

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



Country report KOSOVO

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Conceptual framework and rationale

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

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

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

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

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

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

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

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

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

While describing corruption is a complex task per se, measuring it is even 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 ANTI-CORRP. Available at: <http://anticorpp.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://anticorpp.eu/publications/the-impact-of-eu-conditionality-on-corruption-control-and-governance-in-bosnia-and-herzegovina/>.

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

General methodological approach

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

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

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

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

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

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

Indicators and data packages covered by the assessment

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

Measurements and process of assigning values to different indices

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

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

For each of the 18 categories, two different measurements were provided: a) Corruption Resistance Index and b) Capture Risk Index. These two differ in the standardized interpretation and require different logic in thinking by

evaluators which is crucial in order to be able to understand, observe and measure the effect that corruption has on the procurement system:

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

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

Potential method in brief

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

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

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

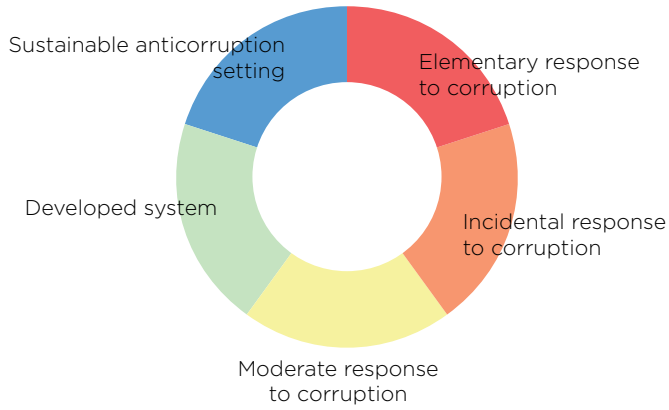
Values of the index

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

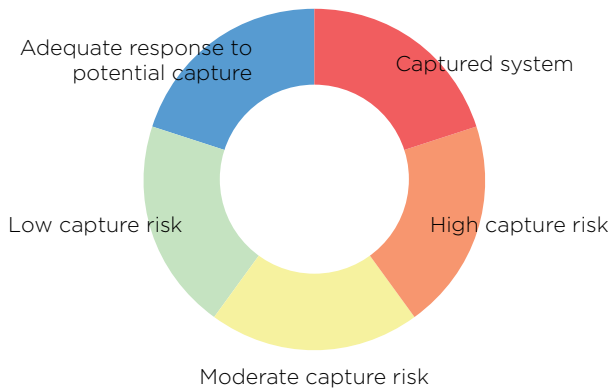
Important note

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

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



Public Procurement Capture Risk Index by level of risk



2. Country report Kosovo

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Abbreviations

AA	Anticorruption Agency
AU	Authorising Officer
CAC	Criteria Assessment Commission
CAO	Chief Administrative Officer
CoI	Conflict of interest
CPA	Central Procurement Agency
ISB	Independent selection body
KIPA	Kosovo Institute of Public Administration
MPA	Ministry of public administration
NAO	National Audit Office
PP	Public Procurement
PPL	Public Procurement Law
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
PU	Procurement Unit
RPO	Responsible Procurement Officer
RU	Requesting Unit
TEC	Tender Evaluation Committee
TOC	Tender Opening Committee

Summary

TABLE K.A. Overall Public Procurement Corruption Resistance Index 2017, Kosovo¹³

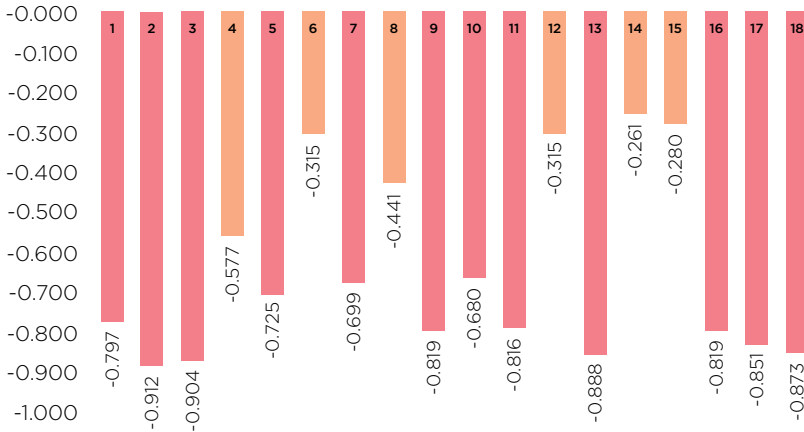
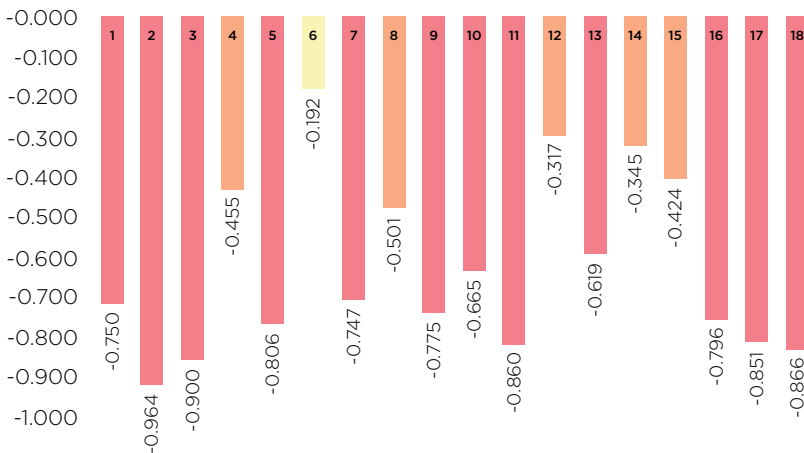


TABLE K.B. Overall Public Procurement Capture Risk Index 2017, Kosovo



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 K.A and K.B above indicate, the Public Procurement system in Kosovo made moderate progress in the areas of 6. Contracting; 12. Audit mechanisms; and category 14. Capacity and human resources management, with both indices (corruption resistance and capture risk) showing significant improvement compared to other observed categories. In the contracting phase, progress has been made in ensuring the separation of powers, exclusion criteria for potential bidders including evidence of previous conduct, exclusion criteria for respective members of the evaluation committee, individual responsibility of each member of evaluation committee, and conflict of interest regulation. The emphasis on independence and integrity as well as the strong capacity of the NAO (National Audit Office), a significant number of conducted audits, and extended focus on funding institutions are also steps in the right direction, although the lack of a proper regulatory framework for auditing of public procurement procedures remains a problem. Finally, the achievements in certification and capacity building of respective PP officers are considered good practice that should be maintained in future.

However, the fact that in 12 out of 18 categories (1,2,3,5,7,9,10,11,13,16, 17,18), the PP system in Kosovo was assessed as having only an elementary response to corruption, suggest that the system is at very early stage of its development, and that addressing corruption in PP has not been among the priorities in building the PP institutions. Significant risks of capture of the system are observed in the categories 1,2,3,5,7,9,10,11,16,17, and 18. The primary deficiency of the system is in the area of the regulatory eco-system, which is considered to be in the pre-standardization stage. Implementation of the PPL entirely rests on operational guidelines that are more or less unenforceable by respective control mechanisms. There are no appropriate sanctions for any misconduct in the PP system, leaving this function solely to the discretionary decisions of the respective heads of the PP contracting authorities. These risks are significantly increased by slow development in digitalization of the system, and weak capacity of the oversight mechanisms (respective PPRC, PRB and CPA). The culture of informality established by the weak regulatory framework has affected most of the observed categories in Kosovo, in some cases (see interpretations in specific categories) limiting good solutions and responses to corruption and capture related risks.

Key findings

Public procurement procedures in Kosovo are regulated primarily by the Public Procurement Law. However, the procedures are only briefly described in the PPL, leaving detailed provisions to be prescribed in by-laws, where additional risks were observed. The PPL is very vague regarding the by-law requirements and most of them are published in the form of 'guidelines', meaning they are not binding legal documents. Good practice has been observed in the public procurement-related legal drafting process: the PPL prescribes an obligation for the PPRC, PRB and CPA to publish draft bylaws prior to adopting them and to make them available to the public and interested parties for a period of at least 15 days for public consultation and comments.

Public procurement plans are not published nor made publicly available for scrutiny of interested parties and the general public, representing a weakness in regard to efforts made towards improving transparency and competition in public procurement.

Public procurement information management remains at an early stage of development, while the lack of digitalization and comprehensiveness of the data management system diminishes the country's ability to detect anomalies in public procurement and act accordingly. It also affects the ability of relevant institutions to monitor the behavior of public procurement actors and respond to the needs of the public procurement system in general.

Low thresholds for conducting public procurement represent good practice, as do the regulations on appointment of the key management staff in oversight and legal remedy bodies. However, the capacity of staff to perform duties envisaged in the PPL, especially given the observed culture of informality and absence of strict legally binding acts, is assessed as insufficient to cope with the level of risk.

The need to separate responsibilities for the pre-bidding and contracting phases has been taken into account in Kosovo and an effort made to prevent undue influence over the entire public procurement process. According to the Operational Guidelines, staff engaged in preparing tender documentation are not allowed to participate as Tender Evaluation Committee members in that specific procedure, i.e. in its evaluation and contracting phase. However, due to the informal nature of the documents (guidelines), there is almost no barrier or sanction if the respective authority decides to act contrary to these provisions.

As for the remedy mechanism established in Kosovo, any economic operator - defined as any supplier, service provider or contractor, or even a Civil Society Organization - is entitled to file a complaint to the PRB. The share of complaints resolved by the PRB is relatively high (97.3% of those received); however, 43 cases from 2014 and 2015 remain unresolved due to the PRB Board being shut down owing to complications with appointing some of its

board members. Moreover, there is a lack of available statistics on the outcome of reviews conducted by the PRB.

In terms of the control mechanisms, the main risks to the public procurement system in Kosovo arise from the implementation of the PPL and the regulations in force. In particular, the PP controlling institutions seem to be insufficiently staffed for the workload they are supposed to execute. With over 170 contracting authorities active in the country, and more than 10,000 contracts signed annually, the staff of around 30 persons in the PRRC seems insufficient to ensure adequate monitoring of the entire system, especially in an environment where there is lack of comprehensive digitalization and big data management.

Another weakness is the insufficient nature of sanctions for deviations from due process. The PPRC can, at most, suspend a contract that does not correspond to the specifications of the tender. Most other cases (such as not publishing information in the register) are dealt with by a simple warning, even in cases of conflicts of interest. Moreover, the PPL does not provide any specific rules regarding conflicts of interests; it only mentions it as a general principle.

This risk is even more pressing since the judicial system and prosecution service have neglected the issue completely until recently, and other second-line institutions, such as the National Audit Office, are not properly equipped to participate. Namely, the auditing performed by the NAO does not focus on public procurement, as the auditors are neither authorized nor equipped to supervise PP procedures, and thus they focus only on the final destination of the funds. Finally, Kosovo is still at an early stage of its fight against corruption, and that affects the Court system as well. According to the State Prosecutor's Office, statistical data on corruption that specifically refers to public procurement has only been collected since 2017.

The capacity of the procurement personnel seems to be adequately addressed in Kosovo: a certification system for PP officials has been introduced. Basic training consists of a 15-day course which entitles the candidate to a 'basic certificate' valid for three years. If the candidate undertakes an advanced training course lasting 10 days, he/ she receives advanced certification, which has no expiry date, but requires the holder to undergo appropriate trainings which the PPRC deems convenient on an on-going basis. The e-procurement system has been functioning theoretically since 2016. Yet, the number of contracts published in e-procurement up to August 2017 was 1,872, less than 20% of the total amount of public contracts concluded annually in Kosovo.

Overall, the public procurement system in Kosovo is not equipped to deal with the sophisticated corruption and capture issues that may occur. Deterrence mechanisms are weak, ill-equipped and limited in their actions by a legislative culture of informality (could, but do not have to). Impunity for a variety of deviations that may occur represents another set of problems that need to be addressed. The probability of corruption in such an environment is high.

Key recommendations

While specific improvements in the PP system in Kosovo could be introduced by observing other systems covered by the GRAPP report (we recommend concepts and approaches established in Montenegro), the first priority of the Kosovo PP system is to improve Public Procurement legislation. Legislation need to pay attention to specific risks that are observed here and introduce proper sanctioning for deviations that can and do occur. In addition to this, proper oversight is needed in a variety of areas. PP Plans need to be publicly available, while the entire system requires digitalization and full transparency. While the trend of centralization in procurement addresses the immediate risks at this stage, in future this should be limited owing to the risk of restricting competition and therefore diminishing external controls. Additional mechanisms for improvements in the pre-bidding stage of procurement, as well as in the area of control of the execution of contracts, need to be introduced. Finally, proper regulation and capacity for PP audits should be developed in the NAO. While the system needs significant restructuring, the good developments observed to date should be preserved and built upon.

Category 1

Public Procurement Regulatory Ecosystem

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

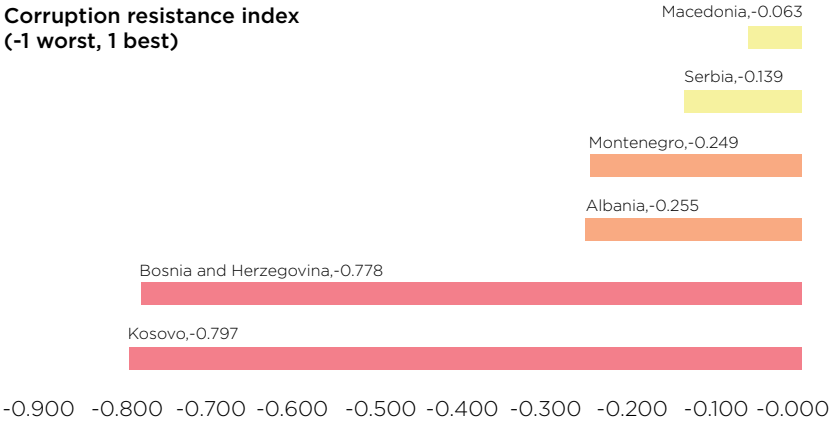
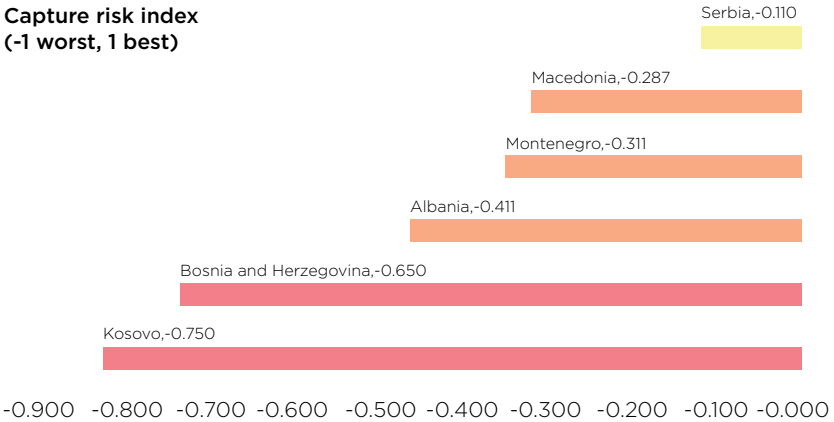


TABLE K.1.2: Capture Risk Index - Public Procurement Regulatory Ecosystem



Interpretation of indices Kosovo Category 1: Public Procurement Regulatory Ecosystem

The public procurement regulatory framework in Kosovo is at the pre-standardization stage. The Corruption resistance index (table K.1.1 above) shows elementary development in the area of corruption resistance, while the Capture risk index suggests a captured system (see the table K.1.2 above). The Public Procurement Law and adopted bylaws aim at significant coverage of the procedures, responsible contracting authorities and regulatory and oversight institutions. In addition, the PPL stipulates a broad range of organizational entities covered by law (i.e. including private organisations that provide a public service by virtue of a concession granted by the competent authority, see Findings in detail below). However, the majority of implementation of the law rests on administrative instructions and operational guidelines. While operative guidelines in some case provide for an appropriate course of action, the key accountability mechanisms for enforcement of such guidelines are missing, which makes the broad scope of anti-corruption measures in the PP legislation unenforceable. A culture of informality affects most of the observed categories in Kosovo, limiting in some cases (see interpretations in specific categories) good solutions and responses to corruption and capture related risks. Improvement of the regulatory environment in Kosovo could be achieved through learning from PP regulatory frameworks in Serbia and Macedonia, while improvements in enforceability could be modelled on established structures in Montenegro.

Findings in detail

The cornerstone of the public procurement system is the Public Procurement Law (PPL) in the Republic of Kosovo (Law no. 04/L-042, amended by Law no. 04/L-237, Law no. 05/L-068 and Law no. 05/L-092), which regulates public procurement procedures. It is partially aligned with EU directives. Its provisions cover the procurement activities of state and local authorities, agencies and legal persons that conduct or take part in public procurement. Public procurement is defined as “any activity connected with the initiation or conduct of a procedure or other activity that leads to or is intended to lead to the award of a public contract”.

Public procurement in Kosovo can be undertaken by the following types of contracting authorities:¹⁴

- 1) Public Authorities
 - a) Central and local authorities (ministries, municipalities, etc.);
 - b) Bodies governed by Public Law, meaning bodies under dominant public influence;
 - c) Associations of the above.
- 2) Public Service Operators
 - a) Public authorities or public undertakings engaged in public service activity;
 - b) Other entities granted exclusive rights to perform public service activity (neither public authorities nor public undertaking).
- 3) Public undertakings (any undertaking under dominant public influence).
- 4) Any person, committee or private company operating on the basis of a special or exclusive right.
- 5) Anybody carrying out procurement activities on behalf of the above.

By virtue of Article 2 (scope of the Act), and using the terms employed therein as defined in Article 4, the entire public sector of Kosovo is covered by this regulation, including legal persons that are public, or in which public authorities exercise direct or indirect influence. Furthermore, its scope extends to private organisations that provide a public service by virtue of a concession granted by the competent authority.

However, a list of entities that are obliged by public procurement legislation is not established. This aspect should be further analysed in the future as it indicates two types of risks – one related to the governance culture (application and implementation of legal framework), while the other points at possible problematic loopholes in legislation and raises risks of capture of the public procurement system. In such a system, there is a relatively high risk that problematic contracting authorities might be omitted from the scope of the law on the basis of discretionary decisions of the executive branch, while the probability of detecting or sanctioning such an anomaly is low.

In addition, the Act is very vague regarding further by-law developments. For other issues requiring further regulation, it establishes the Public Procurement Regulatory Commission (PPRC), charged with producing de-

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PUBLIC PROCUREMENT REGULATORY COMMISSION (2016) Operational guidelines for public procurement. p. 5.

tailed rules and procedures for a number of issues, “including rules governing the use and conduct of each of the procedures”. To this effect, a number of Administrative Instructions and more comprehensive Rules and Operational Guidelines for Public Procurement have been published. Yet these, as their name implies, are only guidelines, and are only binding legal documents in as far as they reproduce the content of either the Act or the Administrative Instructions. Such a culture of informality in development of guidelines further emphasises the risks of capture of the system, as guidelines may not be applied and followed.

Finally, a good practice has been observed in the public procurement-related legal drafting process. Namely, the PPL obliges the PPRC, PRB and CPA to publish draft bylaws prior to adopting them and to make them available to public and interested parties for a period of at least 15 days for public consultation and comments (Article 10 paragraph 9). In addition, the legal documents relevant for public procurement are easy accessible and available in Albanian, Serbian and English on the PPRC’s website.¹⁵

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See: https://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=2&PPRCMenu_OpenNode=62.

Category 2

Public Procurement Planning

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

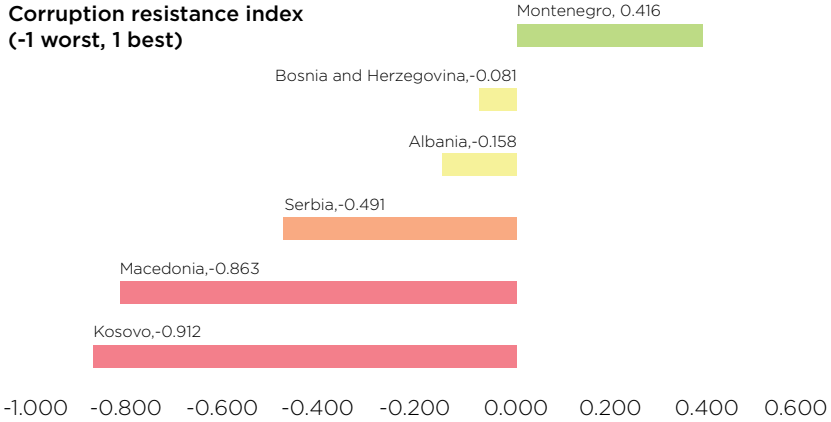
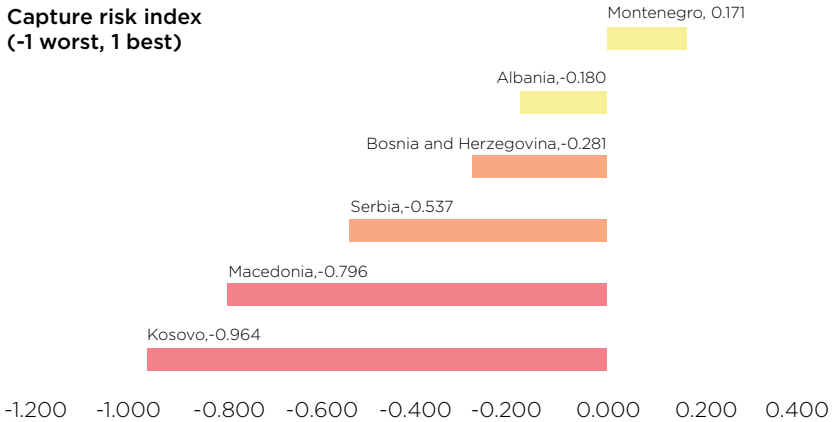


TABLE K.2.2: Capture Risk Index - Public Procurement Planning



Interpretation of indices Kosovo Category 2: Public Procurement Planning

In the area of public procurement planning, the indices place Kosovo in the stage of elementary response to corruption risks (see table K.2.1 above) and captured system (see table K.2.2 above). Limited measures have been adopted in standardization of the PP plans and centralized management of the plans (see the Findings in detail below). However, there are several issues of concern. PP regulation forbids the publishing of PP plans by the Central Procurement Agency (CPA). Plans are only analysed by the CPA to determine the needs for centralized procurement under its jurisdiction. While establishing a centralized procurement infrastructure is seen as good practice, the absence of centralized digital publishing of procurement plans limits the oversight capacity of the system and restricts the participation of potential bidders, who have less access to and time for preparation of bids. The lack of publication of plans also limits the activity of external control mechanisms in this area (i.e. media and civil society) and the effectiveness and efficiency analysis of the system, by restricting coordination among different governance areas such as development planning, financial planning and procurement planning. In addition, the CPA is exposed to high risks of system capture through its appointment procedures (see findings in detail below). These need to be addressed in any future development of the system. In this area, the PP system in Kosovo may benefit from observing and adopting approaches and solutions established in Montenegro, especially in the area of standardization of PP plans, centralized publishing, and sanctioning misconduct.

Findings in detail

Each contracting authority should prepare a preliminary procurement plan 30 days prior to the beginning of each fiscal year at the latest. The procurement plan should be finalized and sent to the CPA within 15 days after the adoption of the budget. The purpose of procurement plans is limited to identifying goods, services and works that should be procured through centralized procurement via the CPA. Procurement plans are not published nor made publicly available for scrutiny of interested parties and the general public; in fact, operational guidelines for public procurement explicitly forbid this. This is a weakness, impeding efforts to improve transparency and competition in public procurement.

Procurement plans include information about estimated public procurement value and product classification in the case of planned goods contracts; estimated aggregate value by category of each service in the case of service contracts; and characteristics of each work contract that is intended to be conducted over the fiscal year (Article 8). The plan must be prepared and

sent to CPA electronically by using an Excel standard form 'Procurement Forecast', approved by the PPRC.

The CPA reviews and aggregates the information from the procurement plans received from all contracting authorities and identifies common use items that may be acquired more efficiently through the application of a consolidated or common procurement procedure or through the use of a central framework contract (hereafter, centralized procurement). The CPA is authorized by the Government (upon proposal of Ministry of Finance) to conduct centralized procurement procedures. A list of goods, services and works to be awarded by the CPA using framework agreements is adopted every year (by January 31 at latest) in the form of Administrative Instruction. The list and any amendments are to be published in media and on the PPRC website (Article 95 paragraph 2).

In addition, contracting authorities need to conduct a formal needs assessment before initiating each procurement procedure. As evidence that the assessment was conducted, each contracting authority has to adopt a "Statement of needs and determination of availability of funds". This statement is signed by the head of the contracting authority and the person responsible for finances within the contracting authority. If the procurement in question was not specified in the procurement plan submitted to the CPA at the beginning of fiscal year, the contracting authority has to provide the CPA with a copy of the abovementioned Statement. The CPA reviews the Statement to identify whether the procurement should be conducted via centralized procurement procedure (Article 9).

Establishing an infrastructure with the aim of increasing the share of centralized procurement procedures in overall public procurement value is a good practice and constitutes a valuable effort towards the professionalization of public procurement, consequently lowering corruption risks in public procurement. In order to assess the performance of the system in Kosovo, this text further analyses the functioning of the CPA, its competences, the level of politicisation and specific regulations that would prevent undue influence.

The CPA is established as an independent executive agency within the Ministry of finance following the PPL Article 94. The CPA conducts centralized procurement procedures on behalf of contracting authorities for common use items (goods, services and works) identified from the procurement plans. It as well conducts procurement procedures on behalf of contracting authority at their request. Finally, CPA at the request provides contracting authority assistance in conducting procurement procedures.

Before the 2011 PPL was adopted, the CPA was called the Public Procurement Agency and was responsible for issuing decisions on public procurement procedures (acting as a remedy body). With the adoption of the new law, the responsibilities of the CPA were reduced so that it solely acts as a central procurement body, representing an improvement in the system.

The CPA is administered and led by a Director, appointed according to the procedure prescribed by Civil Service Law.¹⁶ Candidates for this position are selected from a list of Civil Servants holding senior managerial positions, prepared on the basis of applications received upon announcement of a public competition. The Ministry of Public Administration (MPA) establishes a Criteria Assessment Commission (CAC), comprised of three general secretaries, one university professor from the relevant subject area, and one member from civil society. In addition, two CAC members are appointed from the CPA. The CAC conducts the procedure and proposes three of the best candidates to the MPA. The MPA then submits to the Minister of Finance three of the best candidates for his/ her approval. Finally, the MPA recommends to the Government the candidate preferred by the Minister of Finance, who is appointed by the Government for a three-year mandate.¹⁷ The appointment procedure of CPA Director is relatively well organized and provides a sound foundation for merit-based appointment, with a low level of politicisation and capture risk over the appointed Director and consequently, the CPA in general.

As far as the performance of the CPA is concerned, very little information is available since the obligation of the CPA to prepare an annual report to the Minister of Finance was introduced only with the amendments to the PPL in January 2016. Although publication of an annual report is not envisaged with the amendments, the CPA did publish a Report for 2016 on its website; however the report is not accessible, i.e. the link does not work. The information given on the CPA website is quite modest. Although a merit-based performance assessment was not feasible, the general impression is that the CPA has weak capacities and particular attention should be given to this aspect in future assessments.

¹⁶ Law no. 03/1 -149 on the Civil Service of the Republic of Kosovo

¹⁷ Law no. 03/1 -149 on the Civil Service of the Republic of Kosovo, Article 15

Category 3

Exceptions from procurement legislation

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

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

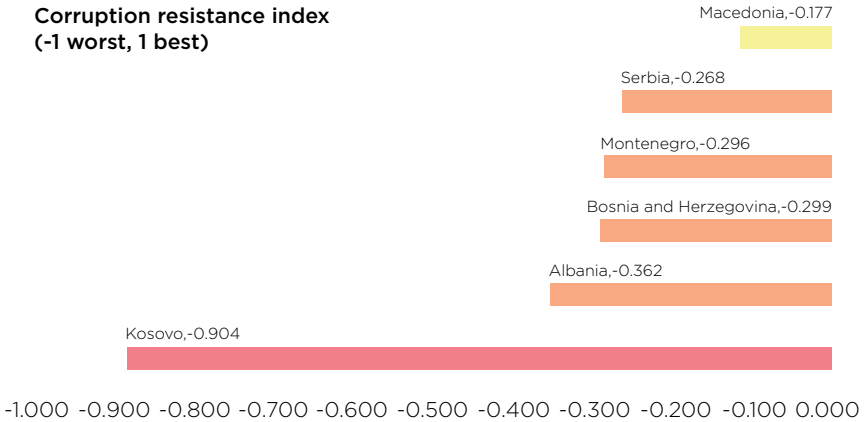
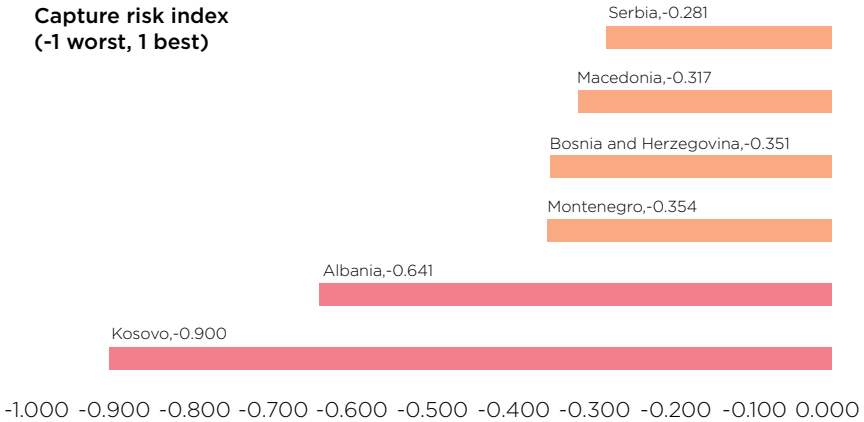


TABLE K.3.2: Capture Risk Index - Exceptions from procurement legislation

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



Interpretation of indices Kosovo Category 3: Exceptions from procurement legislation

In the area of exemptions from PP legislation, Kosovo's PP system scores low in comparison to the other observed countries. The PP Corruption resistance index (table K.3.1 above) suggests only elementary development of corruption deterrence, while the Capture risk index (see table K.3.2 above) indicates a captured system. Thresholds for exemptions due to petty procurement rules are moving in the right direction, and the definition of low value procurement, which is conducted through simplified procedures, is limited to EUR 10,000. However, all of these are stipulated in operational guidelines rather than in legislation, and there is no clear sanctioning of deviations in practice (see Findings in detail below). In addition, provisions on defence-related contracts and "contracts that are subject to specific regulations" is vague and allow broad interpretation by respective contracting authorities. In the absence of explicit stipulations and enforcement, the system is prone to discretionary decisions and consequently capture. The lack of proper reporting and sanctioning also opens space for corruption to go undetected. While quick improvements in this area can be achieved through following the systems operating in Serbia and the FYR of Macedonia, on a more strategic level, the Kosovo PP authorities need to consider restructuring the PPL, and designing measures for the effective detection, prevention and sanctioning of deviation.

Findings in detail

Usually countries set a threshold for the application of procurement regulation, i.e. specifying for example that regulation does not apply to procurements of an estimated value below a certain amount. In Kosovo, this is not the case. The PPL applies to every activity undertaken by the public sector aimed at signing a public contract.

Based on the estimated value, public procurement contracts in Kosovo are classified into four types:

- a. large value contract;
- b. medium value contract;
- c. low value contract, and
- d. minimal value contract.

Thresholds set according to type of contract are presented in the table below.

DESIGN CONTEST

	SUPPLY	SERVICES	Award of a service contract	Prizes and payments to participants	WORKS
LARGE VALUE	≥ EUR 125.000		≥ EUR 125.000	≥ EUR 100.000	≥ EUR 500.000
MEDIUM VALUE	< EUR 125.000		< EUR 125.000	< EUR 100.000	< EUR 500.000
	≥ EUR 10.000		≥ EUR 10.000	≥ EUR 10.000	≥ EUR 10.000
LOW VALUE	< EUR 10.000		< EUR 10.000		< EUR 10.000
	≥ EUR 1.000				≥ EUR 1.000
MINIMAL VALUE	< EUR 1.000				< EUR 1.000

Source: Operational guidelines for public procurement, 2016.

Different types of contract should be procured according to the procedures specified in the Operational Guidelines. Procurement with an estimated value below EUR 1,000 should be conducted by using the minimal value procedure. Within this procedure, the contracting authority has to contact at least three economic operators and invite them to submit an offer. This does not mean that the contracting authority is obliged to receive three offers. However, the contracting authority should report on all minimal value contracts and include them in the Public Procurement Annual Report. Low-value contracts can be signed based on the open procedure or price quotation procedure.

There are, however, loopholes. In particular, the PPL includes an extensive list of exemptions based on the subject of the contract, for example:

- Defence-related contracts referring to the acquisition, maintenance or training activities related to military equipment. These have special rules under Article 3, which are to be adopted through a governmental regulation - although, from publicly available information, it has been impossible to ascertain whether such a document exists.
- Contracts subject to specific procurement regulations (as an open clause) or following an international agreement.
- Contracts that may force Kosovo to share critical information.
- Contracts affecting the intelligence community.
- Contracts resulting from international agreements.
- Contracts concluded in a third country and related to military and civilian deployments abroad (as well as foreign missions in Kosovo).

Category 4

Information management in Public Procurement system

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

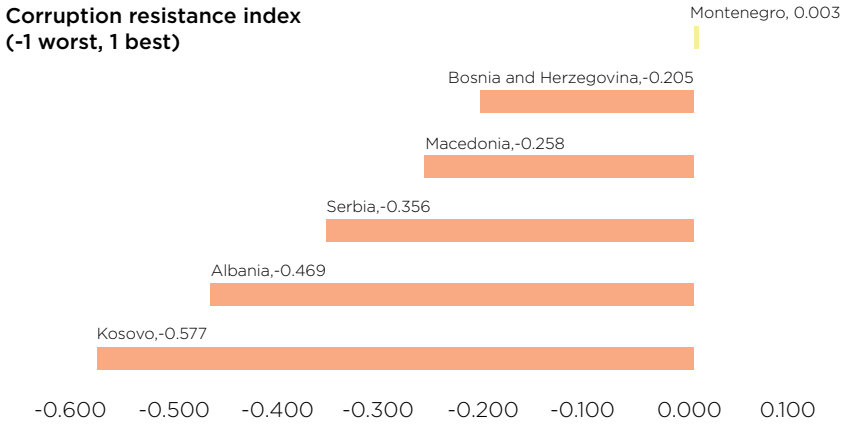
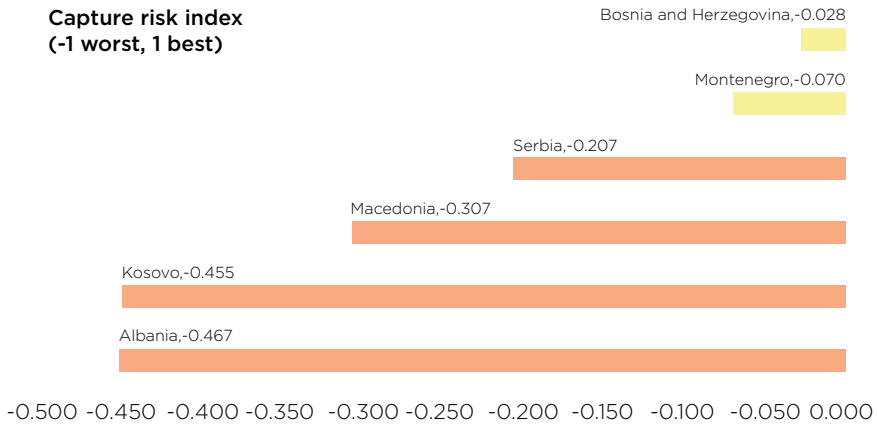


TABLE K.4.2: Capture Risk Index – Information management in PP system



Interpretation of indices Kosovo Category 4: Information management in PP system

In the area of Information management, the Kosovo PP system scores relatively low in comparison to the other observed countries. Indices S.K.1 and K.4.2 (above) show an incidental response to corruption, followed by high capture risk in this category. However, in 2017, significant progress has been observed in the area of standardization of all relevant PP information, centralization of information, and transparency of the collected information (see Findings in detail below). The information published information is assessed as of moderate quality and incomplete, thus limiting the ability of oversight and external controls to conduct any significant observations. The digitalization of the system and development of e-procurement are also at early stages of development, which adds to the observed risks in this category. Full digitalization and primary source reporting should be considered as a solution in this area, as well as expanding the scope of reporting (i.e. publishing procurement plans) and establishment of preliminary digital risk assessment tools to assist the control institutions.

Findings in detail

The handling and publication of all relevant pieces of information related to public procurement in Kosovo has been centralized. The PPRC is responsible for establishing a Public Procurement Register for all administrative acts pertaining to public procurement, and it has been given competences to design all standardized forms the PPL determines, as well as those it considers necessary. In addition, contracting authorities are expected to submit public procurement related documents to the PPRC for publication in both official languages (Serbian and Albanian) as well as English in certain cases, according to Article 42.

The PPRC has so far drafted and established more than 50 standardized forms for public notices, letters of notification and even full dossiers for internal use. As of October 2017, all documents explicitly mentioned in the PPL have been developed. However, a certain number of gaps remain. The most relevant is the non-existence of a standard modification notice. The PPL foresees the necessary notification of all interested tenderers whenever the conditions and specifications of a tender are changed, but it does not specify the content of that notification, and the PPRC thus far has not provided any template.

The digitalization of procurement is still at an early stage. Electronic communication is foreseen and all relevant notices are at least published on the webpage of the PPRC, which provides readily available access, but in a purely passive manner. There is a relatively modest search engine for procurement notices in place on the PPRC website;¹⁸ however, an attempt to test how it works proved that the search engine is not functional. This significantly limits the ability of control mechanisms to observe the system, detect anomalies and act upon them, creating risks that undetected capture of the system may occur.

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See: https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=3&PCID=-1&CtlID=SearchNotices&ind=1&PPRCMenu_OpenNode=63.

Category 5

Pre-bidding stage

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

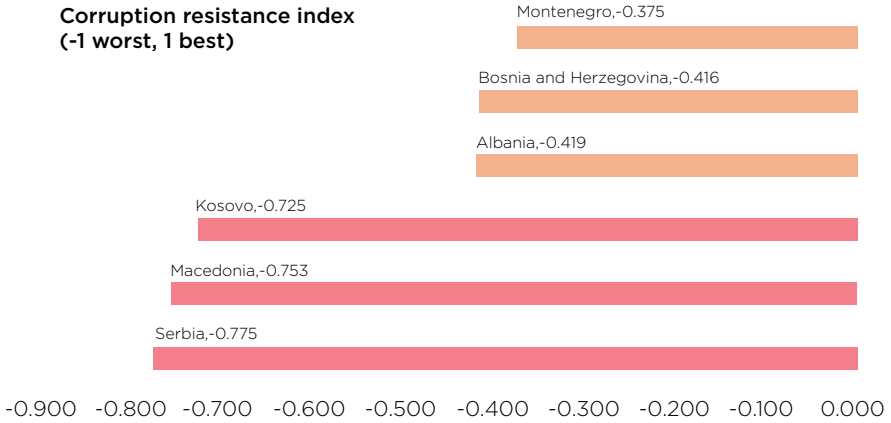
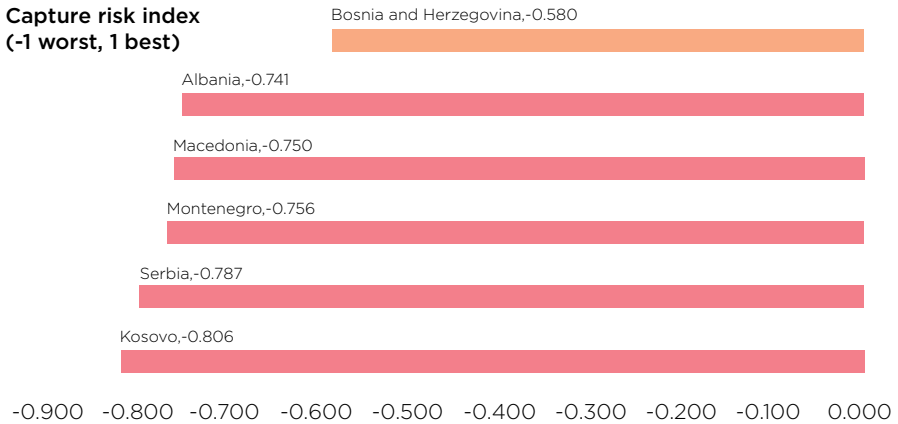


TABLE K.5.2: Capture Risk Index – Pre-bidding stage



Interpretation of indices Kosovo

Category 5: Pre-bidding stage

The pre-bidding stage of the PP in Kosovo follows the negative trend observed in all countries covered by the GRAPP report. Evaluators observed a significant lack of attention to this issue by legislators and practitioners in countries. The indices in category 5. of PP assessment in Kosovo suggest that the response to corruption is at an elementary stage (see table K.5.1 above) and that system is captured (see K.5.2 above). While the system addresses some of the corruption risks (i.e. moderately addressing division of powers, pre-bidding related conflict of interest, and information management, see Findings in detail below), the envisaged responses by and large depend on soft recommendations (operational guidelines) rather than primary legislation, consequently limiting the enforcement of the envisaged measures. As the relevant regulation grants the head of the institution the power to appoint all key personnel, without any strict guidance or sanctions for deviation in the process, the established response is observed as weak and inefficient in preventing corruption or capture in this area. Interventions should focus on the establishment of proper standardized operating procedures accompanied by application of the division of powers principle, dual controls and sanctioning of the wide range of deviations (with emphasis on the protection of privileged data and conflict of interest) that can appear at this stage of PP process.

Findings in detail

The structure for conducting public procurement procedures in Kosovo is the following:

- Chief Administrative Officer (CAO), i.e. head of contracting authority¹⁹
- Requesting Unit (RU), responsible for pre-bidding phase
- Procurement Unit (PU), in particular the Responsible Procurement Officer (RPO) of the contracting authority, appointed by CAO and responsible for evaluation, contracting and execution phase
- Authorising Officer (AO), designated by CAO, whose function is limited to formally authorising the initiation and launching the tender.

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CAOs are: Mayor of a municipality, the General Secretary or Chief Executive Officer of other budget organizations, according to the regulations on public administration; the Director or Head of an autonomous agency; the Chief Executive Officer or Director of public undertakings and the Head of mission in a diplomatic office (PPL, Article 3 Paragraph 1.6).

The CAO is responsible for appointing the RPO and AO, approving the assessment of procurement needs and initiation of the procurement procedure, as well as for approving the TEC members (upon RPO's proposal) and signing high-value contracts. Considering this list of tasks and scope of responsibilities, the risks deriving from the organizational setting differ depending on the level of direct political influence over the decision-making process. In general, contracting authorities in which the CAO is a career civil servant are less prone to undue interference, while local contracting authorities are exposed to higher risks, since the deciding authority has direct political influence.

The Requesting Unit (RU) is competent for the pre-bidding stage activities. It is established within the contracting authority and is responsible for preparing the formal needs assessment and producing tender documentation for the contracting authority.²⁰

According to Operational Guidelines, the RU's staff may be appointed as member(s) of the Tender Opening Committee (TOC) or Tender Evaluation Committee (TEC). It should be highlighted that staff engaged in preparing tender documentation (technical specifications, terms of reference, etc.) are not allowed to participate as TEC members in that specific procedure. This suggests that the need for a division of powers in the pre-bidding and contracting phases has been taken into account and an effort was made to prevent undue influence over the entire public procurement process. It is however difficult to assess how efficient these efforts are in practice, since the appointment/ employment procedures of the RU's staff are not covered in the PPL or in the Operational Guidelines.

The management and storage of tender documentation falls within the responsibility of the procurement officer responsible for the tender within Procurement Unit. He/she should maintain a well-ordered and comprehensive set of records for each procurement procedure, regardless of whether the procedure resulted in a contract or design award. Documentation should be stored pursuant to the applicable legislation on State Archives (PPL, Article 10 paragraph 1). There is no other specific mention of the issue in the legal text, and no mention of it can be found in the Operational Guidelines either. Safeguarding mechanisms based on the four-eye principle are missing, as are strict protocols for the management of procurement documentation (reception, storage, movement of documents, etc.).

20 PUBLIC PROCUREMENT REGULATORY COMMISSION (2016) Operational guidelines for public procurement. p. 14.

Category 6

Public procurement Contracting

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

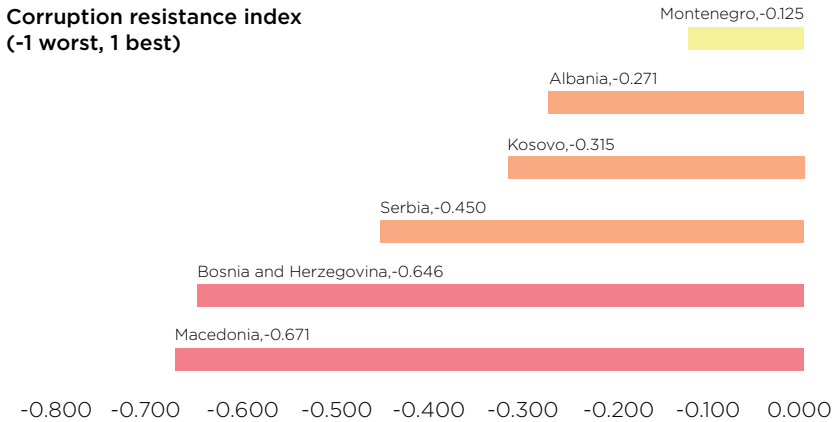
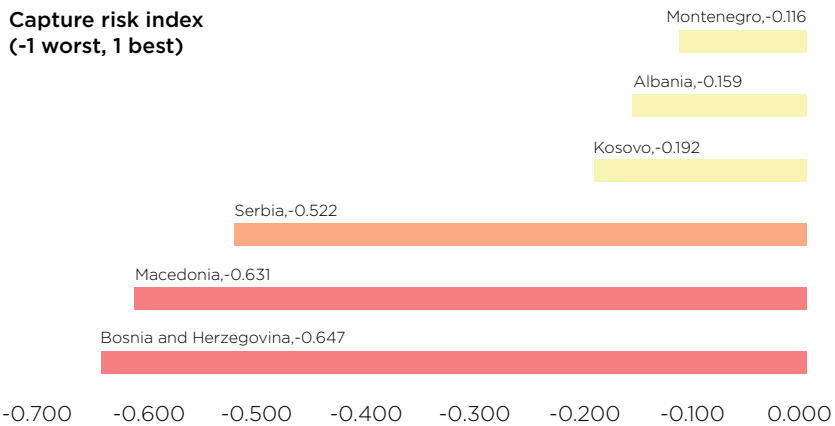


TABLE K.6.2: Capture Risk Index – Public Procurement Contracting



Interpretation of indices Kosovo Category 6: Public procurement Contracting

In the area of PP contracting, the PP system in Kosovo preforms moderately in comparison to the other countries. The Corruption resistance index (see the table K.6.1 above) is in the area of incidental response, while the Capture risk index (see table K.6.2 above) is in the stage of high capture risk. In this category, similar to the pre-bidding stage, the PP regulatory setting has foreseen a variety of measures to assure the integrity of the PP process and mitigate corruption risks (i.e. division of powers, exclusion criteria for potential bidders including evidence of previous conduct, exclusion criteria for respective members of evaluation committee, individual responsibility of each member of evaluation committee, conflict of interest in contracting phase, see Findings in detail below). Progress in comparison to the previous category (category 5, pre-bidding stage) has been made in direct stipulation of measures in the PPL (i.e. full individual responsibility for decision of each of the TEC members). However, despite certain progress and reference of the guidelines to the relevant PPL, the PP process at this stage still shows significant dependence on the Guidelines, which are less enforceable (see findings in detail below). While the PP system in Kosovo may benefit from applying some of the solutions and approaches used in Albania (i.e. in the area of exclusion criteria), the respective PP authorities in Kosovo need to pay further attention to developing enforceable integrity measures in the contracting process, establishing dual controls (including pro-active inspections), engaging in proper sanctioning for breaches of law, fully digitalizing information management and further developing precise guidelines for usage of exclusion criteria.

Findings in detail

Once the CAO fulfils the requirements pertaining to the assessment of needs relevant to the tender, he/she nominates a Tender Evaluation Committee (TEC) upon the RPO's proposal and allows the designated Authorising Officer to formally initiate the tender.

According to the PPL, all TEC members assume full individual responsibility for the performed tender evaluation (Article 59, paragraph 1). Since this regulation is too vague, the PPRC is required to establish further rules for the TEC. They are part of the Operational Guidelines.

These Guidelines (which do not have any regulatory force) determine the nature, composition and procedures of the TEC. It is an ad hoc structure with advisory functions, whose members are designated by the CAO at the proposal of the Responsible Procurement Officer (RPO). It is formed by at least three people, and must have an odd number of members. The RPO

is barred from being a member of the TEC, but other members of the procurement unit are eligible. Other eligibility criteria are directly copied from those referring to the tenderers, literally reproducing Article 65 paragraph 3 of the Act, which is reviewed below. In an example of good practice, the TEC members are not allowed to be involved in preparing the specifications or terms of reference for the tender (pre-bidding phase). Furthermore, the TEC votes on the different proposals according to the award criteria established in the contract notice or equivalent document through which the procedure was launched. Whenever a vote differs from the evaluation of the rest of the TEC, “the responsible procurement officer shall explain any misconception and request the member to re-examine that particular section of the tender submission, once again” (Rules and Operational Guidelines for Public Procurement, 2016), which he may, or may not choose to do.

In any case, the final decision relies with the Procurement Officer. If the received opinion is rejected, he/she must justify it in writing and notify the CAO of the situation. No other provision or control mechanism is foreseen, apart from the general obligation to follow the Code of Ethics set by the PPRC, which regulates in very general terms the principles of procurement and offers some guidance as to what represents unacceptable behaviour. According to the Code, anyone who considers himself/herself in a conflict of interest situation is expected to notify the highest authority of the organisation and recuse himself/herself from taking part in any procurement procedure.

By contrast, concerning the regulation on exclusion criteria for tenderers, there is an extensive regulation in Article 65. It mentions conflict of interest, both in general terms and specifically, in connection with taking part in the preparation of the procurement dossier, directly or indirectly. However, these reasons can be countermanded by the contracting authority if it is considered that they did not result in any competitive advantage. Any interested third party can appeal to the Procurement Review Body (PRB) or the administrative courts. However, the issue of their jurisdiction and capacity in specific conflict of interest cases remains and must be further investigated or clarified by respective public authority.

There is also exclusion clauses regarding past misconduct, including criminal offences related to corruption, or unprofessional conduct as defined by the body competent to set the applicable professional standards. These are the clauses that are reflected in the selection of the Evaluation Committee.

Finally, paragraph 4 of the Article establishes classic exclusion clauses related to the tax situation of the tenderer, its economic solvency and status at the time and in the period immediately prior to the procurement process, as well as its administrative situation and any potential past misconduct in public contracts.

Petty public procurement

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

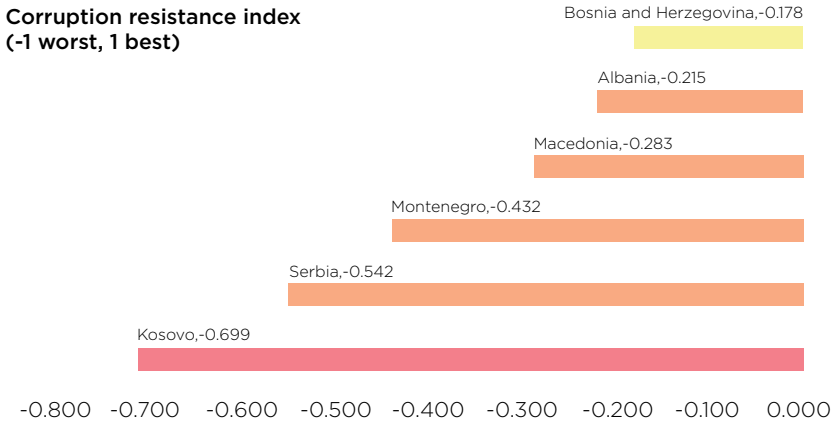
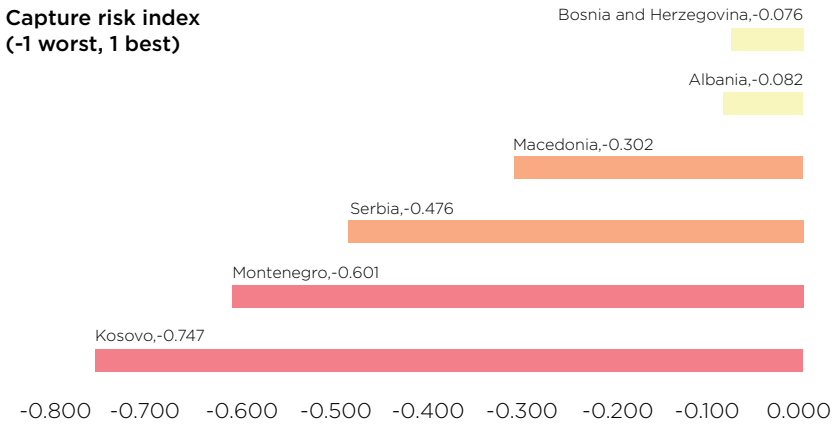


TABLE K.7.2: Capture Risk Index – Petty public procurement



Interpretation of indices Kosovo

Category 7: Petty public procurement

In the area of petty public procurement, the value of the PP Corruption resistance index is in the area of elementary response to corruption (table K.7.1 above), while the Capture risk index is in the area of high capture risk (table K.7.2 above). The system has seen improvements, e.g., by limiting petty procurement to EUR 1,000 and the small value simplified procedure to EUR 10,000, as well as requiring publication of such contracts in the centralized procurement register (see Findings in detail below). However, the dependence on guidelines (as opposed to laws), accompanied by a weak enforcement environment, as well as the lack of more strict procedures for low value procurements, pose risks of corruption and capture occurrence. These are further emphasized by the significant exposure of contracting authorities to overall political influence (especially at local level), and high discretionary powers of the respective PP authorities in the absence of proper horizontal accountability measures (i.e. sanctioning) or external controls (due to limited availability of public information in this area). Moderate improvements of the system could be achieved through adoption of strict guidelines on low value procurement (i.e. increase the number of minimum bidders to 5 as in Bosnia and Herzegovina and Albania) and better reporting systems (detailed standardized reporting in the PP system accompanied). These measures should be accompanied by full digitalization of the system and real time reporting, in-house dual controls protocols, and pro-active inspections of low value procurement.

Findings in detail

Regarding petty procurement, recall that the PPL applies to all procedures leading to the signing of a public contract. Procurement of goods, services and works with value estimated below EUR 1,000 is defined as a “minimal value contract”, which is subject to minimum rules. Several procedural requirements are not necessary in such contracts. This includes shorter deadlines, an exemption from the need to keep a procurement dossier, and transparency requirements are more lenient.

In addition, the PPRC is responsible for establishing the rules for a special procedure to govern the award of minimal value contracts in order for such procedures to fulfil the conditions of competitiveness, transparency, economy and non-discrimination. These rules have been included in the Operational Guidelines. In particular, the contracting authority has to contact at least three economic operators and invite them to submit the offer, although it is not obliged to receive three offers.

One favourable practice is that award notices must be communicated to the PPRC via applicable standardised forms; and such procedures need to be published on the PPRC webpage, as with any other public procurement procedure.

Category 8

Public Procurement Remedy mechanisms

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

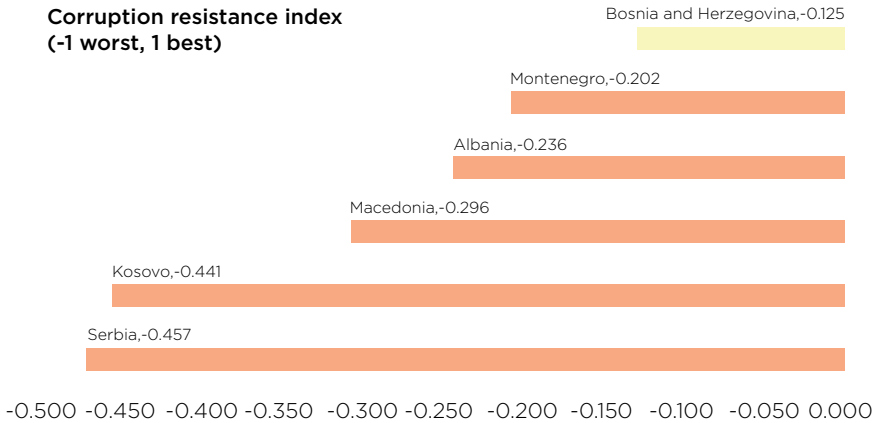
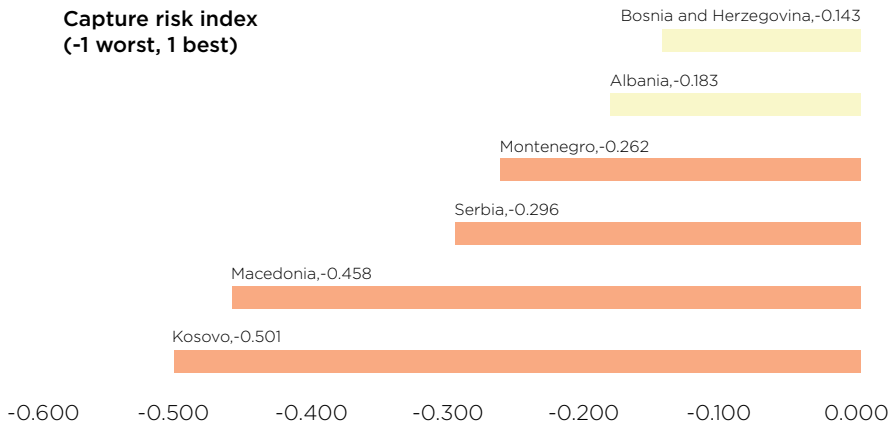


TABLE K.8.2: Capture Risk Index – Public Procurement Remedy mechanisms



Interpretation of indices Kosovo Category 8: Public Procurement Remedy mechanisms

The remedy mechanism in Kosovo scores rather low or moderate in comparison to other countries. The Corruption resistance index (see table K.8.1 above) indicates an incidental response to corruption, while the Capture risk index value (table K.8.2 above) ranks the Procurement Review Body (PRB) in the area of high capture risk. In the area of the appointment of the PRB managing structure, measures to prevent corruption and capture are moving in the right direction. The Kosovo Assembly appoints both the chairperson and members of PRB based on the recommendation given by the Independent selection body (ISB) - which is established by the Assembly and comprised of three judges appointed by the Kosovo Judicial Council (see Findings in detail). PRB members are subject to the provisions of the Act on Conflicts of Interest. The criteria of qualification to become a member of the PRB are properly addressed. The PP system in Kosovo also benefits from broad access, as any interested party, including civil society organizations, may initiate procedures before the PRB. Administrative fees for filling complaints are moderate (between EUR 100 and EUR 5,000) and reflect Kosovo's economic situation. The number of cases as well as the ratio of resolved cases match the size of the overall PP economy in Kosovo (see Findings in detail below). However, the fact that two of the board members were the subject of criminal proceedings and suspended for their conduct implicate that there are outstanding issues in addressing the integrity of the PRB members. In addition, the lack of the proper statistics limit the evaluation of the effectiveness and efficiency of the work of the PRB, despite the notion that in this area the Kosovo PP system performs significantly better than in most of other observed areas. While some solutions could be learned from observing PP systems in Montenegro and Bosnia and Herzegovina, Kosovo needs to maintain its approach to selection and appointment, as well as the open access principle (i.e. potential CSO participation in filling complaints), while improving integrity of the institutions, and the integrity of the individual members of the PRB.

Findings in detail

The Procurement Review Body (PRB) is an independent administrative review body responsible for conducting public procurement related review procedures in Kosovo. It consists of five Board members. For administrative support, the PRB is assisted by a Secretariat and 18 civil servant employees. The PRB Board chairperson and members are appointed by the Assembly for a five-year mandate without the right of re-appointment. The government proposes at least two candidates for the position of chairperson and at least two candidates for each position of Board member. However, the Assembly appoints both the chairperson and members based on the recommendation given by the so-called Independent selection body (ISB). The ISB is established by the Assembly and comprised of three judges appointed by the Kosovo Judicial Council. The ISB interviews and evaluates all candidates and delivers the ranking list of candidates to the Assembly. All these persons are subjected to the provisions of the Act on Conflicts of Interest. The current President of the Board was appointed on 30 March 2016 (by the previous government); while two of its members have been suspended due to criminal proceedings being opened against them. Any candidate for chairperson or PRB member must meet the criteria listed in Article 100 of the PPL, which specifies, among other things, that candidates must not have been convicted or indicted for any criminal offence. In addition, if an indictment against the chairperson or a member of the PRB is raised, he/ she will be suspended with payment of 50 percent of his/ her salary (Article 101 PPL).

The rules of procedure are prescribed by Regulation No. 01/2017 of the work of Public Procurement Review Body of Kosovo.²¹ Any economic operator - defined as any supplier, service provider or contractor, or even a Civil Society Organisation - is entitled to file a complaint. The complaint can be filed after the preliminary resolution of disputes mechanism has been exercised. This mechanism is an ordinary review by the contracting authority of its own act upon a request by a party. This request needs to be submitted within five days, and it must be resolved, as a general rule, within three days. The tenderer is allowed to submit a complaint to the PRB within ten days of receiving a negative decision from the contracting authority. Unfortunately, there are no statistics available regarding the rates of positive review of actions in the preliminary procedure. As in other countries, any complaint filed to the PRB must be accompanied by the payment of a complaint fee, as per Article 118 of the PPL and 13, paragraph 7 of the Rules of procedure. The latter fixes the fee at 1% of the bid value, and a minimum of EUR 100 and a maximum of EUR 5,000, which must be paid either in cash or via a bank deposit. This deposit is returnable if the PRB finds the complaint to be grounded.

Once a complaint is accepted, the PRB must decide on the case within 30 days. A review expert must be called within four days and has ten days to

²¹

Regulation No. 01/2017 of the work of Public Procurement Review Body of Kosovo. Available at: https://oshp.rks-gov.net/repository/docs/200-17work-regulation_1.PDF.

assess the validity of the complaint. A review panel will then decide, based on the expert's opinion, within 15 days of the date of receipt. During the period from January 2014 to August 2017, the PRB received in total 1,610 complaints; which equates to 23.3 per employee in year one, 25.73 per employee in year two, and 20.91 dossiers per employee in year three. Of those, 1,657 (97.3%) were resolved, while 43 cases from 2014 and 2015 remain unresolved due to the Board being shut down due to complications over the appointment of some of its board members. There are no available statistics on the outcome of such reviews. An aggrieved party can request compensation against a negative decision (but not challenge the decision itself) through the administrative courts. Due to the current judicial set-up, this involves the Administrative Department of the Basic Court of Pristina acting within 30 days of the receipt of the decision. According to the statistics, from the first quarter of 2017, the Department has a backlog of 5,185 cases.²²

Overall, the composition and selection of the PRB seems sound, although the fact that it remained inoperative for 2 years is problematic, as is the fact that members of its board were suspended for criminal charges.

22 Kosovo Judicial Council, answer to FOIA request.

Category 9

Control over the implementation of PP legislation

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

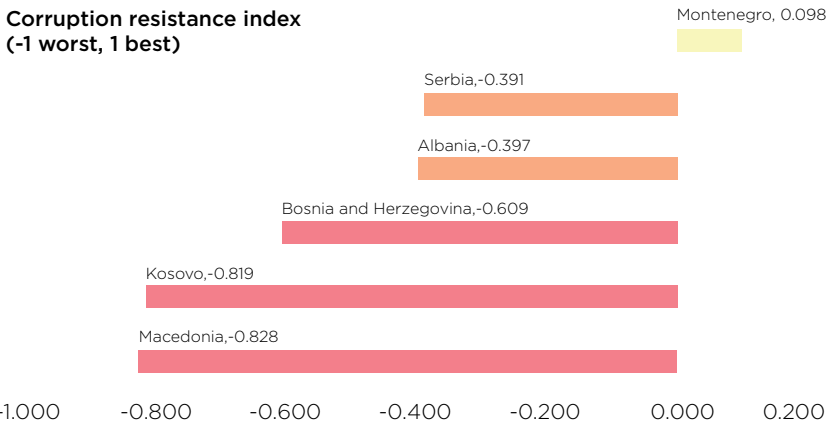
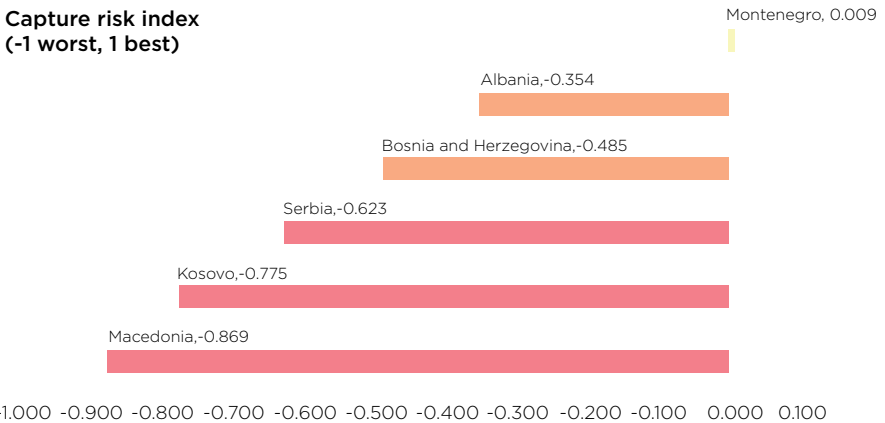


TABLE K .9.2: Capture Risk Index – Control over the implementation of PP legislation



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

In category 9, control over the implementation of PP legislation in Kosovo, the Corruption resistance index (table K.9.1 above) is in the area of an elementary response, while the Capture risk index (table K.9.2 above) indicates a captured system. The Public Procurement Regulatory Commission (PRRC) is moderately equipped with regulatory powers, with a focus on monitoring the implementation of the PPL, setting specific rules and regulations, as well as conducting inspections and issuing opinions on technical aspects of procurement procedures and related administrative acts (see Findings in detail below). While the general scope of the PRRC's authority does not differ from other observed countries, in the area of enforcement, the PRRC is rather limited in its powers. In most cases, where deviations are observed during inspections, the PRRC can only issue a warning or notify another body of their findings (see Findings in detail below). The impact of this risk is multiplied by deficiencies in the digitalization of data and the weak annual performance indicators. To achieve immediate improvements, the PP authorities should consider adopting the concepts and approaches developed in Montenegro. In the long run, the Kosovo PP system will need more comprehensive restructuring and empowerment of the control institutions, by providing specific tools and capacities, as well as regulatory powers to fit the role assigned to them. The further digitalization of data management (i.e. development of digital risk detection tools), and building barriers to undue influence from the executive branch government are also priorities.

Findings in detail

The Public Procurement Regulatory Commission (PRRC) is competent to supervise the implementation of the public procurement law in Kosovo. The PRRC's competences include monitoring the implementation of PPL, setting specific rules and regulations, as well as conducting inspections and issuing opinions on technical aspect of procurement procedures and related administrative acts. In addition, the PRRC is responsible for the continuous development and improvement of the PP system. This goal involves the collection and receipt of reports from all contracting authorities to obtain accurate information on the state of the procurement system. This intelligence is used to identify general flaws in the procurement system and assess individual compliance. The PRRC will also lead the transition to a full e-procurement system.

The PPRC has a staff of 33 employees in four departments:

- Regulation, which drafts sub-legal acts and provides technical assistance for contracting authorities;
- Information, charged with the Procurement Register and maintaining the flow of information as per legal requirements;
- Training, whose mandate includes setting the requirements to certify procurement officers and arranging for any required training activities; and
- Monitoring and Surveillance, dealing with the actual oversight of the legal compliance and effectiveness of the procurement system.

It has been impossible to obtain separate data by department, so an analysis of the available manpower for each of these activities is not currently feasible.

However, for 2014, the department for Monitoring and Surveillance carried out monitoring of 38 contracting authorities involved in 282 procurement activities, which represented 90% of the envisaged plan for the year. In the same year, 11,362 public procurement contracts were signed. In 2015, 10,895 public procurement contracts were signed and the PPRC monitored the same number of contracting authorities as the previous year (38), relating to 285 procurement activities. Relevant data for 2016 were not available at the time of writing (late 2017). With over 170 contracting authorities active in the country, and more than 10,000 contracts signed annually, the staff level seems insufficient to ensure the adequate monitoring of the entire system, especially in an environment which lacks comprehensive digitalisation and big data management.

A different question is the level of expertise of the available staff, for which no data are available. The board of the PPRC is composed of three members chosen by the Assembly in a process similar to that foreseen for the PRB, for a mandate of five years, without the possibility of reappointment. However, the current president of the board was reappointed in 2015, before this clause came into force. All members of the board are subject to legislation regarding conflicts of interest.

Another problem is the insufficient nature of sanctions for deviating from due processes. The PPRC can, at most, suspend a contract that does not correspond to the specifications of the tender. Most other cases (such as not publishing information in the register or departing from the technical specifications of the tender) are dealt with by a simple warning, and even in cases of conflicts of interest, the response deemed appropriate is only to notify the Anticorruption Agency.

Control over Execution of public procurement contracts

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

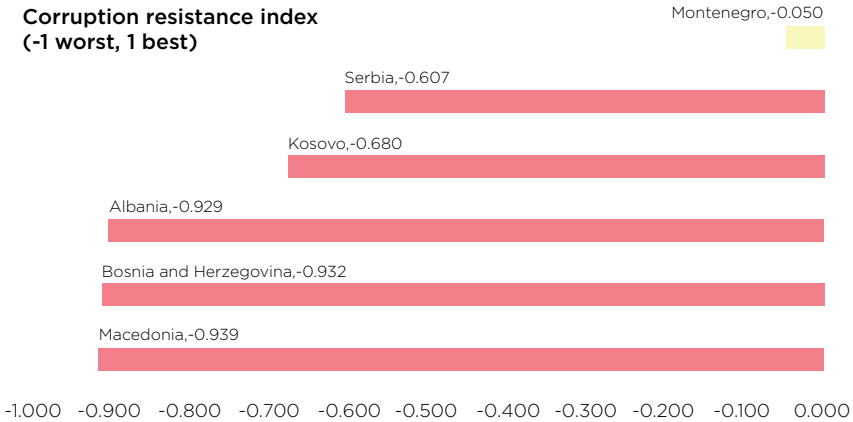
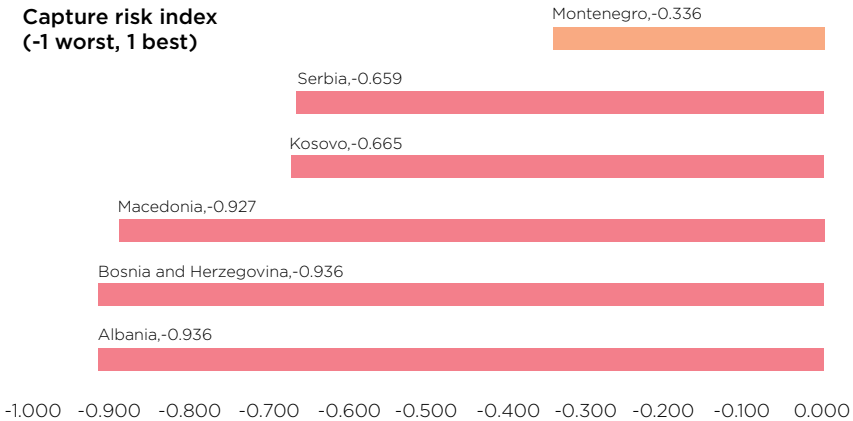


TABLE K.10.2: Capture Risk Index – Control over Execution of public procurement contracts



Interpretation of indices Kosovo

Category 10: Control over Execution of PP contracts

In the area of control of execution of contracts, the PP system in Kosovo performs in line with the majority of the observed countries. The Corruption resistance index value is in the stage of elementary response (see table K.10.1 above) while the Capture risk index indicates a captured system (see table K.10.2 above). PP regulation vests power of control over execution of the contracts in the PPRC. While the existence of such a stipulation in the regulatory framework is considered to be progress among Western Balkan countries, the lack of any evidence on the performance of such controls casts doubt on the efforts of the PP authorities to address this issue. The risks in this area are further emphasized by the unknown capacity of the institution to conduct the wide range of inspections necessary to assure the system's integrity. While in general, parliamentary appointments mitigate direct political influence (i.e. from executive branch government) to some extent, in reality, capture risk remains high. Immediate improvements in this area can arise from observing principles and approaches in controls adopted by the PP system in Montenegro. On the strategic level, more detailed standardized operating procedures should be developed, accompanied by proper capacity and sanctioning mechanisms.

Findings in detail

From the responses received through the GRAPP framework, it appears that the organisation in charge of the execution of contracts oversight is the PPRC. However, the data provided in the response do not detail any oversight of the execution of the contracts which has been conducted, suggesting that such activity has not been carried out in previous years and consequently that this element of the PP integrity system is yet to be developed. While the competence of the PPRC derives from the law, the actual capacity to conduct such oversight is missing.

Category 11

Regulation of Conflict of Interest in PP System and procedures

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

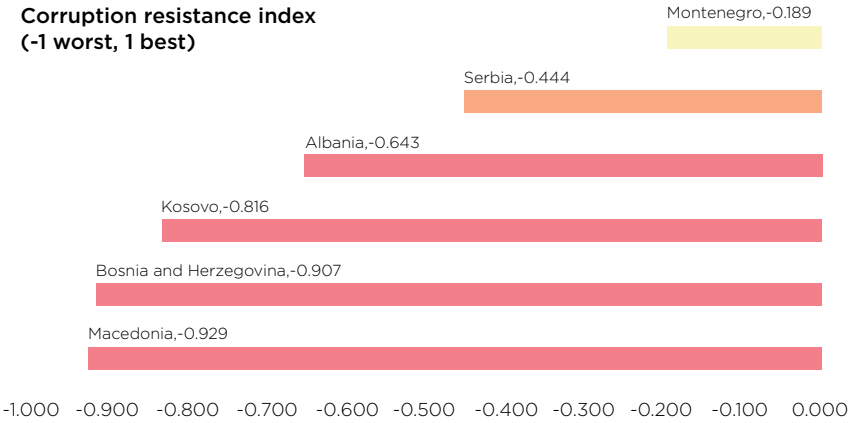
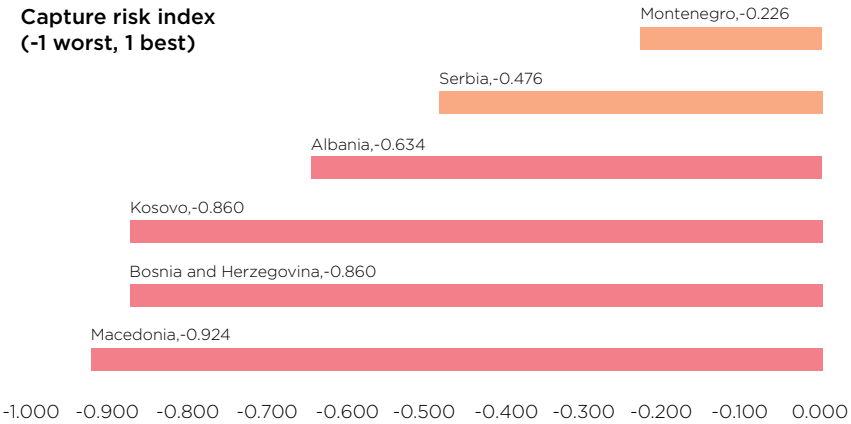


TABLE K.11.2: Capture Risk Index – Regulation of Conflict of Interest in PP System and procedures



Interpretation of indices Kosovo

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

In comparison to other observed countries, in the area of managing conflict of interest in the Public Procurement system, Kosovo indicates limited progress. The Corruption resistance index registers an elementary response (table K.11.1 above) accompanied by a captured system (table K.11.2 above). The PPL stipulates conflict of interest management, and vests powers of oversight in the jurisdiction of the Anti-corruption agency, which represents moderate progress (see Findings in detail below). However, the lack of any evidence on the performance of the system, accompanied by limited insight into information on the PP process by external controls, as well as frequent reference to direct politicization of the PP system, cast doubt on the progress achieved in this area. In the long run, the capacity of the AA may prove to be insufficient to monitor and control approximately 170 contracting authorities and 10,000 contracts annually, especially as it is more or less an administrative body that heavily depends on information provided by respective contracting authorities. As the PPL does not foresee proper sanctions in this area, the question arises as to what would be the response of the AA even if such inspections had been conducted and deviations found in respective contracting authorities. Improvements in the performance of the system might be achieved by learning from the concepts, approaches and solutions implemented in Montenegro. However, in the long run, the restructuring of conflict of interest management should be considered as well as development of digital infrastructure (horizontal reporting on evidence of relationship between the successful bidders and contracting authorities).

Findings in detail

The PPL does not provide any specific rules regarding conflicts of interest; it only mentions it as a general principle. A conflict of interest is defined by the CoI law as “a situation of incompatibility between the official duty and private interest of a senior official, when he/she has direct or indirect private personal or property interests that may influence or seems to influence his/her legitimacy, transparency, objectivity and impartiality during the discharge of public functions”. The PPL simply repeats this definition, placing it in the context of public procurement officials and activities.

Within the legal framework of Kosovo, the authority to prevent, detect and sanction conflicts of interest falls within the remit of the Anticorruption Agency. The AA has 40 employees, a figure which has remained stable since 2014. Of these, six are assigned to the Division for the Prevention of Corruption in Public Procurement, including a Chief and five Senior Officers. In recent years, the AA has issued a number of decisions regarding conflicts of interest: 288 in 2014, 211 in 2015 and 195 in 2016. However, it is impossible to ascertain how many of these were related to the procurement system. This implies that either there is a loophole in the performance monitoring system within the AA (since there is a special designated department for PP within the AA) or that there are no cases that the agency has initiated in this area, which would raise another set of questions.

The AA staff is composed of professional civil servants subject to the regime of public employees. The Director is chosen by the AA according to its own rules of procedure since no specific regime is foreseen. He/she serves for five years, with the possibility of another mandate, and must hold a master’s degree and have five years of experience, with no prior criminal record. Relevant provisions on conflicts of interest also apply.

In theory, all officials involved in procurement activities are subject to the provisions of the CoI regulation. However, it is questionable whether the six officers assigned to the task can properly monitor the entire sector, even with the assistance of the PPRC, which can notify the AA of any misconduct discovered during its ordinary monitoring activities. Thus, the main risk in this case arises from improper implementation due to insufficient means.

Audit mechanisms

TABLE K.12.1: Corruption Resistance Index – Audit mechanisms

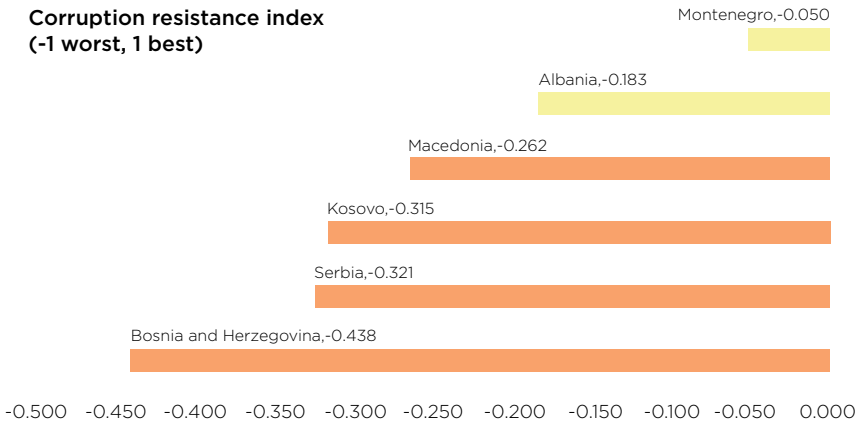
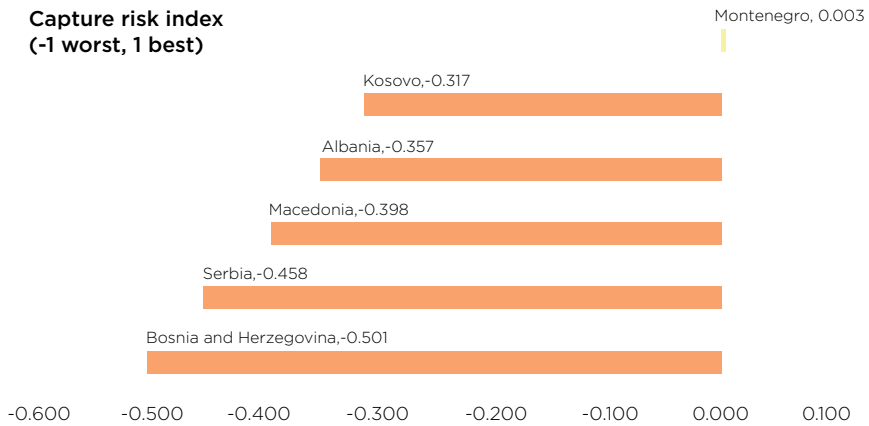


TABLE K.12.2: Capture Risk Index – Audit mechanisms



Interpretation of indices Kosovo

Category 12: Audit mechanisms

In the area of audit mechanisms, the PP system in Kosovo scores moderate in comparison to other observed countries. The Corruption resistance index shows an incidental response to corruption (table K.12.1 above) accompanied by high capture risk (table K.12.2 above). Despite the lack of specific provisions in the area of control of public procurement procedures (see Findings in detail below), the Kosovo National Audit Office (NAO) has some specific roles and performance indicators that shall be appraised in future developments of the system. The NAO has adequate staffing (over 100 auditors- see Findings in detail below) and conducts a significant number of audits annually (over 100). In addition, the NAO outsources audits when necessary to other independent auditing organizations. Proper measures to ensure transparency of audit reports have been taken, as well as measures to limit political influence over the auditors' work. In comparison to other countries, the requirement of obligatory cooperation with the NAO, even for institutions and organizations outside of direct government influence, represents good practice. Special focus on donor funds, and consequently on secondary procurement that derives from it, is also good practice. However, the lack of direct regulatory stipulation on conducting procurement audits, as well as a lack of specialization in this area requires the attention of PP legislators in future reforms. The regulatory framework as well as the expertise of NAO needs to be improved (i.e. continuous education, certification) while the independence of institution needs to be maintained. Stronger horizontal cooperation is recommended as well as digitalization of the system accompanied by preliminary digital risk assessments. Reporting on Public procurement, as well as auditing of a sample of public procurement, should be standardized in order to enable year to year monitoring of trends.

Findings in detail

There are no specific rules pertaining to auditing in the PPL. The only mention in the entire text is in relation to proving mechanisms of solvency for tenderers, and a prohibition on using due confidentiality as an excuse for PPRC and CPA officials to avoid collaborating with the Auditor General.

The Auditor-General is a constitutionally independent institution established as the highest economic and financial control institution of the state. He/she is also the Head of the National Audit Office (NAO), an organization established by Law 05/L-055 “as an independent institution with the objective of assisting the Auditor General in performing his/her duties” (Act on the National Audit Office, 2016).

Its mandate includes carrying out annual audits of all public authorities at both local and state level in Kosovo, as well as any agency established by

them. Audit reports are published and are readily accessible on the website of the institution.

Most organizations participating in public procurement are regularly scrutinized by the NAO, including the PPRC, PRB and CPA. However, auditing does not focus on public procurement, as the auditors are neither authorized nor equipped to supervise these procedures, and thus they focus only on the final destination of the funds, rather than the procedures.

According to its last report, the NAO has a staff ceiling of 146, including the Auditor-General. Of those, 106 are auditors, while the rest are senior management and supporting staff. With these resources, the office has exercised its mandate, producing over 100 reports a year, although it has also outsourced a number in the past. More specifically, it produced 102 audits (11 outsourced) in 2014, 117 (6) in 2015 and 114 (1) in 2016. Of these, one covers the entire consolidated budget, 38 the municipalities, 24 state authorities, around 20 independent agencies (the number varies as they are established or discontinued) and four to ten donor funds. In 2016, the NAO started auditing public enterprises, as well.

The process for selecting the Auditor-General is typical for constitutionally independent institutions and involves both the Presidency and the Assembly of Kosovo. The former proposes a candidate following a selection process carried out by a committee appointed by it, and the Assembly approves it with an absolute majority of all deputies, for a mandate of five years, renewable once. Dismissal requires a reinforced majority of two-thirds of the Assembly (Constitution, 2008). The current Auditor-General was invested on 30 March 2016, at the proposal of the current President.

Not only the Act on Conflicts of Interest is applicable to all auditors, but also the Act on the National Audit Office includes specific considerations for both the Auditor-General and his colleagues, setting out a more comprehensive regime of incompatibilities that includes holding any other function within the public sector; fulfilling any role in public or private enterprises, or political parties, or exercising any remunerated activity without the authorization of the Auditor-General. While no doubt is cast on the professionalism with which auditing takes place, it is notable that the mandate, focus and scope of the institution do not specifically include public procurement.

Criminal justice system response to PP anomalies

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

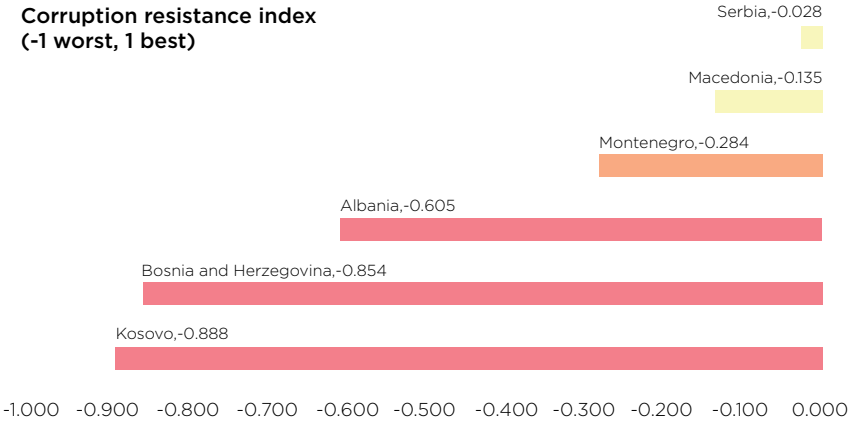
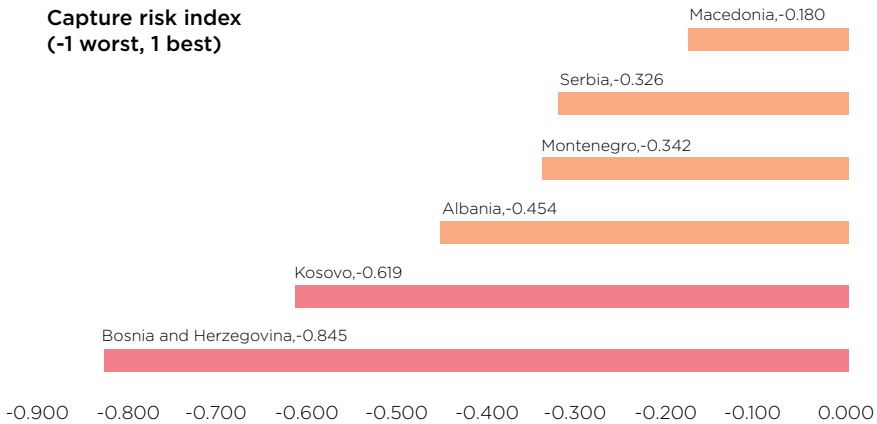


TABLE K.13.2: Capture Risk Index – Criminal justice system response to PP anomalies



Interpretation of indices Kosovo Category 13: Criminal justice system response to PP anomalies

In the area of the criminal justice system, Kosovo is among the weaker performers in comparison to the other observed countries. The Corruption resistance index is at the stage of an elementary response (see the table K.13.1 above), while the Capture risk index value indicates high capture risk (table K.13.2 above). While in 2017, the Kosovo criminal justice system started collecting relevant statistics in the area of criminal offences related to public procurement, the evidence of performance is still missing (see Findings in detail below). This is further emphasized by weak performance observed in other horizontal accountability mechanisms. In future developments, a more strategic approach is required. Horizontal cooperation between the institutions in observing trends and anomalies and designing comprehensive responses (prevention, detection, sanctioning) could significantly improve the impact of the system on corruption related to PP.

Findings in detail

The Courts are usually the main and final line of defence against malpractice in the public sector. They can act as deterrents by themselves, but they are more effective when the system as a whole works properly since it can filter most cases that otherwise would invariably result in a criminal trial. However, Kosovo is still at an early stage of its fight against corruption, and that affects the Court system as well. According to the State Prosecutor's Office, only in 2017 did it start to collect statistical data on corruption that specifically refers to public procurement. Neither the Kosovo Judicial Council nor the Kosovo Prosecutorial Council could provide more detailed information regarding the number of cases, either pertaining to the subject matter, or their outcome. As seen from the responses and general weakness of the detection mechanisms, the accountability of the PP system is not adequately provided for within the current regulatory and institutional setting. The GRAPP assessment finds that the system is in the very elementary stage of development and as such is neither effective nor efficient in tackling the capture risk in public procurement.

Capacity and human resources management

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

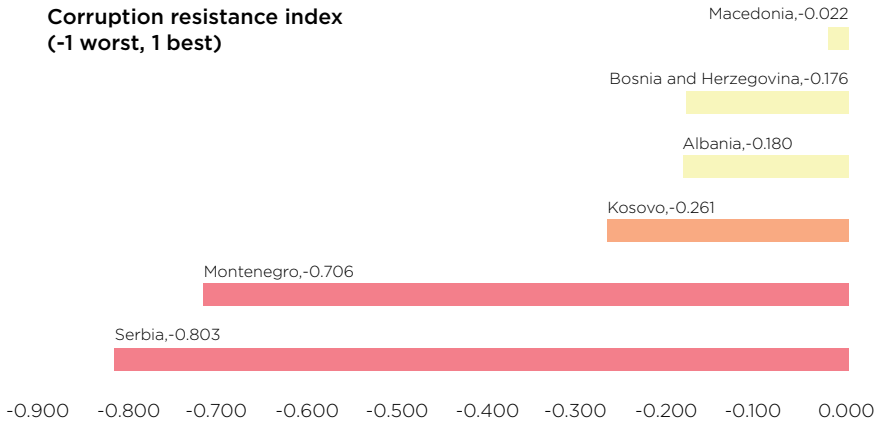
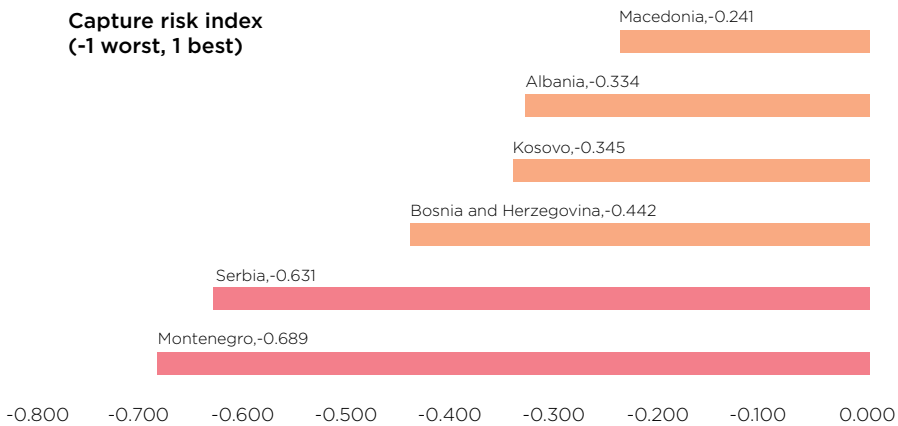


TABLE K.14.2: Capture Risk Index – Capacity and human resources management



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

In the area of Capacity and human resources management, the PP system in Kosovo scores moderate in comparison to the other observed countries. The Corruption resistance index is in the stage of incidental response to corruption (table K.14.1 above), while the Capture risk index (table K.14.2 above) suggests high capture risk. The two-level certification of PP officers, as well as continuous education in the field, are considered to be good progress in this area (see findings in detail below). However, progress in this category has been undermined by the slow advancement of e-procurement despite PP officers having undergone certification in this area. In addition to this, evidence on re-certification since 31 December 2016 is missing which may indicate additional risks of preferential treatment in this process. Nevertheless, Kosovo performs significantly better here than in other areas. In terms of future reform, the PP system in Kosovo would benefit from the approaches and practices observed in FYR of Macedonia, as well as from a stronger focus by existing control mechanisms on this aspect of the public procurement system and procedures. Further capacity building is needed, as well as proper controls of conduct especially by contracting authorities at the local level, as well as full implementation of e-procurement.

Findings in detail

Kosovo has introduced a certification system for PP officials: in order to take part in procurement activities, or be part of a procurement department, a person must be a certified procurement officer, as per Article 23 of PPL. To obtain that certification, Article 25 of PPL establishes a training scheme to be arranged by the PPRC with the collaboration of the Kosovo Institute of Public Administration (KIPA), which sets two levels of certification, basic and advanced. Basic training consists of a 15-day course which entitles the candidate to a “basic certificate”, valid for three years, after which it becomes void and the holder is no longer entitled to act as a procurement officer. To avoid this, that person must undertake an advanced training course lasting ten days. Upon passing the requirements of the course, the person will receive advanced certification, which has no expiry date, but requires the holder to undergo any appropriate training the PPRC deems relevant on an on-going basis. A person with a four-year master’s degree in PP can sidestep this qualification process but is still required to undertake ongoing training. The PPRC is entitled to review, ex officio or in response to a complaint, whether a procurement official still possesses the knowledge required for certification, and if appropriate, deem it void. No statistics are available regarding such annulments. On the other hand, the last amendment of the PPL required re-training for all officials, to be completed by 31 December 2016, since any previous certificate would be declared void after that date. By the end of the year, more than 700 officials had been certified by the KIPA.

If Kosovo has made great efforts to ensure it has a professionalized procurement corps, it has been much slower in establishment of e-procurement. The system has theoretically been functioning since 2016, and at this moment, 172 persons (virtually the entire ensemble of contracting authorities), are certified to conduct e-procurement. However, the number of contracts published in e-procurement up to August 2017 was only 1,872, less than 20% of the total amount of public contracts concluded annually in Kosovo.

Category 15

Trends in public procurement contracts

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

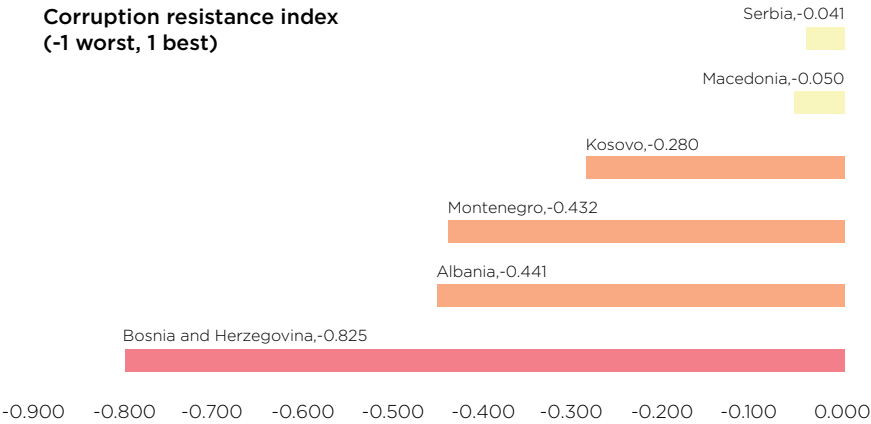
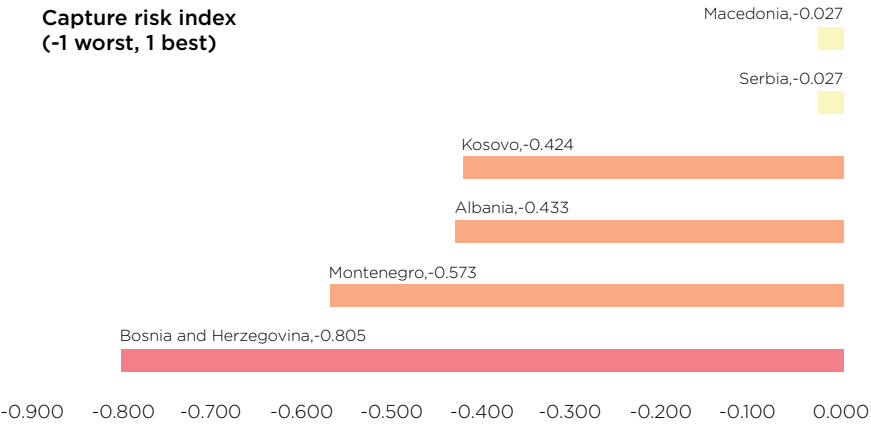


TABLE K.15.2: Capture Risk Index – Trends in public procurement contracts



Interpretation of indices Kosovo

Category 15: Trends in public procurement contracts

Statistics on public procurement contracts in Kosovo indicate moderate developments in this area placing Kosovo among the moderate performers. The Corruption resistance index suggests an incidental response to corruption (table K.15.1 above) accompanied by high capture risk (table K.15.2 above). The centralization of data management, as well as a trend of centralization of procurement procedures (see Findings in detail below) are proper responses to the observed risks. However, indirect reporting through the Public Procurement Regulatory Commission (PRRC) limits real-time responses to anomalies, while weaknesses observed in horizontal accountability mechanisms, including lack of any sanctions for significant breaches of the PPL, undermine the good progress observed in this area. This is further emphasized by the poorly developed public reporting portal which does not allow any significant insight into PP procedures or contract notices, nor any significant big data analysis, which would be needed for adequate external controls (i.e. media and civil society). In future developments of the system, additional standardization (i.e. introduction of more comprehensive reporting on executed contracts) and data digitalization should be prioritised, and more adequate powers and capacities should be granted to the established control mechanisms. In the aim of increasing centralized procurement for better controls, special attention should be given to the issue of competition as extensive use of centralized procurement tends to diminish competition, which can exacerbate capture risks in the long run.

Findings in detail

In the last few years, from 2014 to 2016, public procurement in Kosovo has revealed some interesting facts. Unfortunately, it has proved impossible to obtain separate data by contract value or contracting institution. The information available combines all public authorities (state, local and independent agencies) in a single category, which inhibits a more detailed analysis. However, the data available indicate some patterns.

The number of contracts has been constantly decreasing, from 11,362 in 2014 to 10,015 in 2016. Meanwhile, the value of contracts has increased from EUR 389 million in 2014 to EUR 424 million in 2016. This implies that fewer, but bigger contracts are being prepared and signed: the average value in 2014 was EUR 34,301.88 per contract, while in 2016 it reached EUR 37,367.93, an increase of 8.9% in two years. In addition, public procurement contracts related to construction of highways are singled out from the overall statistics. The structure of public procurement in Kosovo per the type of contract in 2014 and 2015, including the highway contracts, is presented in the table below (data for 2016 were not available).

Table 2 Public procurement structure per type of contract, 2014-2015

	2014		2015	
	EUR	% in total PP	EUR	% in total PP
High value	246.119.956	55,3%	227.200.294	44,0%
Middle value	119.138.144	26,8%	151.551.828	29,3%
Small value	22.190.827	5,0%	20.875.077	4,0%
Minimal value	2.289.029	0,5%	2.216.424	0,4%
Highways	55.468.528	12%	114.577.050	22,2%
Total PP	445.206.484	100%	516.420.673	100,0%

Data source: Author's own computation based on data from Public Procurement Regulatory Commission of Kosovo

There was a significant rise in contracting by public authorities in 2016, after a consolidation process took place within the CPA for many decentralised agencies and other public-sector organisations. Thus, public companies signed 20% fewer contracts than in the previous year, which amounts to a reduction of 40% in contract value. The Government (including state and local levels), on the other hand, increased its share of public contracting by roughly EUR 100 million, from EUR 259 million in 2014 to EUR 359 million in 2016.

This increased centralisation may increase the efficiency of the procurement system, by avoiding unnecessary smaller procurement processes and placing a higher proportion of procurement in the hands of the CPA, which simplifies oversight and scrutiny.

Table 3 Value of concluded contracts by type of procedure, EUR, 2014- 2015

	2014	2015
Open procedure	282.717.895	306.798.670
Restricted procedure	281.264	7.438.530
Negotiation procedure with prior publication	31.924.923	40.170
Negotiating procedure without prior publication	50.592.000	64.695.068
Design contest	47.883	551.567
Price quotation	21.888.064	20.108.584
Minimal value procedure	2.285.928	2.211.036
Total	389.737.958	401.843.625
Highways	55.468.528	114.577.050

Data source: Author's own computation based on data from Public Procurement Regulatory Commission of Kosovo

Trends in framework agreements

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

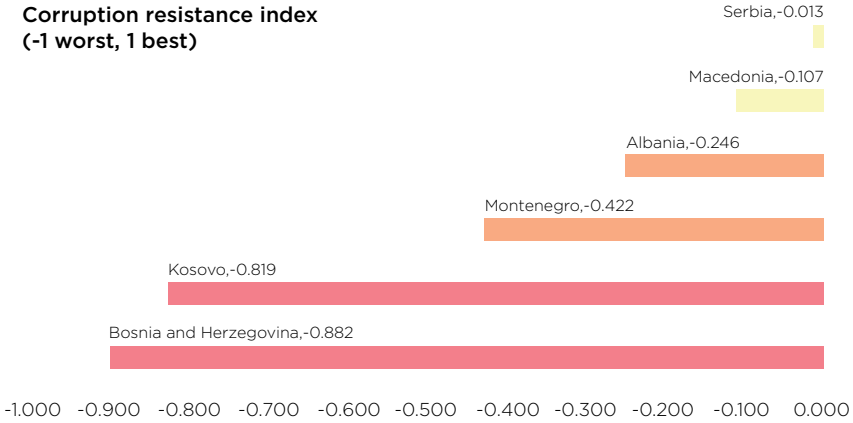
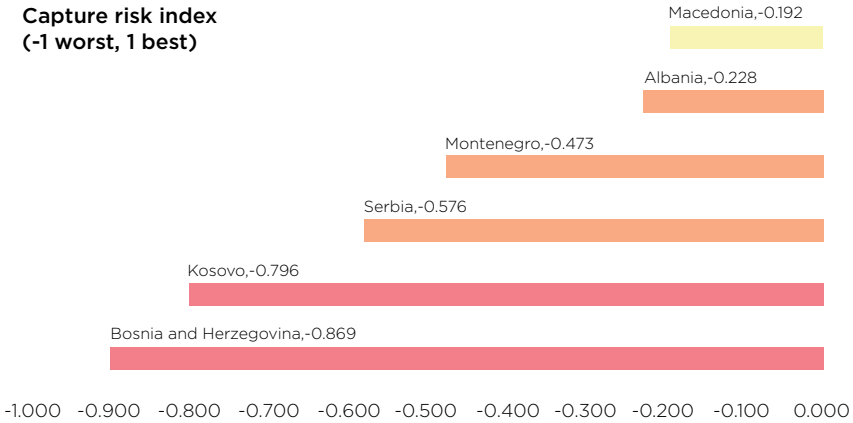


TABLE K.16.2: Capture Risk Index – Trends in framework agreements



Interpretation of indices Kosovo Category 16: Trends in framework agreements

In the area of framework agreements, the PP system in Kosovo shows an elementary response to corruption (table K.16.1 above) and a captured system (table K.16.2 above). Framework agreements are mostly left to the centralized procurement body based on the submitted procurement plans. While this practice may lead to stronger controls in the short run, in the long run there is a risk that centralisation of procurement will limit competition and weaken the external control environment (if fewer actors bid for contracts). The lack of any evidence on the numbers, values and types of the signed Framework Agreements further emphasize the risks observed in this area. While in this area, the PP authorities in Kosovo can benefit from observation of the concepts, approaches and solutions applied in the FYR of Macedonia, in the long run, a restructuring of the FA concept in the Kosovo PP system should be considered.

Findings in detail

As described earlier in the text, the CPA conducts centralized procurement procedures including framework agreements on behalf of contracting authorities for common use items (goods, services and works) identified in the procurement plans. Unfortunately, it was not possible to conduct trend analysis in framework agreements at the time of writing due to the lack of publicly available statistics on conducted procedures and concluded framework agreements during the observed period, 2014 to 2016. Namely, the last annual report published by CPA was that for 2013. Annual reports for 2014, 2015 and 2016 had not been published at the time of writing.²³

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See: <https://aqp.rks-gov.net/sq/raportet>.

Category 17

The most successful tenderers

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

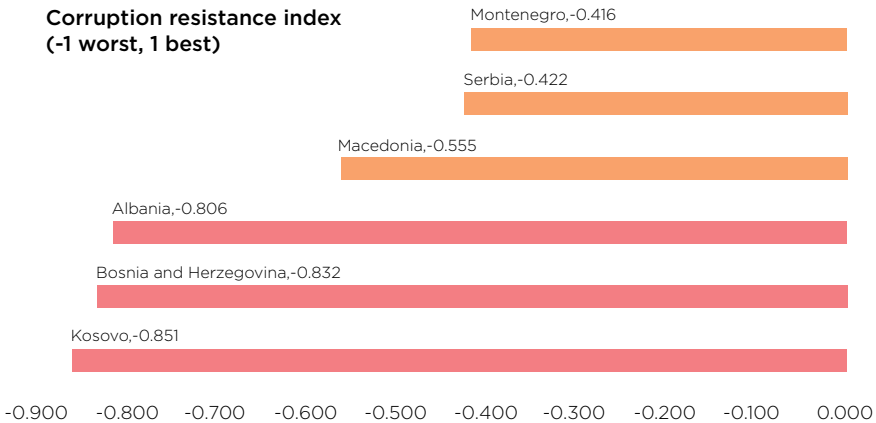
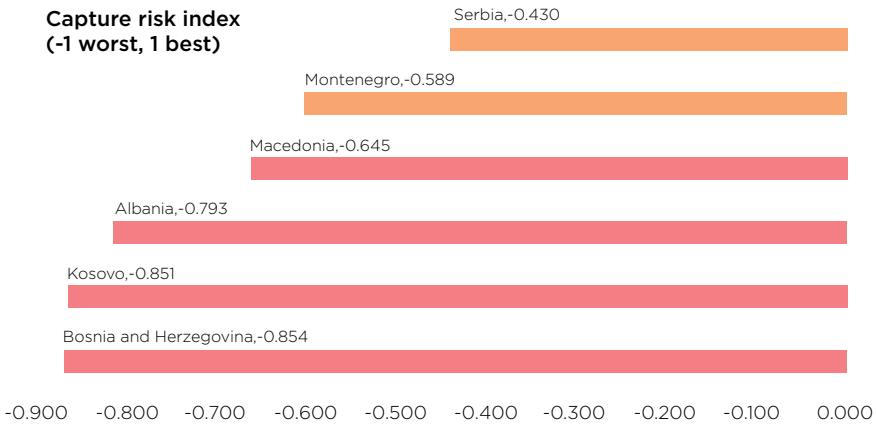


TABLE K.17.2: Capture Risk Index – The most successful tenderers



Interpretation of indices Kosovo Category 17: The most successful tenderers

Indices in the area of risks related to most successful tenderers (corruption related risks) and preferential treatment (PP capture risks) suggest an elementary response to corruption (table K.17.1 above) and a captured system (table K.17.2 above). The data management system does not provide for big data analysis and neither external control institutions nor the respective PP authorities provided such data. We observed weak controls in this area, as well as the absence of any sanctions for significant deviations in PP procedures, putting risks in this area in Kosovo among the highest of the observed countries. The observed risks further emphasize the urgency of proper digitalization of the system and strengthening of established control mechanisms.

Findings in detail

As with framework agreements, there were difficulties in obtaining information about the most successful tenderers, i.e. the tenderers that were awarded with the biggest total value of PP contracts in 2014, 2015, and 2016. It has not been feasible to provide analysis of the most successful tenderers in Kosovo due to a lack of information. The PRRC did not provide the names of the most successful tenderers in response to our FOIA request nor could this information be found in the annual reports published by the PRRC.

Category 18

Trends in petty public procurement

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

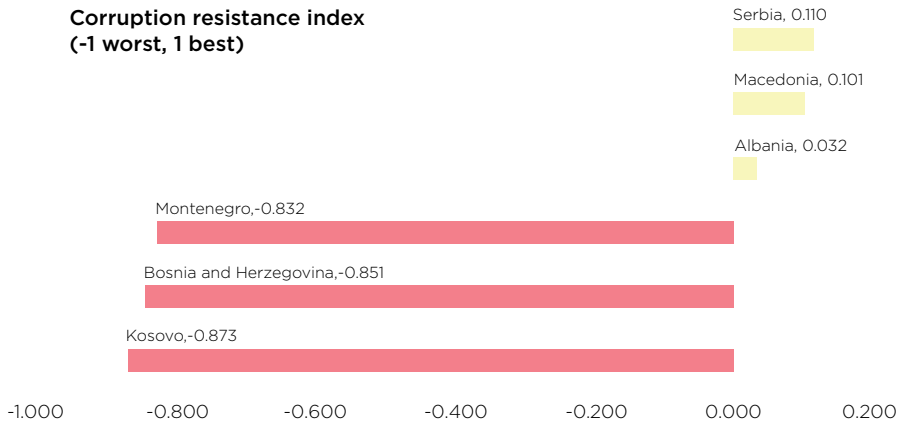
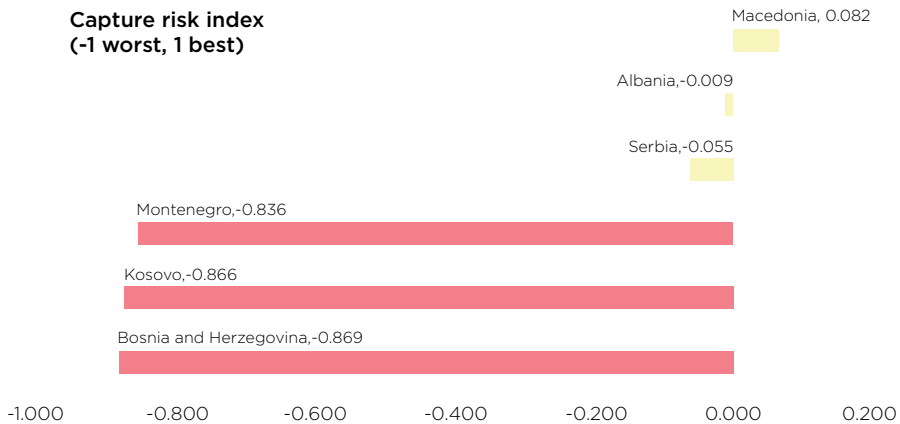


TABLE K.18.2: Capture Risk Index – Trends in petty public procurement



Interpretation of indices Kosovo

Category 18: Trends in petty public procurement

In the area of trends in Petty public procurement, Kosovo scores lowest in comparison to other countries. The corruption resistance index score is in the stage of elementary response to corruption (table K.18.1 above) while the Capture risk index indicate a captured system (table K.18.2 above). While proper measures have been observed in limiting the petty procurement to 1,000 EUR and simplified procedure (low value procurement) to EUR 10,000, the lack of evidence, statistics, controls and sanctioning in this area undermine efforts to prevent abuse. The absence of strict protocols on how to conduct low value procurement or sanctioning of the abuse of the provision further increase the risks. As detailed real-time reporting on low value procurement is still absent, this issue requires thorough intervention in data management, with proper standardization of reporting aiming at appropriate digitalization of the system (for purpose of timely controls and responses of the established control mechanisms). There is also a need for improvements in statistical reporting of the respective control mechanisms on breaches of the PPL in low value procurement, and on sanctioning.

Findings in detail

As noted earlier in the report, the PPL applies to all procedures leading to the signing of a public contract. Procurement of goods, services and works with value estimated below EUR 1,000 is defined as a “minimal value contract”, which is subject to less stringent rules. Several procedural requirements are not necessary in such contracts. This includes shorter deadlines, an exemption from the need to keep a procurement dossier, and transparency requirements are more lenient.

Minimal value contracts proved to be insignificant in terms of value during the observed period, amounting to only 0.5 % of total public procurement value (see Table 2 above).

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

CENTRAL PROCUREMENT AGENCY (2017) Annual reports. Available at: <http://aqp.rks-gov.net/sq/raportet>

National Audit (2017) Annual reports for 2014, 2015, 2016. Available at: <http://www.zka-rks.org/en/publications/>

FOIA requests

Kosovo Judicial Council, answer to FOIA request

Office of State Prosecutor, answer to FOIA request

Public Procurement Regulatory Commission, answer to FOIA request

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>.

Law on Public Procurement in Republic of Kosovo (the Public Procurement Law) (law no. 04/L-042, amended by law no. 04/L-237, law no. 05/L-068, and law no. 05/L-092). Available at: <https://www.kuvendikosoves.org/common/docs/ligjet/05-L-068%20a.pdf>

Law on the Civil Service of the Republic of Kosovo (Official Gazette Law no. 03/1-149). Available at: <http://www.kuvendikosoves.org/common/docs/ligjet/2010-149-eng.pdf>

Regulation No. 01/2017 of the work of Public Procurement Review Body of Kosovo. Available at: https://oshp.rks-gov.net/repository/docs/200-17work-regulation_1.PDF

Administrative Instruction no.02/2015 “For the Implementation of Public Central Procurement Procedures”. Available at: https://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=2&PPRCMenu_OpenNode=62

Criminal Code of the Republic of Kosovo (Code No. 04/L-082). Available at: <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>

Law on Prevention of Conflict of Interest in Discharge of Public Functions (Law No. 04/L-051). Available at: <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20prevention%20of%20conflict%20of%20interest%20in%20dischar%20of%20public%20functions.pdf>