

*Public Procurement
Systems in the
Western Balkans:*
**An Assessment of
Integrity, Performance
and Vulnerability
to Capture**



Country report ALBANIA

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Conceptual framework and rationale

The integrity of the public procurement process is best assured when two conditions are present: first, the allocation of resources should occur in conditions of open competition; and, second, mechanisms should exist to monitor the government agents in charge of the process and check that their decisions are made solely on the basis of the relative merits of competing bidders¹. While these conditions appear undemanding, in practice achieving integrity in public procurement is a challenging task in any governance environment, even in well-developed democracies. Despite the efforts of public procurement policy actors to suppress corruption in public procurement, the incidence of corruption in this area remains high, suggesting that accepted mechanisms and approaches are deficient.

Detecting and measuring corruption in public procurement (hereafter, PP) is particularly challenging, not least because there is scant agreement on how to define corruption or translate theoretical definitions into practical approaches. Rose-Ackerman (1975) proposed a framework for detecting and measuring corruption in public procurement that is based on the relationship between market structure and the incidence of corrupt dealings in the government contracting process². This widely accepted approach has led to the development of ‘red flag’ indicators of corruption risk in the public procurement process. Practitioners, investigators and policy makers use this approach to estimate the probability that corruption occurred in a specific procurement case while it also lays the foundation for a new evidence-based approach to fighting corruption³. However, the red flag approach is dependent on being able to gain access to high-quality data, which is rarely the case. It also fails to shed light on why such deviations occur and how serious the extent of corruption in the public procurement system is in any given country or sector.

These deficiencies in detecting PP-related corruption may be especially profound in situations of market capture, where corrupt actors are able to shape the rules and access to data. Thus, in our study on public procurement in the construction sector (Podumljak and David-Barrett, 2015), the empirical evidence suggested that actors were able to exert direct or indirect political control over access to contracts of a significant value, such that

1 Podumljak, M., David-Barrett, E. (2015) The Public Procurement of Construction Works: The Case of Croatia. European Commission's Seventh Framework Programme ANTICORRP. Available at: <http://anticorrrp.eu/publications/report-on-croatia/>.

2 Rose-Ackerman, R. (1975) The Economics of Corruption. *Journal of Public Economics* 4. 187-203.

3 Ferwerda, J., Deleanu, I., Unger, B. (2016) Corruption in Public Procurement: Finding the Right Indicators. *European Journal on Criminal Policy and Research* Vol. 23, Issue 2, p. 245-267.

only favoured bidders were successful⁴. This demonstrates that capture of the system's functionality - for the purpose of shaping the outcome – is an important part of public procurement corruption. As such, the phenomenon of state capture shall be addressed research and assessments of PP corruption.

State capture is defined as “*shaping the formation of the basic rules of the game* (i.e. laws, regulations and decrees) through *illicit* and non-transparent private payments to public officials and politicians”.⁵ Academic scholarship suggests that state capture - *illicit influence over the rules of the game* - is one of the most pervasive forms of corruption today, especially in transitional societies.⁶ While a conservative interpretation of state capture focuses on the aim of private interests to capture state functions for its own benefit, this report also covers a less researched area: the usage of public resources (power or material resources) in efforts to capture or influence the behaviour of external actors - including in the private sector (economic operators), civil society and media - to serve illicit private interests. In such cases, the instruments of capture are usually defined through a set of combined actions, and can become visible or manifest as bribery, breaches of integrity, favouritism, conflicts of interest, clientelism, cronyism or other corrupt activity. However, the phenomenon of capture is present only if these manifestations are the result of systemic multi-layered activity to control loci of state and societal power. This can be observed through proxies such as *hyper-politicization of the public sector* and the presence of constituencies of interests of political, economic and social players with significant influence over the rules that govern the distribution of public resources.

This report differentiates between, on the one hand, basic deviations from administrative processes and incidental corruption and, on the other, the more severe phenomena of societal capture. The report develops two indices to measure these phenomena – a corruption resistance index and a capture risk index. The indices rest on Klitgaard's⁷ widely accepted corruption axiom $C = M + D - A$ (1988), to measure the extent to which a monopoly of power and administrative discretion are checked by accountability. This approach also builds on more recent theoretical work by Mungiu-Pippidi⁸ (2013) describes corruption and the control of corruption as an equilibrium between opportunities (resources and motives for corruption on one side), and constraints (deterrents imposed by the state or society).

While describing corruption is a complex task per se, measuring it is even

4 Podumljak, M., David-Barrett, E. (2015) The Public Procurement of Construction Works: The Case of Croatia. European Commission's Seventh Framework Programme ANTICORRP. Available at: <http://anticorrrp.eu/publications/report-on-croatia/>.

5 Hellman, J.S., Jones, G., Kaufmann, D. (2000) Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition. p. 2. Policy Research Working Paper 2444. World Bank.

6 Ibid.

7 Klitgaard, R. (1998) Controlling Corruption. p. 75. Berkley: University of California Press

8 Mungiu Pippidi, A. (2013) The Good, the Bad and the Ugly: Controlling Corruption in the European Union. p. 28. Berlin: Hertie School of Governance.

more challenging. Numerous scholars and practitioners have developed indices based largely on surveys of perceptions and experts (i.e. Transparency International Corruption Barometer, World Bank World Governance Indicators) while others have developed proxies for corruption in public procurement (see Fazekas et al 2013). Our approach also focuses on PP but seeks, rather than measuring corruption, to assess systemic deterrence to corruption and state capture, and the effectiveness, efficiency and impact of established systems in detecting, preventing and punishing undue influence over procedures and outcomes. The aim of the report is to inform practitioners and policy makers to enable design of better control systems.

The team faced several challenges that this report aims to address. In the first pilot draft we tested a country-specific approach to reporting (following the principles of the EU Anti-Corruption report 2014⁹) but responses from non-practitioners relating to understanding of PP-specific capture risks have led us to focus our recommendations on more conceptual factors, rather than policy or institution-specific advice. In addition, since the report aims to assist the European Commission in developing future country reports, as well as member state governments in designing efficient and effective responses to corruption in public procurement, a new, innovative digitally-assisted comprehensive standardized approach in reporting was designed and piloted in this final document. The approach and methodology also builds on the new approach of the Commission elaborated in the EU 2016 Enlargements strategy and the emphasis on evidence-based reporting within the *fundamentals first* framework.

The EU began to play a more active role in governance reforms in the Western Balkan (WB) countries in June 2003 when the prospect of potential EU membership was extended to all WB countries during the Thessaloniki EU-WB Summit. The summit resulted in the Thessaloniki Declaration, which has guided the reform efforts of the WB countries in seeking to join the Union, as well as offering enhanced EU support for their endeavours.¹⁰ With the prospect of EU membership, among other important issues, all of the WB countries committed to a *permanent and sustainable fight against corruption* that was accompanied by technical and financial aid to good governance programs in respective countries.

The European Commission (EC) DG Near (at the time DG Enlargement) played a crucial role in guiding the respective countries in their reform efforts and providing assistance in the areas where challenges for WB countries were significant. However, more than a decade later, the strategies and action plans implemented had not produced the expected results or impact on corruption patterns. This has prompted policy-makers to revisit and re-

9 European Commission (2014) EU Anti-Corruption Report. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

10 Council of the European Union (2003) Thessaloniki European Council 19 and 20 June 2003. Council of the European Union (2003) Thessaloniki European Council 19 and 20 June 2003. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/press_data/en/ec/76279.pdf.

design the approaches and objectives used in the fight against corruption in the Western Balkans.

Through the GRAPP project, we aim to address several explanations for the absence of sustainable positive reforms and developments. Academic literature argues that EU democratic conditionality in any area, including fight against corruption, works best where the local political costs of compliance are not high. However, in the areas where conditionality threatens to disrupt the power equilibrium of veto players (i.e. local political elites), progress is likely to be limited or unstable.¹¹ From the EU's point of view, the fight against corruption is embedded in two different categories assessed by the EU Country reports – Democratic conditionality and *acquis* conditionality.¹² However, the success of the EC in its assistance to anti-corruption efforts in the accession countries depends greatly on the responsiveness of local actors. In addition, in designing realistic reforms and development benchmarks, the Commission requires an understanding of the local governance culture and the social drivers of corruption, as well as analysis of the effectiveness and efficiency of the accountability mechanisms in the local context. The EC is highly dependent on local political cooperation in assessing the different aspects of governance in order to design appropriate reforms. Yet local veto players are often reluctant to give up their power, leading to a variety of roadblocks to democratization and making the process challenging, slow and sometimes frustrating for many of the actors involved.

As such, the need for in-depth research and assessment, as well as for the *development of process tracing tools*, has emerged as a priority for the EU accession processes of WB countries, as well as for other processes where assessment is an essential foundation for designing effective assistance and support to reforms. In order to improve the process, the EC uses a variety of available tools developed internally and externally (i.e. SIGMA and OECD's 'Principles of Public Administration' and GRECO evaluations). However, despite the value and quality of the established instruments, many gaps in understanding specifics in certain corruption hot-spots (i.e. *state capture*) as well as challenges to adequate local contextualization remain.

In order to respond to this challenge, we propose a complementary approach in assessing specific corruption risk areas, which is elaborated further here.

11 Podumljak, M. (2016) The Impact of EU Conditionality on Corruption Control and Governance in Bosnia and Herzegovina. 7th Framework Programme: ANTICORRP project. Available at: <http://anticorpp.eu/publications/the-impact-of-eu-conditionality-on-corruption-control-and-governance-in-bosnia-and-herzegovina/>.

12 Term Democratic conditionality mostly refers to Copenhagen criteria as explained in: Schimmelfennig, F. and U. Sedelmeier (2004) Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European Public Policy* 11/4: 661-679.

General methodological approach

Our methodology addresses the European Commission's need for local contextualization whilst also engaging with theoretical approaches to assessing the concept of state (social) capture. The main guiding methodological principles of the GRAPP project - *Common denominator approach*, *Multi-purpose indicators approach*, *Standardized data collection approach*, and *Standardized data interpretation approach* - are elaborated below:

The Common Denominator approach establishes key elements of assessment in each area that provide standardized information on the risks of capture, exposure to capture, and manifestation of capture of specific public and social power entities relevant for the category being assessed. This enables researchers to establish specific relationships as well as causalities between the anomalies detected and progress/regress of the social (state) capture phenomena over time. The common denominator approach also enables researchers to establish *cross-category* relationships and *cross-country* comparisons that can be elaborated in country and cross-country reports within the GRAPP project. The manifestation and systemic nature of social (state) capture and different forms of corruption in Public Procurement is determined primarily by the culture of governance, integrity, accountability and transparency observed in the given societies. Therefore, common denominators are established in each of the 18 assessment areas, resting on these key elements. In addition, the common denominators applied in each area will cover the following:

- Vulnerabilities and loopholes in relevant regulatory frameworks (in each of the 18 areas of assessment) that create risks of capture of state loci of power.
- Barriers to capture and corruption identified in the regulatory framework in each assessed area (integrity, accountability and transparency mechanisms).
- Implementation and enforcement capacity of the existing organisational infrastructure established to deal with corruption and capture phenomena in Public Procurement (integrity and horizontal accountability mechanisms).
- Evidence of capture of loci of state and social power (hyper politicisation, preferential treatment in distribution of public resources including distribution of power).
- Effectiveness of vertical accountability mechanisms (social capacity to detect, expose and sanction corruption and social/state capture) relevant for Public Procurement systems.

The Multi-purpose Indicators approach provides efficiency in usage of collected information for the purpose of establishing indicators and creating judgments about country status in each assessed area. As tested during the pilot project, the quality of assessments will rely on being able to collect a significant amount of primary source data to understand governance behavior in the assessed area. In order to reduce the burden on data collection systems and national administrations, multi-purpose indicators have been established. For example, the regulatory and performance indicators in the area of procurement planning (existence, accuracy and assurance of transparency of procurement plans) can be used also to assess the quality of information management. This approach preserves resources needed for implementation and lessens the overall burden on administrative bodies in given countries during the data collection period. The multi-purpose indicators approach is further strengthened through usage of PSD's GRAPP IT Tool which provides the experts and levels of evaluation with the information relevant for making quality judgments. In addition, multi-purpose indicators contribute to the speed and quality of the reforms in each of the countries covered by GRAPP as they target specific measures in the PP system that have direct relationships with the integrity, accountability and transparency of the system. By improving performance on one of the multi-purpose indicators, the impact of the measure may spread through several categories, contributing to the overall impact of EU Assistance to the accession countries in chapters 23 and 24.

The Standardized Data Collection approach was tested in the MEDIA CIRCLE project (measuring Media Clientelism Index) in the period 2013-17. PSD prepared standardized FOIA requests for data sets and distributed them to our country partners. Accompanied by a letter from DG Near explaining the purpose of the exercise and data collection, these requests for information packages were duly forwarded to relevant authorities. The respective country authorities were given 45 days to respond to all of the questions, with an additional 45 days allowed for clarification of the requests and additional responses from relevant authorities. Standardized data collection facilitates understanding of discrepancies observed to date in country evaluations by different projects and facilitates the development of different sets of indicators at subsequent stages.

The Standardized Data Interpretation approach is an additional measure intended to mitigate variations and deviations in understanding of specific country situations. The IT Tool established by PSD guides researchers in interpreting the collected data. Each data set and set of indicators important to understanding the social (state) capture situation is followed by a specific set of questions to which researchers are asked to respond. Narrowing the interpretation to the aspects of contextualization most relevant to social capture shall further enhance the quality of the reports, ease the review and editing process established, and support the EU Commission in designing high-quality assistance to reform programs for accession countries.

Indicators and data packages covered by the assessment

In each of the six countries covered, eighteen (18) different areas/ categories of Public Procurement important for understanding governance culture, integrity eco system, risks and manifestations of state/social capture were assessed: 1. Public Procurement Regulatory Ecosystem; 2. Public Procurement Planning; 3. Exceptions from the application of the PP Law; 4. Information management; 5. Pre-bidding; 6. Contracting; 7. Petty public procurement; 8. Remedy mechanisms; 9. Control over the implementation of law; 10. Execution of public procurement contracts; 11. Conflicts of interest; 12. Audit mechanisms; 13. Criminal justice system; 14. Capacity and human resources management; 15. Trends in public procurement contracts; 16. Trends in framework agreements; 17. The most successful tenderers; 18. Trends in petty public procurement. For each category, the set of multi-purpose indicators were assessed using the standardized interpretation approach used as established in the interpretation guidelines that each of the experts received. In total, more than 130 data packages were used in the assessment of each country, with additional information requests made where relevant (e.g., in the case of inconclusive opinion over the specific category).

Measurements and process of assigning values to different indices

During the measurement and data interpretation process, and due to the need to valorise or weight certain categories, a three-level measurement was deployed for each of the countries analysed :

1. On the first level, local experts provided their respective opinion over each specific category based on collected primary source data (i.e. responses received from respective authorities), applying the standardized interpretation guidelines.
2. In the second-level evaluation, these interpretations were translated into vector-based distances.
3. The third-level evaluation utilised the PSD expert group to review the local expert evaluations.

For each of the 18 categories, two different measurements were provided: a) Corruption Resistance Index and b) Capture Risk Index. These two differ in the standardized interpretation and require different logic in thinking by evaluators which is crucial in order to be able to understand, observe and

measure the effect that corruption has on the procurement system:

- The Corruption Resistance Index measures the rationale, relevance, effectiveness, efficiency and coherence of measures for prevention, detection and sanctioning of potential corruption-related behaviour in each assessed category. This Index reflects on the capacity and practice of the regulatory and institutional framework to prevent, detect or sanction corruptive behaviour, based on observable evidence.
- The Capture Risk Index reflects on the evidence of discretionary power, politicization, and risk of unchecked undue influence over the established structures that could lead to capture of the system by undue private or partisan interests. It reflects on the opportunities to influence established anti-corruption measures and undermine the effectiveness and efficiency of established systems.

The principle of assigning values to each of the indices in levels two and three above rests on the Potential method following theoretical work of Lavoslav Čaklović, Ph.D., University of Zagreb, Faculty of Science, Department of Mathematics, as tested in the Media Circle project and the measurement of the Media Clientelism Index in SE Europe. The Potential method can be applied to modelling all human activities which are based on preferences (see brief interpretation of Potential method below).

Potential method in brief

Each decision problem has data structured in the form (S,R) , where S is a set of objects and R is a preference relation. In this exercise, the evaluator tries to find a representation of this preference structure in the form of a real function defined on S which preserves the preference. In reality, R is often non-transitive and incomplete, which is the reason why the correct representation of the preference structure is not possible. The potential method, based on graph theory, is flexible in the sense that it gives the best approximation of the reality in space of the consistent preference structure.

A preference multigraph is a directed multigraph with non-negative weights which may be interpreted as the aggregation of individual preferences of a group of decision-makers (or criteria graphs). The nodes on the graph represent the alternatives in consideration, while the arc-weights represent the intensity of a preference between two nodes. The ranking of the graph nodes is obtained as the solution to the Laplace graph equation.

This simple model may be integrated in complex decision structures: hierarchical structures, self-dual structures (when the weights of the criteria are not known), reconstruction of missing data in the measurement process (when some proxy data are given), classification process (medical diagnostics), classical multi-criteria ranking (including ordinal ranking and with a given intensity of preference), group decision-making and many others.

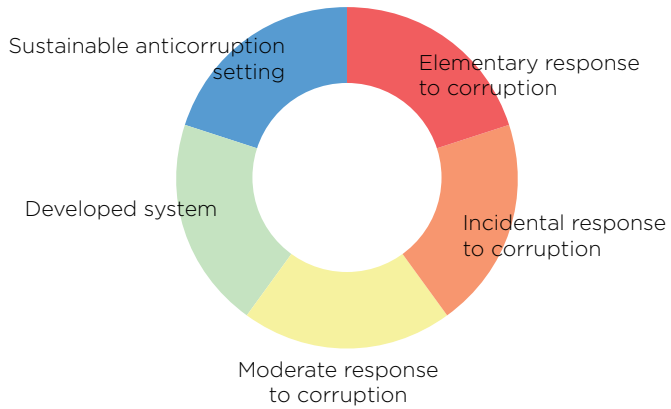
Values of the index

Values of the index are arithmetical interpretations that range from $-1,00$ to $+1,00$, with the extreme $(1,00)$ being an infinite number that cannot be achieved. Based on the given interpretation, evaluators assign a vector-based value to each of the 18 categories, based on standardized interpretation. Their vector-based evaluations are translated in to numerical based on the graph theories as described above. The accurate representation of reality is further strengthened by the three-level evaluation process. The final score for each index in each category is an average value of each of the three level evaluations conducted. However, it is important to note that while each of the numerical values and charts represent the closest representation to reality possible, their main purpose does not rest on numerical comparison between the countries (although it does provide this option) but on visual and numerical value of the observed strengths and weaknesses of the PP system in each of the observed 18 categories, and on possibilities to learn from cross-country comparison in terms of legislative, institutional or policy improvements.

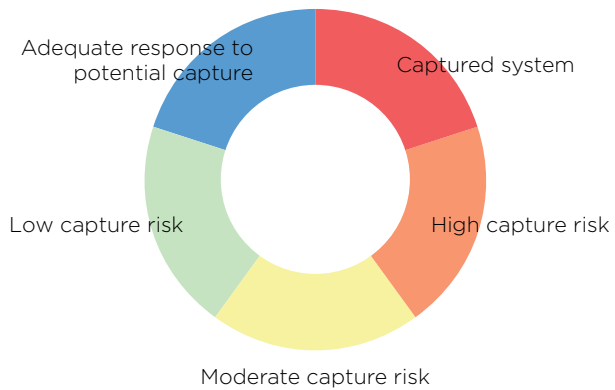
Important note

In the process of gathering and analysing data, GRAPP assessment as well as any other assessments that rely on primary source data, have methodological limitations. Due to regulation and commonly accepted practices on the statistical reporting statistical data including data on budgets, economic performance and institutional performance were not available for the year of the assessment (2017), but only after then June 2017, for the previous year (2016). Therefore, for the purpose of GRAPP assessment, three-year trends were observed (2014, 2015, 2016). While limitations in country's statistical reporting can affect real-time monitoring, they still provide insight in to the trends in the performance of the institutions. On the other hand, in order to properly assess current state of play in each specific country, the regulatory framework, as well as institutional setting and human resources management, was observed in the year of the assessment as well (2017). As GRAPP assessment was set as pilot to multi-year observations (new report on developments in public procurement in each country is expected by the end of 2018 within GRASP framework), based on experience in our Media Clientelism Index measurement, the limitation of the statistical reporting will be mitigated based on observation of year to year developments i.e. the progress or regression of individual indicators in relation to the index measurement from the previous year.

Public Procurement Corruption Resistance Index by level of resistance (stages of system development)



Public Procurement Capture Risk Index by level of risk



2. Country report Albania

| | |
|--|--|
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Abbreviations

| | |
|----------------|--|
| ASPA | Albanian School of Public Administration |
| CA | Contracting authorities |
| CM | Council of Ministers |
| DCM | Decision of the Council Ministers |
| EPS | Electronic Procurement System |
| HIDAACI | High Inspectorate for the Declaration and Audit of Assets and Prevention and Control of Conflict of Interest |
| MF | Ministry of Finance |
| MI | Ministry of Interior |
| PPA | Public Procurement Agency |
| PPC | Public Procurement Commission |
| PPL | Public Procurement Law |
| SSAI | Supreme State Audit Institution |

Summary

TABLE A.A. Overall Public Procurement Corruption Resistance Index 2017, Albania¹³

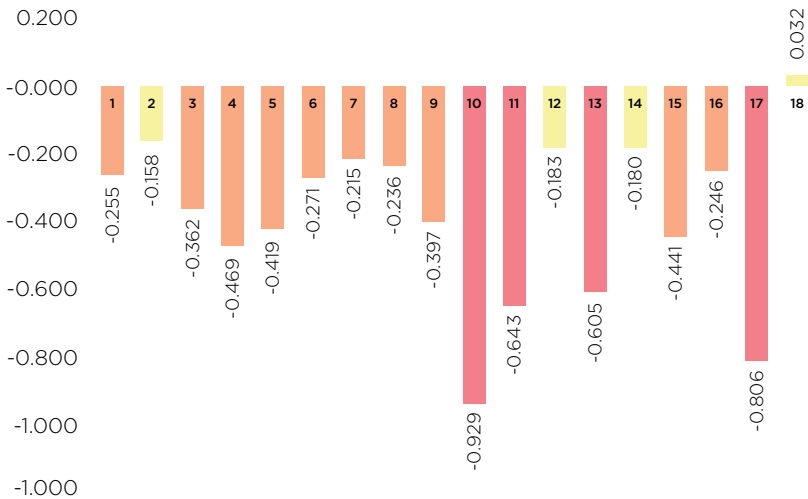
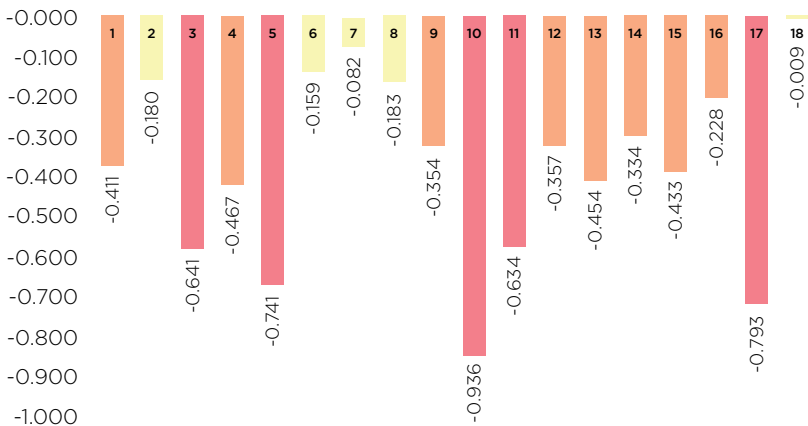


TABLE A.B. Overall Public Procurement Capture Risk Index 2017, Albania



¹³

1. Public Procurement Regulatory Ecosystem; 2. Public Procurement Planning; 3. Exceptions from the application of the PPL; 4. Information management; 5. Pre-bidding; 6. Contracting; 7. Petty public procurement; 8. Remedy mechanisms; 9. Control over the implementation of law; 10. Execution of public procurement contracts; 11. Conflict of interests; 12. Audit mechanisms; 13. Criminal justice system; 14. Capacity and human resources management; 15. Trends in public procurement contracts; 16. Trends in framework agreements; 17. The most successful tenderers; 18. Trends in petty public procurement

Summary interpretation of overall indices

Tables A.A and A.B above demonstrate that Albania has made progress and exhibited stronger development in the categories A.2 (public procurement planning) and A.18 (trends in public procurement). The inclination of legislators to centralize the system and publish information in the area of PP planning as well as to limit and control the use of Petty public procurement is observed in these two categories as positive progress in terms of both indices - Corruption resistance and Capture risk. In addition, despite the lack of proper regulation, significant progress has been made in building resistance to corruption in the PP system owing to the practice of the Supreme State Audit Institution (SSAI) as well as the education and capacity building activity of PP officers conducted under cooperation with the OECD/SIGMA assistance.

In assessing the capture of the PP system, strong developments are observed in category 7 - public procurement contracting - where proper division of powers/functions is applied, and there is strong regulation of petty public procurement. However, some aspects of the system require immediate attention from PP actors in Albania, such as:

- Control of the execution of the PP contracts (category 10) is completely absent in the legislation and consequently not the responsibility of any of the PP actors in place, which poses significant risks for corruption incidence and capture of the PP system as well.
- A lack of proper information management and digitalization affects the ability of the system to properly observe outcomes of the PP procedures, as reflected in the absence of information on most successful bidders (category 17), a key factor for any pro-active investigation/monitoring of Public Procurement.
- Observed deficiencies in the area of suppressing conflict of interest in PP system (category 11) and procedures reflects on low deterrence to corruptive behavior by PP actors at all levels. Observed weaknesses in the Conflict of interest area are further emphasized by weak sanctions (mostly administrative and disciplinary) and the limited ability of external actors (i.e. media and civil society) to access relevant information.
- Significant capture risk is also observed in the pre-bidding stage of the PP system in Albania, which lacks proper protocols or standard operating procedures developed for design of the tender, communication with the respective bidders, and collection of evidence on procedures (that could eventually address or mitigate significant risks to the outcome of the procedures that derive from the pre-bidding stage of the procurement). While the contracting phase of the PP system in

Albania has a clear division of powers, such separation is absent at the pre-bidding stage, with high exposure to politicization and discretionary decision-making by political appointees and a lack of proper accountability.

Key findings

Albania has a comprehensive legal framework regulating public procurement, which has been amended several times over the course of the last ten years to align it to EU requirements.

However, given the PPA reliance on secondary legislation, frequent changes have led to challenges in updating the relevant bylaws which consequently lead to legal insecurity and limits the ability of PP actors to adjust and perform their duties as prescribed by regulation.

Public procurement planning is moderately regulated. Moderate efforts have been made towards data management quality; however, the fact that procurement procedures can be launched without being published in procurement plans, represents a risk. Moreover, the efficiency and effectiveness of the institutional framework in charge of supervising the adoption and implementation of procurement planning is weak; it falls under the discretion of the internal audit bodies of the contracting authorities or the SSAI to conduct thematic audits to supervise implementation in practice.

Loopholes in the information management systems were observed and this affects performance of all PP actors in Albania. It is not clear why the establishment of e-procurement was not accompanied by digitalization of the data in the system, as usually these two processes go hand in hand. The absence of digitalization in the area of data management limits the ability of the system to detect, analyze, prevent and punish deviations in public procurement.

This problem is further evident in the lack of standardization of information in the public procurement system in Albania. Though all public procurement notices are required to be published in the electronic procurement system and in the weekly APP Public Notice Bulletin, not all forms of notices are standardized and prescribed in a unified form approved by the PPA.

Regarding the integrity and capture risks of the pre-bidding phase, there is a high risk of political influence in appointments to the structure responsible for producing the tender documentation for the contracting authority and the collection of all required materials, or the Procurement Unit. It is the head of the contracting authority or a person duly authorized by her who makes these appointments.

The Evaluation Commission is also established by a special order by the head of the contracting authority and is composed of not less than three persons, of whom at least one is an expert in the pertinent area; this extends the risk

of undue political influence to the entire decision-making system in all tenders. However, this situation is somewhat mitigated as persons responsible for developing the tender documentation cannot be appointed to the Tender Evaluation Commission.

As regards petty public procurement, petty purchase procedures are implemented through the electronic procurement system, and risks related to that appear to be properly mitigated.

The PPC, as the legal remedy body, may have insufficient human resources to deal with the scale of complaints submitted, which could affect the quality of decisions made as well as the effectiveness of the body in preventing corruption. On the other hand, the PPA is responsible for conducting administrative investigations into public procurement procedures, upon conclusion of a contract, but not for conducting administrative investigations on how contracts are implemented. In both cases, measures that are supposed to assure that contracts and implementation correspond to the specifications of the tender are inadequately addressed by the regulatory and institutional setting in Albania.

While conflict of interest regarding public procurement appears to be addressed in the regulatory framework, the absence of any kind of performance indicators in this area suggests that the system does not exist, nor perform, especially in that there are no pro-active investigations to detect and sanction conflict of interest. Fines prescribed for a variety of misconducts are not reciprocal to the potential damage that derives from the deviation in the public procurement procedure.

“Breaching the equality of participants in public bids or auctions” is a criminal offence, and fines and incarceration of up to three years are prescribed for committing acts in breach of the laws which regulate the freedom of participants and equality of citizens in bids and public auctions by a person holding state functions or public service. Regarding criminal offences committed by persons exercising public functions, ten criminal proceedings were brought in 2014, 13 in 2015, and 19 in 2016, while the number of convicted defendants dropped from 17 in 2014 to six in 2015 and 2016. Although public procurement typically represents one of the hot-spots for corruption, criminal investigations in this area represent only 2,5% of the overall statistics for corruption-related crimes.

Regarding key soft mechanisms that prevent corruption/capture of the public procurement system, although progress has been made in the application of the e-procurement system, the professionalization of public procurement remains problematic. The PPA does not require the certification of procurement officials, and public procurement is not recognized as a ‘profession’ in Albania.

Key recommendations

PP actors in Albania should focus immediate attention on information management and digitalization and consequently the standardization of the PP information management, to increase the efficiency and effectiveness of the entire PP structure in Albania. In the first stage of development in this area, Albania may observe the PP information management systems in Montenegro and Bosnia and Herzegovina as a preliminary solution. However, a longer term solution should follow the specific needs of the PP system in Albania and respond to the risks and deficiencies observed in this report. Division of powers and development and adoption of strict protocols and/or standard operating procedures for pre-bidding stage (i.e. in the area of appointment of the personnel, development of technical specifications, receipt and storage of the offers/bids) are also priorities for the Albanian PP system. The lack of proper regulation in this stage of the procedure negatively impacts both of our key indices (corruption resistance and capture risk). Finally, the lack of any control over the execution of contracts is an urgent measure to be developed by legislators with proper institutional setting for implementation in place. In this area, Albania may learn from concepts developed under the PP framework in Montenegro.

Category 1

Public Procurement Regulatory Ecosystem

TABLE A.1.1: Corruption Resistance Index - Public Procurement Regulatory Ecosystem

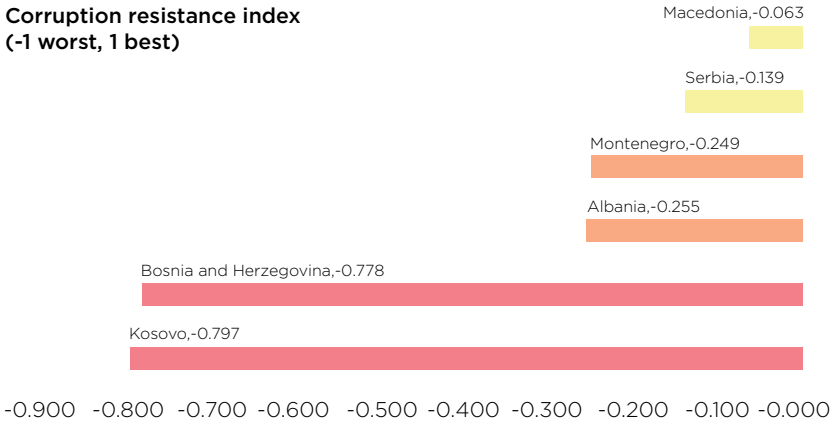
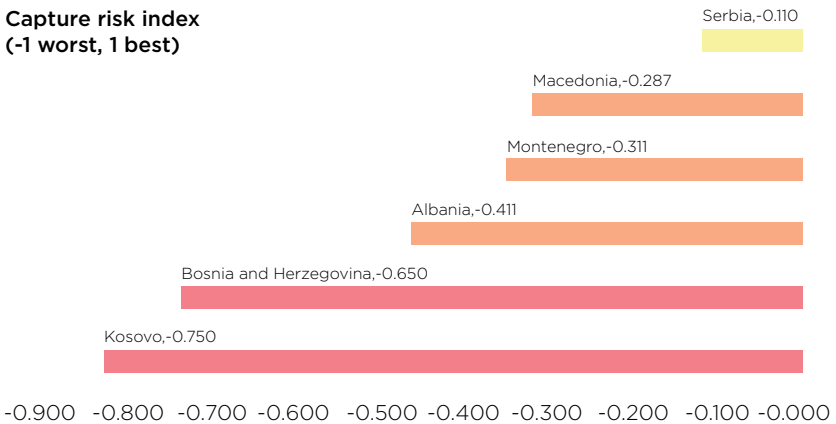


TABLE A.1.2: Capture Risk Index - Public Procurement Regulatory Ecosystem



Interpretation of indices Albania Category 1: Public Procurement Regulatory Ecosystem

Our assessment of the procurement regulatory package as shown in the tables A.1.1 and A.1.2 above suggests that the Albanian regulatory system falls under the category of incidental response to corruption risks, with high occurrence of opportunities for system capture (high capture risk). Frequent changes of regulatory setting as well as regulated areas indicate attempts by the Albanian authorities to align PP practice with the EU Acquis in PP and show significant improvement over time. However, the incoherence in the adopted regulation, together with significant reliance on bylaws in important areas such as Framework Agreements and electronic procurement, provide opportunities for discretionary decisions in the absence of accountability mechanisms that would address the risks. Temporary and quick improvements in the Public Procurement regulatory setting in Albania could be achieved by observing the logic and structure of regulatory systems in FYR of Macedonia and Serbia and applying either of the solutions designed.

Findings in detail

The Public Procurement Law¹⁴ (PPL) and Decision of the Council Ministers (DCM) on adoption of Public Procurement Rules¹⁵ provide a comprehensive legal framework for regulating public procurement in the country. Following the PPL adopted in 2006,¹⁶ the primary legislation has been amended eight times to align it with EU requirements. The latest amendments were adopted during 2017 to align it partially with Directive 2007/66/EC and focused on regulating the activity of the Public Procurement Commission (PPC).

Along with the abovementioned Public Procurement Rules, additional secondary legislation arising from the PPL has been adopted by the Council of Ministers: DCM on Conducting Public Procurement Procedures Electronically¹⁷, and DCM on Public Procurement Procedures for Certain Goods and Services on behalf and account of the Prime Minister's Office, Ministries and Subordinate Institutions by the Central Purchasing Body, the Ministry of Internal Affairs¹⁸.

Finally, numerous instructions and manuals have been developed by the Public Procurement Agency (PPA) in order to assist contracting authorities (CA) in implementing public procurement procedures.¹⁹ For instance, in 2015 six instructions were adopted regarding only the Electronic Procurement System (EPS), and additional amendments to those were made during 2016 and 2017.

Given the PPL's overreliance on secondary legislation, frequent amendments have resulted in challenges regarding updating through relevant bylaws and consequently to the sense of legal insecurity in public procurement system. Not all of the foreseen bylaws have been adopted, or aligned with the latest amendments, which sets challenges for proper implementation of the law as well as for monitoring and oversight institutions seeking to fulfil their duties.

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- 14 Public Procurement Law (No. 9643, 2006) as amended by PPL (No. 9800, 2007), PPL (No. 9855, 2007), PPL (No. 10170, 2009), PPL (No. 10309, 2010), PPL (No. 22/2012), PPL (No. 131/2012), PPL (No. 182/2014) and PPL (No. 47/2017). Available [here](#).
 - 15 Decision of the Council Ministers on adoption of Public Procurement Rules (No. 914, 2014) as amended by DCM (No. 402, 2015) and DCM (No. 823, 2016). Available [here](#).
 - 16 With the adopted law of 2006 the first national act that entered into effect in 1995 was repealed.
 - 17 Decision of the Council Ministers on Conducting Public Procurement Procedures Electronically (No. 918, 2014) as amended by DCM (No. 796, 2017).
 - 18 Decision of the Council Ministers on Public Procurement Procedures for Certain Goods and Services on behalf and account of the Prime Minister's Office, Ministries and Subordinate Institutions by the Central Purchasing Body, the Ministry of Internal Affairs (No. 28, 2015). Available [here](#).
 - 19 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

In general, PP in Albania can be conducted by three types of contracting authority:

- Constitutional and other central institutions, independent central institutions and local government units;
- Any bodies established for the specific purpose of meeting needs in the general interest, of no commercial character, with the status of a legal person, and either financed, for the most part, by the State, regional or local authorities, or other public bodies; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other public bodies; or associations formed by one or several of such authorities or one or several of such public bodies
- Sectoral contracting authorities.

Interpretation of the PPL raises questions as to whether public companies as entities are bound by the PPL. An adequate assessment of PPL coverage, however, is not feasible due to the fact that a list of contracting authorities, i.e. entities bound by the PPL, does not exist.

An interesting peculiarity was observed in rules pertaining to centralized procurement in Albania. The Council of Ministers (CM) assigned the role of the central purchasing body to the Ministry of Interior (MoI) for procurement of certain goods, works and services²⁰ on behalf of and to the account of the Prime Minister's Office, ministries and subordinate institutions.²¹ Such a system represents an additional capture risk due to the conflict of interest in MI's jurisdiction as a central purchasing body and as a law enforcement body in cases of violations of the PPL and criminal liability. Such risk is further emphasized by the process of appointments to the MoI leadership, lacking proper integrity mechanisms.

²⁰ Goods, works and services delegated to Ministry of Interior are listed in Decision of the Council Ministers on Public Procurement Procedures for Certain Goods and Services on behalf and account of the Prime Minister's Office, Ministries and Subordinate Institutions by the Central Purchasing Body, the Ministry of Internal Affairs (No. 28, 2015). Available [here](#).

²¹ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Category 2

Public Procurement Planning

TABLE A.2.1: Corruption Resistance Index - Public Procurement Planning

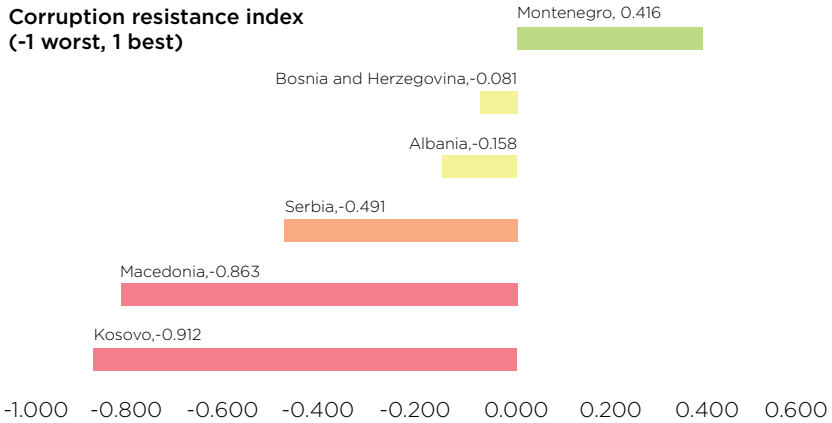
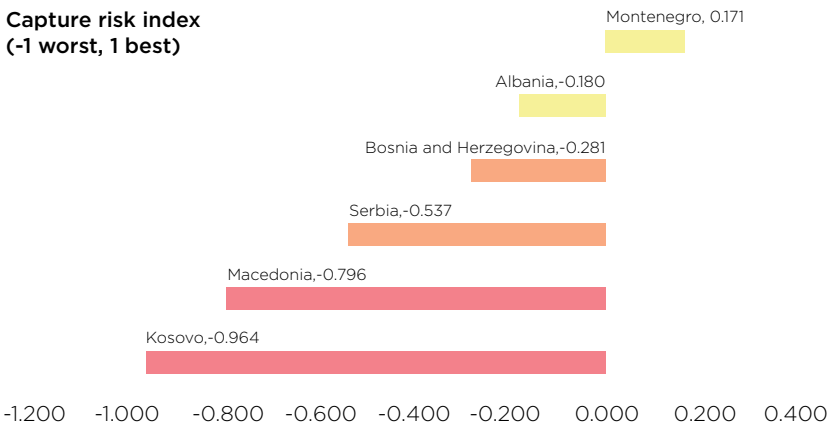


TABLE A.2.2: Capture Risk Index - Public Procurement Planning



Interpretation of indices Albania Category 2: Public Procurement Planning

Public procurement planning in Albania lacks proper strength in regulation, as reflected in previous indices on regulatory framework. However, the observed practice does show a slightly more developed aspect of Public Procurement in comparison to the other assessed areas, or other countries covered by this report. The PP Corruption Resistance Index (tables A.2.1 and A.2.2) suggests that in this area, the Albanian Procurement system provides a moderate response to corruption risks, following the moderate risk of capture of the implementing organizational structure. We observed the inclination of the legislators to centralize the system and make the information public which is seen as a desirable progress. However, the lack of accountability mechanisms for non-compliance as well as the slow and complex process for publishing the Procurement Plans, exposes them to the risks of illicit manipulation without adequate consequences if such practice occurs. As the Albanian system already has in place a structure for centralized real time publishing of procurement plans (so that they can play the role of supporting anti-corruption mechanism), the system may significantly benefit from the practice observed in Montenegro in this area.

Findings in detail

The public procurement planning process and procurement plans are not mentioned in the Public Procurement Law; and only one article is designated to this in DCM on adoption of Public Procurement Rules, which further stipulates common practice to address important aspects of PP in by laws. The Article 4, Paragraph 1 of the DCM No. 914 prescribes that the contracting authorities are required to prepare and adopt annual procurement plans known as annual forecast registers of procurements. The procurement plans should follow the standardization guidelines of the PPA and contain data regarding the object of procurement, the fund limit, financing source, type of procedure and timing planned for the procedure.²²

The head of the contracting authority is required to adopt and submit for publication by 15 January its procurement plan to the PPA or the central purchasing body providing the budgetary funds. The central purchasing body is required to submit by 30 January a summary of its own procurement plan and those of other pertaining contracting authorities.²³

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Article 4, Paragraph 1 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014. Instruction of PPA No. 2, "On the preparation of the annual forecast register of procurements and the public procurement realization register" dated 27.01.2015.

23

Article 4, Item 1, Paragraph 1 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014. The PPA Instruction No. 2, "On Creating the Register of Projections of Public Procurements and Register of Implementation of Public Procurements", dated 27.01.2015, prescribing mandatory elements and deadlines that public procurement plans must contain.

The process of procurement planning is linked to the adoption of the budget. Contracting authorities send the Ministry of Finance (MF) a detailed plan on how the funds approved in the December of the previous year will be used.²⁴ After the MF approves the plan, the contracting authorities send their procurement plans by 15 January to the PPA, which has an ensuing obligation, within the month of February, to publish them on its website in the form of a summarized National Public Procurement Forecast Register.²⁵

If there are amendments to procurement plans, the contracting authority shall prepare additional registers (plans) and submit them to the PPA, to the MF's Department of Budget and Treasury, or to the central purchasing body, depending on the case. The contracting authority or the central purchasing body instructs the PPA or the MF's Department of Budget and Treasury to incorporate the changes in the relevant summary plans.²⁶

Nevertheless, the preparation and submission of procurement plans does not prevent the launching of public procurement procedures by contracting authorities ahead of these deadlines²⁷ which, if abused may lead to privileged access to information regarding future procurement activities by determined economic operators.

Moreover, the efficiency and effectiveness of the institutional framework in charge of supervising the adoption and implementation of procurement planning are weak. It is the responsibility of the internal audit bodies of the contracting authorities or of the Supreme State Audit Institution to conduct thematic audits to supervise the implementation of the legal provisions and adoptions and submissions of the public procurement plans.²⁸

The supervision of abidance by the regulations governing the preparing and publication of public procurement plans is not within the competency of the PPA²⁹, meaning there are no sanctions in case of violation.

²⁴ Management of the Budget System in the Republic of Albania (No. 9936, 2008)

²⁵ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

²⁶ Retrieved from the Public Procurement Agency through a FOI received on 11.07.2017. Paragraph 4 of Article 4 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

²⁷ Paragraph 3 of Article 4 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

²⁸ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

²⁹ Retrieved from the Public Procurement Agency through a FOI received on 11.07.2017.

Category 3

Exceptions from procurement legislation

TABLE A.3.1: Corruption Resistance Index - Exceptions from procurement legislation

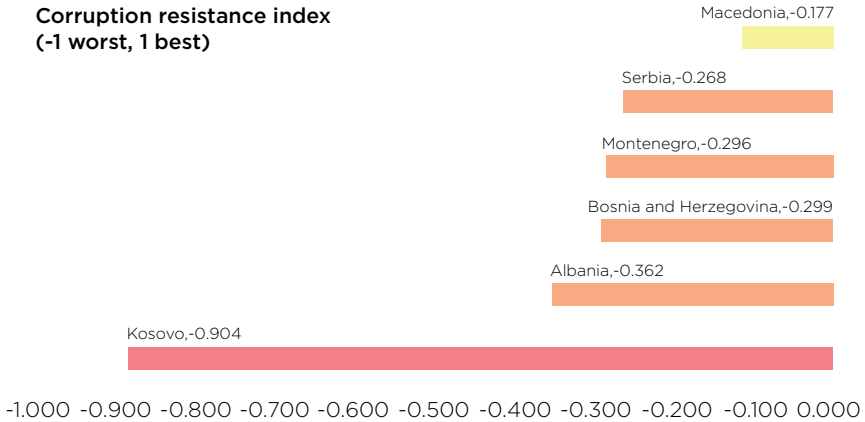
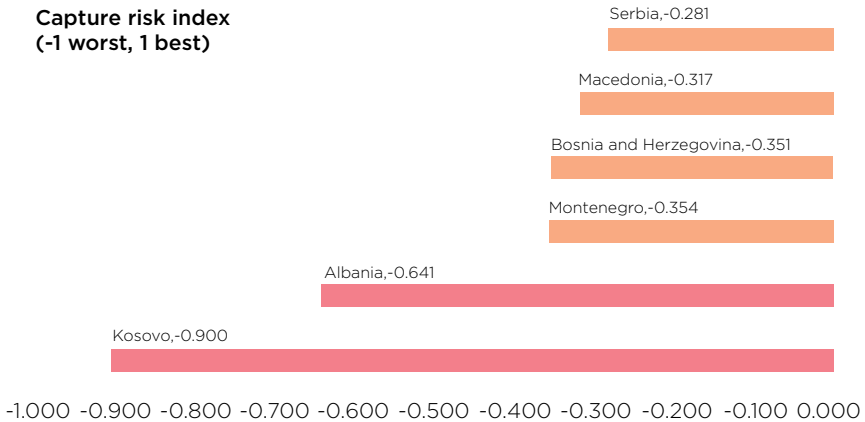


TABLE A.3.2: Capture Risk Index - Exceptions from procurement legislation



Interpretation of indices Albania Category 3: Exceptions from procurement legislation

In the area of exceptions from procurement legislation, the evaluators observed numerous risks that mostly rest on high opportunities for false interpretation of what falls under the exceptions from the procurement legislation, an extensive list of exceptions, relatively high thresholds and weak accountability provisions for non-compliance with the legislation (cases where respective contracting authority intentionally uses inappropriate interpretation of the Exceptions). The observed deficiencies in the system place the Albanian procurement system under the category of incidental response to corruption with high risk of capture of the procurement system (captured system, table A.3.2 above). The high value of procurement conducted under the rules of exceptions from the regulation, with the trend showing a significant increase (see findings in detail below) over the years, further emphasises that corruption risks that derive from exceptions from procurement legislation have not been properly addressed in the Albanian procurement system. A temporary and quick improvement in the Albanian system could be achieved by following the logic and structure of the exceptions from the public procurement legislation observed in FYR of Macedonia and Serbia.

Findings in detail

The PPL provides for two levels of public procurement thresholds: high-value thresholds and low-value thresholds. The financial thresholds are reviewed every two years and are established in the Public Procurement Rules.

The high value thresholds are ALL 200 million (or EUR 1.48 million³⁰) for goods and services, and ALL 1.2 billion (or EUR 8.9 million³¹) works. The low value thresholds are ALL 8 million (EUR 59.5 thousand³²) for goods and services and ALL 12 million (EUR 89.2 thousand³³) for works.³⁴

In further assessments, attention shall be given to implementation of simplified procedures in low-value thresholds and potential abuse of such procedures: for a procurement valued below ALL 300 thousand (EUR 5.9 thousand³⁵) within one calendar year, the contracting authority may complete the purchase through the small value procurement procedure.³⁶

The procurement procedures can be launched without being published in procurement plans which, if abused, may represent a significant risk of capture and undue influence over public procurement procedures. Moreover, contracting authority may launch public procurement procedure without funding being made available to the account of the institution, i.e., without having planned this procurement in advance. However, the contract shall enter into abidance with the timeframes set forth in the public procurement rules, and only when funding is made available in the pertinent account of the contracting authority.³⁷ Furthermore, the use of the public procurement procedure of “negotiated procedures without prior publication of a contract notice”³⁸ to meet the contracting authority’s urgent needs, or to satisfy the needs of the start of the year, does not require publication in the procurement plans.³⁹

The scope of exemptions from the applicability of the PPL includes:⁴⁰ public contracts awarded in the field of defense, when the application of the provisions of PPL would cause disclosure of information which might

30 Conversion rates used for January 2017. Available [here](#)

31 Ibid.

32 Ibid

33 Ibid

34 Article 8 of the DCM No. 914, “On Adoption of Rules on Public Procurement”, dated 29.12.2014.

35 Conversion rates used for January 2017. Available [here](#)

36 Article 8 of the DCM No. 914, “On Adoption of Rules on Public Procurement”, dated 29.12.2014.

37 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

38 Article 33/1/c of the PPL.

39 Provisions of item 2/è of Article 36 of the DCM No. 914, “On Adoption of Rules on Public Procurement”, dated 29.12.2014.

40 The exceptions are set out in Articles 5, 6, 7, 8 and 9 of the PPL, as amended.

harm national safety interests; the purchase of arms, munitions and war material, or related services; and the occurrence of natural disasters, armed conflicts, war operations, military training and participation in military missions outside the country;⁴¹ secret contracts, contracts requiring special security measures, or contracts which are affected by the substantial interests of the state.⁴²

Specific exemptions include public service contracts⁴³ for the acquisition or rental of immovable property; the acquisition, development, production or co-production of program material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time; arbitration and conciliation services; financial services in relation to the issue, sale, purchase or transfer of securities or other financial instruments; research and development services, whose outcome is used by all on a non-discriminatory basis, other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authorities; all services referred to in “Chapter V/1, Procedures for awarding sectoral contracts”, and for employment contracts. It also applies to international obligations⁴⁴ and service contracts awarded on the basis of an exclusive right.⁴⁵

While there is a rational explanation for the exemption from the PPL in the area of defense, general exemptions in other areas - if abused - may mean that a significant portion of public procurement occurs outside of the regulatory framework and consequently outside of the internal and external control mechanisms.

In pursuance of item 1 of the DCM No. 918, dated 29.12.2014, “On Conducting Public Procurement Procedures Electronically”, all procurement procedures are conducted electronically, with the exception of negotiation without prior notice of contract, the second phase of the “Consulting Services” and “Design Contest” procedures, procurement procedures valued under ALL 100 thousand (or EUR 744), and those conducted in emergency cases, and procurement procedures for the “Purchase of electrical energy”.

While the PPL appears to restrict exemptions, actual practice and statistical reports derived through the assessment indicate notable abuse of the ‘negotiation without prior notice’ procedure.

41 Article 5 of the PPL as amended.

42 Article 6 of the PPL as amended.

43 Article 7 of the PPL as amended.

44 Article 8 of the PPL as amended.

45 Article 9 of the PPL as amended.

Table 1 Public Procurement Structure by type of procedure, 2014-2016

| Types of procedures | 2014 | | | 2015 | | | 2016 | | |
|---|--------------------|---------------|--------------|--------------------|---------------|--------------|--------------------|---------------|--------------|
| | EUR | % | No. | EUR | % | No. | EUR | % | No. |
| Open international procedure (winner notice) | 33,225,822 | 10,2% | 16 | 36,796,062 | 7,0% | 29 | 44,744,732 | 6,4% | 47 |
| Open procedure (winner notice) | 211,000,092 | 64,9% | 1,523 | 368,932,831 | 70,7% | 1,624 | 533,848,388 | 76,8% | 1,949 |
| Request for proposal (winner notice) | 38,041,544 | 11,7% | 3,060 | 40,844,608 | 7,8% | 2,527 | 50,010,254 | 7,2% | 2,958 |
| Consultancy service, design contest (winner notice) | 3,022,515 | 0,9% | 73 | 13,270,430 | 2,5% | 88 | 7,843,432 | 1,1% | 113 |
| Restricted local | 3,971 | 0,0% | 1 | 584,293 | 0,1% | 1 | 0 | 0,0% | 0 |
| Awarded negotiated procedures without publication | 39,793,564 | 12,2% | 2,121 | 61,638,392 | 11,8% | 2,706 | 58,485,688 | 8,4% | 2,186 |
| Total | 325,087,509 | 100,0% | 6,794 | 522,066,616 | 100,0% | 6,975 | 694,932,495 | 100,0% | 7,253 |

Data source: Author's own computation based on data from Public Procurement Agency, Albania

Around 8 percent of the total public procurement value in 2016 was procured via negotiation without prior notice procedure. Though in decline as a % of total annual public procurement (12% in 2014); the value of goods, works and services procured under this procedure almost doubled in 2016 compared with 2014; from EUR 39.7 million in 2014, to EUR 58.4 million in 2016.

This may reflect poor procurement planning or that the procedure is being abused by the contracting authorities. An adequate assessment in this regard, however, was not feasible due to difficulties encountered in the attempt to access the contract registers in order to determine an in-year breakdown of figures regarding the contracts signed and procedures used. This is further suggestive of corruption-related risks (due to lack of the access to data by any kind of external controls).

Category 4

Information management in Public Procurement system

TABLE A.4.1: Corruption Resistance Index – Information management in PP system

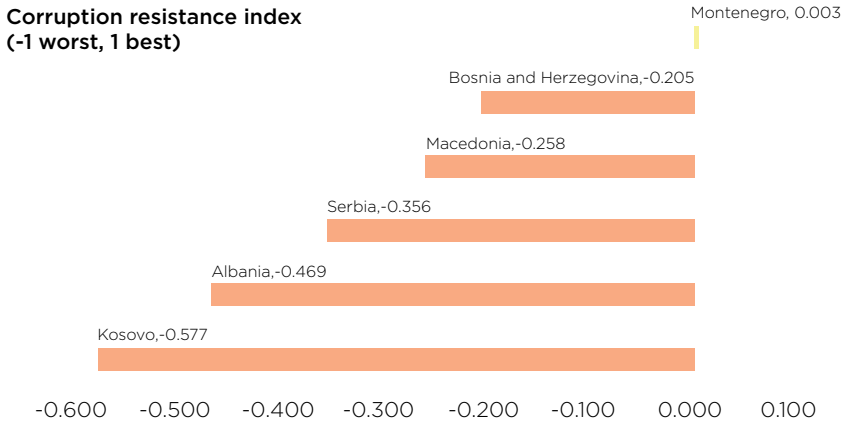
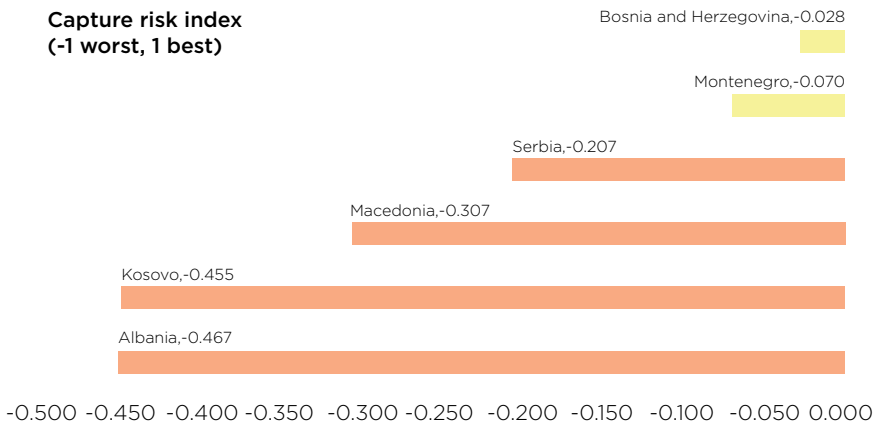


TABLE A.4.2: Capture Risk Index – Information management in PP system



Interpretation of indices Albania

Category 4: Information management in Public Procurement system

Albania has one of the least developed information management systems in Public Procurement among the observed six countries. Indices A.4.1 and A.4.2 (above) show incidental response to corruption risks in this area with high risk of capture of the system. Information management in PP is not fully standardized, and thus centralized, lack of real-time and direct reporting in the respective registers by contracting authorities (it is instead published by PPA every Monday, see in detail findings below) creates opportunities for non-declared notices. This is further emphasised by the lack of standardization and quality and corruption related relevance concerning the data published in the PP Bulletin. In this area, the Albanian system could be significantly improved by applying some of the solutions implemented in Montenegro, as the two systems show significant consistency in the principles of the applied solutions.

Findings in detail

Notices of public procurement defined by the existing regulatory framework on public procurement include contract notices, contract award notices, modification notices (of documents of public procurement procedures), design contest notices, results of design contests, notices for additional information, information on incomplete procedures or corrigenda and notices on the termination of an awarding procedure.⁴⁶ Public procurement information management is still at an elementary stage of development; only some of the forms of notices (mentioned above) are standardized and prescribed in a unified form approved by the PPA.⁴⁷ All public procurement notices are required to be published in the electronic procurement system⁴⁸ and in the Public Notice Bulletin⁴⁹ that the PPA publishes every Monday. The Public Notice Bulletin, which is published in the electronic procurement system, is accessible to the public, however limited in providing any possibility of analysis and comprehensive system monitoring.⁵⁰ The Bulletin includes: contract notices for contracts of a value above and below the high value threshold,⁵¹ award notices,⁵² contract notices,⁵³ and termination contracts⁵⁴; an updated list of economic operators banned from public procurement,⁵⁵ and other information that PPA deems necessary for publication or that is required by the PPL.⁵⁶ Except for notices on contracts concluded, the contract as a juridical act signed by contractual parties is not accessible.⁵⁷ However lack of comprehensive standardization of the procurement data and elementary stage of digitalization remains significant obstacle for performing oversight over the public procurement system, detecting anomalies, monitoring behavior of contracting authorities and economic operators in public procurement, and exercising internal and external controls.

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- 46 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.
- 47 These are specified in the Standard Tender Documents for Goods/Work/Services. Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.
- 48 As provided in the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014 and in reliance of DCM No.176, "On Publication of the Bulletin of Public Notices", dated 29.3.2006.
- 49 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.
- 50 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017. The section of the Public Notice Bulletin on the PPA's website, www.app.gov.al.
- 51 Articles 12 and 13 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
- 52 Articles 6 and 21 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
- 53 Article 25 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
- 54 Article 6 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
- 55 Paragraph 3 of Article 13 of the PA, as amended.
- 56 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.
- 57 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Category 5

Pre-bidding stage

TABLE A.5.1: Corruption Resistance Index – Pre-bidding stage

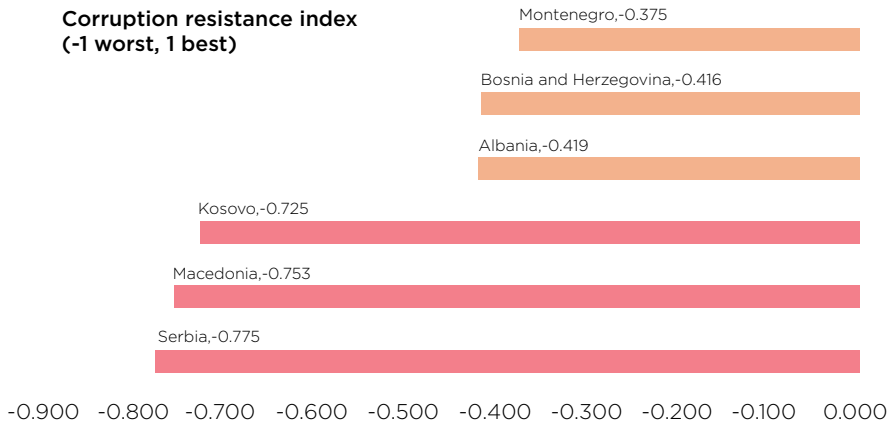
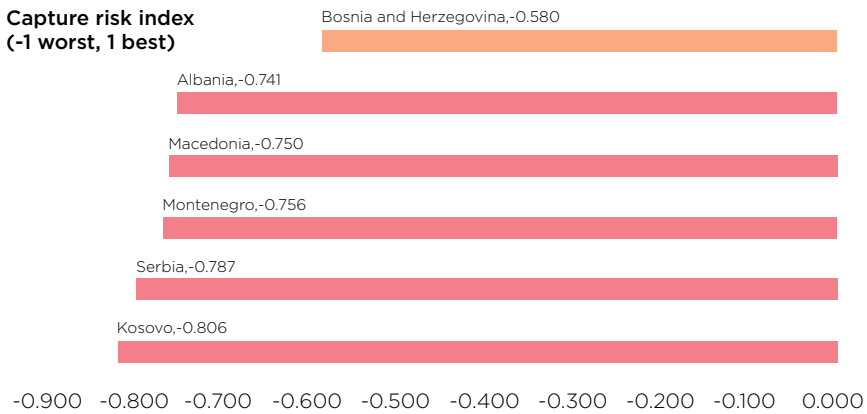


TABLE A.5.2: Capture Risk Index – Pre-bidding stage



Interpretation of indices Albania

Category 5: Pre-bidding stage

All of the observed public procurement country systems, including that of Albania, show a lack of the attention to building deterrence to corruption in the pre-bidding stage of the Public Procurement process. Indices A.5.1 and A.5.2 suggest that anti-corruption developments in this area are at an incidental response stage, and that the system is vulnerable to capture (no barriers to political or other type of the illicit influence over the system in this category). Evaluators have observed that in addition to lack of division of powers (appointing different personnel to administer different stages of procurement), there are no adequate protocols or standard operating procedures developed for the design of tenders, communication with respective bidders, and collection of evidence on the procedures used – all factors that could eventually address or mitigate significant risks that derive from the pre-bidding stage of the procurement. The fact that conflict of interest in PP is not properly addressed either contributes to the overall weakness of the system. While the Albanian procurement system may temporarily and moderately benefit from looking in to solutions used in Montenegro in this area, the lack of adequate measures to protect the pre-bidding stage from undue influence in all countries suggests a need for action on the side of the EU commission through assisting with developing SOPs or guidelines for regulation in this area.

Findings in detail

The Procurement Unit is responsible for producing the tender documentation for the contracting authority and for collecting of all required materials. This Unit is established by the contracting authority.⁵⁸ The head of the institution or a person duly authorized by him appoints the persons responsible for producing competition documentation⁵⁹; this represents a risk of undue political interference with the decision making and capture of the system. The lack of division of powers in this stage is insufficient to address the potential undue influence over entire process.

With regard to receiving tenders and storage of documentation, since all procurement procedures are conducted electronically, the tender documentation - which includes tender documents published by the contracting authority, bids submitted by bidders, evaluation reports, the selection of the winner, and the notice on the concluded contract -, are stored in the electronic procurement system, in the electronic archive of the contracting authority.⁶⁰ However, the security of information management in this case is not sufficiently elaborated and therefore may represent additional risks in terms of preferential treatment of certain economic operators.

Certain discrepancies have been observed between responses of competent authorities and organizational culture realities in Albania, especially in the area of conducting electronic procurement, differentiation between electronic procurement and digitalization of data, and managing data in accordance with the fair treatment of all participants in public procurement. In the next report, special attention and further explanations will be requested from respective authorities in Albania.

58 In reliance of Article 57 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

59 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

60 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Category 6

Public procurement Contracting

TABLE A.6.1: Corruption Resistance Index – Public Procurement Contracting

**Corruption resistance index
(-1 worst, 1 best)**

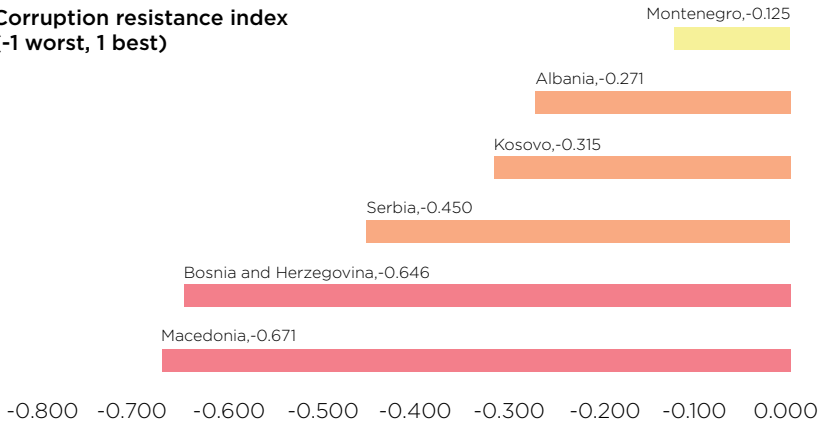
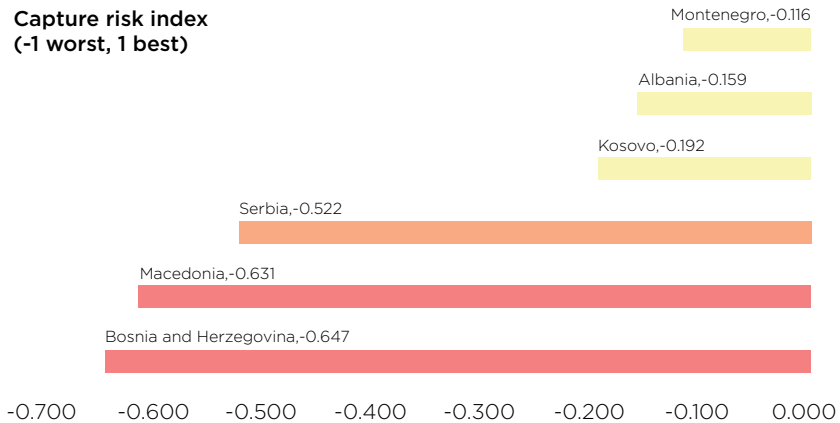


TABLE A.6.2: Capture Risk Index – Public Procurement Contracting

**Capture risk index
(-1 worst, 1 best)**



Interpretation of indices Albania Category 6: Public procurement Contracting

Both the Corruption resistance and Capture risk indices in the category of PP Contracting put Albania among better performers in category 6 in comparison to other observed countries. While the value of the corruption resistance index (table A.6.1) in this category is still in the area of incidental response (observed components lack targeted anti-corruption approach), the value of capture risk index (table A.6.2) places Albania in the moderate capture risk zone of the index. The strong points of the contracting process in Albania are the adequately regulated division of powers, clear process description in the existing regulation, as well as the approach to blacklisting of bidders as a corruption prevention mechanism. However, the imprecision and lack of enforcement of anti-conflict of interest regulation is inadequate as a response to the corruption risks that may occur. In addition, the overall lack of oversight and dual control should be addressed in further developing the system. While scoring higher than most of the observed countries in this aspect, Albania still could moderately benefit from learning from the PP system in Montenegro, which has stronger solutions to the dual controls and accountability in cases of breach of procedures (including conflict of interest in this area).

Findings in detail

The Tender Evaluation Commission is responsible for reviewing and evaluating bids.⁶¹

The Evaluation Commission is established by a special order of the head of the contracting authority, usually a political appointee, and is composed of not less than 3 persons, of whom at least one is an expert of the area under consideration. If there is a lack of staff, the contracting authority contracts external experts as commission members. The chairperson of the commission, who is responsible for initiating work upon the creation of the commission, is selected from among the senior officials of the contracting authority.

Persons responsible for developing the tender documentation cannot be appointed to the Tender Evaluation Commission.⁶²

The prevention of conflicts of interest for members of the evaluation commission is regulated by the PPL⁶³, the Rules on Public Procurement which foresee that when opening bids, officials involved in the process of bid evaluation sign a declaration whereby they state that they are not in any conflict of interest with the bidders,⁶⁴ and the Public Procurement Agency Instruction On Declaration of Conflict of Interest by Procurement Officers.⁶⁵ However from the responses it is not clear who is in charge of checking or pro-active investigations related to potential or actual conflict of interest in public procurement procedures.

The declaration form for conflicts of interest, which must be filled in when submitting a bid, is part of the Standard Tender Documents for Goods/Works/Services.⁶⁶ The declaration of conflicts of interest assures the contracting authority that the tenderer/bidder is not in a conflict of interest. This declaration form contains personal data on the tenderer/bidder and group of persons considered as persons in conflicts of interest, in accordance with the applicable legislation (further explanation please see in the chapter on conflict of interest below).⁶⁷

As regards the procedures by which the Commission renders a decision on the selection of the most advantageous tender,⁶⁸ the Commission starts

-
- 61 Article 58 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
 - 62 Article 58 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
 - 63 Article 26 Law No. 9643, dated 20.11.2006, "On Public Procurement", as amended.
 - 64 Article 56 and 64 of DCM No. 914, "On Adoption of Rules on Public Procurement" dated 29.12.2014, as amended.
 - 65 Instruction of PPL No. 3, "On Declaration of Conflict of Interest by Procurement Officers" dated 24.10.2016.
 - 66 Article 11 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
 - 67 Article 16 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.
 - 68 The procedures on the review and evaluation of bids are set out in Article 64 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

by opening and reading the tenders. The evaluation commission reads the name and address of the tenderer and opens the relevant sealed envelope. Then, the list of the legal, administrative and qualification documents presented by the tenderer and the economic offer must be read to the participants. At the request of any tenderer, the minutes and a receipt reflecting all the documents accompanying his offer, shall be made available and a notice shall be sent to any tenderer who submitted a tender, but was not present or represented at the opening session. After the opening and reading session, as above-mentioned, if the evaluation commission deems that its activities require more than one working day, it shall indicate to the representatives the time and date that the result of the evaluation of technical and financial offer and the final classification will be communicated to the tenderers.⁶⁹

The duration of the procedure must not be longer than 15 days.⁷⁰

Following the public session, the commission verifies and evaluates the submitted offers, qualifying only those which meet the legal, administrative and qualification requirements or which are not abnormally low. On the basis of the admitted offers, the evaluation commission drafts the final classification.⁷¹

Any member of the Procurement Unit may be present during the opening and evaluation phase, but they are not entitled to vote. They may suggest opinions only when required to do so, and can carry out functions of a supporting character etc.⁷²

The PPA can exclude an economic operator from participation in public procurement procedures for a period of one to three years, without prejudicing criminal proceedings that may have started, in the cases of serious misrepresentation and submission of documents containing false information for the purposes of qualification;⁷³ corruption; conviction of any of crimes,⁷⁴ failure to comply with the contractual obligations of public contracts within the time specified in the procurement rules; and when there is a final decision by the Competition Authority Committee on bid collusion.

The drafting and enforcement of public procurement contracts does not fall within the domain of the implementation of the PPA and the sublegal acts pursuant to it.⁷⁵

69 Article 66 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

70 Article 67 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

71 Ibid.

72 Ibid.

73 Item 3 of Article 13 of the PPL, as amended

74 Article 45, paragraph 1 of the PPL, as amended.

75 Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Category 7

Petty public procurement

TABLE A.7.1: Corruption Resistance Index – Petty public procurement

**Corruption resistance index
(-1 worst, 1 best)**

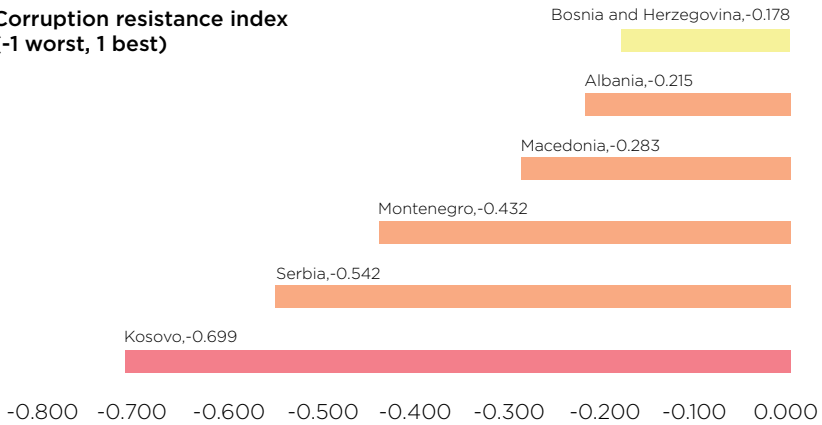
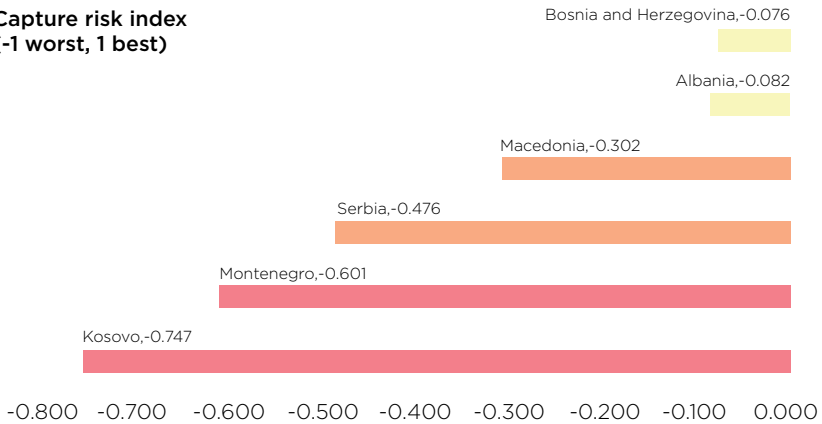


TABLE A7.2: Capture Risk Index – Petty public procurement

**Capture risk index
(-1 worst, 1 best)**



Interpretation of indices Albania

Category 7: Petty public procurement

Observed indices in the Category 7 - petty public procurement - place Albania among the better performers in this area in comparison with other countries. As in the previous category of PP Contracting, here too the corruption resistance index is in the area of incidental response, while capture risk is considered to be moderate. The system's strengths lie in low thresholds for petty public procurement, application of an electronic procurement system for petty procurement, and rules of minimum 5 bidders for petty procurement conducted in written form, as well as obligations to submit petty procurement plans to relevant authorities. However, the absence of quality reporting on petty procurement, as well as a lack of dual controls in this case, leave significant risks of abuse in this area. External controls in petty procurement are not sufficient, as public access to data is limited, with the only criterion for selection being the lowest price. While abuse and extensive use of petty procurement is generally forbidden by the regulation, it does not specify types of abuse and adequate measures for mitigation of such risks. These issues should be addressed in the future development of the Albanian procurement system. Some solutions applicable for the Albanian PP system in the area of Public Procurement may be observed in the PP system in BiH (i.e. centralized reporting). However, a majority of the solutions in addressing the corruption risks in petty public procurement should be developed based on the existing practices in Albania.

Findings in detail

The contracting authority can use the petty procurement procedure for works, goods and services when the estimated value is under ALL 800 thousand (or EUR 5.95 thousand⁷⁶). Petty procurement procedures are implemented through the electronic procurement system.⁷⁷ However, those with a value less than ALL 100 thousand (or EUR 744⁷⁸) and procurements conducted in emergency cases are exempted from the electronic procurement procedures.⁷⁹ Thus, in practice petty procurement can be procured in both the electronic procurement system and in written form.

At the beginning of the year, the contracting authority plans the nature, quantity, and type of contracts to be procured by means of petty procure-

⁷⁶ Conversion rates used for January 2017. Available [here](#)

⁷⁷ Contracting authorities must consider the requirements of Article 40 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014 and the Public Procurement Agency's Instruction No. 3, "On Procurement Procedures for Petty Purchases", as amended, dated 27.01.2015.

⁷⁸ Conversion rates used for January 2017. Available [here](#)

⁷⁹ Item 2 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014.

ment procedure.⁸⁰ To determine the threshold value for this procedure, the contracting authority estimates the value of a group of similar goods or services, which are usually procured together and should in no case be separated for the purposes of this procedure.

The head of the contracting authority or the person duly authorized by him establishes, at the beginning of the calendar year, a special committee made up of three members, one of whom is the chairperson. In the absence of staff, the head of the contracting authority or the person duly authorized by him authorizes the procurement unit to implement this procedure.

When the need arises for works, goods, or services, the head of the contracting authority or any other authorized officer issues a procurement order, whereby the object of the procurement and its quantity are specified. The procurement order must be accompanied by an invitation to bid issued to economic operators. The invitation to bid specifies all the necessary data on the object of procurement.

If the petty procurement procedure is conducted in written form, the members of the committee test the market in order to get indicators for the prices of works, goods or services. The committee determines the winner based on the criterion of lowest price.

If petty procurement procedure is conducted electronically, the committee members invite at least 5 (five) economic operators, when feasible, and publish the investment to bid in the electronic procurement system for any interested party.

Apart from the cases referred to above, this procedure may also include any petty procurement and unforeseeable services, such as: various repairs, a change of locks, repair of various equipment, photocopying machines, computers, and repair of small car defects during travel, and other services of the same nature. In such emergency cases, and where committee presence proves impossible, procurement may be carried out by persons who are not committee members.

⁸⁰ Contracting authorities must consider the requirements of Article 40 of the DCM No. 914, "On Adoption of Rules on Public Procurement", dated 29.12.2014 and the Public Procurement Agency's Instruction No. 3, "On Procurement Procedures for Petty Purchases", as amended, dated 27.01.2015.

Category 8

Public Procurement Remedy mechanisms

TABLE A.8.1: Corruption Resistance Index – Public Procurement Remedy mechanisms

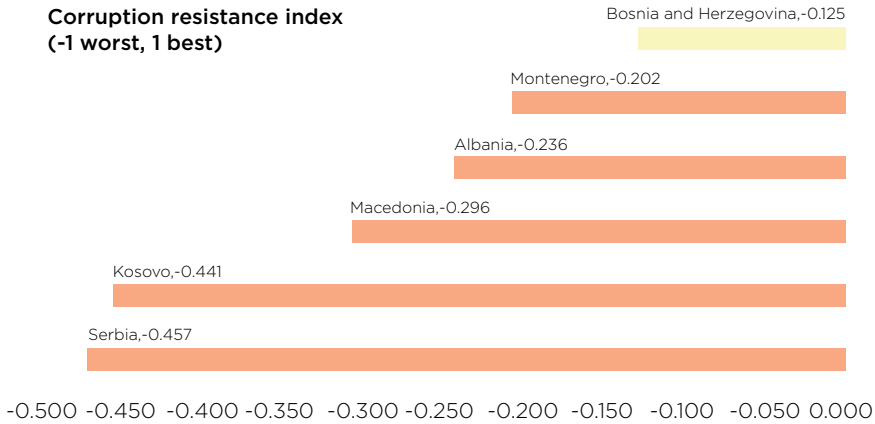
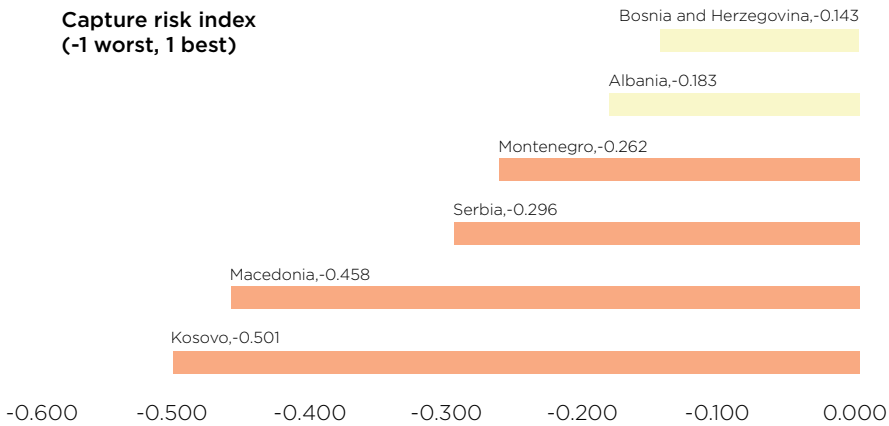


TABLE A.8.2: Capture Risk Index – Public Procurement Remedy mechanisms



Interpretation of indices Albania Category 8: Public Procurement Remedy mechanisms

Remedy mechanisms in Albania rank as moderate in comparison to the other observed countries. However, the Corruption resistance index (table A.8.1 above) suggests that the quality of response to corruption risks is rather incidental, while the system is prone to a moderate risk of capture (table A.8.2 above). Limited measures to address corruption in the work of the Public Procurement Commission (PPC) have been established (i.e. Rules that prevent undue influence on members of the PPC are stipulated in the PPL, see findings in detail below) but these measures fall rather in the area of the criminal justice system, which is not sufficiently equipped for dealing with PP violations, while anti-conflict of interest measures for example are limited to the head of the PPC.

Despite interventions in the system in 2016, the effectiveness and efficiency of the institution remains weak, with insufficient staff numbers and capacity to deal with the high number of sophisticated cases. The annual ratio of resolving complaints is under 50% which can significantly undermine the effectiveness and efficiency of the PP remedy system as an anti-corruption mechanism (based on the complaints of competitors). Thresholds for qualification for complaints are relatively high for the Albanian market (0.5% of the estimated value of the project) which may undermine the very purpose of this part of procurement system in preventing anomalies. While appointment procedures in the institution include some measures to prevent politicization and undue influence (i.e. asynchronous duration of five-year mandate of the head of the body), in reality, the appointment is governed by the Council of Ministers (CoM), meaning Prime minister, without proper accountability measures appointed. While in the short term Albania could benefit from the solutions in this category designed in Bosnia and Herzegovina, strategic solutions should address the digitalization of the information management system, increasing the capacity of the institution through the deployment of the additional staff and/or horizontal cooperation with other relevant bodies, and ultimately, by introducing quality integrity checks for the employed and appointed staff in the PPC.

Findings in detail

The Albanian Public Procurement Commission (PPC) is the highest body for reviewing procurement complaints and making decisions that are administratively final.⁸¹

⁸¹

In conformity with the Constitution, the PPL, DCM No. 184, "On Adoption of the Regulation "On Organization and Functioning of the Public Procurement Commission" dated 17.03.2010, Law No. 44/2015, "Administrative Procedures Code", Law No. 9131, "On Ethics Rules in the Public Administration" dated 08.09.2003, and other legal and sublegal acts pursuant to them.

As regards financial barriers to submitting a complaint, each complaint lodged with the PPC incurs a fee.⁸² The fee is set to 0.5% of the value of the limit fund in the procurement procedure. If the complaint is accepted, the fee is returned to the complainer at the end of the complaint process, but if not the income from the fee flows into the state budget.⁸³

The deadline for submitting a complaint to the PPC, in the case of complaints against tender documents, is 7 days from the publication of the contract notice on the website of the PPA.⁸⁴

Over the last three years, the total number of complaints has shown an increasing trend, from a total of 834 complaints in 2014 to 1,393 in 2016. The proportion of resolved complaints out of the total number of submitted complaints has also been increasing. From 2014 to 2015, the ratio (in %) increased from 40.5% to 49.8% but levelled off during 2016.

During 2014, a total of 826 public procurement appeals were registered and reviewed by the PPC (out of a total of 834 public procurement appeals, concessions, mining permits and auctions).⁸⁵ PPC resolved 338 appeals and rejected 496.⁸⁶ During 2015, a total of 1,111 public procurement appeals were registered and reviewed by the PPC (out of a total of 1,124 public procurement appeals, concessions, mining permits and auctions).⁸⁷ The PPC resolved 560 appeals and rejected 564.⁸⁸ During 2016, a total of 1,387 public procurement appeals were registered and reviewed by the PPC (out of a total of 1,393 public procurement appeals, concessions, mining permits and auctions).⁸⁹ The PPC resolved 683 appeals and rejected 708 due to failure to comply with the formal conditions or as legally unfounded, while 2 were not reviewed.⁹⁰

Although the PPC underwent a restructuring process in 2016 due to the adoption of a new structure,⁹¹ its capabilities for investigating received complaints remain weak. If we compare the ratio of the number of employees to the total number of complaints for the last three years, it decreased from 0.02 in 2014 to 0.015 in 2016 – mainly due to the increase in the total number of complaints for 2016.

Referring to the prior structure, in 2016 the PPC had a total of 22 staff

82 Pursuant to Article 63/10 of the PPL, as amended.

83 DCM No. 261 "On setting the fee and the rules of its payment, in an appeal procedure, to the Public Procurement Commission", dated 17.03.2010.

84 Pursuant to Article 63 of the PPA, as amended.

85 Public Procurement Commission (2016) Annual Report 2015. Available [here](#).

86 Ibid.

87 Public Procurement Commission (2016) Annual Report 2015. Available [here](#).

88 Ibid.

89 Public Procurement Commission (2016) Annual Report 2015. Available [here](#).

90 Ibid.

91 Prime Minister's Order No. 35, "On the approval of the structure and staffing of the Public Procurement Commission" dated 01.03.2016, as well as under Law No. 152/2013 "On the civil servant", as amended, as well as DCM No. 125, "On the temporary and permanent transfer of civil servants", dated 17.02.2016.

members, 5 of whom were members of the Commission, rather than part of the civil service (1 chairman, 1 vice chairman and 3 members), 15 civil servants, and 2 who were not part of civil service.⁹²

During 2014 and 2015, it had a total of 20 staff members.^{93 94}

If the bidder is not satisfied with a decision rendered by the PPC, which is administratively final, they may appeal against the decision to the Administrative Court.⁹⁵

The head and members of the PPC are appointed by Parliament at the proposal of the CoM.⁹⁶ The CoM is required to publish the notification for applications at least six months before the expiry of the mandate of the head or members of the PPC and/or no later than 30 days from the date of the early termination of the mandate. After examining submitted applications and verifying whether candidates meet the criteria for appointment, the CoM submits to Parliament the list of qualified candidates by rank, as well as the list of candidates who do not meet the criteria for appointment.

When selecting the Head and/or members of the PPC, Parliament is not obliged to follow the ranking filed by the CoM. If deemed necessary, Parliament has the right to invite candidates who meet the eligibility criteria for the interview.

The head and the members of the PPC have a five-year mandate, with the right of re-election only once.⁹⁷ The current head of the Public Procurement Commission, Evis Shurdha, was appointed on 21.09.2016.⁹⁸ The mandate of the head and the existing members of the Public Procurement Commission will expire on 1 January 2018 (as stated at the moment of submitting data for this report).⁹⁹

The head of the PPC is under obligation to the Act on the Declaration of Assets and Financial Liabilities and Prevention of Conflicts of Interest.

Rules that prevent undue influence on members of the PPC are stipulated in the PPL, which specifies that any attempt to influence, directly or indirectly, is punishable by a fine, regardless of civil or criminal proceedings that may have commenced¹⁰⁰ and in the Regulation on the functioning of the PPC, which stipulates that members of the Commission are independent and impartial in their decision-making.¹⁰¹

92 Public Procurement Commission (2016) Annual Report 2015. Available [here](#).

93 Ibid.

94 Ibid.

95 Article 19/7 of the PPL, as amended.

96 Article 19/2 of the PPL, as amended.

97 Pursuant to Article 19/2 of the PPL, as amended.

98 DCM nr. 658, "On the release and appointment from/to the office of the head and a member of the Public Procurement Commission" dated 21.9.2016.

99 Article 76/3 of the PPL, as amended.

100 Article 19/7 of the PPL, as amended.

101 Article 11 of the DCM No. 184, "On Adoption of the Regulation 'On Organization and Functioning of the Public Procurement Commission'", dated 17.03.2010 as amended.

Category 9

Control over the implementation of PP legislation

TABLE A.9.1: Corruption Resistance Index – Control over the implementation of PP legislation

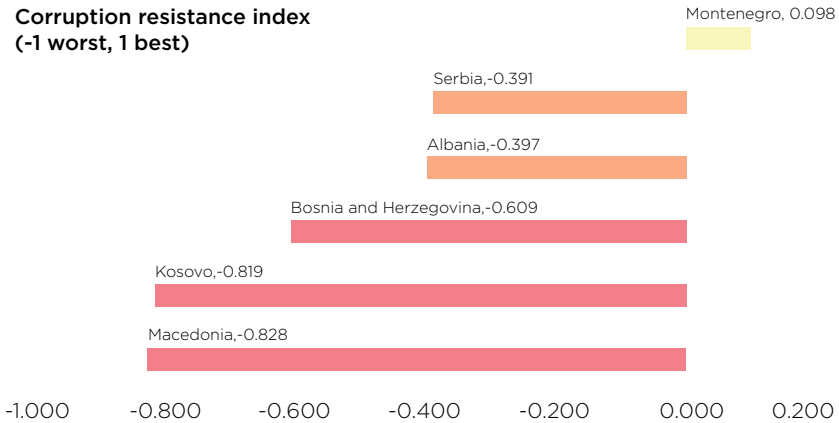
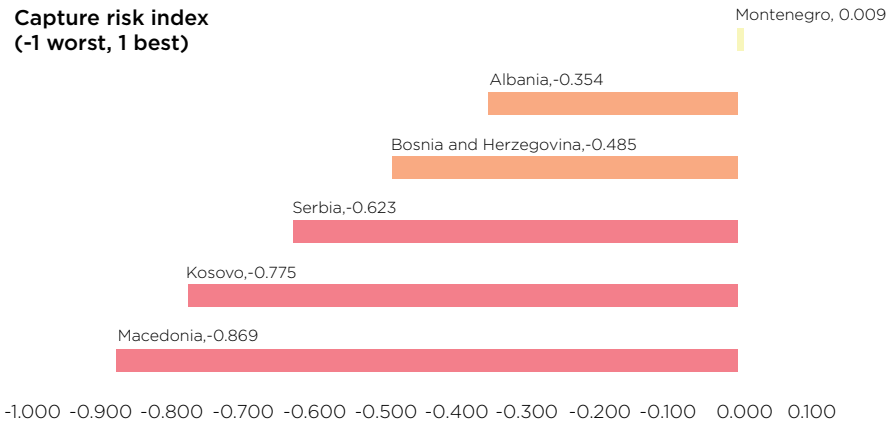


TABLE A.9.2: Capture Risk Index – Control over the implementation of PP legislation



Interpretation of indices Albania Category 9: Control over the implementation of PP legislation

The Public Procurement Agency (PPA), as a key control mechanism over the implementation of PP legislation in Albania, scores moderate in comparison to the other assessed countries. However, its values on both the Corruption resistance index (table A.9.1) and the Capture risk index (table A.9.2) indicate significant risks and low deterrence of corruption/capture. Since 2014, this department has progressed in becoming a more independent body with a focus on anomalies in implementation of the PP Legislation (see findings in detail below). However, the low number of staff (6 persons) in comparison to over 5,000 procedures conducted and signed contracts of significant value annually raises concerns that the department has insufficient capacity to properly observe PP in Albania, especially due to limited digitalization and data management. As it is common practice that such departments conduct ex ante and ex post controls, it is also considered to be one of the key corruption prevention mechanisms; these deficiencies shall be addressed in future development of the Albanian procurement system. The low number of inspections conducted (approximately 68 inspections annually) on approximately 5,000 conducted procurement procedures, also indicates the limits of such mechanisms in Albania. In addition, the low financial fines and/or simple disciplinary measures for significant breaches of procedures (i.e. conflict of interest related or failure to publish contract in appropriate register) further emphasize the risks that derive from deficiencies in the Public Procurement control mechanisms in Albania (see findings in detail below). Improvements in the work of the PPA in the short run may follow the solutions implemented in the Montenegro. However, for a proper response it is important to design a strategic response focusing on the capacity of the institution, technical assistance (digitalization of the system) and improvements in the area of the sanctions prescribed.

Findings in detail

The PPA¹⁰² is responsible for conducting administrative investigations on public procurement procedures upon conclusion of the contract.¹⁰³

The Monitoring Sector, part of the Legal and Monitoring Department of the Public Procurement Authority, is the body competent to monitor procurement procedures. This sector started its work as a separate unit in July 2015. Until July 2015, this function was exercised by the Legal and Monitoring Department, staffed by five specialists and the Director of the Department. In addition to monitoring the procurement procedures, other

¹⁰² Article 13 of the PPA, as amended.

¹⁰³ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

duties of this unit include the review of reports by domestic audit bodies, such as the Supreme State Audit Institution (SSAI), institutions' internal audits, and the Compulsory Healthcare Insurance Fund, etc.¹⁰⁴

Recruitment of staff for this unit ended in October 2016. The unit staff comprises six specialists and one head of unit.¹⁰⁵

In terms of inspections conducted by the PPA, during 2014, 82 procurement procedures conducted by 52 contracting authorities, during 2015, 67 procurement procedures conducted by 55 contracting authorities, and during 2016, 56 procurement procedures conducted by 55 contracting authorities were examined.¹⁰⁶ In 2014, the PPA proscribed in total 80 fines which resulted from the monitoring of public procurement procedures, in 2015 in total 53 fines were proscribed and 63 were proscribed in 2016. Finally, the PPA proscribed 41 disciplinary measures in 2014, 33 disciplinary measures in 2015 and 34 in 2016. Detailed data are presented in the tables below. At the time of writing this report, data for 2017 were still not available.

The head of the Public Procurement Agency is a high management level civil servant (TND). He is appointed and relieved of duties pursuant to the legal provisions, "On Civil Servants" and DCM no. 118, dated 05.03.2014.¹⁰⁷ As a result, the head of PPA is not appointed for a specified mandate.¹⁰⁸ The current head of the PPA was appointed on 25.05.2017.¹⁰⁹ The head of the PPA is under obligation to the Act on the Declaration of Assets and Financial Liabilities and Prevention of Conflicts of Interest.¹¹⁰

Sanctions prescribed for contracting authorities that deviate from the law in their practice include: a fine of ALL 1 million (or EUR 7.4 thousand) for failure to implement a public procurement procedure in cases where such an obligation is prescribed,¹¹¹ a fine of ALL 50 thousand to ALL 500 thousand¹¹² (or EUR 371 to 3.7 thousand) for violation of prescribed deadlines by the contracting authority,¹¹³ a fine of ALL 50 thousand to ALL 200 thousand (or EUR 371 to 1.48 thousand) for departure in the technical specifications in the tender for competition from those described in the

104

Ibid.

105

Ibid.

106

Ibid.

107

Law No. 152/2013, Pursuant to the law "On Civil Servant" and DCM no. 118, "Procedures for appointment, recruitment, management and termination of civil service relationship of high management level civil servants and members of TND", as amended, dated 05.03.2014.

108

Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

109

Ibid.

110

Ibid.

111

Conversion rates used for January 2017. Available [here](#). Article 72, paragraph 1, item "a" of the PPA, as amended. Failure to meet the obligation is set out in Article 4 of the law.

112

Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

113

Conversion rates used for January 2017. Available [here](#). Article 72, paragraph 1, item "g" of the PPL, as amended.

contract,¹¹⁴ or a fine of ALL 50 thousand to ALL 100 thousand (or EUR 371 to 743) for failure to publish a tender for competition.¹¹⁵ As fines prescribed are not in reciprocity to the potential damage, there is risk of non-compliance with such regulation that has been indicated and observed in statistical reports.

Table 2 Number of monitoring of public procurement procedures conducted by public procurement agency by type of procedure, 2014- 2016

| | 2014 | 2015 | 2016 |
|---|-----------|-----------|-----------|
| Negotiated procedure without prior publication of the contract notice | 62 | 20 | 21 |
| Open procedure | 13 | 30 | 20 |
| Request for proposal | 3 | 3 | 3 |
| Small value procurement procedures | 4 | 14 | 12 |
| Total | 82 | 67 | 56 |

Source: Author's calculations based on data from PPA Annual reports, 2014- 2016

Table 3 Number of proscribed fines resulted from the monitoring of public procurement procedures by type of official, 2014- 2016

| Role of the official | 2014 | 2015 | 2016 |
|--|-----------|-----------|-----------|
| Head of Contracting Authority | 17 | 10 | 17 |
| Member of Procurement Unit | 23 | 10 | 21 |
| Member of Offers Evaluation Commission | 27 | 22 | 19 |
| Member of the Group for Calculating the Limit Fund | 13 | 10 | 6 |
| Member of Small Value Procurement Committee | 0 | 1 | 0 |
| Total | 80 | 53 | 63 |

Source: Author's calculations based on data from PPA Annual reports, 2014- 2016

¹¹⁴ Conversion rates used for January 2017. Available [here](#). Article 72, paragraph 1, item "c" of the PPA, as amended: Failure to meet the obligation laid down in Article 23 of the Act.

¹¹⁵ Conversion rates used for January 2017. Available [here](#). Article 72, paragraph 1, item "e" of the PPA as amended: Failure to meet one of the obligations laid down in Article 38 of the Act.

Table 4 Number of imposed disciplinary measures resulted from the monitoring of public procurement procedures by type of official, 2014- 2016

| Role of the official | 2014 | 2015 | 2016 |
|--|-------------|-------------|-------------|
| Head of Contracting Authority | 1 | 0 | 2 |
| Member of Procurement Unit | 26 | 18 | 12 |
| Member of Offers Evaluation Commission | 7 | 6 | 9 |
| Member of the Group for Calculating the Limit Fund | 4 | 3 | 1 |
| Member of the Commission for Small Value Procurement Procedures | 3 | 6 | 10 |
| Total | 41 | 33 | 34 |

Source: Author's calculations based on data from PPA Annual reports, 2014- 2016

In cases of failure to publish the public procurement contract in the appropriate register and conflict of interest in the evaluating members of the evaluating committee, disciplinary measures are imposed.¹¹⁶

The PPA does not envisage sanctions in cases of conflict of interest between the head of the contracting authority and selected bidder, because the only applicable legal provision relates to the potential conflict of interest between the tender evaluation commission members and the bidders participating in a procurement procedure. This represents a significant risk for capture of public procurement, due to the political appointments and consequent influence over the system by head of contracting authority that is political appointee.

For cases in concluding a contract which deviate from the technical specifications described in the tender competition, the PPA envisages no sanctions, because enforcement of the procurement contract is not included in the domain of the implementation of the PPL. However, the PPL provides that “the terms of the contract awarded pursuant to the PPL shall not differ from the prescriptions established in the tender documents and in the successful tender.” (Paragraph 1 of Article 60 of the PPL). As deviations between the technical specifications and actual contracts represent one of the key corruption methods in public procurement, absence of such norm represent significant risk for corruptive practice and capture of public procurement system.

¹¹⁶ Paragraph 2 of Article 72 of the PPA, as amended stipulating, “When the responsible persons are not punished with a fine, and in any other case of violation of the provisions of this law, imposing of disciplinary measures shall be required against them.”

Control over Execution of public procurement contracts

TABLE A.10.1: Corruption Resistance Index – Control over Execution of public procurement contracts

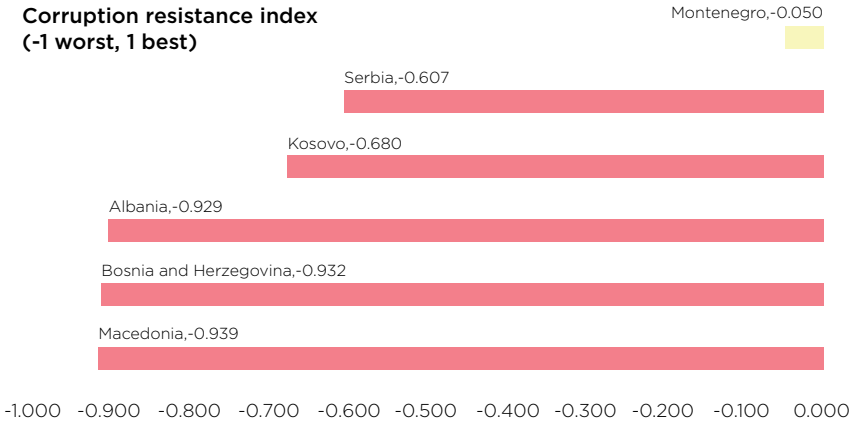
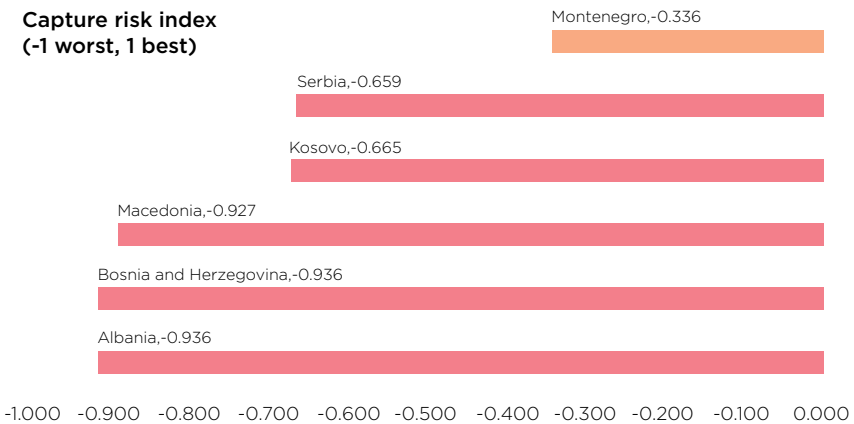


TABLE A.10.2: Capture Risk Index – Control over Execution of public procurement contracts



Interpretation of indices Albania

Category 10: Control over Execution of public procurement contracts

Despite the fact that the obligation to establish proper mechanisms for control of the execution of the public procurement contracts is envisaged in the latest 2014 PP Directive, very few countries have taken steps in this direction and Albania is no exception. In both indices in this category, Albania scores very low – the Corruption resistance index value suggests only elementary development of corruption resistance (no visible deterrence to corruption), while the Capture risk index suggests that in this category evaluators observed it as a captured system. The lack of any regulation (either in the PPL or by laws) that would explicitly assign responsibility for control over execution of the contracts to a respective authority or contracting body provides no barrier for manipulation of the PP process through the collusion between successful bidders and contracting authorities on the expense of the public funds. This is further emphasized by the observed deficiencies in the control mechanisms (i.e. PPA) and lack of the digitalization systems and obligation to report on executed contracts that would allow external control mechanisms to react on anomalies. One of the questions raised is whether information on executed contracts is available even for respective judicial bodies or executive branch government. All of this makes the area of control of execution of the PP contracts one of the urgent priorities in Albania.

Findings in detail

Monitoring of the execution of public procurement contracts is not regulated in Albania.

The Public Procurement Agency is responsible for conducting administrative investigations on public procurement procedures upon conclusion of the contract, but not for conducting administrative investigations on how the contracts are implemented, i.e. the execution of contracts.¹¹⁷

Lack of mechanisms that assure that contracts are implemented according to technical specifications set in the tender open space for post contract corruption that usually occurs if there is opportunity. As in addition to lack of regulation, there is lack of institutional setting in charge of this aspect of public procurement, this area represents one of the highest corruption and capture risks in Albanian public procurement system.

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Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Category 11

Regulation of Conflict of Interest in PP System and procedures

TABLE A.11.1: Corruption Resistance Index – Regulation of Conflict of Interest in PP System and procedures

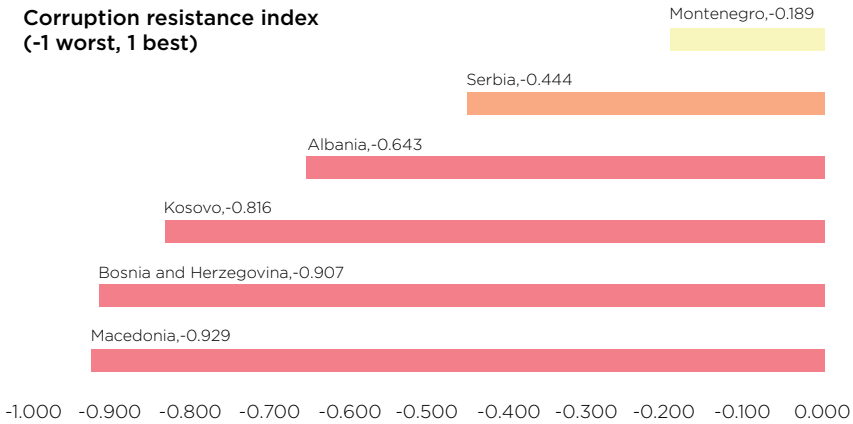
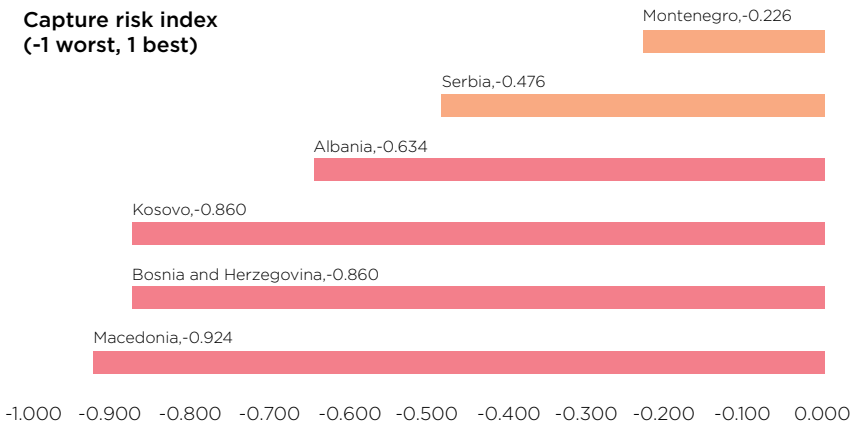


TABLE A.11.2: Capture Risk Index – Regulation of Conflict of Interest in PP System and procedures



Interpretation of indices Albania

Category 11: Regulation of Conflict of Interest in PP System and procedures

Indices on conflict of interest in Albanian PP system suggest elementary development of deterrence to corruption (table A.11.1) and captured system (table A.11.2). There are several institutions in charge of the conflict of interest prevention and investigations (PPA, HIDAACI, and in specific cases of complaint the PPC). However, the low number of cases processed by those institutions on all types of breaches of the law, and absence of any statistics on conflict of interest cases related to public procurement indicate that organizational structure in place is not effective nor efficient in addressing this issue. Absence of coherent approach and sanctions that are reciprocal to the damage done through occurrence of conflict of interest (sanctions are rather disciplinary and, in some cases, fined) tend to diminish even the parts of the system where Albania has shown progress and development. The risks are further emphasized by the limited digitalization of the system and limited access to data to external controls (i.e. media and civil society). In general, the concept of conflict of interest is not set as anti-corruption priority nor it is adequately regulated which provides significant opportunities for capture of the system. As an immediate measure, Albania could adopt the setting, procedures and solutions observed in Montenegro. However, for long term solutions, the PP related anti- conflict of interest measures need to be more robust with proper investigating techniques and adequate sanctions in place.

Findings in detail

In the domain of public procurement in Albania, regulation of conflict of interest regarding contracts with public institutions is conducted in a specific case-by-case manner.¹¹⁸

It is the responsibility of the contracting authorities in the domain of public procurement to take all measures to record all phases of the procurement process in the documentation of the public procurement procedure, starting from the decision to appoint members to the procurement unit, to the tender evaluation commission, award of the contract, conclusion of the contract, and decisions on complaints and their resolution.¹¹⁹ The authorities responsible for the implementation of the conflict of interest law include a) the superiors of the officials, according to the hierarchy, within a public institution; b) the directorates, units of human resources or units especially so charged, according to the need and possibilities of every public institution; and c) the superior institutions.

¹¹⁸ High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

¹¹⁹ Paragraph 2 of Article 41 of Law No. 9367, dated 7.4.2005 as amended.

These authorities are authorized, in the name of the respective institution: to collect from lawful sources of information all data on the private interests of an official; to accept information obtained in a lawful manner; to verify the credibility of this information; to notify the official of the information obtained about him; to give the official the opportunity to prove the contrary if the official so requests, and to record the private interests of officials in public institutions.¹²⁰

On the other hand, issue of conflict of interest is looked in to by the PPA (during their investigations) and PPC (in case of complaint) implement additional monitoring of conflicts of interest. The PPA is the supervisory central body for coordinating and controlling the process of public procurement through law enforcement, advisory, control and policymaking functions. In this regard, in respect of Article 13 of the PPL, the PPA is authorized to conduct administrative investigations on public procurement procedures, including verification of cases of conflicts of interest in public procurement procedures. The PPC plays an important role in the decision-making process regarding public procurement procedures, as stipulated in Law No. 9643, dated 20.11.2006 “On Public Procurement”, as amended. The PPC is the highest body in the field of procurement authorized to review complaints on procurement procedures, in conformity with the requirements stipulated in this law.

The High Inspectorate for the Declaration and Audit of Assets and Prevention and Control of Conflict of Interest (HIDAACI) plays an advisory role. The HIDAACI, in cooperation with the OSCE Presence in Albania, has produced and published an explanatory manual “On the Role of Responsible Authorities in the Prevention and Control of Conflict of Interest” and delivered the relevant training to assist the responsible authorities of public institutions in the prevention, treatment, and resolution of cases of conflict of interest.¹²¹

The Albanian system of public procurement has institutions for managing conflicts of interest in place. However, performance indicators of the detection of conflict of interest as well as sanctions prescribed in specific cases related to public procurement are absent. This indicates that the regulatory system is not adequately supported by the institutional framework and annual plans. The sampling method used in inspections of public procurement as observed in this assessment is insufficient to prevent conflicts of interest in public procurement, or to adequately sanction such occurrences. The absence of relevant statistics and performance indicators in this area may significantly hinder all other aspects of integrity in the public administration in Albania as well. Therefore, special attention should be given to this issue in future reporting, and thorough explanations shall be requested from relevant authorities in this field.

¹²⁰ Law on Prevention of Conflict of Interest in the Exercise of Public Functions (No. 9367, 2005)

¹²¹ High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

Audit mechanisms

TABLE A.12.1: Corruption Resistance Index – Audit mechanisms

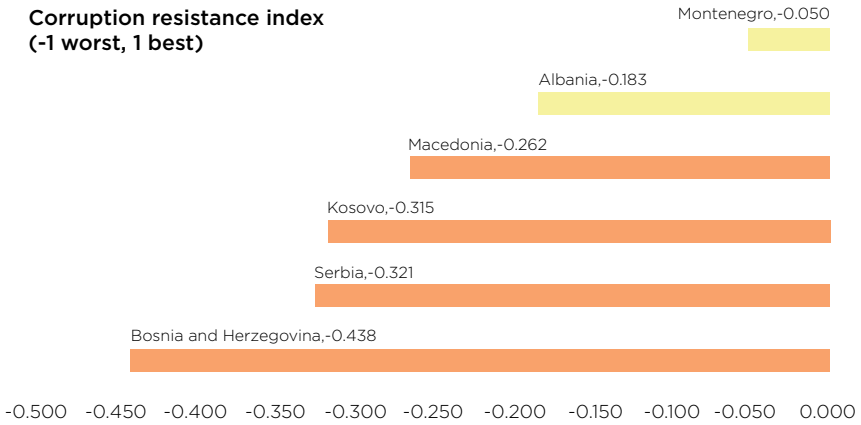
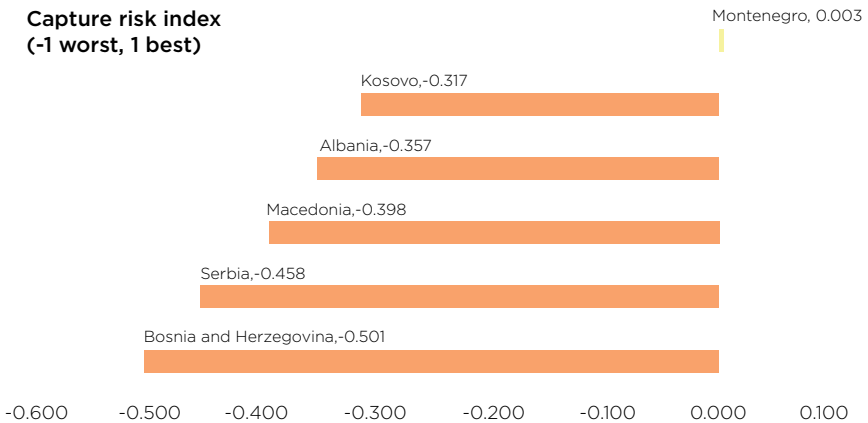


TABLE A.12.2: Capture Risk Index – Audit mechanisms



Interpretation of indices Albania

Category 12: Audit mechanisms

In the area of Audit mechanisms and their performance, Albania scores relatively higher than most countries covered by the assessment. The Supreme State Audit Institution (SSAI) has all elements for addressing corruption risks in place, and is equipped with the necessary knowledge to conduct assessments of public procurement procedures. In the corruption resistance index, the SSAI is seen as having a moderate response to corruption, while the capture risk index is still relatively high due to the lack of specific obligations of the SSAI to conduct audit of procurement procedures in the existing regulation. However, despite this, the SSAI has conducted specific audits and provided issue-specific reports in this area (see findings in detail below). Incidental audits in the area of public procurement are not expected to have a long-term effect in detecting or preventing corruptive acts, and therefore this should be addressed in future development of Albanian PP system.

Findings in detail

The jurisdiction of the Supreme State Audit Institution (SSAI)¹²² includes as “auditees” all institutions of central government, local government bodies, other central and local performing public functions, independent institutions and trade associations or any other forms, not including financial ones, where the state capital is over 50 per cent, or the loans, credits and liabilities are guaranteed by the state.¹²³

The SSAI does not audit entities that are not public authorities.¹²⁴ The SSAI does not audit European institutions/agencies, or international organizations, but “audits the users of public funds provided by the European Union or other international organizations, unless otherwise provided by law.”¹²⁵ The SSAI auditors are equipped with the skills required to audit public procurement procedures.¹²⁶ Indeed, the 2016 SSAI Annual report provides an overview of public procurement procedures beyond simply stating in whether the PPL was implemented or not. For instance, the report inter alia states that 50% of the total public procurement value was contracted with 57 economic operators and 5% of the total number of successful tenderers have won 14.7% of the total procurement value in 2016.

¹²² Pursuant to Law No. 154/2014, the scope of activity is specified in paragraphs 1, 2, and 3 of Article 6. Article 10 delineates the competences of the SSAI. The SSAI conducts financial, compliance, performance, and information technology audits (as set forth in Articles 11, 12, 13, and 14).

¹²³ Supreme State Audit (2017) Freedom of Information Act, written response retrieved on June 30, 2017.

¹²⁴ Paragraph 15 of Article 3 of Law No. 154/2014, “On the Organization and Functioning of the State Supreme Audit Institution”. Available [here](#).

¹²⁵ Item “dh” of Article 10 of Law No. 154/2014, “On the Organization and Functioning of the State Supreme Audit Institution.”

¹²⁶ Supreme State Audit (2017) Freedom of Information Act, written response retrieved on June 30, 2017

Table 5 Number of employees vs. number of contracting authorities for the SSAI

| Year | 2014 | 2015 | 2016 |
|--|-------------|-------------|-------------|
| Number of employees | 166 | 171 | 176 |
| Number of contracting authorities | 1933 | 1741 | 1378 |

The number of audits carried out by the SSAI during 2014-2016 was: 160 audits during 2014, 158 audits during 2015 and 154 audits during 2016.¹²⁷ If we compare the ratio of number of audits conducted per year to the number of people employed, it shows a slightly decreasing trend, from 0.96 in 2014 to 0.87 in 2016. The number of staff employed has increased, from 166 employees in 2014 and 171 employees in 2015, to 176 employees in 2016.¹²⁸ Here the discrepancy in numbers between publicly available reports and those retrieved through the GRAPP project was observed as well. However, the discrepancies do not suggest a significant change in the capacity of the institution to perform its duties. The Head of the SSAI is elected by Parliament at the proposal of the President of the Republic with a seven-year mandate and with the right to re-election.¹²⁹ The current head of the Institution was appointed on 15 December 2011.¹³⁰ The Head of the SSAI is under obligation to the Act on the Prevention of Conflicts of Interest. Retrieved data from SSAI does not refer to any specific role of the SSAI in assessing public procurement in relevant authorities, which consequently leaves public procurement out of reach of soft mechanisms and raises questions as to what is the competent authority that should play such role in the pp system in Albania.

¹²⁷ Ibid.

¹²⁸ Supreme State Audit (2017) ALSAI Performance Report 2016. Available [here](#).

¹²⁹ Supreme State Audit (2017) Freedom of Information Act, written response retrieved on June 30, 2017.

¹³⁰ Ibid.

Criminal justice system response to PP anomalies

TABLE A.13.1: Corruption Resistance Index – Criminal justice system response to PP anomalies

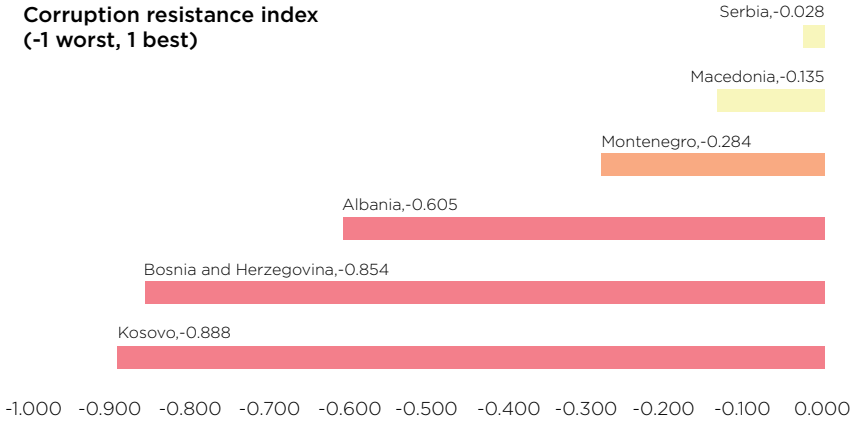
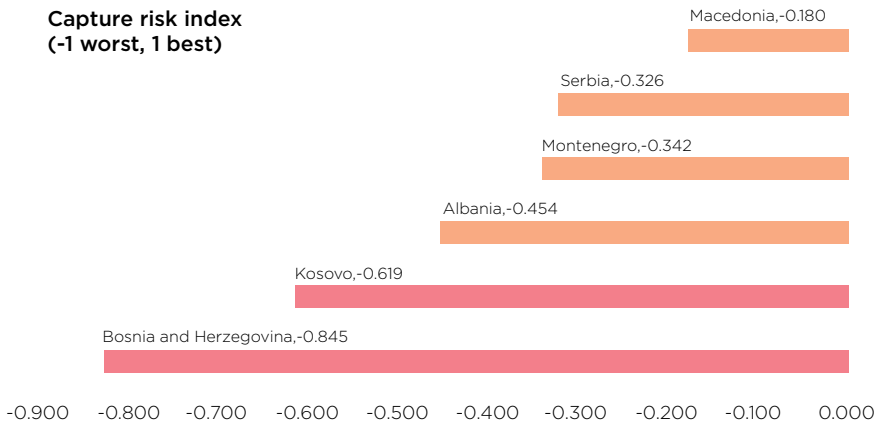


TABLE A.13.2: Capture Risk Index – Criminal justice system response to PP anomalies



Interpretation of indices Albania

Category 13: Criminal justice system response to PP anomalies

The criminal justice system is observed as the ultimate, final and most important response to corruption, and Public Procurement-related corruption is no exception to this. In this area, the Albanian PP system scores relatively low. The value of the Corruption resistance index places the Albanian system among elementary responses while Capture risk is considered to be high. Some progress in this area has been made with the inclusion in the Albanian Criminal code of crimes related to public procurement and concessions. However, the low number of cases and declining trend indicates insufficiencies that should be considered by several different Government departments (public procurement related institutional setting and criminal justice institutional setting). Sentencing of corruption in PP is not reciprocal to the damage that can be inflicted as the maximum prison time for crimes in PP is three years as prescribed by criminal code (see findings in detail). Among other issues, a lack of proper protocols for horizontal cooperation, with questionable access to information by the external controls (i.e. media and civil society), limits the corruption detection capability of the system which ultimately limits the impact of the criminal justice system to pursue corruption in PP. While the Albanian system may benefit in the short term by observing solutions in place in Serbia, there are needs for stronger organizational responses to corruption in public procurement, as well as stronger regulatory solutions for addressing corruption in PP. Weak political accountability, as well as weak other horizontal accountability and control mechanisms further emphasize the potential for capture of the system.

Findings in detail

Criminal offences directly related to violations in public procurement are enshrined in Article 258 of the Albanian Penal Code: “Breaching the equality of participants in public bids or auctions”¹³¹.

Fines and incarceration of up to three years are envisaged for committing acts in breach of the laws which regulate the freedom of participants and the equality of citizens in bids and public auctions by a person holding state functions or public service.¹³²

According to the Procedural Penal Code, the competent authority for prosecuting corruption cases is the Prosecutor’s Office. Based on the annual reports from the General Prosecutor’s Office, the specific weight of sentences passed for criminal offences by persons exercising public functions

¹³¹ Criminal Code of the Republic of Albania, as amended.

¹³² Criminal Code of the Republic of Albania, as amended.

was 2,4% in 2014, 2,2% in 2015 and 2,6% in 2016.¹³³ Low share of cases related to public procurement in overall criminal justice statistics related to corruption implicate that detection mechanisms in Albania are insufficient for the need in public procurement system. Public procurement, as one of the hot-spots for corruption is expected to have higher share in overall corruptive behaviour in any country, especially if emphasized in criminal code as a crime. This as well raises question of subordination, efficiency and effectiveness of other bodies observed in this report, as they appear to have extensive powers and wide scope as prescribed by legislation, but relatively low statistical outcome or performance indicators in area of public procurement. Therefore, accountability and integrity mechanisms in observed areas in Albania seem to be absent or ineffective.

Of the criminal offences by persons exercising public functions, 10 criminal proceedings were brought in 2014, 13 in 2015, and 19 in 2016, while the number of convicted defendants dropped from 17 in 2014 to 6 in 2015 and 2016.

Table 6 Statistics on “Breaching the equality of participants in public bids or auctions.”

| | 2014 | Total | 2015 | Total | 2016 | Total |
|---|-------------|--------------|-------------|--------------|-------------|--------------|
| Conducted criminal proceedings | 10 | 823 | 13 | 723 | 19 | 803 |
| Proceedings sent to trial | 3 | 138 | 2 | 169 | 2 | 171 |
| Number of registered defendants | 14 | 336 | 6 | 300 | 3 | 395 |
| Defendants under trial proceedings | 12 | 276 | 7 | 341 | 6 | 265 |
| Convicted defendants | 17 | 145 | 6 | 183 | 6 | 154 |

¹³³ General Prosecutor’s Office (2017) Situation of Criminality 2016. Available [here](#).
 General Prosecutor’s Office (2016) Situation of Criminality 2015. Available [here](#).
 General Prosecutor’s Office (2015) Situation of Criminality 2014. Available [here](#).

Capacity and human resources management

TABLE A.14.1: Corruption Resistance Index – Capacity and human resources management

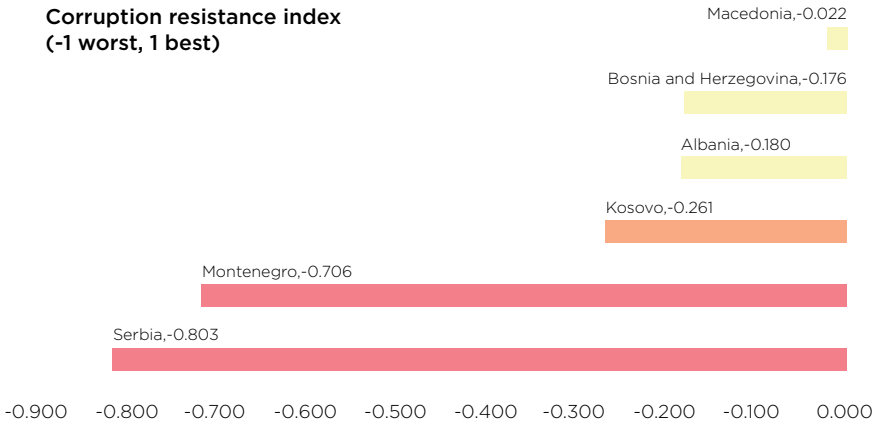
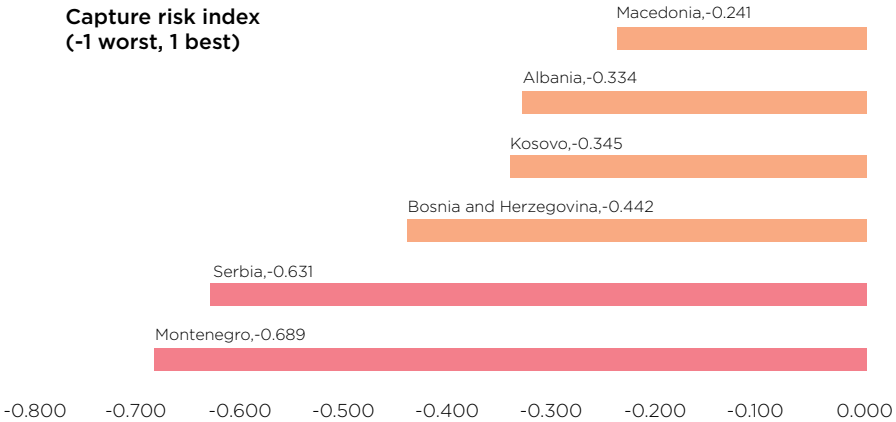


TABLE A.14.2: Capture Risk Index – Capacity and human resources management



Interpretation of indices Albania Category 14: Capacity and human resources management

In this area, the Albanian public procurement system is among the better performers of the six countries covered by the report. The corruption resistance index value places Albanian capacities and human resources in the stage of moderate response to corruption, while the Capture risk index is still relatively high. The strong points of the system are that the education and capacity building of PP officers is conducted under cooperation with the OECD/SIGMA; the setback in this area is that there is no process of certification of PP officers, as prescribed by the law. In reality this means that procurement officers that have participated in the education do not have to conduct procurement procedures, or to be capable of conducting procurement procedures. Lack of the knowledge and capacity of the PP officers, although soft measure in fight against corruption, does increase the risk of corruption in this area, as incompetence make them prone to political or other undue influence during performance of the necessary tasks. In addition, staff are not necessarily able to apply the sophisticated procedures and measures prescribed by PP regulation as observed in the findings in detail below. The system of qualification and recertification need to be established in this area in any further development of the PP system in Albania.

Findings in detail

The PPA does not require certification of procurement officials, and public procurement is not recognized as a ‘profession’ in Albania to date.¹³⁴

The PPA organizes training in public procurement in cooperation with the OECD/SIGMA. Public procurement officials who attend the nine-day training course organized by the PPA in cooperation with the Albanian School of Public Administration (ASPA) obtain certificates that are not accredited as professional qualifications, but that certify attendance and successful completion of the training course.¹³⁵ During 2016, seven nine-day training sessions were organized for officials at the national level and nine one-day training sessions for officials at the local level. A total of 237 officials were trained.¹³⁶ Lack of obligatory certification of public procurement officers may significantly diminish capacity of the overall system to properly respond to the existing legislation. This reflects in statistics on usage/abuse of the “negotiated procedure without prior notification”, number of fines prescribed by relevant authorities in comparison to the number of inspections conducted and in other aspects where lack of integrity and accountability in the system is visible and detectable.

In 2007, progress was made towards e-public procurement with the introduction of rules necessary to implement public procurement procedures by electronic means¹³⁷. The Albanian Power Corporation conducted the first tender in the electronic procurement system to the value of EUR 220 million for the purchase of annual supplies of electrical power in 2007. During 2008, electronic procurement began to be applied by several institutions, and by 2009, the electronic procurement system was mandatory.¹³⁸

In pursuance of item 1 of the DCM No. 918, dated 29.12.2014, “On Conducting Public Procurement Procedures Electronically”, all procurement procedures are conducted electronically, with the exception of negotiation without prior notice of contract, the second phase of the “Consulting Services” and “Design Contest” procedures, procurement procedures valued under 100, 000 ALL (or EUR 744), and those conducted in emergency cases, and procurement procedures for the “Purchase of electrical energy”.

¹³⁴ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

¹³⁵ Ibid.

¹³⁶ Public Procurement Agency (2017) Annual Report for 2016. Available [here](#).
Public Procurement Agency (2016) Annual Report for 2015. Available [here](#).
Public Procurement Agency (2015) Annual Report for 2014. Available [here](#).

¹³⁷ DCM No. 659, “On Rules on Electronic Public Procurement Procedures” dated 03.10.2007.

¹³⁸ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Trends in public procurement contracts

TABLE A.15.1: Corruption Resistance Index – Trends in public procurement contracts

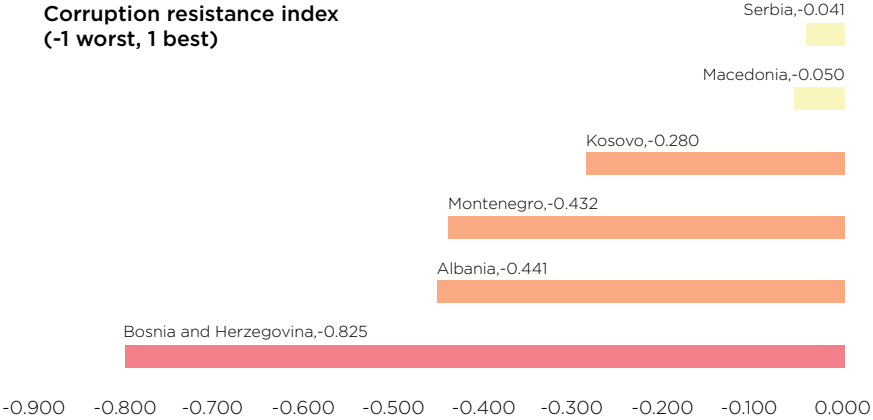
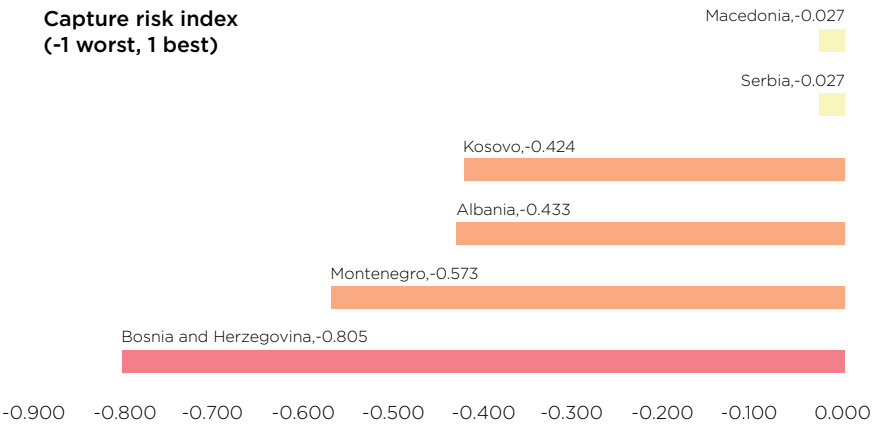


TABLE A.15.2: Capture Risk Index – Trends in public procurement contracts



Interpretation of indices Albania

Category 15: Trends in public procurement contracts

Statistics on public procurement contracts indicate an incidental response to corruption (table a.15.1 above) and high risk of capture of the system (table 15.2 above). A weak information management system (see the category 4 above) was key to the evaluators' assessment of developments in this area. Inconsistent statistics and discrepancies between different statistics for the same period/same issue indicate significant challenges for the entire PP setting in Albania. A lack of proper information management diminishes the efforts of internal controls, horizontal accountability and external controls to perform their role in protecting the public interest in PP in Albania. The fact that the total annual value of contracts increased by approx. 45% in a three-year period, with a reduction in the number of detected anomalies followed by discrepancies in statistical presentation of data, require immediate attention by PP actors in Albania. This may suggest that a significant value of the contracts is not properly managed and registered, and therefore are beyond the reach of the competent authorities in conducting controls on procedures and actual contracts. While in the short run Albania may benefit from observing the systems in Serbia and Macedonia in the area of monitoring of the public procurement contracts, the long run solution needs to be addressed through more strategic regulatory and institutional response.

Findings in detail

The total number of notices on procurement procedures published in the electronic procurement system by type of contract, service, goods, works, in the PPA's website was 5288 for 2014, 4630 for 2015 and 5109 for 2016.¹³⁹ The value of procurement per type of contracting authority is not available in the Public Procurement System.¹⁴⁰ This represents another example of a partially established system. While electronic procurement is mandatory in Albania, which sets precondition for digitalization of the system, it becomes obvious that digitalization of the specific data still remain an issue. If such systems are in place, extrapolating any kind of statistics would require less than hour of work for purpose of calibrating the system. Rationale behind such development is not clear, as frequent changes of the law never addressed this issue, which is fundamental for understanding functioning of the pp system, behaviour of the pp actors and managing the very economy of the public procurement in Albania.

¹³⁹ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

¹⁴⁰ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Table 8 Breakdown of procurement notices by number and type of published contracts

| Year | 2014 | 2015 | 2016 |
|---|---|---|---|
| Total number of published notices | 5,288 | 4,630 | 5,109 |
| Total estimated value of published procurement notices | ALL 60 billion EUR 429 million ¹⁴¹ | ALL 90 billion EUR 649 million ¹⁴² | ALL 108 billion EUR 787 million ¹⁴³ |
| Number of consultancy services and design contests | 116 | 168 | 153 |
| Value of procured consultancy services and design contests | ALL 1.6 billion EUR 11 million ¹⁴⁴ | ALL 2.3 billion EUR 17 million ¹⁴⁵ | ALL 1.8 billion EUR 13.6 million ¹⁴⁶ |
| Number of international bids | 10 | 9 | 15 |
| Value of international bids | ALL 7.7 billion EUR 55.2 million ¹⁴⁷ | ALL 5.1 billion EUR 36.7 million ¹⁴⁸ | ALL 7,6 billion EUR 55.3 million |
| Number of local bids | 1,367 | 1,533 | 1,835 |
| Value of local bids | ALL 42.6 billion EUR 304.4 million ¹⁴⁹ | ALL 74.3 billion EUR 531.8 million ¹⁵⁰ | ALL 89.5 billion EUR 651.7 million ¹⁵¹ |
| Number of requests for proposals | 3,789 | 2,914 | 3,106 |
| Value of requests for proposals | ALL 7.9 billion EUR 56,893,761.24 ¹⁵² | ALL 8.8 billion EUR 63,321,697.25 ¹⁵³ | ALL 9.2 billion EUR 67,059,726.89 ¹⁵⁴ |
| Number of restricted local procedures | 6 | 1 | 0 |
| Value of restricted local procedures | ALL 257 million EUR 1.8 million ¹⁵⁵ | ALL 4,2 million EUR 30.3 thousand ¹⁵⁶ | 0 |
| Number of negotiated procedures with prior publication | | 5 | 0 |
| Value of negotiated procedures with prior publication | | ALL 20.4 million EUR 146 thousand ¹⁵⁷ | 0 |

¹⁴¹ Average yearly exchange rate for 2014.

¹⁴² Average yearly exchange rate for 2015.

¹⁴³ Average yearly exchange rate for 2016.

¹⁴⁴ Average yearly exchange rate for 2014.

¹⁴⁵ Average yearly exchange rate for 2015.

¹⁴⁶ Average yearly exchange rate for 2016.

¹⁴⁷ Average yearly exchange rate for 2014.

¹⁴⁸ Average yearly exchange rate for 2015.

¹⁴⁹ Average yearly exchange rate for 2014.

¹⁵⁰ Average yearly exchange rate for 2015.

¹⁵¹ Average yearly exchange rate for 2016.

¹⁵² Average yearly exchange rate for 2014.

¹⁵³ Average yearly exchange rate for 2015.

¹⁵⁴ Average yearly exchange rate for 2016.

¹⁵⁵ Average yearly exchange rate for 2014.

¹⁵⁶ Average yearly exchange rate for 2015.

¹⁵⁷ Average yearly exchange rate for 2015.

Category 16

Trends in framework agreements

TABLE A.16.1: Corruption Resistance Index – Trends in framework agreements

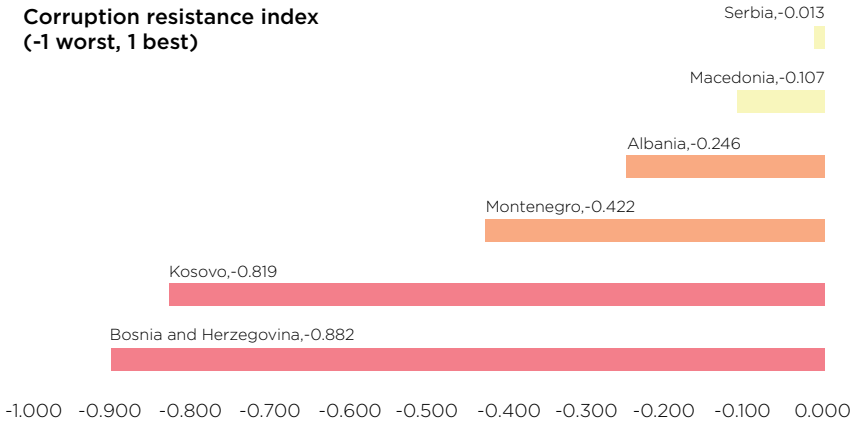
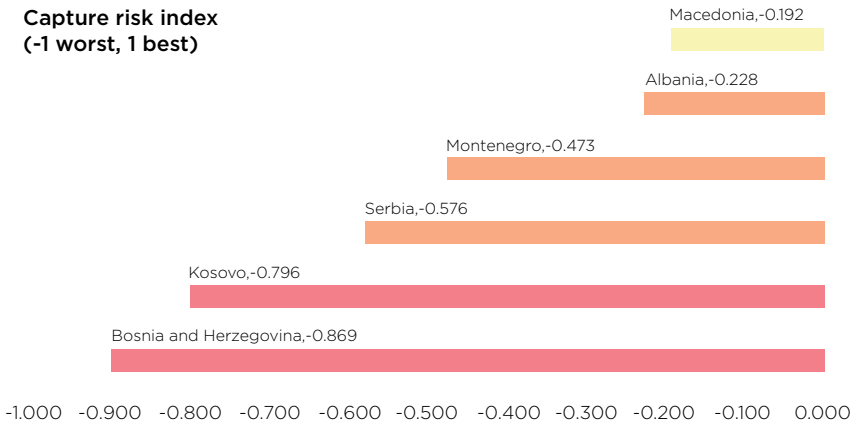


TABLE A.16.2: Capture Risk Index – Trends in framework agreements



Interpretation of indices Albania Category 16: Trends in framework agreements

In the area of framework agreements, the Albanian system is placed among incidental responses to corruption and high risk of the system capture. While the system does not show significant anomalies, evaluators considered that the limited use of framework agreements - which started in 2015 and are still not extensively used - restricts conclusions on the efficiency and effectiveness of the system in preventing corruption. However, limited use of the FAs may in fact indicate the weak capacity of the PP system and lack of expertise. This puts the system at high risk of capture and prone to undue influence. For further development of FA use in the PP procedures, respective authorities should consider introducing safety mechanisms that will assure detection (i.e. abuse of FA for the purpose of limiting the competition), prevention and sanctioning of potential corruption in this area.

Findings in detail

Contracting authorities in Albania started to use framework agreements for the first time during 2015.¹⁵⁸ During 2016, data analysis shows that contracting authorities continued to use the framework agreements, focusing mainly on procuring services such as the purchase of plane tickets, consultancy, healthcare services, repair of vehicles and equipment.

¹⁵⁸ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on July 11, 2017.

Table 9 Contract notices on framework agreement procedures 2015-2016

| Type of procedure | 2015 | | 2016 | |
|-----------------------------|-----------|--|-----------|--|
| | Number | Limit fund | Number | Limit fund |
| Open local procedure | 15 | ALL 282.7 million EUR 2 million ¹⁵⁹ | 20 | ALL 789.9 million EUR 5,749,954.54 ¹⁶⁰ |
| Request for proposal | 19 | ALL 71.4 million EUR 511 thousand ¹⁶¹ | 23 | ALL 101.5 million EUR 739 thousand ¹⁶² |
| Consultancy service | | | 3 | ALL 166.6 million EUR 1.2 million ¹⁶³ |
| Total | 34 | ALL 354.1 million EUR 2.5 million¹⁶⁴ | 46 | ALL 1 billion EUR 7.7 million¹⁶⁵ |

¹⁵⁹ Average yearly exchange rate for 2015.

¹⁶⁰ Average yearly exchange rate for 2016.

¹⁶¹ Average yearly exchange rate for 2015.

¹⁶² Average yearly exchange rate for 2016.

¹⁶³ Average yearly exchange rate for 2016.

¹⁶⁴ Average yearly exchange rate for 2015.

¹⁶⁵ Average yearly exchange rate for 2016.

Category 17

The most successful tenderers

TABLE A.17.1: Corruption Resistance Index – The most successful tenderers

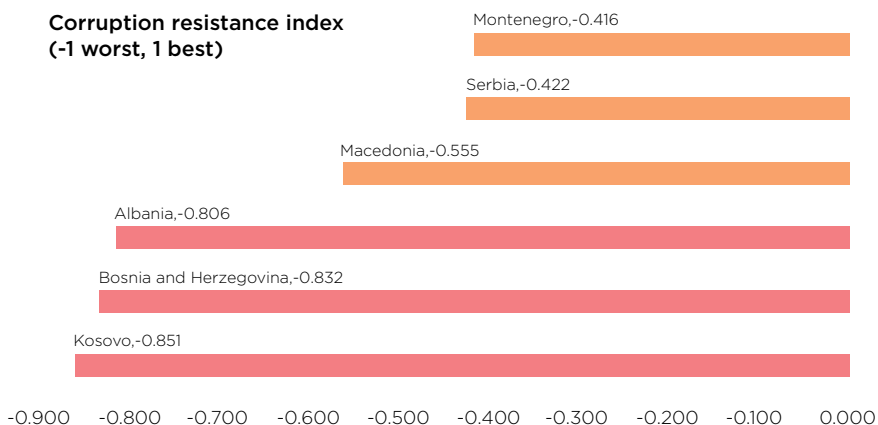
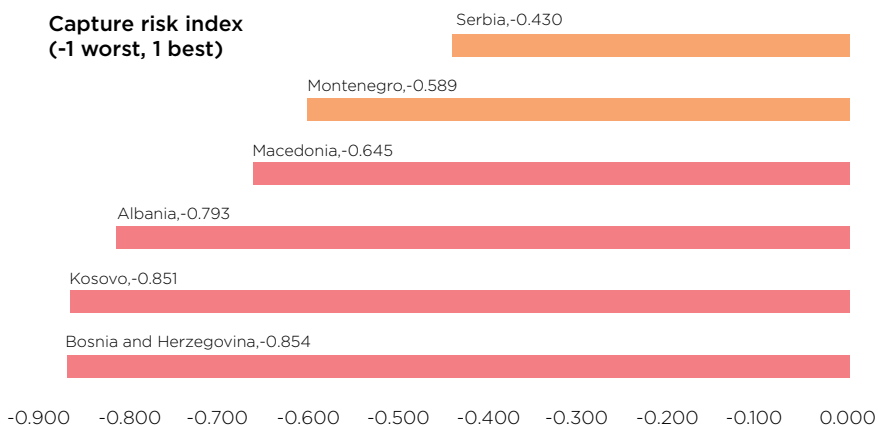


TABLE A.17.2: Capture Risk Index – The most successful tenderers



Interpretation of indices Albania

Category 17: The most successful tenderers

In this area, Albania is assessed as a weak performer with indices in the zone of the elementary corruption response (table 17.1 above) and Captured system (table 17.2 above). Data on most successful tenderers are simply unavailable in the PP system.¹⁶⁶ Lack of digitalization and loopholes in information management pose a fundamental challenge to any kind of substantive controls (whether internal or external) over the outcomes of PP procedures. Inability of the system to provide data on most successful bidders implicates multiplication of the challenges observed in earlier chapters. It is not clear why system during establishment of the e-procurement was not previously digitalized in area of data management, as it did not make sense to the evaluators to have one without another. As this issue affects all aspects of accountability, integrity, internal and external controls, it represents one of the key risks to corruption/capture of the system as well as obstacles to implementation of any integrity and accountability initiative. This is especially important as local evaluators observed that there is a public perception of “collusion” between local authorities and the most successful tenderers. Therefore, data management structures and digitalization appear to be an ultimate priority in any further intervention in the PP system in Albania.

¹⁶⁶ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on October 11, 2017.

Trends in petty public procurement

TABLE A.18.1: Corruption Resistance Index – Trends in petty public procurement

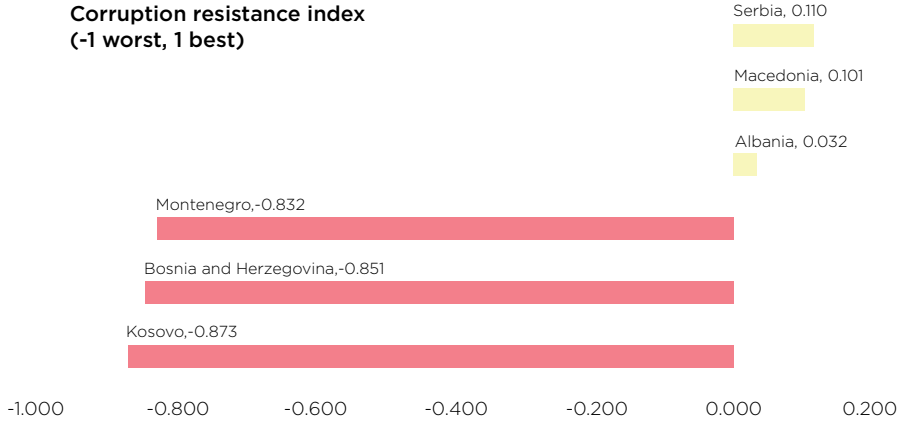
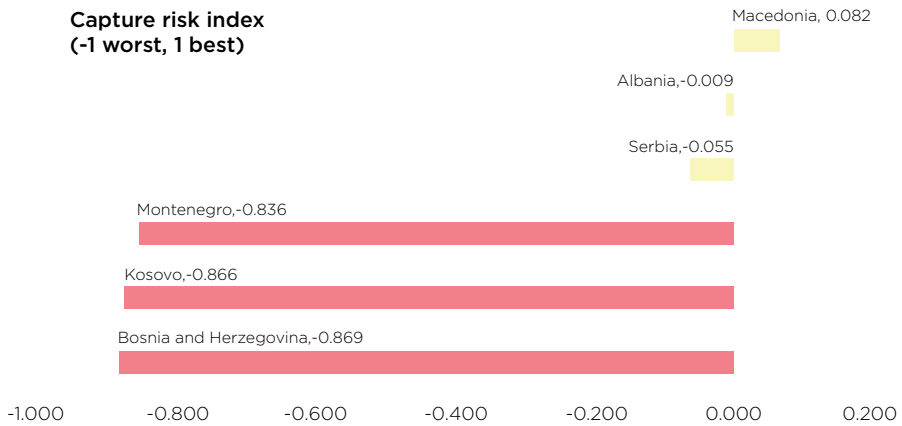


TABLE A.18.2: Capture Risk Index – Trends in petty public procurement



Interpretation of indices Albania

Category 18: Trends in petty public procurement

In the area of trends in Petty public procurement, Albania scores relatively high in comparison to other countries. The corruption resistance index score is in area of moderate response to corruption (see table 18.1 above), while Capture risk index is also in the area of moderate risk (see table 18.2 above). The reasons for this kind of development mostly lie in the solid regulation of petty public procurement (see the detailed explanation in category 7 above), low thresholds of petty public procurement, and more advanced use of the electronic procurement in this area. In the long run, respective PP authorities may consider full digitalization of the petty public procurement in order to increase ability of control mechanisms to provide more comprehensive analysis in this area.

Findings in detail

Albania sees a positive trend in petty procurement purchases, with the number and value of petty procurement having decreased in the last two years (2015 and 2016) compared to 2014. The same trend applies when petty procurement is observed as a proportion of the total value of public procurement: 13% in 2014, 11.3% in 2015 and 6.7% in 2016.

Table 13 Data on petty procurement, 2014-2016

| | 2014 | 2015 | 2016 |
|--|--|---|--|
| Total number of petty purchases | 46.537 | 22.435 | 21.914 |
| Total limit fund of petty purchases | ALL 9.2 billion EUR 65.6 million ¹⁶⁷ | ALL 10.2 billion EUR 73.4 million ¹⁶⁸ | ALL 7.5 billion EUR 54.8 million ¹⁶⁹ |
| Total procured fund of petty purchases | ALL 7.8 billion EUR 56 million ¹⁷⁰ | ALL 4.4 billion EUR 31.9 million ¹⁷¹ | ALL 3.1 billion EUR 22.7 million ¹⁷² |
| Total number of ongoing petty purchases | 31.164 | 19.828 | 17.010 |
| Total number of unfinished procedures (annulled etc.) | 15.373 | 2.607 | 4.904 ¹⁷³ |

¹⁶⁷ Average yearly exchange rate for 2014.

¹⁶⁸ Average yearly exchange rate for 2015.

¹⁶⁹ Average yearly exchange rate for 2016.

¹⁷⁰ Average yearly exchange rate for 2014.

¹⁷¹ Average yearly exchange rate for 2015.

¹⁷² Average yearly exchange rate for 2016.

¹⁷³ Public Procurement Agency (2017) Freedom of Information Act, written response retrieved on October 11, 2017.

Literature

Council of the European Union (2003) Thessaloniki European Council 19 and 20 June 2003. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf.

European Commission (2014) EU Anti-Corruption Report. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

Ferwerda, J., Deleanu, I., Unger, B. (2016) Corruption in Public Procurement: Finding the Right Indicators. *European Journal on Criminal Policy and Research* Vol. 23, Issue 2, p. 245-267.

Hellman, J.S., Jones, G., Kaufmann, D. (2000) *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition*. p. 2. Policy Research Working Paper 2444. World Bank.

Klitgaard, R. (1998) *Controlling Corruption*. p. 75. Berkley: University of California Press.

Mungiu Pippidi, A. (2013) *The Good, the Bad and the Ugly: Controlling Corruption in the European Union*. p. 28. Berlin: Hertie School of Governance.

Podumljak, M. (2016) *The Impact of EU Conditionality on Corruption Control and Governance in Bosnia and Herzegovina*. 7th Framework Programme: ANTICORRP project. Available at: <http://anticorrrp.eu/publications/the-impact-of-eu-conditionality-on-corruption-control-and-governance-in-bosnia-and-herzegovina/>.

Podumljak, M., David-Barrett, E. (2015) *The Public Procurement of Construction Works: The Case of Croatia*. European Commission's Seventh Framework Programme ANTICORRP. Available at: <http://anticorrrp.eu/publications/report-on-croatia/>.

Rose-Ackerman, R. (1975) *The Economics of Corruption*. *Journal of Public Economics* 4. 187-203.

Schimmelfennig, F. and U. Sedelmeier (2004) *Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe*. *Journal of European Public Policy* 11/4: 661–679.

Reports

General Prosecutor's Office (2017) Situation of Criminality 2016. Available at: http://www.pp.gov.al/web/raporti_pp_2016_07_03_2017_1160.pdf.

General Prosecutor's Office (2016) Situation of Criminality 2015. Available at: http://www.pp.gov.al/web/raporti_pp_2015_final_1094.pdf.

General Prosecutor's Office (2015) Situation of Criminality 2014. Available at: http://www.pp.gov.al/web/fiinal_final_raporti_pp_06_03_2015_1093.pdf.

Public Procurement Commission (2017) Annual Report 2016. Available at: <http://www.kpp.gov.al/ppadv/AnnualReports.aspx>.

Public Procurement Commission (2016) Annual Report 2015. Available at: <http://www.kpp.gov.al/ppadv/AnnualReports.aspx>.

Public Procurement Commission (2015) Annual Report 2014. Available at: <http://www.kpp.gov.al/ppadv/AnnualReports.aspx>.

FOIA requests

Public Procurement Agency (2017) Freedom of Information Act, written response on questions 1-71 retrieved on July 11, 2017.

Public Procurement Commission (2017) Freedom of Information Act, written response on questions 72-85 retrieved on June 29, 2017.

Supreme State Audit (2017) Freedom of Information Act, written response on questions 86-93 retrieved on June 30, 2017.

High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (2017) Freedom of Information Act, written response on questions 94-100 retrieved on July 3, 2017.

General Prosecution Office (2017) Freedom of Information Act, written response on questions 101-103 retrieved on July 7, 2017.

Legal documents

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement. Available at: <https://eur-lex.europa.eu/eli/dir/2014/24/oj>.

Public Procurement Law (No. 9643, 2006) as amended by PPL (No. 9800, 2007), PPL (No. 9855, 2007), PPL (No. 10170, 2009), PPL (No. 10309, 2010), PPL (No. 22/2012), PPL (No. 131/2012), PPL (No. 182/2014) and PPL (No. 47/2017). Available at: <http://www.app.gov.al/GetData/DownloadDoc?documentId=82a5c8f9-99cb-4604-b280-3858834847aa>.

Decision of the Council Ministers on adoption of Public Procurement Rules (No. 914, 2014) as amended by DCM (No. 402, 2015) and DCM (No. 823, 2016). Available at: <http://www.app.gov.al/GetData/DownloadDoc?documentId=5074eb43-15a3-480d-9b8d-f770bd77d47e>.

Decision of the Council Ministers on Conducting Public Procurement Procedures Electronically (No. 918, 2014) as amended by DCM (No. 796, 2017).

Decision of the Council Ministers on Public Procurement Procedures for Certain Goods and Services on behalf and account of the Prime Minister's Office, Ministries and Subordinate Institutions by the Central Purchasing Body, the Ministry of Internal Affairs (No. 28, 2015). Available at: <http://www.app.gov.al/GetData/DownloadDoc?documentId=c1df50b8-a503-4435-ae15-dbbe2c308f4f>.

Instruction of PPA No. 2, “*On the preparation of the annual forecast register of procurements and the public procurement realization register*” dated 27.01.2015.

Management of the Budget System in the Republic of Albania (No. 9936, 2008)

Instruction of PPL No. 3 “*On Declaration of Conflict of Interest by Procurement Officers*” dated 24.10.2016.

Public Procurement Agency’s Instruction No. 3, “*On Procurement Procedures for Petty Purchases*”, as amended, dated 27.01.2015.

Decision of the Council Ministers No. 261 “*On setting the fee and the rules of its payment, in an appeal procedure, to the Public Procurement Commission*”, dated 17.03.2010.

Prime Minister’s Order No. 35, “*On the approval of the structure and staffing of the Public Procurement Commission*” dated 01.03.2016

Law No. 152/2013 “*On the civil servant*”

Decision of the Council Ministers on the temporary and permanent transfer of civil servants, No. 125, dated 17.02.2016.

Decision of the Council Ministers on the release and appointment from/to the office of the head and a member of the Public Procurement Commission, no. 658, dated 21.9.2016.

Decision of the Council Ministers on Adoption of the Regulation on Organization and Functioning of the Public Procurement Commission, No. 184, dated 17.03.2010 as amended.

Law No. 152/2013, Pursuant to the law “*On Civil Servant*”

Decision of the Council Ministers no. 118, “*Procedures for appointment, recruitment, management and termination of civil service relationship of high management level civil servants and members of TND*”, as amended, dated 05.03.2014.

Law on Prevention of Conflict of Interest in the Exercise of Public Functions (No. 9367, 2005)

Law No. 154/2014 “*On the Organization and Functioning of the State Supreme Audit Institution*”: Available at: http://www.klsh.org.al/web/alsai_s_new_law_english_1715.pdf.

Criminal Code of the Republic of Albania (1995, amended 2015).