

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



Country report SERBIA

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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

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- 1 Podumljak, M., David-Barrett, E. (2015) The Public Procurement of Construction Works: The Case of Croatia. European Commission's Seventh Framework Programme ANTICORRP. Available at: <http://anticorrrp.eu/publications/report-on-croatia/>.
 - 2 Rose-Ackerman, R. (1975) The Economics of Corruption. *Journal of Public Economics* 4, 187-203.
 - 3 Ferwerda, J., Deleanu, I., Unger, B. (2016) Corruption in Public Procurement: Finding the Right Indicators. *European Journal on Criminal Policy and Research* Vol. 23, Issue 2, p. 245-267.

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

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

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

While describing corruption is a complex task per se, measuring it is even more challenging. Numerous scholars and practitioners have developed

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

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

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

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

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

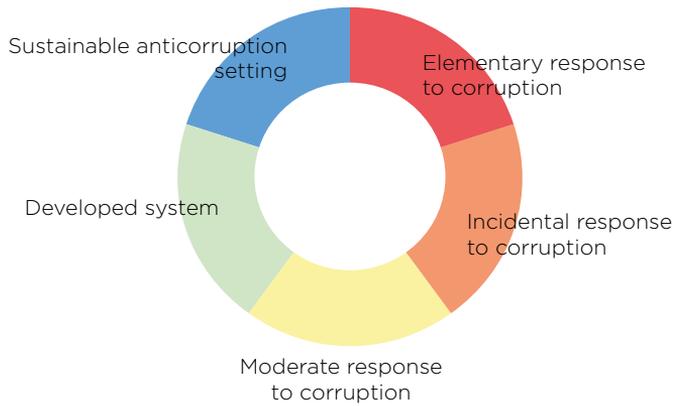
Values of the index

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.

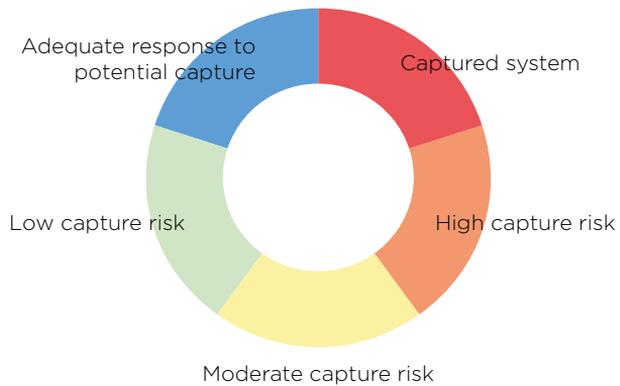
Important note

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 Serbia

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Abbreviations

CS	Civil Supervisor
PPC	Public Procurement Committee
PPL	Public Procurement Law
PPO	Public Procurement Office
PPP	Public Procurement Portal
RCPR	Republic Commission for the Protection of Rights in Public Procurement Procedures
SAI	State Audit Institution

Summary

TABLE S.A. Overall Public Procurement Corruption Resistance Index 2017, Serbia¹³

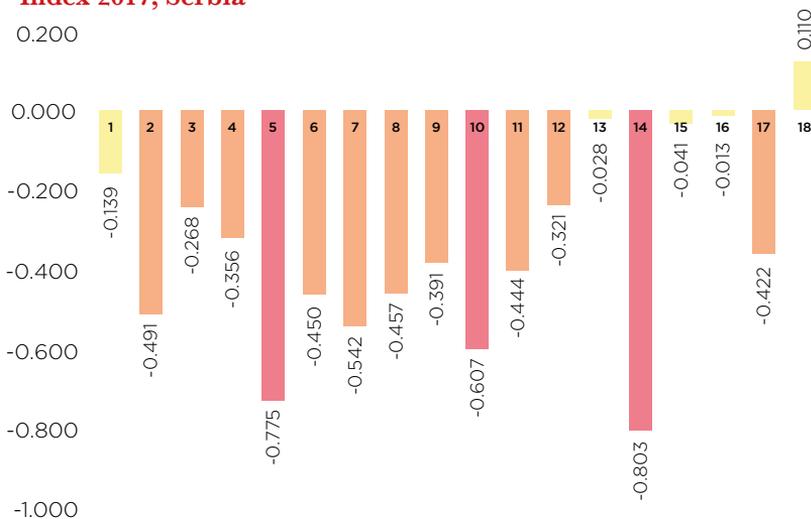
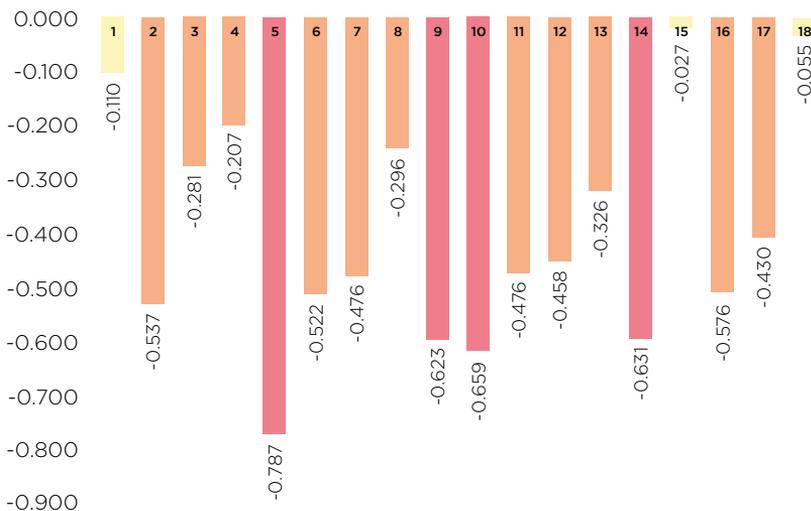


TABLE S.B. Overall Public Procurement Capture Risk Index 2017, Serbia



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

The public procurement system in Serbia demonstrates fairly good solutions and a solid base for the future development of integrity and corruption resistance measures. The regulatory eco system (category 1, see table S.A. and S.B. above) in Serbia is comprehensive in both areas covered (including broad scope of contracting authorities), and developed procedures (centralization, standardization, controls, legal protection and management). Despite deficiencies and over-reliance on bylaws, as well as limits in the technical and organizational infrastructure for implementation of the PPL, the Serbian PP regulatory framework is among the most developed of the observed countries. Standardization in PP procedures and a centralized information management contribute to the solid performance and the ability of the system to detect anomalies (i.e. corruption/capture), while broad sanctioning mechanisms established in legislation provide tools to address the majority of corruption practices from the system. Positive developments in the Criminal justice response to corruption in PP procurement (category 13), as well as proper standardization of contracts, framework agreements and petty procurement management, contribute to the positive developments in several areas (see interpretations in categories 1, 13, 15, and 18).

However, there are some issues of concern that need to be addressed by the respective PP authorities in future interventions. The system is deficient in terms of the separation of powers in PP procedures and control mechanisms, which limits its ability to effectively and efficiently implement the measures foreseen by the PP regulatory framework, as observed in many categories (i.e. see interpretation in categories 8 and 9). The pre-bidding stage (category 5) of the system remains outside the scope of integrity measures, and is marked by an absence of detailed protocols or standard operating procedures for pre-bidding process management as well as deficient accountability measures; these impose risks and weaknesses in areas of ex-post detection of the corruption and suggest a high risk of system capture. These deficiencies consequently have a negative impact on the outcome of PP procedures and on the ability of the system to prevent, detect and/or sanction intentional illicit conduct. While developments in control over execution of the contracts (category 10) are moving in the right direction (establishing regulatory obligation), the concept, approach and solutions in place are not responding to the risks that occur in this stage of PP. Control over the execution of the contracts (category 10) lacks dual controls, proper independent oversight, and irregularity detection and sanctioning tools.

These risks are multiplied by the weak capacities and human resources deployed at all levels (including respective contracting authorities and oversight mechanisms). According to statistics provided by respective authorities, only one third of contracting authorities have a certified PP officer in place. The re-certification and professional developments of PP officers is

not foreseen by regulatory acts (see category 14) which limits the system's ability to correctly implement sophisticated procedures and adjust to dynamic regulatory and technical developments in this area. The elementary nature of developments in E-procurement and the full digitalization of the system contribute to capacity weaknesses. While the information management system is highly standardized, the intermediate reporting on procedures and contracts (quarterly reports to the PPO, see as well category 4 of the report) limits the ability of the control mechanisms to act in real time (at the time of occurrence of the illicit practice), with delays meaning that such risks may only be detected through reporting mechanisms. This is reflected in the low performance statistics of the respective control bodies (see categories 8, 9 and 13). The complex setting of the control mechanisms and reliance on RCPR (see categories 8 and 9) for broad scope of protection (not just legal protection of bidders), as well as low performance indicators in this area, suggest limited access to justice and weak proactive controls. While it appears that many institutions could control specific procedures, our analysis suggests that no one is in charge of controlling the system as a whole. This is especially true for the pre-bidding stage of the procurement and control over the execution of the contracts, that are in general considered to be areas of highest corruption and capture risks. While petty procurement is more or less properly addressed, the extensive use and high thresholds for low-value procurement (see category 7), which is conducted in very simplified manner and is beyond the scope of proper accountability, increases the risks of abuse in the PP processes in Serbia.

Key findings

The Serbian Public Procurement Law (PPL) covers all relevant entities: ministries, local authorities, regulatory institutions, and state-owned enterprises. The rather high number of bylaws (17) prompts concern that overreliance on secondary legislation could result in a sense of legal insecurity in the public procurement system. The adoption and publishing of annual public procurement plans in Serbia is obligatory for all contracting authorities since 2016. However, the implementation of public procurement plan-related provisions is not being proactively supervised by any of the relevant institutions. All procurement notices are published on the Public Procurement Portal (PPP) as well as on the contracting authority's website. However, information management still suffers from lack of digitalization, real time reporting, and the absence of functional e-procurement practice. The public procurement procedure (preparation of tender documentation, evaluation and contracting) is conducted by a Public Procurement Committee (PPC), which is established by each contracting authority. However, the procedure of appointment of the PPC is not prescribed by the PPL. Taking into consideration that the appointment of heads of all contracting authorities is under the strong influence of ruling parties, this suggests that the system – including the PPC - is potentially exposed to undue political influence.

Contracting authorities bear the liability when concluded contracts do not correspond to the technical specifications described in the tender documentation. However, the existing regulation does not stipulate who is in charge of detecting such anomalies, nor does it prescribe sanctions if deviation occurs. In the contracting stage of PP, the respective contracting authority optionally can impose additional requirements (broadly defined) for participation in public procurement procedures, which may lead to abuse in order to undermine fair competition. 2015 changes to the legislation increased the thresholds for low-value procurement to relatively high levels, accompanied by a significant simplification of procedures, increasing the risk of capture and corruption in this area, as well as undermining fair and free competition. In addition, data on petty procurement is not published on the PPP and, for low-value procurement, only aggregate data is published; this raises concerns about the transparency of the system.

Protection of rights in public procurement procedures is conducted by the Republic Commission for the Protection of Rights in Public Procurement Procedures (RCPR), an autonomous and independent body. Having a separate body (and not the PPC) diminishes the corruption risk and potential risk of political influence (considering that as mentioned above, there is a high risk of political influence over the PPC). Regarding sanctions for not complying with the PPL, the RCPR may impose fines, annul a contract, and rules on the misdemeanour procedures. The RCPR's roles is complex and it has a broad scope of authority in deciding on anomalies in PP, and yet there is little evidence of activity in relevant performance statistics, raising questions about the effectiveness and efficiency of control mechanisms in Serbia.

The Public Procurement Office (PPO) is competent to supervise the implementation of public procurement law. The PPO's capacity appears insufficient to meet all of the institution's competences, judging by the low number of implemented monitoring activities compared to the number of contracts and value of public procurement. The PPL is rather vague in its prescriptions regarding the monitoring and execution of public procurement contracts, with oversight capacity further hindered by a lack of properly standardized information management. Conflict of interest is addressed in the regulatory framework, namely, contracting authorities are not allowed to award public procurement contracts to bidders where conflicts of interest exist. However, this provision is subject to exceptions in various prescribed situations, which limits the corruption prevention effect of such measures. The State Audit Institution (SAI) has considerable discretion in terms of the auditees, subject, scope and type of auditing, as well as its initiation and duration. Also, according to responses received, auditors are not specifically trained in public procurement. On the other hand, audit reports are published and publicly available on the SAI website, and reports do address public procurement related anomalies.

Misuse of public procurement procedures is a criminal offence in Serbia. During the period 2014 – 2016, on average 90 public procurement-related

criminal complaints were submitted annually. Approximately 10% of complaints resulted in indictments, out of which roughly one in five ended with conviction. This is a relatively low number of complaints, considering that the average number of public procurement contracts signed annually was around 98,000. Regarding the training and certification of Public procurement officers (PPO), the PPL and Rulebook differ. There is an insufficient number of PP officers in respective contracting authorities, and there is no precise obligation on training and renewal of accreditation for public procurement officers.

Although e-procurement was normatively introduced in January 2013 and enforced in April 2013, it is still not implemented in practice. The implementation of an electronic system for e-procurement seems to be a huge challenge for the Serbian authorities. Thus, there is room for significant improvement in this area. However, the introduction of an electronic system would simplify procurement and tender procedures and make the system more transparent and cost-effective.

Key recommendations

Immediate attention is needed in the areas of pre-bidding, control of the execution of contracts, capacity building and further technological development (i.e. digitalization of the information management and full application of the e-procurement). In the pre-bidding stage, future interventions shall focus on establishing proper standardized operating procedures accompanied by proper application of division of powers principles, dual controls and sanctioning of the wide range of deviations (with emphasis on the protection of privileged data and conflict of interest in area of development of technical specifications) that can appear at this stage of PP process. However, as most of the observed systems in this area demonstrate significant deficiencies, the development of universal principles in this area should be considered by the respective authorities of the EU (i.e. EU Commission). In the area of control of execution of the contract, the development of an independent control mechanism for contract execution should be considered. This should be accompanied by more standardized and detailed real-time reporting on executed contracts (in order to improve detection capability) and development of proper sanctioning mechanisms for misconduct. In designing future solutions to control the execution of the contracts, Serbia may consider concepts, approaches and solutions applied in the PP system of Montenegro. In future, building the capacities of the system to conduct public procurement, and proper controls, obligatory periodical training should be imposed. All contracting authorities should have certified officer, and procurement value thresholds should be in line with the PP legislation (i.e. only petty procurement, or low value procurement should be exempt from the obligation to be conducted by certified PP Officer).

Full digitalization and the introduction of functional e-procurement system should be among the priorities for further development as deficiencies in this area affect the performance of all other actors, including the respective PP officers in contracting authorities and performance of control mechanisms.

Finally, the limited access to justice, and weak protection of the overall PP system shall be addressed. We suggest that the system should be restructured in this area with significant changes in the jurisdiction and jurisprudence of the respective RCPR. While we recommend concepts that are more in line with the PP system in Montenegro, there are other solutions to this issue as well (i.e. different division of powers within the RCPR). The overall deficiencies of the control mechanisms and access to justice need to be among priorities in future development of the Serbian PP system.

Category 1

Public Procurement Regulatory Ecosystem

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

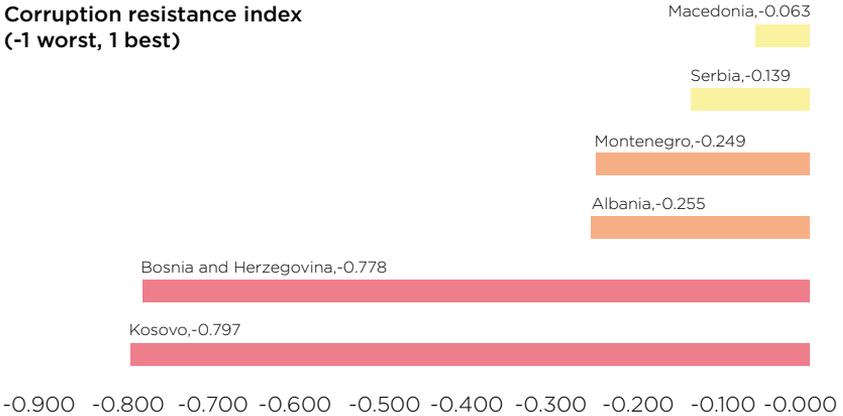
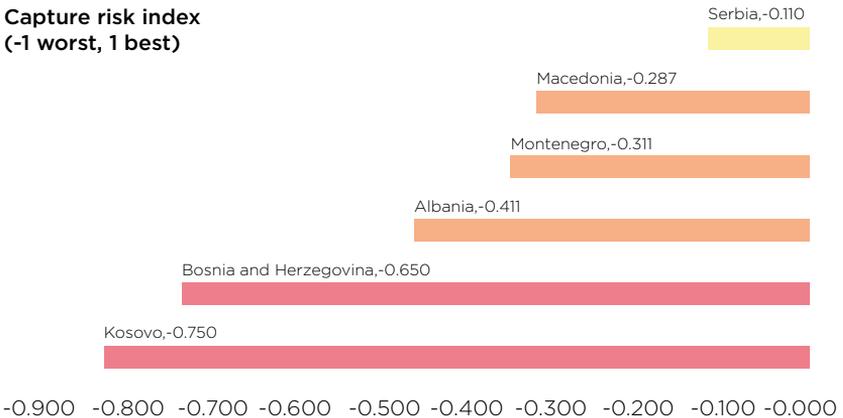


TABLE S.1.2: Capture Risk Index - Public Procurement Regulatory Ecosystem



Interpretation of indices Serbia Category 1: Public Procurement Regulatory Ecosystem

The public procurement regulatory package in Serbia is one of the most developed eco-systems among the countries observed. The Corruption resistance index (table S.1.1 above) indicates a moderate response to corruption, while the Capture risk index suggests a moderate risk of system capture (table S.1.2 above). The Public Procurement Law (hereinafter: PPL) and adopted bylaws comprehensively cover all of the relevant public procurement (PP) actors and their respective procedures. The latest changes in legislation take appropriate steps in terms of centralization, standardization and implementation oversight (see Findings in detail below), and has a broad scope in terms of entities that are subject to the legislation. However, over-reliance on secondary legislation raises some questions as to the effectiveness of the introduced measures, which may limit the ability of the system to enforce the law rigidly in risk areas. In future reforms to legislation, PP actors in Serbia should pay specific attention to the enforcement of legislation, operationalization of the envisaged corruption barriers and the introduction of more efficient control mechanisms, as well as proper sanctioning of the broad scope of deviations that occur in implementation (as observed in other sections of this assessment).

Findings in detail

The National Assembly of the Republic of Serbia adopted the first Public Procurement Law in 2002. Since then, several amendments have strengthened the legislative and institutional framework. The most radical change was introduced in 2013, when the Government centralized public procurement with the intention of reducing the level of corruption, increasing competition and boosting efficiency. The latest changes to the PPL were introduced in 2015. The main novelty was the mandatory publication of public procurement plans for all parties, in order to increase transparency and impose preventive mechanisms against corruption. Today, the public procurement system in Serbia is regulated by the PPL¹⁴ and a total of 17 bylaws. The legislative framework is broadly in line with the EU *acquis*, however, overreliance on secondary legislation could result in a sense of legal insecurity in the public procurement system. The PPL covers all relevant entities – ministries, local authorities, regulatory institutions, and state-owned enterprises (Article 2). During public discussion of the draft PPL in 2015, concerns were expressed about the legislators' intention to omit some important state-owned companies from the scope of the PPL. However, ultimately the legislature amended the draft and broadened the definition of contracting authority to include all relevant entities. In 2015, the Ministry of Finance, the Public Procurement Office and the Republic Commission for the Protection of Rights in Public Procurement Procedures adopted all bylaws envisaged in the PPL¹⁵, and thus the legislative framework has been completed and aligned with the EU Directive on Public Procurement. All adopted bylaws are publicly available on the website of the Public Procurement Office.¹⁶ In late August 2017, Serbian Prime Minister announced that the Government would again propose amendments to the PPL.¹⁷ According to the Action plan for implementation of the Strategy for Development of Public Procurement in the Republic of Serbia for 2018, the new PPL was to be introduced in Q2 2018.¹⁸

14 Public Procurement Law. Official Gazette of RS No. 124/2012, 14/2015, and 68/2015

15 See: <http://www.ujn.gov.rs/ci/propisi/podzakoni>

16 Public Procurement Office website: <http://www.ujn.gov.rs/ci/propisi/podzakoni>

17 Daily Newspaper Blic, "Brnabi : Moramo menjati Zakon o javnim nabavkama", 31 August 2017, <http://www.blic.rs/vesti/ekonomija/brnabic-moramo-menjati-zakon-o-ja-vnim-nabavkama/3fybr5d>, (last accessed 10 October 2017)

18 Action Plan for Implementation of the Public Procurement Development Strategy in the Republic of Serbia for 2018, available here: <http://www.ujn.gov.rs/ci/strategija/akcioni-plan2018.html>.

Public Procurement Planning

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

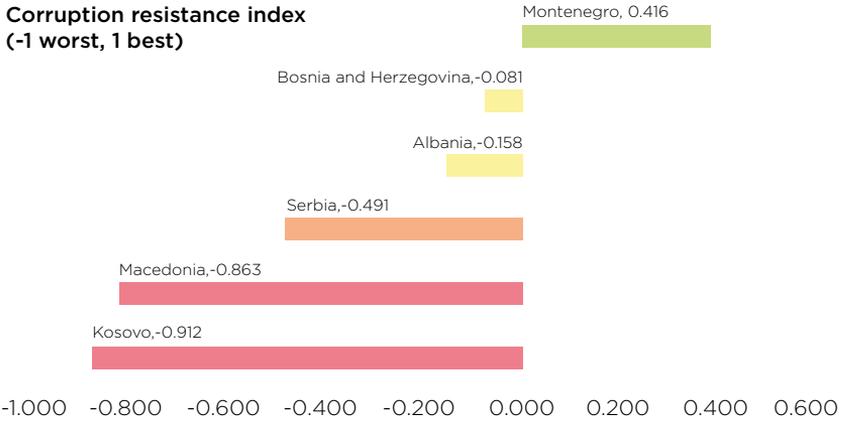
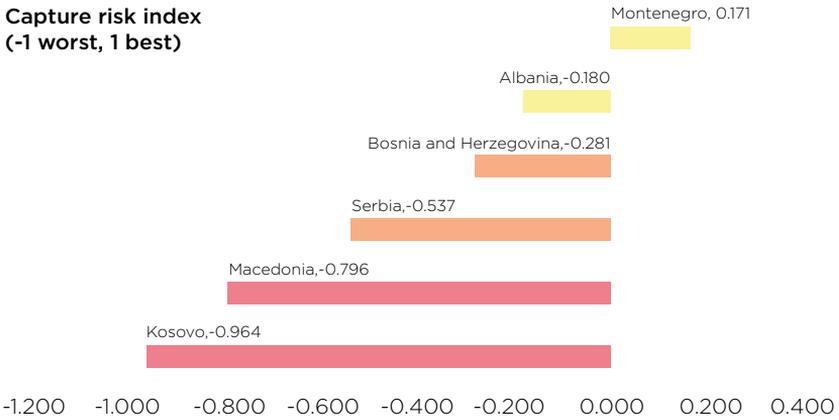


TABLE S.2.2: Capture Risk Index - Public Procurement Planning



Interpretation of indices Serbia Category 2: Public Procurement Planning

In the area of procurement planning, Serbia scores moderately in comparison to the other observed countries. The PP Corruption resistance index in Category 2 (table S.2.1) suggests an incidental response to corruption accompanied by high capture risk in this area. Proper regulatory measures have been adopted in standardization of procurement plans, centralized publishing since 2016 (see Findings in detail below), and sanctioning of breaches of the PPL related to the planning provisions. However, weak sanctions, and lack of evidence that any sanctions have been applied to respective contracting authorities for violation of these provisions suggests that misconduct and discretionary influence over this stage of PP process is not being checked, which limits the efficiency and effectiveness of the PP system. The immediate advancement of the planning process in PP in Serbia may come from adopting solutions and practice applied in Montenegro, supported by additional advancements in digitalization of the PP system and introduction of preliminary digital risk analysis. Standardizing an obligatory interconnection between financial plans (i.e. budgets and budget reporting) and PP plans would also improve accountability.

Findings in detail

Contracting authorities are obliged to adopt annual public procurement plans and since January 1, 2016 they are also obliged to publish it through a centralized system on the Public Procurement Portal (PPP) within 10 days of adoption (Article 51). The same rule applies to modifications of procurement plans.¹⁹ The format of public procurement plans and the method of publishing on the PPP is prescribed by the Public Procurement Office (PPO).

In general, a public procurement procedure may not be initiated if it has not been specified in the procurement plan (Article 52). Only in exceptional cases, where a public procurement contract could not be planned beforehand or due to reasons of urgency, a contracting authority may initiate a public procurement procedure even if this procurement was not foreseen in the annual public procurement plan.

If a contracting authority violates the PP plan-related provisions, it may be fined by \approx EUR 1,700-12,700²⁰ while the person responsible within the contracting authority could be fined by \approx EUR 670-1,260²¹ for an offense (Article 169). However, the application of public procurement plan-related provisions is not being proactively supervised by any of relevant institutions.²² The PPO was in the process of assessing these provisions in 2016 at the time of data collection for the purposes of this report but did not possess information about the number and value of fines imposed for violating public procurement plan-related provisions.²³

¹⁹ Modifications to public procurement plan sare defined in PPL as „change concerning an increase of the estimated procurement value for more than 10%, change of the subject of procurement, and planning of a new public procurement“

²⁰ RSD 200.000 up to 1.500.000

²¹ RSD 80.000 up to 150.000

²² Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

²³ Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Category 3

Exceptions from procurement legislation

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

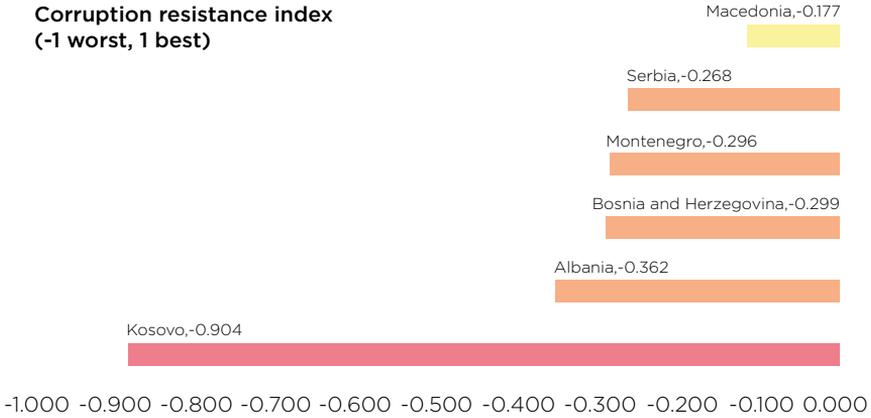
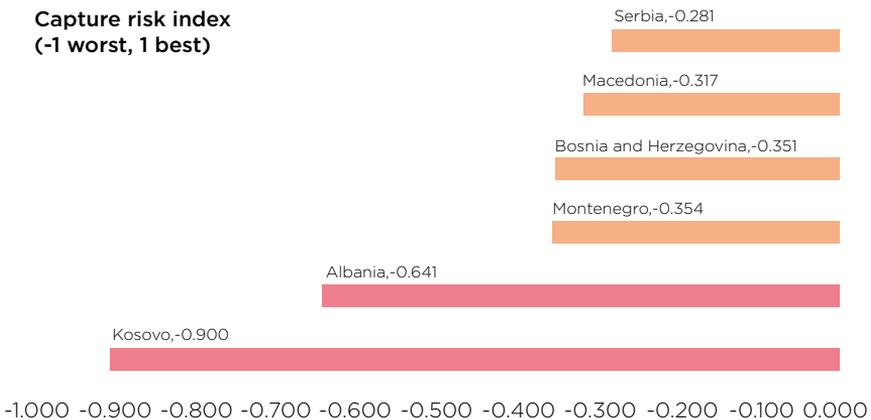


TABLE S.3.2: Capture Risk Index - Exceptions from procurement legislation



Interpretation of indices Serbia Category 3: Exceptions from procurement legislation

In the area of exemptions from PP legislation, the Serbian PP system scores relatively high in comparison to the other countries. However, the PP corruption resistance index (table S.3.1 above) suggests an incidental response to corruption, while the capture risk index (see table S.3.2 above) indicates high capture risk. Thresholds for exemptions due to petty procurement rules are broadly appropriate, but several other issues require attention. The broad and vague descriptions of the exemptions and lack of proper guidelines on the application and conduct of such procedures make the legislative framework weak in this area, while our observations suggest that misinterpretation in practice is not uncommon (see Findings in detail below), representing a significant risk in this area. These deficiencies accompanied by the lack of proper evidence on strict deterrence of abuse of petty procurement rules, suggest that more attention to developments in this area is needed in future reforms. While respective PP authorities in Serbia may look to the concepts, approaches and solutions in PP system in Montenegro for immediate responses, in the long run, this aspect of the PP System will need more precise regulation, advanced digitalization, stronger control mechanisms, and proper sanctioning of misconduct where breaches occur.

Findings in detail

Procurements exempt from the PPL are listed in Articles 7 and 7a of the PPL. Procurements in the water management, energy, transport and postal services exempt from PPL are prescribed in Article 122. Procurements in the defence and security sector exempt from PPL are specified in Article 128. Overall, there is a broad and extensive list of exemptions, and a lack of precision in defining them, leading to significant loopholes in implementation. Moreover, evidence (reports) suggest that practice contradicts the PPL. For example, the Ministry of Interior of the Republic of Serbia procured 710 vehicles without a procurement procedure justifying it with Article 128. Prime Minister Brnabić stated that the information about the procurement of those vehicles was secret because of the specifications of those vehicles.²⁴

Contracting authorities are not obliged to apply the provisions of the PPL for procurement of goods, services and work with an estimated value not exceeding \approx EUR 4.145²⁵ (Article 39 paragraph 2). The exemption from the PPL further applies where the estimated value of the same-kind procurement at the annual level does not exceed \approx EUR 4.145.²⁶ Same-kind procurement is procurement having the same or similar purpose, which may be executed by the same bidders in terms of the nature of economic activities they perform (Article 64).

²⁴ Insajder (2017) Nabavka 710 „škoda“ i dalje tajna: Funkcioner SNS-a u estvovao u nabavci? November 29. Available here: <https://insajder.net/sr/sajt/tema/8546/>.

²⁵ RSD 500.000

²⁶ RSD 500.000

Category 4

Information management in Public Procurement system

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

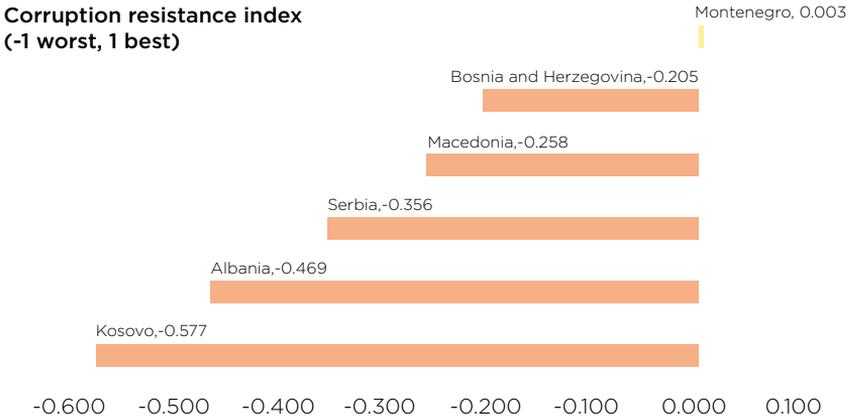
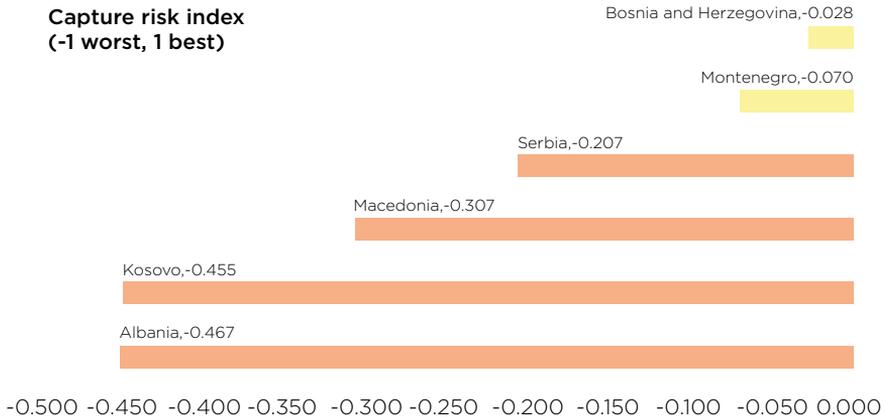


TABLE S.4.2: Capture Risk Index – Information management in PP system



Interpretation of indices Serbia

Category 4: Information management in PP system

In the area of information management, Serbia scores moderately in comparison to other countries. Indices S.4.1 and S.4.2 (above) show an incidental response to corruption, followed by high capture risk in this category. Progress has been observed in the area of standardization of all relevant information, centralization of information, and transparency of the collected information including information on low value procurement and the register of bidders. While the PP regulatory framework suggests that strong improvements have been made, practices in PP information management differ. The Public Procurement Office (PPO) acts as an intermediary in publishing the information in the PP portal; this can be considered as early development in digitalization and real time monitoring of the PP process (see Findings in detail below). This practice currently limits prompt monitoring and reaction by the internal and external control mechanisms, as information on many aspects of the public procurement process is not publicly available (nor internally for relevant PP accountability mechanisms), inhibiting a timely response – a topic which should be addressed in future development of the system. Full digitalization and primary source reporting would help in this area, as well as establishment of preliminary digital risk assessment tools to assist the respective control mechanisms.

Findings in detail

All procurement notices are published on the Public Procurement Portal²⁷ (PPP) as well as on the contracting authority's website (Article 57). The PPP is managed by the PPO. There are 14 procurement notices defined by the PPL, including decision on modifying public procurement contract and notice on a filed request for the protection of rights, which contribute to the transparency of procurement procedures. The system has recognised the importance of transparent reporting on low-value public procurements and requires them to be published on the PPP. Procurement notices with an estimated value above the low-value public procurements should also be published on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases. However, information management is poorly organised. While reading the PPL, one would assume that the system is centralised, digitalised and that contracting authorities publish notices on awarded public procurement contract directly on the PPP and in real time, i.e. within the deadlines prescribed by PPL. The reality is somewhat different. According to a written response from the PPO retrieved on July 20, 2017, it is the PPO that is publishing notices on awarded public procurement contracts on the PPP. Contracting authorities submit their procurement notices to the PPO in form of quarterly reports. Upon receiving those reports, the PPO publishes them on PPP.²⁸ Public procurement notices on the Portal are searchable vertically by several filters: contracting authority, type of procurement and procedure, type of notice, and CPV. Separate browsers allow one to search notices on concluded public procurement contracts of high and low value, reasons for cancelation of the procedure, outcomes of conducted public procurements and the number and value of procurement procedures exempted from PPL conducted by contracting authority. Nevertheless, a need for improvement of the system is observed in the context of cross checks and big data analysis, which could provide a more systematic insight into the public procurement system. If a contracting authority fails to publish any of the public procurement notices prescribed by PPL, including tender documents and amendments to tender documents, it shall be fined by \approx EUR 850-8,470²⁹ for an offence while the responsible person within the contracting authority could be fined \approx EUR 250-670³⁰ for an offence (Article 169).

27 See: <http://portal.ujn.gov.rs/Default.aspx>.

28 Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

29 RSD 100,000 up to 1,000,000

30 RSD 30,000 up to 80,000

Pre-bidding stage

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

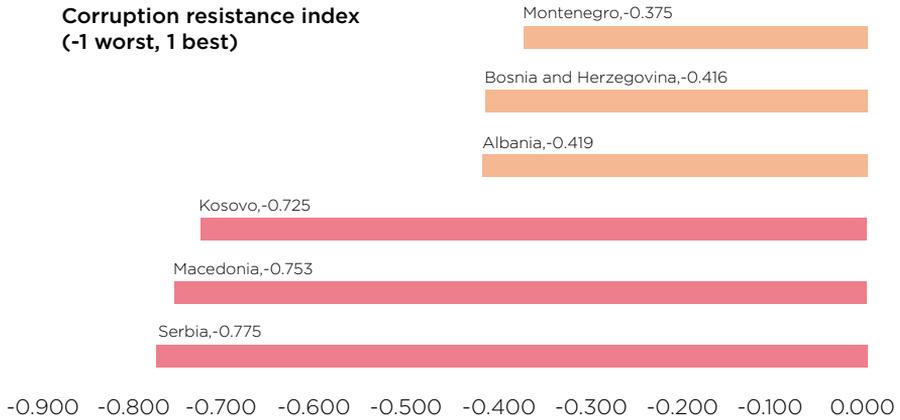
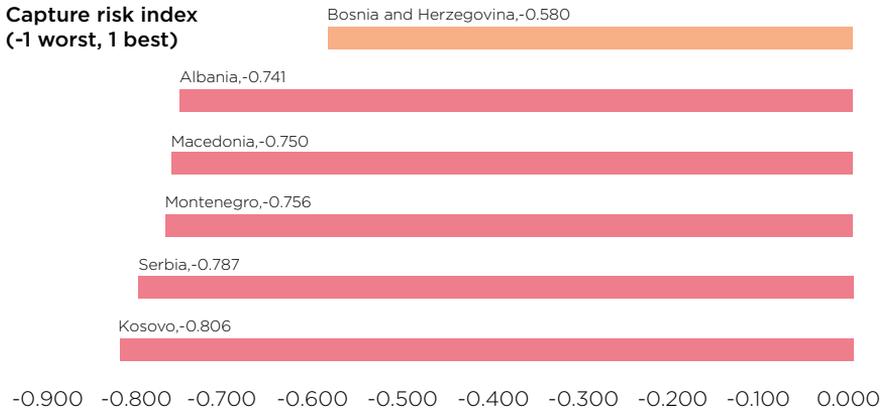


TABLE S.5.2: Capture Risk Index – Pre-bidding stage



Interpretation of indices Serbia

Category 5: Pre-bidding stage

The pre-bidding stage of PP in Serbia follows the negative trend in all observed countries. While the literature in general confirms that pre-bidding is one of the highest risk areas in Public Procurement, evaluators observed significant lack of attention to this issue by legislators and practitioners. Indices in category 5 of PP assessment in Serbia suggest an elementary response to corruption (see table S.5.1 above) accompanied with a captured system (see S.5.2 above). While the system at this stage generally addresses some of the corruption risks (i.e. addressing conflict of interest, confidentiality of the information in the pre-bidding stage, introduction of the civil supervisor in contracts of significant value, and sanctioning of breaches of the PPL in this area, see Findings in detail below), the envisaged response does not appear to be effective or efficient in preventing, detecting and sanctioning the potential corruptive behaviour.

Procedures for the appointment of members of the Public Procurement Commission (PPC) are not set out, and appointments are thus exposed to direct political influence without proper accountability measures (see Findings in detail below). Standard operating procedures for the receipt and storage of the bids (and other information in the pre-bidding stage) is lacking, which exposes the process to individual solutions and discretionary decision-making by the respective political appointees. While in general, conflict of interest is addressed, the lack of dual controls in this area, the absence of pro-active investigations and lack of proper sanctioning in conflict of interest related matters (i.e. procurement may continue whether or not conflict of interest occurred), this raises the risk of significant undue influence over procurement procedures in the pre-bidding stage. In addition, even private influence over procurement procedures (i.e. participation by entities with knowledge of insider information) is symbolically fined up to approx. EUR 1,700, with no foreseen further consequences. PP officers are obliged to govern procurement only in procedures where the estimated value is three times higher than the amount of low-value procurement. Even the introduction of the civil supervisor (only for contracts of the value of EUR 8.47 million) is controlled by the PPO and indirectly under political influence, lacking detailed rules on appointment and requirements for certain qualifications. As all of the observed countries have weak responses in this area, the proper solutions may have to come through improvement of the EU regulation, and/or within the technical assistance framework in pre-accession. These interventions should focus on establishment of proper standardized operating procedures accompanied by proper application of division of powers principles, 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 the PP process.

Findings in detail

The public procurement procedure, including preparation of tender documentation, evaluation and contracting, is conducted by the Public Procurement Committee (PPC) established by each contracting authority (Article 54). The PPC should have at least three members, one of whom is the public procurement officer or person with a law faculty degree. In procedures with estimated value three times higher than the amount of low-value procurement, the president of the PPC should be a public procurement officer. Members of the PPC should be persons with adequate professional education in the area of public procurement. If a contracting authority does not have an employee with adequate education, it may appoint a non-employee person as a member of the PPC. In addition, public procurement procedures with estimated value exceeding \approx EUR 8,470,000³¹ should be monitored by a civil supervisor (CS) appointed by the PPO (Article 28). The CS has a permanent insight into procedure and she/ he files a report on conducted procedure to the National Assembly in charge of finances (or to the Assembly of autonomous province or local self-government) and to the PPO within 20 days from the day of concluding the contract or of decision on cancelling procurement.

The procedure of appointment of PPC members is not prescribed by the PPL. The contracting authority internally decides on that matter. Taking into account the heads of all contracting authorities (state-owned enterprises and public institutions) are appointed directly by the Government or by the National Assembly – meaning, their appointment is under strong influence of the ruling parties, it is fair to say there is a high risk of political influence over the PPC and public procurement procedure in general.

It is prohibited to provide information on received bids, and contracting authorities are obliged to keep the bids so as to protect them against possession by unauthorized persons (Article 102). The PPC is responsible for observing the legality of the public procurement procedure, including this one. However, standard operating procedures to ensure the application of this provision are not specified and contracting authorities regulate this internally which opens the door for a variety of anomalies to occur.

With the latest amendments to the PPL in 2015, several conflicts of interest-related novelties were introduced. Members of the PPC, upon appointment, sign a statement confirming that they are not involved in any conflict of interest in a given public procurement. Where they deem they may be in a conflict of interest, or where during the course of the public procurement procedure they learn that they might become involved in a conflict of interest, PPC members should immediately notify the appointing body which shall take necessary measures in order to prevent adverse consequences in the further course of public procurement procedure. However, it is not clear what those “necessary measures” include and failure to implement

31

RSD 1 billion

prescribed measures by both the PPC members and contracting authority is not prescribed as an offence.

Secondly, the provision on protection of the integrity of the public procurement procedure was introduced (Article 23). It prescribes that a person who participated in public procurement planning or in preparing tender documentation, and person related to him or her, may not act as a bidder or a bidder's subcontractor, nor cooperate with bidders or subcontractors in preparation of their bids. Otherwise, the contracting authority is obliged to refuse the bid and to immediately notify the competent state bodies thereon. Further, it prescribes that where bidders have, directly or indirectly, given, offered or hinted at some benefit, or tried to find out any confidential information or to influence in any way the contracting authority's actions during public procurement procedure, the contracting authority shall urgently notify the competent state bodies. However, the implementation of these measures is another area where appropriate data is lacking.

If a contracting authority fails to reject a bid offered by persons involved in the planning of public procurement, tender documents or its parts, or persons who have collaborated with a bidder, it shall be fined \approx EUR 1,700-12,700³² while a responsible person within the contracting authority could be fined \approx EUR 670-1,260³³ for an offense (Article 169).

³² RSD 200.000 up to 1.500.000

³³ RSD 80.000 up to 150.000

Category 6

Public procurement Contracting

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

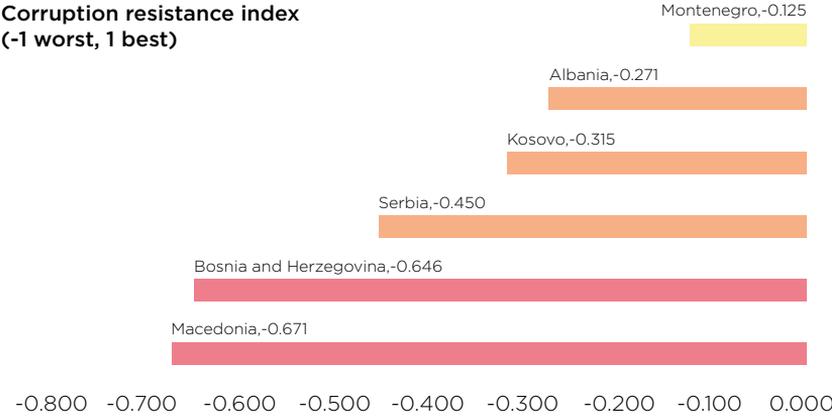
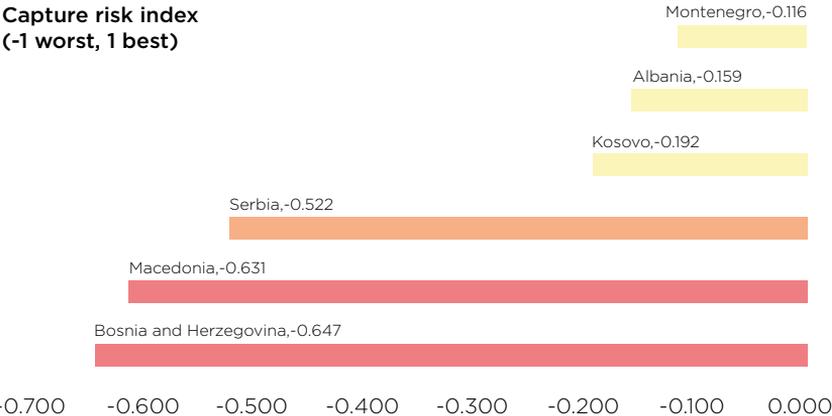


TABLE S.6.2: Capture Risk Index – Public Procurement Contracting



Interpretation of indices Serbia Category 6: Public procurement Contracting

In the area of PP contracting, Serbia is among moderate performers in comparison to the other countries. The Corruption resistance index (see the table S.6.1 above) shows an incidental level of response, while the Capture risk index (see table S.6.2 above) indicates high capture risk. In this category, similar to the pre-bidding stage, the regulatory framework foresees a variety of measures to assure the integrity of the PP process and mitigate corruption risks (i.e. exclusion criteria including evidence of previous conduct, registration of bidders in the respective registry, and financial capacity requirements). However, the risk of exposure of the PPC to undue political influence through selection and appointment procedures remains high, as observed in category 5 above. The absence of dual controls (i.e. lack of direct responsibility for inspection of whether the signed contract fully meets the technical specifications criteria in the tender) exacerbate the risk.

The introduction of a legal possibility to use additional requirements for participation in the public procurement procedure, related to “social and environmental issues” (Article 76, paragraph 4, see Findings in detail), create a significant risk of discretionary selection and preferential treatment in PP contracting and should be addressed in future reform of the system. The lack of a proper response to conflict of interest related issues, issues related to the security of privileged information as well as deficiencies in governance of the PP process by relevant PP officers (as reported in previous category 5 – prescribed thresholds for participation of certified officer) significantly undermine the effort shown by respective PP authorities in this category.

While the PP system may moderately benefit from applying some of the solutions and approaches used in Montenegro (i.e. obligation for all PP procurement to be conducted by certified PP officer) or in Albania (in the area of exclusion criteria), the PP authorities in Serbia need to pay further attention to development of integrity measures in contracting, establishment of dual controls in this area (including pro-active inspections) accompanied by full digitalization of the information management and further development of precise guidelines for usage of exclusion criteria.

Findings in detail

As elaborated in the previous chapter, the entire public procurement procedure, including preparation of tender documentation, evaluation and contracting phase is conducted by the Public Procurement Committee (PPC). Risks of undue political influence over the PPC were observed, as a result of the appointment procedure, and these spill over to the contracting phase of procurement.

The contracting authority bears the liability when concluded contracts do not correspond to the technical specifications described in the tender documentation.³⁴ However, it is not clear who is in charge of detecting such anomalies nor what the prescribed sanctions are if deviation occurs. Finally, there is no data on any kind of performance of the institutions in this area.

The PPL prescribes mandatory and additional requirements for participation in public procurement procedures (Articles 75 and 76). Mandatory requirements include registration with the competent body, proof that the authorized representative has not been convicted of any criminal act as a member of an organized criminal group, proof that it is not prohibited from performing any economic activity, that it has paid due taxes, and that it has a valid licence to carry out economic activities. Additional requirements set by contracting authorities usually concern financial, operational, technical, and personnel capacities. Contracting authorities may also ask for proof that a bidder is not undergoing liquidation or a bankruptcy procedure, or a preliminary liquidation procedure. However, contracting authorities may also impose “additional requirements for participation in public procurement procedure, especially if they relate to social and environmental issues” (Article 76, paragraph 4); this is very broadly defined and as such may be subject to abuse in order to undermine fair competition.

If the bidder does not meet the mandatory requirements set by the PPL, it will be excluded from the public procurement procedure. In addition, a contracting authority may reject a bid if it possesses evidence that, over the previous three years prior to publishing the tender notice, the bidder has acted contrary to Articles 23 (Protection of integrity of the procedure) and 25 (Prohibition of working engagement with supplier) of the PPL, made a breach of competition, supplied false data in a bid, unjustifiably refused to sign a public procurement contract after being awarded one, or refused to supply evidence and collateral to which it had previously committed in a bid. Finally, a contracting authority may reject a bid where it possesses evidence that the bidder did not fulfil its obligations under previously awarded public procurement contracts that related to the same subject of procurement, over the three years prior to publishing the tender notice (Article 82).

³⁴ Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Petty public procurement

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

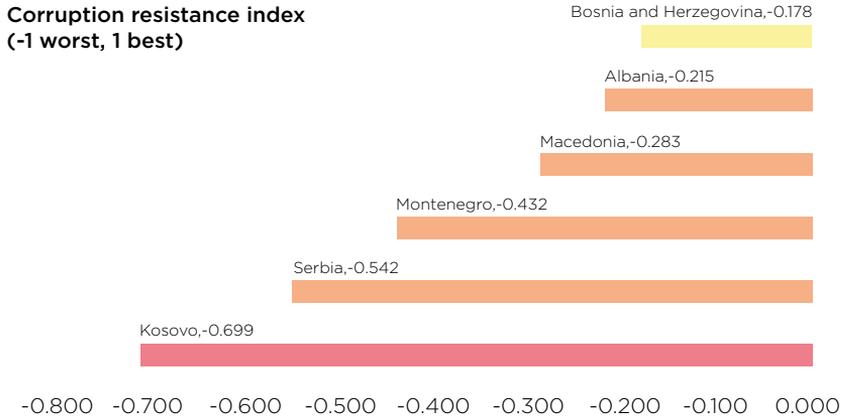
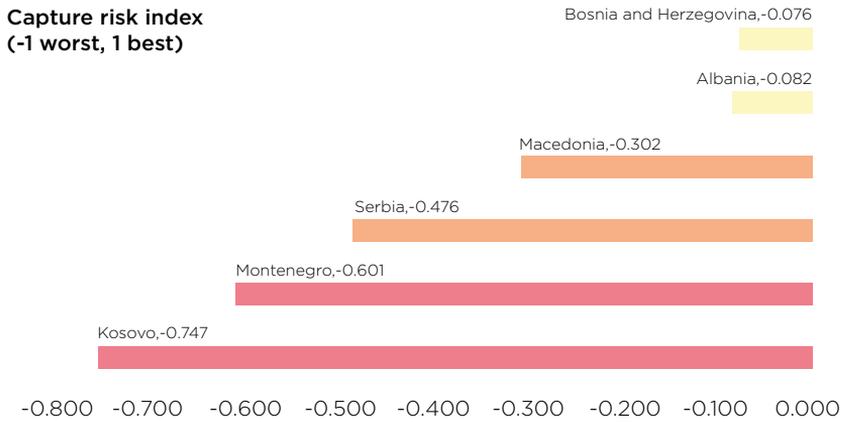


TABLE S.7.2: Capture Risk Index – Petty public procurement



Interpretation of indices Serbia

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 incidental response to corruption (table S.7.1 above), while the Capture risk index is in the area of high capture risk (table S.7.2 above). The system is moving in the right direction by limiting petty procurement to approximately EUR 4,145 annually for the same kind procurement. However, the additional simplified procedure (requiring only three offers) for sectoral contracting – applicable at thresholds of EUR 42,300 and EUR 84,000 - does not reflect economic reality in Serbia and represents a significant risk of corruption and capture (see Findings in detail below). Weak system control mechanisms, and the fact that only aggregate data is published on low value procurement limits the ability of external control mechanisms (i.e. media and civil society) to detect or react to abuse. The 37.9% increase in the annual total value of low value procurement in the period 2014 - 2016, see Findings in detail below) also indicates that more procurement may be being channeled into this category. Moderate improvements of the system can 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). These measures should be accompanied by full digitalization of the system and real time reporting as observed earlier in category 4. Dual controls, and pro-active inspections of low-value procurement should accompany all other measures as well, together with frequent public reporting.

Findings in detail

With the latest amendments to the PPL in 2015, thresholds for petty procurement (as well as for low-value procurement) have increased. Compared to the previous version of the PPL in 2013, thresholds for petty procurement increased from \approx EUR 3,333 to \approx EUR 4,145, and for low-value procurement from \approx EUR 25,000 to \approx EUR 42,300. The increase in these thresholds may reduce the accountability and integrity established by the previous PPL.

Petty procurement, i.e. procurement where the contracting authority is not obliged to apply the provisions of the PPL, applies to procurement of goods, services and works with an estimated value not exceeding \approx EUR 4,145³⁵ (Article 39 paragraph 2) and to same-kind procurement which does not exceed \approx EUR 4,145 annually.³⁶

For procurement with an estimated value higher than \approx EUR 4,145³⁷ but lower than \approx EUR 42,300³⁸, and where the total estimated values of same-kind procurement at the annual level are higher than \approx EUR 4,145³⁹, and lower than \approx EUR 42,300⁴⁰, the contracting authority is allowed to conduct a Low-Value Public Procurement Procedure. This is a more simplified procedure; the contracting authority must invite at least three persons, who are, according to its knowledge, capable of delivering the procurement, to submit their bids, and at the same time publish the invitation to bid on the Public Procurement Portal and on its website (Article 39 paragraph 5). In the sectors of water management, energy, transport, and postal services, low-value public procurement refers to procurement with estimated value not exceeding \approx EUR 84,000⁴¹ (Article 124a).

Relatively high thresholds at which simplified procedures can be used represent a risk of capture and occurrence of corruption in public procurement, as well as an opportunity for distortion of fair and free competition. Measures to mitigate such risks need to be put in place.

Data on petty procurement is not being published on the PPP and for the low-value procurement only aggregate data is published which raises some concerns about the transparency of the system, and additional attention should be paid to this in future assessments. However, even the aggregate data reveal that in 2016 there has been a significant increase (37.9%) in the low-value procurement compared to 2014.⁴²

35 RSD 500.000

36 RSD 5.000

37 RSD 500.000

38 RSD 5.000.000

39 RSD 500.000

40 RSD 5.000.000

41 RSD 10.000.000

42 Author's calculations based on data provided by: Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Category 8

Public Procurement Remedy mechanisms

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

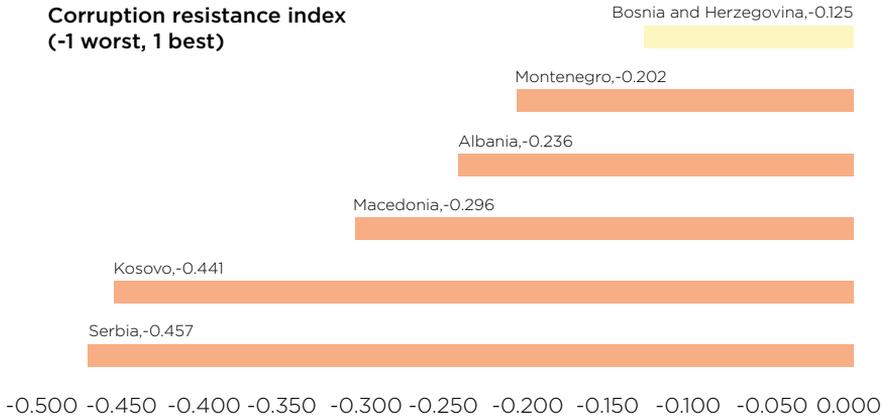
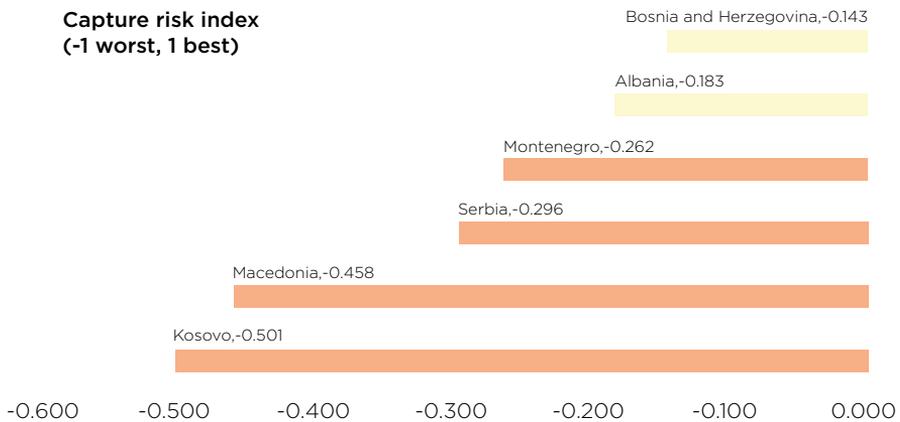


TABLE S.8.2: Capture Risk Index – Public Procurement Remedy mechanisms



Interpretation of indices Serbia Category 8: Public Procurement Remedy mechanisms

The remedy mechanism in Serbia scores rather low or moderate in comparison to other covered countries, despite some of the advanced solutions applied. The Corruption resistance index (see table S.8.1 above) indicates an incidental response to corruption, while the Capture risk index value (table S.8.2 above) ranks the Republic Commission for the Protection of Rights in Public Procurement Procedures (RCPR) in the area of high capture risk. The interpretation of such values in this category for the PP system in Serbia rests on combined assessments of categories 8 (remedy mechanisms) and 9 (control over the implementation of the PP Legislation) and comparison to the other observed countries and some of the standards in this area due to specific jurisdiction and jurisprudence of the RCPR. The system in general has taken numerous measures to address potential corruption risks in this area. There are proper qualification criteria for members of the RCPR (a para judicial body), appointment of key people rests on parliamentary decisions, and the mandate of the head of the agency is not aligned to election cycles (5 years). In addition to the general anti conflict of interest instruments, the legislation stipulates the possibility of additional protection for participants in the procedures before the Commission by allowing them to file a demand for exclusion of a member of the RCPR if they have a reasonable doubt about that individual's impartiality (see Findings in detail below). There is sufficient human capacity within the institution (approx. 64 employees) and there are proper guidelines on use of external experts in the work of the Commission.

However, there are several issues of concern that need to be addressed in this area. In addition to decisions in the area of legal protection (protection of interests and rights of bidders), the RCPR decides within the limits of filed requests for the protection of rights by authorized parties (i.e. Public Procurement Office – PPO) and conducts ex officio rulings on whether legal requirements for the application of certain public procurement procedure were met, whether legal provisions were violated (leading to annulment of public procurement contract), whether the contract is considered null and void, and whether there are reasons due to which this public procurement procedure may not be finalized in a lawful manner (see Findings in detail in category 9 Control over the implementation of the PPL). This practice, although it aims to strengthen protection, is not considered to be efficient and effective in many systems, and even in cases where it existed (i.e. PP system in Croatia for some time) experience suggest that it was not an adequate solution. Deciding on a wide scope of anomalies in Public Procurement procedures should not be mixed with providing legal protection for bidders and these powers should not rest in the same institution. In such cases, as only authorized parties may submit complaints, the overall oversight of the implementation of the PPL is limited, and the investigative

powers and capacity of the Commission do not respond to the reality of corruption in the >5,000 contracting authorities letting >90,000 contracts. While administrative fees are relatively high for low-value procurement (approx. EUR 500 in comparison to for example EUR 250 in Bosnia and Herzegovina), the 0.1% fee for high-value contracts appears appropriate. The limits of the approach and risks deriving from it are further emphasized by the number of cases filed and decided by the commission. As the statistics show (see table S.C. below), the number of cases observed by the Commission significantly decreased over the years, and is surprisingly low in comparison to other observed systems.

Table S.C.: Ratio of filed complaints (remedy mechanisms) 2016 per PP system

Observed PP systems	Number of complaints 2016	Value of PP 2016 in Billion EUR
Serbia	1.388	2.72
Albania	1.393	0,79
Bosnia and Herzegovina	2.684	1.22
FYR of Macedonia	623	1.04
Montenegro	1.310	0,45
Kosovo	N/A	N/A

As table S.C. above shows, the ratio of complaints filed before the RCPR (as a share of total contracts) is unusually low in comparison to other countries, especially in the context of a significantly higher total value of public procurement contracts in 2016. The fact that the RCPR also decides on filed requests for the protection of rights by the PPO (see the category 9 below) makes this information even more significant. While a low number of filed complaints in a PP system is usually linked to distrust in the actors, barriers to participation, and general dissatisfaction, in the case of Serbia the main issue is limits in the established institutional setting to adequately respond to potential breaches, and a tendency to deal with case to case issues (specific PP procedure) rather than system deficiencies. In addition, as 1,388 filed complaints represent only a 1.5% sample of the approximately 90,000 contracts signed annually, the risk that large-scale anomalies are going undetected remains high, with significant risk of system capture.

While some of the issues could be addressed through applying the solutions used in Montenegro (i.e. introduction of a PP inspectorate and transfer of jurisdiction for breaches other than those stipulated in the complaint to other relevant institutions) or by applying the model developed in Bosnia and Herzegovina (i.e. establishment of two-level body based on value thresholds) in further development of the system, the capacity of the Commission shall follow the reality of the PP system in Serbia (strengthening the work of the RCPR shall rest on maintaining its current capacities with a

focus on increasing access to remedy mechanisms for economic operators). Another potential solution is to divide the RCPR into different departments that cover different areas of PP infringements. However, this solution would also require a more supportive infrastructure in the inspection/oversight bodies that supply cases to the RCPR.

Findings in detail

The RCPR is an autonomous and independent body competent for protection of rights in public procurement procedures and is accountable for its work to the National Assembly. It should be mentioned that RCPR is, among other competences prescribed in Article 139, competent for imposing fines on contracting authorities and on the responsible person within contracting authority. Requests for the protection of rights may be submitted by an interested party (bidder, applicant, candidate), who has sustained or may sustain damage due to a contracting authority's actions made in contravention of the provisions of the PPL. In addition, requests for protection of rights may also be submitted by the Public Procurement Office, the State Audit Institution, public attorneys and civil supervisors (Article 148).

Time limits for receiving a request for protection of rights are sufficient and are set in Article 149: requests shall be considered timely if received by a contracting authority at the latest seven days before the expiry of the time limit for submission of bids, and in low-value public procurement procedure and in qualification procedure, at the latest three days before the expiry of the time limit for the submission of bids. After a decision is made on awarding a contract, concluding a framework agreement, recognizing qualification, or cancelling a procedure, the time limit for filing a request for the protection of rights is ten days from the day of posting the decision on the PPP, and five days in the case of low-value public procurement. Fees due upon submitting requests for protection of rights are relatively high. For example, the claimant shall pay a fee in the amount of \approx EUR 500⁴³ in low-value public procurement procedures (procurement with estimated value higher than \approx EUR 4,145⁴⁴ and lower than \approx EUR 42,300⁴⁵). When submitting a request for protection of rights in the procurement with estimated value above \approx EUR 1,016,000⁴⁶ and after opening of bids, the claimant should pay 0.1% of the estimated value of public procurement (Article 156).

43	RSD 60.000
44	RSD 500.000
45	RSD 5.000.000
46	RSD 120.000.000

The president and eight members of the RCPR are appointed by National Assembly upon proposal by the competent Committee⁴⁷ after conducting a public competition. Conditions for the appointment of both the President and members of the RCPR are prescribed by the PPL (Article 141). A person appointed as President must meet the requirements for the appointment of judge in basic court (except the condition concerning the Judiciary Academy), and must have at least five years of work experience in the area of public procurement.

A person appointed as a Member must meet requirements for the appointment of a judge in basic court (except the condition concerning the Judiciary Academy) and must have at least three years of work experience in the area of public procurement. At least five RCPR members must fulfil these conditions, while the remaining three members could be appointed based on the additional conditions. Those include having higher education in the areas of legal, economic or technical sciences, having at least five years of work experience in public procurement, and acquiring certification as a public procurement officer.

In the context of conflict of interest regulation, it should be emphasized that the PPL guarantees to the party in the procedure the right to demand the exclusion of a member of the RCPR (Article 144 paragraph 4) in case of reasonable doubt in her/his impartiality. In addition, any person may raise an initiative before the competent Committee for removal from office of both the RCPR president and members (Article 145). In such cases, the competent Committee submits to the National Assembly a reasoned proposal for removal from office together with evidence. The RCPR President or member must be given an opportunity to present a statement in the National Assembly in response.

The RCPR works and makes decisions in panels of three members (Article 146). Members of the panel may, at their own initiative, decide to include an expert in the work of the panel, where they find it necessary for the proper establishing of facts and making a proper decision. An expert is a person registered as a standing court expert (Article 143) and she/he has no vote in the decision.

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Committee of the National Assembly in charge of finances

Table S.D. Number of complaints received and resolved by the RCPR, 2014- 2016⁴⁸

	2014		2015		2016	
	Received	Resolved	Received	Resolved	Received	Resolved
Request for protection of rights	2.162	2.052	2.004	1.910	1.171	1.370
Contracting Authority's complaints	185	178	206	192	186	203
According to PPL 2015 procedure	0	0	4	0	31	29
TOTAL	2.347	2.230	2.214	2.102	1.388	1.602

Table S.D. reveals that the RCPR is successful in resolving complaints. More than 90% of all received requests were resolved in each observed year and by the end of 2016, almost all complaints from the last three years had been resolved.

No appeal can be lodged against a decision of the RCPR. An administrative dispute may be initiated against a decision of the RCPR within 30 days of the receipt of the decision (Article 159). Data regarding the work of the Court of Appeal and charges with resolving disputes are not available, thus the evaluation of the efficiency of the second-instance system cannot be completed.

The number of employees in the RCPR has stayed roughly the same during the period in question: 65 employees in 2014, 67 in 2015 and 63 employees in 2016⁴⁹.

⁴⁸ Republic Commission for the Protection of Rights in Public Procurement Procedures (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

⁴⁹ Republic Commission for the Protection of Rights in Public Procurement Procedures (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

Category 9

Control over the implementation of PP legislation

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

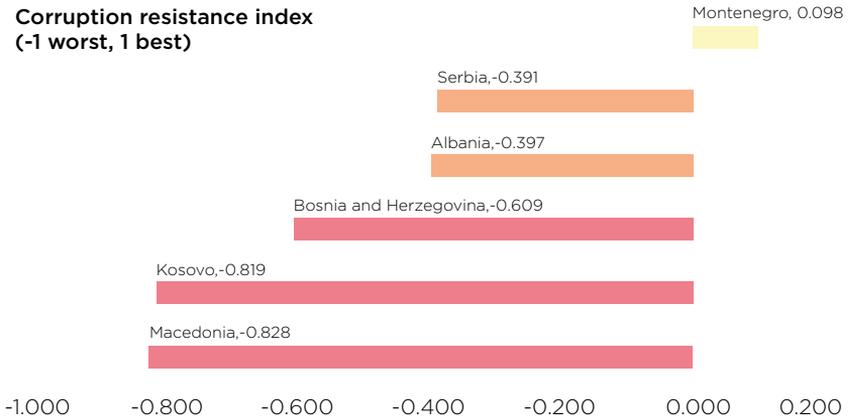
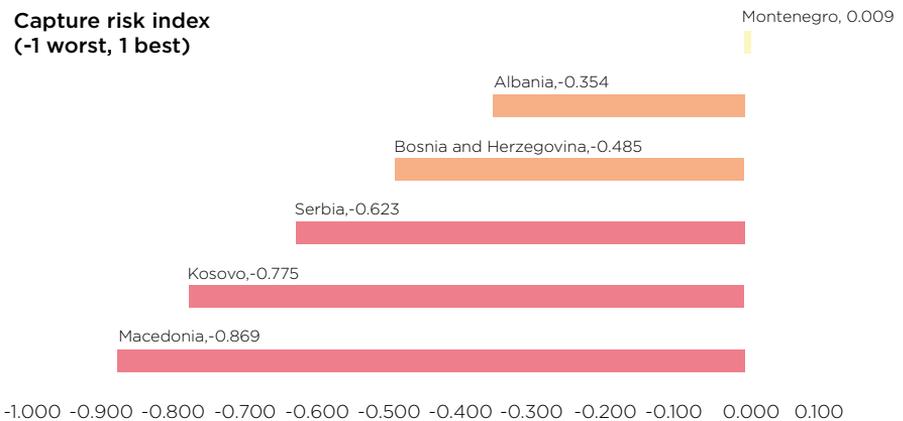


TABLE S.9.2: Capture Risk Index – Control over the implementation of PP legislation



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

In the area of control over the implementation of the PP legislation, the PP system performs as moderate in comparison to other observed countries. The Corruption resistance index (table S.9.1 above) is in the area of incidental response, while the Capture risk index (table S.9.2 above) indicates captured system. The Public Procurement Office in Serbia (PPO) is sufficiently equipped with regulatory powers, prescribed sanctions for violation of the PPL, and is supported by other forms horizontal accountability in the institutional setting. However, complex, and to certain extent complicated jurisdiction and jurisprudence issues undermine this context. As observed in the previous category, the relationship between the PPO as an institution in charge of implementing the PPL and the RCPR, which decides on filed complaints by the PPO, limits the ability of the PPO to protect the system. The RCPR works on a case by case basis (individual procurement procedure) and not on systemic deficiencies. With the low number of total cases adjudicated by the RCPR (approx. 1,300 in 2016) and only approx. 200 cases filed by the respective PPO in 2016, only a fraction of total procurement appears to be examined each year, with a high level of discretion over who is inspected (and consequently fined if anomalies are detected) (see Findings in detail below). This case by case approach to investigating deviations, rather than systemic oversight and pro-active controls, creates a situation in which many are in charge of observing specific aspects of procurement, yet no body has oversight of the system as a whole (i.e. there is no prescribed fine, nor any available specific data on deviations in publishing public procurement plans). The direct government appointment of the PPO leadership also represents a risk of undue political influence over the process. As the PPO is one of the key institutions that feed the RCPR in its decision making, the politicization of the system and lack of proper accountability represent significant risks to capture of the overall system and require thorough attention in future development. While for immediate improvements, the authorities may look into the concepts and approaches developed in Montenegro, in the long run, the Serbian PP system needs more comprehensive approaches that will increase the capacity and ability of the PPO to conduct pro-active investigations, while assuring the independence of the institution. Further digitalization of data management (i.e. development of digital risk detection tools), and building barriers to undue influence from the executive branch of government are also priorities for the regulatory and institutional setting.

Findings in detail

The Public Procurement Office (PPO) is competent to supervise the implementation of public procurement law. In addition, some supervisory functions are assigned to other institutions, such as the RCPR, State Audit Institution, Ministry of Finance, and Commission for Protection of Competition, Anti-Corruption Agency, and Commission for Public Private Partnership.⁵⁰ Within its competence, the PPO can file requests for the protection of rights to the RCPR and notify the State Audit Institution and Budgetary Inspection on identified irregularities in conducting public procurement procedures and delivering public procurement reports. The PPO initiates a misdemeanour procedure when it learns in any way of a violation of the PPL which might be the grounds for a minor offence liability. Finally, the PPO is competent to initiate the procedure for annulment of a public procurement contract (Article 136).

The Director of the PPO is appointed directly by the Government for a five-year mandate, after having conducted a public competition (Article 137). The Director is under obligation to the Law on Anti-Corruption Agency.⁵¹ During the period from 2014-2016, there were 24 people employed in the PPO. During the same period, the PPO carried out monitoring activities in 97 cases. Following the cooperation with other governmental bodies and organizations (prosecution, police, Anti-Corruption Agency), the PPO carried out additional monitoring activities in 124 cases.⁵² It appears PPO capacities are insufficient to meet all their competences because the number of implemented monitoring activities is far from reciprocal to the number of contracts and value of public procurement in Serbia. To put this in larger perspective, the average number of contracting authorities per year in the period 2014-2016 was 4,800, the average number of public procurement contracts per year in the same period was around 98,000 and the annual public procurement value in this period was on average EUR 2.7 billion. The PPO has monitored a sample of only 0.23% of the total number of public procurement procedures/ contracts.

50 Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

51 Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

52 Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Sanctions

The RCPR decides on filed requests for the protection of rights, but also determines ex officio whether legal requirements for the application of certain public procurement procedures were met, whether there was a violation of legal provisions due to which a public procurement contract may be annulled, whether the contract is considered null and void, and whether there exist reasons due to which this public procurement procedure may not be finalized in a lawful manner (Article 157). By its resolution, the RCPR may impose fines, annul a contract, and decide in the misdemeanour procedure.

Requests for annulment of contract should be filed together with requests for the protection of rights and within 30 days from the day of learning the reason for annulment, but no later than a year after the contract was concluded. The RCPR will file a lawsuit for determining the nullity of the public procurement contract if it learns in any way that the concluded public procurement contract is null and void.

The RCPR conducts minor offence proceedings in the first instance, for offences provided for by the PPL. Minor offence proceedings are conducted by a panel of the Republic Commission constituted such that those members of the Republic Commission who participated in the work of the panel which decided in the procedure for the protection of rights may not participate. Minor offence proceedings before the Republic Commission are initiated upon request of the Public Procurement Office, the State Audit Institution, another authorized body, or ex officio, immediately after learning of the offence. The first instance decision may be challenged by an appeal lodged to the Higher Misdemeanour Court (Article 165). According to the existing legislative framework, the following sanctions are prescribed for deviations in public procurement procedures:

Deviation

Sanction

Failure to publish invitation to submit bids and applications

Contracting authority will be fined by ≈ EUR 850-8,470⁵³ for an offence and responsible person within the contracting authority by ≈ EUR 250-670⁵⁴ for an offence.

Departure in the technical specifications in the contract from those described in the tender

Contracting authority is obliged to clearly state the subject in the contract in the same way as defined in the tender documentation (technical specification).

If the contracting authority modifies the contract contrary to the PPL (Article 115), the concluded contract will be annulled (Article 168, Paragraph 1, Line 4). Contracting authority will be fined ≈ EUR 1,700-12,700⁵⁵ and responsible person within the contracting authority by ≈ EUR 670-1,260⁵⁶ for an offence.

Failure to publish the notice on awarded public procurement contract

If the contracting authority does not submit notice on awarded public procurement contract to the PPO, it will be fined ≈ EUR 850-8,470⁵⁷ for an offence and responsible person within the contracting authority by ≈ EUR 250-670⁵⁸ for an offence.

Failure to implement a public procurement procedure where such an obligation is prescribed by the law

Contracting authority will be fined ≈ EUR 1,700-12,700⁵⁹ and responsible person within the contracting authority by ≈ EUR 670-1,260⁶⁰ for an offence.

Conflict of interest related to members of evaluating committee

PPL does not specify “members of evaluation committee” in conflict of interest-related offences. It refers to “contracting authority’s representative”.

In case of breach of conflict of interest-related provisions (Articles 29 and 30), contracting authority will be fined by ≈ EUR 1,700 up to 12,700⁶¹ and responsible person within the contracting authority by ≈ EUR 670-1,260⁶² for an offence.

Conflict of interest between the head of the contracting authority and selected bidder

Contracting authority cannot conclude a public procurement contract in case of existing conflict of interest, except in cases prescribed in item 3 of Article 30⁶³.

In case of breach of conflict of interest-related provisions (Articles 29 and 30), contracting authority will be fined by ≈ EUR 1,700 up to 12,700⁶⁴ and responsible person within the contracting authority by ≈ EUR 670-1,260⁶⁵ for an offence.

Execution of contract deviates from the technical specifications described in the tender competition and contract

Contracting authority will be fined ≈ EUR 1,700-12,700⁶⁶ and responsible person within the contracting authority by ≈ EUR 670-1,260⁶⁷ for an offence.

Violation of prescribed deadlines by the contracting authority

If the contracting authority fails to make decision on awarding contract or on cancelling public procurement procedure within the deadlines, it will be fined ≈ EUR 850-8,470⁶⁸ for an offence and responsible person within the contracting authority by ≈ EUR 250-670⁶⁹ for an offence.

If the contracting authority fails to act according to instructions contained in the decision of the RCPR within time limit set in that decision, it will be fined by ≈ EUR 1,700-12,700⁷⁰ and responsible person within the contracting authority by ≈ EUR 670-1,260⁷¹ for an offence.

53	RSD 100.000 up to 1.000.000
54	RSD 30.000 up to 80.000
55	RSD 200.000 up to 1.500.000
56	RSD 80.000 up to 150.000
57	RSD 100.000 up to 1.000.000
58	RSD 30.000 up to 80.000
59	RSD 200.000 up to 1.500.000
60	RSD 80.000 up to 150.000
61	RSD 200.000 up to 1.500.000
62	RSD 80.000 up to 150.000
63	PCPR at the request of contracting authority will approve the concluding of contract in case of existing conflict of interest, provided that contracting authority demonstrates that prohibition to conclude contract would cause great difficulties in work or business of contracting authority disproportionate to the value of public procurement, or that it would substantially undermine the interests of the Republic of Serbia, that it has taken all measures to prevent adverse impacts, that other bidders do not meet requirements of the procedure, or that, after the ranking of their bids, the difference in prices is 10% higher or that the number of weights is higher by ten in favour of the selected bidder.
64	RSD 200.000 up to 1.500.000
65	RSD 80.000 up to 150.000
66	RSD 200.000 up to 1.500.000
67	RSD 80.000 up to 150.000
68	RSD 100.000 up to 1.000.000
69	RSD 30.000 up to 80.000
70	RSD 200.000 up to 1.500.000
71	RSD 80.000 up to 150.000

Control over Execution of public procurement contracts

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

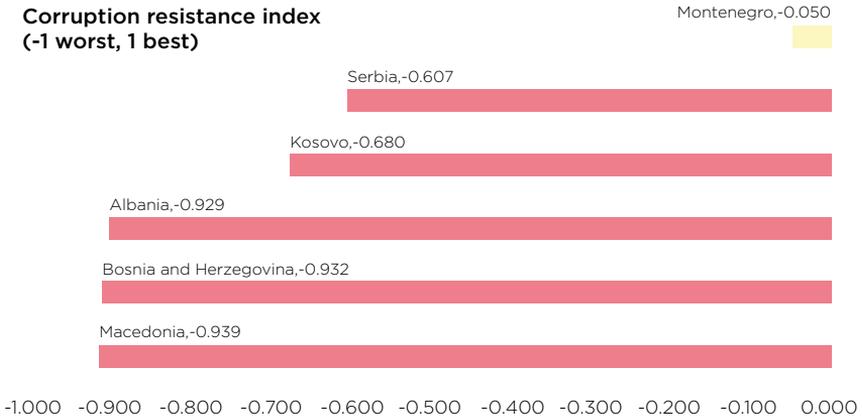
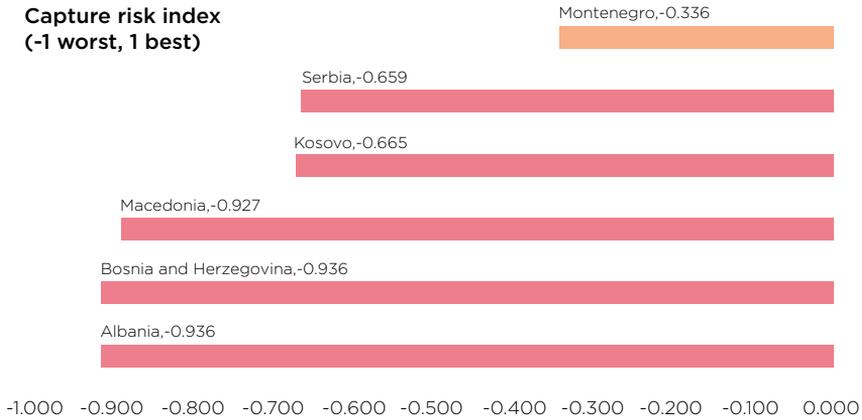


TABLE S.10.2: Capture Risk Index – Control over Execution of public procurement contracts



Interpretation of indices Serbia

Category 10: Control over Execution of PP contracts

In the area of control of execution of contracts, the PP system in Serbia performs to a certain extent better than most of the other countries covered by the GRAPP assessment. The Corruption resistance index value is in the stage of incidental response (see table S.10.1 above) while the Capture risk index indicates high capture risk (see table S.10.2 above). The PPL stipulates the obligation to control the execution of contracts and this is further supported by relevant obligations to report on the execution of contracts in the PP information system. However, the responsibility for control and reporting rests with respective contracting authorities, which limits the impact of such a measure over corruption and capture risks. Reporting on execution is limited (executed or suspended) without proper elaboration of the actual implementation of the contract. In addition, information on executed contracts is collected quarterly by the PPO, which hinders a timely response by the control mechanisms in cases of non-executed contracts. Immediate improvements in this area could be gained from observing the principles and approaches in controls adopted by the PP system in Montenegro. On a strategic level, more detailed standardized reporting should be developed, as well as independent control of the contract implementation phase (quality checks as well as detailed compliance with the contract).

Findings in detail

In general, alongside competent ministries, the institutions responsible for monitoring the execution of public procurement contracts include the Public procurement office, State audit institution, and Sector for budget inspection within Ministry of finance.⁷² However, monitoring the execution of public procurement contracts is very vaguely prescribed in the PPL. Contracting authorities are obliged to adopt a bylaw to regulate the public procurement procedure and in particular the mode for monitoring implementation of contracts (Article 22). Further, contracting authorities are obliged to include the information on execution of public procurement contracts in their quarterly reports sent to the PPO (Article 132). According to what is published on the PPP related to execution, it seems that contracting authorities are reporting only on whether the contract was successfully implemented or suspended. This suggests that control of execution of public procurement contracts is not properly addressed in Serbia, increasing the risks of corruption in public procurement.

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Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Category 11

Regulation of Conflict of Interest in PP System and procedures

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

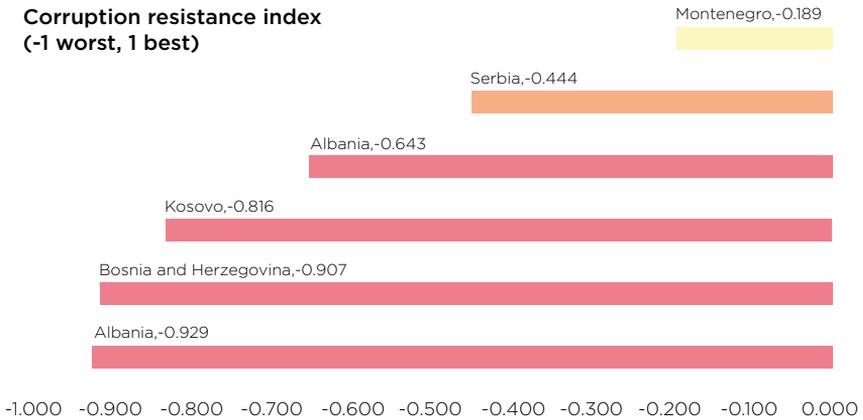
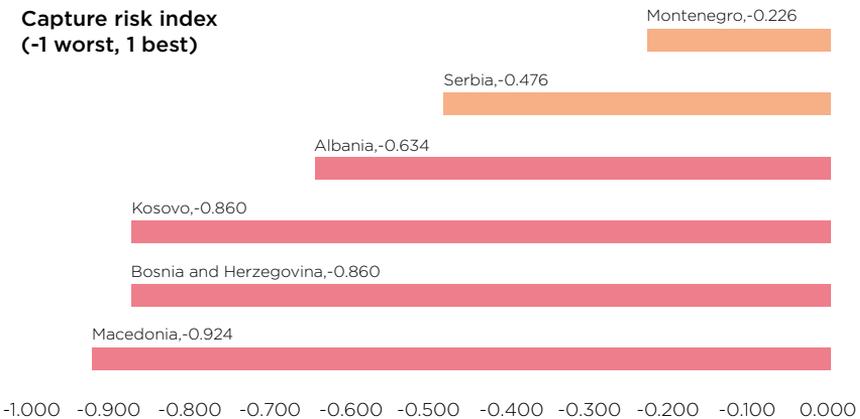


TABLE S.11.2: Capture Risk Index – Regulation of Conflict of Interest in PP System and procedures



Interpretation of indices Serbia

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

In comparison to the other observed countries, in the area of managing of conflict of interest in the Public Procurement system, Serbia indicates moderate progress. The Corruption resistance index is in the area of incidental response (table S.11.1 above) accompanied by high capture risk (table S.11.2 above). Legislators have made a clear attempt to address conflict of interest, and there is an institutional framework in place for deciding on conflict of interest in Public Procurement procedures and application of the law. However, proper evidence on the performance of the established infrastructure is missing (see Findings in detail below). The conflict of interest exceptions from the provisions of the PPL are rather vague and provide space for misinterpretation. While vesting the powers for deciding over conflict of interest (management of the potential conflict of interest) in an independent institution (RCPR) could be considered good practice, the conflicting model (where the RCPR also decides on sanctions, upon the request of the PPO) may limit the effect of the established barriers to corruption. Prescribed sanctions for conflict of interest appear to be relatively low to the potential damage that conflict of interest can inflict on PP process (up to EUR 12,700 for contracting authority, see category 10 above) which is further emphasized by lack of evidence on application of such measure in actual cases (standardized statistic does not cover specifically this issue). Improvements of the system performance may arise from changes in mandatory annual reporting on the issue by RCPR and PPO. However, in the long run, the restructuring of the 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

Conflict of interests, as defined by the PPL, exists where the existence of a relationship between contracting authority and bidder may impact the impartiality of the contracting authority's decision-making in a public procurement procedure. In particular, this applies if the representative of the contracting authority or a relative is involved in the management of a bidding company; if the representative of a contracting authority or their relative owns more than 1% of the bidder's share or stocks; and if the representative of the contracting authority or his/her relative is employed or working with the bidder or has a business relationship with the bidder (Article 29).

The contracting authority is not allowed to award a public procurement contract to a bidder in the case of an existing conflict of interest. However, this provision is subject to exception if a contracting authority demonstrates that prohibiting the contract would cause great difficulties in its work or business disproportionate to the value of public procurement, or that it would substantially undermine the interests of the Republic of Serbia. In utilising this exception, the authority also needs to show that it has taken all measures to prevent adverse impacts, that other bidders do not meet requirements of the procedure, and that, after the ranking of bids, the difference in prices is at least 10% or that the number of weights is higher by ten in favour of the selected bidder. In such cases, the RCPR at the request of the contracting authority will approve the concluding of such a contract (Article 30).

In general, conflicts of interest in public procurement are overseen by the PPO (monitoring) and RCPR (in case of request). The PPO is the supervisory central body for coordinating and controlling the process of public procurement through law enforcement, advisory, control and policy-making functions. In this regard, the PPO is authorized to conduct administrative investigations on public procurement procedures, including verification of cases of conflicts of interest. The RCPR plays an important role in the decision-making process regarding public procurement procedures; it is the highest body in the field of procurement authorized to review complaints on procurement procedures, in conformity with the requirements stipulated in the PPL. Finally, the Anti-Corruption Agency deals with issues concerning conflicts of interest in Serbia in a more general way and they are not competent for oversight of conflict of interest in public procurement.⁷³

73

Anti-Corruption Agency (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

Audit mechanisms

TABLE S.12.1: Corruption Resistance Index – Audit mechanisms

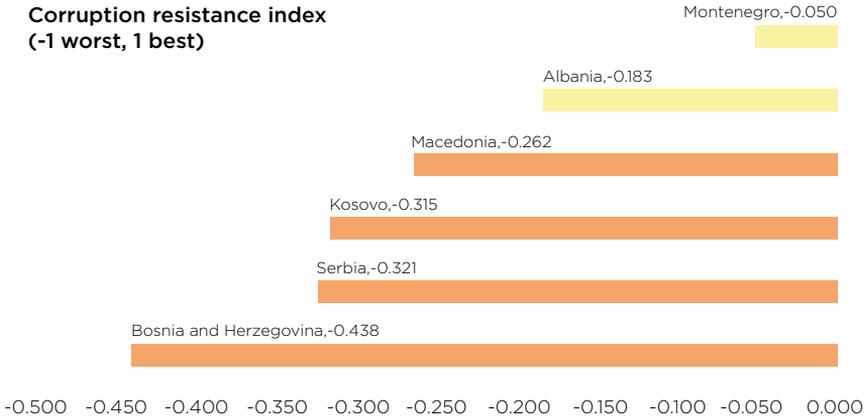
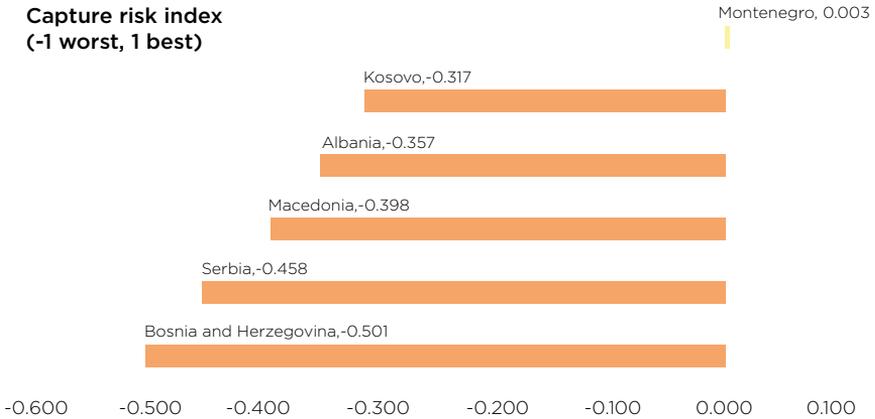


TABLE S.12.2: Capture Risk Index – Audit mechanisms



Interpretation of indices Serbia

Category 12: Audit mechanisms

In the area of audit mechanisms, the PP system in Serbia ranks as moderate in comparison to other observed countries. The Corruption resistance index shows an incidental response to corruption (table S.12.1 above) accompanied by high capture risk (table S.12.2 above). Existing regulation suggests that the role of the State Audit Institution (SAI) in the PP system is to verify whether the public procurement procedure has been applied in line with the PPL within the general audit conduct of specific public entities. However, practice suggests a lack of standardization in the auditing of public procurement as reflected in the coverage of different categories of the PP process on a year-to-year basis (see the table provided in Findings in detail below). While addressing compliance with the PP regulation within the audit procedure is considered good practice, this is undermined by the observed lack of standardization, and lack of evidence on proper capacity of the SAI auditors to conduct PP related audits (i.e. education, certification or similar evidence). At the same time, the finding that, in 2016, more than 40% of the contracts (by value) in the audited sample were found to have been conducted not in accordance with the PP Law (see the table in Findings in detail), suggests that irregularities in the system are common and are not properly addressed by the existing control mechanisms. This in turn implies a high risk of corruption and capture of the system, not addressed by the current institutional and regulatory setting. The main recommendations for reform are to improve the capacity of the SAI (i.e. continuous education, certification), and maintain the independence of the institution; ensure stronger horizontal cooperation; improve the digitalization of the system; and introduce preliminary digital risk assessments. Reporting on public procurement, as well as the auditing of public procurement sample, needs to be standardized to enable year to year monitoring of trends.

Findings in detail

The State Audit Institution (SAI) is the supreme state body for auditing public funds in Serbia; it is autonomous and independent, accountable to the National Assembly.⁷⁴ The President, Vice-President and members of the SAI Council are elected and dismissed by the Assembly, by a majority vote, at the motion of the competent working body of the Assembly, and for a five-year mandate. The President of the SAI is subject to the Act on Preventing Corruption.⁷⁵ In the judgement of the author, based on experience in Serbian public administration, the SAI works independently from the Government to a certain degree, and the institution has avoided political influence by the ruling parties.

In reference to public procurement, the SAI verifies whether the public procurement procedure has been applied in line with the PPL. However, it has considerable discretion in terms of the auditees, subject, scope and type of auditing, outset and duration of auditing. When asked whether the auditors are authorized and trained to perform audits of public procurement procedures, the SAI was reluctant to provide information supported by proper evidence. The response was that, “Auditors are trained and authorized to perform audits of the financial reports and the regularity of activities subject to the audit”⁷⁶, without providing any detail or evidence.

Audit reports are published and publicly available on the SAI website. This is very important from the perspective of the transparency of the system, as all relevant data are easily accessible. In 2014, the audit covered public procurement in the amount of \approx EUR 140 mil⁷⁷; i.e. 5.85% of the total public procurement value. Irregularities were found in 45.82% of the audited sample.⁷⁸ In 2016, the audit covered public procurement in the amount of \approx EUR 430 mil⁷⁹; i.e. 15.79% of the total public procurement value, a significant increase compared to the previous year. Irregularities were found in 27.9% of the audited sample.⁸⁰ Finally, in 2016, the audit covered public procurement in the amount of \approx EUR 240 mil⁸¹; i.e. 9.80% of the total public procurement value and irregularities were found in 9.8% of the audited sample.⁸² More detailed information about the type of irregularities in public procurement found by the audit is presented in the table below.

⁷⁴ Law on State Audit Institution. Official Gazette 101/2005, 54/2007 and 36/2010.

⁷⁵ Ibid.

⁷⁶ State Audit Institution, Freedom of Information Act, written response retrieved on July 3, 2017.

⁷⁷ RSD 16.5 billion

⁷⁸ State Audit Institution (2015) Annual report for 2014. Available at: <https://www.dri.rs/dokumenti/godisnji-izvestaji-o-radu.93.html>.

⁷⁹ RSD 52 billion

⁸⁰ State Audit Institution (2016) Annual report for 2015. Available at: <https://www.dri.rs/dokumenti/godisnji-izvestaji-o-radu.93.html>.

⁸¹ RSD 29.5 billion

⁸² State Audit Institution (2017) Annual report for 2015. Available at: <https://www.dri.rs/dokumenti/godisnji-izvestaji-o-radu.93.html>.

Table 2. Public procurement audit, 2014-2016

	2014	%	2015	%	2016	%
Public Procurement Value, EUR	2.414.137.800		2.726.542.602		2.447.184.290	
Amount covered by the audit, EUR	141.211.509		430.588.036		239.732.036	
% covered by the audit	5,85%		15,79%		9,80%	
Performed PP not in accordance with the law, EUR	64.700.546		120.067.818		23.566.878	
Share of irregularity	45,82%		27,9%		9,8%	
Concluded contracts without conducting public procurement procedures, EUR	23.963.165	37,0%	21.529.402	17,9%	9.589.281	40,7%
Irregularities in the tender documentation	0	0,0%	23.185.510	19,3%		0,0%
Conducted procurement not foreseen in the annual procurement plan, EUR	10.526.676	16,3%	0	0,0%		0,0%
Granting subsequent contracts, EUR	9.842.014	15,2%	0	0,0%		0,0%
Contracts concluded with inadequate public procurement procedures, EUR	4.792.633	7,4%	0	0,0%		0,0%
Procurement that has been detected in irregularities in public procurement procedures, EUR	4.193.554	6,5%	0	0,0%		0,0%
Irregularities in the area of award, conclusion and modification of contracts, EUR	0	0,0%	9.108.593	7,6%		0,0%
Other irregularities within the Public Procurement Act, EUR	11.382.503	17,6%	8.702.847	7,2%	3.364.375	14,3%
Identified irregularities from previous years, EUR	0	0,0%	50.511.289	42,1%		0,0%

Irregularities in notification of procurement, EUR	0	0,0%	4.247.917	3,5%		0,0%
Use of negotiated procedures without the fulfillment of the conditions, EUR	0	0,0%	273.258	0,2%		0,0%
Irregularities regarding the conditions for initiating public procurement procedures, EUR	0	0,0%	2.509.003	2,1%		0,0%
Irregularities related to the inadequate estimation of the price	0	0,0%	0	0,0%	828.904	3,5%
Concluded procurement contracts conditions prescribed by law have not been fulfilled	0	0,0%	0	0,0%	8.207.775	34,8%
Violation of public procurement principles	0	0,0%	0	0,0%	1.576.543	6,7%

Criminal justice system response to PP anomalies

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

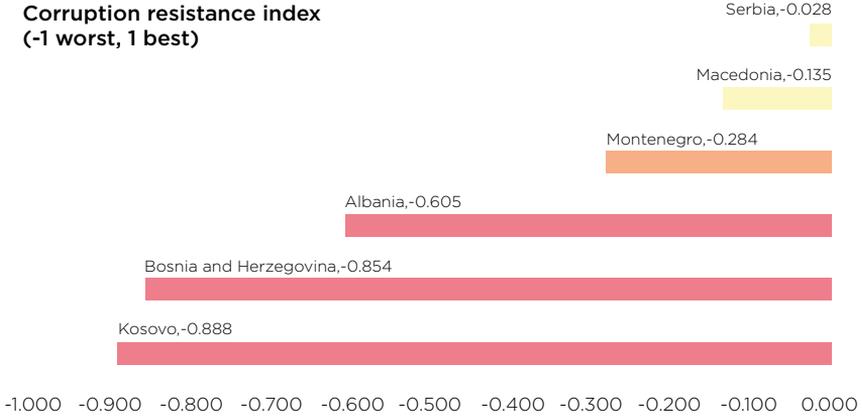
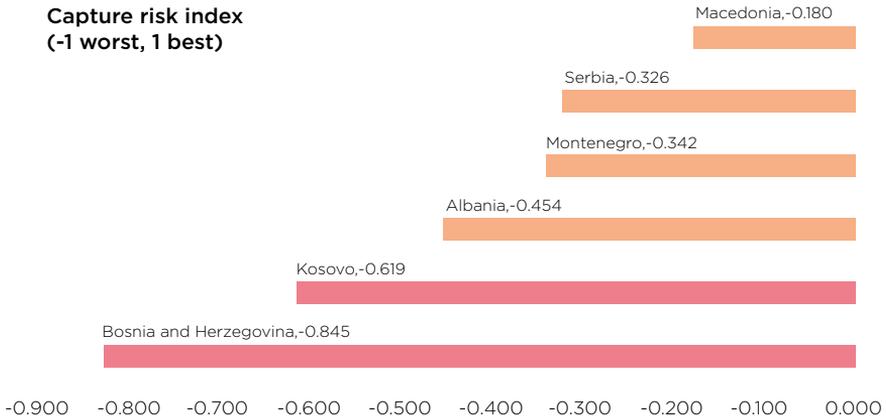


TABLE S.13.2: Capture Risk Index – Criminal justice system response to PP anomalies



Interpretation of indices Serbia

Category 13: Criminal justice system response to PP anomalies

The criminal justice system is the ultimate, final and most important response to corruption and Public Procurement related corruption is no exception. In this area, Serbia is among best performers in comparison to the other observed countries. Nevertheless, the Corruption resistance index is at the stage of moderate response (see the table S.13.1 above), while the Capture risk index value indicates high capture risk (table S.13.2 above). The criminal code in Serbia properly addresses procurement-specific crimes, and there is evidence of some enforcement (see Findings in detail below). However, the low number of cases, and low ratio of convicted persons suggests that there is a need for further attention and focus by the respective criminal justice and PP actors, particularly given the weak performance observed in other horizontal accountability mechanisms (i.e. RCPR and PPO, see above). In future developments, a more strategic approach is required in this aspect. Horizontal cooperation between the institutions (i.e. SAI, RCPR, PPO, prosecutors, and police) 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

Misuse of public procurement procedures is a criminal offence in Serbia. Article 228 of the Criminal Code⁸³ stipulates that anyone who in respect of public procurement submits an offer based on false information, or colludes with other bidders, or undertakes other unlawful action with the aim to influence the decision of a contracting authority, shall be punished with imprisonment from six months to five years. The same penalty shall also be imposed on a responsible person or official in the contracting authority, who either through the abuse of position, or by exceeding his/her powers or failure to discharge his/her duty violates the PPL and thus causes damages to public funds. In addition, if such a criminal offence is committed in respect to public procurement with value above \approx EUR 1,270,000⁸⁴, the perpetrator shall be punished with imprisonment from one to ten years. Finally, a perpetrator who voluntarily discloses that their offer is based on false information or collusion with other bidders, or that he/she has undertaken other unlawful actions with intent to influence the decision of the contracting authority prior to issuance of decision on selection of bid, may be treated leniently.

⁸³ Criminal Code of the Republic of Serbia. Official Gazette of RS No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

⁸⁴ RSD 150,000,000

According to data obtained from the Republic Public Prosecutor's Office, during the period 2014 – 2016, on average 90 public procurement-related criminal complaints are submitted annually. Approximately 10% of complaints resulted in indictments, out of which roughly 20% ended with conviction. Putting things back in perspective, the average number of public procurement contracts signed annually was around 98,000, meaning that 0.1% of public procurement procedures were the subject of criminal complaint. More detailed is presented in the table below.

Table 4 Criminal justice system performance related to Public Procurement⁸⁵

	2014	2015	2016
Criminal complaints	79	129	68
Investigations conducted	0	3	4
Evidentiary actions performed	23	46	59
Indictments passed	9	7	9
Final judgements passed	0	2 convictions ⁸⁶ , 3 acquittals ⁸⁷	2 convictions 1 acquittal

Source: Author's calculations based on data obtained from Republic Public Prosecutor's Office, Serbia

⁸⁵ Republic Public Prosecutor's Office, Freedom of Information Act, written response retrieved on June 21, 2017.

⁸⁶ Pronounces the defendant guilty

⁸⁷ Pronounces the defendant not guilty of the charges

Capacity and human resources management

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

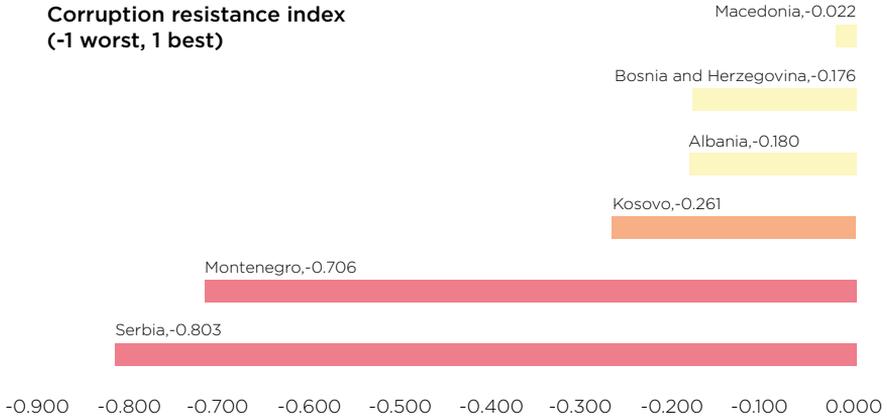
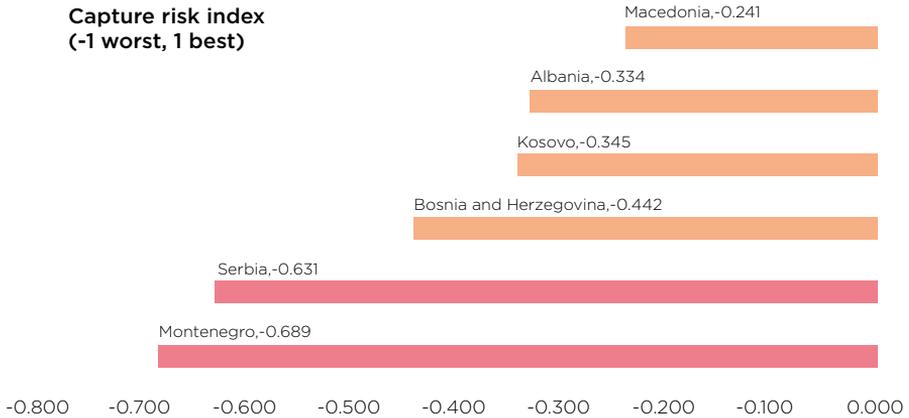


TABLE S.14.2: Capture Risk Index – Capacity and human resources management



Interpretation of indices Serbia

Category 14: Capacity and human resources management

In the area of capacity and human resources management, the PP system in Serbia is among the weakest performers among the observed countries. The Corruption resistance index is in the stage of elementary response to corruption (table S.14.1 above), while the Capture risk index (table S.14.2 above) suggests high capture risk. The existing regulatory framework addresses the obligation for certification of PP professionals (PP officers) and proper examination (see Findings in detail below). However, the introduction of a threshold of approx. EUR 211,000 of annual value of procurement is not justified, nor does it reflect the potential risks in this area. In addition, a lack of evidence that proper education of PP officers is undertaken, and the absence of an obligation on the need for periodic re-certification (especially given the dynamic development of the PP regulatory framework and system in Serbia), pose significant risks to the performance of the system, and thus to corruption/capture risks. The fact that only one-third of contracting authorities have certified officers (see Findings in detail below) emphasizes the weakness of the system in this area. The weak development of e-procurement, as well as digitalization, are additional risk contributors, undermining the efforts and resources invested in system development. In this area, the PP system in Serbia may significantly benefit from the approaches and practices observed in the FYR of Macedonia, as well as from a stronger focus by existing control mechanisms on this aspect. There is a need for further capacity building, as well as the introduction of obligatory re-certification of PP officers, and full implementation of the e-procurement.

Findings in detail

A contracting authority whose overall annual value of planned public procurement exceeds \approx EUR 211,500⁸⁸ must employ at least one public procurement officer (Article 134). A public procurement officer is a person trained to perform public procurement-related tasks. The PPL further stipulates that it is the PPO who determines the manner and the program for professional training and examination for public procurement officers. However, the Rulebook⁸⁹ relevant to training and examination for public procurement officers, adopted by the PPO, does not prescribe any form of professional training. It rather stipulates legal sources (laws, by-laws, etc.) that are to be used in preparing exams for public procurement officers.

Upon successfully passing the exam, the certificate for public procurement officer is issued. Renewal of the certificates for public procurement officers is envisaged in neither the PPL nor the Rulebook.

It is recommended that the authorities should consider introducing an obligation to renew the certificates; constant improvement in skills should be mandatory for all involved in public procurement, and as an incentive, the periodic extension of certificates could be a positive stimulus.

According to the data provided by the PPO, there were 1,478 certified public procurement officers in 2016.⁹⁰ When compared with the number of contracting authorities in 2016 (4,462), this means only one-third of all contracting authorities had a certified public procurement officer in-house. More precise statistics unfortunately could not be gathered owing to a lack of information about the number of contracting authorities obliged to have public procurement officers employed.

E-procurement was normatively introduced in January 2013 and enforced in April 2013, but it is still not implemented in practice.⁹¹ As with many other IT projects in the country, the implementation of an electronic system for e-procurement seems to be a huge challenge for the Serbian authorities. Thus, there is room for significant improvement in this area. The introduction of an electronic system would simplify procurement and tender procedures and make the system more transparent and cost-effective.

⁸⁸ RSD 25.000.000, i.e. fivefold amount referred to in Article 39, Paragraph 1 of PPL.

⁸⁹ Rulebook on the manner and program for professional training and examination for public procurement officers. Official Gazette RS No. No. 77/14 and 83/15

⁹⁰ Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

⁹¹ Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Trends in public procurement contracts

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

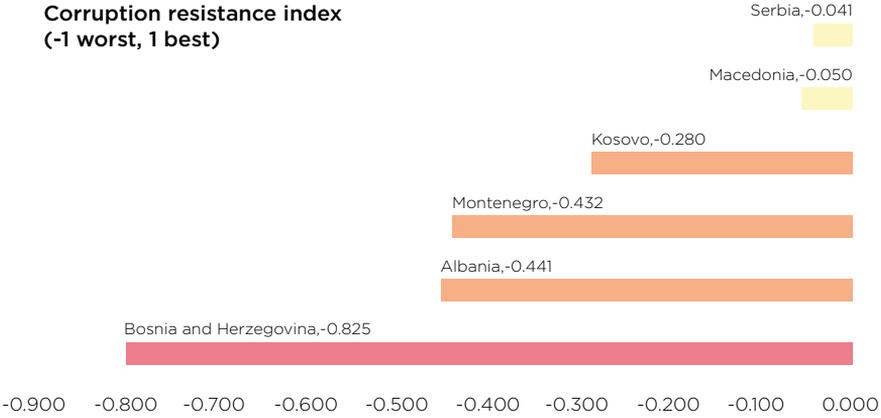
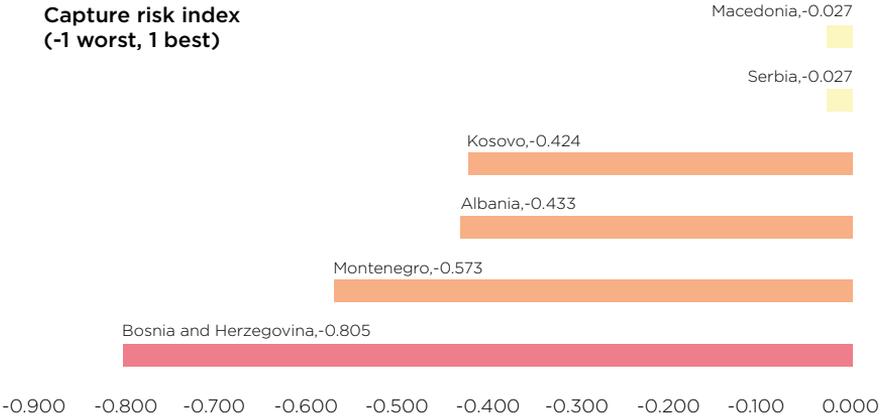


TABLE S.15.2: Capture Risk Index – Trends in public procurement contracts



Interpretation of indices Serbia

Category 15: Trends in public procurement contracts

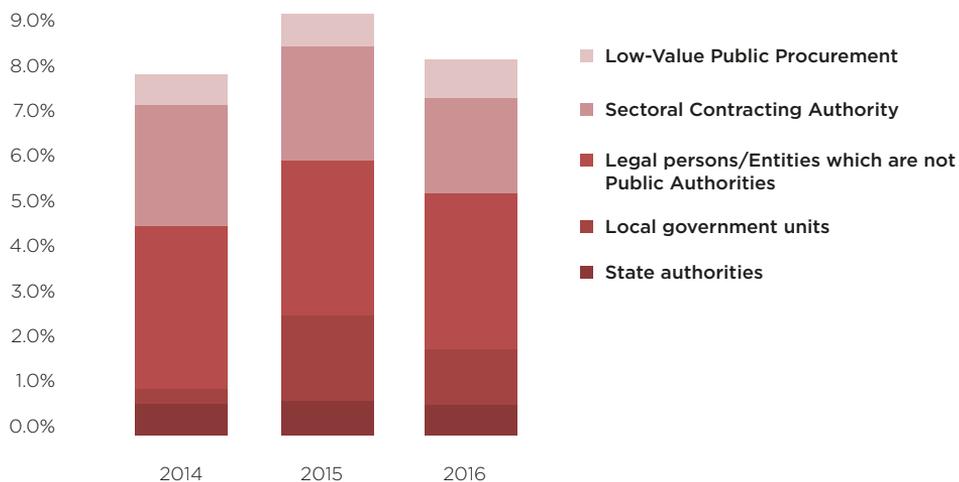
Statistics on public procurement contracts in Serbia indicate strong developments in this area, placing Serbia among the best performers in comparison to the other observed countries. The Corruption resistance index suggests a moderate response to corruption (table S.15.1 above) accompanied by moderate capture risk (table S.15.2 above). The high level of standardization of data in the PP system as well as a high degree of centralization contributed to the relatively high scores. Information on PP procedures and contracts allows for preliminary risk analysis as well as econometric observations of trends per specific contracting authority, or sector. However, indirect reporting through the PPO, within the framework of quarterly reports, limits any real-time responses to anomalies, while weaknesses observed in horizontal accountability mechanisms undermine the good progress observed in this area. In further developments, additional standardization (i.e. introduction of more comprehensive reporting on executed contracts) and data digitalization should be introduced.

Findings in detail

In 2016, the total value of public procurement in Serbia decreased by 7.8% in comparison with 2015 and amounted to EUR 2.72 bn, or 8% of the GDP of Serbia. This drop could be explained by the dramatic rise in the value of framework agreements in the same year. Low-Value Public Procurement, which is not recorded in a proper manner and cannot be addressed by public procurement safety mechanisms, reached a value of 0.81% of the GDP of Serbia in 2016 (approximately 10% of total public procurement value). In addition, around 70% of the total public procurement contracting value in Serbia during the period 2014-16 was executed by contracting authorities that were not public bodies⁹² and are subject to weaker controls.

⁹² Legal persons/entities which are not public authorities and sectoral contracting authorities.

Figure 1 STRUCTURE OF TOTAL PUBLIC PROCUREMENT BY TYPE OF CONTRACTING AUTHORITY AND % OF GDP, 2014-16



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

Trends in framework agreements

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

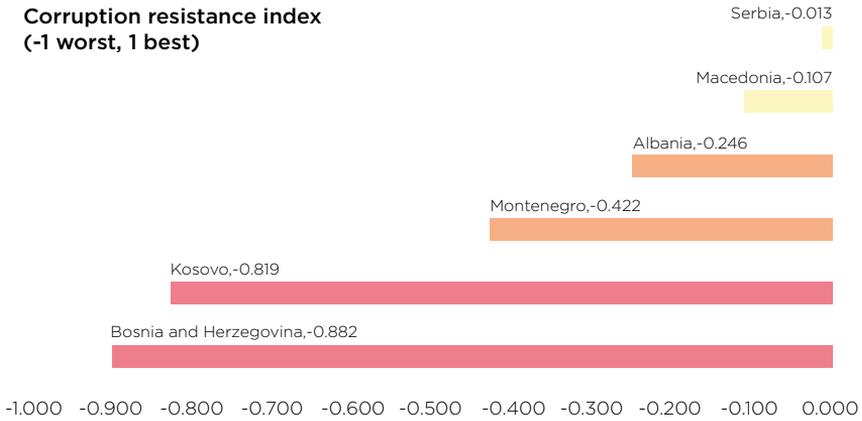
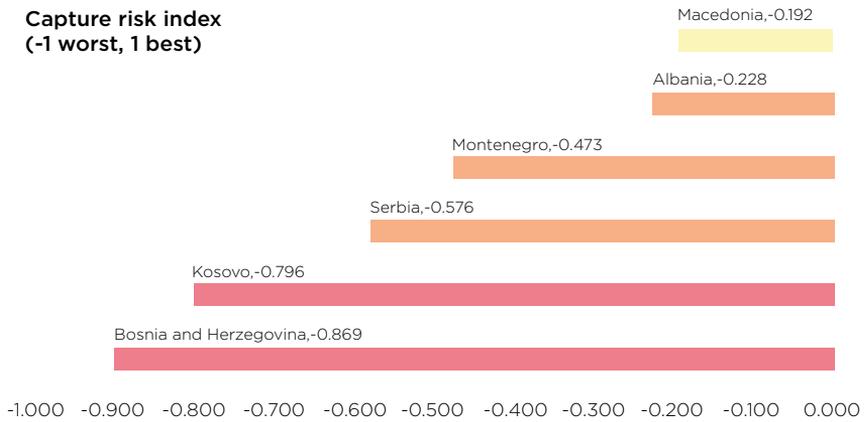


TABLE S.16.2: Capture Risk Index – Trends in framework agreements



Interpretation of indices Serbia

Category 16: Trends in framework agreements

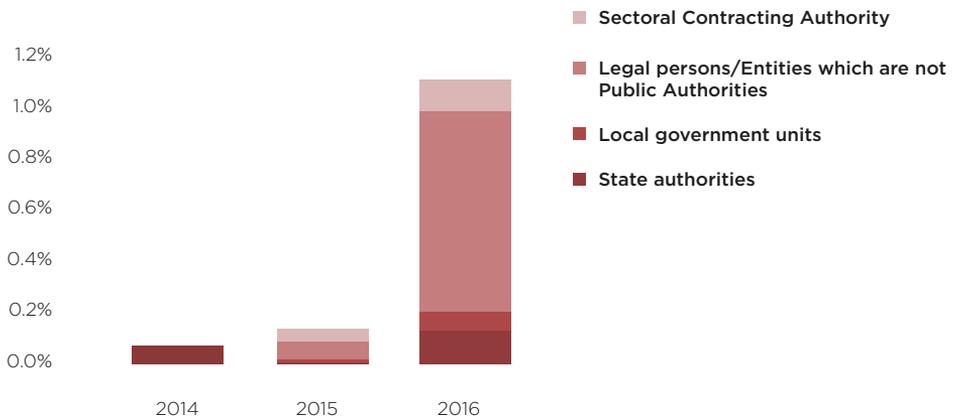
In the area of framework agreements, the PP system in Serbia shows a moderate response to corruption (table S.16.1 above) and high capture risk (table S.16.2 above). The regulatory framework properly covers the FA contracting procedure, with adequate reporting mechanisms and evidence of such conduct. However, the trend of increased and extensive use of FAs by the contracting authorities, accompanied by weak controls (i.e. Legal persons which are not public entities, see Finding in detail below), and a significant increase in the use of FAs in the purchase of goods (i.e. over EUR 300 mill in 2016)⁹³, require attention by established control mechanisms. As such entities are considered to be highly politicized (see Findings in detail below) and the system has a weak capacity to conduct sophisticated procedures implicit in FA agreements (i.e. only one-third of entities observed to have a certified officer, see category 14 above) and weak performance of control mechanisms, practice in this area is considered at high risk of capture. While in this area, the PP authorities in Serbia could benefit from the concepts, approaches and solutions applied in the FYR of Macedonia, in the long run, increasing the frequency and quality of external controls in this area should be considered.

Findings in detail

During 2016, the value of framework agreements experienced dramatic growth, from EUR 22.7 mil to EUR 342.7 mil, or 1,430%. As with public procurement contracts, the vast majority of framework agreements in 2016 (around 70%) were contracted by those contracting authorities that are most exposed to risks of undue political influence and capture.

⁹³ Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Figure 2 FRAMEWORK AGREEMENTS BY TYPE OF CONTRACTING AUTHORITY AND % OF GDP, 2014- 2016⁹⁴



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

Framework agreements are a relatively new method in the Serbian public procurement system, thus the rise in their value should not be unexpected. However, given that corruption risks in management of framework agreements are greater, there are some issues that need to be highlighted. Framework agreements should be under the scrutiny of the competent authorities on a large scale, as they tend to limit competition and therefore represent fertile ground for corruptive behaviour, thus exposing the procurement system to higher risk of capture through collusive agreements. One of the main rules of the market is to secure free competition. Although some areas, in relation to violation of free competition, would not be sanctioned (one general example is intellectual property), public procurement should not be one of those areas, especially since a significant portion of public money is spent in this way.

94 Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

The most successful tenderers

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

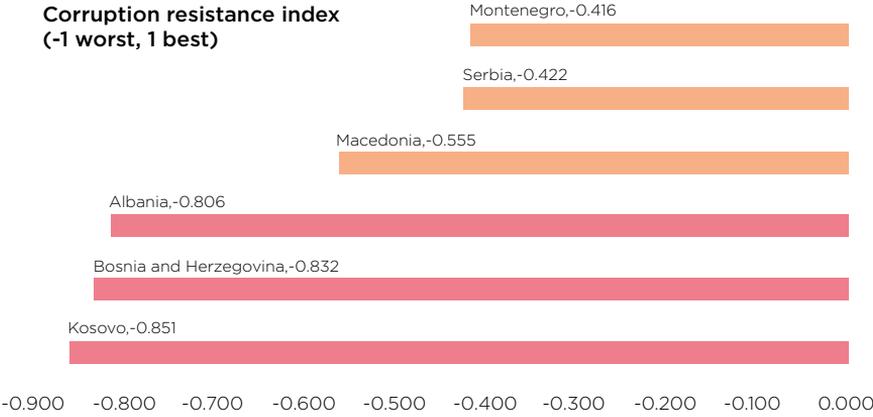
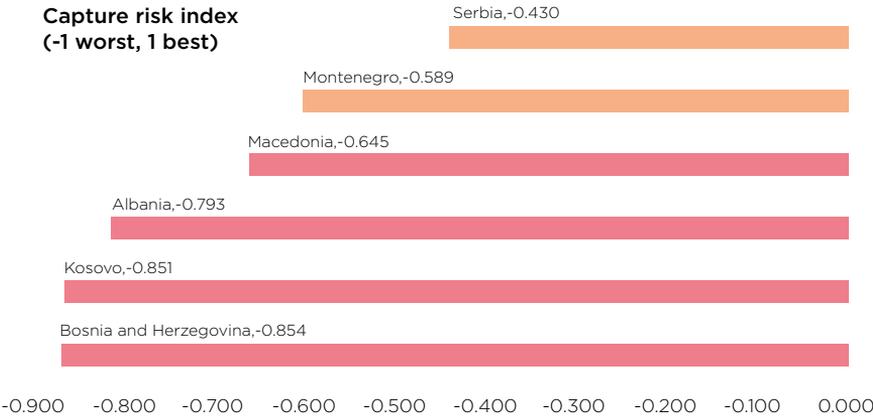


TABLE S.17.2: Capture Risk Index – The most successful tenderers



Interpretation of indices Serbia 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 incidental response to corruption (table S.17.1 above) and high capture risk (table S.17.2 above). The established data management system, despite observed deficiencies (i.e. lack of digitalization and real time reporting), provides a solid insight into the frequency of relationships between specific contracting authorities and successful bidders. Among the top ten most successful tenderers, there is evidence of domination by State-Owned Enterprises as well as privatized companies. As these relate to energy supply, where the market in Serbia is still developing, these do not necessarily reflect preferential treatment. However, as the largest value of procurement is contracted by contracting authorities that are not public entities, and that are under indirect political control through appointments to the management, this issue requires further attention by control mechanisms. This should be accompanied by further developments in digitalization and risk management.

Findings in detail

The ten most successful tenderers according to the value of public procurement contracts signed, for 2014, 2015, and 2016 were:

Table 7 Most successful bidders⁹⁵

	2014	2015	2016
1	Naftna industrija Srbije	Arriva litasd.o.o.	Phoenix Pharma
2	Phoenix Pharma	Phoenix Pharma	Naftna industrija Srbije
3	EPS snabdevanje	Naftna industrija Srbije	Comtrade system integration
4	Farmalogist	MBA Ratko Mitrović niskogradnja	Farmalogist
5	JP Elektroprivreda Srbije	JP Elektroprivreda Srbije	Vega Valjevo
6	Vega Valjevo	Energoprojekt oprema	JP Elektroprivreda Srbije
7	Kolubara usluge	Farmalogist	GE Power AG Mannheim
8	Niš ekspres	Vega Valjevo	Feromont inženjering
9	Energotehnika Južna Bačka	EPS-snabdevanje	PRO TENT
10	Via Ocel	Makstim Beograd	

The list of the most successful bidders is dominated by electricity and oil and gas enterprises owned by the state, domestic and international wholesale pharmaceutical distributors, and construction companies. There are no clear signs of systematic corruption among the most successful bidders.

Naftna industrija Srbije is the second largest national company (after JP Elektroprivreda Srbije) and operates in the area of extracting and processing

⁹⁵ Public Procurement Office (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

crude oil. It has the most widespread network of gas stations in the country. In 2008, it was privatized in a controversial inter-governmental gas agreement between the Serbian and Russian governments. It is not officially connected to political parties, although government officials are represented in the Board of Directors.

EPS snabdevanje is a state-owned enterprise that supplies electricity to all end users that buy electricity at preferential prices.

Arriva Litas is a foreign public transportation company. It is not officially connected to any political party in the country, and there has been only allusion to possible corruption, in the controversial *Tabloid*⁹⁶ magazine, about the decision by Belgrade authorities to allocate an annual subsidy of EUR 80 mil to this company. However, there are no other indications of connections between the ruling party and this company.

Phoenix Pharma is one of the leading pharmaceutical traders in Europe, with a well-developed network in the Balkan region. There are no signs of connection between this company and the ruling parties or government officials.

Farmalogist is a domestic wholesale pharmaceuticals dealer. There are no signs in the media reports of affiliation between this company and the ruling parties/government officials. The founder of the company is the president of a group of wholesale pharmaceutical distributors within the Serbian Chamber of Commerce⁹⁷.

JP Elektroprivreda Srbije is the largest state-owned enterprise and the largest national company in terms of GVA. It is also the biggest domestic producer of electricity. The director of the company is directly appointed by the Government. Although the operations of the company are under the political influence of the Government, there are no reasons to think that corrupt activities exist when it comes to public procurement by the Government. However, public procurement within the company may be a subject of inquiry.

Vega Valjevo is a domestic wholesale pharmaceutical distributor. There are no signs of ties between this company and the ruling parties. However, the founder of the company is the vice-president of the group of wholesale pharmaceutical distributors within the Serbian Chamber of Commerce.

Nis ekspres is a domestic bus company in the city of Nis, owned by a consortium of former and present employees and Delta Real Estate, a member of Delta Holding. There are no links between the company and the ruling parties.

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Link: <http://www.magazin-tabloid.com/casopis/?id=06&br=383&cl=09>

97

The latest Act on chambers of commerce, adopted in 2015, was controversial and even unconstitutional according to some. Despite significant resistance from the general public, the Act was adopted and implemented, and the Serbian Chamber of Commerce was promoted as the main national chamber. All economic subjects are obliged to be members of this institution.

Energotehnika Južna Bačka is a domestic producer of electricity. There are no links between the company and the ruling parties.

Via Ocel is one of the leading companies in Serbia for material supplies for power plant facilities and the leading producer in the region of pressure managing equipment. Based on the information on their website, major Serbian public enterprises are their important partners. However, there are no clear signs of affiliation between this company and the ruling parties.

MBA Ratko Mitrović niskogradnja is a privatized domestic construction company engaged in various projects across the country, especially in road construction in Belgrade. There were some controversies in the media regarding political influence and possible corruption, because of its involvement in road construction in North Kosovo. The owner of the company, Branko Miljkovic, was publicly mentioned in the media in 2011 by the former Prime Minister Aleksandar Vucic, then the second figure of the opposition.

Makstim Beograd is a domestic company that operates in the area of wholesale medical equipment. There are no clear media signs of the affiliation of this company with the ruling parties. However, Makstim was one of the companies that complained about the public procurement for the Sremska Kamenica medical centre in 2015. The affair was used by the Serbian Progressive Party, then the opposition party in the Autonomous Province of Vojvodina and the ruling national party in Serbia, to attack the Government of Vojvodina led by the president of the Democratic Party.

Comtrade system integration is a domestic IT company that cooperates with many renowned international companies. However, Comtrade is well-known for winning many public procurements for computers or software for Serbian public administration. There are some links between Comtrade and the Serbian Progressive Party which are publicly known; an advisor of Comtrade's CEO is a founder of *Telegraf*, a tabloid strongly supportive of Aleksandar Vucic, President of the ruling Serbian Progressive Party.

GE Power AG Mannheim is a branch of the international company General Electric. There are no signs of any connection between this company and the Serbian Progressive Party.

PRO TENT is a state-owned company that provides maintenance services to JP EPS.

Trends in petty public procurement

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

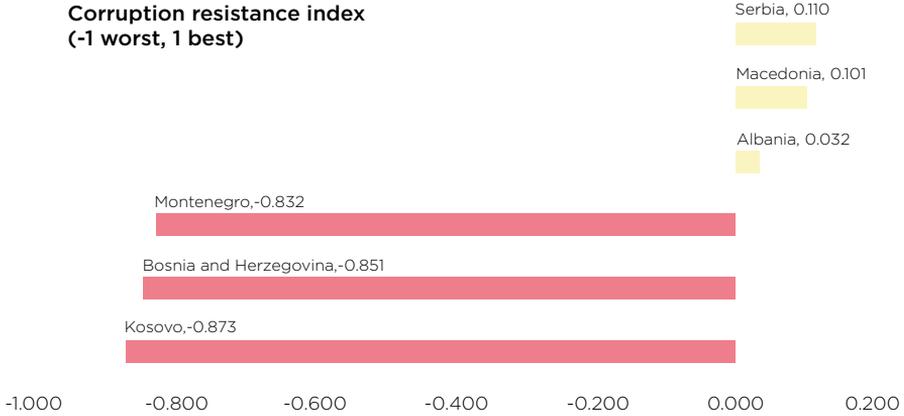
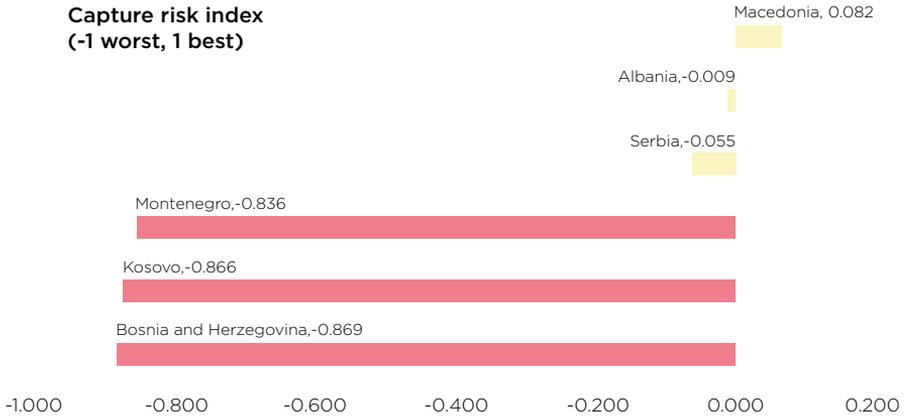


TABLE S.18.2: Capture Risk Index – Trends in petty public procurement



Interpretation of indices Serbia

Category 18: Trends in petty public procurement

In the area of trends in petty public procurement, Serbia scores relatively high in comparison to other countries. The Corruption resistance index score is in the stage of moderate resistance to corruption (table S.18.1 above), while the Capture risk index indicates moderate capture risk (table S.18.2 above). Proper measures are in place to limit petty procurement on an annual basis, as well as to report on low-value contracts (those based on simplified procedures represent petty procurement). While standardization of data has positively affected this area, there are issues that require immediate attention by the relevant PP policy actors. Increased thresholds in the PP regulation for low-value procurement - as observed previously - have increased the overall share of this category to 10% of the total value of PP procurement in Serbia, most significantly in the areas of procurement of goods and services (see Findings in detail below). As reporting on low-value procurement is still limited, this requires thorough intervention in data management, with proper standardization of reporting and appropriate digitalization of the system (to facilitate timely controls and responses by the established control mechanisms). In that direction, statistical reporting of the respective control mechanisms on breaches of the PPL in low-value procurement need to improve as well.

Findings in detail

The total value of low-value public procurement in 2016 increased by 37.9% compared to 2014. According to the type of procurement, the most important increase of low-value procurement happened in the procurement of goods – from EUR 108 mil to EUR 139 mil in the same period, or 38.1%. Procurement of services rose from EUR 69.9 mil to EUR 100 mil, or 43.1%, and procurement of works increased from EUR 28.7 mil to EUR 35.8 mil, or 24.7%. This result was expected, since the legislature increased the threshold for low-value procurement in 2015.

Table 8 Low-value public procurement in total public procurement value, 2014- 2016 (EUR)

	2014	2015	2016
Public procurement	2.414.137.800	2.726.542.602	2.447.184.290
Low-value public procurement	199.389.856	224.574.632	274.810.368
Overall value of public procurement	2.613.527.656	2.951.117.234	2.721.994.658
The proportion of simplified public procurement procedures in overall public procurement	7.6%	7.6%	10.1%

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

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