

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



Country report BOSNIA and HERZEGOVINA

This report has been published within the framework of the Governance Risk Assessment in Public Procurement- GRAPP project implemented by Partnership for Social Development (Croatia).

Project full title: Governance Risk Assessment in Public Procurement

Acronym: GRAPP

Duration: May 2017 –December 2017

Website: <http://www.integrityobservers.eu/>

ISBN 978-953-55446-8-5

CIP zapis je dostupan u računalnome katalogu Nacionalne i sveučilišne knjižnice u Zagrebu pod brojem 001007888.



This publication has been produced with the assistance of the European Union.

The contents of this publication are the sole responsibility of Partnership for Social Development and can in no way be taken to reflect the views of the European Union.

The project is funded by the European Union

Contents

<i>1. Introduction</i>	<i>2</i>
Conceptual framework and rationale	2
Methodology	6
General methodological approach	6
Indicators and data packages covered by the assessment	8
Measurements and process of assigning values to different indices	8
Potential method in brief	9
Values of the index	10
<i>2. Country report Bosnia and Herzegovina</i>	<i>12</i>
Summary interpretation of overall indices	14
Key findings	15
Key recommendations	16
Category 1 : Public Procurement Regulatory Ecosystem	17
Category 2 : Public Procurement Planning	21
Category 3 : Exceptions from procurement legislation	23
Category 4 : Information management in Public Procurement system	26
Category 5 : Pre-bidding stage	29

Category 6 : Public procurement Contracting	32
Category 7 : Petty public procurement	35
Category 8 : Public Procurement Remedy mechanisms	37
Category 9 : Control over the implementation of PP legislation	40
Category 10 : Control over Execution of public procurement contracts	43
Category 11 : Regulation of Conflict of Interest in PP System and procedures	45
Category 12 : Audit mechanisms	48
Category 13 : Criminal justice system response to PP anomalies	50
Category 14 : Capacity and human resources management	52
Category 15 : Trends in public procurement contracts	54
Category 16 : Trends in framework agreements	57
Category 17 : The most successful tenderers	60
Category 18 : Trends in petty public procurement	62

3. References

64

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 decree⁵) 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 more challenging. Numerous scholars and practitioners have developed indices based largely on surveys of perceptions and experts (i.e. Transparency

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.

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

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.

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* conditionality¹². 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://anticorrrp.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.

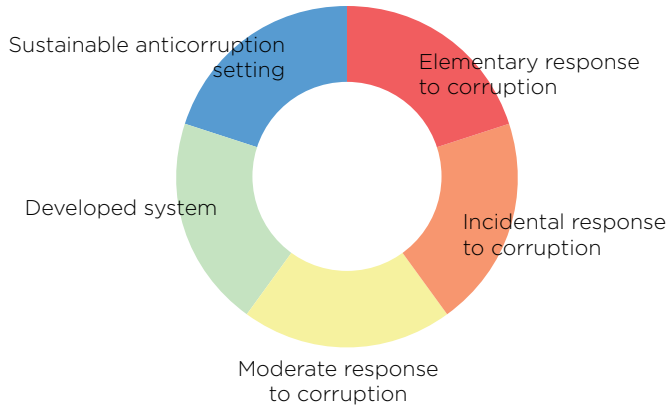
Values of the index

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.

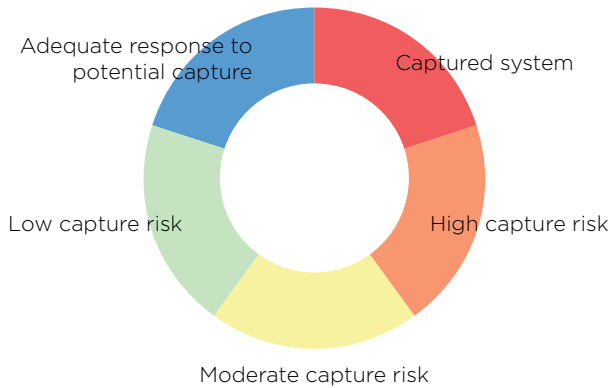
Important note

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 Bosnia and Herzegovina

Authors	Munir Podumljak, Erol Mujanović
Contributing author	Ana Hećimović
Editor	Elizabeth David Barrett
Methodology and standardization	Partnership for Social Development Croatia (Methodology and IT tool for Governance Risks Assessment in Public Procurement (developed in 2016, Croatian Copyright Agency: Deposit Certificate Reference No. 301/2017)
Data collection	Vesta organization (Bosnia and Herzegovina)
Fact checking	Vesta organization (Bosnia and Herzegovina), Partnership for Social Development (Croatia)
First instance evaluator	Erol Mujanović
Second instance evaluator	Ana Hećimović
Third instance evaluator	Munir Podumljak
Correction of indices	Sandra Gajić, Matea Matić

Abbreviations

BiH	Bosnia and Herzegovina
Commission	Commission for Conflicts of interest
FOIA	Freedom of Information Act
PABiH	Parliamentary Assembly of BiH
PC	Procurement Commission
Portal	E-Procurement Information System Portal
PPA	Public Procurement Agency
PPL	Public Procurement Law
PRB	Procurement Review Body

Summary

TABLE B.A. Overall Public Procurement Corruption Resistance Index 2017, Bosnia and Herzegovina¹³

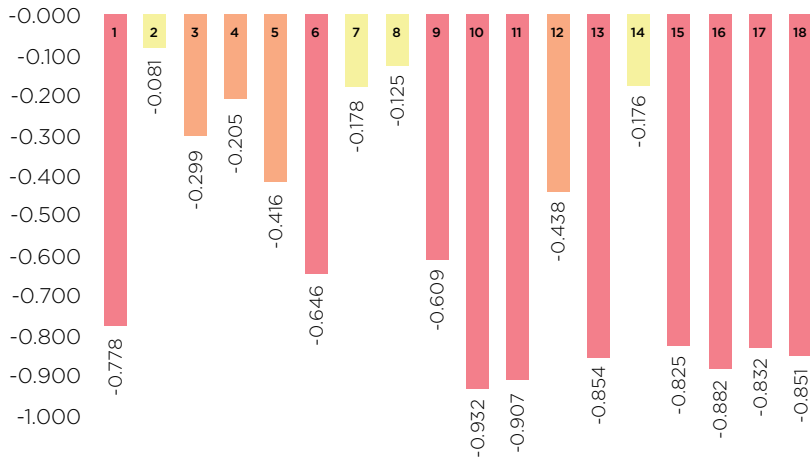
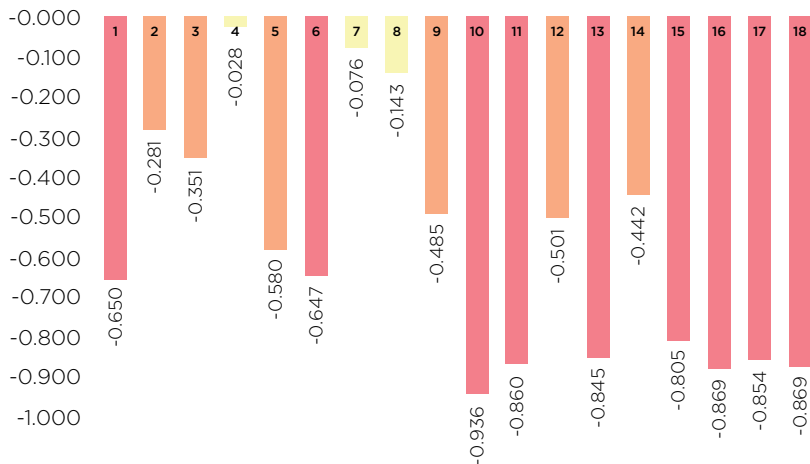


TABLE B.B. Overall Public Procurement Capture Risk Index 2017, Bosnia and Herzegovina



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

As tables B.A and B.B above show, the Public Procurement system in Bosnia and Herzegovina recorded significant progress in the areas of the regulatory environment related to category 7. Petty public procurement; and 8. Remedy mechanisms (where BiH can serve as a role model for other countries) with both of the indices (Corruption resistance and Capture risk) indicating moderate risks/responses. In addition, the Corruption resistance index shows progress in areas of category 2. Public Procurement Planning (tendency to standardization, digitalization and centralization of information related to PP plans) and category 14. Capacity and human resources management (plans and endeavours to provide obligatory training for PP officers, standardization of tender documents and limited digitalization of the information). In the area of corruption capture, some positive developments have been observed in category 4. Information management (due to pre-standardization initiatives, see full explanation in detailed interpretation of the category). However, the fact that in 10 out of 18 categories, the PP system in Bosnia and Herzegovina indicates elementary response to corruption (categories 1, 6, 9, 10, 11, 13, 15, 16, 17, 18) suggests a significant lack of attention to corruption in PP system development.

Significant risks of capture of the system, as observed in categories 1, 6, 10, 11, 13, 15, 16, 17 and 18, further emphasize the need for stronger and more comprehensive initiatives in this field. The primary deficiencies of the system that lead to weak system performance are observed in the areas of horizontal accountability and controls (see interpretation of categories 9. and 13.), further emphasized by structural and practice deficiencies in institutional oversight over the specific issues covered by this report (i.e. lack of pro-active investigations and reporting in the area of petty public procurement, publishing of the contract notices, information on most successful bidders and framework agreements). In addition to the above, the risks that arise from absence of proper division of powers in public procurement procedures, as well as absence of protocols on tender documentation management, undermine corruption deterrence in PP in general. The lack of any substantial barrier to conflict of interest further increases the probability of occurrence of undetected corruption and capture of PP system, especially on the local level, which is further emphasized by the regulatory stipulation of preferential local treatment in PP procedures (which is also contrary to the EU PP Directive 2014). Finally, the lack of any regulatory coverage over the execution of contracts, within a weak institutional setting, puts serious corruption in PP in Bosnia and Herzegovina almost beyond the reach of any of the established mechanisms.

Key findings

Public procurement procedures in BiH are regulated primarily by the PPL. Secondary legislation and bylaws arising from the PPA attempt to enforce the general principles described in the law, however, some are still pending adoption (the rules on training public procurement officers, models of standard tender documentation for all types of public procurement procedures, and the rulebook defining the dynamic purchasing system).

Procurement planning is another high risk observed within this assessment. Preparation and publication of public procurement plans, although prescribed in the PPL, is not standardized and neither is the procedure for modifying procurement plans. This harms competition and undermines the principle of transparency as one of the prerequisites for clean procurement.

The data management system for reporting on different stages of public procurement procedures and contracts is relatively standardized. However, the system is still not digitalized and respective contracting authorities report on public procurement in different non-digital formats which sets a challenge for general management of the public procurement system. In such circumstances, big data analysis and analysis of general behavior of different public procurement actors is not feasible, reducing the ability of internal and external control mechanisms to detect an anomaly and act upon it.

The pre-bidding phase is an area of high risk in terms of exposure to undue influence. There are no protocols for receipt and storage of bidding documents, or prescribed security over the tender documentation in the pre-bidding phase.

The division of power between personnel overseeing different stages of the procedure is very vague. Each phase carries a substantial risk of political influence and particularistic control due to appointment procedures as well as the political reality in BiH. All relevant control mechanisms are under direct control of the executive branch government through appointment and employment procedures.

The capacity of the key control mechanisms is questionable if not inadequate due to lack of resources to execute the wide scope of authority that is given to them by relevant legislation. In addition, the capacity of procurement personnel remains unsuitable to the need imposed by the sophisticated procedures and based on assessed numbers of contracting authorities that are covered by recent legislation. It is not clear why certification of procurement officials is not required in BiH, nor why there are no plans to introduce it any time soon.

Key recommendations

Rapid improvements of the PP system in Bosnia and Herzegovina could be achieved in several categories: 1. Public Procurement Regulatory Ecosystem; 13. Criminal justice system; 15. Trends in public procurement contracts; 16. Trends in framework agreements; 17. The most successful tenderers; 18. Trends in petty public procurement can be achieved through observation of the systems in FYR of Macedonia and Serbia, and application of the concepts, approaches and solutions established in these two systems. In the areas of 6. PP Contracting and 11. Conflict of interests, learning from the concepts and approaches used in Montenegro could significantly improve the capacity of the BiH PP System to tackle corruption.

Longer term, the PP system in Bosnia and Herzegovina requires significant restructuring. Horizontal control mechanisms (i.e. PPA) should be better equipped with appropriate capacity building measures for proactive investigations, and control over the respective contracting authorities. Due to the complex general governance structure in BiH, the solution applied in the case of the Procurement Review Body of Bosnia and Herzegovina (PRB), with decentralized offices, should be considered. This should be accompanied by proper information management systems so as to enhance capability for detecting risks, while further digitalization including procurement planning and petty public procurement is also essential. The BiH PP system could further benefit from greater alignment with then EU PP directive (in the case of the preferential treatment of local operators) and de-ethnicization of the system. Finally, the criminal codes need to be aligned across all entities in the area of Public Procurement, and accompanied by proper criminal justice practice and collection of evidence.

Category 1

Public Procurement Regulatory Ecosystem

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

Corruption resistance index
(-1 worst, 1 best)

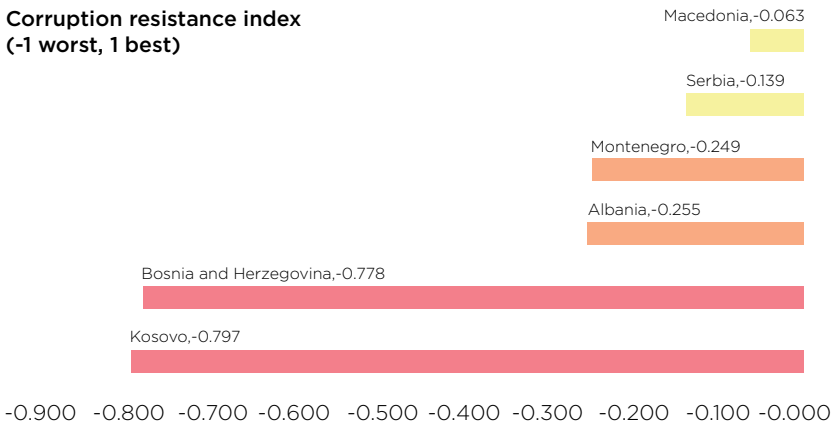
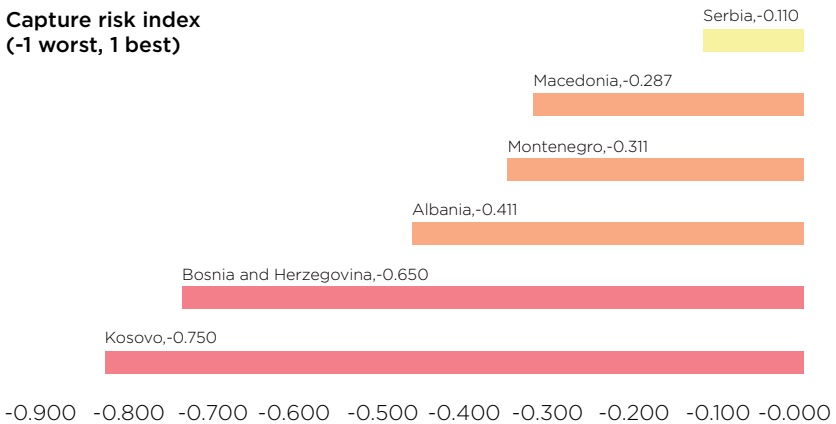


TABLE B.1.2: Capture Risk Index - Public Procurement Regulatory Ecosystem

Capture risk index
(-1 worst, 1 best)



Interpretation of indices Bosnia and Herzegovina Category 1: Public Procurement Regulatory Ecosystem

The assessed procurement regulatory package, as shown in the tables B.1.1 and B.1.2 above, suggests that the regulatory system in Bosnia and Herzegovina is in the elementary stage of corruption resistance with significant risk of system capture (captured system). While the Public Procurement Law is one of the rare pieces of legislation in Bosnia and Herzegovina that is applicable at all levels of governance (state, entity, cantons, Brčko district and local), it does not specify the list of institutions on which the legislation imposes obligations; this opens up opportunities for deviations in implementation and limits the enforcement of anti-corruption elements of the law. The observed deficiencies in organizational infrastructure (i.e. lack of coherence, missing central purchasing body, see findings in detail below), and preferential treatment of local competitors as stipulated by PPL, exacerbate the risks of system capture and corruption occurrence. While in this area Bosnia and Herzegovina in the short run may benefit from adopting the regulatory framework used in Macedonia and Serbia, in the long run, regulatory framework should be further developed to arrive at universality in implementation, precision in definition of contracting authorities and the development of necessary bylaws, which remain absent.

Findings in detail

The public procurement system in Bosnia and Herzegovina (BiH) is regulated by the Public Procurement Law¹⁴ (PPL), applicable for contracting authorities at all levels (State, entity and local level).

Entities covered by the public procurement regulatory framework include every institution in Bosnia and Herzegovina, the entities, Brčko District of Bosnia and Herzegovina, at the canton, city, or municipal level (hereinafter: institution at State, entity, or local level). Furthermore, the PPL also includes any legal person established for the specific purpose of meeting the needs of public interest; as well as associations established by one or more such institutions or legal persons and public utility companies.

The Public Procurement Agency (PPA) adopted a *Rulebook comprising a list of contracting authorities by categories*; however, the contracting authorities are not listed. Rather, specific categories are defined for each type of contracting authorities. For instance, the categories listed under the first type of contracting authorities (institutions at State, entity, or local level) are the following: legislative power, executive power and judicial power.¹⁵ Thus, the Rulebook does not fulfill its purpose and the assessment of PPL coverage is limited.

Secondary legislation and bylaws arising from the PPL attempt to enforce the general principles described in the law, which mainly relate to the technical elaboration. However, several challenges are observed here. Not all of the foreseen bylaws have been adopted, despite the legal text requiring that such regulation is adopted. For example, the rules on training public procurement officers, models of standard tender documentation for all types of public procurement procedures, and the rulebook defining the dynamic purchasing system; are still pending adoption. The rules on training public procurement officers, for example, have been on the agenda of the Council of Ministers of BiH on several occasions, but have not yet been adopted.

Although legal prerequisites have existed since June 2015¹⁶, the central purchasing body has not been established in BiH at state, entity or canton level. The Canton of Tuzla is an exception: a procurement office responsible for conducting centralized procurement on behalf of contracting authorities in the canton is established.

During 2016, rulebooks were adopted on: obligatory application of domestic preferences¹⁷; conditions and usage of e-auctions¹⁸; procurement of ser-

14 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

15 Rulebook comprising a list of contracting authorities by categories (2015) Official Gazette No. 21/15. Available [here](#).

16 Ordinance on the implementation of the centralized procurement and the establishment of the central purchasing body adopted on June 17, 2015. Available [here](#).

17 Decision on obligatory application of domestic preferences (No. 83, 2016) Available [here](#).

18 Rulebook on conditions and usage of e-auctions (No. 16, 2016) Available [here](#).

vices from Annex IIB¹⁹; and monitoring public procurement procedures²⁰.

Mandatory application of domestic preferences in public procurement procedures prevents BiH from fully implementing fundamental principles of public procurement – competition, equal treatment and non-discrimination. The provision of Article 2 of the Decision on obligatory application of domestic preferences defines that domestic preferences can be applied until January 1, 2020, when the application of preferential factors will cease.

Regarding e-auctions, the Rulebook prescribes that contracting authorities in BiH should apply e-auction in at least 30% of public procurement procedures in 2017, 50% in 2018 and 80% in 2019. The ultimate goal is meeting the EU's 100% uptake goal by 2020.

A public procurement procedure having as its object services within the meaning of Annex IIB is regulated in detail; however, not in line with EU Directive. The contracting authorities indicate in the award notice whether they agree to have such contracts published or not.

The PPA is responsible for monitoring public procurement procedures, according to the Rulebook. Monitoring is carried out ex officio. It should be highlighted that procurement planning is covered by monitoring, although upon request.²¹ Execution of the public procurement contracts, however, is not monitored. PPA submits an infringement report to the competent misdemeanor court in case of determining that violations of the public procurement procedure have occurred that represent an infringement in the context of provisions of PPL.

¹⁹ Rulebook on procurement of services from Annex IIB (No. 66, 2016) Available [here](#).

²⁰ Rulebook on monitoring public procurement procedures (72, 2016) Available [here](#).

²¹ Public Procurement Agency, Branch office Mostar (2017) Freedom of Information Act, written response retrieved on June 26, 2017.

Category 2

Public Procurement Planning

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

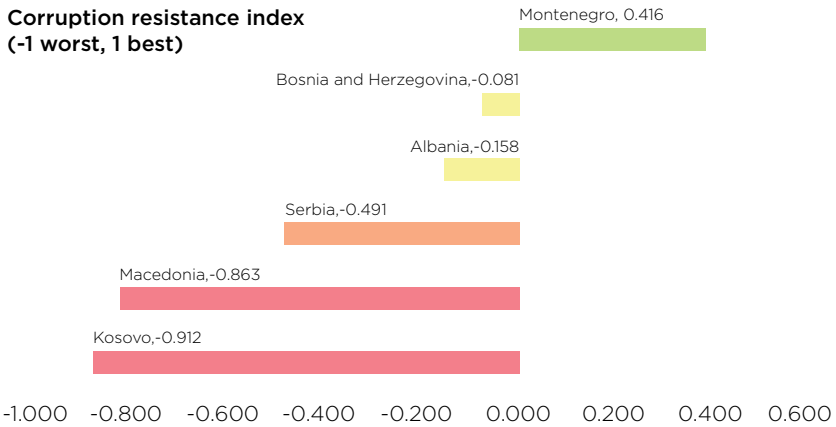
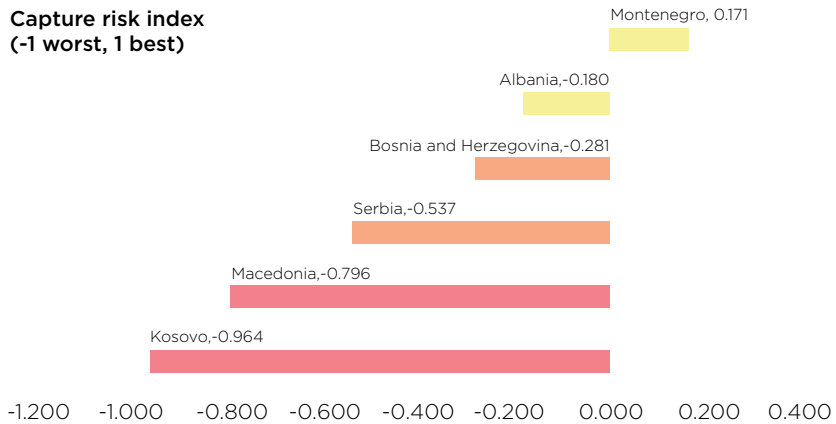


TABLE B.2.2: Capture Risk Index - Public Procurement Planning



Interpretation of indices Bosnia and Herzegovina Category 2: Public Procurement Planning

In the area of procurement planning, Bosnia and Herzegovina scores relatively high in comparison to the other observed countries. The PP Corruption Resistance Index in Category 2 (table B.2.1) places BiH in the stage of ‘moderate’ response to corruption, while capture risk remains relatively high (table B.2.2). The strengths of the system reside in the area of obligation to timely develop and publish PP Plans, which is supported by financial sanctions in the case of breach (see findings in detail below), and in the tendency to centralize procurement plans (see category 4). However, a lack of standardization of the PP plans and weaknesses in the obligatory centralized information management systems in this area undermine efforts. The lack of statistics on applied sanctions and conducted evaluations/controls by the respective authority (PPA) further supports the need for improvement in this area. Bosnia and Herzegovina could significantly improve in this category by applying the model established in Montenegro. However, in the long run, significant interventions are needed in the organizational infrastructure (controls) and technical solutions (standardization and digitalization).

Findings in detail

The PPL advises contracting authorities to include all public procurement in their procurement plan. However, the obligation refers only to procurement of goods and services of estimated value equal or above EUR 25,000 and EUR 40,000 for works. Procurement above these thresholds cannot be launched without being published in procurement plans.²²

The procurement plan is to be published on the contracting authorities’ website, if they have one, and provided that the budget or financial plan is adopted on time. The contracting authorities are obliged, 60 days after adoption of their financial plan at the latest, to publish the procurement plan.

The format of the procurement plan, however, is not standardized and neither is the procedure for modification. This harms competition and undermines the principle of transparency as one of the prerequisites for clean procurement.

If it fails to adopt a procurement plan or to publish it on its website, the contracting authority shall be fined for an infringement with a pecuniary penalty amounting to between EUR 767 and EUR 7,600. The PPA is responsible for monitoring the publication of the procurement plans, but this task seems impossible given the lack of standardization and centralization in publishing them. No data are available on monitoring conducted by PPA in this regard, neither have any sanctions been issued for failing to publish procurement plans.

22

Article 17 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

Category 3

Exceptions from procurement legislation

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

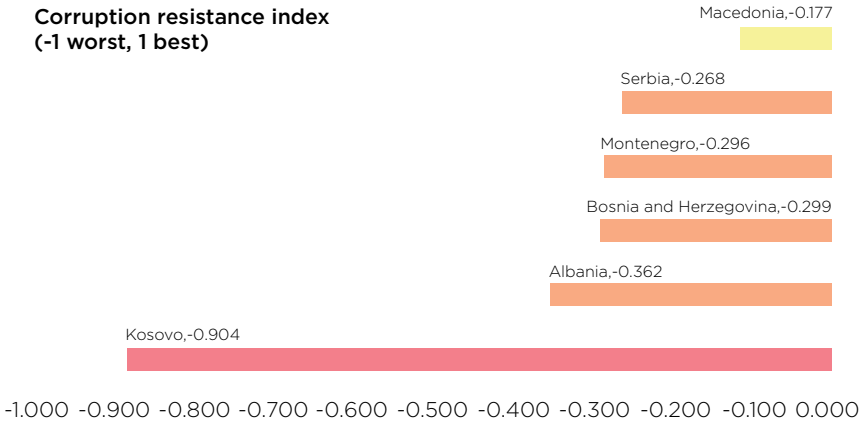
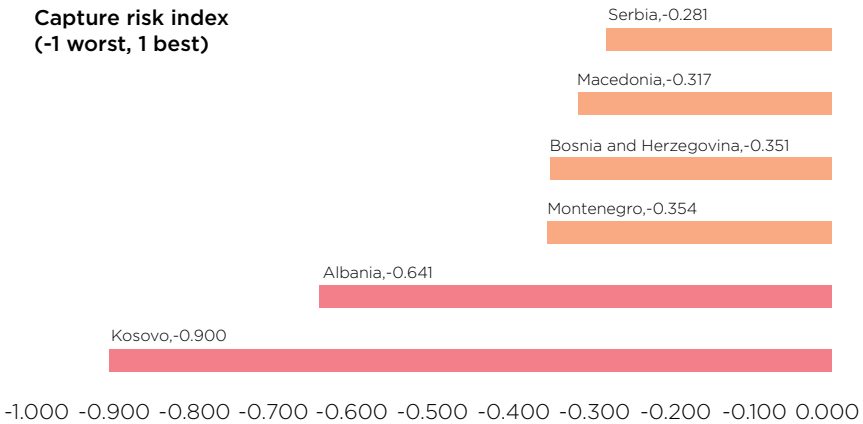


TABLE B.3.2: Capture Risk Index - Exceptions from procurement legislation



Interpretation of indices Bosnia and Herzegovina Category 3: Exceptions from procurement legislation

Bosnia and Herzegovina is rated in the stage of incidental response to corruption with high risk of capture of the procurement system, reflecting weak standardization of control procedures in this area (as well in the area of controls over the implementation of PP legislation, see category 9 below) complex and complicated operational differences based on established thresholds, and the limited capacity of PP officers to understand the list of the exemptions (see category 14 below). Such deficiencies are further emphasized by insufficient reporting on small procurement and petty procurement. As a temporary solution in this area, respective PP authorities in Bosnia and Herzegovina may refer to solutions adopted in FYR of Macedonia. However, long term solutions require more work on standardization of the exemptions, standardization of the approaches and procedures in the types of procurement that fall under exemption categories, and improved information management and controls.

Findings in detail

The organization of public procurement thresholds is somewhat more complicated in BiH than in other countries.

The low value thresholds are as follows:

- a. EUR 3,000 regardless the type of procurement; and
- b. EUR 25,500 for goods and services, EUR 50,900 for works.

The low value thresholds apply to all contracting authorities, regardless of type. Public procurement in value equal or below EUR 3,000 is procured under direct agreement procedures and there is no obligation for contracting authority to publish related procurement notices.

The high value thresholds are different depending on type of contracting authority:

- a. Institution at State, entity, or local level: EUR 127,800 for goods and services and EUR 4.6 million for works
- b. Legal persons: EUR 204,500 for goods and services and EUR 4.6 million for works
- c. Sectoral Contracting Authorities: EUR 409,500 for goods and services and EUR 4.6 million for works

When the value of public procurement equals or exceeds the high threshold values, the contracting authority is obliged to publish additionally a summary of the notice in English on the portal of the PPA and Procurement Review Body (PRB).

Public procurement contracts exempted from the application of PPL include: contract declared a state secret by laws in BiH; contract the execution of which must be accompanied by special security measures in accordance with laws in BiH; contract awarded in accordance with an international agreement according to which special procedure applies; public procurement contract for natural and legal monopolies; contract on acquisition or rental of existing buildings; employment contracts; contracts for financial services connected with the issues, purchase, sale, assignment or transport of securities or other financial instruments and central bank services; contracts for arbitration and conciliation services; contracts for 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; and contracts for research and development services.

Concession contracts are awarded in line with laws on concessions in BiH. Public-private partnership contracts are awarded in line with public-private partnership legislation.²³ In addition, sectoral contracting authorities are exempted from the application of PPL when awarding: (1) public goods or services contracts for further sale or lease to third parties, under the condition that the sectoral contracting authority does not hold a special or exclusive right to sale or lease of subject matter of such contracts, and that other operators can freely sell or lease under equal conditions as the sectoral contracting authority or sectoral contracting authorities; and (2) contract concluded by sectoral contracting authority for the purposes that do not include the performance of activities in the area of water supply, energy, transport, and postal services.²⁴

²³ Article 10 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

²⁴ Article 86 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

Category 4

Information management in Public Procurement system

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

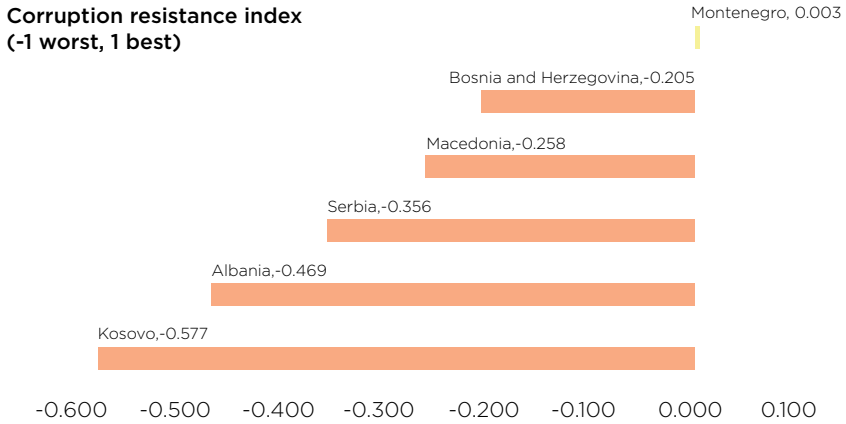
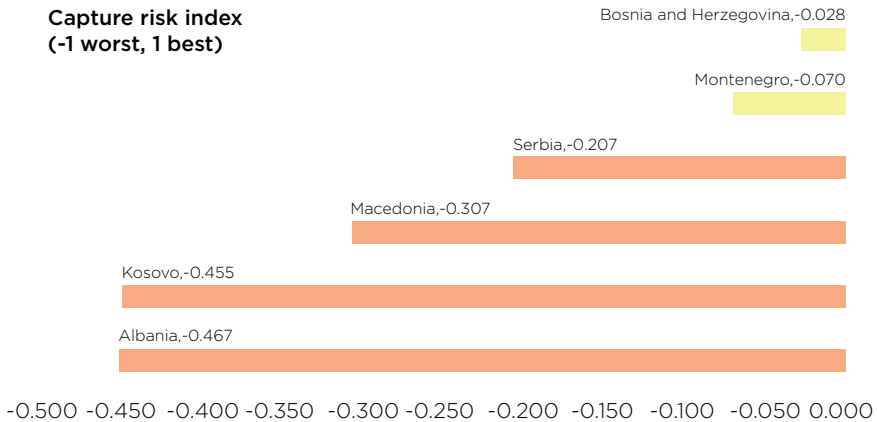


TABLE B.4.2: Capture Risk Index – Information management in PP system



Interpretation of indices Bosnia and Herzegovina Category 4: Information management in PP system

In the area of information management, Bosnia and Herzegovina has made visible progress, and scores high in comparison to other observed countries. Indices B.4.1 and B.4.2 (above) show an incidental response to corruption in this category with moderate capture risk. Information management in PP as observed by evaluators has reached the first stage of standardization and digitalization, allowing basic access to information to external control mechanisms and consequently allowing the centralized bodies to perform a first stage of risk assessments in Public Procurement. The system requires further development especially in the planning (standardization and centralized publishing of procurement plans) and contextualization of procurement (horizontal links to information on bidders and contracting authorities and more advanced searches). Risks of undue influence over the system are mitigated by the first stage of standardization and digitalization, and the system benefits from its complex organizational structure which inhibits full “capture of the system”. However, despite the obvious strengths in information management, the system needs further strengthening and elaboration of the obligations for publishing all relevant information on PP including contracts conducted under simple procedures and petty public procurement. There are no adequate sanctions in place for failing to publish the contract, or abusing the procedures for exemptions from the PPL.

Findings in detail

The PPL (Article 36) regulates the obligation for a number of notices to be published and made available via the E-Procurement Information System Portal (Portal).²⁵ These notices include contract notices, decisions on selection of the most favourable bid, decisions on the annulment of public procurement procedure, award notices, voluntary ex ante transparency notice and prior information notices. All contracting authorities, meaning State, entity and local level, are obliged to publish these notices on the Portal. Since January 2018, contracting authorities have the possibility of uploading their procurement plans onto the Portal. Publication is for now only optional, i.e. there is no obligation. Public procurement notices on the Portal can be searched by contracting authority or by successful tenderers. For example, if one chooses to search by contracting authority, he/she first decides on whether they want to search notices from all contracting authorities, regardless of the level or whether they are interested only in, for example, the canton level. After aligning the filters according to their interest, contracting authorities at a particular canton level will be listed. For example, there are in total 116 contracting authorities at canton level. There is a hyperlink on each contracting authority listed; when you open it, summary data on that particular contracting authority is presented, inter alia, the total value and number of public procurements per type of procurement procedure. The same principle is applied when searching successful tenderers.

Search by type of public procurement notice is available at the Portal. If one chooses award notices, they are listed and additional filtering is available, such as: time period, name of contracting authority or tenderer, CPV etc.

At the current stage, interested parties and the public can gain relatively good insights into public procurement at all levels in BiH and can download specific information from the Portal. Such a system allows control of procurement plans, single procedures and award notices; however, there are still challenges in big data analysis and observing systemic behaviour of different procurement actors in BiH.

25

See: <https://www.ejn.gov.ba/>.

Pre-bidding stage

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

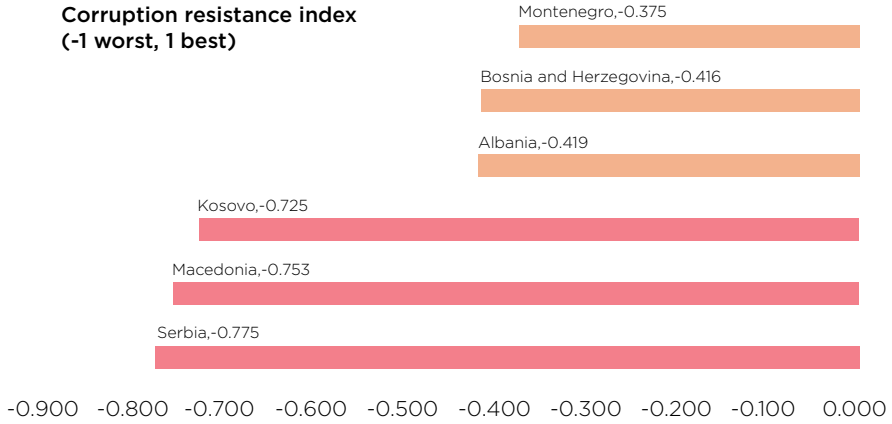
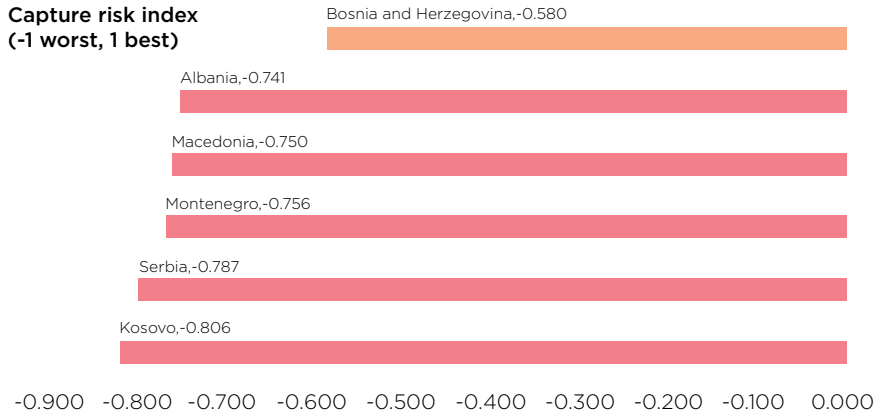


TABLE B.5.2: Capture Risk Index – Pre-bidding stage



Interpretation of indices Bosnia and Herzegovina Category 5: Pre-bidding stage

The pre-bidding stage of the PP in Bosnia and Herzegovina follows the negative trend observed countries. While literature in general confirms that pre-bidding is one of the highest risk areas in Public Procurement, the evaluators observed significant lack of attention to this issue by legislators and practitioners in the countries covered by the report. Indices B.5.1 and B.5.2 suggest an incidental response to corruption accompanied by high capture risk.

However, Bosnia and Herzegovina still performs relatively well in comparison to other countries, partly because the highly decentralized system limits large-scale capture. The overall setting remains weak and prone to undue influence, despite evidence that efforts have been made to develop operating procedures for appointment of the Procurement officers and procurement commission. Impartiality and conflict of interest regulation is based on declarations without assigned control mechanism and/or sanctions prescribed (see findings in detail below). The division of powers in the pre-bidding stage has not been addressed, and nor have procedures for receipt and storage of the tender documents prior to opening stage. The system is further exposed to undue influence due to the lack of the professionalization and capacity in the contracting authorities that are subject to PP regulation. As all of the observed countries have weak responses in this area, the proper solutions rely on improvement of the EU regulation and/or within the framework of pre-accession technical assistance.

Findings in detail

The PPL does not prescribe explicitly who within the contracting authority is responsible for preparation of tender documentation; neither do the related bylaws. The public procurement system in BiH is highly decentralized and contracting authorities alone are to decide who is responsible for tender preparation.²⁶ Preparation of tender documentation is only briefly addressed in the *Rulebook on the establishment and operation of procurement commission* within Article 5 stating that if the contracting authority does not have in-house a public procurement officer, then the preparation of tender documentation can be assigned to the Procurement Commission (PC).²⁷ The PC is appointed by the head of the contracting authority prior to initiating a public procurement procedure and it is responsible for implementing the entire procurement procedure.²⁸ It is established for each single procurement procedure separately, and primarily composed of employees of the contracting authority, including mandatory a public procurement officer. Each member of the PC, both in-house and external if applicable, need to sign an impartiality and confidentiality statement, as well as a declaration confirming the absence of any conflict of interest, prior to initiating a procedure. However, there are no sanctions foreseen in case these are violated.²⁹ There is no clear procedure related to accepting and storing bids prior to their official opening and evaluation. The PPL states that for such procedures, the PC is in charge, but there is no bylaw precisely regulating the procedure. The *Rulebook on the establishment and operation of procurement commission*³⁰, adopted by BiH Council of Ministers, only vaguely reflects this in Article 4, stating that the head of the contracting authority is obliged to appoint a PC Secretary, who has no power to vote and is responsible for the administrative work.

The lack of division of powers in tender preparation and evaluation and poorly regulated protection mechanism that would prevent undue influence over the public procurement procedure increases the risk of political interference with decision making and capture of the system.

²⁶ Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on June 29, 2017.

²⁷ Rulebook on the Establishment and Operation of Procurement Commission (103, 2014) Available [here](#).

²⁸ Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on June 26, 2017.

²⁹ Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on June 29, 2017.

³⁰ Rulebook on the Establishment and Operation of Procurement Commission (103, 2014) Available [here](#).

Category 6

Public procurement Contracting

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

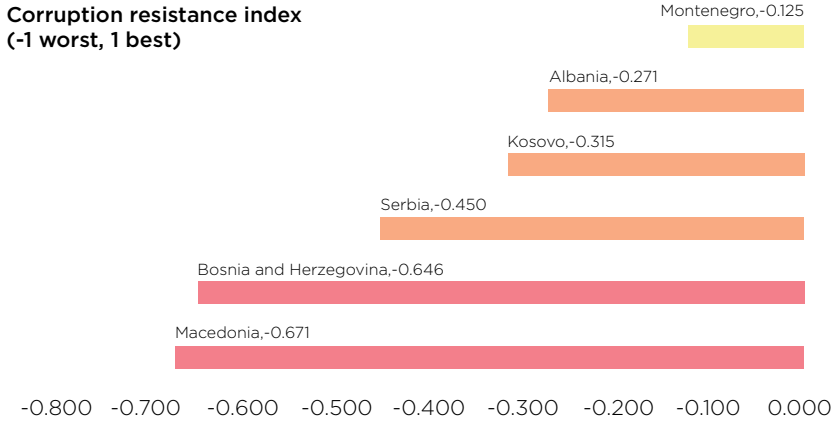
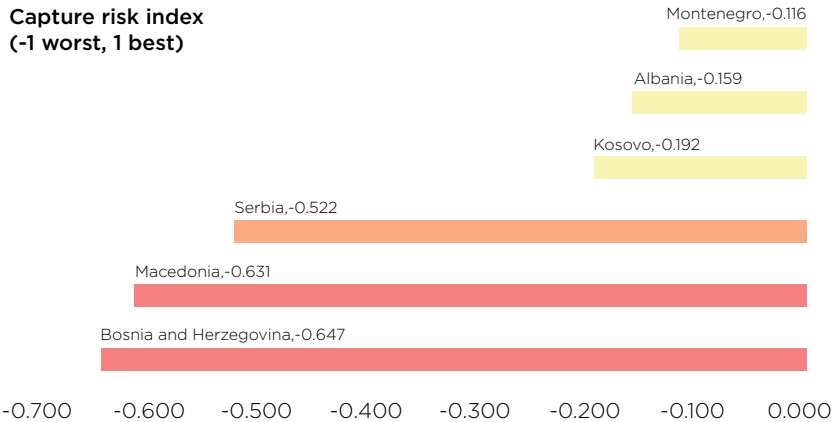


TABLE B.6.2: Capture Risk Index – Public Procurement Contracting



Interpretation of indices Bosnia and Herzegovina Category 6: Public procurement Contracting

Bosnia and Herzegovina is among the weaker performers in the category of PP Contracting. Both the Corruption resistance and Capture risk indices are in the stage of elementary response to corruption and high risk of capture of the system (see tables B.6.1 and B.6.2 above). In this area, the system suffers from a lack of standardized professionalization (certification of PP officers) and ad hoc approach to selection of the Procurement commissions (see the findings in detail below). Conflict of interest and other prevention measures such as exclusion criteria are adequate on paper, but analysis of the relevant legislation suggests that enforcement of such measures is questionable, with no relevant statistics, or evidence provided by monitoring bodies on the efficiency and effectiveness of such measures. In reality, the head of institution, who is often a political appointee, can appoint anyone to the Procurement Commission; this creates a high risk of capture of the system especially due to the hyper politicization observed in other areas. As an immediate response to these issues, respective PP Authorities in Bosnia and Herzegovina should observe the concepts, approaches and solutions adopted in Montenegro.

Findings in detail

The PC is appointed by the head of contracting authority for every procurement procedure separately, in accordance with the PPL and respective bylaw (Rulebook). As discussed above, these rules are not absolutely clear, particularly in terms of recruiting an outside expert when there is no employee capable of conducting the affairs of the PC. It appears that there is no legally binding procedure for selection of the members of the PC nor selection of the outside expert, no requirement that selection is based on the competence of the persons and relevant expertise; this multiplies the risks already observed in pre-bidding phase.

According to the regulation in force, the members of the PC must avoid potential conflict of interest situations in relation to particular bidders (Rulebook, Article 7). However, no sanctions are foreseen in the event of violations.

Potential reasons for excluding tenderers from procurement procedures include failure to prevent occurrence of conflict of interest in particular (PPL, Article 52). Another reason for exclusion is conviction for a criminal offence (organized crime with elements of corruption, money laundering, and fraud – Article 45 paragraph 2). If the bidder fails to present valid documents regarding these issues, the bid will be rejected.

The assessment of bids received, based on which the PC drafts a proposal for a decision on the most advantageous bid, is regulated in detail (PPL, Article 63-69). Finally, the contract on procurement is signed by an authorized official (i.e. elected or appointed).

However, neither the PPL nor the applicable bylaws prescribe any kind of sanctions if the contract does not correspond to the technical specifications described in tender documentation; this creates risks of a variety of malpractices in public procurement, especially in the post-contracting (implementation) phase. Regulation on conflict of interest and pre-qualification of bidders aims in right direction in preventing corruption risks in contracting phase of the public procurement system. However, as there is no adequate information management in this area or monitoring conducted by relevant authority, assessing the effectiveness and efficiency of the anti-conflict of interest regulation remains a challenge.

Petty public procurement

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

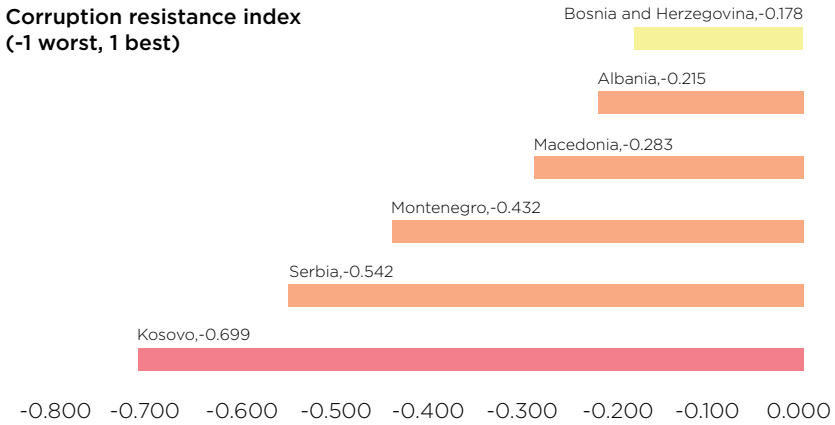
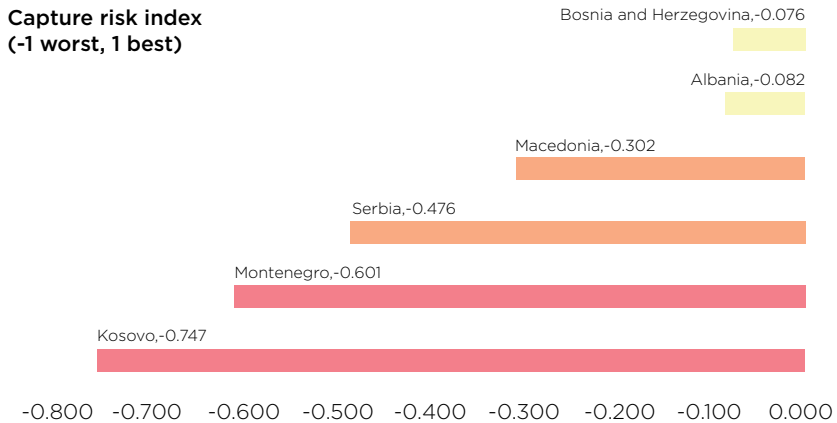


TABLE B.7.2: Capture Risk Index – Petty public procurement



Interpretation of indices Bosnia and Herzegovina Category 7: Petty public procurement

In the area of petty public procurement, Bosnia and Herzegovina scores high among the six covered countries due to low thresholds and strict value limits on the annual basis. The corruption resistance index is in the area of moderate response to corruption (table B.7.1 above), with moderate capture risk (table B.7.2 above). While such measures point in the right direction in mitigating corruption and capture risks, weak reporting mechanisms on petty procurement and additional simplified procurement procedure for values up to EUR 25,000 for goods and 40,000 for works (see findings in detail below) undermine the effectiveness of such measures. Additional concerns are raised by the fact that procedures and contracts conducted under this simplified procedure are not publicly available, which creates a high risk of corruption and/or capture occurrence without proper accountability mechanisms in place. In any further development of PP system in Bosnia and Herzegovina, these deficiencies must be addressed.

Findings in detail

The PPL covers any activity undertaken by the public sector aimed at signing a public contract of estimated value above EUR 3,000. Contracting authorities are obliged to adopt internal regulations on so called direct agreement, which refers to procurement of estimated value below EUR 3,000.

It is worth mentioning that the contracting authority may conduct another small value contract procedure - competitive request for quotations, when the estimated value of procurement is below EUR 25,000 for goods and services and below EUR 40,000 for works. It is a less complicated procedure in comparison to open procedure, so there is a potential corruption risk of contracting authorities to divide their higher value procurements on a regular basis, simply to override strict and complicated procedures.

Direct agreement-related contract notices are not being published on the Portal. The ones related to competitive request for quotations are to be published on the Portal according to PPL; however, upon the verification of the notices published on the Portal, it was found that such notices are not publicly available.³¹

31

See: <https://www.ejn.gov.ba/Announcement/Search>. Filter used: Search by notifications.

Category 8

Public Procurement Remedy mechanisms

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

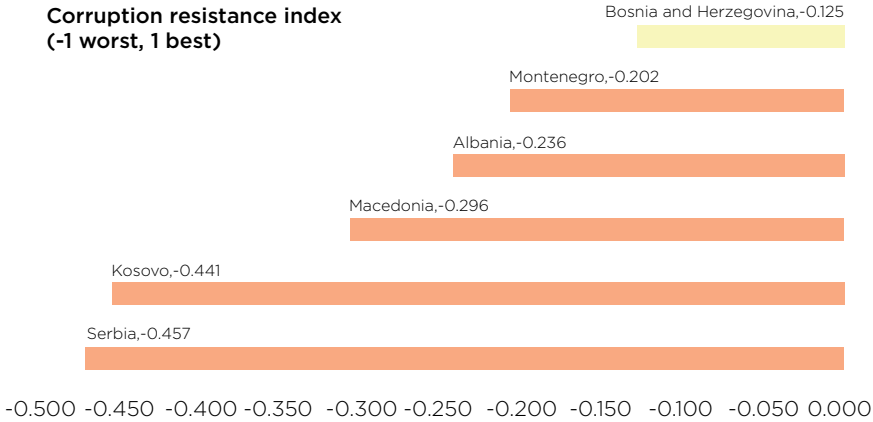
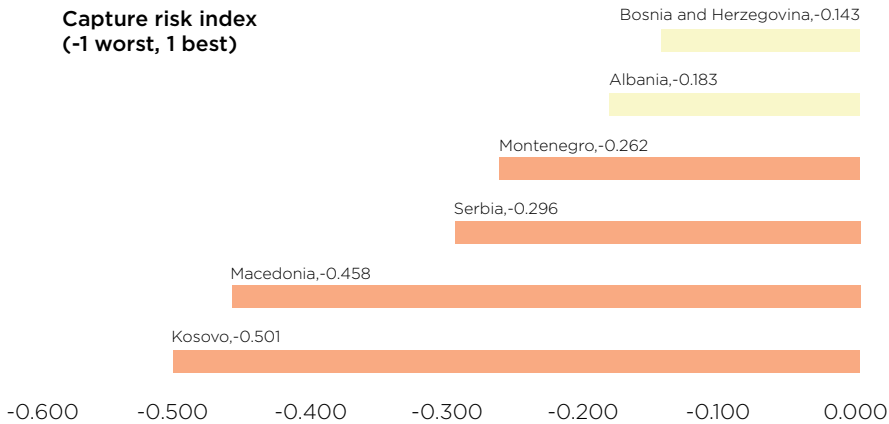


TABLE B.8.2: Capture Risk Index – Public Procurement Remedy mechanisms



Interpretation of indices Bosnia and Herzegovina Category 8: Public Procurement Remedy mechanisms

The remedy mechanism in place in Bosnia and Herzegovina scores highest among the covered countries and shows strong progress. The corruption resistance index (table B.8.1 above) indicates a moderate response to corruption, while the Capture risk index value (table B.8.2 above) ranks Procurement Review Body of Bosnia and Herzegovina (PRB) in the zone of moderate capture risk. The administrative fees imposed for complaints reflect economic reality and do not pose a significant barrier for potential complainant. The complex ethnicity-based governance system in Bosnia and Herzegovina (due to Dayton agreement) reflects on the organizational structure of the remedy mechanism with both positive and negative impacts. There is a two-level Procurement Review Body (PRB), where local branches decide on complaints in estimated value of contracts up to EUR 400,000, while the centralized body decides over cases of value over EUR 400,000. This has proved an efficient solution as reflected in the positive trends on number of decisions rendered and percentage of complaints resolved over the period of three years (see findings in detail below). However, at the same time, the appointment and employment procedure is ethnicity-based, contrary to the EU Acquis and posing corruption and capture risks in an environment of ethnic political governance. These risks are further emphasized by the limited number of staff, however this number still offers a better ratio than in most of the other observed countries. While in many aspects, the remedy mechanism established in BiH can serve as a possible model for other countries, the system could still benefit from strict appliance of the EU Charter on fundamental rights to align it with the EU fundamental principles and fully professionalize the service.

Findings in detail

The Procurement Review Body of Bosnia and Herzegovina (PRB) acts as an independent remedy body, with the competence to decide on complaints by tenderers and interested parties against the decisions of contracting authorities.³² The PPL amendments in 2013 introduced administrative fees to be paid at the time of filing a complaint.³³ The amount paid varies depending on the procurement value (from EUR 250 for estimated procurement value of up to EUR 25,000, to EUR 12,500 for estimated procurement value above EUR 4.5 million). Although the fee is to be returned to the tenderer/interested party if their complaint is assessed as justified (PPL, Article 108 paragraph 6), it is nonetheless a significant cost which may prevent some from exercising their right to protect their own interests. Nevertheless, the rationale behind it is to prevent tenderers from abusing the complaint

³² Article 93 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

³³ Law amending the Public procurement law (87, 2013) Available [here](#).

procedure and should be assessed as a good practice.

There are six members of the PRB, appointed by the Parliamentary Assembly of Bosnia and Herzegovina, of whom: two each from the ranks of each constituent people in BiH, one from the ranks of others, taking into account that at least two members are from the ranks of people in BiH from Republika Srpska; four members from the ranks of people from the Federation of Bosnia and Herzegovina; and one from the ranks of others is selected from one or the other entity in alternation. In addition, three members, among whom the chairperson needs to be elected, must have a university degree in law and have passed the judicial state examination. The remaining three members must be university-degree experts in the area of work construction, public procurement, transport, or strategic business management.

The PRB has its headquarters in Sarajevo and branch offices in Banja Luka and Mostar. The PRB in Sarajevo is competent to adopt decisions in review procedures for procurement values exceeding EUR 400,000 as well as for all procurement procedures within contracting authorities of BiH and Brčko District. PRB branch offices in Banja Luka and Mostar are competent to adopt decisions in review procedures for procurement values below EUR 400,000.

Time limits have been set for complaints against tender documentation and those against decisions on the most advantageous bid. Appeals may be filed seven days at the latest prior to the expiry of time limit for the submission of requests for participation or bids in relation to the information in notice; and ten days at the latest upon receiving the bid opening minutes or receipt of the award decision.³⁴ Upon complaint, the PRB has a period of 15 days to decide on a complaint after they get the complete procurement documentation, with the option of prolonging the decision for 15 more days.

Time limits as set by regulation may represent a challenge considering the capacity of the PRB based on assessment of the number of employees versus the number of complaints per year that they had to observe in 2014, 2015 and 2016. The fact that the number of complaints increased over the years (from 1132 in 2014 to 2684 in 2016), as did the number of decisions rendered (from 611 in 2014 to 2524 in 2016), and that this was all accomplished by between 17 employees in 2014 and 32 employed in 2016,³⁵ may raise questions on the quality of the assessments conducted in each complaint by authorized staff member.

On average, the PRB has to deal with eight cases (complaints) per day, which considering the scope of their work and need for multiple persons to work on one case, may represent a significant burden for the organizational structure.

³⁴ Article 101 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

³⁵ Procurement Review Body (2017) Freedom of Information Act, written response retrieved on July 7, 2017.

Category 9

Control over the implementation of PP legislation

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

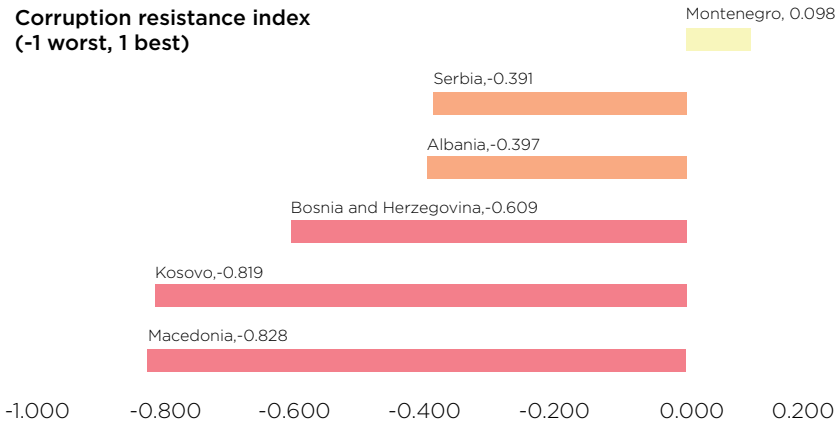
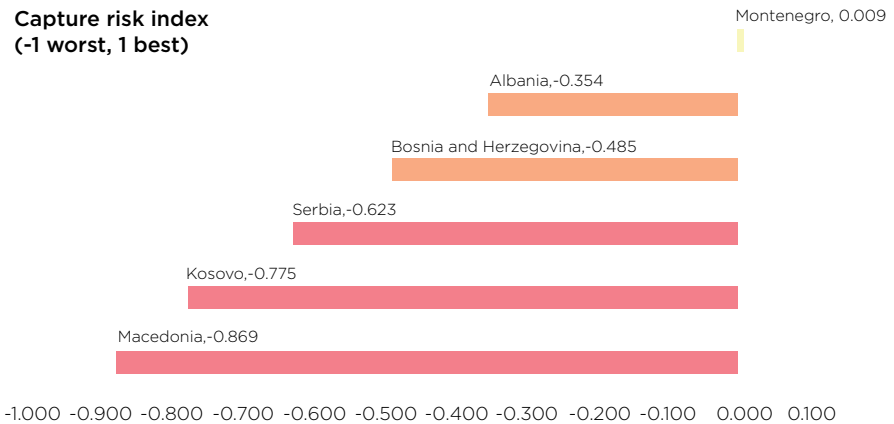


TABLE B.9.2: Capture Risk Index – Control over the implementation of PP legislation



Interpretation of indices Bosnia and Herzegovina Category 9: Control over the implementation of PP legislation

The Public Procurement Agency (PPA), as the key control mechanism over the implementation of PP legislation in Bosnia and Herzegovina, scores moderate in comparison to the other assessed countries. However, both the Corruption resistance index (table B.9.1) and Capture risk index (table B.9.2) values indicate significant risks and low deterrence to corruption/capture. While the PPA is considered to be an independent body, the appointment of the board from different ministries poses risk of indirect political control over its work. While authority of the PPA in control of the implementation of the PP regulation appears to be sufficient, lack of proper evidence of controls and outcomes of such procedures, as well as the absence of standardized statistical reports, indicate deficiencies in the work of this institution. This reflects on the overall integrity of the system exposing it to risks of undetected illicit practice, with implications for all other chapters of this report. While in the short run the BiH PPA could benefit from observing the approach and practice in Montenegro, in the long run, the independence and accountability of this institution should be addressed.

Findings in detail

The PPA is responsible for the implementation of the PPL and monitoring public procurement procedures in BiH. Monitoring is carried out ex officio. PPA is an independent administrative organization; its Director has the status of a secretary with a special task and is appointed for a five-year mandate by BiH Council of Ministers, in compliance with the Law on civil service in institutions of BiH.³⁶

The Board of the PPA consists of five members: representatives of the BiH Ministry of Finance and Treasury, entity ministries of finance, Directorate for European Integrations, and a representative of Government of Brčko District BiH. Board members are appointed by BiH Council of Ministers for the period of five years.

During the last three years (2014, 2015 and 2016), the PPA had 24 employees.³⁷

The PPA is responsible for monitoring public procurement procedures, according to the Rulebook. Monitoring is carried out ex officio. It should be highlighted that procurement planning is covered by monitoring, although upon request.³⁸ The execution of public procurement contracts, however, is not monitored. The PPA submits an infringement report to the competent misdemeanor court in case of determining that violations of the public procurement procedure have occurred that represent an infringement in the context of provisions of PPL.

Performance indicators delivered by the PPA point, however, to worrying shortcomings in data management. Data for 2016 were not available at the time that data collection was carried out (June- July, 2017) because the annual report was still pending. On the other hand, comparison between 2014 and 2015 was not feasible due to unstandardized reporting from year to year.

³⁶ Article 92 Public Procurement Law (2014) Official Gazette No. 39/14. Available [here](#).

³⁷ Public Procurement Agency, Branch office Mostar (2017) Freedom of Information Act, written response retrieved on June 26, 2017.

³⁸ Ibid.

Control over Execution of public procurement contracts

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

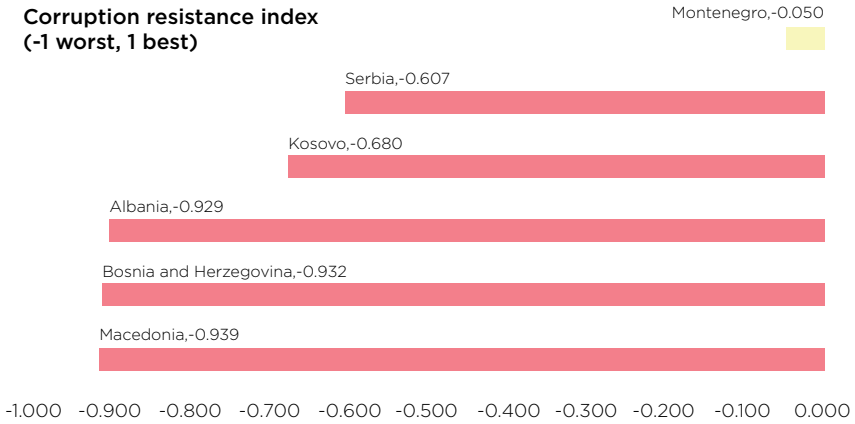
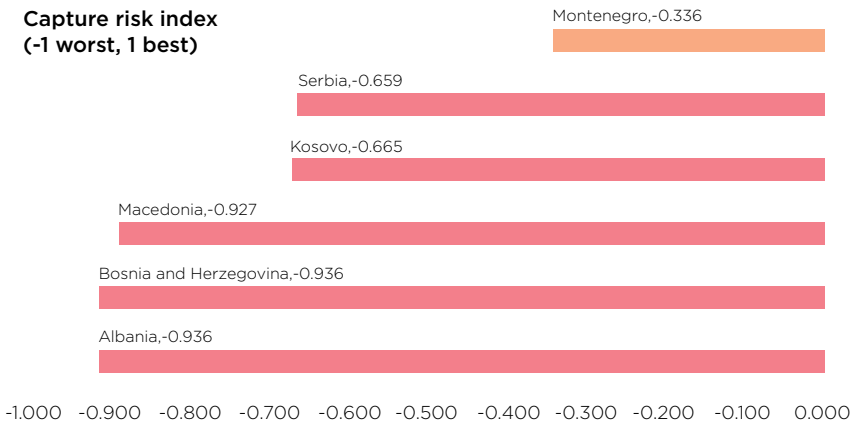


TABLE B.10.2: Capture Risk Index – Control over Execution of public procurement contracts



Interpretation of indices Bosnia and Herzegovina 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 Bosnia and Herzegovina is no exception. In both indices in this category, Bosnia and Herzegovina scores very low – the Corruption resistance index value suggests only elementary development of corruption resistance (no visible deterrence to corruption), while on the Capture risk index evaluators assessed it as a captured system. The lack of any regulation (in PPL or bylaws) that would explicitly put responsibility for control over execution of the contracts on respective authority or contracting body provides no barrier for manipulation of the PP process through the collusion between successful bidders and contracting authorities at the expense of public funds. This is further emphasized by the observed deficiencies in the control mechanisms (i.e. PPA), deficiencies observed in simplified procurement procedures, and deficiencies in work of other accountability mechanisms (i.e. criminal justice system). As execution of contracts together with pre-bidding are categories of highest risk to corruption, this issue requires immediate attention by respective authorities.

Findings in detail

In information submitted by respective authority on the list of questions referring to the control of execution of the contracts, the PPA replied as follows: “Pursuant to the Public Procurement Act and bylaws derived from it, body that would be responsible for monitoring the execution of a public procurement contracts is not established in Bosnia and Herzegovina.”³⁹ No other evidence of existence of such mechanisms was found by the researchers and country correspondents.

39

Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on June 30, 2017.

Regulation of Conflict of Interest in PP System and procedures

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

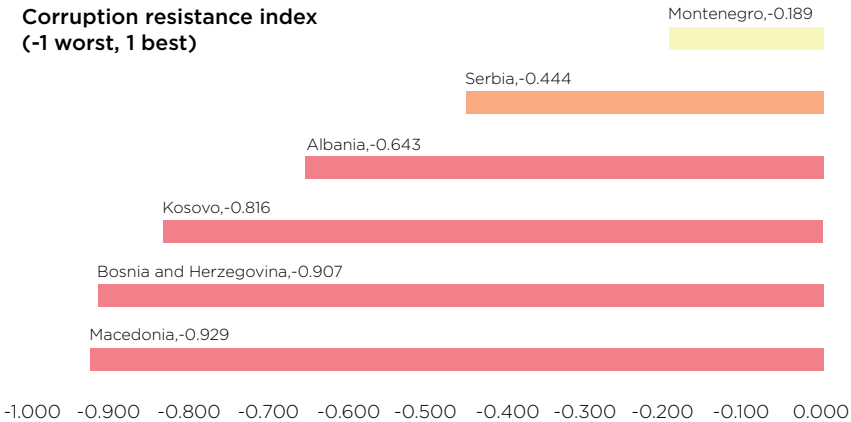
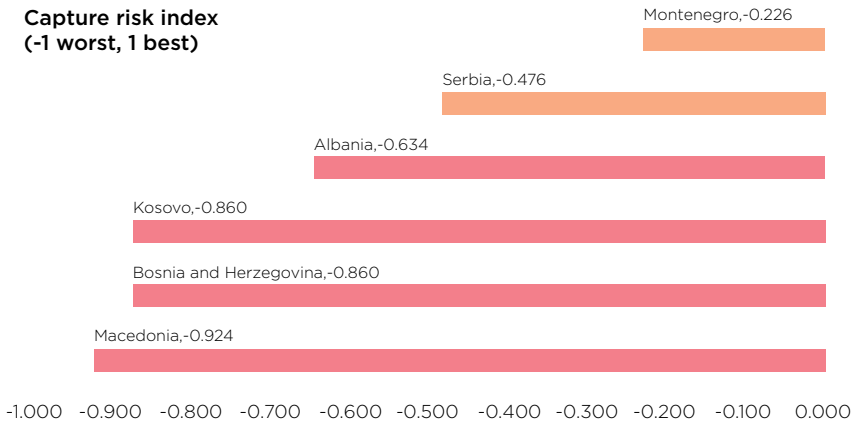


TABLE B.11.2: Capture Risk Index – Regulation of Conflict of Interest in PP System and procedures



Interpretation of indices Bosnia and Herzegovina Category 11: Regulation of Conflict of Interest in PP System and procedures

Indices on conflict of interest in PP system in Bosnia and Herzegovina suggest elementary development of deterrence to corruption (table B.11.1) and a captured system (table B.11.2 above). There is no evidence of any institution beyond the Commission for Conflicts of Interests in Bosnia and Herzegovina being in charge of management, monitoring or sanctioning conflict of interest in PP procedures and system performance. Poor regulation of conflict of interest in public procurement and the absence of any even hypothetical sanctions for such occurrences further emphasizes the corruption risks observed in this area as well as the risks of system capture. These deficiencies also undermine the efforts of the respective authorities in all other areas. Therefore, a proper response to the CoI issues in public procurement should be one of the immediate priorities of the respective authorities. Looking to solutions adopted in Montenegro and adopting a similar approach may significantly improve the integrity and performance of BiH PP system.

Findings in detail

While there is no specific body for dealing with conflicts of interest in the area of public procurement, on the higher level governance (the heads of respective contracting authorities) CoI management rests with the Commission for Conflicts of Interests. However, the work of the commission is considered to be challenging in many aspects. The authorities in Bosnia and Herzegovina at all levels have been attempting for years to overturn the legal framework. The idea behind implementation was to whittle down the number of the appeals, especially those with no legal basis. The most recent evidence of this was the refusal to confirm the specific status of the Commission for Conflicts of Interest (Commission) and its removal from the list of administrative units of Parliament.

Although composed of six representatives of the Parliamentary Assembly of BiH (PABiH) and three representatives of the Agency for Prevention of Corruption and Coordination in the Fight against Corruption, the Commission is not an administrative unit either within the PABiH or at the Agency, where the Office of the Commission is located. Amendments to the Conflicts of interest law adopted in 2013 have had devastating consequences on the already weak mechanisms of conflict resolution by public officials.

This was followed by a two-year period of failing to implement the law at the federal level and stonewalling the work of the Commission of BiH. Due to administrative barriers there is now no one to decide on conflicts of interest, either at the FBiH or BiH level.

The legal vacuum plays into the hands of public officials who are in potential conflicts of interest and undermines the very purpose of the law.

The current Commission has done very little in terms of public procurement and until the legal act is changed there will be very little improvement in this area.

Performance indicators of the detection of conflict of interest as well as sanctions prescribed in specific cases related to public procurement were not available, i.e. the Commission denied to provide information based upon the FOIA request. In addition, the evaluators have not found any evidence of any other body monitoring conflicts of interest in the area of public procurement.

Audit mechanisms

TABLE B.12.1: Corruption Resistance Index – Audit mechanisms

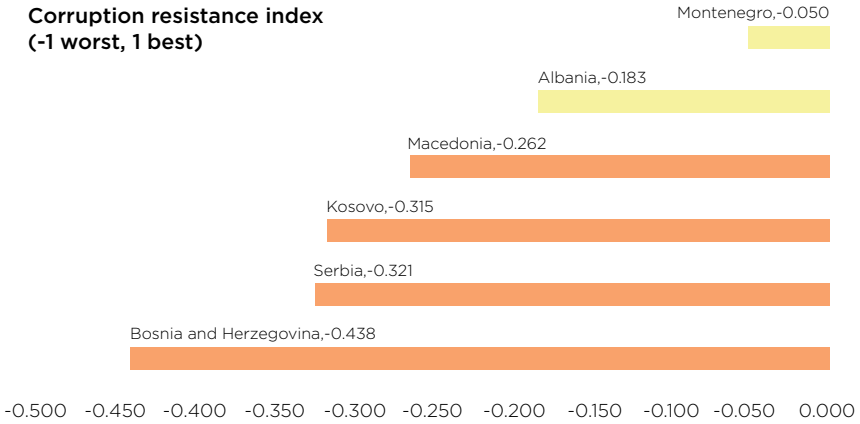
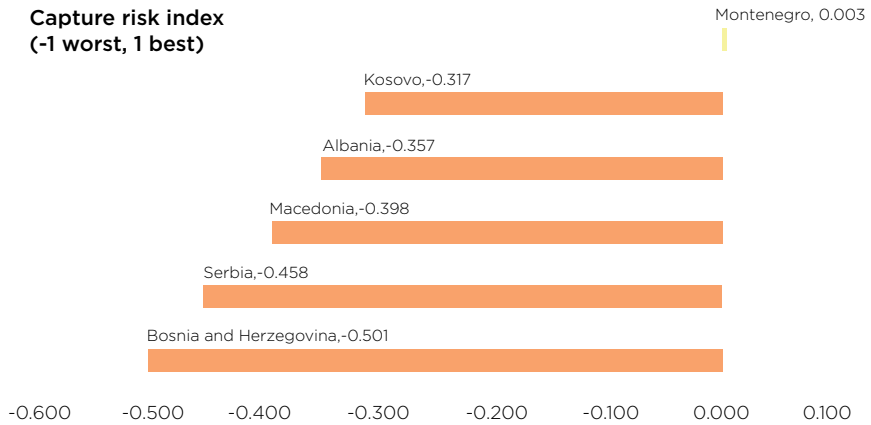


TABLE B.12.2: Capture Risk Index – Audit mechanisms



Interpretation of indices Bosnia and Herzegovina Category 12: Audit mechanisms

The PP system in Bosnia and Herzegovina scores relatively low in comparison to other observed countries in the area of soft anti-corruption mechanisms. The State Audit Office of BiH (SAO BiH) has partial jurisdiction, while entity-level audits (Federation of Bosnia and Herzegovina and Republika Srpska) have more authority over the respective contracting authorities. However, the audit mechanisms in BiH are neither equipped nor obliged to deal with the details of the public procurement procedures within their scope of work (see explanation below). This places Bosnia and Herzegovina as having an incidental response to corruption (table B.12.1 above) and high risk of capture (see table B.12.2 above). Aside from scoring low in this category, this undermines other aspects of accountability in the PP system and limits the continuous and sustainable development of the system to detect and prevent corruption. The PP system in Bosnia and Herzegovina would benefit from the concepts, approaches and solutions adopted in Montenegro with emphasis on the capacity and regulatory response of the SAO in preventing corruption in Public Procurement.

Findings in detail

The State Audit Office of BiH audits the financial management of state entities and establishes whether it is in accordance with public accounting standards. State audits are distinguished between the entities of Federation of Bosnia and Herzegovina and Republika Srpska.

In reference to public procurement, the State Audit Office of BiH verifies whether the public procurement procedure has been applied in areas where it is obligatory but does not examine the details of a particular procurement procedure.

Criminal justice system response to PP anomalies

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

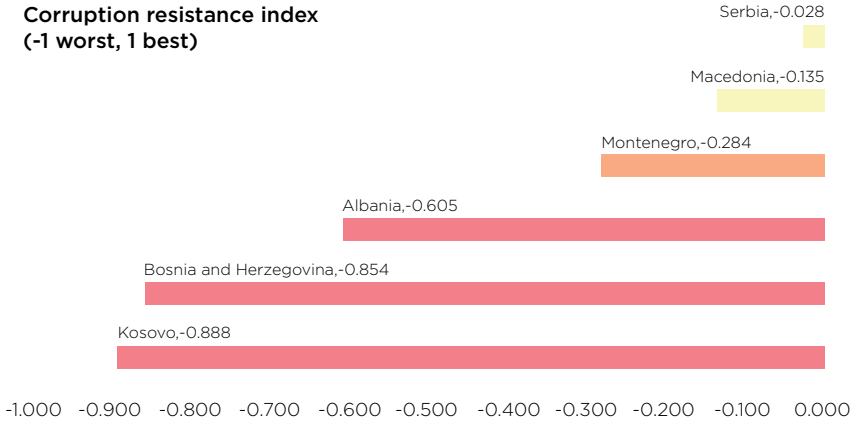
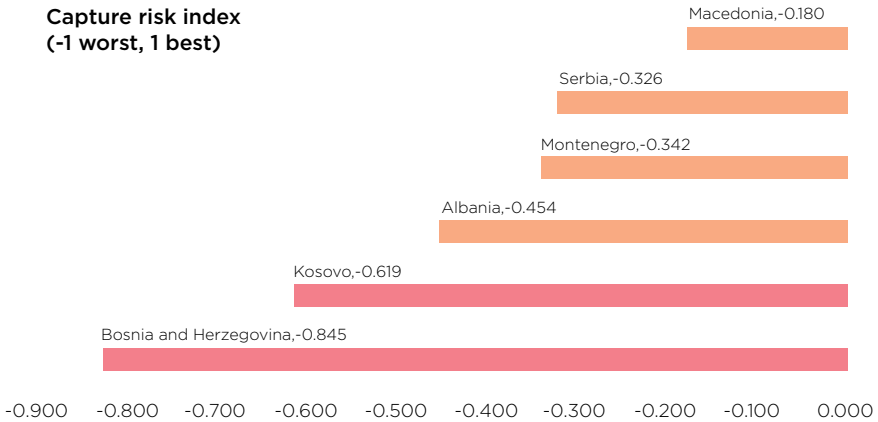


TABLE B.13.2: Capture Risk Index – Criminal justice system response to PP anomalies



Interpretation of indices Bosnia and Herzegovina Category 13: Criminal justice system response to PP anomalies

The criminal justice system is the ultimate, final and most important response to corruption including in Public Procurement. In this area, the PP system of Bosnia and Herzegovina is among the weakest performers among the observed countries. The Corruption resistance index value places BiH in the area of elementary response to corruption (see the table B.13.1 above), while the Capture risk index value indicates a captured system (table B.13.2 above). Structural disorder of the criminal justice system in BiH (between the state and entity level) has created a situation where only one entity (Republika Srpska) in BiH has adopted criminal justice measures against anomalies in PP, resulting in a rather confusing state of play where the same actors may be rewarded or sanctioned depending on which particular geographic position in the same state they were at the moment of committing the act. In addition, the lack of any publicly available statistics on the performance of the criminal justice system at the time of writing, accompanied by the weak performance of other horizontal accountability mechanisms (see Findings in detail below), suggest that there is no significant deterrence to the most serious deviations of PP process in BiH. These issues need immediate attention by all actors in BiH. While in the short run, BiH may benefit from the solutions applied in Serbia and FYR of Macedonia, in the long run, the establishment of proper criminal justice and accountability measures against corruption in PP requires reform of the PP regulation and organizational setting in BiH.

Findings in detail

Public procurement-related crimes are addressed only in one of the entities in BiH, (i.e. Article 250 of the Criminal Code of Republika Srpska).⁴⁰ Neither the State Criminal code⁴¹, nor the Criminal code of Federation BiH⁴² addresses the issue. However, the Prosecutor's Office of Bosnia and Herzegovina could not provide information regarding the number of investigations linked to public procurement, nor the number of indictments lodged or sentences passed for crimes tied to corruption in public procurement (i.e. if public procurement was not the predicate offense). This inter alia points to general weaknesses in corruption detection and sanctioning mechanisms in the PP system in BiH. Combined with weak evidence on performance of other horizontal accountability mechanisms (i.e. PPA), this points at a general absence of attention to corruption and accountability in the public procurement system in BiH at all levels.

40 <https://advokat-prnjavorac.com/zakoni/Krivicni-zakonik-Republike-Srpske-2017.pdf>

41 <https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosne-i-hercegovine.html>

42 <https://www.paragraf.ba/propisi/fbih/krivicni-zakon-federacije-bosne-i-hercegovine.html>

Capacity and human resources management

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

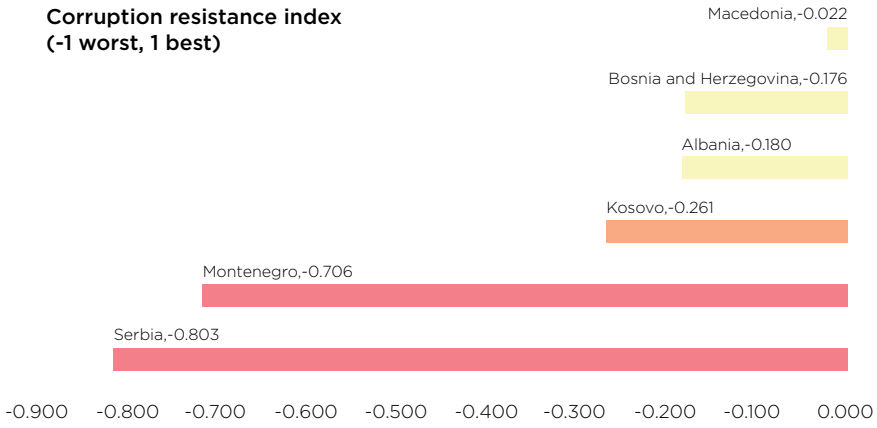
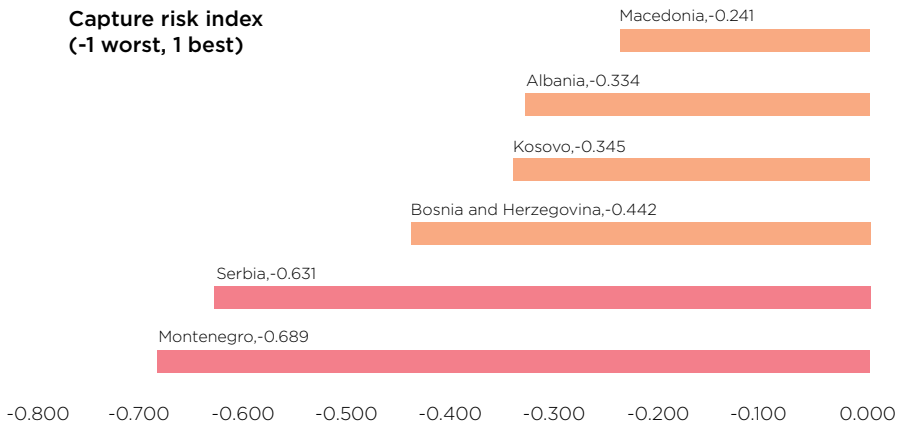


TABLE B.14.2: Capture Risk Index – Capacity and human resources management



Interpretation of indices Bosnia and Herzegovina Category 14: Capacity and human resources management

In the area of Capacity and human resources management, the PP system in BiH has made some good progress and exhibits positive trends, despite observed deficiencies. The Corruption resistance index is in the stage of moderate response to corruption (table B.14.1 above), while the Capture risk index (table B.14.2 above) suggests high capture risk. While endeavors to increase the capacity of PP officers through obligatory training and education have been observed (see Findings in detail below) the adopted Rulebook does not foresee the certification of PP officers – a key deficiency owing to the risk of undue political interference in the appointment of PP officers and members of procurement commissions. E-procurement, e-tender, and e-auctions are still pending to be developed as assistance to the PP officers and soft corruption prevention tools. However, the aim of digitalization has been observed as good progress. In this area, BiH should consider stronger development of PP human resources (including certification and strict application of the PP regulatory framework) and further development of its digitalization process.

Findings in detail

The PPL does not foresee certification of procurement officials in Bosnia and Herzegovina. The Rulebook on training in the field of public procurement is currently being drafted; however, it will not include the certification of public procurement officials.⁴³ Regarding digitalization of the procurement system and application of the e-procurement platforms, e-tender and e-auctions are yet to be developed; however, the PPL in Article 36 regulates the obligation for a number of notices to be published and made available via the E-Procurement Information System Portal (Portal). These notices include contract notices, decisions on selection of the most favourable bid, decisions on the annulment of public procurement procedure, award notices, voluntary ex ante transparency notice and prior information notices. All contracting authorities, meaning State, entity and local level, are obliged to publish these notices on the Portal.

43

Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

Trends in public procurement contracts

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

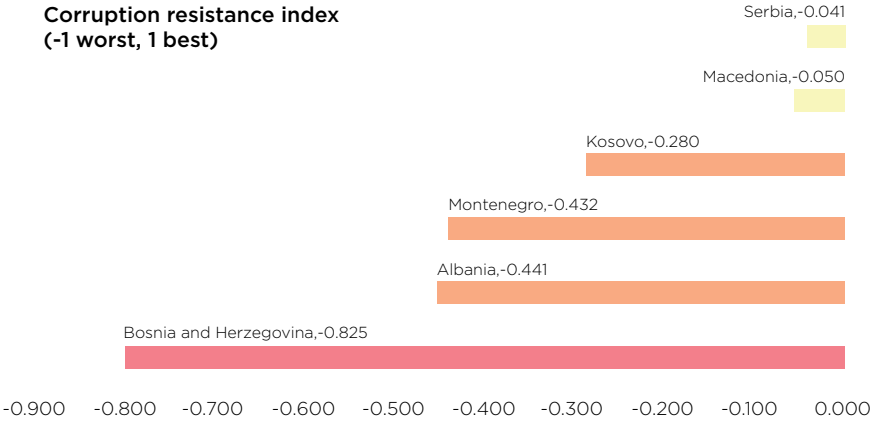
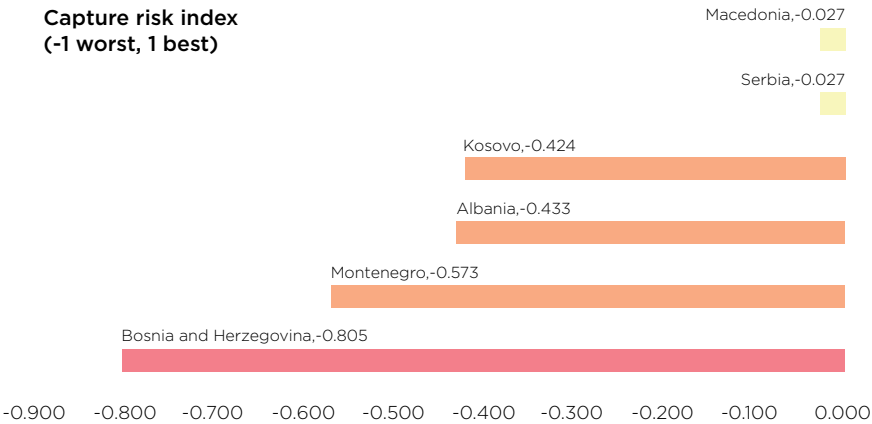


TABLE B.15.2: Capture Risk Index – Trends in public procurement contracts



Interpretation of indices Bosnia and Herzegovina Category 15: Trends in public procurement contracts

Statistics on public procurement contracts in BiH indicate an elementary response to corruption (table B.15.1 above) and a captured system (table B.15.2 above). This reflects multiple deficiencies including: a lack of plausible explanation in PP statistics on significant fluctuations of the procurement value from year to year; weak control mechanisms (absence of any statistics); and regulatory loopholes (i.e. lack of sanctions for non-published procedures and contracts). In addition, the significant share (by value) contracts signed under simplified procedures, and under the annex IIB (see Findings in detail below) further emphasize the risks in this area and expose the system to illicit arrangements. Regulatory deficiencies in the areas of criminal justice and conflict of interest-related risks, accompanied by unfinished digitalization multiply the risks. While in this area, the PP system in BiH may benefit from the solutions and approaches established in Serbia and FYR of Macedonia, it is of crucial importance that in further development of the system, proper insight and analysis of the conducted procurements, especially in the areas of use of simplified procedures and annex IIB are conducted by the relevant authorities (PPA). In addition, actual inspections of the contracting authorities on use (or potential abuse) of the simplified procedures need to be undertaken.

Findings in detail

In 2016, the total value of public procurement in Bosnia and Herzegovina increased by more than 60% in comparison with 2015 and amounted to EUR 1.21 billion, or 8.2% of the GDP of the Bosnia and Herzegovina. Data from the PPA reports do not provide a plausible explanation for the observed significant fluctuation of the PP value in BiH. Small value procurement reached 16% of total public procurement value in Bosnia and Herzegovina during 2014 and 2015, while in 2016 the share dropped to 10%. However, due to the simplified procedures in small value, which contradict the economic reality of BiH, and inability to access the detailed information on the small value procurement in existing information management structure (the Portal, see the category 4 above), this is assessed as high risk of abuse and capture of the system.

Table 1. Public procurement value by type of procedure, 2014-2016 (EUR)

	2014	2015	2016
Chapter I (Standard public procurement procedures)⁴⁴	1.147.914.125	550.463.262	955.173.789
Chapter V (Small value procurement procedures)⁴⁵	224.180.258	119.702.291	126.537.709
Annex II Part B Services	N/A	80.555.261	136.690.512
Overall value of public procurement	1.372.094.383	750.720.814	1.218.402.010
The proportion of small value procurement procedures	16,34%	15,94%	10,39%

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

⁴⁴ Including: open procedure; restricted procedure; negotiated procedure with prior publication of a contract notice; negotiated procedure without prior publication of a contract notice, etc.

⁴⁵ Including: competitive request for quotations and direct agreement.

Trends in framework agreements

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

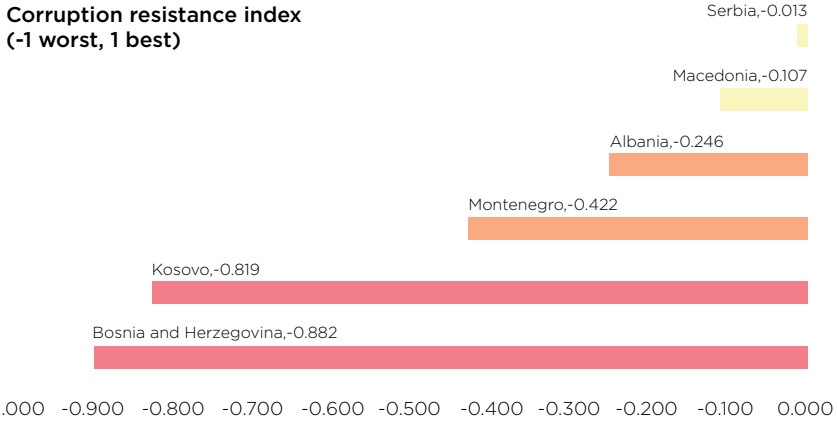
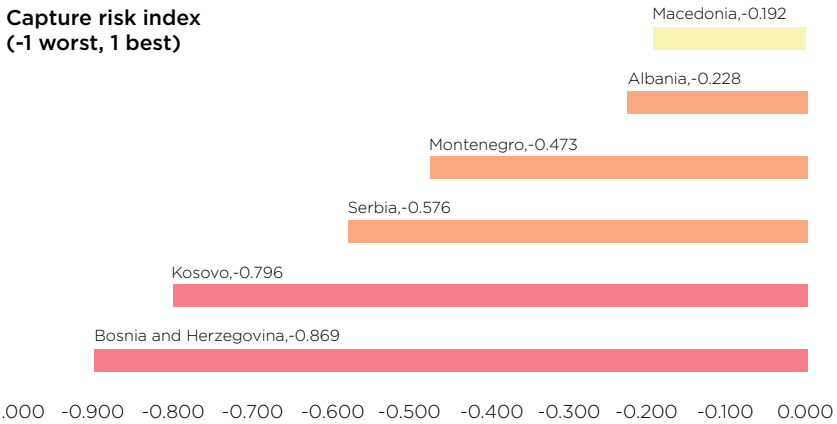


TABLE B.16.2: Capture Risk Index – Trends in framework agreements



Interpretation of indices Bosnia and Herzegovina Category 16: Trends in framework agreements

In the area of framework agreements, the PP system in BiH is rated as having an elementary response to corruption (table B.16.1 above) and a captured system (table B.16.2 above). The share of the value of FA's in Bosnia and Herzegovina in overall PP contracting is one of the highest in the observed six countries, which does not reflect the system's capacity to conduct sophisticated procedures (no certification of PP officers, no centralized procurement) nor the economic and regulatory reality of the country. This accompanied with weak control mechanisms and regulatory deficiencies (i.e. preferential treatment of local bidders) as well as information management deficiencies, suggest a high probability of corruption occurrence and significant risk of system capture at local level. While the PP system in Bosnia and Herzegovina would benefit from observing the situation in Serbia and FYR of Macedonia in this area, immediate actions are needed to introduce pro-active inspections of relevant contracting bodies and in-depth analysis of the justification of use of FA's as well as evaluation of the implementation of FA's.

Findings in detail

Framework agreements should be under the scrutiny of the competent authorities on a large scale, as they tend to limit competition and therefore represent fertile ground for corrupt behaviour, and thus expose the PP system to higher risk of capture by collusive agreements. One of the main aims of the PP market is to ensure free competition. Although some areas in relation to violation of free competition would not be sanctioned (one general example is intellectual property), public procurement should not be one of those areas, especially since a significant portion of public money is spent in PP procedures. The retrieved data from the PPA annual reports (table 2) suggests extensive use of framework agreements and a significant share in overall public procurement – approx. 20% of the total PP value in 2014 to 10% of the total value in 2016. As this significantly affects the market, further justification of such practices is needed. As stated earlier in the report, there is no available statistic on inspections conducted by PPA and any specific report on the appropriateness of the FA in BiH procurement system. The lack of training and capacity of respective procurement officers (no obligatory education and certification) also raises question as to their general capability to conduct more sophisticated procedures such as FA's and observe proper implementation.

Table 2. Share of Framework Agreements and Public Procurement contracts value in Total Public Procurement Value, 2014- 2016 (EUR)

	2014		2015		2016	
	Value	%	Value	%	Value	%
Public procurement contracts	1.147.914.125	83,66%	550.463.262	73,32%	955.173.789	78,40%
Framework agreements	287.299.659	20,9%	95.621.373	12,7%	121.795.781	10,0%

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

The most successful tenderers

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

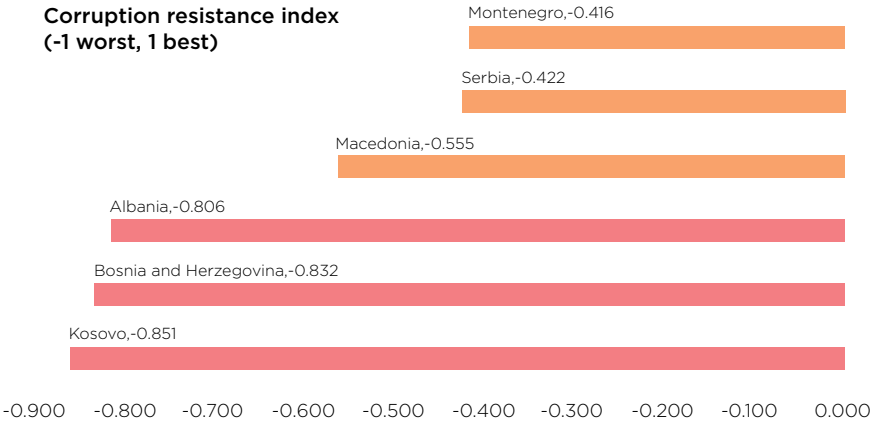
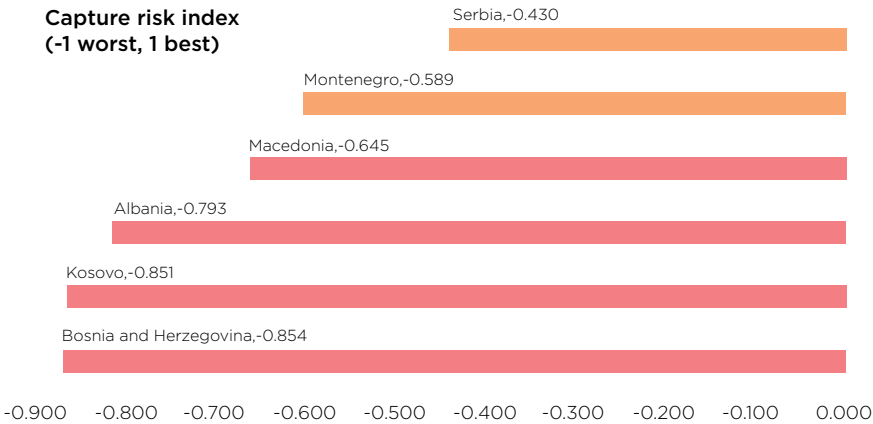


TABLE B.17.2: Capture Risk Index – The most successful tenderers



Interpretation of indices Bosnia and Herzegovina Category 17: The most successful tenderers

Indices in the area of risks related to most successful tenderers (corruption related risks) and preferential treatment (PP market capture risks) indicate an elementary response to corruption (table B.17.1 above) and a captured system (table B.17.2 above). Failure to report on such occurrences (based on frequency between the contracting authorities and total value) show significant deficiencies in control mechanisms and limit the ability of external controls to participate in the prevention and detection of the corruption in PP system in Bosnia and Herzegovina. The weaknesses of the system in this sense are further emphasized by weak horizontal controls (i.e. weak PPA proactive control performance) as observed earlier and the absent criminal justice response to the problem. While immediate improvements could be accomplished through observance of the system and applying approaches adopted in FYR of Macedonia, on the strategic level, this aspect of the system needs to be reconsidered and properly addressed in many aspects (PPA performance, information management improvements and other control mechanisms participation including more pro-active role of the criminal justice system).

Findings in detail

Analysis of the risks related to political and other type of collusion and or preferential treatment between the most successful tenderers and contracting authorities was limited in the case of BiH as the PPA failed to provide reports on the most successful tenderers in the last three years (2014, 2015 and 2016) based on their access to data in existing digital system. This further confirms the assessment given in the information management section.

Trends in petty public procurement

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

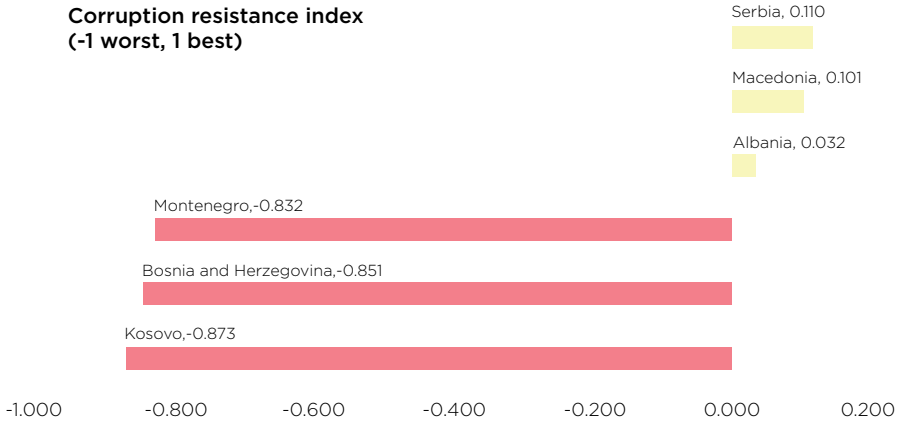
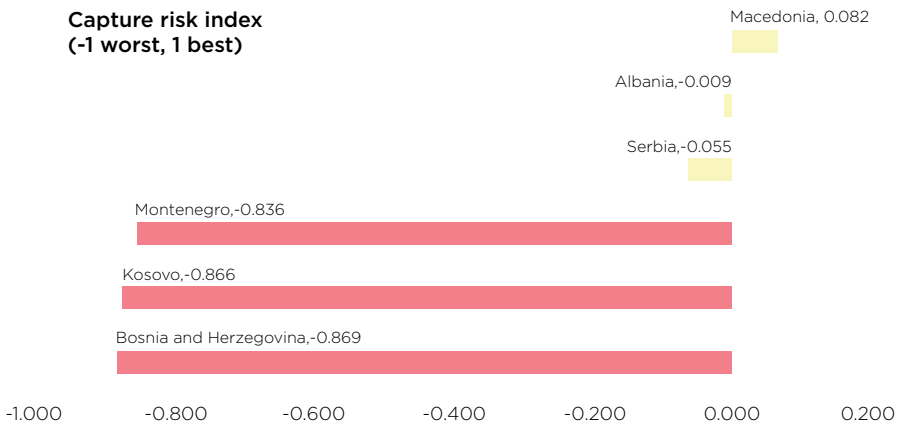


TABLE B.18.2: Capture Risk Index – Trends in petty public procurement



Interpretation of indices Bosnia and Herzegovina Category 18: Trends in petty public procurement

In the area of trends in Petty public procurement, Bosnia and Herzegovina scores low in comparison to other countries. The Corruption resistance index score is in the stage of elementary resistance to corruption (table B.18.1 above), while the Capture risk index indicates a captured system (table B.18.2 above). The lack of any kind of obligatory reporting on the petty procurement, as well as observed weaknesses in the area of pro-active controls and/or statistical data represent significant corruption and capture risks in this category. This is further emphasized by the lack of proper access to data on simplified procedures, which represent a significant share in the total value of PP contracts in Bosnia and Herzegovina (see the category 15 above). Quick improvements in this area could be achieved through application of the regulatory solutions and practices used in Serbia and FYR of Macedonia. However, on the strategic level, this aspect needs to be addressed through more effective and efficient data management and quality of controls (dual controls principle).

Findings in detail

Contracting authorities are not obliged to publish information about the value of procurement contracted under direct agreement procedures (contracts of estimated value below EUR 3,000). Therefore, despite the fact that some positive developments in the area of Petty public procurement were observed in category 7, with low thresholds, the lack of reporting undermines the positive efforts established in the PP regulation.

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

Audit office of the Institutions of BiH, Public announcement on institution auditing for year 2015. Available at: <http://www.revizija.gov.ba/novosti/pdf/?id=4096>

Audit office of the Institutions of BiH, Public announcement on institution auditing for year 2015. Available at: <http://www.revizija.gov.ba/novosti/pdf/?id=4795>

FOIA requests

Public Procurement Agency, Branch office Mostar (2017) Freedom of Information Act, written response retrieved on June 26, 2017

Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on June 29, 2017.

Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on June 30, 2017.

Public Procurement Agency, Branch office Banja Luka (2017) Freedom of Information Act, written response retrieved on July 3, 2017

Procurement Review Body (2017) Freedom of Information Act, written response retrieved on July 7, 2017.

Public Procurement Agency, Appeal Office (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

Audit office of the Institutions of BiH, Freedom of Information Act, written response retrieved on June 29, 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 (2014). Official Gazette No. 39/14. Available at: https://www.javnabavke.gov.ba/legislativa/zakoni/Novi_ZJN_BiH_en.pdf

Law amending the Public procurement Law (87, 2013) Available at: <https://www.javnabavke.gov.ba/index.php?id=10zak&zak=10&jezik=bs>

Rulebook comprising a list of contracting authorities by categories (2015) Official Gazette No. 21/15. Available at: https://www.javnabavke.gov.ba/legislativa/podzakonskaakta/pravilnici/Pravilnik_lista_sr.pdf

Ordinance on the implementation of the centralized procurement and the establishment of the central purchasing body adopted on June 17, 2015. Available at: https://www.javnenabavke.gov.ba/legislativa/podzakonskaakta/pravilnici/Pravilnik_zn_cnt_hr.pdf

Decision on obligatory application of domestic preferences (No. 83, 2016) Available at: https://www.javnenabavke.gov.ba/legislativa/podzakonskaakta/odluke/Odluka_preferencijalni_tretman_bs.pdf

Rulebook on conditions and usage of e-auctions (No. 16, 2016). Available at https://www.javnenabavke.gov.ba/legislativa/podzakonskaakta/pravilnici/Pravilnik_aukcija_bs.pdf

Rulebook on procurement of services from Annex IIB (No. 66, 2016) Available at: https://www.javnenabavke.gov.ba/legislativa/podzakonskaakta/pravilnici/Pravilnik_aneksIIdioB_bs.pdf

Rulebook on monitoring public procurement procedures (72, 2016). Available at: https://www.javnenabavke.gov.ba/legislativa/podzakonskaakta/pravilnici/Pravilnik_pracenje_postupaka_bs.pdf

Rulebook on the Establishment and Operation of Procurement Commission (103, 2014) Available at: https://www.javnenabavke.gov.ba/legislativa/podzakonskaakta/pravilnici/Pravilnik_komisija_bs.pdf

Criminal Code of Republika Srpska (64, 2017). Available at: <https://advokat-prnjavorac.com/zakoni/Krivicni-zakonik-Republike-Srpske-2017.pdf>

State Criminal code (Official Gazette No. 3/2003, 32/2003, 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 i 35/2018) Available at: <https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosne-i-hercegovine.html>

Criminal code of Federation (Official Gazette No. BiH 36/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 i 75/2017). Available at: <https://www.paragraf.ba/propisi/fbih/krivicni-zakon-federacije-bosne-i-hercegovine.html>

Law on Audit of Institutions F BiH (Official Journal of the F BiH" No. 48/99), Available at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2006/zakoni/17hrv.htm>

Law on Public Sector Audit in Republika Srpska. Available at: http://www.gsr-rs.org/static/uploads/zakon_o_reviziji/zakon_o_reviziji_javnog_sektora_rs_lat.pdf

Law on Audit of Institutions F BiH. Available at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2006/zakoni/17hrv.htm>.

Law on Audit of Public Administration and Institutions in Brcko District (Official Gazette of the Brcko District BiH No. 17/08)