of corruption in public procurement are addressed separately, whereby it is noted that regulatory and institutional mechanisms on integrity and conflict of interests are still insufficient.

For many years, the EC has advised the country that implementation and prevention of irregularities in public procurement need to be viewed through the prism of the overall public procurement cycle. This year's report reiterates that there is no risk assessment system embedded in the procurement cycle to ensure timely information on possible corrupt practices or flag irregularities.

While institutions more often develop risk assessments and strategies to mitigate such risks, these documents almost never include corruption risks in all stages of public procurement and more broadly, across the overall procurement cycle. Individual institutions barely use data to alert about possible corruptive practices and ensure protection against corruption.

The Bureau of Public Procurement introduced the so-called red flags and develops reports on the basis of these indicators, but significant follow-up on these reports is missing. In that regard, the EC requires improved cooperation and coordination among all institutions involved.

Finally, it should be noted that on 7th June 2023, the WTO Government Procurement Agreement (GPA) members decided to accept North Macedonia to the GPA. The instrument for ratification of the Decision on Accession of the Republic of North Macedonia to the WTO Government Procurement Agreement entered in effect on 20 October 2023, whereby the country became the 49<sup>th</sup> member of the GPA.

## SERBIA

In the last several progress reports, the European Commission (EC) has, more or less, repeated the same remarks about public procurement in Serbia. The EC's 2023 Report will be pub-



lished on 8th November and having in mind that this overview is being drafted in October 2022, it should be noted findings presented here are based on the EC's 2022 Report. In particular, the 2022 Report for Serbia assesses the country as moderately prepared in the area of public procurement, but no progress was made in the reporting period.

These remarks are identical to those made in the 2019 Report, where the EC noted that Serbia: a) should ensure further alignment with the 2014 EU Directives on Public Procurement, including public-private partnership and concessions; b) should ensure that intergovernmental agreements with third countries do not violate the basic public procurement principles; and c) should continue to strengthen capacity of the Public Procurement Office, the Republic Commission for Protection of Rights in Public Procedures and the administrative courts. Given that, to present, only one recommendation is implemented (adoption of new law on public procurement) the EC's most recent remarks do not really come as a surprise.

As regards alignment of public procurement legislation, Serbia adopted a new Law on Public Procurement that entered into force on 1st January 2020, but shortly afterwards it adopted the infamous Law on Special Procedures for Linear Infrastructure Projects of Special Importance for the Republic of Serbia (hereinafter: Law on Linear Infrastructure Projects) that allows the government to exempt linear infrastructure projects of 'special importance for the Republic of Serbia' from application of public procurement rules. On the other hand, Serbia has not yet adopted amendments to the existing law on concessions and public-private partnership to align it with the EU Directives.

Having all of the above in mind, the 2019 list of EC recommendations was modified and expanded whereby, from 2020 (to date), Serbia is expected to:

- repeal the Law on Special Procedures for Linear Infrastructure Projects;
- ensure full alignment with the 2014 EU Directives on Public Procurement, in particular by adopting amendments to the Law on Public-Private Partnerships and Concessions and by ensuring that projects financed with public funds are subject to public procurement procedures;
- ensure that intergovernmental agreements with third countries do not unduly restrict competition and comply with the basic principles of public procurement, in line with the national legislation and the EU acquis;
- continue to strengthen capacity of the Public Procurement Office, the Commission for Public-Private Partnerships and Concessions, the Republic Commission for Protection of Rights in Public Procedures and the administrative court.

Thereby, the problem related to large number of exceptions from application of the Law on Public Procurement is not pointed out only in the section that refers to Chapter 5 (Public Procurement), but also in the section that refers to public finance management, as well as the section that addresses fight against corruption. In particular, it is emphasized that the large number of exemptions from application of the Law on Public Procurement implies a serious risk of corruption in this area.

Another alarming fact is that, in 2021, the value of public procurements exempted from application of the Law on Public Procurement skyrocketed by 88 %, i.e. by 1.5 billion EUR compared to 2020, to a total value of 3.2 billion EUR. Exemptions from application of the Law on Public Procurement in 2021 accounted for almost 70 % of the cumulative value of all public procurement contracts awarded that year.

Also, having in mind that during the covid pandemic, the government declared data related to the procurement of medical equipment performed by the Republic Health Insurance Fund

(RFZO) on behalf of and for the account of health institutions as 'strictly confidential', in its 2021 and 2022 reports the EC recommended that it would be especially important 'to maintain audit trails' with regard to procurements implemented during the pandemic in order to mitigate risks of fraud and corruption. At the same time, it was reiterated that disclosure of all information concerning covid-related procurements on government portals would most certainly contribute to enhanced transparency and trust.

Finally, it is important to note that, as was the case with all previous progress reports since 2015, the EC's 2022 Report also points out that the administrative court's capacity to deal with the complexity, diversity and overall quantity of cases and lengthy legal proceedings remains weak and needs to be additionally strengthened. At the same time, the EC notes that "cooperation between the Public Procurement Office and the Republic Commission with the administrative court on exchange of knowledge and information remains to be strengthened".

It will be interesting to see how the European Commission assesses Serbia's progress in the field of public procurement for the year 2023, given that only one of last year's recommendations was implemented and that the Law on Linear Infrastructure Projects was repealed, but shortly afterwards the government adopted new *lex specialis* - the Law on Special Procedures for Implementation of the International Specialized Exhibition EXPO Belgrade 2027 for projects worth approximately 1 billion EUR. It almost seems that the aforementioned law was repealed only for the purpose of ensuring some positive remarks in the EC's new report allowing the Commission to register some progress in 2023.

# State-of-Affairs in Public Procurement in the Western Balkans – Balkan Tender Watch Perspective

## ALBANIA

Albania has a central electronic public procurement portal where tender and contract notices and other important information and guidance is published. Use of this portal is mandatory, including for low-value procurements. The procurement forecast register is developed and posted online. Still, SAI reported 64 irregularities, with estimated damage to the state budget of around 3.1 million EUR, while PPA imposed fines on 102 employees and proposed disciplinary measures for 145 employees.

In December 2021, PPA introduced ‘open data’ with real-time information on public procurement procedures and archives dating back to 2010, but even this measure was insufficient to change the general public perception on corruption in public procurement, preselected procurement winners and predefined outcome of procurement procedures.

Although a completely new legislation on public procurement entered into force in 2021 and ensured further alignment of the legal framework with the 2014 EU Directives on Public Procurement, the thresholds set for competitive procurement of goods and services remains high.

PPA is the public authority mandated to propose regulatory measures, monitor compliance with public procurement rules and contract performance. In March 2023, a new organisational structure was created for this entity, comprised of 48 job positions in total, of which eight are still vacant. In 2022, a regulation was adopted to strengthen the status of the Agency for Centralised Procurement. Key organizations responsible for public-private partnerships and concessions are the Ministry of Finance and Economy and the Concessions Treatment Agency (ATRAKO).

In 2022, a regulation was adopted that further clarifies the rules on invalidity of procurement contracts and PPC’s role in this regard. The remedy system is easily accessible to economic operators, albeit subject to payment of fee. An electronic portal for submission and management of appeals and complaints is in place and provides real-time statistics. PPC completed the overhaul of its internal procedures to incorporate the new online procedures.

In terms of developing an effective system for prevention of corruption in public procurement, Albania should focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalisation. Albania has laid down a good foundation by significantly improving transparency through its comprehensive electronic procurement and appeals system and by improving the review system to allow participants access to redress.

According to SAI’s 2022 Annual Report, findings on key problems in the public procurement system concern:

- inefficient, ineffective and uneconomic use of funds in the field of public procurement due to lack of control over implementation of these procedures which, in many cases, are not carried out in compliance with the legal framework;
- budget discipline violations as part of public expenditure programming and execution, and late payment of expense and investment invoices, resulting in creation of arrears.

As regards legality of public procurement procedures, cases have been identified where:

- requirements defined by procurement unit staff in respect to qualifications, licenses, and required certificates do not correspond to the procurement subject and type of contract;
- failure to verify economic operator's ability, i.e. fulfilment of technical specifications; use of agreement scheme prohibited by non-life/life insurance economic operators;
- organization of negotiating procedures without previously announced procurement notice although the procurement in question does not fulfil conditions for that type of procedures; cases of limit fund calculations that are contrary to the legal framework in place; failure to verify documents demonstrating fulfilment of eligibility criteria defined in the Standard Tender Documents (STD);
- lack of legal knowledge on the part of officers working in public procurement; cases of failure to set up structures responsible to monitor contract performance which jeopardizes the process of supervision and/or delivery of goods.

On implementation of public procurement for works, the audit findings show:

- differences in volume or calculation of works performed and those enlisted in the contract; performance of works after the contract's end or beyond deadlines;
- construction works not performed in accordance with technical specifications;
- unfinished works, i.e. violation of the contract signed;
- breached deadlines for contract performance; etc.

Irregularities and shortcoming detected in the field of public procurement concern:

- inadequate definition of the procurement subject;
- procurement planning in the absence of previously conducted needs-assessment for goods, works or services and, in some cases, in the absence of available funds;
- failure to deposit procurement orders in the Treasury before the start of procurement procedures;
- actions that lead to organization of procurement procedures without available funds and increase debt accrual at the end of the fiscal year periods;
- procurement units responsible for drafting tender documents employ officers with completed higher education, but their respective professions are unrelated to the procurement subject, which is most prominent in civil works procurements due to lack of civil engineers knowledgeable about the procurement subject;
- use of criteria that do not correspond to the procurement subject, directly impacting competition among economic operators.

Cases are observed when the procurement unit defines unreasonable eligibility criteria by imposing requirements that favour particular economic operators, which indirectly affects attainment of the procurement's main objective.

Incorrect definition of eligibility criteria is generally noted in civil works contracts and relates to:

- determining license categories and category classification;
- requiring unreasonable license categories that do not match the volume of works or license categories unrelated to the procurement subject;
- requirements related to the number of employees that do not correspond to the volume of works and, in many cases, are set higher or lower than the actual number needed to attain the procurement's purpose, etc.;
- requirements related to additional documentation demonstrating the number of employees, for example, social security declaration forms, etc.;
- unsubstantiated requirements for machinery that do not correspond to the volume of works, owned or rented;
- failure to request contract performance guarantees, even in the case of supply contracts;
- requirements related to additional technical management staff that should be employed, not outsourced, which limits participation of companies that do not have technical staff on their payroll and can engage them under temporary work contracts;
- use of special eligibility requirements by some contracting authorities related to submission of non-debtor certificates issued by the contracting authority, which exceeds the public procurement law requirements, given that receipt of such certificates reveal names of economic operators participating in the procurement procedure, thereby compromising the procedure and directly affecting fair competition in the procurement process, etc.;
- in some cases, members of bid-evaluation units have unfairly disqualified economic operators that presented lower-value bids and have qualified economic operators with higher-value bids, resulting in damages to the contracting authority's public procurement budget or illegality in implementation of procurement procedures.
- failure to analyse reasons for tender annulment prior to organization of new procurement procedure that would have allowed necessary corrections and would have increased competition.

On problems identified in implementation of works and goods contracts, the audit found economic damages in the amount of 112,802 thousand ALL as a result of non-implementation of rules in the field of construction and failure to conduct construction works approval and handover. In particular, the audit findings established irregularities and problems related to:

- technical deficiencies due to inadequate definition of technical specifications (failure to study the terrain) that require substantial changes during performance of works contracts;
- initial estimates that do not match the project's volume;
- price caps that are not covered in construction works pricing manuals, are not accompanied by relevant price analyses or are based on price analyses that are not conducted according to regulations;
- postponed deadlines for completion of works without technical justification to avoid contractual penalties for delays in completion of the works;
- deviations from situational volumes, revealed by comparison of technical file documents against actual works in the field.

PPA reports did not include any data on corruption cases in 2022. Therefore, the Agency was presented with a freedom of information request inquiring about this matter, but in its re-

sponse PPA informed that *“in the year 2022, there were no corruption cases or reports referred the prosecution service by PPA.”*

Given that the General Directorate of Anticorruption’s 2022 Annual Report is not published yet, this institution was also addressed with a freedom of information request with the same outcome, i.e. the General Directorate’s response read *“Based on performed checks, in 2022 the General Directorate of Anticorruption has not filed any criminal charges in the field of public procurement”*.

According to these reports, FOI requests and media consultation, it can be concluded that public authorities are hesitant to forward corruption cases for further processing by competent authorities in an attempt to hide behind law-stipulated targets, leaving this responsibility to the media and civil society organizations.

Given that non-implementation of the new 2020 Law on Public Procurement had been extensively discussed in the public, better results in the fight against corruption were expected, but in reality results are the same or even worse – non-existent.

The EC’s 2023 Progress Report for Albania, yet again, underlines that: in respect to development of effective system for prevention of corruption in public procurement, Albania should focus its efforts on further strengthening the functioning of the overall system, in order to increase competition, compliance and professionalisation. Albania has laid down a good foundation by significantly improving transparency through its comprehensive electronic procurement and appeals system, and by improving its review system to allow participants access to redress.

## **BOSNIA AND HERZEGOVINA**

In Bosnia and Herzegovina (BiH), the legal framework on public procurement is centralized and falls under state level jurisdictions. A unified public procurement system has been under construction since 2004, with the adoption of the first state Law on Public Procurement. The current legal framework is established by the Public Procurement Law (PPL) and is subject to continuous development as part of the process for alignment of BiH’s public procurement system with the EU Directives. In addition to the primary law, the legal framework on public procurement also includes a series of bylaws (secondary legislation) adopted by BiH’s Council of Ministers or the Public Procurement Agency (PPA)<sup>3</sup>. Apart from the formal process for alignment with the EU acquis, the public procurement system is also part of the public administration reform process wherein issues related to public procurement are addressed in the context of improving fiscal transparency and accountability.

At principal level, the law regulates public procurement matters based on the principles of non-discrimination, transparency, equal treatment, and open competition. It can be said that the law and bylaws reasonably regulate public procurement matters by establishing minimum transparency in procurement planning and contract award processes, adequate advertising, equal quality and availability of information for interested bidders, prohibition of discrimination, adequate online access, minimum bid evaluation and contract award criteria, public opening of bids, etc. Although reasonably solid, the regulatory framework has its own shortcomings, primarily related to lack of transparency in the contract performance stage. Moreover, matters related to concessions and public-private partnerships are not regulated by this law and are instead governed by separate laws adopted at different administrative levels in BiH.

---

<sup>3</sup>The legal framework is comprised of the Public Procurement Law adopted in 2014 and 20 bylaws. Over the nine-year period from its adoption, the law was amended only once, in 2022, which contributes to the system’s stability. However, existence of as many as 20 bylaws makes the system complex.



A robust institutional framework is in place, with clear roles and responsibilities assigned to specific institutions. Key institutions in this field are the Public Procurement Agency (PPA) and the Procurement Review Body (PRB), while audit offices, BiH Court (administrative department), and the Anti-Corruption Agency also play a significant role. BiH's institutional framework on public procurement is an example of centralization of key public procurement functions, as there is significant concentration of such functions within the purview of two independent institutions: PPA and PRB. This observation of centralized functions does not pertain to establishment and operation of joint procurements or central procurement bodies, whose formation is envisaged as possibility by the Public Procurement Law (PPL). Instead, it refers to the functions of primary and secondary policies and legislation, international coordination, monitoring and control, capacity building and professionalization, reporting, etc. In general, it can be concluded that more efforts are needed to harness the full potential of all institutions. Coordination among some key institutions is incomplete. Having in mind illegal collusion among bidders, collaboration with BiH's Competition Council is of essential importance, which is currently not the case. Key procurement institutions lack capacity for quality, efficient, and adequate performance of their responsibilities. Also, contracting authorities need additional capacities to perform procurement tasks.

The legal protection system in Bosnia and Herzegovina enables a very high number of appeals, affecting legal certainty, diminishing trust in the public procurement system, and causing delays in project implementation. Also, the Procurement Review Body was established as an independent institution with legal entity status, headquartered in Sarajevo, Banja Luka and Mostar, creating a significant likelihood of inconsistent legal practices both, between decisions at the headquarters and its branches and among different councils, which is reflected in the practice. The law does not stipulate procedure for unification of practices (decisions) or practice on monitoring and studying judicial decisions.

While Bosnia and Herzegovina's public procurement sector showcases substantial financial figures, it is crucial to critically assess certain aspects of its functioning. Significant in absolute numbers, the total annual value of public procurement exceeding 2.25 billion EUR raises questions about efficiency and effectiveness of procurement processes. The average share of public procurement in the country's GDP (10.65%) and budget expenditure (23.49%) raises concerns about allocation and utilization of public funds, calling for closer examination of the economic impact and the value for money. Examining the breakdown of public procurement value across goods, services, and works provides insight into diversity of economic activities in the country. Goods account for 39.47% of the total value of public procurement, services contribute with 36.00%, and works represent 24.54%. This distribution reflects a balanced engagement across various sectors, showcasing the multifaceted nature of public procurement in Bosnia and Herzegovina.

The average number of bids per tender procedure is 1.93, indicating that competition is low although open procedures dominate the landscape in this field, constituting 71.42% of the total value of public procurement. Negotiation procedures and other procurement methods account for 11.44% and 17.13%, respectively.

**Disinterest on the part of bidders to submit proposals for often lucrative government projects reflects a very low level of trust in the public procurement system. Low number of bids can lead to increased prices or reduction in quality of goods procured. According to previous legal provisions and interpretations, most procedures required at least three valid bids to complete the process. This has led to significant number of procurement procedures being annulled on the grounds of insufficient number of valid bids. The new legal solution allows contracting authorities to complete the process or award the contract even in cases when they have been presented with only one valid bid. Alarming is the fact that, in the period 2017-2023, the average number of bids in procurement procedures for goods (marked**

by the highest competition level) stands at 2 or below. Ultimately, the absence of any valid bids in procurement procedures is a common excuse for contract award under negotiated procedures without previously announced procurement notice. While this risk has been identified in considerable number of reviewed cases, as part of their recent audit reports, oversight institutions have not specifically emphasized this risk on the account of the fact that it does not constitute a violation of the law.

In general, enhanced transparency, integrity and quality should have a preventive effect on public procurement violations (which is not covered by any measure in PPL targeting transparency). However, having in mind the number of reports on public procurement violations to PPA (18 in 2022) and the negligible number of motions for initiation of misdemeanour proceedings to PRB (1 in 2022), this effect is not achieved. PPL features provisions on violations committed by contracting authorities and responsible persons at these institutions, as well as violations committed by bidders and respective responsible persons, accompanied by relevant fines. Documents analysed in preparation for this overview do not provide any information on the number of cases or situations (and, accordingly, reasons for inactivity on the part of institutions) in which competent authorities, in particular PRB when acting in appeal proceedings (especially when the appeal is admitted on the grounds of legal violations) had come across information or had determined that a law violation has occurred, which would have compelled them to file motion for initiation of misdemeanour proceedings.

**Analysis of the public procurement system in Bosnia and Herzegovina reveals absence of actions to prosecute and sanction abuses in public procurement due to inadequate and insufficient efforts on the part of judicial institutions. Impunity for these abuses seriously undermines trust and competition, and negatively affects bidders participating in public tenders. On the other hand, the courts' slow pace in resolving complaints lodged by participants in procurement procedures renders the protection mechanisms meaningless. Failure to prosecute abuses in public procurement procedures legalizes corruption, undermines the trust of citizens in public institutions and sends the message that corruption and crime are worthwhile. Investigative reporters and civil society organizations enlighten and document abuses in public procurement by various institutions and public enterprises on daily basis. In spite of that, most abuses go unpunished, while those involved in corruption continue to control public spending.**

## KOSOVO

State-of-affairs in the area of public procurement is highly problematic, which has been duly noted in civil society analyses, but also in reports of other relevant institutions. In particular, this area is characterized by serious risk or potential for corruption, which is further complicated by poor and incomprehensive legal provisions.

By using the instrument for free access to public documents, FOL Movement addressed the Ministry of Finance with a request to obtain the latest version of the Draft Law on Public Procurement. However, the document disclosed does not seem to be the latest version, i.e. it does not feature all changes intended by the party proposing law amendments.

According to information obtained by FOL from its reliable sources, the Public Procurement Regulatory Commission, which is responsible for monitoring implementation of public procurement rules, is intended to be placed within the Ministry of Finance, thereby losing its institutional independence. Moreover, the Procurement Review Body should be transformed into single-level body, which means that its decisions cannot be appealed. Be that as it may, these changes do not appear in the draft law sent by the Ministry of Finance.

According to the proposing party, the purpose of these amendments is to address problems



that plague the public procurement cycle in Kosovo, which may be of different form, manner and size, but undoubtedly affect the Budget of the Republic of Kosovo. However, adoption of above-elaborated alleged changes would further derogate the public procurements system in Kosovo.

Lack of integrity in the public procurement system is evident, starting from problems related to law enforcement, contract management, lack of transparency and interinstitutional cooperation, and ending with lack of evidence and accountability in cases processed and sanctioned by the prosecutorial and judicial system. Tender files and contract notices include requirements and criteria that are contrary to the Law on Public Procurement and procurement rules in general, and directly favour certain economic operators.

Furthermore, institutions continue to encounter problems in terms of estimating the value of procurement contracts, resulting in award of public contracts in values that exceed the amount of funds planned in their budgets. Lack of transparency is a direct result of the fact that procurement contracts are not published on the e-procurement platform. Access to tender documentation is rather difficult due to the large volume of documents. On top of that, capacity of staff working on public procurement is limited and reflected in frequent mistakes made in procurement procedures due to heavy workload. This includes lack of trained staff and adequate infrastructure for procurement management.

## MONTENEGRO

Within the framework of EU accession negotiations, Montenegro opened the chapter on public procurement at the end of 2013<sup>4</sup>. Ten years have passed since and improvements are still needed in the field of public procurement.

Throughout the years, Montenegro was obliged to amend its national legislation to integrate standards from the EU Directives. In addition to the law, which has been brought largely in line with the EU Directives under the latest amendments, there is still room for improvements to certain provisions in order to ensure better implementation.

Public procurement is a high-risk area for corruption. Over a four-year period (duration of the parliament's mandate), more than 2 billion EUR are spent on public procurement, with an average share of 8% to 15% in Montenegro's GDP. These data are indicative of the need for transparency, efforts to strengthen capacity of contracting authorities and restore trust in the public sector, as well as to ensure daily control in terms of law enforcement. In Montenegro, the Electronic Public Procurement System has been in use for two years and accounts for some progress in respect to data availability and monitoring of public procurements, especially due to the fact that all public procurements are conducted through this system.

In 2022, the total value of public procurement has doubled compared to the previous year (2021) and amounts to more than half billion euros. The increase in value of public procurement is conditioned by the end of the covid pandemic, as well as raising inflation and circulation of more funds, in line with global flows. The fact that the average number of bids per tender procedure has increased to 3.5 is encouraging, but is insufficient to ensure truly competitive market if the trend does not continue. Worrying is the fact that 35.74% of the total value of public procurement is contracted under tender procedures presented with only one bid, which is the highest share observed in the last four years.

The average duration of procurement procedures is 105 days in the case of limited procedure, 81 days in the case of open procedures, and 34 days in the case of negotiation procedures without previously announced procurement notice. The law grants contracting

<sup>4</sup> <https://www.skupstina.me/en/eu-accession/montenegro-and-the-european-union>.

authorities discretionary rights to decide which type of procedure to use for procurement of goods, works or services. The share of open procedures in all public procurement, which currently stands at 73.26%, is a good indicator.

Another significant, but worrying fact concerns the low share of simple procurements (15.20%) organized through the electronic system, as well as small-value public procurements (below 5,000 EUR) awarded outside the electronic procurement system by means of direct procurement from specific bidders. Negotiation procedures without previously announced procurement notice account for 11.14% of all public procurements.

Encouraging is the fact that the number of bids submitted in procurement procedures has increased from 15,386 in 2021 to 22,474 in 2022.

The interim report (first half of 2022) shows that inspection supervisions were conducted at 160 out of 675 entities obliged to apply the Law on Public Procurement and registered on the relevant list in the Electronic Public Procurement System. Moreover, inspectors have found 137 irregularities (at 59 entities subjected to supervision). Among the total number of inspections, 27 were conducted upon previously submitted initiatives and resulted in establishment of eight irregularities. As regards inspections conducted for the purpose of the report on implementation of public procurement contracts and publication of contract performance notifications on the Electronic Public Procurement System within a deadline of 30 days from contract completion, 64 inspections have resulted in identification of 52 irregularities (81.25%). On the other hand, 11 inspection supervisions performed on small-value procurements and urgent procurements upon previously submitted initiatives resulted in identification of eight irregularities (72.73%). The high number of irregularities is indicative of the need for enhanced control system and strengthened inspection capacity in public procurement. The need for better legal framework, more stringent penal provisions, better technical equipment at inspection services, as well as increased number of inspectors has been reiterated for many years<sup>5</sup>.

## NORTH MACEDONIA

For several years, implementation of public procurement in North Macedonia is 'trapped' in the old practice. While the new Law on Public Procurement, largely aligned with the EU acquis, is in force for more than three years now, **public procurement is still implemented in the 'old fashion', without utilizing possibilities offered by the new legal framework.** Independent public authorities, civil society organizations and the media continuously reveal cases of possible irregularities and corruption in public procurement.

By inertia and not as naively as it might seem, selection of the most favourable bid is **dominantly made by using the criterion defined as 'lowest price'**, in spite of the fact that the law stipulates use of the criterion defined as 'most economically advantageous tender'. High 94% of procurement procedures still use lowest price as criterion for selection of the most favourable bid, thereby preventing cost-effective procurement of what is needed and attainment of the best value for the money spent. In 2022, this selection criterion was used to award public procurements in total value of 988 million EUR.

Apart from lowest price, contracting authorities did not discontinue **frequent organization of electronic actions for reduction of initially bided prices.** In 2022, e-auctions were organized for 73% of all public procurements, in spite of the fact that adverse effects of inadequate use of e-auctions have been repeatedly indicated by the civil society sector and, in the last several years, by the institution competent to monitor and analyse implementation of the

<sup>5</sup> <https://wapi.gov.me/download-preview/b8f25dc1-b690-49f3-8ad2-9636718bc741?version=1.0>.

Law on Public Procurement, i.e. the Bureau of Public Procurement (BPP). In this regard, BPP recommended the institutions to limit use of e-auctions, irrespective of the criterion applied for selection of the most favourable bid.

2022 was marked by **declined competition in public procurement** to barely 3 bids per tender procedure, which is the lowest competition level recorded in the last five years. Negative trends in public procurement competition are evident from other datasets as well. Most worrying is the fact that more than 35% of tender procedures are not presented with any bids or are presented with only one bid. More specifically, 5% of tender procedures are not presented with any bids, while 30% are presented with only one bid. Another concern-raising trend is the deteriorated structure of tender procedures in the sense that the share of tender procedure with no bids, with one and with two bids is increasing, while the share of those with three and more bids is decreasing.

Low competition is also reflected in concentration of companies participating in tender procedures, i.e. **absolute domination of several companies in distribution of public procurement funds**. Notably, the top 20 companies with high-value procurement contracts account for 26% of the total value of all public procurements, while the cumulative value of contracts won by the top ten companies with highest number of procurement contracts accounts for 35% of the total value of all public procurements. On the other hand, only 0.3% of public procurement contracts are awarded to foreign companies (100 contracts), accounting for 3.3% of the total value of all procurement contracts (37 million EUR). Among them, companies from EU member-states account for 55% of these contracts and 83% of their cumulative value, with 45% of contracts accounting for 17% of the total value are awarded to companies from non-EU countries.

Frequency and ease of tender annulment has not subsided. **In 2022, every third tender procedure was annulled**. In that, the dominant reason for tender annulment concerns the fact that there were no bid submitted or there were no acceptable bids among those submitted, i.e. all bids had been eliminated in the evaluation phase. There are institutions that have annulled more than 50% of their tender procedures, meaning they have annulled every second tender and had to organize the procurement procedure anew. A lot has been said about problems created by tender annulment which primarily threatens efficiency and effectiveness in operation of the institutions, as well as uncertainty and distrust among businesses. The high share of tender annulments is one of the oldest problems in the area of public procurement in the country, but has not been resolved even with the several measures taken in the last years. This raises concerns that, in addition to objective reasons, frequent annulment of tender procedures is also related to tender rigging and corruption.

The single positive development is noted in respect to negotiation procedures without previously published procurement notice, also known as direct contracts, which are the least transparent procurement procedure. While the number of such contracts in 2022 has increased compared to the previous year (334 in 2022 compared to 300 in 2021), **the value of directly-awarded contracts has decreased**. In 2021, the value of these contracts accounted for 105 million EUR, while in 2022 their value dropped to 74 million EUR. In spite of decreased value of direct contracts, 6.6.% of all contracts have been awarded under this type of procedure. However, the biggest problem with these contracts is the fact that high 82% of negotiation procedures without previously announced procurement notice were presented with only one bid, i.e. they implied negotiations with only one company. As regards reasons for use of this non-transparent procedure, as many as 35% of direct contracts were signed on the grounds of urgent needs, while 55% were awarded due to two previously failed procurement procedures, meaning that the tender procedure was not presented with any bids or there were no acceptable bids after the evaluation phase.

**A negative trend in 2022 is observed in respect to appeals lodged by companies before the State Commission on Public Procurement Appeals**. Namely, while the number of tender

procedures organized in 2022 is slightly higher compared to the previous year (by 0.4%), the number of appeals has decreased by high 34%. At the same time, the share of appeals in the total number of announced procurement notices has dropped to 3.3% and is the lowest share observed in the last four years. The share of appeals approved by the State Commission has decreased in parallel to the decreased number of appeals lodged. Only 40% of all appeals were approved, which is the lowest approval level in the last six years.

In addition to above-elaborated general issues, **each public procurement stage is affected by other problems, some of which are old, while others are new**, and are summarized below:

- market research is still not conducted;
- procurement needs are not elaborated and justified;
- public procurement plans are not complied with;
- little effort is invested to ensure a more precise calculation of the procurement's estimated value;
- frequent use of discriminatory provisions in tender documents and technical specifications;
- frequent occurrence of bids that fully match the procurement's estimated value, which had not been published in advance;
- too many bids rejected in the evaluation phase;
- rare appointment of persons responsible to monitor contract performance, etc.

At national level, this year was marked by the government's decision to continue implementation of the 2019 special law on strategic partnership for construction of corridors VIII and X-d in spite of concerns expressed by the EU about the fact that this law exempts application of the Law on Public Procurements.

In March 2023, a contract was signed with the American-Turkish consortium Bechtel & Enka, selected in direct and non-competitive manner and without application of the Law on Public Procurement, for construction of 110 kilometres along these two corridors, in total value of 1.3 billion EUR. This means that **not only was the strategic partner selected directly, by means of *lex specialis* and without competitive procedure, but the Law on Public Procurement would not be applied to projects anticipated for construction of these two corridors**, i.e., in the next six years, at least 200 million EUR of budget funds annually will be spent without application of this law.

In that, poor experience from a similar endeavour back in 2013 when the Law on Public Procurement was exempted from application in selection of the Chinese company SINOHYDRO to construct the motorway to Ohrid in the value of half billion EUR did not serve as lesson learned, especially knowing that construction deadlines were breached several times and the motorway is still not completed, almost twice the amount of initially planned funds was spent and corruption trial is led before the criminal court.

Amendments to the Law on Medicines and Medical Aids from March 2023 also derogate the Law on Public Procurement. In particular, they allow award of managed entry agreements between the Republic of North Macedonia and manufacturers of innovative medicines at high prices, without market competition. According to these changes and contrary to provisions under the Law on Public Procurement, managed entry agreements will not be made publicly available and persons involved in the procedure will be bound by non-disclosure statements.

## SERBIA

As part of its EU accession negotiations, Serbia opened Chapter 5: Public Procurement (which is now part of Cluster 1: Fundamentals) in December 2016, but seven years later it has still not met the criteria established at that time for temporary closure of this chapter. Having in mind observations put forward in the EC's Country Reports and the current state-of-affairs, it seems that today Serbia may be more distant from closing this chapter than it was back in 2016.

What are the key problems in Serbia's public procurement system?

In addition to those noted by the European Commission in its annual reports, such as incomplete alignment of national legislation in the field of public procurement with the EU acquis and large number of exceptions from application of the Law on Public Procurement, main problems also concern absence of competition and insufficient transparency, lack of control on contract performance, non-compliance with environmental principles and ineffective legal protection (criminal and misdemeanour).

Namely, the new Law on Public Procurement entered into force in December 2019 and its enforcement began on 1<sup>st</sup> July 2020. Adoption of this law ensured successful transposition of two directives in the field of public procurement in the national legislation - Directive 2014/24/EU (the so-called classic directive) and Directive 2014/25/EU (the so-called sectoral directive). However, having in mind that, in broader terms, the public procurement system also includes public-private partnerships and concessions, full alignment of national legislation in this area necessitates adoption of amendments to the Law on Public-Private Partnerships and Concessions without any further delay to ensure transposition of the EU Directive 2014/23/EU on the award of concession contracts, which has been postponed year after year. The only positive development in this regard concerns formation of a working group tasked to draft this law, but to this day it remains unknown whether this activity has even begun. Moreover, the deadline for adoption of this law has been postponed to next year under all Action Plans on Implementation of the Public Procurement Development Program in the Republic of Serbia from 2019 until today.

Furthermore, a major problem related to exceptions from application of the Law on Public Procurement concerns the huge number of contracts awarded without any procurement procedure, on the basis of various *lex specialis* or international treaties, and questionable compliance with the principles of public procurement. Until recently, for example, a law was in effect enabling suspension of the Law on Public Procurement for all linear infrastructure projects (i.e. projects of highest value), but under pressure from the EU and the domestic public, this law was repealed after several years of application. However, shortly after the law was revoked, the government adopted new *lex specialis* - the Law on Special Procedures for Realization of the International Specialized Exhibition EXPO Belgrade 2027, which repeals provisions of the Law on Public Procurement and thereby enables spending of almost 1 billion EUR without the need to organize public procurement. The harmful practice of suspending systemic and anticorruption laws must be immediately stopped, as repeatedly warned by the European Commission in its annual reports.

Closely related to the problem of exceptions from application of the Law on Public Procurement is the problem of (non)compliance with the basic principles of public procurement (when procurement procedures are organized), primarily the principle of ensuring competition and the principle of transparency. As regards competition in public procurement, it is almost non-existent. According to the Public Procurement Office's latest report (2022), the average number of bids per tender procedure stands at 2.5, but the question is raised how much this data reflects the actual state-of-affairs, given that as many as 51.6% of tender



procedures were presented with only one bid! Reasons for absence of competition can be either insufficient interest on the part of bidders due to low level of trust in the system or insufficient market research by contracting authorities. However, in our opinion, the most common reason is favouritism by contracting authorities or bid-rigging by business entities.

As far as transparency is concerned, it should be said that some progress has been achieved with the new Public Procurement Portal launched in 2020. In addition to procurement notices and complete tender documentation, this portal enables publication of public procurement plans, decisions taken during procurement procedures, as well as communication with business entities and the Public Procurement Office in accordance with the law. Moreover, the share of negotiation procedures without previously announced procurement notice (the least transparent procedure) in the total number of procurement procedures is relatively small: according to the Public Procurement Office's 2021 Report, their share was 0.97%. Moreover, announced amendments to the Law on Public Procurement should ensure greater transparency in the phase on contract performance, as newly proposed obligations for contracting authorities include mandatory publication on the e-portal of data on all contracts signed after completion of procurement procedures, as well as data on all subsequent changes made to the contract. It remains to be seen whether these proposed changes to the law would actually bring any results, and whether and how the Public Procurement Office will more closely regulate the manner of data publishing and (perhaps more importantly) what types of data are published, given that the draft amendments to the law stipulate these issues as obligation of the Public Procurement Office.

As regards performance of public procurement contracts, in addition to transparency, adequate supervision of this phase is equally important, because otherwise, it opens huge space for corruption and various illegal agreements between contracting authorities and selected bidders. That is why the criteria for temporary closure of Chapter 5 place special emphasis on strengthening control mechanisms in the contract performance stage. Contrary to this, the current Law on Public Procurement regulates supervision of contract performance very narrowly and imprecisely by only stipulating that the contracting authority is obliged to control performance of public procurement contract, and that supervision is performed by the Ministry of Finance. To make matters worse, the ministry has not supervised performance of public procurement contracts for almost three years, i.e. since the start of law enforcement. Namely, supervision by the Ministry of Finance became feasible only with adoption of the special Law on Budget Inspection (Official Gazette of the Republic of Serbia no. 118/2021), whose implementation began on 1st January 2023. The abovementioned law centralized budget inspection, thus enabling the control of contracts awarded by contracting authorities whose founder is an autonomous province or local self-government unit, which would not have been possible without it. However, to this day, there are no data on supervision performed in this stage of public procurement procedures.

What makes the existing situation even more dangerous is the fact that the current Law on Public Procurement provides significant opportunities for changes to be made to contracts during their implementation (in some cases, it allows increase of contract value by up to 50% of its original value). Therefore, the absence of control on contract performance has created ideal conditions for unlimited corruption. In the following period, it remains to be seen how and to what extent budget inspection will begin to implement this type of supervision. Announced amendments to the Law on Public Procurement could bring some positive developments in this regard, since the current (and only) provision that supervision is carried out by the respective ministry would be supplemented by a provision that stipulates an obligation for the ministry to more closely regulate the manner of supervision, which was not the case so far.

The aforementioned Draft Law on Amending the Law on Public Procurement, whose adoption is announced for the end of 2023, 'adds' the principle of environmental protection to the existing principle of economy and efficiency. In addition, the draft law establishes an obligation for the Public Procurement Office to stipulate the types of goods, services and works for which contracting authorities are obliged to apply environmental considerations when defining the technical specifications, eligibility criteria for tender participation, contract award criteria or conditions for contract performance.

The current Law on Public Procurement stipulates an obligation for compliance with environmental protection regulations only for bidders, but not for contracting authorities. According to the law, the contracting authorities may, but do not have to, consider environmental and energy efficiency requirements when setting technical specifications, selection criteria and contract award criteria. On the other hand, when performing public procurement contracts, business entities are obliged to respect environmental protection requirements, i.e., international law provisions on environmental protection. The consequence of such legal solutions is that, according to the Public Procurement Office's 2022 Report, contracting authorities have applied environmental considerations in only 0.44% of all public procurement procedures.

Bearing in mind all of the above, announced changes to the law concerning 'green procurement' would certainly bring about some movement in normative terms, but it remains to be seen whether these changes will also bring improvements in the practice.

Finally, a major problem in Serbia's public procurement system is ineffective legal protection, despite the large number of protection mechanisms that remain available to all participants in public procurements. Namely, in addition to 'legal protection' before the Republic Commission and those granted as part of PPO's monitoring procedure, legal protection is also available in the form of criminal proceedings led before competent prosecution services and courts (procurement fraud under Article 223 of the Criminal Code), misdemeanour proceedings led before misdemeanour courts, competition protection procedures led before the Commission for Protection of Competition and audit procedures of the State Audit Institution. In spite of the many legal protection mechanisms in the area of public procurement, lawful implementation of public procurement and anticorruption measures are yet to yield any specific results. This leads to the conclusion that the trust of both citizens and economic operators in state bodies is extremely low, as well as that state bodies do not exercise their powers granted under the Law on Public Procurement.

In addition to all this, by deploying very broad legal description of criminal offences and non-specificity of the manner in which offences are committed, the legislator has opened up a myriad of legal issues and dilemmas about the work of prosecution services and courts. As a consequence, in the practice it is often unclear what constitutes commitment of this criminal offence and what facts need to be established during the proceedings, leaving room for dissonant legal practice and arbitrary actions by state authorities. This is confirmed by data on the number of proceedings initiated and sanctions imposed for this criminal offence. According to corruption statistics published on the Ministry of Justice's official website, in 2022, a total of 67 new reports on criminal acts of procurement abuse were filed to the special anticorruption departments at the Higher Public Prosecution Office and the Prosecution Office Against Organised Crime; 83 decisions were taken to dismiss criminal charges, 2 orders were issued to initiate investigation and 9 indictments were filed. Moreover, according to these statistics, 7 suspended sentences and no prison sentences were handed down.

There are still no official statistical data on misdemeanour procedures in the field of public procurement. However, a quick glance at the Public Procurement Office's annual report allows the conclusion on increased number of misdemeanour proceedings led before the courts. Thus, in 2021, PPO filed 143 motions for initiation of misdemeanour proceedings, while

in 2022, the number of such motions accounted for as many as 429. In contrast, the Republic Commission, which is also authorized to initiate misdemeanour proceedings, had filed only 6 motions in 2022.

As regards criminal and misdemeanour liability in public procurement, the most striking fact is that the most serious possible violation of the Law on Public Procurement, i.e. non-enforcement of the law, is stipulated as misdemeanour. Namely, provisions under Article 234 of the Law on Public Procurement stipulate that the contracting authority has committed a misdemeanour when it had awarded a public procurement contract without implementing procurement procedure. More absurd is the fact that the substance of the criminal offence of public procurement abuse incriminates these actions only after the fact!

In terms of its legal significance, award of public procurement contract without previously organized procurement procedure is certainly the most serious form of law violation in this area and should therefore constitute a criminal offense, not misdemeanour.



# Identified Corruption Risks in Public Procurement in the Western Balkans

## KEY RESULT

As indicated earlier, the Balkan Tender Watch coalition developed a unique methodology, i.e. benchmarking tool, which allows detection of corruption-vulnerable spots within public procurement systems. The benchmarking tool is comprised of three segments.

The first segment measures the basic elements of procurement systems and their preparedness to identify, process and sanction corruption in public procurement. This segment is focused on national legislation (alignment with the EU rules and main anticorruption principles and mechanisms) and the system's performance in general (results at the level of public procurement system based on official statistics). This segment covers 27 indicators.

The second segment of the tool is focused on public procurement cycle and draws data from monitoring of specific public procurement cases. It enables collection of standardized data on the main features of monitored cases necessary to assess the vulnerability to corruption. This segment covers 41 indicators.

The third segment of the tool is focused on measuring responsiveness of the institutions responsible to ensure integrity and combat corruption in public procurement. This approach enables measurement of anticorruption mechanisms' effectiveness (procedures and institutions) based on their interventions in relation to potential or proven corrupt practices already detected by the system.

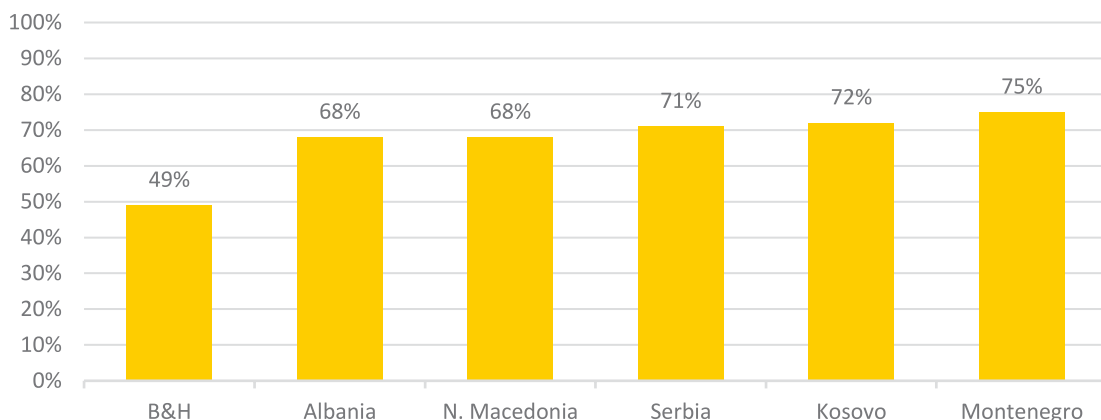
Results presented here concern the first two segments of the tool, while results pertaining to the third segment are qualitatively described in the chapter on country-specific overviews. The cumulative result is composite and shows the degree to which public procurement in the country is implemented in terms enforcement of legislative, institutional, systematic and practical anticorruption measures. The lowest score of 0% means that public procurements are implemented under high risk of corruption, while the highest score of 100% means that public procurements are implemented in an environment that implies existence and enforcement of legislative, institutional, systemic and practical measures for protection against corruption.

The average score for all six WB countries is 67%, which means that 33% of public procurements are still implemented under serious threat of corruption. The country-specific scores range from 49% in Bosnia and Herzegovina to 75% in Montenegro.

When the result of this complex assessment is correlated to the total amount of funds which all six WB countries spend on public procurement every year, i.e. 11.6 billion EUR, it could be inferred that 3.8 million EUR annually are under threat of corruption.

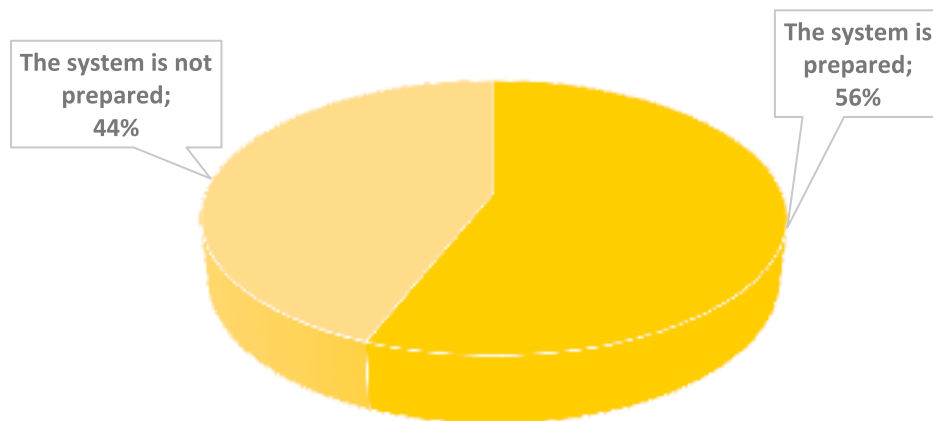
This is a serious amount of funds and therefore governments in all WB countries and public authorities participating in public procurement implementation, creation of legislative and institutional setup and public procurement systems in general, should take urgent measures to narrow the space for corruption and ensure more efficient public spending.

*BENCHMARKING TOOL RESULTS*



At the level of individual segments, the average score under the first segment, i.e. the system’s preparedness, is 56%, while the average score under the second segment, i.e. implementation of public procurement, is 78%.

*LEVEL OF PREPAREDNESS OF THE SYSTEMS FOR PROTECTION AGAINST CORRUPTION IN PUBLIC PROCUREMENT*



Below is an overview of corruption risks identified in public procurement for each WB country based on this research and monitoring of specific public procurement cases, by using the benchmarking tool methodology developed by the Balkan Tender Watch.

**ALBANIA**

Although the new legislation on public procurement was further aligned with the EU acquis in 2020, observations and assessments of public procurement in Albania featured in the EC’s 2023 Report allow the conclusion that progress is not satisfactory compared to past years. The Supreme Audit Institution identified significant risks across the public procurement cycle, with persistent inefficiencies, lack of control, risks from inadequate qualifications, licenses and other criteria required, and irregularities leading to financial losses. Moreover, issues such as use of negotiation procedure without previously announced procurement notice, discrepancies in calculation of funds, and insufficient legal knowledge among staff engaged in public procurement contribute to risk-laden landscape in the country. Assessment of state-of-affairs reveals shortcomings in project implementation, including deviations from

situational volumes, technical deficiencies, and discrepancies between initial estimates and project volumes. The risk of corruption looms at large, evident in public authorities' reluctance to report cases and absence of criminal charges filed by anticorruption bodies. The overall system needs to be strengthened, with emphasis on competition, compliance, and professionalization, underscoring the need for identified risks to be comprehensively addressed with a view to create a more robust and transparent public procurement environment in Albania.

Most common corruption red flags include lack of transparency (inconsistent distribution of information to bidders), inadequate choice of procurement procedures, unjustified use of non-competitive procedures, unclear evaluation criteria, too narrow or too broad contract specifications, etc.

Open Data Albania, a civil society organization working on promotion of transparency through data, analysed the 100 highest-value tender procurements in 2022. According to that analysis, 39 of them were organized as limited procedures, which implies high risk for competition in public procurement.

According to Open Data, economic efficiency of bidding in these 100 tender procedures is deteriorating. *"None of the tenders guaranteed an offer less than 95% of the fund limit value. Even the main part has this level of 99.9%".*

Eight out of the ten highest-value contracts in 2022 raised *red flags* related to risks of procedural irregularities and competition issues. The Albanian Road Authority (ARA) organized three of these ten tenders in 2022.

The highest-value tender procedure in 2022 concerns expansion of the Elbasan-Qafë Thane road (phase 1) and was organized by the Albanian Road Authority. Among the total of six economic operators that participated in this procurement procedure, four competitors were disqualified during the evaluation phase, all of which had offered lowest price bids.

The second highest-value contract is another tender procedure organized by the Albanian Road Authority worth 2.165 billion ALL and awarded to ANK, and it concerned construction of the Korçë - Erseke road (Lot 2). *Red flags* raised by this tender concerned disqualification of all economic operators except for the contract-winning bidder.

The third highest-value contract concerned construction of the Traffic Monitoring Centre, awarded to the union of operators led by MC Networking, in cooperation with Intera Elektronik Sanayi ve Ticaret Anonim Sirk and Gjoka Konstruksion, worth 2.12 billion ALL, VAT excluded. Again, ARA appears as the contracting authority implementing this tender procedure, which raised *red flags* in terms of public procurement irregularities.

According to its contract value, construction of the National Theatre (phase I) is the fourth-ranked tender procedure, organized by the Municipality of Tirana. The bid submitted by Agi Kons in cooperation with BE-IS amounted to 1.84 billion ALL and was awarded the contract after all other economic operators had been disqualified.

The fifth-ranked contract concerns supply of oxygen and gas for medical use and was organized by the Ministry of Health. The contract was awarded to the Union of Economic Operators GTS shpk and Messer Albagaz, whose successful bid amounted to 1.62 billion ALL, VAT excluded. *Red flags* identified in this tender procedure are related to lack of competition due to development of favouring eligibility criteria.

This activity aims to monitor tender procedures in the country's main sectors such as infrastructure development; health; local government; contracts awarded by public enterprises and only in 2022 the results of this endeavour show that the top five contracts in terms of highest value have raised *red flags* for risks related to procedural irregularities and competition issues.

## BOSNIA AND HERZEGOVINA

The general conclusion of the research conducted as part of monitoring public procurements organized in 2023 implies that compromised integrity and, consequently, corruption are present in all stages of procurement procedures and processes. In Bosnia and Herzegovina, the public procurement cycle is defined as sequence of interconnected activities, from needs assessment, through contract award, to contract management and final payment. Corruptive elements can be identified in all stages of public procurement. Formulation of institutional budgets and public investment plans is yet another specific segment susceptible to corruption, as it is based on needs that are often exaggerated, unnecessary or influenced by potential bidders. Equally significant is the manner in which institutions define project tasks and procedures, as this further impacts all essential aspects of public procurement – efficiency of public spending, fairness, transparency, non-discrimination, and competitiveness. Performance of contracts awarded is the final area in which the contracting authority's integrity can be compromised. Alterations to the method of contract performance, deadlines, prices, quantities delivered or quality of goods/services/works can practically undermine the previously implemented procurement process.

Monitoring of contracting authorities' integrity has shown that, with few exceptions, identified negative practices are a permanent feature in all phases of the public procurement cycle. These practices represent behavioural patterns of contracting authorities and are challenging to eradicate. While it is difficult to enlist all illegalities and irregularities observed by this monitoring, some of them need to be highlighted:

1. **Non-transparency:** Some contracting authorities did not adopt and/or publish procurement plans and/or have organized procurement procedures not featured in their procurement plans or specific decisions. Tender documents published do not include sufficient information necessary for bidders to develop competitive bids, putting bidders with alternative sources of information in more favourable position. As regards the actual public procurement process (tendering and decision-making), inadequate transparency is observed in implementation of direct agreements, which, in the case of some contracting authorities, was almost the only procurement procedure used. It can be concluded that the public procurement process is turned into a 'black box' at the moment of contract signing between the contracting authority and the selected bidder. This practice dominates public procurement procedures in Bosnia and Herzegovina due to inadequate control of contract performance, abuses and malpractices, and lack of transparency in contract performance (including the fact that most contracting authorities do not publish their contracts). It is important to note that performance of public procurement contracts is not regulated by the Public Procurement Law (PPL), but at the level of regulations on contractual relationships, technical regulations, internal control regulations, etc.
2. **Bidder discrimination or favouritism:** Another prominent risk to integrity of public procurements concerns bidder discrimination or favouritism. It is manifested in various ways, mainly as eligibility criteria for tender participation and requirements placed on bidders (personal, professional, or financial capacity), technical and other specifications related to the procurement item, or contract award criteria that favour particular bidders. All these conditions and requirements imply a significant risk as they could provide an advantage for specific bidders or prevent others from participating, including conditions that are of no decisive importance for the procurement item. An example thereof are tender procedures that include conditions which only one bidder can meet. While this negative practice is mainly associated with the pre-tendering stage of the

public procurement cycle, an interesting observation is the fact that domestic institutions have very easily adapted to new tender publication conditions. Namely, to avoid bidder complaints about conditions, criteria, and technical specifications presented in procurement notices and tender documentation, contracting authorities have innovated a new model of bidder favouritism by simply not requiring selected bidders to submit documents demonstrating fulfilment of eligibility criteria (which, during the bid-submission process, is confirmed by statements) or bank guarantees and other security instruments that formed part of contract award requirements, and by awarding contracts to bidders who do not meet the defined conditions.

3. **Selection of inadequate procedures as risk to integrity:** This primarily refers to illegal selection of non-transparent procedures such as direct agreements or negotiation procedure without previously announced procurement notice. The law stipulates that the preferred basic procedure is the open procedure, with deviations therefrom permitted only in justified cases. Be that as it may, the monitoring shows that numerous contracting authorities choose less transparent procedures, even when legal conditions for implementation of these procedures are not met. Particularly concerning is the large number of cases of illegal use of negotiation procedures without previously announced procurement notice as the least transparent procurement procedure.
4. **Abuse of e-auctions:** Although announced as tool that would eliminate corruption in public procurement in Bosnia and Herzegovina, e-auctions are actually perceived as major generator of abuses in public procurement cases marked by cartelization or agreements among individual bidders. It should be noted that, during e-auctions, cartels are problematic for contracting authorities as they influence numerous withdrawals of lowest-price bidders, leading to much higher payments than would occur if competition was fair and without agreements.
5. **Abuses in contract performance:** Abuses in contract performance represent behavioural patterns which, due to the manner in which awarded contracts are implemented, devalue the entire public procurement process conducted and selection of the most favourable bidder. This feature distinguishes abuses from lack of control as the former involves conscious changes to essential contract elements (price, delivery deadline, quality, quantities, etc.), while the latter is a consequence of poorly designed control systems. The most dangerous example of such abuses is manifested in the form of (formal or informal) amendments and supplements to contracts that lead to situations where the selected bidder would not have been chosen if the circumstances foreseen by contract amendments had been integral part of their bid (e.g., price determined in contract amendments is higher than the price offered by the second-ranked bidder).

Except for shortcomings elaborated above, numerous other irregularities seriously undermine legality of public procurement procedures. For example, contracting authorities extend deliveries under expired contracts without conducting new procurement procedure or organize fictitious procurement procedures which can be proven by absence of envelopes containing submitted bids in their archives and protocols. Furthermore, contracting authorities allow alteration and supplements to bids during contract performance or accept bids sent by fax in procurements of significant value. Contracting authorities deny access to bid opening records for bidders or do not sign/certify these records. They do not justify decisions taken on contract award, thereby seriously violating procurement laws, even when they have been directly informed of improper conduct.



## KOSOVO

Monitoring of procurement activities and results obtained by applying the benchmarking tool revealed several corruption risks, as elaborated below.

**Special service agreements in maximum duration of 36 months awarded under public procurement** – The Law on Public Officials stipulates that special service agreements should be contracted under public procurement. The Public Procurement Regulatory Commission has published the standard document B59 Rules for Procurement of Special Services (Consultants / Individual Contractors), Article 3.6 of which allows special service agreements to be contracted in duration of up to 36 months. Given the maximum duration of these agreements, they can be misused to ‘hire’ people who would not have otherwise qualify for hire and directly bypass article 22/C of LMPFA prohibiting increased spending on wages and per diems.

**Public procurement activity initiated without available funds** – At the moment, public institutions are allowed to start procurement activity without available funds. One of the first documents to be signed is the B04 Statement of Needs and Determination of Availability of Funds, which confirms availability of funds. But in practice, public institutions initiate procurement activity and make false claims that funds are available by signing the B04 Form. A flagrant example thereof is the tender procedure for adaptation of emergency clinic into covid hospital, in estimated value of 18 million EUR, which was cancelled due to lack of funds. To mitigate this problem, interoperability is needed between the e-procurement platform and the finance systems to block the possibility for initiation of procurement activity without having secured the funds needed.

**Public Procurement Law (PPL) allows bidders with same owners/ownership to bid and win contracts** – The current PPL allows two or more companies with same owners/directors to bid in same procurement procedure and win contracts. In contrast, the World Bank procurement rules prohibit companies with the same ownership from bidding in same tender procedures. One recent example thereof was observed with contract awarded by the Municipality of Gjakova whereby the tender procedure was rigged by two companies with same ownership. This loophole needs to be closed by introducing a legal provision in the draft law that prohibit bidding by two companies with same ownership.

**Lack of beneficial ownership disclosure** – The term ‘beneficial owner’ refers to natural person, i.e., real, living person, who ultimately owns or controls company or another asset or who materially benefits from assets held by company. Kosovo lacks regulation on beneficial ownership disclosure. Such disclosure should be mandatory for all companies and individuals that receive public funds such as public procurement contracts, subsidies, state aid, etc.

**Shorter deadline for bid submission** – According to PPRC, shorter deadlines for bid submission have been noted in 16% of all public procurements. Shorter deadlines could be set for different reasons. A potential misuse of such deadlines concerns advantage against other bidders. A short deadline prevents companies to timely prepare their bids, giving advantage to those with inside information. At the moment, institutions indicate the reason for use of shorter deadline only in their procurement notice. To prevent use of shorter deadlines in the absence of convincing reason, use thereof in high-value procurement activity should be subject to prior approval by PPRC.

**Abnormally low-price bids** – Although PPL features legal provisions to protect contracting authorities from abnormally low-price bids, comparison and cross-referencing of prices bid for goods/services/works against market prices is not always easy and straightforward. Around 10% of complaints submitted to the Procurement Review Body concerns claims about abnormally low prices. Abnormally low-price bids are a corruption risk as companies tend to

offer very low prices for some tender parts and very high prices for others. To eliminate such abuses, the government should create and maintain the National Catalogue of Prices which can be used by all parties to compare market and bid prices.

## MONTENEGRO

According to the official data, there is no conflict of interests in public procurement in Montenegro. Information that, in 2022, the Directorate for Public Procurement Policy was not presented with any reports on existence of possible corrupt actions or potential conflict of interests is not encouraging in terms of detecting weak points in the public procurement system. Trust in institutions needs to be strengthened, as well as continuous monitoring and initiation of procedures by competent institutions.

As regards corruption risks in public procurement cycle, procurement planning is the first thing to should be considered. For years, the institutions in Montenegro have struggled with inadequately planning. Many institutions continue practice of making changes to their public procurement plans without adequate justification, failure to adopt procurement plans within law-stipulated deadlines or failure to adopt procurement plans at all, and non-publication of these plans on their websites. Binding obligations need to be defined for contracting authorities in respect to development and publication of public procurement plans. These plans should include analysis of the institution's needs in the previous three years and elaboration of any dramatic differences in procurement needs planned compared to same-type procurement needs in the past, as well as justification for new procurements planned. Amendments to public procurement plans must be accompanied by relevant justification of changes made. Serious corruption occurs in the phase on procurement procedure planning and preparation, particularly by use of discriminatory eligibility criteria and technical specifications.

Corruption risks in the process of developing tender documents include development of tender documents that favour particular bidder, use of discriminatory criteria to select the most favourable bid, division of procurement items to facilitate use of less transparent and competitive procedures, unreasonable and frequent use of negotiation procedures without previously announced procurement notice, as well as inadequately regulated data protection and flow of confidential information until the opening. Moreover, heavy use of direct negotiations on the part of contracting authorities raises concerns about evident abuse of this instrument, having in mind non-transparency of this type of procurements.

Data availability and transparency is very important, especially in respect to direct procurements, which necessitates proactive publication of all contracts and invoices and supervision by the Public Procurement Inspectorate.

Direct procurements account for large share of total public procurements, prompting the European Commission to draw attention to this type of procedures in its 2022 country report<sup>6</sup>.

The public procurement system should be strengthened by further alignment of the legal framework and changes to laws and bylaws that affect overall process of public procurement implementation.

Instead of the Ministry of Finance's rulebook on the method for implementation of simple procurements, direct procurements should be regulated by the law and the government regulation on the method of implementation of simple procurements, including rigids provisions on public spending caps for this type of procurements.

Lowest price should not be the main criterion for bid selection and the contracting authorities should prioritize quality of works, goods and services in public procurement procedures

<sup>6</sup> [https://www.eeas.europa.eu/delegations/montenegro/montenegro-2023-report\\_en](https://www.eeas.europa.eu/delegations/montenegro/montenegro-2023-report_en)



by using the selection criterion defined as 'best price-quality ratio', which ensures extended lifespan of goods/services/works procured and protects their budgets.

Improved and better controls, reduction of bureaucracy, simplification of procedures, adequate training and advocacy campaigns would significantly improve confidence in the public procurement system and facilitate higher competition in public procurement.

## **NORTH MACEDONIA**

Based on monitoring of public procurement procedures, it could be concluded that each stage of the public procurement cycle is plagued with corruption risks.

It all starts with selection of what should be procured, of what quality and in what scope. Almost no contracting authority complies with the legal obligation for detailed elaboration of the procurement need. Why is that product, service or work needed? Why it is needed in that quality and scope? And why it is needed now? Due diligence is not made whether something is truly needed and in that quality, scope and delivery deadline, which creates broad space for abuse and malpractice knowing that corruption is agreed exactly in this stage of public procurement, which can be addressed with good planning as anticorruption mechanism.

The next risk also pertains to the first stage of public procurements and concerns non-compliance with and frequent changes to annual public procurement plans. High 90% of public procurement procedures are implemented later than their initially planned timeline. Moreover, public procurement plans are subject to frequent changes without adequate elaboration of reasons thereof. Except for corruption doubts, all this brings under question efficiency in implementation of public procurements, normal operation of institutions, as well as the role of public procurement plans.

Adjustment of eligibility criteria for tender participation or adjustment of technical specifications to favour particular bidders, products or services is another growing problem affecting public procurement, as indicated by 45% of surveyed companies. This, most often, implies requirements for specific equipment and number of employees disposed by bidding companies, certificates, standards, performance track records, number of previously performed contracts and the like. On the other hand, tender documents rarely indicate the quantity needed or even estimation thereof, do not include details that would closely describe the procurement subject or include detailed description of the procurement subject that provides direct reference to specific products.

As a result of all that, competition in tender procedures is continuously dropping and reached 3.03 bids per tender procedure in 2022, representing a backslide to the level observed six years ago (2016). Furthermore, the structure of tender procedures is also deteriorating, meaning that the share of tender procedures presented with no bids, with one or with two bided is increasing, while the share of tender procedures presented with three or more bids is decreasing. As many as 35 % of tender procedures were not presented with any bids or were presented with only one bid. Contracting authorities do not use the mechanisms allowed by the law to stimulate competition, primarily competitive dialogues, market research, division of tenders into procurement lots, etc.

In this regard, there are numerous examples of audacious tender-rigging when the bid presented by at least one bidder fully corresponds to the procurement's estimated value, which is not published in advance and was known only to people at the contracting authority organizing the procurement procedure in question. Another example concerns cases where two bids are very close in terms of prices, but only one bidder participates in the e-auction, while the other declines any further effort to win the contract. Also, there are cases where one bid overlaps with the procurement's estimate value, while the other bid is several times

higher and expectedly does not even take part in downward bidding.

This leads to the next problem in this stage of public procurement, i.e. previous arrangements among companies for participation in tender procedures. High 54% of companies admit they have engaged in previous arrangements for tender participation, which is prohibited, but has never been sanctioned. This issue falls within the realm of the Commission for Protection of Competition which, for years now, has not issued sanctions against any company for illegal arrangements to participate in public procurement procedures. It seems that nobody is interested in reporting such arrangements given that the burden of proof for such suspicions falls on the party reporting them, which makes the entire procedure impossible to be completed. However, serious suspicion about prior arrangements between companies are almost an everyday occurrence, not only in monitoring reports on public procurement developed by civil society organizations, but also by contracting authorities that implement public procurements.

Although regulated in great details, the next stage of public procurement, i.e. bid evaluation and all steps leading to award of procurement contract, is marked by many examples that raise corruption concerns. Only in 2022, the bid-evaluation stage has resulted in rejection of high 13% of all bids, which in absolute number is around 65,000 bids. Corruption suspicions are also raised by the fact that all bids received have been rejected in almost 1,600 procurement procedures, while one bid remained acceptable in 7,130 procurement procedures. Expressed in shares, bid-evaluation processes in 7.5% of all public procurement procedures resulted in rejection of all bids, while bid-evaluation processes in 34% of all tender procedures resulted in one acceptable bid remaining, followed by contract award.

Even the last stage of public procurement, i.e. contract performance, is highly problematic in terms of corruption as it remains a 'grey' zone of which little is known, little attention is paid to and there are no efficient control mechanisms in place. Contracting authorities rarely appoint persons responsible to monitor performance of public procurement contracts, whereby contract performance is generally understood in financial terms, and not in material and essential terms. In the pool of publicly available documents on public procurement, the least documents are available for this stage of public procurement and are the most difficult ones to obtain, even by using the instrument for free access to public information. Performance of public procurement contracts is rarely subject of internal audits, and this stage is difficult to be controlled by means of external audit. After several years of status quo, late payment for performance of public procurement contracts again emerges as one of the more significant problems. In 2023, late payment was indicated as problem by 39% of companies surveyed, reporting an average period for payment in duration of 6 months and 27 days. Collection of receivable is yet another generator of corruption.

As part of the Center for Civil Communications' annual survey, 46% of companies that participate in public procurement believe that corruption is present in public procurements, while 18% of them indicated they have personally faced this problem. In their opinion, the most present form of corruption are political and familial relations, followed by kick-backs.

Against this background, it seems that fight against corruption in public procurement is far from being sufficient or adequate. Institutions and mechanisms for prevention, detection and sanctioning of corruption in this area are in place, but significant results are evasive.

For the time being, it appears that detection of corruption is the most successful aspect, credited mainly to civil society organizations and the media, as well as some independent bodies such as the State Audit Office (SAO) and the State Commission for Prevention of Corruption (SCPC).

As for the latter, among the 22 audit reports which SAO has submitted to the public prosecution for further processing based on the auditor's assessment that misdemeanour or

criminal offence has been committed, 6 reports noted irregularities in public procurement procedures and contract performance. In 2022, SCPC was presented with 33 complaints concerning suspicion for abuse of public procurement, and it has formed 2 cases in ex-officio capacity. Of these, the Commission motioned criminal charges in three cases. There are no information available about the prosecutorial outcome for these initiatives.

The public prosecution service against organized crime and corruption at the Public Prosecution Office of the Republic of North Macedonia is response to take action in cases of abuse of public procurements and abuse of official duty and authorization in public procurement.

Although the prosecution service did not respond to FOI requests inquiring about the number of investigations and indictments raised against such criminal offences, in its 2022 annual report it underlined unwavering intensity of reports and proceedings taken pursuant to paragraph 5 of the article on abuse of official duty and authorization and relating to abuses in public procurements. Nevertheless, this impression is not shared by the public.

In the meantime, under the pressure of continuous requests by the European Union, a coordination body on public procurement is formed among competent institutions. Just as efforts were made to find ways for key institutions fighting corruption in public procurement to corporate and coordinate their work, primarily in respect to measures that should be taken upon reports of public procurement irregularities and abuse, the fight against corruption in public procurement suffered a major blowback, which further contributes to already present impunity for public procurement abuses.

Notably, in September 2023 and under fast-tracked procedure, the Parliament adopted amendments to the Criminal Code that revoked the above-referenced provision stipulating an imprisonment sanction in duration of at least five years for public officials who have committed abuse of their official duty and authorization when implementing public procurements. Accordingly, this change triggered lower statute of limitations for these criminal offences. The results of such action were made known immediately afterwards. In particular, in period from adoption of these amendments to present, the media often report on court proceedings or investigations being terminated due to statute of limitation for criminal prosecution. It is believed that changes made to the Criminal Code would affect two dozen court cases, majority of which concern public procurement abuse.

## SERBIA

Corruption in public procurement poses major obstacle to development. The public procurement cycle includes many steps that procurement officers need to take and therefore corruption risks can be found across the overall cycle. Most common corruption red flags are lack of transparency (inconsistent distribution of information to bidders), inadequate choice of procurement procedures, unjustified use of non-competitive procedures, unclear evaluation criteria, too narrow or too broad contract specifications, etc.

As already noted, corruption risks in the procurement planning phase can be and are often associated with unrealistic budgeting, procurement of unnecessary goods, services or works, lack of market research, or frequent changes to procurement plans. Certain legal solutions contribute to such state-of-play, i.e., no deadline for adoption of public procurement plans and no obligation for contracting authorities to conduct market research before implementation of procurement procedures. This might be the reason behind the large number of changes to public procurement plans observed in most public procurement procedures monitored as part of the project.

In regard to procurement planning, the Directive 2014/24/EU of the European Parliament and the Council on public procurement and repealing Directive 2004/18/EC (the so-called classic directive) contains only one provision related to market research. Namely, this provision allows the opportunity for contracting authorities to conduct market research before initiating procurement procedures in preparation thereof and for the purpose of informing business entities about their plans and procurement requirements. This provision is significant because it introduced the practice whereby contracting authorities seek or accept advice of independent experts, competent bodies or market participants, in order to plan and implement procurement procedures, certainly on the condition that such advice does not lead to distortion of market competition and that the principles of non-discrimination and transparency are not violated. The information obtained through market research is the basis for determining the procurement subject's technical specifications, the method for conducting the procurement procedure, etc., all for the purpose of attaining the best value for the money spent.

Due to these reasons, the Law on Public Procurement should stipulate market research as obligation, bearing in mind the importance of this initial phase in procurement planning and defining procurement items, technical specifications, life-cycle costing, etc. This is particularly important in the context of legal provisions whereby estimated values have to be based on market research of the procurement subject, have to be valid at the time when procurement procedure is initiated, and cannot be determined in a manner that avoids application of the law.

Likewise, one aspect of public procurement that has not been discussed, but may represent a significant corruption risk, concerns the fact that contracting authorities are not obliged to publish a plan of procurements that are not covered by the law. Namely, due to high thresholds set for application of the Law on Public Procurement (8,500 EUR for goods and services and 25,500 EUR for works), the number of procurements beyond the scope of the law has significantly increased. Introduction of this obligation would enable monitoring of the manner in which contracting authorities spend public funds, which would undoubtedly contribute to reduced corruption risks.

The stage on procurement procedure implementation also carries certain corruption risks. High number of tender procedures presented with only one bid is among significant indicators of corruption. In the past, such tender procedures have accounted for more than half of all public procurements. Similar state-of-affairs was observed among procurement procedures monitored for the purposes of this project. Reasons for absence of competition (in cases where the Law on Public Procurement is applied) are different. One reasons could be insufficient interest on the part of bidders due to low trust in the system or insufficient market research by contracting authorities, but, in our opinion, the most common reason is the practice of favouring certain bidders by contracting authorities or bid-rigging by business entities.

Market division is one of the most common forms of bid-rigging in Serbia. This form of bid-rigging implies (express or tacit) agreement between bidders on market division whereby certain bidders agree not to participate in public procurement procedures organized by certain contracting authorities or in certain geographical areas. For example, participants can assign specific procurement-making entities or categories of procurement-making entities to certain companies so they do not participate in tender procedures organized by procurement-making entities that 'belong' to other companies (or are asked submit 'cover' bids). In addition to market segmentation, other forms of bid-rigging include fictitious bids, rotating bids or refrainment from bid submission. Nevertheless, it is important to note that different bid-rigging techniques are not mutually exclusive and often occur together.

On the side of contracting authorities, competition in public procurements can be limited in different ways: by setting specific additional eligibility and contract award criteria, adjusting technical specifications to favour particular bidders, and definition of procurement subject (whether the procurement is divided into lots or not). An excellent example thereof is the public procurement organized carried out by the Ministry of Health and concerning equipment for the Clinical Center of Serbia. The subject of this procurement included as many as 602 items of diverse functions and purposes ranging from state-of-art medical equipment (CT scanners, MR devices, ultrasound machines, etc.), through standard medical equipment (microscopes, wheelchairs, infusion stands, etc.), to non-medical equipment (bar stools, bookcases, coffee grinders, technical service tools). The contracting authority designed the procurement subject as single unit, without dividing it into different lots, which completely limited competition and favoured a specific bidder (group of bidders). As expected, this procurement procedure was presented with only one bid, almost identical to the estimated value.

Finally, corruption risks are present in the contract performance phase which implies attainment of the procurement procedures' purpose. However, performance of procurement contracts contrary to the manner and conditions stipulated in tender documents and contract award decisions, i.e. contract performance under changes to elements that were crucial for the contract award decision (price, delivery deadline, quality) render public procurement procedures meaningless. This does not mean that changing certain contract elements is not allowed at all costs, i.e. changes are admissible only in cases and under conditions stipulated by law. All this further enhances the importance of transparency in contract performance (elaborated in the section on the principle of transparency). Moreover, adequate supervision of this stage in public procurement procedures is equally important because, absence of control opens up space for corruption and illegal arrangements between contracting authorities and selected bidders.

# Recommendations to Improve Public Procurement in the Western Balkans

## ALBANIA

In Albania, or in any country for that matter, fighting corruption in public procurement requires a comprehensive and multi-faceted approach. Recommendations that could improve the current state-of-affairs concern:

- complete alignment of national legislation with the EU acquis in the field of public procurement, including the legislative framework on concessions and public-private partnerships;
- continuous efforts to ensure competitive procurement procedures, by further efforts to encourage use of 'most economically advantageous tender' as contract award criterion and framework contracts;
- continuous improvements to the Electronic Public Procurement System, especially in respect to access to archived procedures for the purpose of detecting problem issues that should be avoided in future procedures;
- PPA assistance to contracting authorities in respect to procurement procedures, in order to minimize cases of eligibility criteria defined by contracting authorities that restrict participation and fail to ensure fair competition of economic operators, and in order to enhance performance of contracting authorities in implementation of procurement procedures that guarantees efficiency and effectiveness in public procurement;
- development of guidelines on use of selection criterion defined as 'most economically advantageous tender' based on cost;
- development of Green Procurement Roadmap for public procurement to consider environmental and energy efficiency requirements when determining technical specifications, selection criteria and contract award criteria;
- establishment of an independent body tasked to supervise performance of public procurement contracts and adopt adequate internal act that will more closely regulate the manner in which budget inspection conducts supervision and criteria for selection of contracts whose performance will be subject of supervision;
- training programs for procurement officers and other stakeholders on standards, anticorruption measures and proper implementation of procurement procedures, and efforts to ensure greater coordination among them, both through law-stipulated institutes and other forms of cooperation;
- establishment of effective mechanisms to protect whistleblowers who report corruption in public procurement;
- ensuring transparency in public procurement by making all relevant information easily accessible to the public;
- public awareness about the negative impact of corruption on the society and the



economy and encouraging civic engagement in monitoring and reporting corrupt practices in public procurement;

- more collaboration between PPA and PPC with the prosecution services to boost reporting on corruption cases.

It is important to note that successful implementation of these recommendations requires commitment from the government, collaboration between different stakeholders, and on-going efforts to adapt to emerging challenges. Also, regular evaluation and adjustment of anticorruption strategies will be of crucial significance in the long-term fight against corruption in public procurement.

## BOSNIA AND HERZEGOVINA

Adoption of a new Law on Public Procurement in Bosnia and Herzegovina is a condition sine qua non, having in mind the current state-of-affairs in the public procurement system plagued by corruption. This conclusion had been reiterated from the very beginning of the legal regulation on public procurement in the country, back in 2004, having in mind that the legal framework has consistently 'lagged behind' current EU directives, while implementation of existing legal solutions opens up more space for development and institutionalization of corruption at numerous public institutions and organizations. The new legal framework should encompass all relevant EU directives, as well as knowledge accumulated by non-governmental organizations and business associations, and its development should ensure active participation of all interested parties in the drafting process.

The urgent need to improve the institutional framework in the area of public procurement is based on the neglect of the main institutions in the public procurement system (Public Procurement Agency and Procurement Review Body) over the years, and the desire for (political) control over the main 'controllers' of integrity and legality of public procurement in Bosnia and Herzegovina, which has opened the way for numerous corrupt practices. For long period of time, these institutions lack human and other resources which, in turn, grants them an excuse for their increasingly poor results. Although one of the main functions of the Public Procurement Agency is to monitor and supervise implementation of public procurement procedures, it is evident that this function is underdeveloped and the Agency does not have sufficient capacity to perform these tasks. When these problems are combined with the poor track record of the Procurement Review Body (taking different positions in identical cases and making diametrically opposite decisions, selecting members based on 'suitability' instead of integrity and qualifications, 'nationally' coloured decisions on certain procurement cases and abuses by contracting authorities), it is evident that priority should be given to enhancing the institutional framework in order to improve the overall public procurement system in Bosnia and Herzegovina.

**Some technical issues that need to be addressed as well. These relates to creation of IT solutions that support procurement planning and contract performance, introduction of integrity mechanisms and improved functions of the Public Procurement Portal to enable e-tendering.**

Year after year, numerous reports of public sector audit institutions and non-governmental organizations, as well as media findings and statements from investigative journalists underline problems identified in enforcement of the Law on Public Procurement, as well as blatant law violations on the part of individuals and institutions. An impression has been created that the practice of 'impunity' has reached its peak, despite the fact that, in 2017, the Republika Srpska and the Brčko District have 'codified' criminal offenses of 'abuse in the



public procurement process' and 'Illegal favouring of bidders.' At the same time, the criminal laws of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina do not stipulate specific criminal offenses in the field of public procurement. However, it is evident that, despite the codification of these acts, no significant progress is made in terms of initiating investigations and court proceedings for the newly introduced criminal offenses in the Criminal Code of Republika Srpska and the Criminal Code of the Brčko District. It is expected that, in the coming period, these solutions must be harmonized across all districts as a result of improved work by judicial institutions on prosecuting corruption-related criminal offenses in public procurement across the country.

It should be stressed that implementation of transparent, efficient, economical, effective, non-discriminatory, and lawful public procurement depends on the morality and political culture that permeates any political system. While morality and political culture in Bosnia and Herzegovina have been derogated by certain political elites and individuals for decades back, changes are not possible without comprehensive reforms, led by stronger institutionalization of anticorruption mechanisms that relate to clearer and more comprehensive regulation and application of frameworks to prevent conflict of interests, protect whistleblowers, and finance political parties. Thus the need for new legislation that would adequately reflect the country's constitutional and administrative structure, including clearly defined implementation powers and transparent monitoring on the effects thereof.

Finally, it should be noted that establishment of fair and corruption-free public procurement system in Bosnia and Herzegovina greatly depends and will depend on the role of EU representatives in the country's accession process to the European Union. If this endeavour mostly relies on technical assistance from SIGMA experts, without significant involvement of non-governmental organizations and business sector representatives, the path to fairer public procurement system free of corruption will be long and uncertain. Therefore, it is important to establish clear and regular communication among all relevant actors interested in ensuing regular public procurement system, without excluding anyone from this process. Findings of civil society organizations and the business community should be given equal weight to findings of official institutions because only by doing so certain progress can be expected in the coming period.

## KOSOVO

### Recommendations to improving public procurement include:

- public access to municipalities' procurement plans on their respective websites, instead of publication only in the e-procurement system that requires user registration;
- procurement officers responsible for bid-evaluation should have in-depth knowledge of the field in which the tender procures is organized;
- increased human resources;
- compliance with law-stipulated deadlines for submission of bids;
- publication of all contracts on the e-procurement website to improve the level of transparency, having in mind that not all contracts are published;
- prosecutors and judges should be profiled in the field of public procurement, thereby enabling professional investigations, prosecutions and judgments to uncover criminal activities that take place through public procurement.

## MONTENEGRO

As regards recommendations to improve the public procurement cycle, the first and most important improvement concerns **adequate planning** by contracting authorities, including introduction of an obligation to conduct market research before development of procurement plans. Penal provisions for responsible persons at the institutions who do not submit plans within the legal deadline, as well as for institutions that change their plans more than once during the year without specific explanation.

**Strengthened ex-officio control** by competent institutions during the entire public procurement process and greater authority to the Public Procurement Inspectorate.

Amendments to the law in respect to the statute of limitations for offenses in the field of public procurement and introduction of provisions in the criminal code that acknowledge criminal responsibility in the field of public procurement.

The Anticorruption Agency, the Public Procurement Inspectorate, the Commission for Control of Public Procurement and the Ministry of Justice, as well as the Revenue and Customs Administration, should be networked with the system of electronic public procurement in order to better control and introduce monitoring of public procurement processes in ex officio capacity.

**Strengthened individual responsibility** and introduction of stricter penal provisions for authorized persons who perform actions related to public procurement procedures on behalf of the contracting authority. In addition to misdemeanour provisions, sanctions in the form of bans for engaging in work in the field of public procurement would most certainly have an effect of punishment.

**Stronger control mechanisms** or development and adoption of a special law on procurements in the security and defence sector that would address all specificities of these procurements in terms of planning, implementation, reporting and supervision over implementation of these procurements.

Mandatory compliance with recommendations of the **State Audit Institution** which, for years, controls public procurement of institutions and points out problems, both individual and systemic.

**Increased transparency** in implementation of simple public procurements by direct contracts, including an obligation for these procedures to be implemented through the electronic system of public procurements and setting thresholds for contracting authorities in terms of the total amount and the number of such procurements on annual level.

The need for active monitoring of **public procurement contract performance** is of great importance, together with detailed contract supervision report which should be published in the electronic system along with other documentation.

Introduce an obligation to **sanction bidders** for poor contract performance and maintenance of database with bidders that do not fulfil their obligations under the contract are measures that would increase responsibility on the part of bidders.

## NORTH MACEDONIA

Based on assessment of state-of-affairs in public procurement, as well as findings from monitoring specific public procurement in terms of detecting risks and corruption suspicions, below are recommendations aimed to improve state-of-play and prevent corruption:

- internal acts on public procurement implementation which contracting authorities are more frequently developing should include more details, cover all stages of the public procurement cycle and define precise actions to be taken in cases that are insufficiently regulated by the law, i.e. allow discretionary decisions and open space for different practices, as well as in cases that necessitate conflict of interests management;
- the procurement planning process should be improved and perceived as integral part of the public procurement cycle, ensuring proper procurement planning, precise setting of estimated values, introduction of systems for monitoring implementation of public procurement plans and measures to stimulate competition (market research, division of tenders into procurement lots, non-discriminatory eligibility criteria and technical specifications, etc.);
- individual assessment should be made for each procurement procedure in respect to the selection criterion to be used that ensures the best value for the money spent;
- institutions should conduct analyses on public procurement implementation to identify actual reasons for various phenomena that occur and find solutions for improvements, especially in respect to increasing competition, reducing tender annulments and direct negotiations, and decreasing use of e-auctions;
- Bureau of Public Procurement should increase its administrative controls over public procurement procedures based on random selection and red flags for corruption risks;
- current level of transparency and accountability in public procurement should be maintained and further improved by publishing public procurement information and documents on the institutions' official websites and by conducting an analysis of additional documents and information that could be made publicly available in the Electronic Public Procurement System, such as procurement decisions, names of beneficial owners of companies awarded procurement contracts, etc.;
- appointment of persons responsible to monitor performance of each public procurement contract with adequate checks and documentation on proper implementation of contractual obligations in terms of the procurement type, quality, quantity, deadline and other aspects from procurement contracts;
- continuous efforts are needed to invest in capacity building of staff members working on public procurements, including timely certification and involvement of management staff and procurement commission members in such training.

## SERBIA

Based on the analysis of state-of-affairs elaborated, actions necessary to improve the public procurement system in Serbia include:

- complete alignment of national legislation with the EU acquis in the field of public procurement, by bringing the Law on Public-Private Partnership and Concessions in line with the Directive 2014/23/EU on the award of concession contracts;
- withdraw the Law on Special Procedures for Realization of the International Specialized Exhibition EXPO Belgrade 2027 from procedure and put an urgent stop to the practice of adopting special laws (*lex specialis*) that enable exemption from application of the Law on Public Procurement and other systemic and anticorruption laws for large infrastructure projects, as well as practices on awarding public procurement contracts as part of intergovernmental agreements;

- stipulate, by law, an obligation for contracting authorities to conduct and document market research before adopting their public procurement plans;
- stipulate, by law, environmental protection as one of the basic principles of public procurement and an obligation for contracting authorities to consider environmental and energy efficiency requirements when setting technical specifications, selection criteria and contract award criteria;
- stipulate, by law, an obligation for contracting authorities to publish data related to public procurement contract performance on the Public Procurement Portal, primarily data on the value and degree of contract performance, data on payments made for goods, works and services delivered, data on compliance with deadlines and whether and what measures were taken against the selected bidder for non-fulfilment of contractual obligations (contractual fines, security instruments, etc.), as well as other important data (e.g., advance payments);
- Ministry of Finance should urgently start supervision of public procurement contract performance and adopt adequate internal act that would more closely regulate the manner in which the budget inspection will conduct supervision and criteria for selection of contracts whose performance will be subject to supervision;
- insist on adherent enforcement of the Law on Public Procurement by contracting authorities, but also consistent and timely exercise of legal powers entrusted to key institutions in the public procurement system - Public Procurement Office, Republic Commission for Protection of Rights in Public Procurement Procedures and Administrative Court, as well as institutions such as Commission for Protection of Competition, Agency for Prevention of Corruption, State Audit Institution, the budget inspection and competent courts and prosecution services;
- increase and strengthen personnel capacity at key institutions in the public procurement system, and ensure greater coordination among them, both through law-stipulated institutes and other forms of cooperation;
- stipulate, more clearly, the act of committing the criminal offense of public procurement fraud;
- non-implementation of the Law on Public Procurement (failure to organize procurement procedure) should be considered a criminal act, not a misdemeanour.

# About the Balkan Tender Watch Coalition

Balkan Tender Watch is a regional anticorruption coalition of civil society organizations established in 2012 around the idea of narrowing space for corruption in public procurement by means of:

- identifying spots in the public procurement cycle vulnerable to corruption;
- exposing corrupt practices in monitored public procurement cases;
- proposing and advocating policy solutions that would contribute to decreased corruption in public procurement in the Western Balkans.

Current members of the coalition are the Center for Civil Communications - CCC (North Macedonia), Network for Affirmation of NGO Sector - MANS (Montenegro), Center for Applied European Studies - CPES (Serbia), Enterprise Development Agency - EDA (Bosnia and Herzegovina), FOL Movement (Kosovo) and Respublica Centre (Albania).

From the very beginning in 2012, the coalition is increasing the Western Balkans civil society impact on anticorruption policies and practices across the public procurement cycle. The Balkan Tender Watch strongly believes that the EU integration process has to be used as a strong transformative framework for the WB countries. Also, it believes that reforms should go beyond the minimum *acquis* requirements and lay down a firm foundation for Europeanisation of all countries in the WB region.

Since 2012, the coalition has conducted numerous analyses of legal and institutional frameworks that regulate public procurement in WB countries. This endeavour implied monitoring of a significant number of public procurement cases to actively control legality, efficiency and effectiveness of public spending.

Coalition members are particularly proud of the two unique tools developed, i.e. the benchmarking tool that enables detection of spots and areas within public procurement systems vulnerable to corruption and the Manual on Monitoring and Control of Public Procurement Purposefulness.

In the course of past years, in addition to producing many comparative analyses, shadow reports, policy and media briefs, the coalition provided training and mentorship to more than 50 civil society actors (NGOs and media) from the WB region in order to share knowledge, boost their capacity and empower them to actively engage in monitoring of public procurement and public finances in general. At the same time, active 'field' work with grassroots civil society actors enabled us to establish a broad and stable anticorruption network.

CIP - Каталогизација во публикација Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

343.352(497.7)"2023"(047)

343.85:343.352]:340.13(497.7)"2023"(047)

35.075:[343.85:343.352(497.7)"2023"(047)

COMPARATIVE evaluation report on public procurement in the Western Balkans 2023 : over 3.8 billion euro spent annually under auspices of corruption. - Skopje : Center for Civil Communications, 2023. - 21x29.7 cm : илустр. ; 61 см

This report is developed as part of the project "Balkan Tender Watch" implemented by the Center for Civil Communications and the Balkan Tender Watch Coalition. - Финансиер: the Foundation Open Society – Macedonia.

ISBN 978-608-4974-27-7

а) Корупција -- Македонија -- 2023 -- Извештаи б) Антикорупција -- Правна и институционална рамка -- Македонија -- 2023 -- Извештаи

COBISS.MK-ID 62564613





# BALKAN TENDER WATQH

## About the Balkan Tender Watch Coalition

Balkan Tender Watch is a regional anticorruption coalition of civil society organizations established in 2012 around the idea of narrowing space for corruption in public procurement by means of:

- identifying spots in the public procurement cycle vulnerable to corruption;
- exposing corrupt practices in monitored public procurement cases;
- proposing and advocating policy solutions that would contribute to decreased corruption in public procurement in the Western Balkans.

Current members of the coalition are the Center for Civil Communications - CCC (North Macedonia), Network for Affirmation of NGO Sector - MANS (Montenegro), Center for Applied European Studies - CPES (Serbia), Enterprise Development Agency - EDA (Bosnia and Herzegovina), FOL Movement (Kosovo) and Respublica Centre (Albania).

From the very beginning in 2012, the coalition increasing the Western Balkans civil society impact on anticorruption policies and practices across the public procurement cycle. The Balkan Tender Watch strongly believes that the EU integration process has to be used as strong transformative framework for the WB countries. Also, it believes that reforms should go beyond the minimum acquis requirements and lay down firm foundation for Europeanisation of all countries in the WB region.

Since 2012, the coalition has conducted numerous analyses of legal and institutional frameworks that regulate public procurement in WB countries. This endeavour implied monitoring of significant number of public procurement cases to actively control legality, efficiency and effectiveness of public spending.

Coalition members are particularly proud of the two unique tools developed, i.e. the benchmarking tool that enables detection of spots and areas within public procurement systems vulnerable to corruption and the Manual on Monitoring and Control of Public Procurement Purposefulness.

In the course of past years, in addition to producing many comparative analyses, shadow reports, policy and media briefs, the coalition provided training and mentorship to more than 50 civil society actors (NGOs and media) from the WB region in order to share knowledge, boost their capacity and empower them to actively engage in monitoring of public procurement and public finances in general. At the same time, active 'field' work with grassroots civil society actors enabled us to establish a broad and stable anticorruption network.