



SIGMA

Creating Change Together



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Central public procurement institutions in the Western Balkans (with selected EU country examples)

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List of abbreviations and acronyms

ABA	Procurement Policy and Advice Commission (<i>Aankoopbeleid en Advies</i>)
AIA	Administration of Inspection Affairs
ANAC	National Anti-Corruption Authority (<i>Autorità Nazionale AntiCorruzione</i>)
ANAP	National Agency for Public Procurement (<i>Agenția Națională pentru Achiziții Publice</i>)
APA	Portuguese Environment Agency (<i>Agência Portuguesa do Ambiente</i>)
ASPA	Albanian School of Public Administration
ATRAKO	Agency for the Treatment of Concessions and PPPs
BAAINBw	Federal Office of Bundeswehr Equipment, Information, Technology and In-Service Support (<i>Bundesamt für Ausrüstung, Informationstechnik und Nutzung der Bundeswehr</i>)
BAM	Federal Institute for Materials Research and Testing (<i>Bundesanstalt für Materialforschung und -prüfung</i>)
BBG	Federal Procurement Agency (<i>Bundesbeschaffung</i>)
BeschA	Federal Procurement Office of the Ministry of the Interior (<i>Beschaffungsamt des Bundesministeriums des Innern</i>)
BiH	Bosnia and Herzegovina
BME	Association of Materials Management, Purchasing and Logistics (<i>Bundesverband Materialwirtschaft, Einkauf und Logistik</i>)
BMI	Federal Ministry of the Interior, Building and Community (<i>Bundesministerium des Innern, für Bau und Heimat, BMI</i>)
BMWi	Federal Ministry for Economic Affairs and Energy (<i>Bundesministerium für Wirtschaft und Energie</i>)
C&PPP Law	Law on Concessions and Public-Private Partnerships
CDTI	National Centre for Research and Innovation (<i>Centro para el Desarrollo Tecnológico Industrial</i>)
CEFTA	Central European Free Trade Agreement
CGS	Common Government Services
CIPS	Chartered Institute of Procurement and Supply
CISD	Classified Information Security Directorate
CJEU	Court of Justice of the EU
CPA	Centralised Procurement Agency or Central Purchasing Agency
CPC	Code of Public Contracts (<i>Código dos Contratos Públicos</i>)
CPV	Common Procurement Vocabulary

DAE	State Purchasing Directorate (<i>Direction des Achats de l'État</i>)
DAJ	Department of Legal Affairs (<i>Direction des Affaires Juridiques</i>)
DGE	General Directorate for Enterprises (<i>Direction Générale des Entreprises</i>)
DSJU	State School for Public Administration
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EPPS	Electronic Public Procurement System
eSPap	Central purchasing body (<i>Entidade de Serviços Partilhados de Administração Pública</i>)
ESPD	European Single Procurement Document
EU	European Union
EUROSAI	European Organisation of Supreme Audit Institutions
FAQs	Frequently Asked Questions
FBiH	Federation of Bosnia and Herzegovina
GDP	Gross Domestic Product
GIZ	(<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>)
GPA	Government Procurement Agreement
GPP	Green public procurement
GZD	Federal Central Customs Authority (<i>Generalzolldirektion</i>)
HIDAACI	High Inspectorate of Declaration and Audit of Assets and Conflict of Interests
IMPIC	Institute of Public Markets, Real Estate and Construction (<i>Instituto dos Mercados Públicos, do Imobiliário e da Construção, I.P.</i>)
IPA	Instrument for Pre-accession Assistance
IPA	Irish School of Public Administration
IT	Information Technology
ITACA	Institute for Modernisation and Transparency of Procurement and Environmental Compatibility (<i>Istituto per l'innovazione e trasparenza degli appalti e la compatibilità ambientale</i>)
IUB	Procurement Monitoring Bureau (<i>Iepirkumu Uzraudzības Birojs</i>)
KdB	Co-ordination Unit Government Purchasing Authority of the Ministry of Interior (<i>Kaufhaus des Bundes</i>)
KIPA	Kosovo Institute of Public Administration
KNB	Competence Centre for Sustainable Procurement (<i>Kompetenzstelle für Nachhaltige Beschaffung</i>)
KNB	Competence Centre for Sustainable Procurement (<i>Kompetenzstelle für Nachhaltige Beschaffung</i>)

KOINNO	Competence Centre for Innovation Procurement (<i>Kompetenzzentrum Innovative Beschaffung</i>)
MEAE	Ministry of Economic Affairs and Employment
MIA	Montenegrin Investment Agency
MICINN	Ministry of Science and Innovation (<i>Ministerio de Ciencia y Innovación</i>)
MoE	Ministry of Economy
MoEF	Ministry of Economy and Finance
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MTTT	Ministry of Trade, Tourism and Telecommunications
NAC	National Appeals Chamber (<i>Krajowa Izba Odwoławcza</i>)
NGO	Non-Governmental Organisation
OECP	Public Procurement Economic Observatory (<i>Observatoire Économique de la Commande Publique</i>)
OECD	Organisation for Economic Co-operation and Development
OGP	Office of Government Procurement
OIRESCON	Independent Office for Regulation and Supervision of Public Procurement (orig. <i>Oficina Independiente de Regulación y Supervisión de la Contratación</i>)
OJEU	Official Journal of the European Union
OSCE	Organization for Security and Co-operation in Europe
PPA	Public Procurement Administration or Public Procurement Agency or Public Procurement Authority
PPB	Public Procurement Bureau
PPC	Public Procurement Commission
PPC	Public Procurement Council
PPD	Public Procurement Directorate
PPI	Public Procurement of Innovation
PPL	Public Procurement Law
PPO	Public Procurement Office
PPP	Public-Private Partnership
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Board or Procurement Review Body
PRIMO	Procurement, Integrity, Management and Openness
RCPRPP	Republic Commission for the Protection of Rights in Public Procurement Procedures
RS	Republika Srpska

SAC	State Appeals Commission
SAI	Supreme Audit Institution
SC	State Commission for the Review of Public Procurement Procedures
SIGMA	Support for Improvement in Governance and Management
SME	Small and Medium-sized Enterprise
SNCP	National Electronic Public Procurement System (<i>Sistema Nacional de Compras Publicas</i>)
SPP	Strategic Public Procurement
SRPP	Socially responsible public procurement
TAIEX	Technical Assistance and Information Exchange
TED	Tenders Electronic Daily
TIMS	Training Information Management System
ToT	Training of Trainers
UHM	Sweden's National Agency for Public Procurement (<i>Upphandlingsmyndigheten</i>)
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
USAID	US Agency for International Development
WTO	World Trade Organization
ZV-BMEL	Central Procurement Unit of the Federal Office of Food and Agriculture (<i>Zentrale Vergabestelle für das Bundesministerium für Ernährung und Landwirtschaft</i>)

Foreword

This paper is intended as a guide for decision makers, providing policy options to administrations in the process of designing and improving central public procurement institutions that can help to build sound and efficient procurement systems. It also aims to suggest ways forward, based on available good practices.

For the last 20 years, SIGMA has been working with governments and other stakeholders in the Western Balkans on designing modern and efficient public procurement systems that conform with the requirements of the harmonisation process with the European Union (EU).

SIGMA has provided wide-ranging assistance for reforms: helping to draft national public procurement legislation (primary and secondary) based on the EU Public Procurement Directives and good practices established in EU Member States; helping to increase the professionalisation of procurement communities by developing training materials, guidelines, policy briefs and other tools, and by organising direct training for policy makers and procurement practitioners; supporting the creation and operation of independent review bodies; and providing strategic policy advice and assessment to evaluate progress in carrying out the reforms.

The main focus of SIGMA assistance has always been support for the central public procurement institutions (public procurement offices and agencies) set up by each administration in the Western Balkans to oversee the development of the public procurement system. SIGMA has thus accumulated a considerable body of knowledge. Since 2015, its Baseline Measurement and Monitoring Reports in the Instrument for Pre-accession Assistance (IPA) region have provided regular, structured overviews of public procurement, including the institutional structures and the performance of the relevant public procurement systems. This paper provides an opportunity to consolidate, expand and share this knowledge and experience.

All SIGMA partners in the IPA region have established administrative structures in the central government to design the legislative framework and policies in public procurement, and to provide general support for the system. This includes electronic publication/dissemination of information on procurement opportunities and contracts awarded, and assistance to contracting authorities and economic operators (including support, advice and training). Some have also introduced more advanced electronic procurement platforms. A few decided to implement additional control and approval procedures that involved the central procurement institutions directly in individual procurement processes (with mixed and not always successful results). All SIGMA partners in the region have also established special, quasi-judicial procurement review bodies to decide on appeals submitted by economic operators contesting the decisions of contracting authorities. Some have established bodies to carry out centralised purchasing.

This paper offers a comparative overview of central institutions that develop, regulate and manage the public procurement systems in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Republic of North Macedonia (hereafter 'North Macedonia') and Serbia, also drawing on examples of good practices established in several EU countries. This paper, however, does not deal with the review institutions, central purchasing bodies or the agencies set up to support and manage public private partnerships and concessions. Its focus is a systematic and detailed discussion of the functions of public procurement offices and agencies (or equivalent institutions).

The paper consists of two parts. The first provides analysis of the main procurement functions performed by the central institutions.

The second part of the paper includes detailed descriptions of the development and organisation of the relevant administrative structures in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

The main objective of this paper is to provide information on the rich variety of solutions that the SIGMA partner administrations have chosen, to perform crucial functions for operating the public procurement system. It was not our intention to provide direct assessment of these solutions, or to recommend the best model for the administrative framework for public procurement. Various equally compelling and potentially successful ways can be found to organise administrative support for public procurement at the central government level. The paper instead attempts to identify several solutions, both from the EU and from the Western Balkans. The substantial collection of good practice examples is intended as a source of inspiration for decision makers, for SIGMA partners and beyond, to generate new ideas on developing and improving their national public procurement systems.

The paper was developed by a team, led by Mr. Marian Lemke (SIGMA), of international public procurement experts: Mr. Eriks Mezalis (Latvia), Mr. Dariusz Piasta (Poland) and Ms. Susie Smith (UK). The following SIGMA staff members helped to prepare the paper for publication: Mr. Gheorges Cazan, Mr. Piotr-Nils Górecki, Ms. Ilana Demal and Ms. Pauline Boisson. Several valuable comments have been delivered by Mr. Gregor Virant, Head of the SIGMA Programme, and OECD/GOV reviewers: Ms. Erika Bozzay, Mr. Paulo Magina and Mr. Julio Bacio Terracino.

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Executive summary

Good public procurement practice requires a sound policy and regulatory framework, and institutional structures and arrangements that ensure that the regulatory system functions properly with sufficient level of integrity. Administrative structures are needed at the central level with a clear mandate to initiate, design, implement and monitor public procurement policy. These structures must be responsible for all aspects of the policy within the public sector and must respond to changing priorities and needs. A clear vision is essential for responding to changing operational needs and strategic demands, to ensure that procurement can deliver sustainable, socially responsible and innovative solutions.

This paper focuses on the central institutions, in the Western Balkans and in the European Union, that are tasked with public procurement policy making, design of the rules and implementation and control/monitoring. These functions and activities are often undertaken by a Public Procurement Office/Agency or a Ministry of Finance or Economy. Other institutions that deal with remedies (the legal review process for challenges to decisions taken in public procurement procedures) and centralised purchasing are not the subject of this paper.

The key public procurement functions discussed in detail in later chapters of this paper are:

- the crafting of national public procurement policy and strategy;
- strategic use of public procurement to deliver sustainable, socially responsible and innovative solutions;
- preparation of legislation, both primary and secondary;
- preparation of standard procurement documents;
- providing support to contracting authorities, economic operators and other stakeholders, by offering legal information, opinions and guidance;
- organising/maintaining/supporting the national procurement training system to increase professionalisation, as one aspect of capacity building;
- facilitating the introduction, operation and development of electronic procurement systems;
- collecting and publishing statistical data;
- control and monitoring of the application of procurement rules by contracting authorities;
- international co-operation.

The key public procurement functions are similar for every national public procurement system, but they can be carried out by bodies/structures organised in different ways, ranging from highly centralised to decentralised models, which are outlined in this paper. The Western Balkan administrations have adopted centralised models with a high concentration of procurement functions allocated to one or a few central institutions.

1. The crafting of national public procurement policy and strategy

Policy making in the field of public procurement and co-ordination of the activities associated with it should have clarity, coherence and continuity, as well as a strong political mandate supported at ministerial level in the national administration. Public procurement policy should be comprehensive and cover not only issues related to the awarding of public contracts, but also other forms of public procurement, such as

works and service concessions, as well as public-private partnerships (PPP) and infrastructure. It should address both strategic and operational issues while acknowledging the wider policy, legal and institutional environment.

National public procurement policy should address the development and use of Strategic Public Procurement (SPP) – with the goal of sustainable, socially responsible and innovative outcomes – in accordance with clear national priorities.

Public procurement policy development, implementation and review is a dynamic, complex, iterative and interactive multi-stage process. At each stage, all stakeholders should be actively engaged in the process, including public institutions, contracting entities, economic operators, independent experts and Non-Governmental Organisations (NGOs) and civil society. Stakeholders can provide real examples of both successes and problems within the existing system and offer their perspective on setting priorities and realistic objectives. They may also provide valuable input on performance indicators that can help ensure transparency and accountability in delivering on the agreed objectives and action plans.

2. Promoting Strategic Public Procurement: ensuring sustainable, socially responsible and innovative solutions

Until relatively recently, public procurement was seen as an administrative, back-office function that focused on obtaining value for money within the framework of applicable legal rules. Today, however, it is increasingly seen as a crucial pillar of service delivery for governments, and a strategic tool for achieving key policy objectives.

This paper reviews how Strategic Public Procurement has been incorporated as part of national public procurement policy/strategy, where responsibility lies for the promotion of Strategic Public Procurement, and demonstrates how practical support can be provided to contracting authorities in organising Strategic Public Procurement.

3. Drafting primary and secondary legislation

The functional and institutional systems of public procurement in the EU Member States and in Western Balkan administrations are based on a set of rules. These rules aim to regulate all aspects of the public procurement cycle, from budgeting and procurement planning to procurement, contract execution and performance assessment. They also define the roles and responsibilities of institutions with competencies in public procurement.

In EU Member States and in Western Balkan administrations, the public procurement legal framework is strongly influenced by EU public procurement law, under the 2014 Procurement Directives and Regulations. The obligations of Western Balkan administrations to implement the EU legal framework are laid out in the agreements with the EU that govern their EU accession processes.

There are various solutions for allocating responsibility for preparing first drafts of public procurement laws in different administrations. Typically, the regulatory framework specifies the institution charged with the initial draft legislation. That institution may be entitled to submit the draft law to the government.

Legislation should not be drafted in isolation. The department, ministry or public procurement body responsible for drafting may head a working group of representatives of other ministries and public institutions including contracting authorities, and may also include other stakeholders, such as NGOs and organisations representing economic operators. Wider stakeholder engagement should enhance the quality of the law-making process in line with principles of good governance and effective administration,

increase the legitimacy of the legislation and secure better outcomes to ensure effective allocation of public funds and decrease the risk of legal noncompliance with the applicable international obligations.

4. Standard procurement documents

Another important function of central procurement institutions is the preparation and provision of standard procurement documents such as: procurement notices for publication; notifications of decisions; tender documents; terms and conditions of the contract/s; specifications; and documents used in review procedures, such as the form of appeal and responses.

Well-prepared and relevant standard procurement documents can have beneficial outcomes. They can increase transparency and the effectiveness of procurement processes and facilitate access to procurement opportunities for potential competitors of all sizes by streamlining procurement processes and easing the administrative burden for both contracting authorities and economic operators. Standard procurement documents should also reduce the room for errors and irregularities, since they should comply with formal legal requirements. In addition, such documents should facilitate monitoring of compliance with public procurement rules by control, audit or review bodies.

Standard procurement documents are usually developed by central procurement institutions, whose employees are familiar with the relevant legal provisions. It is good practice to involve representatives of economic operators and other stakeholders in the preparation of standard procurement documents.

5. Providing legal information, opinions and guidance on interpretation of public procurement rules

Providing legal information, opinions and guidance on interpretation of the public procurement rules is traditionally one of the chief functions of central procurement institutions. It is an important role: well-focused, relevant, practical support can assist contracting authorities and economic operators to plan and run procurements efficiently, in a legally compliant manner and in line with good practice.

This paper demonstrates that advice and support can take a number of forms, including the provision of: consolidated texts of public procurement laws and implementing regulations; notes, guidance, commentaries and interpretations; answers to frequently asked questions; help desks, whether face to face, by telephone or online; the provision of operational tools as well as support specifically for economic operators

6. Organising and supporting training in public procurement

Central procurement institutions often play a role in organising and supporting training on public procurement as part of the wider capacity building agenda. Training is commonly focused on developing the expertise and skills of public procurement officers, including supporting certification programmes. It can also include training for economic operators and others involved in the public procurement system, such as judges and auditors.

This paper identifies a range of models for the organisation and support of training in public procurement. Training activities can take various forms and be delivered by different institutions. One well-established format is to hold training events organised by central procurement institutions, and led by members of their staff. Training may also be organised and delivered by central procurement institutions in co-operation with other institutions or external experts. It may also be partially or entirely “outsourced” to public and private entities, while the central procurement institutions maintain control of the quality of the training provided. In some EU countries, central purchasing bodies play an important role in professionalising public

procurement and serving as hubs for the transmission of expertise. Internet-based tools can also provide useful support for the training and development of procurement professionals.

Some administrations in the Western Balkans and the EU use certification schemes as a validation mechanism. These train public procurement officers in the necessary skills and competencies and give them the incentive to fully commit to skills development and continuous learning.

7. Electronic procurement systems

Public procurement is becoming increasingly digitised. This is beneficial in a number of ways, since it: allows for faster, more efficient transactions and more effective use of human resources; increases competition; promotes integrity by making public procurement transactions more open and visible; allows for efficient aggregation of data. It may also facilitate good public financial management practices through the procurement cycle.

E-procurement can potentially have a great impact on the activity of central procurement institutions that play a key role in the planning, introduction, development and maintenance of e-procurement in the national procurement framework. The central procurement institution can be assigned the responsibility for procurement and/or development of the e-procurement information technology (IT) system and for its ongoing operation and management. The central procurement institution may take a leading role in co-ordinating key institutional stakeholders, for example, facilitating the interface between different IT systems that link up with the e-procurement system.

8. Collection and publication of statistical data

Reliable and comprehensive data on public procurement is important at every level of the public procurement system. It is an essential foundation for the formulation of national procurement policies/strategies. At an operational level, procurement data on what is being purchased and the frequency of purchases can be used to determine the type of purchases suitable for centralised procurement or for instances where framework agreements or dynamic purchasing systems might be suitable. It may also be used to identify systemic problems, such as failed procurement or high levels of use of non-competitive procedures, and even evidence of negative supplier behaviour, such as collusion or bid rigging. Procurement data that is publicly available can, where it is sufficiently clear, up-to-date and comprehensive, improve accountability and increase the transparency of the procurement system. The collection, analysis and publication of procurement data is thus a key function of central procurement institutions.

Modern technologies are important for collecting and analysing public procurement data. They can augment data collection and analysis, improving the measurement of the impact of the public procurement policies and public procurement operations in different sectors and for different types and levels of contracting authorities.

All central procurement institutions in the Western Balkans collect and process statistical data on the public procurement market. The relevant information is sometimes collected from reports submitted by contracting authorities, in accordance with public procurement laws.

The move towards open data is a positive development. Publication of comprehensive data free of charge, in a format that can be independently analysed by NGOs, public procurement experts and other stakeholders, can increase market transparency, decrease transaction costs and facilitate government accountability.

9. Control and monitoring of application of procurement rules

The control and monitoring of public procurement play an important role in any national public procurement system, particularly as a method for safeguarding integrity. Control and monitoring are often performed primarily by central procurement institutions. However, other institutions, such as state auditors or specialised inspection institutions, also perform control or monitoring activities. In some cases, the procurement review/challenge process may also be regarded as a form of control, particularly where the review body acts in an *ex officio* capacity. Monitoring, when understood as a broad concept, can also involve more general systematic observation of the public procurement system, conducted in order to assess the development and functioning of the system. This can include activities of civil society, NGOs or independent experts.

This paper focuses on activities undertaken by central purchasing institutions to detect and remedy infringements of public procurement rules. These can be divided into activities that are undertaken prior to conclusion of a contract, either during or at the end of a procurement process (*ex ante* control), activities undertaken after the conclusion of the procurement process (*ex post* control) and monitoring the implementation of contracts. Both *ex ante* and *ex post* controls involve various advantages and disadvantages which are presented in this paper. These should be evaluated when considering whether to introduce new controls or during the review of controls that are already in place.

All public procurement offices in the Western Balkans perform some forms of monitoring and control of public procurement. In all of the administrations concerned, control is limited to assessment of the legality of procurement activities of contracting authorities (legal compliance control).

10. International co-operation

National public procurement systems do not function in isolation. Public procurement offices/agencies play an active role in international co-operation by contributing to international regulatory activities in the field, including meetings of the Committee of Government Procurement Agreement (GPA) of the World Trade Organization (WTO). They may also contribute to the EC expert groups on public procurement, such as the Government Experts Group on Public Procurement. In the Western Balkans, central procurement institutions act as a national contact point for EU services in public procurement matters and maintain constant working contacts between public procurement institutions in the region.

Part 1. Organisation of central public procurement functions

Chapter 1. Institutional models for central public procurement functions

Public procurement refers to the entire process of identifying what is needed, finding the best supplier, and ensuring the best quality product or service is delivered to the right place, at the right time and at the best price¹. This process must be carried out in a fair and transparent manner given the fact that governments spend a large sum of money through public procurement to carry out their daily functions and deliver their mandates. Public procurement continues to be one of the key areas of public administration reform in the Western Balkan region. In 2018, spending on public procurement represented 24 % of total government expenditures in the Western Balkan region². This number ranged from 16% in North Macedonia to 37% in Kosovo³. The size of public procurement in terms of GDP reflects also the economic significance of public procurement as a strategic governance tool. In 2018, the region spent approximately 8% of GDP on public procurement. The largest share was spent on public procurement in Kosovo (11%) and the smallest in North Macedonia (4.9%).

Good public procurement practice requires a sound policy and regulatory framework, and institutional structures and arrangements that ensure that the regulatory system functions properly. Administrative structures are needed at the central level with a clear mandate to initiate, design, implement and monitor public procurement policy. These structures must be responsible for all aspects of the policy in the public sector and must respond to changing priorities and needs. A clear vision is essential for responding to changing operational needs and strategic demands, to ensure that procurement delivers sustainable, socially responsible and innovative solutions.

The 2014 EU Procurement Directives explicitly recognise the need for coherent governance of public procurement systems. Article 83 of Directive 2014/24/EU requires Member States to designate one or more authorities, bodies or structures competent in the following tasks: monitoring of the application of public procurement rules; providing, free of charge, information and guidance on the interpretation and application of EU public procurement legal frameworks, to assist contracting authorities and economic operators, and in particular small- and medium-sized enterprises (SMEs), to apply the framework correctly; supporting contracting authorities in planning and carrying out procurement procedures.

The 2014 EU Procurement Directives are flexible on the specific institutional arrangements, leaving Member States to select the most appropriate structures to carry out their procurement tasks and functions. This approach recognises the different institutional structures in place in EU Member States.

¹ OECD (2020), *Government at a Glance: Western Balkans*, p. 104, OECD Publishing, Paris, <https://www.oecd.org/governance/government-at-a-glance-western-balkans-a8c72f1b-en.htm>.

² Ibidem.

³ Ibidem,

Four clearly distinct areas and activities should be noted in discussing the central-level governance structures or institutions that are relevant for public procurement systems. The areas/activities and types of institutions often responsible for these areas/activities are:

- **Policy making, design and implementation and control/monitoring:** activities including strategy, design of the rules and tools, practical support to contracting authorities and economic operators and control/monitoring of public procurement operations. These functions and activities are often undertaken by public procurement offices or agencies, or a ministry of finance or economy responsible for the public procurement system.
- **Remedies:** the legal review process for challenges to the conduct and decision making of public procurement. This function and its related activities are conducted by specialist review bodies, tribunals or courts⁴.
- **Conduct of centralised procurement:** often involving purchase of frequently used commodities on behalf of or for contracting authorities and the operation of framework agreements. This is often undertaken by central purchasing bodies, which may either have a general remit or be specialist procurers in particular sectors⁵.
- **Other institutions involved in public procurement:** such as state audit institutions, financial inspectors, anti-corruption bodies and competition control and anti-monopoly bodies.

This paper focuses on the first of these areas, the institution/s that are tasked with public procurement policy making, design and implementation and control/monitoring. It is important, however, not to lose sight of the wider context within which such institutions operate and their interaction with institutions responsible for the other roles and activities outlined above.

The institution/s tasked with public procurement policy making, design and implementation and control/monitoring operate in an ever-changing environment. They need to be flexible enough to respond to more general societal and technological changes, as well as to developments in the procurement landscape.

The fast-changing technological environment in which the whole public administration operates has introduced new challenges and opportunities for public procurement. Ongoing developments in, for example, the internet of things, machine learning and virtual reality open up a myriad of possibilities in the way that procurement is scoped and conducted and how procurement support and training can be provided. The increasing use of open data can potentially open up new ways for holding public sector organisations accountable for their activities in spending public funds. A shift towards more strategic procurement, supported by the 2014 EU Directives, demands changes in the concepts and practice of contracting authorities as they are scoping, defining and purchasing to meet public needs.

Central procurement institutions are expected to live up to the consequences of the new changes and options. Contracting authorities will turn to them for advice and guidance. At the same time, central procurement institutions will need to retain oversight over the correct use of, for example, social and innovative criteria. The discretion they involve may open up a risk of fraud and breaches of integrity. Central

⁴ OECD (2007), "Public Procurement Review and Remedies Systems in the European Union", *SIGMA Papers*, No. 41, OECD Publishing, Paris, <https://doi.org/10.1787/5kml60q9vkl-t-en>.

⁵ OECD (2011), "Centralised Purchasing Systems in the European Union", *SIGMA Papers*, No. 47, OECD Publishing, Paris, <https://doi.org/10.1787/5kqkqgv703xw-en>.

procurement institutions will need to play a major role in ensuring more sustainable and innovative procurement to achieve the results anticipated.

The recent COVID-19 pandemic has added to this list of challenges. Procurement of essential items and services in response to the pandemic has made the need for an effective public procurement institutional framework even more evident. On the other hand, the COVID-19 pandemic also highlighted the importance of public procurement in ensuring essential public services⁶.

1. Key public procurement functions

The starting point for this discussion of central procurement institutions is not the institutions themselves but identifying the key public procurement functions crucial for managing and delivery of an effective public procurement system.

The central or key public procurement functions discussed in detail in later chapters of this paper are:

- the crafting of national public procurement policy and strategy;
- strategic use of public procurement to deliver sustainable, socially responsible and innovative solutions;
- preparation of legislation, both primary and secondary;
- preparation of standard procurement documents;
- supporting contracting authorities, economic operators and other stakeholders by providing legal information, opinions and guidance;
- organising/maintaining/supporting the national procurement training system to increase professionalisation;
- facilitating the introduction, operation and development of electronic procurement systems;
- collecting and publishing statistical data;
- control and monitoring of the application of procurement rules by contracting authorities;
- international co-operation.

The central or key public procurement functions are similar for every national public procurement system, but they can be carried out by bodies or structures organised in different ways. In 2007, SIGMA published a study of central public procurement structures and capacity in EU Member States⁷. It clearly demonstrates how different legal and administrative traditions, and each Member State's freedom to decide on its own structures for public administration, resulted in a variety of ways of organising national public procurement systems.

2. Centralised or noncentralised institutional structures

One of the key differences in institutional structure is whether the public procurement system is 1) centralised, with a high concentration of procurement functions allocated to a few central institutions

⁶ OECD (2020), Policy Responses to Coronavirus (COVID-19) – Public procurement and infrastructure governance: Initial policy responses to the coronavirus (COVID-19) crisis, <http://www.oecd.org/coronavirus/policy-responses/public-procurement-and-infrastructure-governance-initial-policy-responses-to-the-coronavirus-covid-19-crisis-c0ab0a96/>

⁷ The centralised, semicentralised and decentralised models were identified in OECD (2007), "Central Public Procurement Structures and Capacity in Member States of the European Union", *SIGMA Papers*, No. 40, OECD Publishing, Paris, <https://doi.org/10.1787/5kml60qdqq0n-en>.

(typically a central procurement office or agency, a procurement review body and sometimes a central purchasing body); 2) semicentralised, with combination of functions allocated to a larger number of institutions; or 3) a decentralised model that disperses procurement functions to various levels of public administration, sometimes including private and public companies⁸.

In EU Member States, the centralised and semicentralised models are arguably more typical. A few Member States do have a decentralised model, examples of which are outlined below. The Western Balkan administrations, however, have adopted only a centralised model, entrusting central procurement institutions with strong mandates and broad responsibilities.

Centralised and semicentralised models have been adopted, in most cases, in the EU Member States that joined the EU in 2004 or later. However, since joining the EU, some of these countries have initiated further reforms that have resulted in the next iteration of changes in the public procurement institutional landscape. In the Member States of Western and Southern Europe, procurement functions tend more often to be divided among several institutions. This is perhaps not surprising, given that the countries in transition from a centrally planned economy to a market economy needed strong institutions to lead reforms in the procurement area and to manage the procurement functions in a coherent way. A centralised system also facilitated the oversight of public procurement and the effort to eliminate fraud and abuse. However, in countries with a long history of a free-market economy, the procurement system was shaped not by an ambitious, rapid reform process, but by constant, needs-based development. This allowed a variety of procurement stakeholders to develop different procurement solutions and approaches institutionally recognised by the law. It thus resulted in decentralisation and greater diversity in the institutional and functional procurement framework.

Finland is one example of a fully decentralised system where several institutions carry out the main functions of public procurement. The Ministry of Economic Affairs and Employment (MEAE) is responsible for drafting national legislation governing public procurement, providing information about the statutes, following the reforms and topical issues relating to public procurement, and ensuring that internal market mechanisms are functioning properly. The MEAE's competence includes participating in decisions made at the EU level and in the WTO. It is also responsible for HILMA, the electronic contract notice system. The Public Procurement Advisory Unit, maintained by the Association of Finnish Local and Regional Authorities and the MEAE, offers contracting authorities information and advice on applying procurement legislation.

The public procurement duties of different ministries depend on their respective administrative branches. The Ministry of Finance (MoF) is responsible for providing general guidance and developing central government procurement activities, for example by defining the general principles followed in central government procurement strategy and public contracts and by developing procurement practices and methods. The MoF also decides which public contracts will be subject to a centralised tendering process in the central government. The Ministry of Defence is responsible for preparing the legislation on defence procurement. The website of the Ministry of the Environment provides information on integrating environmental considerations into public procurement.

Hansel Ltd. is the government's central purchasing body, which invites tenders for supplies and services, establishing and maintaining framework agreements concerning the tendered items on behalf of central government contracting authorities. It also provides contracting authorities with expert services on public contracts and procurement practices. Hansel Ltd. is a wholly state-owned company operating under the guidance of the MoF.

⁸ Ibidem.

In **Germany**⁹, in line with the country's federal structure, public procurement is decentralised. Public procurement functions are assigned to different institutions and different levels of administration. At the federal level, responsibilities are broadly divided between the Federal Ministry of Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*, or BMWi), which leads on policy development and the overarching legal and regulatory framework, and the Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*, or BMI), which leads on e-procurement, the centralisation of procurement, and the rules for the procurement of public works.

The Federal Chancellery co-ordinates the collaboration between different federal ministries to prevent overlap and manage issues that touch upon several ministries, including for public procurement. While the Federal Chancellery is also responsible for guiding exchanges between federal and state-level ministries, there is no supervisory authority responsible for co-ordinating vertically between ministries at federal, state and municipal levels. However, the *Bund-Länder-Ausschuss* (federal-state committee) is a regular meeting between federal- and state-level policy makers that serves to co-ordinate topics of interest for different governmental levels, such as procurement.

There are four central purchasing bodies at the federal level with sectoral specialisations, each housed with a Federal Ministry and tasked with aggregated purchases for defined product groups for the entire Federal Administration: the Federal Central Customs Authority (*Generalzolldirektion*, or GZD), the Federal Procurement Office of the Federal Ministry of the Interior (*Beschaffungsamt des Bundesministeriums des Innern*, or BeschA), the Federal Office of Bundeswehr Equipment, Information, Technology and In-Service Support (*Bundesamt für Ausrüstung, Informationstechnik und Nutzung der Bundeswehr*, or BAAINBw), and the Federal Institute for Materials Research and Testing (*Bundesanstalt für Materialforschung und -prüfung*, or BAM). The *Kaufhaus des Bundes* (KdB), also called the Co-ordination Unit Government Purchasing Authority of the Ministry of Interior, is a platform to group the needs of the public administration and link these central procurement bodies. In addition, the Central Procurement Unit of the Federal Office of Food and Agriculture (*Zentrale Vergabestelle für das Bundesministerium für Ernährung und Landwirtschaft*, or ZV-BMEL) offers its services outside of KdB. Central procurement bodies also exist at regional level.

In **France**, the semicentralised public procurement system involves a number of procurement institutions. The Ministry of Economy and Finance (MINEFI) is responsible for formulating the conditions governing the whole procurement system. The competence of the ministry includes drafting primary and secondary legislation, providing advisory and operational support, managing international co-ordination, and monitoring and control. Its Department of Legal Affairs is in charge of analysing regulations governing public contracts, as well as providing support and legal advice. It is also responsible for collecting public procurement data. The Ministry of Defence and the Ministry of Transport have developed practical tools to inform contracting authorities about the main developments in their respective areas. France has a central purchasing body called the Union for Grouping Procurements, which makes purchases on behalf of state and local buyers. Its functions are complemented by the State Purchasing Body, whose principal activity consists of awarding framework agreements and procurement contracts for common purchases of central administrations.

In the **Western Balkans**, all six administrations have centralised public procurement systems.

In **Albania**, the central body responsible for co-ordinating and monitoring the public procurement system is the Public Procurement Agency (PPA), which reports to the Prime Minister. Under the Public Procurement Law (PPL), "The PPA is a central body, a public legal person reporting to the Prime Minister, and financed by the State Budget". The PPA is entrusted with a wide-ranging list of functions, including monitoring procurement, preparation of draft secondary decrees, imposing fines for public procurement

⁹ OECD (2019), *Public Procurement in Germany: Strategic Dimensions for Well-being and Growth*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1db30826-en>.

violations and excluding economic operators from participation in procurement procedures. Overall, the PPA is responsible for developing, implementing and monitoring public procurement policy, as well as the practical functioning of the system. The PPA also plays an important role in co-ordinating and implementing the Public Finance Management Strategy, which includes several high-priority public procurement components and actions.

In **Bosnia and Herzegovina**, the central authority responsible for public procurement is the PPA, whose headquarters area in Sarajevo, with two branch offices in Mostar and Banja Luka. The PPA reports to the Council of Ministers of BiH. The current PPL does not explicitly assign any specific tasks of the branch offices. The PPA is responsible for drafting procurement strategies and policies, preparing draft legislation, monitoring, and advisory and training activities in the field of public procurement. The PPA's functions and activities include legislative tasks, monitoring and control, providing opinions, training and support to contracting authorities and economic operators.

In **Montenegro**, the MoF has the central competence for public procurement. The MoF discharges relevant functions through the Directorate for Public Procurement Policies (PPD), one of the organisational units of the MoF. The MoF is responsible for policy development for public procurement and is also the competent body for drafting legislation, co-ordinating implementation of the public procurement system and co-operating with international and other organisations. The PPD carries out a number of functions and activities, including: preparation of legal drafts; advice and support to contracting authorities; dissemination of information relevant to public procurement; organising professional development and training of procurement officers; data collection; and monitoring. The PPD also manages the Public Procurement Portal, which advertises public procurement procedures.

In **North Macedonia**, the central body responsible for co-ordinating and monitoring the public procurement system is the Public Procurement Bureau (PPB) [a legal entity within the Ministry of Finance (MoF)]. Its responsibilities are defined in Article 45 of the PPL. They concern legislative activities, monitoring and control, and providing opinions, training and support to contracting authorities and economic operators. As for legislative activities, the PPB is responsible for submitting proposals for the adoption of laws and other legal acts in the field of public procurement to the MoF. This, in turn, is responsible for submitting to the Government proposals for changes in the public procurement legislation.

In **Serbia**, the Public Procurement Office (PPO) is the central administrative body responsible for public procurement. The PPO is an independent entity with legal personality, and it is directly accountable to the Government. Its function and activities include legislative tasks, monitoring and control, providing opinions, training and support to contracting authorities and economic operators. The PPO also manages the Public Procurement Portal¹⁰, which supports advertising of public procurement procedures and is planned, once a new portal is operational, to allow for submission of tenders by electronic means.

3. Responsibility and status of central public procurement bodies

Responsibility to government or parliament: In the majority of countries in Europe, a central public procurement institution is positioned within the government, as a unit within a ministry or a separate agency subordinated to the prime minister or a minister. One exception in the EU is Hungary, where the public procurement body reports to the Parliament. However, even in this case, the crucial role in regulating the public procurement system is in fact played by the Office of Prime Minister. In the Western Balkans, Kosovo has the only central public procurement institution that reports to the Parliament.

In **Hungary**, the Public Procurement Authority (PPA)¹¹ is an autonomous state administration body reporting to Hungary's National Assembly. The PPA is responsible for formulating and disseminating lawful

¹⁰ <http://portal.ujn.gov.rs>.

¹¹ <https://www.kozbeszerzes.hu/english/>.

practices in public procurement transactions, and for encouraging the public and transparent spending of public funds. According to the Public Procurement Act, the PPA's functions include: monitoring the application of public procurement law and issuing opinions on related draft legislation; collecting and publishing statistical data on public procurement; controlling negotiated procedures without prior publication; controlling public procurement notices; editing the Public Procurement Bulletin, the PPA's official journal; operating the Public Procurement Database, the central register of contract award procedures; maintaining contact with the public procurement bodies of other States; organising conferences, training and professional courses; monitoring the amendment and performance of public contracts; keeping and publishing lists and registers specified by the applicable law. The Prime Minister's Office is responsible for policy making, legal drafting, and issuing guidance and *ex ante* control of public procurement.

In **Kosovo**, the Public Procurement Regulatory Commission (PPRC) is a public, independent regulatory authority that reports to the Assembly. It is led by the Board, which is made up of a chairperson and two members proposed by the Government and appointed by the Assembly. The PPRC is entrusted with a wide range of functions, for instance: monitoring procurement; providing technical assistance and advice to contracting authorities and economic operators; support for the development of electronic procurement; drafting and approval of secondary legislation; and maintaining the e-procurement platform. The PPRC uses a database to collect and disseminate information about procurement. It provides regular training to contracting authorities and ad hoc training to economic operators and other interested parties, such as NGOs.

Status of central public procurement bodies: Analysing the status of the branches of public power and the administrative structure is a key element in the successful operation of central procurement institutions, since such issues directly concern the level of their capacity to fulfil procurement functions. In particular, they concern the location of the central procurement body or bodies in the institutional structure of the government, its legal foundation, as well as its status and main organisational set-up.

The central procurement functions can be the responsibility of a ministry, for example the MoF, usually in a separate unit/department or in a stand-alone agency. Typically, even if it is part of a ministry, the public procurement central body enjoys a certain degree of autonomy, but if it is responsible to the government, it remains part of the executive. It is thus fully subordinated to the government, rather than independent, as procurement review bodies are, with their full legal guarantees of independence. Frequently, the policy and primary legislative functions are located in the ministries of finance or justice, while it is advisory and publication functions belong to central procurement bodies/agencies.

The central procurement institution can take several organisational forms. Central functions are exercised by bodies that may report to a variety of authorities, for example, the:

- Council of Ministers
- Prime Minister
- Minister of Finance or Treasury
- Minister of Works
- Minister of Regional Development
- Competition Authority.

Table 0. Comparison of functions performed by central public institutions in the Western Balkans

Function	ALB	BIH	XKV	MNE	MKD	SRB
Preparation of public procurement strategies and other policy documents	X	X	X	X	X	X
Drafting public procurement legislation	X	X	X	X	X	X
Publishing public procurement notices (bulletin or electronic portal)	X	X	X	X	X	X
Providing technical support and interpreting procurement rules	X	X	X	X	X	X
Elaboration of standard tender documentation	X	X	X	X	X	X
Providing training on public procurement	X	X	X	X	X	X
Blacklisting/exclusion of economic operators	X				X	
Certification of public procurement officers		X	X	X	X	X
Certification of public procurement trainers	X	X	X	X		
Developing and maintenance of an electronic public procurement system	X	X	X	X	X	X
Monitoring of awarding of contracts	X	X	X	X	X	X
Monitoring of execution of contracts	X		X		X	
<i>Ex-ante</i> approval of selection of procedures without publication of contract notice				X	X	
<i>Ex-ante</i> approval of procurement documents					X	
Imposing fines for breach of public procurement rules	X			X	X	
Launching procedure to impose penalty for breach of public procurement rules				X	X	X
Collecting statistical data, preparation and publishing of analysis and reports on the public procurement market	X	X	X	X	X	X
Planning and co-ordinating technical assistance projects	X	X	X	X	X	X
International co-operation	X	X	X	X	X	X

X The function is performed by the institution.

Chapter 2. Crafting of national public procurement policy

This chapter looks at the scope, preparation and execution of national public procurement policy. It also shows how Strategic Public Procurement, designed to achieve sustainable, socially responsible and innovative outcomes, is an integral part of national public procurement policy making.

Policy making in public procurement, and co-ordinating the activities associated with it, should have clarity, coherence and continuity and a strong political mandate supported at a high ministerial level in the national administration. Public procurement policy should be comprehensive and cover not only issues related to the award of public contracts but also other forms of public procurement, such as works and service concessions, as well as public-private partnerships (PPP) and infrastructure. It should address both strategic and operational issues, while acknowledging the wider policy, legal and institutional environment.

Public procurement policies are expressed in strategic documents formulating aims and objectives, actions to be taken, how those actions are to be financed and the institutions responsible for implementing them. Measures to assess whether the policy is effectively carried out are an essential element of the overall national procurement policy package. Failure to actively monitor and review how public procurement policies are carried out renders them weak instruments. National policy can take the form of a stand-alone general document covering the whole public procurement system, including concessions, infrastructure and PPP, addressing all its main aspects, such as its legal framework, institutional development, delivery, remedies and review measures accessible to economic operators. A general national public procurement policy may exist along with national public procurement policies on selected, specific aspects of public

procurement, such as: integrity in public procurement; Strategic Public Procurement; the professionalisation of procurement staff; simplification of public procurement rules and obligations; and development of electronic procurement. In some cases, issue-specific national procurement policies may be in force even in the absence of a general national public procurement policy.

National public procurement policy should address the use of strategic procurement – intended to deliver sustainable, socially responsible and innovative outcomes – in accordance with clear national priorities. It should provide an appropriate strategy for the integration of strategic procurement objectives in the procurement system, based on careful planning, baseline analysis, risk assessment and with targeted outcomes. It should also employ an appropriate impact assessment methodology to measure progress in strategic procurement objectives¹².

1. Responsibility for formulating public procurement policy

Drafts of strategies/policies in the field of public procurement are frequently prepared by the central procurement institution in consultation with other relevant institutions and stakeholders and adopted by national governments.

Obligations related to the adoption of public procurement policies are sometimes found in national public procurement law. In such cases, relevant provisions indicate the responsible institutions and may also specify the main strategic priorities and even the content of the policy. Here are two examples of recent developments in this context:

National public procurement policy is directly mentioned in **Spain's** law on public procurement¹³. The designated institution responsible for preparing and adopting the national public procurement policy is the Independent Office for Regulation and Supervision of Public Procurement (*Oficina Independiente de Regulación y Supervisión de la Contratación*, or OIRESCON)¹⁴. Under this Public Procurement Law (PPL), OIRESCON's role also includes monitoring the application of public procurement legislation and, in particular, promoting competition and tackling irregularities in public procurement. OIRESCON is attached to the Ministry of Finance (MoF) but enjoys full functional and organisational independence. It is a relatively new institution, created in 2018 and still in the process of establishment¹⁵. OIRESCON is composed of a president, four members, a secretary and supporting staff. Under the PPL, the national public procurement strategy is approved by OIRESCON, based on the proposal of the Co-operation Committee in the Field of Public Procurement. The national public procurement strategy is a legally binding instrument¹⁶, covering a four-year period and implemented in co-operation with autonomous communities and local entities. It is to be based on an analysis of public procurement practices of all types of contracting authorities. The law also defines the content of the strategy. It is to present: analysis of all available data, both qualitative and quantitative; proposals concerning further improvement of the public procurement system; issues related to drafting manuals of good practice and guidelines; and promotion of professionalisation of public procurement practitioners. The law also defines the objectives of the strategy, such as: combating corruption; increasing professionalisation; promoting efficiency in public procurement and generalised use of electronic tools and instruments; promoting the use of procurement to achieve objectives relating to

¹² The OECD Recommendation on Public Procurement, <https://www.oecd.org/gov/public-procurement/recommendation/>.

¹³ Ley 9/2017 de Contratos del Sector Público, Articles 332 and 334.

¹⁴ <https://www.hacienda.gob.es/es-ES/RSC/Paginas/OIReSuC/OIReSuC.aspx>.

¹⁵ According to press information, only a few of the anticipated 30 staff members have so far been hired. https://elpais.com/economia/2019/08/18/actualidad/1566130948_594034.html.

¹⁶ Ley 9/2017 de Contratos del Sector Público, Article 334 (1).

Strategic Public Procurement (environmental, social and innovation policy); and promotion of participation of small- and medium-sized enterprises (SMEs). The national public procurement strategy has not yet been approved. OIRESCON has adopted a strategic plan for its activities for the period 2020-2024¹⁷. The strategic plan indicates that development of the national strategy, as well as OIRESCON's other activities, requires stronger support and involvement from the Government.

In **Poland**, public procurement policy is also referred to in primary legislation. A new Public Procurement Law (PPL 2021), due to enter into force in January 2021, contains provisions related to the State Purchasing Policy¹⁸. This defines priority actions on public procurement in Poland, as well as the behaviour expected of contracting authorities. Particular attention is paid to strategic procurement, and: acquisition of innovative or sustainable products or services and focus on social considerations in procurement; use of a life-cycle costing approach; corporate social responsibility of enterprises; and dissemination of good purchasing practices and tools¹⁹. The State Purchasing Policy is to be revised every four years. The Minister for the Economy will prepare the document, and it will ultimately be passed into law by the Government. The Minister for the Economy will be responsible for monitoring the strategy. Contracting authorities that are central government administration bodies are required to prepare their own strategies for specific procurement categories under the State Purchasing Policy. These strategies should define procurement contracts, key factors in carrying out the purchasing policy.

In most other countries, public procurement strategies are prepared and enacted, although they are not specifically mentioned in the public procurement laws. Adoption of these strategies is generally part of the task of central procurement institutions, associated with their role of co-ordination and monitoring of national public procurement systems. For example, national public procurement policy in Serbia is established under public procurement strategies and action plans. Strategies and action plans are adopted by the Government on the basis of proposals prepared by the Public Procurement Office (PPO).

In **North Macedonia**, the Public Procurement Bureau (PPB) prepares drafts of strategies. Other institutions involved in creating public procurement policy are: the MoF, the Government, the Ministry of Economy, the State Appeals Council (the procurement review body) and the State Anti-Corruption Commission. The views of contracting authorities, economic operators, business associations and NGOs are also considered in the consultative process in formulating policies.

In the **European Union**, a number of Member States have established bodies dedicated either to supporting public procurement processes in general or to Strategic Public Procurement specifically. These bodies typically serve as the contact point for questions and guidance and as a facilitator for the networks of procurers.

In **Latvia**, procurement policy is led by the Ministry of Finance. The Procurement Monitoring Bureau (*Iepirkumu Uzraudzības Birojs*, or IUB) in the MoF plays a key role in oversight, and is also responsible for providing guidance and training, as well as monitoring procurement statistics. The State Regional Development Agency plays the primary role in e-procurement. The Ministry for Environmental Protection and Regional Development (VARAM) is the main authority for green public procurement policy, although the Bureau, the State Regional Development Agency and the State Environment Bureau are also involved in carrying it out.

In **Portugal**, the Ministry of the Economy is primarily responsible for procurement policy, and the MoF plays a key role in compliance and statistical reporting. The Institute of Public Markets, Real Estate and

¹⁷ [https://www.hacienda.gob.es/es-ES/RSC/Paginas/OIReSuC/PLAN-ESTRAT%C3%89GICO-DE-LA-OFICINA-INDEPENDIENTE-DE-REGULACI%C3%93N-Y-SUPERVISI%C3%93N-DE-LA-CONTRATACI%C3%93N-\(2020-2024\).aspx](https://www.hacienda.gob.es/es-ES/RSC/Paginas/OIReSuC/PLAN-ESTRAT%C3%89GICO-DE-LA-OFICINA-INDEPENDIENTE-DE-REGULACI%C3%93N-Y-SUPERVISI%C3%93N-DE-LA-CONTRATACI%C3%93N-(2020-2024).aspx).

¹⁸ PPL 2021, Chapter 3.

¹⁹ PPL 2021, Article 24.

Construction (IMPIC) is also active in shaping procurement policy. Responsibilities for Strategic Public Procurement are shared between the Portuguese Environment Agency (APA) and the National Innovation Agency (ANI), the central purchasing body, eSPap, and the Ministries of Environment, Economy, Science and Technology and Finances. The eSPap is also a key player in procurement, offering framework agreements available to registered contracting authorities with a wide selection of goods and services listed in its National Public Procurement Catalogue. ESPap is committed to introducing green elements in its purchasing strategy²⁰.

In the **Slovak Republic**, the Public Procurement Office (UVO)²¹ is primarily responsible for public procurement, with a wide range of responsibilities: drafting procurement legislation, implementing policy, overseeing procurement, training, managing e-procurement functions, as well as serving as the body of first instance review. The Ministry of Interior also plays an important role, acting as Managing Authority for the operational Programme on Effective Public Administration, whose tasks include ensuring transparent and effective application of public procurement regulations. The increasing use of green public procurement and of tools to encourage innovation and social considerations in public procurement is one of the key measures intended to increase the effectiveness of public procurement.

2. Preparation of national public procurement policies and stakeholder engagement

Public procurement policy development, implementation, monitoring, reporting and management is a dynamic, complex, iterative and interactive process. The government – in an inclusive process involving internal and external stakeholders – identifies successes and problems, defines and prioritises its objectives and plans activities for achieving these goals, including calculating their costs and identifying sources of financing. It also sets up a measurement framework, with targets for validating progress and helping to address difficulties in the implementation phase.

Before developing a new policy or regulatory framework, governments should undertake an evaluation. Evaluations of procurement systems can be carried out in different ways and rely on procurement metrics and indicators being in place in order to provide insights into trends over time. The increasing availability of procurement data in recent years means that administrations are better equipped to conduct insightful evaluations of their procurement systems than previously. Evaluation of the public procurement system can be done with the use of international assessment tools such as the MAPS (Methodology for assessing procurement systems)²². The MAPS contains a checklist of quantitative indicators, which – along with its legal and policy dimensions – can help in evaluating and benchmarking procurement systems and identifying areas for improvement. The MAPS is a universal tool that aims to catalyse and accelerate the implementation of modern, efficient, sustainable and more inclusive public procurement systems in all countries. In addition, the OECD created a detailed checklist as a self-assessment tool, to guide and support public procurement practitioners in reviewing and revising their public procurement frameworks according to each of the 12 principles of the OECD Recommendation on Public Procurement²³.

Another useful instrument of evaluation are the Principles of Public Administration²⁴, developed by SIGMA in co-operation with the European Commission (EC), which were launched in 2014 as an instrument of the

²⁰ <https://www.espap.gov.pt/spcp/Paginas/spcp.aspx#maintab11>.

²¹ www.uvo.gov.sk.

²² <http://www.mapsinitiative.org/>.

²³ OECD Legal Instruments, Recommendation of the Council on Public Procurement, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411>.

²⁴ <http://sigmaweb.org/publications/principles-public-administration.htm>.

EU Enlargement policy. The Principles were updated in 2017 and a separate version was developed for the ENP administrations. Soon after that, the Principles were complemented with a sound methodological framework, setting the corresponding performance indicators and detailed methodological guidance.

The Principles and the related methodology constitute a framework that (a) helps the governments of the IPA and ENP administrations in designing and implementing public administration reforms, (b) enables objective monitoring²⁵ and assessment of progress and state of play and (c) provides guidelines for technical assistance projects when supporting the governments in their work on public administration reform.

The Principles cover six core horizontal areas of public administration, and public procurement is part of the public financial management chapter. The Principles define requirements and indicators in five main areas of public procurement: legislation, institutional framework, remedies, procurement market and capacity building.

A typical policy planning process involves several key stages, which generally apply to all policy preparation²⁶:

- **Problem analysis:** analysis of the current state of affairs, successes, problems, challenges, and opportunities – preferably based on lessons learned from previous monitoring and evaluation reports, where these are available.
During this phase, supporting evidence related to the problems, challenges and opportunities identified must be collected and provided by the team developing the strategy for decision makers in various stages of the development process. This phase is a key part of strategy development, because the results of the analysis are used later for prioritisation, objective setting and deciding on action. The quality of the analysis is crucial for shaping the quality of the strategy: the scope of the analysis will determine what kind of problems can be identified and verified, fundamentally affecting the objectives of the strategy. The choice of data collection and analytical methods thus requires good planning to avoid bias and short-sightedness, as well as to ensure the engagement of key stakeholders.
- **Prioritisation of problems and objectives:** review, selection and prioritisation of the issues to be addressed. This may be based on their urgency, importance or scale, in accordance with government priorities and available resources, and in light of the views of institutions and stakeholders.
- **Setting objectives:** defining the degree of change desired in the selected problems to be addressed.
- **Defining indicators, with baselines, milestones and targets:** developing ways to measure the achievement of the defined objectives, as well as setting measurable targets to express the extent and direction of the change anticipated and the expected level of performance.
- **Planning action:** Defining objectives and targets, resulting in a planned programme of key activities.

²⁵ <http://sigmaweb.org/publications/monitoring-reports.htm>.

²⁶ Vági, P. and E. Rimkute (2018), "Toolkit for the preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies – Guidance for SIGMA partners", *SIGMA Papers*, No. 57, OECD Publishing, Paris, <https://doi.org/10.1787/37e212e6-en>.

- **Costing planned activities:** calculating the financial and nonmonetary costs required to carry through on the planned actions and create the change anticipated.
- **Monitoring and reporting:** developing and executing a procedure to allow for the regular assessment of progress, for effective, efficient implementation of the desired goals.
- **Evaluation:** development and execution of an indicator-based system to assess progress towards the reform goals.

A common thread running through the policy planning process is the need for active engagement at each stage with stakeholders, including public institutions, contracting authorities, economic operators represented, for example, by chambers of commerce, associations of SMEs and NGOs/civil society. Stakeholders can provide real examples that can identify successes and problems with the existing system, and provide additional perspective for setting future priorities and realistic objectives. They may also provide valuable input on performance indicators, helping to increase transparency and accountability in delivering on the goals and action plans. In addition to formal consultation processes, engagement with stakeholders may take various forms, such as specialist working groups, online suggestion boards or workshops. The type of engagement may differ according to the type of stakeholder. Longer-term, ongoing engagement is likely to prove more valuable than brief, one-off communications. Stakeholders must be given time to consider and respond to suggestions and draft versions of the policy.

3. Aims, objectives and content of national public procurement policies

In **Bosnia and Herzegovina**, The Strategy for the Development of Public Procurement in Bosnia and Herzegovina in the Period 2016-2020 provides an outline for the development, implementation and monitoring of procurement policy. It offers a comprehensive overview of the state of play and challenges in the public procurement system. The Strategy covers public procurement legislative frameworks, monitoring of public procurement procedures, legal protection (review and remedies) and electronic procurement. It does not cover the issues of concessions and PPPs. Among its main strategic objectives, the Strategy focuses on better co-ordination between the public procurement systems, further aligning the legislative framework with the 2014 EU Procurement Directives, enhancing transparency, strengthening institutional capacity and competition, and putting more emphasis on a “value for money” approach.

In **Montenegro**, The Strategy for Development of the Public Procurement System 2016-2020 identifies the main problems of the public procurement system and defines its priorities, such as: improvement of the public procurement system through permanent monitoring and adoption of regulatory changes; strengthening of transparency, efficiency and improvement of the flow of information; monitoring the application of such new trends as green procurement, socially responsible procurement, innovative procurement, support of SMEs and e-procurement; professionalisation of public procurement staff; and harmonisation with the 2014 EU Procurement Directives. The Strategy includes recommendations and proposals for activities to enhance the public procurement system and for harmonisation with the requirements of the EU *acquis*.

In **Kosovo**, the National Public Procurement Strategy 2017-2021 is a coherent strategic framework for the long-term development of the procurement system. Its goal is to improve and modernise the integrated public procurement system and to facilitate the efficient use of public funds. This is to be based on transparency, competition and equal treatment, allowing for substantial budget savings and contributing to Kosovo’s economic development.

The common feature of all these documents is that they deal generally with public procurement, and in particular, harmonising public contracts and concessions with the EU *acquis*. Legislative initiatives are the chief focus. In administrations that are in the process of negotiating accession to the EU, these issues also

play a prominent role in the national public procurement strategy. Strategic use of public procurement does not yet play a large role in public procurement policies of the Western Balkans. Green or social public procurement is mentioned in only a few public procurement policies. In **Serbia**, for example, the Strategy for Public Procurement encourages certain activities related to environmental/green, socially responsible and innovative procurement, as well as the professionalisation of the procurement function (through intensive training and certification of procurement officers). In **Montenegro**, too, the Strategy also deals with the strategic use of public procurement: the inclusion of aspects of green procurement; promoting socially responsible procurement, innovative procurement and access of SMEs to public contracts. In **Kosovo**, green/environmental, social procurement or innovations are covered only in a general way, without providing details.

All the administrations in the Western Balkans region have overall strategies or policies on public procurement that have been adopted by the Government. In the EU, only a few countries have strategies for the whole public procurement system: Bulgaria, Romania²⁷ and Sweden. Some EU countries adopted national strategies in preparation for accession to the EU (as required by the European Commission). Some countries acceding in the period 2004-2013 prepared national public procurement strategies but did not adopt new strategies after they became Member States. Croatia's most recent public procurement strategy was adopted in 2008²⁸, for example, and no further public procurement strategy was adopted after its accession to the EU. Croatia had a strategy dedicated specifically to electronic public procurement in the period 2013-2016²⁹. EU countries do have some examples of recent, overall public procurement policies, and, as noted above, Spain and Poland are preparing new public procurement policies.

In **Bulgaria**, the National Strategy for Development of the Public Procurement Sector³⁰ aims to increase efficiency and conformity with the law in awarding public procurement contracts. It specifies five areas for achieving this: 1) public procurement legislation, 2) public procurement practice, 3) publicity and transparency of the public procurement processes, 4) strengthening administrative capacity, and 5) professionalism in the sector and the control system.

For each of the five areas identified, the following secondary aims have been defined:

- providing for a legal framework: stable and simplified legislation, fully compliant with the 2014 EU Procurement Directives;
- establishing a lawful practice;
- enhancing transparency by introducing fully electronic methods and means for awarding public procurement contracts;
- creating sustainable administrative capacity and enhancing professionalism;
- enhancing the effectiveness of *ex ante*, ongoing and *ex post* control of public procurement.

In **Romania**, the main objective of the public procurement policy is efficiently disbursing public money, by enhancing the quality of the procurement process and increasing administrative capacity. Six specific objectives are noted: development of public policy; streamlining public procurement legislation; providing operational support and help desks; procurement remedies; professionalisation of procurement practitioners; monitoring, supervision and control. The strategy is divided into five chapters, which include: the major problems in the application of the current legislation, a series of supporting documents

²⁷ <http://anap.gov.ro/web/wp-content/uploads/2015/12/Strategia-Nationala-Achizitii-Publice-final.pdf>.

²⁸ <http://www.javnabjava.hr/default.aspx?id=3419>.

²⁹ https://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_54_1098.html.

³⁰ Available in English at: <https://www2.aop.bg/en/legislation-and-methodology/policies-and-strategic-documents-2/national-public-procurement-strategy/>.

substantiating proposed actions and an action plan (separate for each chapter) with specific deadlines, responsible institutions, performance indicators and the impact anticipated.

Belgium has no over-arching public procurement policy for the whole country, but the Flemish Government has adopted a strategy on public procurement for Flanders for the period 2016-2020³¹. It sets these goals: professionalisation of the Flemish government's purchasing policy, application of end-to-end e-procurement, promotion of the participation of SMEs in public procurement, sound public procurement, sustainable and innovative purchasing and using the data from public procurement to help guide strategic procurement.

4. Costing implementation of public procurement policies

When a strategy is developed, it must always include the proper calculation of the cost of the resources needed for its implementation. One of the biggest obstacles to improvement and reform is a lack of funding for such actions. Developing a strategy is a way not only of determining what a government identifies as the main problems and how and to what extent it wants to address these problems, but also of planning for the resources needed to make the desired changes.

Once the goals have been set and the necessary steps to achieve them have been planned for, it is crucial that the resources for implementation are estimated, with the costs calculated and budgets allocated accordingly. The calculations need to be checked against the estimated available internal and external funding before the strategy is finalised, so that the calculated costs of implementation do not exceed the resources available. If resources are insufficient the goals may need to be adjusted or the priorities reconsidered. Appropriate allocations must be made in annual and medium-term budget(s). Ideally, when a strategy and its budget are prepared, the cost of implementing the actions that are planned should take account of the annual budget preparation process. This will prevent planning any action that could be delayed if the current or forthcoming annual budgets do not allow for it, and avoid new financial burdens that could unexpectedly jeopardise the solvency of the state budget. Ideally, the costing should use methodologies approved by the government or ministry of finance. Governments can apply various methodologies to calculate the costs of existing and new policies (reform of the public administration may represent a set of new policies), such as activity-based costing, unit costing or project costing. Where external funding is involved, confirmation must be obtained from development partners that the necessary resources and funds have been secured. A comprehensive and detailed guide for the costing of strategies has been developed, for example, by the Regional School of Public Administration³².

5. Action plans for implementation of national public procurement policies

Public procurement policies (strategies) usually cover a period of four or five years. To ensure their smooth delivery, more detailed action plans covering shorter time spans, usually of one or two years, are also prepared. An action plan for the implementation of national public procurement policies should:

- clearly present all activities to be undertaken and indicate which institutions are responsible for their implementation;
- contain a timetable with clearly defined milestones and deadlines;
- describe the sources of financing for implementation of all activities;

³¹ <https://overheid.vlaanderen.be/overheidsopdrachten-en-raamcontracten/beleid/beleid-overheidsopdrachten>.

³² ReSPA (2018), *Methodological Guide for Costing of Government Strategies with Examples from Public Administration Reform Strategies*, <https://www.respaweb.eu/download/doc/Methodological+Guide+for+Costing+of+Government+Strategies.pdf/e004a1a4c06fb11631f998d9298693b6.pdf>.

- present performance indicators at the level of objectives as well as activities;
- be made available to the public.

Action plans should cover the entire period in which the strategy is to be in force. In practice, this does not always often happen. For example, a strategy may contain the first detailed action plan for the first one or two years of the strategy, and the relevant institutions may then fail to update it and include the subsequent period(s). In **Bosnia and Herzegovina**, for example, the Action Plan covering the period 2016-2017 was adopted to implement the Strategy, but no action plans have since been adopted. In **Kosovo**, an action plan provided for activities to implement the Strategy in the period 2017-2019, but the action plan for the period starting in 2020 is not yet available.

6. Monitoring, reporting and evaluation of implementation

Once a strategy and its action plan have been approved, its implementation begins. Responsible institutions should undertake regular monitoring, reporting and evaluation to see whether implementation of the strategy is achieving the objectives, that activities are achieved in line with performance indicators and timescales, and that the strategy delivers as expected. Strategic documents and action plans should be reviewed and updated at least annually. Any proposals for updating action plans and amending strategies should be the subject of public consultation. Reports on implementation must be prepared and made public. This can be a resource-intensive process.

It is of paramount importance that the monitoring, reporting and evaluation system be developed and set up in conjunction with the adoption of the strategy, detailing the various roles and responsibilities for data provision, data collection, report writing, frequency of reporting, the structure of various reports and key aspects evaluation, such as assessing compliance with performance indicators. If an administration has a framework consisting of several policies/strategies, it is also important to ensure that the monitoring and reporting process is streamlined and coherent, to minimise the additional burden occasioned by each policy/strategy within the framework. It is equally important that any monitoring, reporting and evaluation process be aligned with the requirements and standards of any national system.

It is important to consider carefully how best to collect and analyse the data that will help inform policy improvement and decision making. Similarly, it is also important to consider how to present and communicate the information to external users and the wider public. Setting this fine balance requires the dedicated efforts, expertise and skills of technical staff and receptive management and leadership. It also takes several reporting cycles to evaluate fully what information is required when, and from whom, to provide the best support for smooth, effective implementation.

In **Spain**, the Public Procurement Law requires that the Co-operation Committee in the Field of Public Procurement conduct the initial evaluation of the national public procurement strategy. It is thus allowed to introduce any changes necessary and to adjust its content to secure the objectives of the strategy. Suggestions for modifying or adjusting the strategy are then submitted to OIRESCON to be adopted and published. After the allotted time span of the strategy has expired, the Committee prepares a report on the application of the strategy. This is submitted to the State Public Procurement Advisory Board and OIRESCON. The information is then shared with the EC and the National Committee for Markets and Competition³³ and published within a month.

In **Montenegro**, to streamline implementation of the national public procurement strategy, a co-ordination body was established to monitor it. This is composed of representatives of the MoF and the Public Procurement Directorate (PPD), a procurement review body, State authorities, representatives of NGOs,

³³ <https://www.cnmc.es/>.

business and other interested stakeholders. Minutes from meetings of the co-ordination body, as well as annual reports on the implementation of the strategy, are published on the website of the PPD³⁴.

In **Romania**, the National Agency for Public Procurement (ANAP) uses a “dashboard” monitoring system, which includes the main performance indicators, the planned actions and a colour code designed to visually describe their evolution and compliance with performance indicators. The colour code helps measure progress against the indicators and also serves as a warning system that flags any delays in implementation. Where delays or other problems with meeting indicators or deadlines emerge, ANAP must take the steps necessary to make sure the objectives are met. ANAP is required to prepare, on a quarterly basis or upon request, progress reports that are submitted to the Inter-ministerial Committee on Public Procurement. Depending on internal developments and the results of the evaluation and monitoring process, as well as European developments, the strategy is then subject to updates and adjustments.

Chapter 3. Promoting Strategic Public Procurement: sustainable, socially responsible and innovative solutions

Until relatively recently, public procurement was seen as an administrative, back-office function with a focus on purchasing best value-for-money outcomes within the framework of applicable legal rules. Today, however, it is increasingly seen as a crucial pillar of services delivery for governments and a strategic tool for achieving key policy objectives: from budget accountability to spending efficiency, to buying green and improving outcomes in health, tackling global challenges such as climate change and introducing socially responsible suppliers into the global value chain. In many administrations, national authorities are actively pursuing broader policy goals through Strategic Public Procurement that is aimed at procuring sustainable, socially responsible and innovative solutions.

This chapter starts by explaining some of the terminology used to describe Strategic Public Procurement, since it is often subject to confusion and some degree of overlap. It goes on to look at how Strategic Public Procurement has been incorporated as part of national public procurement policy/strategy, where responsibility lies for the promotion of sustainable public procurement and how practical support is offered to contracting authorities in carrying out Strategic Public Procurement.

1. Terminology

Strategic Public Procurement (SPP) is used in this chapter as an umbrella term to cover three themes: green public procurement, socially responsible public procurement (including promoting participation of small- and medium-sized enterprises, or SMEs) and innovation procurement.

SPP Theme 1: Green public procurement (GPP)

Green public procurement (GPP) can be defined as “a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured”³⁵. GPP is often, but not exclusively, addressed through measures such as the use of environmental criteria based on

³⁴ <http://www.ujn.gov.me/category/koordinaciono-tijelo/>.

³⁵ EC (2008), Communication (COM 400) “Public procurement for a better environment”.

a life-cycle approach, eco-labels and a circular procurement approach³⁶. Significant potential exists to create improved environmental outcomes throughout the public procurement cycle, from planning to delivery.

SPP Theme 2: Socially responsible public procurement (SRPP)

Socially responsible public procurement (SRPP) is defined by the European Commission as "... procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility and design for all, taking into account sustainability criteria, ethical trade issues, and wider voluntary compliance with corporate social responsibility"³⁷. Briefly, SRPP is about achieving positive social outcomes in public contracts³⁸. Accordingly, SRPP aims to address the impact on society of the goods, services and works purchased by the public sector. It can contribute to promoting employment opportunities and social inclusion, providing opportunities for social economy enterprises, encouraging decent work, supporting compliance with social and labour rights, accessibility and design for all, respecting human rights and addressing ethical trade issues and delivering high quality social, health, education and cultural services³⁹.

Public authorities can engage in socially responsible public procurement by buying ethical products and services, for example, and by using public tenders to create job opportunities, decent work, social and professional inclusion and better conditions for disabled and disadvantaged people. Buying responsibly and ethically can also create incentives for entrepreneurs to commit to more responsible and sustainable management of the production process and the employment of workers. Socially responsible public procurement is thus a strategic tool for driving social and labour policies forward effectively.

Promoting the involvement of SMEs in public procurement is often presented as a separate strategic objective, but it can also be seen as a subset of SRPP. SMEs are generally an important part of the economy, but they are often under-represented in bidding for public procurement opportunities. In the European Union, their success rates in public procurement are significantly lower than their contribution to GDP. A range of measures are available at national, regional and local levels to support SME access to public procurement. The most typical are: encouraging the use of e-procurement; simplifying processes and documentation requirements; providing information and guidance to SMEs and encouraging the division of contracts into lots^{40,41}.

³⁶ Circular procurement is an approach to GPP that pays special attention to the purchase of works, goods or services that seek to contribute to the closed energy and material loops within supply chains, whilst minimising, and in the best case avoiding, negative environmental impacts and waste creation across the whole life-cycle, https://ec.europa.eu/environment/gpp/circular_procurement_en.htm.

³⁷ EC (2011), *Buying Social: A guide to taking account of social considerations in public procurement*, https://ec.europa.eu/commission/presscorner/detail/en/IP_11_105.

³⁸ EC (2020), *Making socially responsible public procurement work: 71 Good Practice Cases*, <https://op.europa.eu/s/oIV7>.

³⁹ Ibidem.

⁴⁰ EC (2019), *Analysis of SMEs participation in public procurement and the measures to support it*, 697/PP/GRO/IMA/18/1131/10226 Final report, https://ec.europa.eu/growth/content/analysis-smes%E2%80%99-participation-public-procurement-and-measures-support-it_en.

⁴¹ OECD (2018), *SMEs in Public Procurement: Practices and Strategies for Shared Benefits*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264307476-en>.

SPP Theme 3: Public procurement of innovation (PPI)

Innovation can mean multiple things, commonly including the introduction of new or significantly improved products, services or processes. In this chapter, a wide-ranging view, based on EC guidance, is used to cover the concept of “innovation procurement” and PPI, which *“refers to any procurement that has one or both of the following aspects: buying the process of innovation – research and development services – with (partial) outcomes; buying the outcomes of innovation created of others”*⁴².

Strategic public procurement spending on innovative solutions can contribute to sustainable public services of higher quality and offer economic and social benefits. It creates demand for new ideas and innovative start-ups to emerge and grow. It may increase economic growth and help to solve societal challenges.

Sustainable Public Procurement (SPP)

Another commonly used term is sustainable public procurement. SPP has been defined in the past by the EC as *“a process by which public authorities seek to achieve an appropriate balance between the three pillars of sustainable development – economic, social and environmental – when procuring goods, services or works at all stages of the project”*⁴³. The term is still used in some administrations and contexts to refer to both green public procurement and socially responsible public procurement/SME involvement, and sometimes also incorporates innovation procurement.

Secondary objectives

It is still common to see SPP themes referred to as “secondary objectives” or “secondary policy objectives”. In the past, green, social, SME and innovation issues tended to be regarded as “secondary”, since the primary public procurement objectives were the delivery of supplies, works and services in a timely, economical and efficient manner. The OECD Recommendations on Public Procurement, adopted in 2015, which promotes the holistic and inclusive use of public procurement, defines secondary policy objectives as *“any of a variety of objectives such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives, which governments increasingly pursue through use of procurement as a policy lever, in addition to the primary procurement objective”*⁴⁴. The OECD Recommendation and the tools developed for supporting the implementation of the Recommendation (such as the Public Procurement Toolbox⁴⁵) provide guiding principles for governments on how to apply the value for money principle in balance with other policy objectives to achieve broader outcomes. As the progress report on the implementation of the OECD Recommendation on Public Procurement⁴⁶ highlights, an area of concern in many OECD countries is the possibility of being overwhelmed by a large number of policy objectives through public procurement – the risk being that the system of mandates and preferences becomes unmanageable or impossible to satisfy. Therefore, the need for prioritising the various strategic initiatives is of utmost importance.

⁴² EC (2018), Guidance on Innovation Procurement. European Commission, Notice C(2018) 3051 final, <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-3051-F1-EN-MAIN-PART-1.PDF>.

⁴³ EC, *Green and Sustainable Public Procurement*, https://ec.europa.eu/environment/gpp/versus_en.htm.

⁴⁴ OECD (2015), 2015 OECD Recommendation of the Council on Public Procurement, p. 5, <https://www.oecd.org/gov/public-procurement/OECD-Recommendation-on-Public-Procurement.pdf>.

⁴⁵ <https://www.oecd.org/governance/procurement/toolbox/>.

⁴⁶ OECD (2019), *Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1de41738-en>.

2. Strategic public procurement policy and legislation

Successful use of SPP requires, first, prioritisation of the different strategic objectives. An area of concern in the European Union and the Western Balkans is the possibility of being overwhelmed by a large number of policy objectives through public procurement. There is a risk that the system of mandates and preferences becomes unmanageable or impossible to satisfy. However, there are technical solutions and project management techniques that can support collection of and reporting on objectives that have strategic importance for various stakeholders. Accordingly, there are methods available to prioritise the various strategic initiatives being adopted through procurement functions. The various approaches range from leaving the decision to the contracting authorities to prioritising the initiatives in an annual work plan. The progress report on the OECD Recommendation on Public Procurement includes a summary table on the various prioritisation methods used in OECD countries⁴⁷. Successful use of SPP also requires promotion and support at a high political and administrative level, in line with, for example, national development plans and policies. Some examples of promotion of SPP in EU countries are provided below. SPP may be incorporated as part of the general public procurement policy/strategy and action plan. A separate policy for SPP, or specific procurement policies addressing SPP themes of green, socially responsible or innovation procurement, may also exist. Where there are separate policies, they must be aligned with the general public procurement policy/strategy and action plan (see Chapter 2, on National Public Procurement Policy). The use of SPP may also need to be considered in the process of review and preparation of procurement legislation, to decide whether SPP requirements should be incorporated into legislative provisions (see Chapter 4, on Drafting Procurement Legislation). The 2018 Survey on the Implementation of the OECD Recommendation on public procurement shows that the majority of respondent countries have developed policies at some level regarding green and innovative public procurement and SMEs⁴⁸.

In the Western Balkans, strategic use of public procurement does not yet play a mainstream role in public procurement policies. In **Serbia**, the public procurement strategy involves certain activities related to implementation of environmental/green, socially responsible and innovative procurement, as well as increased professionalisation of the procurement function (through more intensive training and certification of procurement officers). In **Montenegro**, public procurement strategy deals in a general way with the inclusion of green procurement aspects, promotion of socially responsible procurement, innovative procurement and access of SMEs to public contracts. Similarly, in **Kosovo**, green/environmental, social procurement or innovations are covered only in a general way, with no details provided. In **Bosnia and Herzegovina**, the current public procurement strategy does not provide for any specific activities involving strategic use of public procurement. In North Macedonia, the Strategic Priorities document does not cover SPP in great detail.

A good example of the way in which SPP can be embedded in procurement policy is offered by **Sweden**⁴⁹. In June 2016, the Swedish Government adopted the National Public Procurement Strategy⁵⁰, which aims to achieve the Government's objective of public procurement as a strategic tool for achieving social sustainability, among other things. The Strategy states that the strategic use of public procurement is a powerful instrument for achieving many positive effects in society. The strategy is primarily aimed at representatives of the state authorities. The National Agency for Public Procurement

⁴⁷ Ibidem, p. 30.

⁴⁸ Ibidem.

⁴⁹ The National Agency for Public Procurement, Sweden, <https://www.upphandlingsmyndigheten.se/en>.

⁵⁰ Available in English at: https://www.upphandlingsmyndigheten.se/globalassets/english/procurement/national_public_procurement_strategy_english_web.pdf.

(*Upphandlingsmyndigheten*, or UHM) has been given a prominent role as a supporting agency to achieve the goals of the strategy. The Strategy defines seven objectives: 1) public procurement as a strategic tool for doing good business, 2) efficient public procurement; 3) a multiplicity of suppliers and well-functioning competition; 4) legally certain public procurement; 5) public procurement that drives innovation and promotes alternative solutions; 6) public procurement that is environmentally responsible; and 7) public procurement that contributes to a socially sustainable society. For each of these objectives, the Strategy sets out a list of measures that contracting authorities should adopt to realise the given objective. For example, those for contributing to a socially sustainable society include: actively working to combat social dumping and ensuring reasonable working conditions; use of employment specifications; use of social sustainability criteria available from a library of criteria provided by UHM; avoiding use of excessive criteria for financial capacity; and avoiding use of excessively large contracts, which present unjustified barriers to the participation of voluntary organisations.

Poland adopted a National Action Plan for the period 2017-2020⁵¹. In March 2017, the Council of Ministers adopted recommendations on the inclusion of social aspects in public procurement by the government administration. The document requires that heads of all units of government administration take social considerations into account in public procurement, and in particular social contractual clauses, to the extent possible. Heads of administrative units are obliged when preparing annual procurement plans for a given year to conduct an initial assessment of the possibility of including social considerations in the procurement processes planned. For particular public procurement procedures, heads of administrative units are required to undertake an in-depth analysis at the preparation stage and include social considerations where in-depth analysis shows this is possible. Heads of government administrations were also recommended to analyse the possibility of applying SPP in procurement procedures that are not covered by the Public Procurement Law (PPL).

In **France**, the cornerstone of SPP strategy is the 2015-2020 National Action Plan for Sustainable Public Procurement⁵², designed by the Ministry of Ecological Transition and Solidarity. Under the umbrella of “sustainable public procurement”, the SSP Action Plan addresses GPP and SRPP challenges through an integrated approach. It relies on three priority axes: 1) mobilisation of decision makers, 2) supporting public purchasers and 3) reporting on progress achieved. Each axis is built on a set of specific objectives and related actions, combining awareness raising, practical guidance and monitoring. In the context of socially responsible procurement, for example, one objective applying from 2020 onwards requires a minimum of 25% of contracts awarded in a year to contain at least one social clause. To support the development of socially responsible procurement, the Economic Public Procurement Observatory (*Observatoire Economique de la Commande Publique*, or OECP) has published a guide to social aspects of public procurement on its website⁵³.

3. Responsibility for promotion of Strategic Public Procurement

Central procurement institutions are usually responsible for preparing and delivering national public procurement policies/strategies. The lead responsibility for promotion of SPP does not, however, always lie with the central procurement institution. For example, a ministry may take a policy lead on green/environmental issues and consequently assume chief responsibility for promoting GPP. Responsibility may also be divided among a number of different leads. Whatever the case, active

⁵¹ <https://www.uzp.gov.pl/baza-wiedzy/zrownowazone-zamowienia-publiczne/zielone-zamowienia/dokumenty>.

⁵² *Plan national d'actions pour les achats publics durables 2015-2020*, https://www.ecologique-solidaire.gouv.fr/sites/default/files/Plan_national_d_action_pour_les_achats_publics_durables_2015-2020.pdf.

⁵³ *Guide sur les aspects sociaux de la commande publique*, https://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/conseil_acheteurs/guides/guide-aspects-sociaux-cp.pdf, version 3 dated July 2018.

co-operation and clear leadership is required to ensure that all policies, guidelines and support are consistent with each other and with the public procurement legal framework and aligned with national policies/strategies.

In **France**, the Ministry of Economy and Finance (MINEFI) has primary responsibility for drafting the overall procurement legislation and ensuring law enforcement. The Department of Legal Affairs provides support and legal advice to contracting authorities on public procurement. Within MINEFI, the working group on public procurement is the key provider of support for public procurement at the central level. However, the implementation of green public procurement is the responsibility of the Ministry of Ecology, which is in charge of policy making on sustainable procurement. This Ministry monitors the initiatives taken to encourage green public procurement and publishes reports, guidance and practical tools on its eco-responsibility platform.

In the **Netherlands**, PIANOo, the Dutch centre of expertise on public procurement, has a comprehensive role both for providing guidance and delivering strategic thinking on how to develop policies in Strategic Public Procurement. PIANOo provides a wealth of information on its website⁵⁴ on such topics as: social conditions in global supply chains; social return on investment; green public procurement; procurement of bio-based products, circular procurement, public procurement of innovation and opportunities for SMEs.

Portugal shows a more mixed picture. The main bodies responsible for procurement policy are the Ministry of the Economy, which has the principal competency for procurement policy, and the Ministry of Finance (MoF), which plays an important role in compliance and statistical reporting. The Institute of Public Markets, Real Estate and Construction (IMPIC) is also active in shaping procurement policy. However, responsibilities for Strategic Public Procurement are shared between several entities, including the Portuguese Environment Agency (APA) and the National Innovation Agency (ANI), and the Ministries of Environment, Economy, Science and Technology and Finances. Portugal's central purchasing body, eSPap, is a key player in procurement, offering framework agreements available to registered contracting authorities, with a wide selection of goods and services listed in its National Public Procurement Catalogue. ESPap is committed to introducing green elements as part of its purchasing strategy⁵⁵.

4. Practical support for Strategic Public Procurement

SPP, whether green, socially responsible or innovative, is implemented by the concrete actions of contracting authorities. Green/environmental issues are now generally well understood, but social and innovation issues in procurement are newer concepts that can be difficult to grasp in practice. Contracting authorities may lack the knowledge or expertise to understand when SPP is relevant to a particular procurement and how to incorporate SPP considerations effectively into planning, procuring and delivery. It is thus critically important to provide practical support to contracting authorities to ensure the correct and effective use of SPP.

It is often, but not always, the central procurement institution's role to provide practical support to contracting authorities on SPP, depending on the allocation of policy/strategic responsibility for SPP noted above. Practical support may take various forms, such as: guidelines and handbooks; decision-making tools for scoping procurement opportunities to promote sustainable objectives; SPP criteria for both specifying requirements and awards; life-cycle costing/total cost of ownership calculation tools; supported discussion groups; online training and face-to-face workshops. Many good examples exist, some of which are outlined briefly below.

Green public procurement: GPP is the best-established SPP theme, and significant amounts of information and support are available. The **EU** has a Green Public Procurement webpage with links to

⁵⁴ <https://www.pianoo.nl/en/sustainable-public-procurement/spp-themes>.

⁵⁵ <https://www.espap.gov.pt/spcp/Paginas/spcp.aspx#maintab11>.

practical support, such as the GPP Criteria and the GPP Toolkit⁵⁶. The **Netherlands** had a well-established GPP policy for many years⁵⁷. This recently underwent significant changes, shifting from a focus on implementing GPP criteria in a large variety of product groups to a comprehensive sustainable procurement approach that considers circular purchasing, as well as social and innovation procurement. As early as 2010, GPP was applied at the federal level in 100% of public procurement procedures, with 50% use on a voluntary basis at sub-national level. Dutch authorities set a target of 100% sustainable procurement for 2015. To achieve this goal, the Department of Public Works of the Ministry of Infrastructure and the Environment developed a methodology for infrastructure projects in which the functional specification of the tender, together with the quality input from the client, ensure an innovative and high-quality solution. Dutch institutions developed GPP criteria for 45 product groups. Adoption of green procurement is facilitated by the Handbook on GPP, Implementation Coach (to measure progress) and discussion working groups. Help desks are run by PIANOo and the Dutch Agency for public authorities and by MVO Nederland for industries. Resources include guidelines on criteria process, legal framework, stakeholder involvement, best practices, tools and a manual.

In **Latvia**, the Procurement Monitoring Bureau (*Iepirkumu Uzraudzības Birojs*, or IUB) has developed a calculator tool to help assess the life-cycle costs of vehicles. The calculator is available free of charge on the IUB website⁵⁸. The user must input information in eight designated fields, including fuel type, fuel consumption and various emissions. The calculator then provides several results and a calculation of the total operational life-cycle cost.

Socially responsible public procurement/sustainable procurement: In **Sweden**, the National Agency for Public Procurement (*Upphandlingsmyndigheten* or UHM) provides a comprehensive set of tools and services to contracting authorities for Strategic Public Procurement. One example is an online sustainable criteria library⁵⁹ for environmental and social criteria with a criteria “Wizard” to assist in the selection of relevant criteria. UHM also manages the CSR Compass tool for SRPP⁶⁰, whose aim is to help SMEs incorporate social responsibility and promote the active social integration of vulnerable categories. A key facet of the CSR Compass is its various support functions to help contracting authorities integrate social requirements into their supply chain⁶¹.

Belgium offers a good example of phased development of sustainable procurement and the ongoing involvement of a wide range of stakeholders⁶². In the late 1990s, a Secretary of State was appointed to oversee this, and the Public Service for Sustainable Development Planning (PODDO) was set up⁶³. The Secretary of State realised that the Belgian federal authorities could not roll out a sustainable public procurement policy without a web-based user guide outlining the technical sustainability criteria to be included in specifications for the purchase of supplies and services. An initial version of the guide, the

⁵⁶ https://ec.europa.eu/environment/gpp/index_en.htm.

⁵⁷ EC (2016), *Stock-taking of administrative capacity, systems and practices across the EU to ensure compliance and quality of public procurement involving European Structural and Investment (ESI) Funds*, Netherlands In-Depth Country Report, <https://op.europa.eu/s/olV8>.

⁵⁸ http://www.varam.gov.lv/lat/darbibas_veidi/zalais_publiskais_iepirkums/kalkulators/.

⁵⁹ <https://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/sustainable-procurement-criteria/>.

⁶⁰ EC (2016), “Public Procurement – a study on the administrative capacity in the EU”, https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/study/#27.

⁶¹ <https://www.csrcompass.com/>.

⁶² OECD (2015), *Going Green: Best Practices for Sustainable Procurement*, p. 41, OECD Publishing, Paris, https://www.oecd.org/gov/ethics/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf.

⁶³ In 2014, PODDO was replaced by the Federal Institute for Sustainable Development (IFDD).

Sustainable Procurement Guide, was published (its current edition is dated 2015)⁶⁴, which is regularly updated, in collaboration with Belgian public bodies. Channels for ongoing dialogue were established between the government, enterprises and purchasing units. A consultation network was also set up, with representatives from the Federal Public Service, Public Planning Service, semi-public social bodies, the Building Authority and Inspectorate of Finance. A methodology has also been developed based on good practices of public bodies outside the Belgian federal government, in order to reach out to businesses. When compiling or updating technical specifications for products and services in a certain industrial sector, a working party contacts the professional organisation that represents the sector, to help establish technical specifications that match the capabilities of suppliers in the industrial sector in question.

Support for SMEs: Support for SMEs is one of the aspects of the public procurement system dealt with in **Montenegro's** multiyear Public Procurement Strategy. This identifies problems and obstacles faced by SMEs that want to participate in public procurement procedures, both on their own and with other bidders, covering the issues of responsibility, qualifications and cumulative proof of eligibility. The strategy proposes the following steps related to public procurement: "levelling the playing field," to ensure that SMEs are not unduly disadvantaged in relation to larger competitors; training SMEs on public procurement; and training contracting authorities.

In **Belgium**, guidelines for contracting authorities on SME access to public procurement have been published⁶⁵. They contain 12 implementation principles to improve SMEs' chances of obtaining public contracts, including: dividing procurement into lots; publishing adequate information on public procurement opportunities; awarding contracts on the basis of an most economically advantageous offer criterion; optimising electronic means of communication; ensuring adequate protection of intellectual property rights; providing feedback for bidders whose offers were not accepted; and creating minimum requirements, selection criteria, financial guarantees and methods of payment that are proportionate.

In **Ireland**⁶⁶, the Department of Public Expenditure and Reform's Circular 10/14 is applicable for all public sector departments, and includes guidance for contracting authorities on how to further enable SMEs to compete for public contracts⁶⁷. The guidance sets out positive steps buyers should take to promote SME involvement in public sector procurement, which include: conducting market analysis prior to tendering, to better understand the range of goods and services on offer; subdividing contracts into lots; encouraging SMEs that are not large enough to tender in their own right to use consortia; using less "restricted" tendering and more "open" tendering; ensuring that the capacity levels set for candidates or tenderers are relevant and proportionate to the circumstances of a particular contract; encouraging new and innovative solutions by indicating in tender documents where they are prepared to accept reasonable variants to the specifications; dividing framework agreements into lots; promoting the optimum use of the eTenders portal; requiring only the type and level of insurance that is proportionate and reasonable in the context of the particular contract; giving appropriate feedback to participants in a public procurement competition.

Another initiative involving authorities in **Ireland** and **Northern Ireland** is providing training and support activities to enhance the professional capabilities of economic operators and SMEs. InterTrade Ireland⁶⁸, an agency funded by the Department of Business Enterprise and Innovation in Ireland and the Department for the Economy in Northern Ireland, provides a number of services to businesses to enhance growth

⁶⁴ <https://guidedesachatsdurables.be/fr/bonnes-pratiques-2015>.

⁶⁵ *Charte « Accès des PME aux marchés publics »*, SPF Economie, P.M.E., Classes moyennes et Energie, 7 February 2018, <https://economie.fgov.be/fr/publicaties/charte-acces-des-pme-aux>.

⁶⁶ OECD (2018), *SMEs in Public Procurement: Practices and Strategies for Shared Benefits*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264307476-en>.

⁶⁷ <https://ogp.gov.ie/990-2/>.

⁶⁸ <https://intertradeireland.com/sales-growth/tender-successfully/>.

opportunities, innovation and competitiveness. It is recognised as a service provider to SMEs specifically, helping them compete in procurement markets (see Chapter 7, on Organising and Supporting Training).

In some countries, SMEs are also actively involved in the process of adoption of public procurement rules. In the **Netherlands**, for example, SMEs were involved in the implementation of 2014 EU Procurement Directives. Consultations on the draft were held with the participation of SME organisations, and MKB-Nederland and SMEs were able in online consultations to comment on the draft proposal of new provisions. In Finland, a network including SMEs and contracting authorities at various levels of the public administration is financed by the Ministry of Economic Affairs and Employment and the Federation of Finnish Enterprises.

Public procurement of innovation (PPI): PPI was more recently introduced than GPP and SRPP. The EU has issued guidance on PPI⁶⁹ and supports the Innovation Procurement Platform, which offers useful resources on innovation procurement, including guidance, procurement criteria and case studies⁷⁰.

In **Spain**, the bodies responsible for PPI are the Ministry of Science and Innovation (*Ministerio de Ciencia y Innovación*, or MICINN) and the National Centre for Research and Innovation (*Centro para el Desarrollo Tecnológico Industrial*, or CDTI). Public procurement of innovation features prominently in Spain's Innovation Strategy (e2i) for 2010-2015, as an instrument to encourage growth in priority innovation markets⁷¹. In 2011, a number of legal and budget measures were launched to promote PPI. A key element was the introduction of a National Guide to PPI⁷², which aims to support contracting authorities in carrying out PPI, offering practical advice, such as clauses for innovation and information on different procedures.

In **France**, various initiatives promote innovative purchasing. The OCEP has produced a guide to innovative purchasing⁷³ that offers practical guidance for public organisations for encouraging innovative products and services through their purchases. The State Purchasing Directorate (*Direction des Achats de l'État*, or DAE) is responsible for this policy, in co-operation with the General Directorate for Enterprises (*Direction Générale des Entreprises*, or DGE) and the Department of Legal Affairs (*Direction des Affaires Juridiques*, or DAJ). Associated activities include: analysis of an "innovation" performance axis for each purchasing strategy; raising public buyers' awareness of the challenges of innovation; and simplifying the relationship between public buyers and companies with innovative solutions. To facilitate contacts between public buyers and SMEs offering innovative solutions, France is setting up an Innovation Purchasing Platform⁷⁴. The search for suppliers (sourcing) is crucial for public procurement, since the needs of administrations and their public establishments are varied and constantly changing. This phase, timed well in advance of the publication of the call for tenders, should allow public decision makers to inform themselves of the latest innovative solutions to meet their needs. For SMEs offering innovative solutions, it offers the possibility of making a first contact with the public sector.

⁶⁹ EC (2018), notice, "Guidance on Innovation Procurement", C(2018)3051/F1, published 15 May 2018, https://ec.europa.eu/growth/content/commission-advises-public-buyers-how-capitalise-innovation_en.

⁷⁰ <https://innovation-procurement.org/Resources/>.

⁷¹ http://www.ciencia.gob.es/stfls/MICINN/Innovacion/FICHEROS/Spanish_Innovation_Strategy.pdf.

⁷² http://www.ciencia.gob.es/stfls/MICINN/Innovacion/FICHEROS/Políticas_Fomento_Innv/Guia.CPI.pdf.

⁷³ https://www.economie.gouv.fr/files/directions_services/daj/marches_publics/conseil_acheteurs/guides/guide-pratique-achat-public-innovant.pdf.

⁷⁴ <https://www.economie.gouv.fr/dae/plate-forme-des-achats-dinnovation>.

In **Germany**⁷⁵, the Competence Centre for Sustainable Procurement (*Kompetenzstelle für Nachhaltige Beschaffung*, or KNB)⁷⁶ plays a key role in sustainability goals. It was established in 2012, in the Federal Procurement Office of the Ministry of the Interior (*Beschaffungsamt des Bundesministeriums des Innern*, or BeschA). Under Germany's Sustainability Strategy 2016, the KNB assists contracting authorities to consider sustainability criteria in their procurement projects. It provides contracting authorities at various administrative levels with training materials, training and advice on incorporating sustainability in the activities of contracting authorities.

The KNB uses a variety of channels and techniques for disseminating information and collecting data on sustainable procurement. It has a telephone and e-mail hotline to respond to questions and offer advice to procurement staff. It also offers one-day, on-site seminars covering strategic sustainable procurement, the legal framework for sustainable procurement, climate-friendly procurement and training focusing on specific product groups. Meanwhile, it publishes procurement guidelines, information brochures and newsletters. The Competence Centre for Innovation Procurement (*Kompetenzzentrum Innovative Beschaffung*, or KOINNO)⁷⁷ supports innovation in public procurement. It is a registered association hosted by the Association of Materials Management, Purchasing and Logistics (*Bundesverband Materialwirtschaft, Einkauf und Logistik*, or BME) on behalf of the Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*, or BMWi). KOINNO's aim is to increase public procurement of innovative goods and services, to promote innovation and increase competition in Germany's economy. It co-ordinates with KNB to learn from successes and challenges. Innovative solutions often advance sustainable and environmentally friendly outcomes, so both centres often work towards the same objectives. The services KOINNO offers are comparable to the KNB's, providing contracting authorities training, workshops, networking opportunities, on-call consulting and a website with templates, guidance and advice on best practices.

5. Measuring application of Strategic Public Procurement

Effective use of Strategic Public Procurement requires regular proactive monitoring, measurement and assessment. In the EU, notable examples include France, Latvia, the Netherlands, where GPP and to a certain degree, SPP, are monitored on a regular basis.

The progress report on the implementation of the OECD Recommendation⁷⁸ found that systemic evaluation of strategic procurement outcomes remains a challenge in most OECD countries. Only 56.5% of respondents regularly measure the implementation of central procurement body objectives and 22% do not measure it at all. Further, only a minority of respondents have established a formal performance management system, with key performance indicators (KPIs) reflecting outcomes and specific targets for each contracting authority. Therefore, measuring the application of strategic procurement is a challenge. In contrast, some countries have developed and are monitoring specific indicators related to strategic policy objectives, for example, green public procurement (GPP), social issues, SME participation, and innovation (such as Finland).

⁷⁵ OECD (2019), *Public Procurement in Germany: Strategic Dimensions for Well-being and Growth*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1db30826-en>.

⁷⁶ http://www.nachhaltige-beschaffung.info/DE/Home/home_node.html.

⁷⁷ <https://www.koinno-bmwi.de/>.

⁷⁸ OECD (2019), *Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1de41738-en>.

In **France**, monitoring of use of strategic procurement is conducted by the OECF⁷⁹ (see Chapter 9, on Collecting and Publishing Statistical Data). For all procedures of more than EUR 90 000, contracting authorities are required to transmit data on their use of green and social clauses to the Observatory. This produces a yearly indicator on GPP/SRPP uptake. Concise reports published by the Observatory provide statistical data on the uptake of social procurement (i.e. the percentage of procurement procedures allowing for social and green considerations).

Latvia defines “green” procurement as procurement in which at least one GPP criterion is applied and which accounts for at least 5% of the total contract amount. Latvia collects statistical data on GPP through standardised reporting forms that contracting authorities send to the IUB as part of the overall data collection on public procurement. This standardised self-reporting helps quantify the percentage of green procedures in Latvia’s total procurement. The IUB also oversees the application of GPP criteria in the procurement of food and in the transport sector. Monitoring results are included in the activity reports published by the IUB on an annual basis.

In **Poland**, monitoring of Strategic Public Procurement is carried out on a regular basis by the Public Procurement Office (PPO). Information on the application of SPP in procurements is included as a part of annual reports. This information is prepared in accordance with the template laid out in regulations from the Ministry of Development and Finance. Contracting authorities are tasked with sending the PPO every year, in electronic form, a report on the number and value of procurement contracts incorporating social, green or innovative provisions. For contracts applying such provisions, additional detailed information is required using a form that lists specific aspects of social, green or innovative procurement.

The PPO publishes an annual report on sustainable public procurement. It contains general information on the number of contracting authorities and procedures in which social considerations were taken into account. It also provides detailed statistical information about the application of specific social instruments in public procurement, such as: the inclusion in the description of the object of public procurement of a requirement that persons carrying out a public procurement contract will be employed under the employment contract; reserved contracts; social clauses related to execution of contracts; and social criteria for the selection of the best offer (contract award criteria). Comparable statistical data are also collected on green and innovative public procurement. The PPO gives information on public procurement that involves environmental or innovative elements, but does not provide separate data for green and innovative procurement.

Chapter 4. Drafting primary and secondary legislation

This chapter discusses the allocation of responsibility for the preparation and drafting of primary and secondary public procurement legislation. It also provides some information on the processes used to prepare that legislation, including stakeholder engagement and public consultation.

Public procurement functional and institutional systems in the European Union Member States and in Western Balkan administrations are based on a set of rules. These rules aim to regulate all aspects of the public procurement cycle, from budgeting and procurement planning to procurement, contract execution and performance evaluation. They also define the roles and responsibilities of institutions with competencies in public procurement. Democratic societies are based on the rule of law, and rules ensure the implementation of such fundamental principles as justice and proportionality. They also create an equal playing field for everyone. Public procurement is governed in a similar way. Primary laws, secondary acts, as well as guidelines and recommendations, aim to open up the public procurement market for genuine competition and to ensure that principles of equality and proportionality are respected and that the process

⁷⁹ *Observatoire Économique de la Commande Publique* (OECF), <https://www.economie.gouv.fr/daj/observatoire-economique-commande-publique>.

is conducted with integrity. From the EU regulatory perspective, two additional principles, the principle of non-discrimination and the principle of mutual recognition, are also important. These principles extend the effects of equality and proportionality to economic operators from other Member States or administrations covered by the international obligations of the EU.

The adopted primary law is the output of the legislative process. Numerous inputs are required to achieve this result. Typically, the government services prepare the draft law, which is then approved by the Government. It is then passed on to the legislative organ, usually the parliament, for further discussion and enactment. Generally, rules regarding legislative competencies, the process and steps are provided for in the constitution, as well as by constitutional and other laws. Public procurement is not the sole domain of application for these rules; they are applicable to every legislative draft under the approval and adoption process.

Different administrations may have different solutions for allocating responsibility for preparation of the first drafts of public procurement laws. In most cases, the regulatory framework, often the law on public procurement, specifies who is responsible for the initial draft legislation. That institution may be entitled to submit the draft law to the government. Sometimes, however, the applicable law stipulates that only the line ministry responsible, such as the Ministry of Finance (MoF) or the Ministry of Economy, is entitled to do so. In such cases, it is important that the competencies and interaction for preparing and supervising the draft law are clearly prescribed and delineated.

In practice, if a dedicated department exists within the line ministry with competency for public procurement, it is typically responsible for preparing legal drafts. If a, administration has a dedicated public procurement body with a strong mandate, that body – for instance, a public procurement agency – may well provide the initial draft. In either case, draft law should not be drafted in isolation – the department, ministry or public procurement body responsible may lead a working group of representatives of other ministries and public institutions (including contracting authorities) and may include other stakeholders, such as nongovernmental organisations (NGOs) and organisations representing economic operators. In any event, transparent and effective stakeholder participation should be encouraged, by providing opportunities for direct involvement in the process of drafting proposals and the preparation of new or amended legislation, in addition to regular dialogue.

Two key factors influence the drafting of regulations: outcome and process. The quality of the end product characterises the outcome. This may be measured by several factors, such as legal compliance, coherence, and the extent to which the new rules take into account value for money and ensure economic efficiency. In turn, the quality of the process depends on the principles of good governance and effective administration. Principles of good governance require that representatives of society, citizens, NGOs and other stakeholders, such as economic operators, be able to express their opinions of the draft regulations and that their opinions be taken into consideration. Whether they were determines if an effective process is in place for steering the new drafts among different levels of the government. The process must incorporate opinions from different sectors of the public administration and, meanwhile, ensure timely adoption of the new laws or decrees. In public procurement, the outcome and legislative process are both of primary importance. Incoherent legal acts of low quality undermine effectiveness in spending public funds and increase the risk of awkward legal controversies and failure to comply with applicable international obligations. Insufficient public consultation increases the risk that the opinions of the stakeholders of procurement, whether NGOs or the end beneficiaries (citizens), are not fully considered. This calls into question the legitimacy of the regulations, rendering them less effective after they are adopted.

According to best international regulatory practice, the policy-making and legislative drafting process should be evidence-based, and impact assessment should be consistently used across ministries. Policies

and legislation should be designed in an inclusive manner that enables the active participation of society and allows for co-ordinating different perspectives within the government⁸⁰.

It is particularly important to run a Regulatory Impact Assessment (RIA) before the adoption of the respective legislation. Clear and transparent methodologies and criteria are necessary for analysing the impacts of new regulation, to define issues/problems and objectives, identify and appraise alternative policy options and to analyse their potential impact (their benefits, costs, anticipated effects and risks). Running a meaningful RIA strongly correlates with the amount and the quality of data available to legislators. It is thus vital to gather good data on the functioning of the public procurement system. A sound electronic procurement system, especially if it is designed with this purpose in mind (for instance, using the Open Contracting Data Standard), is helpful in this regard.

Procedures should be established to allow for effective public consultation, consistently applied across ministries. These procedures should allow NGOs, other stakeholders and citizens to participate in policy making. They should also, however, ensure an appropriate balance between the involvement of society and effective legislative process. There is no guarantee that stakeholders will express only constructive proposals. The obligation to address too many comments and suggestions and too little leeway to decline particular comments may slow down the legislative process. Legislators must have the right to consider each comment on the substance and decide on further action.

Different tools can be used to gather the opinions of the public. In principle, electronic tools, such as publication online on a dedicated website and on the home page of the line ministry may be the most effective way to involve the public. In addition, invitations may be sent to particular bodies, for instance, NGOs or bodies representing economic operators. Until 2019, Germany maintained a system of Public Procurement Committees that served as a forum for stakeholders from federal, federal state and local administrations, public-private organisations such as Chambers of Industry and Commerce, and the private sector. They helped draft procurement regulations, to take into account private and public sector needs. The Committee for Supplies and Services Tendering and Contract Regulations worked on procurement rules for supplies and services, while the Committee for Construction Tendering and Contract Regulations contributed to procurement rules for public works.

In EU Member States and in Western Balkan administrations, the public procurement legal framework is strongly influenced by EU regulatory acts and the 2014 EU Procurement Directives and Regulations. Western Balkan administrations' obligations to implement the EU legal framework are enshrined in their agreements with the EU governing their EU accession. Overall, the extent of their obligations for legal harmonisation with the EU depends mainly on the outcome of trade negotiations, as stipulated in the relevant association agreements, as well as the particular stage of accession of a given administration.

A dedicated body may be in place to supervise an administration's EU accession process. This institution may be consulted during the drafting process to ensure that the draft is in compliance with the EU *acquis*. Alternatively, the EU compliance function may be carried out by a Ministry of Justice, centre of government institution or other line ministry. In such cases, the ministry in question will participate and contribute to any discussion of EU compliance.

Although the EU Member States and Western Balkan administrations are under similar or comparable obligations to implement the EU Directives, they may choose different models for enacting them. This is so because EU law requires administrations simply to implement the aims of the Directives and imposes no explicit obligation to "copy and paste" their provisions. Nor are there any requirements governing the structure of the national implementing legislation, such as, for instance, to enact one piece of legislation per Directive. Various solutions have been adopted in different administrations, for instance:

⁸⁰ OECD (2017), *The Principles of Public Administration*, pp. 32-35, OECD, Paris, <http://sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

1. One extensive primary law on public procurement, including the “classical” sector, the utilities sector and defence sector procurement or separate primary laws for all or some of those regulatory areas.
2. One primary law covering both public procurement and public-private partnerships (PPPs) or separate primary laws for public procurement and for PPPs.
3. Primary procurement law with a general level of regulation and extensive regulation at the secondary level or primary procurement law with extensive coverage, regulating not only general procurement concepts, but the details of their implementation.

Each of these approaches, as well as other solutions, may be employed as long as they ensure correct transposition of the material provisions of the 2014 EU Procurement Directives. The manner in which the Member State chooses to implement the 2014 EU Procurement Directives will depend on local legal culture, traditions, political preferences and other factors.

The 2014 EU Procurement Directives are silent on the issue of which local institutions should draft the laws and regulations, what legal process these drafts should take, and, finally, which national institutions, bodies or organs should adopt them. These issues of competence are left fully to constitutional provisions and legal norms of the individual Member States and administrations in the EU accession process.

In **Albania**, the Public Procurement Agency (PPA) is the institution in charge of drafting primary public procurement legislation. In practice, it takes a leading role in providing draft primary laws, but other institutions are also involved, either as parties to an inter-institutional working group established by the order of the Prime Minister, or as participants to the public consultation process or inter-institutional consultation round. The PPA drew up the draft Public Procurement Law (PPL). The public consultation process is being organised by publishing the draft PPL on the PPA’s website and providing time for interested parties to submit comments and proposals⁸¹. Roundtables have also been held with different public procurement stakeholders, such as businesses, NGOs and international institutions. The PPA also assisted the Ministry of Defence in preparing the draft law On Procurement in the Field of Defence and Security Services.

The PPA also takes an active role in the preparation of secondary legislation. It submits proposals for procurement regulations to the Council of Ministers, which has the authority and mandate to adopt them. The PPA, for example, drafted the Public Procurement Rules⁸², the main secondary decree for implementation of the PPL. It is also preparing draft secondary decrees prescribed in the new (draft) PPL⁸³.

In **Bosnia and Herzegovina**, one of the tasks of the PPA is preparation of drafts of the public procurement laws and regulations. It also has an explicit mandate to prepare provisions governing the financial thresholds for application of the PPL⁸⁴.

Two types of implementing regulations are issued under the PPL: 1) those adopted by the Council of Ministers of Bosnia and Herzegovina; and 2) those adopted by the Director of the PPA. In both cases, drafts are prepared by the PPA and require approval by the Board of the PPA. Drafts of both primary and

⁸¹ The consultation process is being organised according to the Law on Notification and Public Consultation (Law No 146/2014).

⁸² See <http://www.app.gov.al/GetData/DownloadDoc?documentId=34324c4a-f590-4e85-97d7-473c07357eb0>.

⁸³ It is expected that all by-laws will be prepared and ready by the time the law passes parliamentary procedure.

⁸⁴ PPL, Article 14 (6).

secondary legislation prepared by the PPA are published on the PPA's website in a section entitled "Consultations", and interested parties may express their comments and provide suggestions⁸⁵.

In **Kosovo**, the Public Procurement Regulatory Commission (PPRC) is responsible for providing drafts of primary public procurement legislation. In performing this task, it co-operates with other institutions, such as the Office of Prime Minister, the MoF and the Procurement Review Body. Before the circulation of draft primary public procurement legislation, a concept document is drafted and discussed with stakeholders, according to the Guidelines and Manual for Drafting Concept Documents⁸⁶. During consultations, all interested parties are entitled to submit their opinions. The consultation process on the Draft Concept Document on Public Procurement, for example, was open from 8 October 2019 to 11 November 2019, providing at least 15 working days for anyone interested in submitting comments.

Secondary decrees are issued by the PPRC under the mandate provided for in the PPL. The current approach is to provide detailed implementation measures in the secondary decrees. The main secondary decree is "A01 Rules and Operational Guidelines for Public Procurement"⁸⁷. The PPRC has also issued a range of supporting templates, such as tender dossiers and letter templates for communicating with interested suppliers, candidates and tenderers in a tender procedure. There appears to be no clear difference between secondary decrees and templates, as they are drafted and approved by the PPRC and grouped under one classification.

In **Montenegro**, the institution responsible for submitting drafts of public procurement laws or their amendments to the government is the MoF. However, the drafts are prepared in the Public Procurement Department.

Implementing regulations issued on the basis of the PPL are adopted mainly by the MoF.

They deal, for example, with further details on the use of electronic procurement, such as operating conditions and instructions for use of the European Electronic Public Procurement System (ePPS) and on application of electronic auctions; the functioning of tender committees⁸⁸; detecting and combating corruption in public procurement⁸⁹; programmes and methods for professional education in the public procurement field; correcting arithmetical errors in tenders⁹⁰; applying contract award criteria⁹¹; forms of documents used in public procurement⁹²; award of low-value public procurement⁹³ and recording public

⁸⁵ For example: <https://www.javnenabavke.gov.ba/bs-Latn-BA/articles/148/poziv-za-javne-konsultacije-na-nacrt-zakona-o-dopuni-zakona-o-javnim-nabavkama>.

⁸⁶ https://kryeministri-ks.net/wp-content/uploads/2018/06/Udhezuesi-dhe-Doracaku-per-Hartimin-e-Koncept-Dokumenteve-ENG-24-05-18_Publish.pdf.

⁸⁷ Available, along with other decrees, at the PPRC website at: <https://krpp.rks-gov.net/krpp/PageFiles/File/STRforms2016/English/A01%20Rules%20and%20Operational%20Guidelines%20for%20Public%20Procurement.pdf>.

⁸⁸ Rulebook on More Detailed Criteria for Setting up Commissions for Conducting Public Procurement, Official Gazette No. 055/20.

⁸⁹ Rulebook on Recording and Methodology of Analysis of Risk in Conducting Control of Public Procurement Procedures, Official Gazette No 055/20.

⁹⁰ Rulebook on Methodology of Determining Calculation Errors in Tenders in Procurement Procedures, Official Gazette No. 055/20.

⁹¹ Rulebook on the Methodology of Evaluation of Bids in Public Procurement Procedures, Official Gazette No. 074/20.

⁹² Rulebook on Standard Forms for Application of Public Procurement Procedures, Official Gazette No. 066/20.

⁹³ Rulebook on the Way of Conducting Simple Procurement, Official Gazette No 061/20.

procurement activities⁹⁴. Implementing regulations also deal with the application of environmental criteria⁹⁵. The Government also adopts decrees covering the methods of planning and implementing centralised procurement⁹⁶; types of works and activities covered by the PPL⁹⁷; methods of conducting procurement of goods and services for diplomatic and consular missions and military/diplomatic representatives; the list of military equipment and products⁹⁸ and procedures for implementation; and on reporting requirements for and keeping records of procurement in the areas of defence and security.

In **North Macedonia**, the Public Procurement Bureau (PPB) is the main actor involved in preparing legislative drafts that align the national public procurement legislation with the EU public procurement legislation. The draft of the PPL adopted in 2019 was also prepared by the PPB. Adoption of public procurement legislation is preceded by a process of public consultation, which involves stakeholders such as NGOs, economic operators, contracting authorities and business associations. The European Commission is also consulted once the draft is prepared. Stakeholders are involved in public consultations related to procurement legislation through: participation in roundtables; organised ad hoc public procurement forums; as well as by submitting comments on the draft documents published online. They receive feedback informing them whether or not their comments or suggestions have been included.

Implementing regulations issued under the PPL are adopted mainly by the MoF. Only two have been adopted by the Government: one concerning the Common Procurement Vocabulary and the other containing an indicative list of contracting authorities. The PPB prepares drafts of implementing regulations. Following adoption of the new PPL in 2019, a number of implementing regulations were issued, such as the rulebook on filling out the form and contents of the report on the public procurement procedure; the rulebook on the format and contents of the minutes from the opening of tenders meeting; the rulebook on the method of correcting arithmetical errors in tenders during the evaluation of tenders⁹⁹; the rulebook on the method of keeping records of public procurement; and the rulebook on use of the electronic public procurement system¹⁰⁰, etc. The MoF also adopted the Code of Conduct in Application of Public Procurement, intended to ensure that basic principles for awarding public contracts are respected¹⁰¹.

In **Serbia**, the Public Procurement Office (PPO) is authorised to participate in the preparation of public procurement laws, initiate the adoption or amendment of a regulation in the field of public procurement for which the MoF or the Government are responsible, as well as to participate in similar initiatives of other bodies and organisations. The development of new legislation (the new PPL), based on the 2014 EU Procurement Directives, was scheduled for 2017 in the Action Plan 2017 for the implementation of the previous Strategy (2014-2018). The respective working group, led by the MoF, was composed of representatives of the MoF, the PPO, the review body and the Chamber of Commerce of Serbia. Comprehensive legal gap analyses were prepared for EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25, as well as Remedies Procurement Directives.

⁹⁴ Rulebook on Forms of Records in Public Procurement Procedures Official Gazette No. 061/20.

⁹⁵ Rulebook on Methodology for Determining Energy Efficiency in Public Procurement, Official Gazette No. 09/16.

⁹⁶ Official Gazette No 069/20.

⁹⁷ Official Gazette No. 057/20.

⁹⁸ Official Gazette No. 076/20.

⁹⁹ All three are published in the Official Gazette No. 225/19.

¹⁰⁰ Official Gazette No. 64/19.

¹⁰¹ Official Gazette No. 263/19: <http://www.bjn.gov.mk/podzakonski-akti-zjn/kodeks-na-odnesuva-e-pri-sproveduva-e-na-avnite-nabavki/>.

The draft of the new PPL was subject to extensive public consultation. It was published on the PPO's website, and all stakeholders had the opportunity to submit their comments or suggestions on the draft online. Institutions and individuals involved received feedback on their suggestions. The results of public consultations were presented in a table of the comments submitted, detailing whether they were accepted, partially accepted or not accepted. For comments that were accepted and partly accepted, the report contains information on details concerning relevant modifications of the draft. For comments that were rejected, the report included explanations of why that was the case.

The PPL allows for three types of implementing regulations: 1) those adopted by: the PPO; 2) by the MoF; and 3) by the Government. The PPO prepares and adopts implementing regulations it is entrusted with and helps prepare regulations for the second and third group. The PPO has prepared and adopted several rulebooks regulating various issues of public procurement.

In **Croatia, Poland and Romania**, the central procurement institutions are responsible for preparation of draft public procurement laws. In **Estonia**, the Ministry of Finance is responsible for drafting primary law for public procurement. It also drafts secondary decrees for the Cabinet of Ministers to approve and adopt. In **Germany**, the Federal Ministry for Economic Affairs and Energy is responsible for drafting primary public procurement legislation.

Latvia offers an example of how to create a working group and wider stakeholder engagement, in a case where the MoF drafts primary and secondary legislation in public procurement. The working group was established to draft a new Public Procurement Law. Different public authorities participated, including representatives from the Procurement Monitoring Bureau, the Association of Municipalities, the Foreign Investors Council, the Confederation of Latvian Employers, the Latvian Chamber of Commerce and Industry and other state enterprises. To facilitate participation and to obtain feedback from nongovernmental sector representatives (in particular NGOs and citizens) in preparing the draft, the MoF published an explanatory note on the draft law on its website, in the section "Participation of Society". Press releases on the draft law were published in the media and on the website; and all NGOs that confirmed interest were invited to participate in the working group.

Chapter 5. Standard procurement documents

Another important function of central procurement institutions is the preparation and distribution of standard procurement documents. "Standard procurement documents" is used here as a broad term and includes, for example:

- procurement notices for publication;
- tender documents, which may be a package or tender dossier containing a number of documents, such as: instructions to bidders including information on the process to be used; criteria and evaluation methodologies; declarations and forms for completion by bidders; tender checklists;
- bids and performance guarantees;
- terms and conditions of contract/contracts;
- specifications for standard products or particular requirements for strategic procurement to address environmental, social or innovation issues;
- a performance monitoring schedule;
- letters/notifications to be used by contracting authorities in the course of procurement procedures;
- documents used in review procedures, such as forms of appeal and replies (decisions) of contracting authorities.

Well-prepared and relevant standard procurement documents have numerous benefits. They can increase transparency and effectiveness of procurement processes and facilitate access to procurement opportunities for potential competitors of all sizes by:

- **Streamlining procurement processes**, since contracting authorities do not have to “reinvent the wheel” and can use pre-prepared documents that can be completed with the information specific to a given procurement.
- **Easing the administrative burden** both for contracting authorities and for economic operators, who, once they are familiar with the standard procurement documents, can reduce the time and resources they spend on developing specific documents for a given procurement process.

Standard procurement documents should also **reduce errors and irregularities**, as they comply by definition with formal legal requirements. They also **facilitate monitoring** of compliance with public procurement rules by control, audit or review bodies. Standard documents follow regular patterns and content, making it easier to identify clauses that merit particular attention for monitoring or audit, such as technical specifications, qualification and selection requirements, contract award criteria and contractual clauses.

To realise these benefits, standard procurement documents must comply with all relevant public procurement provisions and be kept fully up to date, both in terms of alignment with the law in force and with good commercial practice. A key role of the central institution with responsibility for preparation and maintenance of standard procurement documents is to ensure that standard procurement documents are updated after any legislative or policy changes. Significant problems can occur where the preparation or updating of standard procurement documents lag behind legal, policy or commercial developments. Obsolete documents will do more harm than good, causing confusion because they are not aligned with the current legal framework. They can also raise issues of liability for noncompliance with legal provisions, if a contracting authority uses outdated standard tender documents that are still available on a central institution’s website. To reduce the risk of confusion and potential liability issues, procurement policy action plans and the process for preparation of new or amended laws should allow for timely updating of standard procurement documents so that they are available, at the latest, when the legislative changes come into force. The task of alignment and ensuring that standard procurement documents are up to date includes making sure that standard procurement documents also work for procurement conducted using e-procurement.

Where the responsible institution is unable to update relevant standard procurement documents in a timely manner, the existing documents should be labelled as out of date, adding an explanation of what is out of date. Contracting authorities should be made aware that the documents are not adjusted and do not reflect the latest legislative changes. When standard procurement documents are modified, the responsible institution should provide relevant information, confirming, for example, that the documents published on its website have been modified and correctly reflect the legal position valid at a given time. It is also helpful, particularly where changes are made only to part of an existing document, to provide information on what changes have been made – for example by publishing an explanatory note, highlighting changes or providing a marked-up or Track Changes version. Since some procurement procedures might have been launched before the entry into force of new regulations and should thus be concluded in accordance with the previous regulations, it is also necessary to publish both old and new versions of standard procurement documents, making clear which will apply in given situations.

Standard procurement documents must also be “fit for purpose”. It is unlikely, for example, that a single set of contract conditions will be appropriate for all procurement contracts. Even basic standard terms are likely to be different for different types of purchases. There is also a danger that standard procurement documents prepared with the aim of covering all types of procurement will be disproportionate to need – creating an overly cumbersome process and unnecessary regulation for lower-value or lower-risk contracts

and meanwhile, not sufficiently addressing the needs of more complex procurements. For example, tender documents for complex construction works should clearly differ in scope and content from tender documents for, say, supplying off-the-shelf stationery or provision of interpretation services. The risk of standard procurement documents not being fit for purpose is higher in systems that mandate the use of standard documents with no amendment permitted and without providing a range of standard documents adapted for different types of procurements.

General awareness of the availability and use of standard procurement documents is also important. Both contracting authorities and other stakeholders need to know what documents are available and how to access them. Standard procurement documents should be promoted by the responsible institution and made clearly visible on their website, to avoid problems with finding the documents. There should be a comprehensive list of standard procurement documents and they should be clearly and identified, according to use and content. Where documents are developed with support of technical assistance projects (see below) and are published on dedicated websites in accordance with European Union visibility requirements, once they are officially endorsed they should also be published on the main website of the responsible institution. This makes it clear that the responsible institution takes full ownership and responsibility for such documents.

Standard procurement documents will be of limited value if contracting authorities do not know when to use them and how to use them appropriately. Standard procurement documents should be supported by clear instructions and advice on their use, with information, for example, on the circumstances in which they shall be used, which fields must be filled in or cannot be modified and those that are optional and/or may be modified or adjusted to the needs of contracting authorities. Mandatory use of standard procurement documents is discussed further below.

After any significant changes in procurement rules and any major overhaul of standard procurement documents, training should be offered to contracting authorities and economic operators as new standard procurement documents for applications are issued. This would include instruction on how to use new standard forms of notices or new model tender documents.

1. Development of standard procurement documents

Standard procurement documents are usually developed by central procurement institutions, whose employees are familiar with the relevant legal provisions. It is a good practice to involve representatives of economic operators and other stakeholders in preparation of standard procurement documents. This could be through formal consultation or, for example, by inviting them to take part in specialised working groups or similar activities. Input from economic operators and other stakeholders can be a valuable part of the preparation process. It may flag practical problems that economic operators encounter when submitting tenders and may lead to proposals for improved transparency and increased competitive opportunities. It may also identify contractual provisions that are not commercially acceptable or approaches that are no longer aligned with market practice. Other stakeholder contributions, such as those from nongovernmental organisations (NGOs), may, for example, highlight problems of transparency or breaches of integrity and result in suggestions for ways of increasing transparency and risk-reduction proposals.

In **Poland**, the President of the Public Procurement Office (PPO), in accordance with the Public Procurement Law (PPL), prepares and disseminates examples of standard forms of public procurement contracts, rules of procedures and other documents used in awarding public contracts¹⁰². To carry out this responsibility, the President of the PPO established a working group for the preparation and dissemination of standard documents and good practices in public procurement procedures. A dedicated email address was set up, and relevant information published on the website of the PPO, to collect input on the activities

¹⁰² Public Procurement Law, Article 154 (10) of the Act of 29 January 2004, as amended.

of this group. Interested parties may submit proposals on documents that could be used to establish good practices in the field of public procurement. The PPO, in close co-operation with business, has also prepared standard clauses for use in tender documents concerning procurement of security, cleaning or maintenance services. In addition, the Industry Practices Forum¹⁰³ was set up on the PPO's website to exchange information and opinions on public procurement. The Forum offers such resources as practical examples from various branches of the economy, suggestions on how to use them and examples of clauses from tender documents. Its content has been created by entrepreneurs who submit their suggestions on good practices to the dedicated e-mail address.

In some cases, the resources of a central procurement institution do not allow for the development of standard procurement documents. In such cases, central procurement institutions may have access to European Commission support in the form of technical assistance projects or twinning projects, as well as aid offered by international organisations or financial institutions such as the World Bank, United Nations Development Programme (UNDP) or the European Bank for Reconstruction and Development (EBRD). A technical assistance project¹⁰⁴, for example, helped the PPO in **Serbia** develop new standard forms of notices adapted to the new PPL, as well as a number of guidelines on, for instance, framework agreements, and estimation of public procurement value and life-cycle costing. In **Bosnia and Herzegovina**, the first set of standard tender documents was developed by a technical assistance project in 2005-2007. It was then taken over by the Public Procurement Agency (PPA), which became responsible for updating them and adjusting for changes in the legal framework. The same approach was applied in **Kosovo** and **Albania**.

Central procurement institutions tend to take the lead in preparing standard procurement documents, such as instructions to bidders and contracts. However, some standard documents and tools, for example on bid rigging, corruption or conflicts of interest, are developed by other bodies, usually in concert with the central procurement institution, and then published on the central procurement website. In **Poland**, the Central Anti-Corruption Bureau¹⁰⁵ has prepared instructions and recommendations on corruption in public procurement¹⁰⁶. The Competition Office publishes an e-learning tool for detecting collusion in public procurement procedures (bid rigging)¹⁰⁷. **Croatia's** PPA publishes on its website materials prepared by the Ministry of Justice¹⁰⁸, and instructions on how to detect corruption at various stages of the public procurement process¹⁰⁹.

2. Mandatory and optional use of standard procurement documents

It is important to consider carefully whether and to what extent use of standard procurement documents is mandatory. This may be an issue that needs to be considered at the stage of drafting or amendment of the PPL, or it may be a matter for secondary legislation or guidance. As already mentioned, documents used for procurement must be fit for purpose and proportionate. A few standard procurement documents do lend themselves to standardisation with little or no room for flexibility, but most will need to offer options in the documents or allow for changes to be made, to ensure they meet the needs of the contracting authority.

¹⁰³ <https://www.uzp.gov.pl/baza-wiedzy/dobre-praktyki/forum-praktyk-branzowych>.

¹⁰⁴ <http://eupodrska.ujn.gov.rs/dokumenta/>.

¹⁰⁵ <https://www.cba.gov.pl/en>.

¹⁰⁶ https://cba.gov.pl/ftp/filmy/Rekomendacje_FINALNA_13112015_v3.pdf.

¹⁰⁷ <https://szkoleniazmowy.uokik.gov.pl/login/index.php>.

¹⁰⁸ <https://pravosudje.gov.hr/antikorupcija/6154>.

¹⁰⁹ <http://www.javnabava.hr/default.aspx?id=3426>.

Standard contract notices: It is common practice to mandate use of standard forms of the notices to be published in the course of public procurement, such as prior information notices, contract notices and contract award notices. This aids transparency and competition and is also helpful in monitoring and data collection.

In the Western Balkans, standard form procurement notices are obligatory. This is also the case in the **EU**, where standard forms of procurement notices are established by the EC under regulations adopted on the basis of EU procurement directives¹¹⁰. All contracting authorities are required to use the same standard form notices for all procurement notices published in the *Official Journal of the EU*.

National authorities may regulate the form and content of procurement notices for contracts below the EU thresholds, and declare them mandatory or optional. In **France**, standard forms of notices must be used for contracts of a value of at least EUR 90 000 but less than the respective EU thresholds¹¹¹. In **Poland**, contracting authorities must use standard form procurement notices for publication of specified contract opportunities that are valued below EU threshold contracts in the *Public Procurement Bulletin*.

Tender documents: Use of standard tender documents tends to be optional, although there are exceptions. In **Albania**, contracting authorities are required to use standard tender documents, as well as documents related to procurement planning, including model templates for making procurement forecasts and outcomes. Standard tender documents seem also to be mandatory in **Kosovo**. In **Bosnia and Herzegovina**, an implementing regulation¹¹² defines the content of tender documentation. It also deals with other issues, including: the manner of preparation; the minimum conditions for participation of economic operators in public procurement procedures; the methods for proceeding with submitted tenders; and the content of minutes from the opening of bids. Contracting authorities are required to prepare their respective tender documents in line with those requirements. The director of the PPA, in turn, draws up a model standard tender documentation. At the time of writing, the section on the PPA website under the heading “Public Procurement Legislation”¹¹³ only offers a template of tender documentation for supplies, works and services in open procedure. The PPA has also prepared a template for minutes from the tender-opening meeting and instructions on how to keep records of tender openings¹¹⁴.

Where use of standard tender documents is not mandatory, contracting authorities are often obliged to comply with certain minimum requirements governing the content of these documents. In such cases, legal provisions often list items to be included in the tender documents, leaving contracting authorities free to decide on the exact form and layout. In **Croatia**, the implementing regulations adopted under the PPL define the minimum content and other elements of procurement documentation¹¹⁵, but no specific standard forms of this documentation appear to have been adopted. In **Serbia**, the regulations cover only the minimum content of such documents. This is also the case in **Poland**, where public procurement provisions define only the obligatory content of a tender documentation (referred to as “specification of essential terms of the contract”)¹¹⁶ but do not require the use of any specific form. However, the PPO is to prepare and

¹¹⁰ Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015, establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No. 842/2011.

¹¹¹ Decree of 12 February 2020 establishing a template for public procurement procedures of a value of EUR 90 000 net of taxes and the threshold of the formalised procedure.

¹¹² Official Gazette of BiH, No. 90/14, “Instructions for preparation of models of tender documentation and tenders”.

¹¹³ <https://www.javnenabavke.gov.ba/bs-Latn-BA/legislation>.

¹¹⁴ Official Gazette of BiH No. 90/14.

¹¹⁵ https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_65_1534.html.

¹¹⁶ PPL, Article 36.

publish exemplary standard forms of public procurement contracts, rules of procedures and other documents used in awarding public contracts¹¹⁷.

In some cases, specialised standard form documents may be issued that are appropriate for use in a particular sector. In **Luxembourg**, standardised procurement documents for the construction sector were adopted under regulations issued by the Minister for Public Works. These are available on the Public Procurement Portal¹¹⁸ maintained by the Public Procurement Directorate¹¹⁹. These standardised public procurement documents are applicable to all types of construction projects and are divided into two parts: general contractual clauses and general technical clauses. General contractual clauses are required to be included as part of an offer submitted by an economic operator, while general technical clauses are optional. Standard procurement documents exist for specific types of construction work, such as structural work, technical installations and infrastructure work.

3. Publication of standard tender documents

In **Albania**, standard tender dossiers are adopted by the decision of the Director of the PPA¹²⁰ and published in the Word format on the PPA's website. The current list contains standard tender documents divided by type of procurement (works, goods, services and consulting services) as well as into specific procurement procedures (open procedure, restricted procedure, negotiated procedure with previous publication, request for proposals and consulting services procedure). In Serbia, the PPO is responsible for formulating standard forms of procurement documentation on various types of procurement procedures and procurement matters, as well as templates of a number of internal acts to be adopted by contracting authorities. On its website, the PPO publishes standard procurement documents for surgical needles and thread in the framework agreements; procurement of service and maintenance of vehicles with the conclusion of a framework agreement; a model of procurement documents for procurement of food within the framework agreement; standard procurement documents for the open procedure; small-value procurement procedure; the restricted procedure: both for the first (qualification) and the second (tendering) phase; the qualification procedure (a special procedure available under the previous PPL); the negotiation procedure (with and without publication of a procurement notice); and the model of an internal plan for protection against corruption in public procurement. Use of all the standard forms developed by the PPO is optional.

In **North Macedonia**, two types of standard documents are published on the PPB's website : model contracts¹²¹ (for example, for services of mobile telephony, formulating IT programme software, works and supplies) and model tender documentation¹²² (for example, for low-value procurement, simplified open procedure, open tender or a template of declaration of independent preparation of a tender). It appears that, as of the time of writing, only some of the standard documents published on the PPB's website were updated after the adoption of the new PPL.

In **Kosovo**, secondary legislation for the implementation of the PPL consists of a large number of implementing regulations (85), including a joint document titled *Rules and Operative Guide for Public Procurement*, as well as standard documents for conducting public procurement activities. The Public Procurement Regulatory Commission (PPRC) drafts standard forms and templates of documents used in

¹¹⁷ PPL, Article 154, point 10.

¹¹⁸ <https://marches.public.lu/fr.html>.

¹¹⁹ <https://marches.public.lu/fr/acteurs/direction.html>.

¹²⁰ Decision No. 2 of March 2019 and Decision No. 6 of June 2019.

¹²¹ <http://www.bjn.gov.mk/category/modeli-na-dogovori/>.

¹²² <http://www.bjn.gov.mk/category/tenderska-dokumentaci-a/>.

public procurement procedures, including tender dossiers. The list of templates and dossiers includes, for example, templates for standard tender documents for open, restricted and negotiated procedures, as well as for the price quotation procedure. Other documents include rules on abnormally low tenders; a procurement code of ethics; contract management plans; rules for filing complaints or standard documents; and templates for works, services and supply contracts.

In **Ireland**, the Office of Government Procurement has a suite of templates of various documents¹²³. Templates designed for the EU threshold tenders noted above are to be used by contracting authorities (government departments and state bodies) for low- to medium-risk goods and services. Contracting authorities are advised to read the templates, user guides, information notes and guidance carefully and to seek legal advice if required.

In **Slovenia**, the Public Procurement Directorate (PPD)¹²⁴ has prepared model tender documentation that is available on its website, in a dedicated section¹²⁵. Explanations provided by the PPD say these documents are intended for contracting authorities, to simplify procurement procedures, and can serve as a basis for the preparation of their tender documents for use in specific procurement procedures. Documents include the compulsory content that the tender documentation must contain under the provisions of the PPL, as well as the optional elements that contracting authorities may use, depending on the subject of the specific procurement procedure. At the time of writing, the tender documentation for supplies and services awarded in open procedure and small-value procurement is available. The PPD also publishes instructions on preparing tender documentations using those models; which elements require particular attention; and how to avoid specific errors when preparing tender documents, etc.

In **Poland**, the PPO website includes a separate section titled “Standard documents”¹²⁶. This includes documents drafted by a working group, adopted by the PPO and recommended for use in public procurement. Standard documents are only a part of a wider initiative on the establishment of the “Repository of Public Procurement Knowledge” (see the section on “Provision of legal advice/support”). At the time of writing, the website does not offer a full set of model tender documents but provides suggestions on specific clauses that could be used in tender documents, for example on the following subjects: communication with bidders; use of the European Single Procurement Document (ESPD); clauses for introducing social considerations in public procurement; statements of economic operators on a lack of grounds for exclusion; other declarations used in public procurement procedures; lists of grounds for exclusion from public procurement; conditions for participation in public procurement; templates of documents to be used in review procedures; guidelines and advice on the use of criteria other than price; and suggestions for technical dialogue for economic operators. Particular attention is paid to good practices in public procurement contracts. The PPO prepared proposals on specific clauses to use in contracts, to ensure that the requirements of a concluded contract balance the rights and obligations of both sides of public procurement, as well as clauses on modification of contracts. There are also standards of contracts for legal services and executing construction projects.

4. Other standard documents to be used by contracting authorities

In addition to standard procurement documents, a wide array of documents and tools are used by contracting authorities, depending on specific national procurement provisions. Centrally prepared and

¹²³ <https://ogp.gov.ie/templates-2/>.

¹²⁴ www.djn.mju.gov.si.

¹²⁵ <http://www.djn.mju.gov.si/sistem-javnega-narocanja/vzorčna-razpisna-dokumentacija>.

¹²⁶ <https://www.uzp.gov.pl/baza-wiedzy/wzorcowe-dokumenty>.

available templates or models of such documents can also greatly help contracting authorities to fulfil their duties stemming from those provisions.

In **France**, the Directorate for Legal Affairs (DAJ) in the Ministry of Economy and Finance (MINEFI)¹²⁷ has developed a series of optional standard documents for use by contracting authorities, such as: documents on opening of tenders; reports from assessment of requests or tenders; minutes of the meeting of the evaluation committee; templates of letters to bidders to supplement or clarify the content of tenders; templates of responses of bidders; information on selection of the best tender; notification of awards; and information on execution of the contract.

In **Poland**, the PPO has developed standard statements for use by contracting authorities that economic operators can use to submit any appeals. In the course of the review procedure, contracting authorities may use the following types of standardised statements: a request for extensions of validity of tender security; a reply to an appeal; a request concerning reimbursement of the costs of the review procedure.

A unique solution is applied in Montenegro, whose legislation, unlike that of any other administration in the Western Balkans and probably also the EU, does not distinguish procurement notices from procurement (tender) documentation¹²⁸. Elsewhere, contracting authorities, when launching public procurement procedures, publish, first in the *Official Journal of the European Union* and/or national bulletins, procurement notices containing basic information about a given procurement and provide more detailed information in the form of procurement documents that are available on websites of contracting authorities or are made otherwise available to interested economic operators. In Montenegro, however, contracting authorities publish “tender documentation,” the first part of which is known as “a call for competition,” the equivalent of a procurement notice as understood in the EU Directives. The second part of the tender documentation is composed of technical specifications, detailed instructions on how to prepare and submit tenders, information on how tenders will be evaluated, what types of documents are required, etc. Relevant implementing provisions adopted by the Ministry of Finance (MoF)¹²⁹ provide for 18 types of standard forms that are required to be used in public procurement procedures. This solution was apparently adopted to avoid the instances that had arisen in the past where discrepancies or inconsistencies between information provided in procurement notices and tender documents were noted. The advantage of the current solution is that all information about prospective procurement is made available to all potentially interested suppliers at the same time. Since all procurement procedures other than negotiated procedures without previous publication are launched with the publication of the tender documentation in the public procurement portal (and will in future be published in the Electronic Public Procurement System, or EPPS) all pertinent information is assumed to be available online at the outset of the procedure¹³⁰.

A shortcoming of this solution is the fact that the lack of formal distinction between procurement notices and tender documents (instructions for bidders) requires the MoF to standardise procurement documents for various types of procurement and procedures. For example, there is only one standard form for such varied procedures as competitive procedure with negotiations, competitive dialogue, innovation partnership and negotiated procedure with previous publication. In turn, there are separate standard forms of tender documentation for open and restricted procedures. Contracting authorities are apparently

¹²⁷ <https://www.economie.gouv.fr/daj/marches-publics/formulaires>.

¹²⁸ “Public procurement procedure shall commence with publishing or sending the tender documentation which shall contain a call for competition...”, Public Procurement Law, Article 53.

¹²⁹ Rulebook on Standard Forms for Application of Public Procurement Procedures, Official Gazette No. 066/20.

¹³⁰ For example, the Public Procurement Law of Montenegro does not provide, in cases where the procurement documentation is not available online from the outset of the procedure, for the deadline for receipt of tenders to be extended by five days. It is assumed that this situation will not arise, since public procurement procedures may not be launched without first publishing the full set of procurement documents online.

required to introduce information specific to a given procurement procedure (for example, contract award criteria and conditions for participation). In preparing tender documentation, contracting authorities have to choose from the options provided or, alternatively, to insert in designated places a text with the relevant information.

Examples of standard forms adopted by the MoF are: forms of tender documentation (including a call for competition and instructions for candidates/bidders); invitation to tender in multiphase procedures; minutes from activities such as opening of tenders (applications), dialogue or negotiations; results of evaluation of tenders; decisions on exclusions from the procedure; selection of the best tender or cancellation of the procedure, etc.

5. Standard forms of documents submitted by economic operators

Standard tender documents will often include forms that economic operators submitting tenders are required to complete and submit with their tender. There are a few examples of standard documents that can be directly accessed and used by economic operators in the course of public procurement procedures.

One example of a mandatory standard form is the ESPD, which was established by the EC under an implementing regulation¹³¹. The ESPD is a self-declaration document an economic operator can prepare using the standard format, which lays out information on grounds for exclusion and selection stage information. Contracting authorities are required to accept completed ESPDs submitted by economic operators for contracts subject to the 2014 EU Procurement Directives. National authorities in EU countries are free to establish equivalent documents for contracts that fall below the EU thresholds. In **Portugal**, for example, in public procurement below the EU thresholds, economic operators submitting tenders must attach a declaration that they fulfil conditions for participation, using a form from an annex to the national PPL.

Other types of standardised documents are also used by economic operators. **France**, for example, has an (optional) document on nominating a leader for a group of economic operators or subcontracting. In **Poland**, the PPO drafted a number of documents that can be used by economic operators specifically in the course of review procedures, for example, templates of: an appeal; the withdrawal of an appeal; a request submitted to obtain access to a review procedure on the side of a contracting authority; a protest against accepting an appeal's charges by the contracting authority; and a request for annulment of an authorisation to sign a contract before the adoption of a ruling by the procurement review body.

Chapter 6. Providing legal information, opinions and guidance on interpretation of the public procurement rules

Providing legal information, opinions and guidance on interpretation of the public procurement rules is traditionally one of the chief functions of central procurement institutions. This is an important role. Well-focused, relevant, practical support helps contracting authorities and economic operators to plan and run procurements efficiently, in a legally compliant manner and in line with good practices.

Advice and support can take a number of forms, including providing:

- consolidated texts of Public Procurement Laws (PPLs) and implementing regulations, and supporting commentaries;
- notes, commentaries and interpretative communications on various aspects of

¹³¹ Commission Implementing Regulation (EU) 2016/7 of 5 January 2016, establishing the standard form for the European Single Procurement Document.

- public procurement;
- answers to frequently asked questions;
- legal interpretations;
- help desks, whether face to face, by telephone or online, providing legal and professional support to public purchasers on a day-to-day basis;
- guidance, systems and operational tools for managing all phases of the procurement process, for example, methodologies for qualification and selection of economic operators, tender evaluation and application of Strategic Public Procurement criteria;
- support provided specifically to economic operators.

The importance of advice and support to stakeholders is set out in the 2014 European Union (EU) Procurement Directives. Article 83 (4) of Directive 2014/24/EU requires Member States to ensure that information and guidance on the interpretation and application of the EU PPL is available free of charge to assist contracting authorities and economic operators, in particular small and medium-sized enterprises (SMEs), in correctly applying the public procurement rules. Support should also be available to contracting authorities for planning and carrying out procurement procedures. Recital 121 provides further clarification. It explains that guidance should be made available to contracting authorities and economic operators wherever it appears necessary to increase correct application of the rules. The guidance might cover all matters relevant to public procurement, such as acquisition planning, procedures, choice of techniques and instruments and good practices in the conduct of the procedures. As for legal questions, guidance should not necessarily involve a complete legal analysis of the issues concerned. It could be limited to a general indication of the elements that should be taken into consideration for the subsequent detailed analysis of the questions. For instance, after examining the issue at hand, it might point to case law that could be relevant or to guidance notes or other sources.

To be of real, practical use, it is important that all advice and support be fully compliant with the current public procurement provisions, including all their modifications. An important role of the central institution is to ensure that all advice and information is up to date. Where publications have not been updated, this needs to be made clear in the documents, so that it does not suggest that they can be relied upon to conform with current public procurement rules. Where transitional arrangements apply, for example for procurement procedures launched before new regulations, which must be concluded under old rules, both the materials on the former and the current legal framework should be published, indicating clearly which particular materials apply and when.

Advice and support will only be of real value when contracting authorities and other stakeholders are aware of its existence and can find it easily.

The COVID-19 pandemic showed not only the importance of public procurement in the fight against the pandemic but also the important role of central public procurement institutions in guiding, advising and supporting the respective contracting authorities not only about how to procure essential goods and services needed for the fight against the pandemic in the health sector but also how to respond to other urgent needs of the public administration and how to manage ongoing contracts under the unprecedented circumstances that the global lockdown caused. Good examples of such a support can be found in the OECD Policy Responses to Coronavirus (COVID-19) — *Public procurement and infrastructure governance: Initial policy responses to the coronavirus (COVID-19) crisis*¹³² and in the SIGMA publication

¹³² OECD (2020), Policy Responses to Coronavirus (COVID-19) – *Public procurement and infrastructure governance: Initial policy responses to the coronavirus (COVID-19) crisis*, p.10, OECD Publishing, Paris, <http://www.oecd.org/coronavirus/policy-responses/public-procurement-and-infrastructure-governance-initial-policy-responses-to-the-coronavirus-covid-19-crisis-c0ab0a96/>.

*Application of public procurement rules during the COVID-19 crisis from the perspective of the European Union's Procurement Directives and the Government Procurement Agreement*¹³³. For example, the Cabinet Office in the United Kingdom issued a Procurement Policy Note –Responding to COVID-19 setting out information and associated guidance on the use of the public procurement regulations for responding to the COVID-19 outbreak. In Ireland, the Office of Government Procurement (OGP) produced an information note to support contracting authorities in managing procurements where urgency is required. The information note clearly establishes that for procurements unaffected by COVID-19 related issues, contracting authorities should ensure their procurements use competitive processes as detailed in the national public procurement guidelines. In Germany, the Federal Ministry for Economic Affairs and Energy (the federal ministry in charge of public procurement law) published a circular that clarified how urgent needs could be met using the existing scope of Germany's public procurement law above and below the EU thresholds. In the Slovak Republic, the Public Procurement Office (PPO) prepared a document specifically for the COVID-19 situation called "Guidance for Procuring Entities".

1. Making information easily available

Advice and written support from central procurement institutions should be clearly accessible on their websites. The information should be presented in a user-friendly fashion. Relevant sections of the website should be clearly labelled, under such headings as, "Frequently asked questions", "Interpretations", "Public procurement manuals" or "Guidelines". Ideally, information should be presented in a format that can be properly accessed, searchable by keyword.

Other institutional stakeholders, such as the central purchasing body, procurement review body, anti-corruption institution, the lead institution for public-private partnerships (PPPs) and state auditors, may also publish public advice and support or information. This may be directly applicable to public procurement, or of wider relevance for public purchasing and infrastructure. Contracting authorities and economic operators benefit from being able to access the full range of information, advice and support provided by institutional stakeholders on a single site. It is helpful if the central procurement institution's website includes the information, advice and support published by other institutional stakeholders, clearly identifying the source. Alternatively, the central institution's website may include links to the relevant webpages of the other stakeholder institutions, with an explanation of why those links are provided and the kind of information available. This helps present a comprehensive picture of the wider procurement landscape.

Information such as guidelines, manuals or summary notes are sometimes developed with the support of technical assistance projects or funded by international organisations or financial institutions. Once they are endorsed, they should also be published on the main website of the central procurement institution. It is thus made clear that the central procurement institution takes ownership and responsibility for such documents.

2. Raising awareness

Not everyone will be checking on a daily basis for new or updated information on the website of the central procurement institution. It is useful for the central procurement institution's website to include on its home page a list (or a link to a list), of new and updated publications, including date of publication. Users can then easily check that they can access all relevant publications. It is also a good idea for central procurement institutions to offer an e-mail notification service, with an e-mail sent each time new

¹³³ OECD (2020), *Application of public procurement rules during the COVID-19 crisis from the perspective of the European Union's Procurement Directives and the Government Procurement Agreement*, p. 10, OECD, Paris, <http://sigmaweb.org/publications/Public-procurement-COVID-19-crisis-SIGMA-April-2020.pdf>.

information is added. This should include a direct link to the new item. Users may opt to receive all notifications or simply on specified topics.

Regular e-newsletters are also recommended. Newsletters can inform recipients about new or updated information and encourage them to visit the website for further details. Regular newsletters are relatively common.

3. Public procurement manuals, guides, briefs and brochures

Clear, practical and up-to-date public procurement manuals, guides and brochures can be a very valuable resource, for contracting authorities in particular. Central procurement institutions are in a good position to call on their wide-ranging expertise and experience to produce manuals and brochures that can help to streamline procurement planning and processes and handle common problems that arise.

In **North Macedonia**, the Public Procurement Bureau (PPB) provides extensive interpretation of procurement regulations on its website¹³⁴. The PPB has published a number of manuals covering public procurement in general, as well as specific issues, such as errors that arise frequently in public procurement procedures and in the use of the electronic procurement system. They have also published brochures on such issues as planning in public procurement, contract award criteria and evaluation of tenders and legal protection and a guide on negative references. The manual on public procurement, published on the website of the PPB, was last amended in 2017, but has not been updated to cover the new PPL. In **Montenegro**, the public procurement manual is published on the Public Procurement Agency (PPA) website¹³⁵. This dates from 2012 and has apparently not been amended to take account of revisions made to the PPL since its adoption.

In **Serbia**, the Public Procurement Office (PPO), supported by the EU technical assistance project, developed a set of brochures and guidelines dealing with various aspects of public procurement, including the application of sustainable procurement, such as guidelines on estimation of public procurement value¹³⁶, life-cycle costing, estimation of public procurement value, market research, appraisal and justification of public procurement needs, centralised purchasing, framework agreements, green procurement, monitoring and how to combat corruption in public procurement. All these brochures and guidelines are published on the website of the EU Project. In addition, a series of informative fiches were developed jointly by the EU Project and the PPO to support application of provisions of the new PPL. These deal with topics such as: the principles for awarding public contracts; preparation of public procurement; public procurement procedures envisaged in the new PPL (open procedure, restricted procedure, competitive procedures with negotiations etc.); minimum time periods to be applied; framework agreements; dynamic purchasing systems; qualification systems; and electronic auctions. All those documents were published on the website of the EU Project¹³⁷, to which there is a link from the PPO website.

In **Albania**, an electronic procurement user guide is published on the PPA's website¹³⁸. The user guide contains practical instructions for managing all available public procurement procedures and tools in the online environment. There are also instructions for economic operators, including video guides on how to

¹³⁴ <http://www.bjn.gov.mk/category/priracnici-za-avni-nabavki/>.

¹³⁵ <http://www.ujn.gov.me/wp-content/uploads/2014/04/Javne-nabavke.pdf>.

¹³⁶ Developed with the support of SIGMA.

¹³⁷ <http://eupodrska.ujn.gov.rs/dokumenta/>.

¹³⁸ <http://www.app.gov.al/t%C3%AB-tjera/manuale/autoritete-kontraktore/nj%C3%ABsia-e-prokurimit/>.

use the electronic public procurement system. **Bosnia and Herzegovina** also has a separate manual on use of the online system¹³⁹.

A useful example of a specialist guide comes from the **Netherlands**. PIANOo publishes on its website a document called “Proportionality guide” that is available in English¹⁴⁰. The Dutch authorities note that the EU public procurement Directive pays specific attention to the principle of proportionality. This principle holds that the choices a contracting authority makes, and the requirements and conditions it sets for a tender, must be reasonably proportionate to the nature and scope of the contract to be awarded. However, the Directive does not explain in detail how to apply this principle, and experience in the Netherlands indicated that contracting authorities have had great difficulty in applying it. The Proportionality Guide was intended to deal with these issues. The Guide was prepared by the Proportionality Guide Editing Board, which consisted of four members and an independent chairman, with administrative support from the Ministry of Economic Affairs. Two members represented economic operators, and two others contracting authorities. The Guide contains a detailed explanation of what the principle of proportionality means, or should mean, at all stages of the procurement procedure, and in the terms and conditions of the contract. The problems that the Guide seeks to solve are faced by all European countries. The Guide is very practical, and contains a lot of advice, examples and good practices.

In **France**, the Directorate for Legal Affairs (DAJ) in the Ministry of Economy and Finance (MINEFI)¹⁴¹ is in charge of analysing regulations regarding public contracts, as well as providing support and legal advice to government departments. The DAJ publishes on its website public procurement briefs (*fiches*) explaining public procurement rules and their interpretation by the different courts, (both the Court of Justice of the EU, or CJEU, as well as national courts) designed to assist buyers in the purchasing processes. All notes are concise and contain the most relevant information about specific topics, both from the perspective of national law and practice and from the EU. They have a similar structure, provide for information and explanation based on both the French and the EU provisions, including case law of the CJEU and national courts. The *fiches* are regularly updated and are of interest not only to a French audience but to economic operators and public procurement officials from other countries interested in the French public procurement market, or those who need to collect information for comparative analysis.

In **Romania**, central authorities responsible for public procurement have developed guidelines and standardised tender documentation for the use of contracting authorities at all levels. In addition, the Ministry for European Funds has created a guide to the main risks of using EU funds through public procurement for contracting authorities. Some standardised tender documents are also available for infrastructure projects in the environmental and transport sectors. The National Public Procurement Authority (NPPA) has drafted standardised awarding documentations, forms and template contracts in various sectors, such as road modernisation, supplies of milk and software. The NPPA has made available an interactive, up-to-date guide to public procurement¹⁴². The guide was intended to fulfil the requirements of the Romanian legislation¹⁴³, as well as one of the objectives of the national public procurement strategy. It contains practical information for those involved in public procurement and is designed for guidance and support on the proper application of public procurement rules and for avoiding the sanctions and penalties imposed for infringing them.

Central procurement institutions typically develop manuals, guidelines and auxiliary information for contracting authorities. In some cases, however, they do not have the resources to provide this assistance.

¹³⁹ https://www.ejn.gov.ba/content/manual/Pomoc%20e-Nabavke_bs.pdf.

¹⁴⁰ <https://www.piano.nl/en/legal-framework/proportionality-guide-1st-revision>.

¹⁴¹ <https://www.economie.gouv.fr/daj/commande-publique>.

¹⁴² <https://achizitiipublice.gov.ro/workflows/view>.

¹⁴³ Government Decision No. 395/2016 (GD 395/2016).

In such cases, they have access to support offered by the EC in the form of technical assistance projects or twinning projects, as well as to aid offered by international organisations or financial institutions such as the World Bank, United Nations Development Programme (UNDP) or the European Bank for Reconstruction and Development (EBRD).

Central procurement institutions and advisory bodies may also request support from or arrange for access to publications from other national institutions or organisations. One example is the weekly case-law summary published by the Dutch e-procurement agency, PIANOo. It is prepared by the Institute for Construction Law (IBR), with PIANOo paying an annual fee to the IBR. This weekly digest contains an analysis of rulings of the CJEU and of Dutch national courts. Both the collection of jurisprudence and the weekly summary of judgements offer an up-to-date overview and useful interpretation of legislation, which procurement professionals consider valuable in helping them to interpret the tendering rules in practice.

4. *Answers to frequently asked questions and legal interpretations*

Answers provided by the central procurement institution to frequently asked questions and general interpretations of public procurement provisions (referred to together here as FAQs) can be a helpful source of information for both contracting authorities and economic operators. It should be underlined, however, that these opinions or answers only indicate how a given provision is understood by a central procurement institution, they are not a source of law themselves –only legal provisions are binding. Interpretations provided by the central procurement institutions do not have to be shared by independent review offices or courts. They should be followed, however, by the public procurement institutions that issued them, for example in the process of control. FAQs can be an efficient way of dealing with recurring practical problems in matters such as: interpreting specific legal provisions; using technical tools or instruments; filling out reports; and publishing notices. Once published, they can provide an easily accessible resource for users and can ease the burden on the central procurement help desk by reducing the number of questions it receives and by allowing the help desk to direct a questioner to the relevant FAQs page. They can also assist in providing a uniform application of the public procurement rules, with authorities using the same solution for shared problems.

FAQs may be real questions referred to the central procurement institution on the telephone or through the electronic help desk or may be received from contracting authorities in the form of requests for legal interpretation. They may also be questions that the central procurement institutions formulates to deal with issues contracting authorities might be interested in. FAQs and responses should be presented in an anonymised manner and phrased so they can be generally relevant.

FAQs can be flexible tools. The list of questions and answers can be easily expanded once new or updated interpretations become available or new questions arise. FAQs can also be consulted easily within the central procurement institution among the relevant units or departments, which can provide input they acquire as they perform their tasks and responsibilities.

To offer maximum utility, answers to FAQ should be published in a structured way, under clearly visible headings, so all those interested can easily find relevant topics. As with all information provided by the central procurement institution, the FAQs, which may be numerous, should be easily and effectively searchable by users.

FAQs can also provide valuable input for improving public procurement provisions, for example, in suggestions to draft clearer rules or provide answers directly in the text of relevant provisions. Often, questions arise not because the users of the relevant provisions are not competent enough but because the provisions themselves are unclear, vague or inconsistent.

Most of the central procurement institutions in the Western Balkans publish answers to frequently asked questions. The PPB in **North Macedonia**, for example, divides FAQs into 22 categories, such as: exclusions from procurement provisions; planning of public procurement; market research; tender

documentation; conditions for participation in public procurement procedures; legal protection; negative references; e-auctions; technical dialogue; reliance on third parties' resources; modification of contracts; and evaluation of tenders¹⁴⁴. In **Serbia**, official opinions and interpretations have been provided, since 2015, in a separate section of the website, under "Professional support"¹⁴⁵, which includes 52 documents. In **Kosovo**, support provided by the Public Procurement Regulatory Commission (PPRC) takes the form of answers to frequently asked questions (FAQs), as well as answers to individual questions by contracting authorities. In **Albania**, the PPA has published answers to frequently asked questions related to electronic procurement¹⁴⁶. In **Bosnia and Herzegovina**, the PPA supports the correct application of the PPL and implementing regulations by publishing its interpretations in a section on its website under the heading "Practical implementation of legal provisions"¹⁴⁷. Approximately 100 opinions are available on the PPL, implementing regulations and the electronic public procurement system. Interpretations are also published in the "Latest news" section of the PPA website.

In **Poland**, the PPO's website includes a separate section titled "Legal interpretations"¹⁴⁸ that includes a number of legal opinions prepared by the PPO staff on topics related to public procurement, as well as answers to FAQs. The PPO is expected to conduct activities with a view to ensuring uniform application of the provisions of the Act by the contracting authorities. In particular, *ex officio* or upon request, it issues opinions presenting interpretation of provisions of the PPL that raise serious doubts or result in discrepancies in jurisprudence. These take into account case law from the courts, the Constitutional Tribunal or the CJEU¹⁴⁹. Strict rules must be followed for those who want to obtain such opinions. Under the PPL, such opinions should include: 1) a description of the legal issue that requires interpretation of the provisions of the PPL; 2) clarification of the scope and manner of application of the provisions of the PPL, along with legal justification. To obtain an interpretation, a requesting party should present the essence of the legal issue and indicate the provisions of the PPL for which an opinion is required, and also justify the need for issuing an opinion. Interestingly, requests for opinions are not answered if they are submitted by entities providing professional legal services, i.e. law firms/companies. Opinions issued by the PPO are published on its website. The PPO also publishes a collection of opinions that can be downloaded in .pdf format from the website.

In **Spain**, the State Public Procurement Advisory Board (*Junta Consultiva de Contratación Pública del Estado*)¹⁵⁰ interprets the Spanish PPL, as well as other national and international regulations and jurisprudence, through opinions, instructions and recommendations. Opinions concern issues of a general nature submitted to the Board by parties entitled to do so. The instructions are intended to promote the adoption of rules or measures of a general nature that are considered appropriate to improve administrative, technical and economic aspects of public contracts. Recommendations are issued as a result of needs identified by the Board. They are of the same legal nature as opinions but are issued *ex officio*. All these documents are published on the Board's website. Search tools are also available to find documents dealing with specific topics.

¹⁴⁴ <http://www.bjn.gov.mk/na-chesti-prasha-a/>.

¹⁴⁵ <http://www.ujn.gov.rs/dokumenti/misljenja-i-objasnjenja/>.

¹⁴⁶ Available at: <http://www.app.gov.al/other/trainings/frequent-questions/>.

¹⁴⁷ <https://www.javnenabavke.gov.ba/bs-Latn-BA/practical-application>.

¹⁴⁸ <https://www.uzp.gov.pl/baza-wiedzy/interpretacja-przepisow>.

¹⁴⁹ PPL, Article 154c.

¹⁵⁰ <https://www.hacienda.gob.es/es-ES/Areas%20Tematicas/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/default.aspx>.

In **Slovenia**, the Public Procurement Directorate (PPD)¹⁵¹ publishes an array of guidance on public procurement processes on its website. Concise interpretations of selected topics are available¹⁵², such as small-value procurement; statutory minimum time periods; qualification criteria; and access to tender documentation. Numerous guidelines are available on the application of procurement rules, such as guidelines and recommendations for procurement of construction works, IT solutions and award of social services contracts and inclusion of social aspects in procurement. The PPD also publishes answers to FAQs gathered in 20 thematic groups¹⁵³.

5. Individual consultations and help desks

Support for both contracting authorities and economic operators can be offered in the form of individual consultations with the staff of the central procurement institution or by a central procurement institution help desk service. This has the advantages of allowing for direct, rather than written contact, allowing for further discussion and more detailed investigation of issues to help resolve queries and problems.

Some practical risks arise in the context of both individual consultations and help desks. It is thus appropriate to assess both the benefits and risks when assessing whether, and on what basis, to offer this type of support. It is also important to make clear to users of the service the status of the advice provided and how the advice can be used. One practical risk is that advice provided in an individual consultation or from the help desk may be based on incomplete information or presented in a manner that seeks to influence or steer the advice to a certain conclusion. It can also be difficult to provide meaningful advice without access to the procurement documents. This level of access may lead to a perception that the central procurement institution endorses a contracting authority's activities and can give rise to conflicts of interest. One way of reducing risk is to ensure that scrupulous records are kept both of the requests for advice and the details of the consultation, meeting or call, and the advice provided.

Another risk management approach is to outsource support for contracting authorities to other specialised public or private institutions. One such example in the Netherlands is BIZOB¹⁵⁴, a foundation established by municipalities of the Southeast Brabant region. It provides advice to the municipalities in the region on the correct implementation of public procurement procedures. In close co-operation with the affiliated parties, BIZOB arranges purchasing, tenders, contract management and management for the social domain, public space, business operations and information and communications technology.

Almost all central procurement institutions in the Western Balkans region have a dedicated phone landline to provide support to contracting authorities (and economic operators) in the form of a help desk. For example, the PPO in **Serbia** communicates with the public through the Call Centre services, providing information on the professional examination for public procurement officers; consultations regarding the Public Procurement Portal; public procurement plans and quarterly reporting; as well as application of the PPL. In **North Macedonia**, the PPB supports contracting authorities and economic operators, in the form of legal consultations with PPB experts on procurement planning and reporting and use of the Electronic Public Procurement System (EPPS). On request, the PPB provides legal interpretations of provisions of the PPL. An e-mail help desk and phone help desks are also available. In Kosovo, advice is also provided by consultations in meetings at the PPRC offices. A help desk is used to provide information on interpreting primary and secondary legislation to contracting authorities, economic operators or other interested parties. In **Montenegro**, the PPD offers contracting authorities and economic operators legal consultations on interpretation of the PPL; consultations on procurement planning and reporting; and use of the Public

¹⁵¹ www.djn.mju.gov.si.

¹⁵² <http://www.djn.mju.gov.si/sistem-javnega-narocanja/staliska-ministrstva/staliska-ministrstva>.

¹⁵³ <http://www.djn.mju.gov.si/sistem-javnega-narocanja/staliska-ministrstva/pogosta-vprasanja-in-odgovori>.

¹⁵⁴ www.bizob.nl.

Procurement Portal (PPP). A call centre/help desk is also available. In **Bosnia and Herzegovina**, the PPA also offers a telephone help desk that offers legal support (offering interpretations of provisions of the PPL and implementing regulations) and technical assistance (publication of notices, use of PPP). In **Albania**, although no dedicated phone lines appear to be available for consultations, the phone numbers of all departments and units are published on the PPA's website. PPA also provides answers and explanations on requests for consultations submitted by e-mail. PPA provides opinions on questions about particular situations and practices in public procurement, as well as concessions, public-private partnerships (PPPs) and public auctions.

In **Latvia**, a phone help desk is offered by the Procurement Monitoring Bureau. An interesting aspect of this help desk is the allocation of a "subject specialist" to offer consultations. Specialists of the Law Enforcement Department provide consultations on the application of legal provisions: on procurement planning; conduct of procedures; problem solving; and related issues. Specialists of the Information Department provide information on filling in announcement forms and statistical forms and related issues. Legal Department specialists provide information on submission of applications and the course of review, and Control Department specialists offer information on inspections performed in accordance with the control procedures on whether the procurement procedures comply with procurement regulations.

In **Belgium**, the Procurement Policy and Advice Commission (*Aankoopbeleid en Advies*, or ABA)¹⁵⁵ has a specialised advisory body composed of public procurement experts from the federal public administration, public corporations, supervisory bodies and representatives of business and trade unions. This advisory body is part of the Procurement Unit of the federal government Policy and Support Services. It is divided into two sectors, procurement advice and procurement policy, with the following tasks: providing legal opinions at the request of the federal procurers in the context of the preparation; award and execution of public procurement of supplies and services; providing training and knowledge transfer related to public procurement regulation; and developing manuals, dashboards and supporting documents that can be consulted by the federal contracting authorities and used in their procurement of supplies and services. ABA works closely with the Federal Network of Federal Buyers. It does not advise companies or public services outside the federal government.

6. Support provided to economic operators

Central procurement institutions in the Western Balkans region also provide some support and information to economic operators, in the form of dedicated training or guidance or legal information. This takes into account specific needs of economic operators (with the emphasis on small- or medium-sized enterprises, or SMEs). For example, in **Montenegro**, the PPO (the predecessor of the Public Procurement Directorate, or PPD) published a "Guide to Promote the Participation of Small and Medium-Sized Enterprises in the Public Procurement Market in Montenegro", and also organised four roundtable meetings in 2016 devoted to the participation of SMEs in public procurement procedures. **Serbia's** PPO published "Guidelines for increasing participation of small and medium enterprises in public procurement procedures" in 2016. The Guidelines analyse the obstacles SMEs face in trying to gain access to public procurement, and propose some solutions for improving the current situation. In **North Macedonia**, the PPB offers training for economic operators (see Chapter 7, on Organising and Supporting Training).

In the **EU**, support for economic operators is offered for example in **Ireland**, by the Office of Government Procurement (OGP)¹⁵⁶. The Tender Advisory Service (TAS)¹⁵⁷, established by the Government in consultation with SME stakeholders, addresses concerns about perceived barriers for SMEs in competing

¹⁵⁵ <https://www.publicprocurement.be/fr/services-federaux/la-cellule-conseils-et-politique-dachats-cpa>.

¹⁵⁶ <https://ogp.gov.ie/>.

¹⁵⁷ <https://ogp.gov.ie/tender-advisory-service/>.

for tender opportunities. It is an informal outlet, provided free of charge to suppliers, for raising concerns about a live tender process carried out by the OGP or other public-sector contracting bodies. It is worth noting that Ireland has no specialist procurement review body, and bidders must make complaints through the court system. TAS can be used by individuals and companies in the following circumstances: where a Request for Tender (RFT) has been published; where the supplier has registered an interest in a specific live tender process; and where the supplier has sought answers to its queries through the normal clarification process with the Contracting Authority and is not satisfied with its response. A TAS query must be submitted after the clarification process has been used, no less than six days before the closing date for receipt of tenders, to allow for concerns/issues to be fully communicated and processed by TAS. In **Poland**, the Agency for Enterprise Development offers online training on public procurement for economic operators, as well as traditional workshops and seminars¹⁵⁸.

Chapter 7. Organising and supporting training on public procurement

Central procurement institutions often play a role in organising and supporting training on public procurement. Training is one aspect of the wider concept of capacity building. Other types of capacity-building activities were addressed in previous chapters of this paper: in Chapter 5 – Standard procurement documents and in Chapter 6: Providing legal information, opinions and guidance on interpretation of the public procurement rules.

Training typically focuses on developing the expertise and skills of public procurement officers, including supporting certification programmes. It can also include training for economic operators and others involved in the public procurement system, such as judges and auditors.

Public procurement officers need to understand and be able to apply the legal rules governing the award of public contracts, in the context of a range of potentially complex procurement activities. In doing so, they are spending considerable amounts of public funds. They need to be adequately educated, skilled and trained to discharge their functions properly. In many cases, not only in Western Balkan administrations but also in EU countries, training is mainly focuses on the legal framework. Undoubtedly, knowing and understanding the legal framework is important for ensuring the compliance of procurement procedures with relevant legal requirements. Respecting the legal framework is also crucial for ensuring integrity, the transparency of the process, non-discrimination etc. However, effective public procurement requires knowledge that exceeds mere legal compliance and requires complex skills and competencies.

Another challenge for capacity building in public procurement is that the skills set required of procurement professionals needs to be flexible, as the contexts and priorities involved in their everyday work are constantly changing. The central procurement institutions should be ready to manage this challenge. There is also a need to enhance wider commercial skills and competencies as opposed to solely operational procurement skills.

The process of increasing the administrative capacity of an organisation by training public procurement officers in the skills they require to carry out their role is referred to as “professionalisation”. Professionalisation of procurement practitioners is increasingly viewed as essential, to ensure that procurement is carried out in compliance with the legal framework, and to high standards of integrity¹⁵⁹. The goal is to deliver both Strategic Public Procurement outcomes – in sustainability, social responsibility and innovation – and best value for money.

¹⁵⁸ <https://akademia.parp.gov.pl/course/view.php?id=12>.

¹⁵⁹ See, for example, OECD (2017), *OECD Recommendation of the Council on Public Integrity*, p. 5, OECD Publishing, Paris, <https://www.oecd.org/gov/ethics/recommendation-public-integrity/>.

The European Commission has acknowledged the importance of professionalisation in its 2017 *Recommendation Professionalisation of public procurement: Building an architecture for the professionalisation of public procurement*¹⁶⁰. This recommends that Member States develop appropriate training programmes, both initial and lifelong, based on data and needs assessment. They should also develop and support professionalisation by contracting authorities and entities with sound human resources management. Career planning and motivational schemes to enhance the procurement functions should aim to attract and retain qualified staff and encourage practitioners to deliver a more strategic approach to public procurement, of better quality¹⁶¹.

Needs assessment: Decisions about who needs training and the type of training required should be based on a comprehensive needs assessment. A needs assessment will not be a one-off event. An initial assessment must be subject to ongoing review and respond to changes in the wider public procurement landscape, as approaches to training evolve. Developments that need to be reflected in the training of procurement professionals include new or changed national policies/strategies; rolling out of e-procurement, increased use of Strategic Public Procurement, as well as new legislation and changes to existing legislation. There are various tools and methodologies available supporting the assessment of needs for further capacity development. For instance, the OECD developed a road map for elaboration of capacity procurement strategy¹⁶². Training, advice and assistance is also covered by Pillar II of MAPS¹⁶³: Institutional Framework and Management Capacity and specific indicator – Indicator 8: The public procurement system has a strong capacity to develop and improve. A supplementary module of the MAPS on professionalisation also provides a methodology to assess the capacity of the public procurement workforce within the entire public procurement system.

1. Training activities

Training can take various forms.

Training organised and delivered by the central procurement institutions: A well-established format is training organised by central procurement institutions and led by employees of the central procurement institution. When the first provisions on public procurement were enacted in a given country, it was obvious that central procurement institutions were centres of expertise on public procurement and so best placed to provide this training. This is usually also the case with new or substantially revised procurement legislation, since central procurement institutions tend to take the lead on drafting legislation. In some cases, training is attended by the staff of the central procurement institutions but organised by, or in co-operation with, other public entities, such as municipalities or public universities.

Some national public procurement laws still explicitly mention education in public procurement as one of the chief responsibilities of the central procurement institution. For example, in **Albania**, the Public Procurement Agency (PPA), on the basis of the Public Procurement Law (PPL), “*promotes and organises training of central and local government officials engaged in public procurement activities*”¹⁶⁴. Similarly, the Public Procurement Bureau (PPB) in **North Macedonia** “organises and conducts trainings for civil servants

¹⁶⁰ Commission Recommendation 2017/1805 of 3 October 2017.

¹⁶¹ See also OECD (2015), *OECD Recommendation of the Council on Public Procurement*, p. 11, OECD Publishing, Paris, <https://www.oecd.org/gov/public-procurement/recommendation/>.

¹⁶² OECD (2016), *Roadmap: How to Elaborate a Procurement Capacity Strategy*, OECD Publishing, Paris, <http://www.oecd.org/governance/ethics/Roadmap-Procurement-Capacity-Strategy.pdf>.

¹⁶³ <http://www.mapsinitiative.org/methodology/>.

¹⁶⁴ PPL, Article 13 (2) (b).

and other competent persons”¹⁶⁵. In **Montenegro**, the Ministry of Finance (the Directorate for Public Procurement Policies) is required to “*organize and carry out professional training and education for the staff of contracting authorities and other persons for performing public procurement tasks*” and to “*organize the professional examination for performing tasks in the public procurement field and issue certificates for the work in the public procurement field*”¹⁶⁶. In **Poland**, the relevant provisions state that the President of the Public Procurement Office (PPO) prepares training programmes, organises and encourages training in the field of public procurement¹⁶⁷. In **Slovenia**, the Public Procurement Directorate (PPD) organises and carries out professional training and education for the staff of contracting authorities and other people involved in public procurement tasks. Tasks related to the professionalisation of public procurement officers are not mentioned explicitly in the public procurement laws of **Serbia**¹⁶⁸ or the **Slovak Republic**¹⁶⁹, however, although central procurement institutions are in fact directly involved in such activities.

Training offered in co-operation with central procurement institutions: Central procurement institutions that do not have sufficient capacity, time or resources may organise training in co-operation with other institutions. In such cases, training is conducted by external experts, but its quality is ensured by the central procurement institutions. Such co-operation occurs in **Poland**, where the PPO co-operates with a number of universities conducting postgraduate studies on public procurement. In **Slovenia**, the PPD conducts training with the Administrative Academy of the Ministry of Public Administration¹⁷⁰. Various training courses for public procurement officers held by the Administrative Academy are offered free of charge¹⁷¹.

Training of Trainers (ToT): This consists of intensive training of a group of professionals, usually employees of public institutions selected by central procurement institutions, who then become trainers on public procurement and are required to provide training to employees of contracting authorities. Examples of ToT models are found in **Bosnia and Herzegovina** and in **Montenegro**. Training of prospective trainers was usually first conducted as one of the activities of technical assistance projects and was subsequently taken over and enhanced by national authorities, possibly with the support of technical assistance project (as it was in **Bosnia and Herzegovina**). Some regional programmes were set up to establish a list of certified trainers throughout the Western Balkans and Turkey. Materials on such training and a list of certified trainers can be found on websites of central procurement institutions in Albania¹⁷² and Montenegro¹⁷³.

Outsourced training: Public procurement training may also be delegated to other public and private entities by central procurement institutions, which supervise the quality of the training. One example of this kind is training conducted in **Croatia** by public entities or private companies but monitored for quality by

¹⁶⁵ PPL, Article 14 (1).

¹⁶⁶ PPL, Article 19 (5)-(6).

¹⁶⁷ PPL, Article 154 (7).

¹⁶⁸ PPL, Article 136, the new PPL, Article 179.

¹⁶⁹ PPL, Article 147.

¹⁷⁰ www.ua.gov.si.

¹⁷¹ For example, <https://ua.gov.si/aktivnosti/detajli/?ID=2526b5d3-ef09-ea11-9c4b-005056818ee6&Tag=456,459>.

¹⁷² <http://www.app.gov.al/t%C3%AB-tjera/trajtime/module-trajtime/>.

¹⁷³ <http://www.ujn.gov.me/2013/12/obuka-u-oblasti-javnih-nabavki-namijenjena-korisnicima-instrumenta-pretpristupne-pomoci-ipa-za-zapadni-balkan-i-tursku-u-organizaciji-uprave-za-javne-nabavki-i-internacionalnog-trening-centra-iz-tor-2/>.

the Public Procurement Administration (PPA). Further discussion of how this functions is provided later in this chapter.

Online tools: Internet-based tools can also be effective and useful forms of support for the training and development of procurement professionals. In **Scotland**, the Scottish Procurement and Property Directorate¹⁷⁴ has developed a National Procurement Competence Framework (NPCF)¹⁷⁵. NPCF and associated online tools – the procurement development framework – can be used to assess skills, identify training needs and support career planning. It reflects the Scottish procurement context and aligns with the Chartered Institute of Procurement and Supply (CIPS) global standards.

In the **Czech Republic**, the Association for Public Procurement¹⁷⁶, a civil society platform for procurement stakeholders, developed a commercially available virtual library on public procurement case law¹⁷⁷. The application was created in 2012, to facilitate the practical application of procurement law. The Association saw contracting authorities' need for a web application to present relevant provisions of Czech procurement law, as well as the decisions of the Office for Protection of Competition, i.e. the first-instance review body in the Czech Republic. The web application provides a user-friendly, searchable repository of all case law related to the Czech PPL. The interface allows for browsing through each article, which is linked to relevant jurisprudence at national and EU level, including the following types of case law: decisions from the Office for Protection of Competition, i.e. the Czech procurement review body; decisions of national courts; rulings of the Court of Justice of the European Union (CJEU); related European legislation; other relevant comments, professional literature and expert opinions. The full text of decisions by the Office for Protection of Competition are also available. Among the library's main users are municipalities and law firms, as well as consultants and public procurement contractors. Subscribers have annual access to the tool, and the Association provides access to the tool to its members.

Practical examples of training organised by central procurement institutions

All central procurement institutions in the Western Balkans region are actively involved in training and education of staff of contracting authorities. Some basic information on this training follows. Further details of activities in the Western Balkans are provided in Part 2 of this paper.

In **North Macedonia**, the PPB is in charge of preparation and delivery of training and education in public procurement for public procurement officers. It also issues certificates confirming that those who participate in training have passed their exams¹⁷⁸. The implementing regulation of the Ministry of Finance (MoF) governs the education programmes; the planning and the method of implementing the education and the examination; the method of issuing and extending the validity of the certificates of candidates who have passed the exam for public procurement officers. Public invitation to participate in the training is published on the website of the PPO¹⁷⁹. All those interested in participating must submit a request online and submit proof they have paid a fee in accordance with the Tariff Book adopted by the MoF¹⁸⁰. Training provided by the PPB is intended for both contracting authorities and economic operators, although contracting

¹⁷⁴ <https://www.gov.scot/about/how-government-is-run/directorates/scottish-procurement-and-property-directorate/>.

¹⁷⁵ <https://scottishprocurementdevelopmentframework.azurewebsites.net/>.

¹⁷⁶ <http://www.asociacevz.cz/>.

¹⁷⁷ <https://www.lexikonvz.cz/>.

¹⁷⁸ PPL, Article 46.

¹⁷⁹ <http://www.bjn.gov.mk/aven-povik/>.

¹⁸⁰ <http://www.bjn.gov.mk/podzakonski-akti/tarifnik-za-edukacija>.

authorities take part more frequently¹⁸¹. The PPB offers five-day sessions and one-day sessions for contracting authorities and two-day sessions for economic operators. The curriculum of all individual trainings of the same type is identical and published on the PPB website. After attending training events, participants must pass the examination, in accordance with the public procurement education programme. Exams are conducted by a committee responsible for education and examination, and the committee conducting education for trainers is composed of managerial administrative employees from the PPB staff working professionally in public procurement.

In **Montenegro**, the PPD is in charge of preparation and delivery of training/education activities in the field of public procurement for public procurement officers. The PPD website publishes an online course on public procurement¹⁸² developed by the EU-financed project Training in Public Procurement for the Western Balkans and Turkey. This material is also available in **Albania**, on the PPA's website¹⁸³. Training the PPA provides and manages aims to increase the capacity of the procurement community, and addresses specific topical issues. In 2018, trainings focused on recent amendments in public procurement legislation, and applying new guidelines on framework agreements and negotiated procedures without prior publication of a contract notice. In **Serbia**, the PPO also organises workshops/seminars or brings speakers to give presentations at events held by other organisations or bodies. In **Bosnia and Herzegovina**, the PPA held a framework programme of two-day training sessions on public procurement¹⁸⁴, although, since it was prepared in 2008, it may be outdated.

According to **Poland's** Public Procurement Law, the Public Procurement Office prepares training programmes, organises and encourages training in the field of public procurement¹⁸⁵. There is a special unit dedicated to this task, the Information, Education and System Analysis Department. The Department organises conferences and seminars that are hosted by the PPO or organised with other bodies or institutions. A separate section on the PPO website dedicated to this topic includes the agendas and all the presentations delivered at the events¹⁸⁶.

In the **Slovak Republic**, training plays an important role in the work of the Public Procurement Office¹⁸⁷. To emphasise the importance of proper education, a separate unit within the PPO, the Institute of Public Procurement¹⁸⁸, was created, which includes the Education Department. The Institute was established in 2018 (the PPO was set up in 2000) to create a more client-oriented PPO and underline the fact that the PPO assists contracting authorities and focuses not only on controlling errors in public procurement but also on raising awareness of public procurement provisions¹⁸⁹.

Training by certified trainers or trainers chosen by central procurement institutions

In addition to training offered by central procurement institutions, several examples may be noted of training that they certify or authorise that is conducted by external experts.

¹⁸¹ For example, in 2017 there were 20 trainings for contracting authorities and one for economic operators.

¹⁸² <http://www.ujn.gov.me/obuka/player.html>.

¹⁸³ <http://www.app.gov.al/t%C3%AB-tjera/trajnimi/module-trajnimi/>.

¹⁸⁴ <https://docs.javnenabavke.gov.ba/articles/3adba4d2-89ed-4640-a2be-411b724e1666.pdf>.

¹⁸⁵ PPL, Article 154.

¹⁸⁶ <https://www.uzp.gov.pl/baza-wiedzy/przedsiewziecia-edukacyjne/konferencje,-seminaria/przedsiewziecia-na-temat-zamowien-publicznych>.

¹⁸⁷ <https://www.uvo.gov.sk/introduction-of-the-office-for-public-procurement-/the-organisational-structure-45a.html>.

¹⁸⁸ <https://www.uvo.gov.sk/o-urade/institut-verejneho-obstaravania-5e8.html>.

¹⁸⁹ <https://www.uvo.gov.sk/o-urade/institut-verejneho-obstaravania-5e8.html>.

In **North Macedonia**, in principle, training in public procurement must be provided by training staff with a certification issued by the PPB, based on passing a qualifying exam. However, the PPB may also issue, exceptionally, a certificate for a trainer who does not have this certification. Those with a minimum of three years of professional experience in public procurement working in the PPB or the State Appeals Commission may be eligible. The PPB also maintains a register of certified procurement officers that is publicly available on the PPB website¹⁹⁰. The Register contains names of certified procurement officers, the names of the institutions they work for and the commencement and expiration date of the certificate. In **Bosnia and Herzegovina**, the list of certified trainers, with contract details, is published on the PPA website¹⁹¹. The number of certified trainers was recently increased from 70 to 136, thanks to support for the PPA from the technical assistance project. In **Kosovo**, training is conducted by individuals selected by the PPRC. Trainers are required to be field specialists, to have professional experience and to be certified in “train-the-trainer” skills. In addition, some experience in best international procurement practices and the EU public procurement system is required. Qualified trainers are included in a list that is renewed every five years. For the particular training activity PPRC selects trainers from that list. By the end of 2019, the list included 39 certified trainers.

Training offered by central procurement institutions in co-operation with other public institutions

If the central procurement institution does not have the resources to provide the required training, the decision may be made to draw on external expertise and to co-operate on or outsource training. Many examples of co-operation between central procurement institutions and other public institutions might be mentioned.

In **Albania**, the PPA co-operates with the Albanian School of Public Administration, both on training covering general legal issues of application of legislation, and training for information technology (IT) professionals on use of the e-procurement system. In **Montenegro**, the PPD has signed a Memorandum on inter-institutional co-operation in public procurement with the Chamber of Commerce and Anti-Corruption Agency, promising to jointly organise and support seminars, roundtables and other professional meetings with the goals of: introducing good practice in public procurement; preparing and promoting innovative public procurement and development; and disseminating various publications and other informational materials to raise public awareness of the PPL. The PPD also actively co-operates with nongovernmental organisations (NGOs)¹⁹².

In **Italy**, the Public Procurement Reform Strategy (2015) and the Action Plan for Public Procurement (2014) noted the following issues among the challenges facing the public procurement system: a lack of professionalism on procedures, preparation of tender documents and use of criteria for evaluation of tenders; and a lack of legal or technical training, resulting in a lack of specific skills and capacities. A Training Plan was launched under a Memorandum of Understanding (MoU) signed in November 2016 between the Presidency of the Council of Ministers, the Agency for Territorial Cohesion, the National School of Public Administration (SNA) and the Conference of the Regions, with the co-operation of the Institute for Modernisation and Transparency of Procurement and Environmental Compatibility (ITACA). Training courses organised by SNA, ITACA and many regions, include: general training using e-learning tools for the staff of all the contracting authorities; specialised classroom training to develop specific skills for contracting authorities, and in particular for central purchasing bodies; and operational training provided

¹⁹⁰ <http://education.bjn.gov.mk/education.bjn.gov.mk/Registar>.

¹⁹¹ <https://www.javnenabavke.gov.ba/bs-Latn-BA/lecturers>.

¹⁹² With NVO Institut alternativa (<https://institut-alternativa.org/>) and Center for Democratic Transition <http://www.en.cdtmn.org/>.

on a regional basis, involving administrative staff of contracting authorities from each region. The training is also intended for the staff of the managing authorities and audit authorities for EU-financed projects.

In **Poland**, the PPO co-operates with universities in organising postgraduate studies on public procurement, based on an agreement it signed with selected universities regulating the organisation and conduct of such courses¹⁹³. The text of the agreement is published on the PPO's website with the list of the 12 schools currently covered. The model framework programme of these courses appears¹⁹⁴, with a short description of the courses offered.

Training provided by entities independent of the central procurement institution

Another solution available if the central procurement institution lacks the resources for educating and training contracting authorities and economic operators is to support other entities to run training on commercial basis. The central procurement institution may, however, want to ensure that training is provided by qualified entities (or persons) and that it is of adequate quality. It may also be concerned to ensure that the prices participants are charged are reasonable, so procurement professionals can afford the training. The cost of training provided by independent entities will need to be set at a commercially viable rate.

In **Croatia**, the PPA, part of the Ministry of the Economy, Small Entrepreneurship and Crafts, is responsible for formulating and conducting education (training) in public procurement. The PPA also organises exams and issues certificates for public procurement officers¹⁹⁵.

The Ministry adopted a Rulebook that defines the programme of training, its planning, conduct, details on issuing and renewing certificates, and other relevant issues. Public procurement education consists of specialised public procurement training and an enhancement/improvement programme. The Rulebook defines the content of the specialised public procurement training¹⁹⁶, which includes presentations/lectures and exercises, over 50 school hours (in 45-minute units). The specialised public procurement programme covers topics such as: the legal and institutional public procurement framework in Croatia and the EU; public procurement principles; exemptions from application of the PPL; market analysis (research); use of technical specifications; criteria for the qualitative selection of economic operators; criteria for evaluation and selection of the best tender; conclusion and modification of contracts; detecting and fighting corruption; and green and sustainable procurement. Enhancement and improvement training requires a minimum of 32 hours of training over three years from the beginning of the validity of the certificate. This training is intended for procurement officers with valid certificates. It is conducted in half-day, one-day or two-day sessions in workshops or seminars. Procurement training may be conducted by the PPA, the State School for Public Administration (DSJU) or authorised providers. Authorisations for trainers are issued by the PPA for a period of three years. The PPA may withdraw authorisation earlier, if the required conditions cease to be fulfilled. Such decisions may be challenged in an administrative procedure. Sixty training providers are listed, including ministries, state schools and public and private companies¹⁹⁷.

¹⁹³ <https://www.uzp.gov.pl/baza-wiedzy/przedsiewziecia-edukacyjne/studia-podyplomowe-pod-patronatem-prezesa-uzp/porozumienie-dotyczace-przygotowania-oraz-prowadzenia-studiow-podyplomowych-z-zakresu-zamowien-publicznych>.

¹⁹⁴ <https://www.uzp.gov.pl/baza-wiedzy/przedsiewziecia-edukacyjne/studia-podyplomowe-pod-patronatem-prezesa-uzp/wzorcowy-program-studiow-podyplomowych>.

¹⁹⁵ PPL, Article 440 (1) & (2).

¹⁹⁶ The Rulebook, Article 12.

¹⁹⁷ On 10 March 2020.

Participation in the exam for procurement officers in Croatia is free, since the costs of organising examinations is incurred by the PPA. However, students have to cover the costs of training – both specialised training and the enhancement/improvement programme (unless the costs are financed by their employers). Since training is organised by public or private companies, the training companies are free to set their prices. However, given that training is readily available, the fees for training tend to be set at similar levels. The average price of specialised public procurement training (50 school hours of presentations and exercises) is in the range of HRK 3 500–HRK 4 100 (i.e. EUR 462 to EUR 542). The enhancement/improvement training costs around HRK 2 000 (EUR 265).

Certification of procurement officers

Some administrations, both in the Western Balkans and the EU, promote certification schemes as a validation mechanism, to ensure that public procurement officers have the necessary skills and competencies and as an incentive to commit to skills development and continuous learning. In some Western Balkan administrations, as well as some EU Member States, certification is a prerequisite for public procurement officers. In other cases, Member States do not require that every procurement officer be certified, but at least one certified practitioner must validate a procurement procedure.

In **Serbia**, the PPL requires large contracting authorities¹⁹⁸ to employ at least one public procurement officer, defined as a person trained to perform public procurement tasks. The PPO determines the manner and programme of the professional training and examination of public procurement officers. Contracting authorities, on the other hand, are required to make it possible for a person performing public procurement tasks to pass the exam to become a public procurement officer within three months of beginning employment, or the day when the conditions are met. The PPO runs a certification system for procurement officers, involving examinations, certifications and registration of public procurement officers. The PPO runs the examinations with the assistance of a software system that manages the administrative aspects of the process and securely stores the database of potential exam questions. To increase the capacity of the contracting authorities, the PPO has developed and posted on its website information to help candidates prepare for the examination. The list of certified officers is not published on the PPO website, although after each examination session, the results of the exams are published, with the names and place of work of successful candidates. Once issued, certificates are valid for an undetermined period and are not subject to renewal.

In **Montenegro**, under the PPL¹⁹⁹, a public procurement officer is required to have a university degree, and to have passed the professional examination for work in public procurement. Public procurement officers: prepare public procurement plans and texts of the decision to initiate a public procurement procedure; conduct public procurement procedures; maintain documentation of public procurements and records of public procurements; prepare and submit reports on the public procurement procedures conducted to the authorised person of the procuring entity; perform administrative tasks in carrying out public procurement procedures and other tasks in accordance with the PPL. Regulations²⁰⁰ govern the content of the programme (the topics covered and the literature required) and the organisation of professional exams for candidates for procurement officers.

In **Kosovo**, each contracting authority must employ a public procurement officer. A person may serve as a procurement officer if he/she has a university degree, as well as a valid basic or advanced procurement

¹⁹⁸ Whose overall annual value of planned public procurements exceeds the fivefold amount referred to in Article 39 (1) of the PPL (i.e. RSD 25 million, about EUR 212 700).

¹⁹⁹ PPL, Article 47.

²⁰⁰ Rulebook on Contents and Methods of Taking the Professional Examination for Procurement Officers, Official Gazette No. 055/20.

professional certificate. The PPRC, in co-operation with the Kosovo Institute for Public Administration (KIPA), organises training for the relevant certificates (basic and advanced). Under the Memorandum of Co-operation between the PPRC and the KIPA, the basic training programme is to be no less than 15 days, and the advanced programme no less than 10 days. On completion of the programme, trainees undergo testing and retesting. The test chiefly consists of open questions to evaluate the ability to solve problems and challenges associated with the procurement system.

Croatia recognised the need for large-scale capacity building in public procurement, since the majority of the staff of its public administration had limited knowledge of public procurement legislation. To address these challenges, the Ministry of the Economy, Entrepreneurship and Crafts²⁰¹ launched a certification scheme for procurement practitioners throughout the country. This was intended to create a critical mass of people knowledgeable about procurement laws, bylaws and rules for the implementation of EU funds. The Ministry organises exams and issues certificates²⁰². The Ministry also adopted a Rulebook dealing with these issues, available on the website of the PPA²⁰³. Accordingly, the Rulebook defines the training programme, planning, method, details concerning issuing and renewing certificates and other relevant issues.

A certificate is issued for a period of three years, counted from the moment of passing the exam and renewed after participation in training, as referred to in the Rulebook (see above). Taking the examination is free of charge for candidates for certified officers, but they must cover the costs of both specialised training and enhanced/improvement training unless they are financed by their employers.

The status and role of certified procurement officers is enhanced by the provisions of the current PPL²⁰⁴, which requires that for procurements above specified financial thresholds, an authority must establish a Public Procurement Committee. At least one member of this committee must have a valid certificate in public procurement. The Ministry conducts regular checks to ensure that procurement procedures have included a certified practitioner. If the rules are not enforced, the contracting authority and its responsible representative are fined. Certified procurement officers can extend the validity of the certificate for another three-year period by participating in the Enhancement/Improvement training, over 32 hours. Requests for the certificate renewal should be addressed to the Ministry no earlier than six months before the expiry of the original certificate. When renewed, the period of extension of validity of the certificate starts to run from the moment of expiry of the original validity. Renewed certificates are issued by the Ministry within 30 days of receipt of the completed request for renewal. Relevant provisions define the content of the request for renewal, the content of the certificate as well as of the duplicate, which may be requested from the Ministry if the certified procurement officer has lost the original certificate. Those certified procurement officers who, exceptionally, obtained a certificate due to their professional experience at the Ministry (PPA) or the State Commission for Control of Public Procurement Procedures, also have the possibility to renew its validity. The website of the Ministry (PPA) contains a dedicated Public Procurement Training Portal that includes registers of training providers, certified officers and training events and programmes.

In **Ireland**, certificates in public procurement are offered by the Irish School of Public Administration (IPA)²⁰⁵. Certificates are not required to engage in the profession of procurement practitioner. IPA offers a one-year course: a combination of distance education and weekday workshops at the IPA in Dublin. Applicants who do not have knowledge or experience of procurement **must** contact the IPA to determine

²⁰¹ www.mingo.hr.

²⁰² PPL, Article 440 (2).

²⁰³ https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_65_1533.html.

²⁰⁴ PPL of December 2016 (NN 120/2016, 21 December 2016), Article 197 (4), available at https://narodne-novine.nn.hr/clanci/sluzbeni/full/2016_12_120_2607.html.

²⁰⁵ <https://www.ipa.ie/public-management/certificate-in-public-procurement.1759.html>.

their suitability for this programme. Interviews may be held. The fee is EUR 4 500 (which includes all matriculation and examination fees), payable in two instalments. Successful students can further their studies in public procurement with the Professional Diploma in Public Procurement.

Certification of procurement officers was applied in another EU country in the past – the Slovak Republic – but application of the certification scheme was discontinued²⁰⁶. Its reintroduction in the Slovak Republic²⁰⁷, as well as establishment of certification in Lithuania, was recommended by the OECD in its studies on public procurement administrative capacity²⁰⁸.

Role of central purchasing bodies and other central institutions

In some EU countries, central purchasing bodies play an important role in the professionalisation of public procurement and as hubs for expertise on procurement. **Austria** offers one interesting example. The Federal Procurement Agency (*Bundesbeschaffung*, or BBG), its central purchasing body, set up the Public Procurement Academy to train procurement officers. On joining the BBG, all employees are enrolled in a two-and-a-half-year training programme that offers a certificate upon completion of the curriculum. BBG launched the Academy and its customised training programmes to professionalise its staff and train them in the specific skills they needed to conduct public procurement. BBG usually recruits professionals with product-related expertise, who are often not specifically familiar with the workings of the public administration. To bring new employees up to speed, the BBG Academy designed an initial ten-day on-board training programme, which provides the essential knowledge and skills for newly recruited employees to start their job.

After the on-board training, employees undergo a 40-day training programme. This is divided into a basic and advanced curriculum and culminates with receipt of the certification as a public procurement professional. To obtain the certificate, employees have to write and defend a thesis in front of the BBG's management, based on challenges and problems encountered in their daily routine. The training includes aspects of procurement such as legal, economic and purchasing issues, covering the key phases of the procurement cycle, i.e. pre-award, tender phase and post-award. Particular attention is paid to development of soft skills like communication and negotiation. Both in-house and external experts provide the training, to give a balanced perspective on procurement in the context of a central purchasing body and outside it.

BBG also focuses on continuous learning throughout a procurer's career. Buyers at BBG regularly assess their own competencies, to identify gaps in their training. Based on the self-assessment and the evaluation of the employee's line manager, an ad hoc training plan is set up for each procurement practitioner. With WU Executive Academy, the business school of the Vienna Academy of Economics and Business²⁰⁹, the BBG also created the first comprehensive European training programme for procurement professionals from central purchasing bodies from all over Europe, training “*Certified Public Procurement Experts*” (CPPE)²¹⁰. A six-week training programme, initiated and funded by the EC, was finalised in January 2019,

²⁰⁶ OECD (2017), *Developing administrative capacity for public procurement in the Slovak Republic: A training action plan for 2016-2019*, p. 14, OECD Publishing, Paris, <http://www.oecd.org/gov/public-procurement/publications/capacity-public-procurement-slovak-republic-training.pdf>.

²⁰⁷ Ibidem, p. 18.

²⁰⁸ OECD (2019), *Improving Lithuania's Public Procurement System Component 1 – implementation of professionalisation and certification frameworks*, p. 41, OECD Publishing, Paris, <http://www.oecd.org/gov/public-procurement/publications/capacity-public-procurement-slovak-republic-training.pdf>.

²⁰⁹ <https://executiveacademy.at/de/>.

²¹⁰ <https://ppe.bbg.gv.at/>.

and 33 participants graduated. The BBG will continue its training activities as it won a contract funded by the EC for the second round of training.

Support from a network of procurement professionals/peer-to-peer support

Another useful tool is peer-to-peer support, in the form of networks or associations of specialists in public procurement. One example is the National Association of Public Procurement Consultants, which was established in 1998, and is the oldest operating association of this type in **Poland**²¹¹. It currently has 160 members: public procurement practitioners, experts in various fields or former members of the public procurement review body. The Association's main mission is to disseminate public procurement knowledge among contracting authorities and economic operators, in particular small- and medium-sized enterprises (SMEs). Its aim is to improve the public procurement system, and it serves as a forum where its members can share their experiences. It organises activities to enhance the ethical values of procurement practitioners and supports its members in performing their tasks. In the **Czech Republic**, the Association for Public Procurement²¹², a civil society platform for procurement stakeholders, was set up in 2006, when the previous public procurement law was adopted. It now offers a forum for discussion and an online library on public procurement (further details are given below).

In **France**, the State purchasing directorate of the Ministry of Economy and Finance launched a social network for buyers, the Social Network of the Public Procurement Staff (*Réseau Social Professionnel des Achats de l'État*, or Respa), as part of its strategy to professionalise procurement. The testing phase of the social network was launched in October 2016, and the network went live in January 2017. Dedicated to state buyers, it aims to encourage co-operation. It promotes the exchange of good practices; the transfer of skills between buyers; sharing of documents and ideas; and allowing buyers to capitalise on their expertise. It aims to professionalise buyers on the economic, as opposed to the legal, dimension of the purchase. While Respa is a professional social network of buyers in the ministries and their public bodies, the target audience includes buyers from Government central administrations, as well as buyers from decentralised ministries throughout France.

Members of the network can ask questions, share documents and consult other members. The network is organised into communities along various themes: sectoral communities, purchasing network communities and communities built around specific purchasing projects. Members are invited to join Respa when at least one community interests them. All buyers sign a usage code that allows them to contribute freely on Respa, since they are acting on their own behalf and not on behalf of their entity or hierarchy. Individuals from outside the Government and its public agencies can participate if they are invited by a community manager on a specific topic. This might include buyers from local authorities or hospitals, lawyers or technical experts in the purchasing field.

The EC supports many initiatives in Member States through various channels such as the Structural Reforms Support Programme, and through promoting the transfer of good practices, notably through the TAIX (Technical Assistance and Information Exchange Instrument)²¹³ and Peer to Peer exchange programme²¹⁴.

²¹¹ <http://www.oskzp.pl/>.

²¹² <http://www.asociacevz.cz/>.

²¹³ https://ec.europa.eu/neighbourhood-enlargement/tenders/taix_en.

²¹⁴ https://ec.europa.eu/regional_policy/index.cfm/en/policy/how/improving-investment/taix-regio-peer-2-peer/.

Specialised training for judges and auditors

Some countries have developed dedicated procurement training programmes and more extensive and targeted training plans for first-instance judges. This can provide them with the technical knowledge required to issue grounded rulings that are less likely to be appealed at the second-instance level. Judges who handle procurement cases often do not have specific expertise in public procurement, since they may only rarely deal with the subject. This is particularly relevant in cases where the responsibility for reviewing appeals at the first-instance level is allocated to ordinary courts, where judges may not have the technological, economic and practical knowledge relevant to a procurement case. This can affect the quality of a judge's rulings, and issuing rulings may take longer.

Romania offers one example of specialised training for judges. Romania's main training institution is the National Institute of Magistracy²¹⁵ (NIM), created in 1992. NIM provides initial training for future judges and prosecutors, as well as continuous training for in-service judges and prosecutors. Public procurement is also covered by the 2017 training plan, through three training activities co-financed by NIM and the Swiss Agency for Development and Co-operation (SDC), which are provided free of charge. Two two-day training courses financed by the National Council for Solving Complaints (a specialised public procurement review body), the National Agency for Public Procurement (ANAP) and NIM aim to unify the judicial, administrative and jurisdictional practice and offer vocational training for judges responsible for settling cases in public procurement. In addition, the two-day training tackles new public procurement provisions brought by public procurement legislation. Specifically, it covers annual public procurement planning, the European Single Procurement Document (ESPD), selection, qualification and award criteria, green public procurement criteria and strategic procurement. To better meet judges' training needs, Romania has also developed a training needs assessment. Relevant information is gathered from multiple sources, including the professional association of magistrates, legal associations, judicial trainers, courts and prosecutors' offices. Once a list of needs is established, it is complemented by judges' and prosecutors' suggestions for training topics on an online system. Decentralised training to enable face-to-face training with judges is co-ordinated and managed by NIM.

Training of auditors on public procurement topics is conducted by the European Organisation of Supreme Audit Institutions (EUROSAI)²¹⁶. The European Court of Auditors publishes a toolkit for Public Procurement Audit on its website²¹⁷ (see Chapter 10, on Control and Monitoring).

Training of economic operators and engagement with SMEs

The training activities outlined above focus on training for public procurement officials and other public officers. To create an effective procurement system with high levels of supplier engagement, it is also advisable to offer training to economic operators. This is particularly true for SMEs, which often lack the experience and capacity to participate in public procurement tenders and which are underrepresented as bidders for public contracts (see Chapter 3, on Strategic Use of Public Procurement).

Ireland and Northern Ireland offer a good example of training and support activities intended to enhance the professional capabilities of economic operators and SMEs in particular. InterTrade Ireland²¹⁸, an agency funded by the Department of Business Enterprise and Innovation in Ireland and the Department for the Economy in Northern Ireland, provides a number of services to businesses to enhance opportunities for growth, innovation and competitiveness. It is recognised as a service provider to SMEs, helping them

²¹⁵ <http://inm-lex.ro/>.

²¹⁶ www.eurosai.org.

²¹⁷ <https://www.eca.europa.eu/sites/cc/Lists/CCDocuments/Toolkit-2018/Toolkit-2018-update.pdf>.

²¹⁸ <https://intertradeireland.com/sales-growth/tender-successfully/>.

to compete in procurement markets. Its main service in this area is the “Go-2-Tender training scheme”, a two-day practical tendering workshop designed for an SME audience, which covers key aspects of procurement. In the seminar, SMEs are taught theory and practical skills to enable them to be successful at tendering, such as identifying opportunities, registering on procurement portals, taking bid/no bid decisions, as well as drafting successful proposals. To participate, companies must meet a number of eligibility criteria, such as being classified as an SME, operating in the manufacturing or tradable services sectors and ability to demonstrate export potential. The workshops are conducted by experienced tender specialists and offer insight into the procurement practices in Ireland’s public sector. Guest speakers from central government and large public procurement organisations are also invited. Half a day of the workshop is devoted to mentoring sessions on topics of interest proposed by the participants. Workshops are offered in various locations, at participation fees of EUR 100. In 2020, due to the COVID-19 crisis, workshops were held online, on Zoom and free of charge.

InterTrade Ireland also organises practical half-day seminars for small business owners who are new to public sector tendering, have limited knowledge or experience of the market or simply want to refresh their knowledge of the public sector on the island. Aimed at micro companies, these seminars focus on low-value opportunities. InterTrade Ireland also arranges “Meet the Buyer” events, where SMEs have an opportunity to meet public sector buyers face to face. Finally, the agency offers FAQs, guides, videos and presentations, as well as dedicated events on emerging trends that impact the procurement framework for SMEs.

In **Italy**, the central purchasing body, Consip, has set up over 260 SME public procurement training desks (*Sportelli in Rete*)²¹⁹ within 11 supplier associations across the country. These provide training for local SMEs on the use of e-procurement tools. Consip experts train association staff, who then train local SMEs free of charge. The initiative has been popular and training attendance is high. Procurement training desks have a fundamental role as reference institutions recognised by local enterprises. About 60 000 SMEs are now suppliers to the public e-marketplace for low-value purchases, thanks to training from the procurement training desk.

Chapter 8. Electronic procurement systems

As in other areas of society, public procurement is becoming increasingly digitised across the world. The electronic environment, while not problem-free, has several advantages, since it:

- allows for faster, more efficient transactions, with cost and time savings for the parties involved in procurement transactions, including contracting authorities, tenderers, budget officers, auditors, review bodies and courts;
- increases competition by eliminating geographical barriers and using dedicated electronic purchasing tools;
- promotes integrity by making public procurement transactions more open and visible, thus contributing to openness and transparency;
- allows for efficient aggregation of data, making possible the adoption of data-based policy decisions in public procurement;
- makes it possible to combine the whole cycle of procurement transactions (from budgeting and planning decisions to public contract implementation and performance assessment), which can facilitate good public finance management practices;
- addresses the problem of the lack of procurement officers and staff, because

²¹⁹ https://www.acquistinretepa.it/opencms/opencms/sportelli_in_rete.html#/.

many procurement functions are essentially automated, and a well-run, effective electronic procurement system reduces the scope for errors.

E-procurement can potentially have a high impact on the activities of central procurement institutions, which are likely to play a key role in the planning, introduction, development and maintenance of e-procurement in the national procurement framework. E-procurement will be considered in the context of developing national procurement policy/strategy and drafting or amending primary and secondary legislation. Manuals, guidelines and other information prepared and published by central procurement institutions need to be updated or reissued to align with national developments in e-procurement. New operational policies specifically for e-procurement need to be prepared. Contracting authorities and other stakeholders may require extra support and training to manage the transition to e-procurement methods effectively. The central procurement institution can be the institution responsible for procurement and/or the development of the e-procurement information technology (IT) system, and also for its ongoing operation and management. The central procurement institution may take a leading role in co-ordination between key institutional stakeholders, for example, facilitating the interface between different government IT systems that may link up with the e-procurement system.

The 2014 European Union (EU) Procurement Directives embraced the need to shift public purchasing from paper to online. Since 2014, setting up e-procurement has become mandatory for Member States at certain stages in the procurement procedure, including: online publication of procurement notices; online availability of tender documentation; and online communication in all stages of tender procedure, including online submission of requests to participate and bids.

The 2014 EU Procurement Directives are applicable only if the contract to be awarded is valued at more than a specified EU financial threshold. This might suggest that the e-procurement provisions are of limited impact, but that is not the case. The Directives require EU Member States to implement all procurement procedures and tools provided by the Directives. A majority of these tools, such as online auctions, a dynamic purchasing system and online catalogues, can only be implemented online. The Directives also clearly state that if they wish to do so, Member States may take further steps to roll out electronic procurement solutions. This means that Member States are free to expand the scope of their online public procurement system:

- beyond the mandatory steps of the Directives. For instance, Member States may include in their systems online planning and online contracting modules. They can also, when feasible, use online bid examination and evaluation tools;
- to procurement contracts not covered by the Directives, such as contracts valued at below the EU financial thresholds.

The Directives provide a framework of requirements for online tools used by Member States for their e-procurement systems. They provide that such tools must be non-discriminatory, generally available and interoperable with the information and communications technology products in general use, for instance, and that they must not restrict economic operators' access to the procurement procedure. They also stipulate that the use of these tools should take into account accessibility for persons with disabilities. In practice, these provisions have a wider impact on the conduct of public procurement in general.

In many jurisdictions, rolling out online public procurement solutions has been a chance to solve a trade-off between equal treatment, transparency and proportionality, on one hand, and efficiency on the other hand. A properly functioning e-procurement system can make it possible for contracting authorities to come up with a list of reasonable demands and requirements and, at the same time, ensure that tender submission, and the examination and evaluation process is rapid and does not require an unreasonable investment of time and money both from contracting authority and from tenderers. This is perhaps most evident in conducting procurements of relatively low value. For such contracts before e-procurement was adopted, policy makers had to make difficult regulatory choices. It often meant that either they used formalistic, document-heavy supplier selection procedures that attracted little interest from the market, or that they

gave contracting authorities unlimited freedom of action in their buying decisions, which often ended up in favouritism and corruption. In an online environment, however, integrity in public procurement can be increased. A well-functioning e-procurement system would preclude, for example: embarking on procurement procedures for which there are no budget funds; selecting a bid that does not comply with requirements set out in tender documents; or making amendments in public procurement contracts that are not detected. An added benefit is that as e-procurement systems automatically ensure implementation of principles of transparency and equal treatment, procurement officials have more time and resources to study the market and focus on Strategic Public Procurement solutions that will benefit society in the long term.

The extent to which e-procurement benefits are realised, however, depends on several factors. Experience in many countries has clearly showed that a fully functioning e-procurement system requires a proper legal framework, an online public procurement system and appropriate online tools. The level of digitisation of the administration is also important, because public procurement does not function in isolation from other public competence areas, such as budgeting, taxation and registration of enterprises. It is also vital to design the e-procurement system and tools in a way that respects the local market structure and a country's stage of commercial development.

Countries introducing reforms in e-procurement face questions that should be considered and built into national procurement policy and strategy, as well as the plans for delivery.

In what sequence, at what speed and to what extent should the shift to e-procurement be rolled out? For example, e-publication of notices is already standard practice. Should e-procurement processes be rolled out in sequential procurement stages, addressing bidder qualifications next, or is a different stage more appropriate? Should the introduction be gradual, moving different stages of the procurement process from a paper-based system to e-procurement over a defined period, or should the process (at least starting from the advertisement to the contract award) be fully rolled out simultaneously? Should the changes be introduced first for lower-value or simpler contracts and procurement procedures? Will contracting authorities have the option, at least in the initial stages, to choose whether to use a paper-based or an e-procurement approach? It may also make sense to use central purchasing authorities as “leaders” in rolling out e-procurement.

Which stages of procurement transactions will the system capture? E-procurement systems may contain core modules, covering, for example, advertising, qualification/selection, evaluation and award, and then “add-on” modules covering matters such as procurement planning and contract monitoring. The total package can deliver a comprehensive end-to-end e-procurement system. It is appropriate to consider short-, medium- and long-term aims in discussing which stages will be covered by the e-procurement. It is also important to address the question of whether e-procurement tools should be applied in every case. E-evaluation, for instance, can be something of a blunt tool in the context of more complex procurements, particularly those requiring some form of negotiation.

Who will own and operate the system? For example, will it be a public-sector owned and managed system, or a **service/public-private partnership (PPP) model**, or some other arrangement? As an illustration: With a public sector-owned and -managed system model, the public sector usually procures a system, whether based on the existing solution or custom-built, from a private sector supplier. The system is then transferred to the public sector, by which it is owned and managed. In this scenario, the establishment and operation of the system is financed from the public budget. Alternatively, the operation of the system can also be financed by user charges, either levied as flat fees, or by adjusting the fees in proportion to the amount of usage of the system. The second option is arguably more sustainable, because it allocates the fees in a more equitable manner. In a software as a service/PPP model, the public sector uses an e-procurement service that is owned, managed and operated by a third party or parties. In the case of a **PPP model**, one option might be to transfer the system back to the public sector after a certain period. In this case, the private sector would assume the costs of setting up the system. The cost of

operating the system could then be borne by system users, who would pay fees for the services provided by the system operator or operators in a multiplatform system model.

One question linked to ownership and operation is: How will the purchase, operation, maintenance and longer-term development or expansion of the system be financed?

Will the system use a single platform or multiple platforms? In some countries, a centralised approach is used, and a single platform is used by all contracting authorities. In other countries, multiple platforms may be used, provided that they meet certain national requirements. These different models can be seen in the cases of **Latvia** and **Portugal**, as outlined below.

How and to what extent will the system be integrated with other public IT systems? This will correlate with the administration's level of digitisation. One good example of the benefits offered by integration or interconnectivity is the degree to which the e-procurement system can be integrated with other systems – for example, tax, social security and court records – to provide information on the qualification or standing of potential bidders. If these have not yet been digitised, it is worth considering whether the e-procurement system can be designed to allow for integration in future. This is one side of another crucial question: **What is the vision and strategy for developing the system?**

There is no one right answer to such questions. The right option will depend on the circumstances: the market context, the size of the economy, the uptake of electronic solutions, the funds available for electronic procurement reform, and how far the public sector can undertake and manage risks.

For countries seeking to join the EU, options are available in the form of EU Technical Assistance projects, as well as from international development agencies. The support offered could be: initial research on the most suitable system models, drafting technical specifications of the system and service-level agreements, as well as partial or full financing for setting up the system.

For **legislative reform**, it is crucial to set up public procurement legislation specifically designed for electronic public procurement transactions. The e-procurement system should not diverge from the legislation, and the legislation should not diverge from the functionality offered by the system. In the best-case scenario, the description of procurement procedures should be redesigned to reflect electronic procurement business processes, and all stages of procurement transaction should be integrated.

The primary law should only regulate general concepts, leaving detailed description of steps in the business process to secondary legislation, by-laws or guidelines. This is because the electronic procurement system must reflect the procedures and processes required by the legislation. Constant fine-tuning and updates are likely to be needed to ensure the system functions properly. Fine-tuning the system may require legal amendments, and it is more feasible to amend secondary legislation, by-laws or guidelines than the primary law on public procurement.

To fully implement e-procurement solutions, a range of new e-procurement-**specific operational guidelines/policies** will have to be adopted or adjusted, for instance, concerning user roles and responsibilities, scenarios in case of IT errors or malfunction, mobile technology options and IT security.

E-procurement systems are a valuable **source of data** for assessing day-to-day procurement operations and overall purchasing patterns, as well as, potentially, for identifying practical problems. Publicly available data collected through the e-procurement system increases transparency and promotes integrity.

For central public procurement authorities in the EU Member States and Western Balkan administrations, implementing e-procurement systems continues to be a crucially important task.

In **Albania**, the Public Procurement Agency (PPA) is responsible for the operation of the electronic public procurement system²²⁰, while its maintenance is carried out by a private sector contractor. The system

²²⁰ Electronic public procurement portal is available here: <http://www.app.gov.al/e-procurement/>.

covers public procurement, PPP and concessions, as well as public auctions. The system allows the PPA to obtain primary data on all transactions, and it has been able to generate savings, according to PPA reports²²¹. All public procurement procedures at present are conducted through the online public procurement system, including negotiated procedures without prior publication of a contract notice. The small-value procurements²²² are also conducted electronically. The forecast and execution functionality, essentially a procurement planning module, was added to the system in January 2018. It has made information about forthcoming procurement transactions available not only to the PPA, but also to economic operators. Foreign operators can register in the system by filling out the required fields of information²²³.

Within the PPA, the electronic procurement system is managed by the Department of Data Administration and Publication. Its main task is to keep the system functioning constantly.

In **Bosnia and Herzegovina**, the public procurement strategy plans for a gradual implementation of electronic procurement. The Public Procurement Portal (PPP) was launched in November 2014, to merge functionalities that had been introduced earlier: “Go-Procure” for publication of procurement notices, “WisPPA” for reporting by contracting authorities, and the Registry of contracting authorities and bidders²²⁴. E-submission (for submission of tenders by electronic means) and e-assessment (electronic evaluation of tenders) are in the pipeline. The PPP is owned and managed by the PPA, and is financed from the state budget and from donations. Its use is free of charge for all users.

In **Kosovo**, the Public Procurement Regulatory Commission (PPRC) is responsible for running and maintaining the e-procurement platform²²⁵. The platform covers all procurement cycle activities, including annual procurement plans and procurement initiation until contract signing, including communication between contracting authorities and economic operators before the bid submission. All 190 Kosovar procurement authorities and about 7 500 economic operators are registered on the e-procurement platform, which is financed by the state budget and can be used free of charge. In the PPRC, the platform is managed by the Division of Information Technology.

In **Montenegro**, use of electronic tools in public procurement is limited to publication of notices and other documents in the Public Procurement Portal (PPP)²²⁶. Submission of tenders by electronic means is possible but not generally required. Setting up e-procurement is expected to be supported by the EU-funded technical project, given the legislative changes introduced by the new PPL.

In **North Macedonia**, the PPL fully regulates electronic communication and exchange of information between contracting authorities and economic operators. The PPB manages and operates the Electronic Public Procurement System (EPPS). EPPS can be used to fill in and publish: the contract notices; notices for simplified competitive procedures; contract award notices; records on simplified competitive procedures; cancellation of procedures; carrying out contract award procedures using electronic means (using electronic devices for data processing and storage); as well as conducting electronic auctions and submission of the final price.

²²¹ 2018 Annual Report of PPA report savings. They are, however, calculated by comparing the estimated value of the procurement with actual acquisition price, which may not be the most precise method.

²²² The threshold for application of low-value procurement procedure according to procurement regulations is ALL 800 000 (approximately EUR 6 666).

²²³ Foreign economic operators can register here: <http://www.app.gov.al/register-operator/>.

²²⁴ <https://www.javnenabavke.gov.ba/bs-Latn-BA/eProcurement>.

²²⁵ The e-procurement portal is available here: <https://e-prokurimi.rks-gov.net/>.

²²⁶ On 31 March 2020.

Economic operators must register to use the system, and are charged fees, on the basis of the Tariff Book, set up by the MoF²²⁷. The fee depends on the type/size of the economic operator²²⁸.

In **Serbia**, the new PPL provides for a new Public Procurement Portal (PPP)²²⁹, defined as a single information system for public procurement. The PPP was developed by the EU Project and was launched on 1 July 2020 with the PPL. Access to the PPP is free of charge.

E-procurement is part of the functionality of the new PPP. The new system supports preparation and submission of electronic tenders; replacement, completion and recall of tenders; opening of tenders; communication between contracting authorities and bidders after opening of tenders (clarification of tenders, correction of computational errors; justification of abnormally low tenders; and submission of evidence to prove fulfilment of qualification criteria, etc.).

The following two examples from EU Member States illustrate a single-platform approach and a multiple-platform approach.

In **Latvia**, the State Regional Development Agency is in charge of maintaining and operating the Electronic Public Procurement System (EIS). EIS is built on the single-platform model and provides for the following online services:

- **Electronic tenders.** The online tendering subsystem is designed as a unified online environment to support the procurement process, including the standardised drafting, storage and use of the necessary documents, preparation and submission of requests to participate and tenders, as well as bid examination and evaluation.
- **Electronic auctions.** The online auction subsystem is designed as a tool to ensure fair competition between suppliers, to reduce the costs of procurers for the performance of the procurement contract and to obtain more favourable tender conditions.
- **Electronic catalogues.** This online ordering subsystem serves as an online shop for public sector customers, where several suppliers offer their standard goods. The State Regional Development Agency (or other central purchasing body), by organising open tenders and concluding framework agreements between the central purchasing body and suppliers, ensures the creation and maintenance of electronic catalogues of standard goods and services.
- **Electronic certificates.** In the online certificate subsystem, suppliers and procurers may request and obtain an online certificate containing electronically compiled information available in state registers, to verify the candidate's or tenderer's compliance with the candidate and tenderer exclusion conditions stipulated in the applicable public procurement legislation.

In the Agency, the EIS is managed by the Electronic Tenders Department, whose functions are: to co-ordinate changes, development and maintenance of the EIS; to ensure the operation of the EIS and its subsystems to conduct procurement and procurement procedures and related activities of state and local government institutions; to ensure the organisation of centralised procurement procedures for goods and services and the conclusion of framework agreements for the supply of goods and services to the users of the EIS electronic catalogue subsystem; to monitor the framework agreements concluded by the Agency and publish regularly information on all contracts concluded within the EIS electronic catalogue subsystem.

²²⁷ <http://www.bjn.gov.mk/podzakonski-akti/tarifnik-esjn/>.

²²⁸ Micro enterprises pay around EUR 35, small and medium enterprises around EUR 70, and large enterprises around EUR 130.

²²⁹ Article 183 of the new PPL.

Users pay no fee for EIS services. The state budget funds the creation, maintenance and development of the EIS.

Portugal employs a multiple-platform approach²³⁰. The Institute for the Shared Services of the Portuguese Public Administration (*Entidade de Serviços Partilhados de Administração Pública*, or eSPap) is in charge of supervision of the national electronic public procurement system (*Sistema Nacional de Compras Públicas*, or SNCP). The eSPap was created in 2012, by merging the National Agency for Public Procurement, which was responsible for the SNCP from its introduction, with two other public institutions²³¹.

The SNCP operates on the following principles: encouraging participation of contracting authorities precisely prescribed by legal acts; mandatory entities (central administration and public entities, and voluntary entities) municipalities and local entities, state-owned companies or regional authorities; aggregation of procurement; acquisition under framework agreements for demand aggregated by the central government; introducing standardisation of items and economies of scale.

The SNCP uses the so-called “multiplatform” model, on a “software as service” basis. Access to the eSPap is provided by private platforms operating in the market²³². The platforms are selected on the basis of competitive procedures, and framework agreements concluded as a result. The platforms offer their services to contracting authorities for remuneration. The amount depends on: the number of users; the number of procurement procedures to be conducted; the scope of usage (different functionalities are available, such as electronic auction, electronic tendering, electronic ordering); the need for customised services to the particular contracting authority; the chosen remuneration model (fixed fee or variable fee per tender). To avoid fragmentation of the market and monopoly risks, competitions for platform services are opened on a regular basis.

Portugal maintains the Official Public Procurement portal (the BASE)²³³. Public procurement legislation defines how much information is provided to the portal and the principles for access to it²³⁴. Among its other functions, the portal is a tool for monitoring and reporting²³⁵. It has a restricted area for contracting authorities to submit information. The BASE also connects with electronic platforms and the national electronic official journal, makes procedures more transparent and accessible, and provides working and project opportunities for nongovernmental organisations (NGOs). It maintains data on historical public procurement transactions and can assist with demand forecasts in key sectors and segments and produce data-based business reports.

Chapter 9. Collecting and publishing statistical data

Reliable, comprehensive data are important at every level of the public procurement system. It provides an essential foundation for planning national procurement policy and strategy effectively. At the operational level, procurement data showing what is being purchased and the frequency of purchases can help identify types of purchases suitable for centralised procurement, or instances where framework agreements or dynamic purchasing systems might be appropriate. It can also help identify systemic problems, such as

²³⁰ <http://www.base.gov.pt/Base/pt/PlataformasEletronicas/OQueSao>.

²³¹ <https://dre.pt/pesquisa/-/search/411608/details/maximized>; <https://eportugal.gov.pt/entidades/entidade-de-servicos-partilhados-da-administracao-publica>.

²³² <http://www.base.gov.pt/Base/pt/PlataformasEletronicas/PlataformaEletronicasLicenciadas>.

²³³ <http://www.base.gov.pt/Base/pt/Homepage>.

²³⁴ https://dre.pt/home/-/dre/70025051/details/maximized?p_auth=zIE9N0kF.

²³⁵ <http://www.base.gov.pt/Base/pt/OPortal/Base>.

failed procurement or high levels of noncompetitive procedures, and even evidence of negative supplier behaviour, such as collusion or bid rigging. If it is clear, up-to-date and comprehensive, procurement data that is publicly available can enhance accountability and increase transparency in the procurement system.

The collection, analysis and publication of procurement data is thus a key function of central procurement institutions. Central procurement institutions should have access to data published by contracting authorities on public procurement portals or otherwise delivered by contracting authorities in their reports. It is important to consider: the most efficient methods for collecting data; the frequency and scope of data collected and published; how best to present relevant data; and who has access to what data.

The European Commission has access to statistical data on procurements over the European Union financial thresholds through Tenders Electronic Daily (TED)²³⁶. It does not require submission from Member States of statistical reports for contracts that are the subject of notices published in the *Official Journal of the EU*. Member States are, however, obliged to respond to requests for clarification from the EC where the quality and completeness of data in notices is insufficient. They must also, every three years, provide information about contracts below the EU financial thresholds.

Linking to wider issues than pure statistical data, the Public Procurement Directive (2014/24 Directive) requires EU Member States to submit a monitoring report to the EC every three years, covering information *“on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems”* in the application of public procurement rules; *“about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities; and as well as the level of SME participation in public procurement”*²³⁷.

The issue of collecting statistical data on public procurement is also covered by the MAPS, in particular by Indicator 7 – “Public procurement is embedded in an effective information system” and Indicator 8 “The public procurement system has a strong capacity to develop and improve”. More specifically, Sub-indicator 7(c) – Strategies to manage procurement data states that *“Statistical information on procurement is essential to evaluate the policies and the operation of the system. Statistics also provide a means for monitoring performance of the system and compliance with the legal and regulatory framework. Statistical information can also be a tool for procurement planning and market analysis. To ensure comprehensiveness and efficiency, the system should be based on data available in e-Procurement or other information technology systems”*.

In turn, sub-indicator 8(c) – Monitoring performance to improve the system requires that *“The results of procurement processes should periodically and consistently be assessed to measure the performance, effectiveness and savings of the procurement system.”*

Modern technology has an important role to play in collecting and analysing public procurement data. A wave of new technologies such as artificial intelligence, big data, blockchain, the internet of things, machine learning and virtual reality is available to public administrations, businesses and citizens. New technologies can enhance data collection and analysis, measuring more effectively the impact of the public procurement policies, and public procurement operations in different sectors and for different types and levels of contracting authorities.

1. Open data

The move towards open data is a positive development. Open data is defined as **“A piece of data or content is open if anyone is free to use, reuse, and redistribute it — subject only, at most, to the**

²³⁶ <http://ted.europa.eu/TED/main/HomePage.do>; TED is the Supplement to the Official Journal of the EU. It is published only in electronic format.

²³⁷ Article 83, Directive 2014/24/EU.

requirement to attribute and/or share-alike.²³⁸ Publication of comprehensive data, free of charge and in a format that can be independently analysed by NGOs, public procurement experts, and other stakeholders, can increase market transparency, decrease transaction costs and facilitate government accountability. Publishing procurement data in an open data format opens a wide range of opportunities. It empowers governments to produce better analytics, which creates vast learning opportunities across authorities. Better and more accessible data can also be used by potential and actual bidders to assess opportunities and evaluate their own performance internally. This should ultimately lead to more competition and, ideally, better outcomes. This data enables civil society to better understand government performance and allow civil society to hold governments more accountable.

An example of this approach to presenting public procurement data is “Opentender”²³⁹, a central, public and open procurement platform set up to contribute to achieving value for money in public procurement and to enhance integrity in the public sector. The platform is a part of the DIGIWHIST project²⁴⁰. DIGIWHIST, a project funded by EU Horizon 2020, brings together six European research institutes to combat corruption in the public sector. Its goal is both to increase trust in governments and improve the efficiency of public spending across Europe.

Opentender was created to address shortcomings in publication of procurement data to an acceptable minimum standard. Sources of information on procurement can vary widely and may even require the payment of a fee, making it very difficult for citizens to find the information they need. Even on TED, some of the required fields are either not filled out or not filled in a standardised way, which means that locating a given tender, as well as comparing different tenders, is sometimes impossible. All these obstacles create an opaque environment for procurement practitioners, bidders and citizens. Opentender activities consist of the systematic collection, structuring, analysis and dissemination of information about public procurement and on mechanisms that increase the accountability of public officials in all EU and some neighbouring countries. The project compiles and evaluates micro-level data using information from individual public procurement transactions and in the winning firms’ finance and ownership structures. This data is then linked to information on aggregate asset and income declarations data, to detect potential conflicts of interest in the public procurement system, and also, more specifically, systemic vulnerabilities in the respective legislation and its implementation. Opentender allows all interested parties to search and analyse tender data from 33 jurisdictions (27 EU member states and the EU Institutions, the United Kingdom, Norway, Iceland, Switzerland, Armenia and Georgia).

Some examples of approaches to collecting and publishing data on public procurement from both the Western Balkans region and the EU countries are provided below. As this short comparative analysis shows, organisation and discharge of this function varies considerably, whether in the thresholds above which such information is collected, the methods of collecting data, the frequency and the scope of reporting.

2. Collection of public procurement data

Central procurement institutions in the Western Balkans all collect and process statistical data on the public procurement market. The information is sometimes collected from reports submitted by contracting authorities, in accordance with the requirements of public procurement laws. A more efficient means of obtaining data, used by a number of central procurement institutions, is to extract it directly from e-procurement systems. Central procurement institutions are all obliged to provide information about the procurement system in given reporting periods to other authorities, such as parliaments or governments.

²³⁸ <http://opendefinition.org/>.

²³⁹ <https://opentender.eu/start>.

²⁴⁰ <http://digiwhist.eu/>.

In **Albania**, the e-procurement system allows the PPA to obtain primary data on all transactions in public procurement, concessions and PPPs, as well as public auction sectors. Information on public procurement transactions collected by PPA can be used for a variety of purposes, such as developing red flags for monitoring, as well as targeted policy making in public procurement. Thanks to e-procurement and access in real time to primary data on procurement transactions, statistical information on the public procurement system is collected on a constant basis.

In **Bosnia and Herzegovina**, data on public procurement is collected by the PPA directly from the public procurement portal, on the basis of information regularly published/provided. The PPA is interested in the following types of information: total value of procurement; values of different types of procurement contracts awarded (supplies, works, services); types of procurement procedures used; and share of contracts awarded to foreign bidders. The following information is available: the total value of procurement contracts awarded; estimated value of procurement exempted from the procurement legislation; values of different types of procurement contracts awarded (supplies, works and services); types of procurement procedures used; and percentage of contracts awarded to foreign bidders.

In **Kosovo**, one of the PPRC's functions is to maintain the Public Procurement Register, a functionality that, under the PPL, is to serve as the repository for electronic copies of all notices, invitations, declarations, tender dossiers, reports, complaints and decisions issued in connection with procurement transactions. The Register thus provides the PPRC with wide-ranging sources of data on procurement. The e-procurement platform also gives the PPRC access to all public procurement transactions of an estimated value of more than EUR 1 000. Information on public procurement transactions collected by the PPRC can be used for a variety of purposes, such as developing red flags for monitoring, as well as targeted policy making in public procurement.

In **Serbia**, contracting authorities are required to keep records on public procurement and to report on it every quarter²⁴¹. Under implementing regulations²⁴², contracting authorities are obliged to submit to the PPO information on procedures and concluded contracts, about conducted procedures of awarding contracts on the basis of exemptions (derogations) from the PPL, about withheld or cancelled public procurement procedures, as well as execution (performance of public contracts). Quarterly reports are submitted to the PPO exclusively in electronic form, after the contracting authority has filled in templates on dedicated software available on the PPO's website. Quarterly reports submitted to the PPO and published on the PPO portal are available on the PPO website²⁴³. The new PPL, in force as of July 2020, requires the PPO to keep records on public procurement procedures and public procurement contracts, by means of automated collection from the PP Portal²⁴⁴. The PPO may also, if needed, request information from the contracting authority/entity on each individual public procurement procedure or each concluded contract, within eight days of receiving the request.

In **Montenegro**, the PP Directorate in the Ministry of Finance (MoF) is responsible for collecting and analysing statistical data on public procurement. Data is collected through submission reports of contracting authorities and publication of notices and procurement documents in the PP Portal. Contracting authorities are obliged to deliver to the PP Directorate, no later than 28 February every year, a report on the public procedures conducted and contracts concluded in the previous year, including information about urgent procurement, low-value procurement and procurement for defence and security. Reports are

²⁴¹ PPL, Article 132.

²⁴² A Rulebook on Contents of Quarterly Reports on Public Procurement and Methods of Keeping Records on Public Procurement adopted by the Director of the PPO on 27 March 2013.

²⁴³ http://www.ujn.gov.rs/ci/izvestaji/izvestaji_ujn.

²⁴⁴ The new PPL, Article 181.

delivered in electronic and written form, in accordance with the standard forms established by the MoF²⁴⁵. Every year by the end of May, the MoF is required to prepare an annual report for the Government on activities and data on the functioning of the public procurement system in the preceding year. Reports are prepared by the PP Directorate and submitted by the MoF.

In **North Macedonia**, the PPB is responsible for collecting and analysing statistical data on public procurement. Data is collected directly from the public procurement portal (EPPS) on the basis of regularly published information. Information is made available to the PPB thanks to records of the public procurement procedures. These are kept by contracting authorities in EPPS in separate record books, which must contain all documents on a given public procurement procedure. After the procedure is completed, the contracting authority must prepare a dossier on the public procurement procedure, including: a public procurement decision; contract notice; tender documentation; received tenders or requests; report on the evaluation conducted; decision on the selection of the most advantageous tender or on cancellation of the procedure; the public contract or framework agreement signed; the contract award notice; and a notice on the performance of a contract. Information collected covers public and utilities procurement but not public-private partnerships (PPP, or concessions) and contracts awarded in the areas of defence and security. The following types of information are collected: total value of public procurement; values of different types of procurement contracts awarded (supplies, works, services); types of procurement procedures used; percentage share of contracts awarded to small and medium-sized enterprises (SMEs) and foreign bidders, etc. The information collected is published in annual reports on PPB activities, which is submitted to the Government. All annual reports are published on the PPB's website²⁴⁶.

In **France**, the Directorate for Legal Affairs (DAJ) in the Ministry of Economy and Finance (MINEFI) is responsible for collecting procurement data through the Public Procurement Economic Observatory (*Observatoire Economique de la Commande Publique*, or OECF). Data provided by contracting authorities for this data collection exercise may vary from year to year. The data required is specified in an implementing regulation (decree) applicable for a defined time period²⁴⁷. The Ministry publishes a short guide on implementation of the decree.²⁴⁸ The short guide to data reporting requirements for 2019 and 2020, for example, requires data on contracts of more than EUR 90 000 and contracts related to innovative purchases of between EUR 25 000 and EUR 100 000 (a special procedure applies for those contracts). Data is submitted in a special form, and statistical information is then published on the DAJ website²⁴⁹. Summary information about public procurement is published in the form of PowerPoint presentations.

In **Portugal**, the state administration has developed a comprehensive and transparent system of collection and dissemination of various data on public contracts.

The law on public procurement, the Public Contracts Code (CPC), stipulates the establishment of a dedicated internet portal to compile all relevant information on public procurement²⁵⁰. The BASE portal²⁵¹ was created as “a space for dialogue for those involved in a public contracting procedure, but also for the general public.” The databases linked to the portal are constantly updated with information from: the Official

²⁴⁵ Rulebook on forms of reports in public procurement procedure Official Gazette No. 060/20.

²⁴⁶ <http://www.bjn.gov.mk/category/godishni-izveshtai/>.

²⁴⁷ <https://www.legifrance.gouv.fr/eli/arrete/2019/3/22/ECOM1831557A/jo/texte>.

²⁴⁸ https://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/formulaires/recense/guide_recensement.pdf.

²⁴⁹ <https://www.economie.gouv.fr/daj/oecf-recensement-economique-commande-publique>.

²⁵⁰ CPC, Article 472 (2).

²⁵¹ <http://www.base.gov.pt>.

Gazette, where the public procurement notices are published; all the e-procurement platforms, where electronic procurement procedures are conducted in accordance with CPC; and the contracting authorities. BASE also provides access to the information system that assesses and monitors public works procurement in Portugal maintained by the Public Works Observatory²⁵². BASE is managed mainly by the Institute for Construction and Property²⁵³. It contains information on all contracts concluded under the CPC, regardless of the procedure used or the value of contract in question.

To provide the portal with the relevant information, contracting authorities must report to BASE all public contracts awarded by them covered by the CPC, including contracts awarded directly, without prior publication of a notice, and all contracts awarded in the area of defence. The reports are to be delivered by March 31 every year on the contracts awarded in a preceding year. The information published includes data on: the contracting authority, the subject matter of the procurement, the contractual price, the date of the contract notification, the procedure used (for example, a direct award or open procedure) and the selected economic operator. A scanned copy of the entire contract is also attached.

The portal offers information on each economic operator with which a public procurement contract has been concluded, and includes the number and total value of all previous procurement contracts concluded with that operator. Information on contracts awarded can also be searched under the headings of most recent contracts and contracts of the highest value. The value of contracts awarded in a given year is presented in a graph showing the value of contracts, the months they were awarded and the procedures applied. Pie charts show the value of the contracts awarded in different regions of Portugal.

3. Frequency of publication of reports by central procurement institutions

Reports prepared from data collected by central procurement institutions are generally published annually on data for the previous year. In some cases, some data are made public sooner and for shorter periods. For example, in **North Macedonia**, basic data on public procurement is available in real time, on the PPB website²⁵⁴. This includes the number of notices published, the number of e-procurement procedures conducted, the number of online auctions and their total value. In **Serbia**, the PPO is required to prepare aggregate quarterly reports on conducted procurement procedures and concluded public procurement contracts, on the basis of the reports it receives, and to publish them on the PP Portal and its website within a month after the deadline imposed on the contracting authority. The PPO must also publish reports for the first half of a given year on the Public Procurement Portal and on its website by 30 September, and the annual report on the preceding year by 31 March. Both types of reports are to be submitted to the Government before they are published. With these reports, the PPO is also to submit proposals for “*common and individual measures for improvement of the public procurement system*”. All reports that the PPO prepares are published on its website²⁵⁵.

As for the European Union, statistical reports (and other reports presenting major developments in public procurement) are prepared and published at regular intervals. This is true, for example, of reports prepared

²⁵² Observatório das Obras Públicas.

²⁵³ Instituto da Construção e do Imobiliário.

²⁵⁴ <http://www.bjn.gov.mk/>.

²⁵⁵ http://www.ujn.gov.rs/ci/izvestaji/izvestaji_ujn.

by the central procurement institutions in Hungary²⁵⁶, Poland, Romania²⁵⁷, the Slovak Republic²⁵⁸, and Sweden²⁵⁹.

4. The content of annual reports of central procurement institutions

To allow for comparison and analysis of developments in the public procurement market, reports prepared by central procurement institutions should contain comparable data.

In **North Macedonia**, the PPB's reports include information on legislative changes during the reporting period (adoption of new laws or amendments, adoption of implementing regulations); activities of the PPB and other institutions relevant to public procurement (the State Appeals Commission, administrative courts, court of auditors, the Commission for Protection of Competition, anti-corruption office); information on the public procurement market (value of contracts awarded, number of procedures conducted, competition in public procurement, use of e-procurement etc.). On the other hand, reports do not contain information on how often socially responsible procurement, environment-related (green) procurement or innovative procurement are used.

In **Albania**, the 2018 annual report includes, for example, information on: types of subject matter of contracts; types of procurement procedures; amount of savings; number of cancelled procedures; number of framework agreements concluded; number of contracting authorities; and economic operators in the system.

In **Kosovo**, statistical information on the public procurement system appears in the PPRC's annual reports²⁶⁰. These contain information on a given reporting period, and include data such as: total number of contracts signed; total value of contracts; share of GDP represented by public procurement; value of contracts by category (supplies, services, works, contracts awarded according to the type of contracting authority and source of financing).

In **Montenegro**, annual reports contain information about legislative changes during the reporting period (adoption of new laws or amendments, adoption of implementing regulations); activities of the PP Directorate and other institutions relevant to public procurement (the Agency for Protection of Competition, Anti-Corruption Office); progress in rolling out public procurement strategy; and information on the public procurement market (value of contracts awarded, number of concluded contracts, number and percentage share of application of various procedures, average number of tenders submitted, number of procurement procedures cancelled). The report concludes with recommendations on forthcoming developments in public procurement.

In **Serbia**, under the new PPL, the PPO is to prepare an annual report on public procurement on the basis of information collected²⁶¹, including: information on the most frequent causes of incorrect application of PPL, including possible structural or recurring problems in the application of the PPL and implementing regulations based on it; information on the degree of participation of SMEs; statistical data on public procurement in Serbia; information on the measures for prevention, detection and reporting of corruption,

²⁵⁶ https://www.kozbeszerzes.hu/data/filer_public/5c/d4/5cd4554c-5aab-4900-9c6f-908fc0cdf1bb/annual_report_2018.pdf.

²⁵⁷ <http://anap.gov.ro/web/analize-si-rapoarte-statistice/?future=false>.

²⁵⁸ <https://www.uvo.gov.sk/informacny-servis/statistika-procesu-verejneho-obstaravania-396.html>.

²⁵⁹ <https://www.upphandlingsmyndigheten.se/verktyg/statistik-om-offentlig-upphandling/>.

²⁶⁰ Available on the PPRC website at: https://krpp.rks.gov.net/Default.aspx?PID=Home&LID=2&PCID=-1&CtlID=HTMLStatic&CID=PPRCannual&PPRCMenu_OpenNode=90.

²⁶¹ The new PPL, Article 182.

conflicts of interest and other irregularities in the application of the PPL; proposals of measures to suppress irregularities and corruption in public procurement, increase efficiency in the public procurement system and boost competition in public procurement procedures; and other information of relevance to the public procurement system. The report should be submitted to the Government by the PPO and published on the PP Portal not later than March 31 of the current year for the previous year.

In the **EU**, the level of detail in the data published varies significantly. The most comprehensive data published appears to be from countries that joined the EU in the period 2004-2013, as well as in Portugal and Sweden, where significant amounts of data are published.

In **France**, the OECF, in addition to the standard data on public procurement, such as value of procurement, also focuses on practical application of “special clauses” in public procurement (submission of tenders by electronic means, share of procurements where subcontractors were involved, contracts containing social and environmental clauses and so on)²⁶².

In **Sweden**, reports published by the Competition Authority²⁶³ contain a wealth of information on contracting authorities, economic operators and public procurement processes (procedures). Particularly useful are comparative analysis presenting statistics on various issues not only in Sweden, but in countries of the EU and European Economic Area. This information is based on data from Tenders Electronic Daily. The latest available report, for 2018, is more than 200 pages. Reports include a short summary in English.

In **Poland**, the PPO, in addition to its annual reports²⁶⁴ publishes monthly *Information Bulletins*²⁶⁵, with basic statistical data on public procurement in a given month, such as: number of notices published; percentage of category of procurement (supplies, services or works); number and percentage share of types of procedures applied and award criteria used. Statistical data, updated daily, is published by the Public Procurement Monitoring Bureau in **Latvia**²⁶⁶.

Chapter 10. Control and monitoring of the application of procurement rules

The control and monitoring of public procurement plays an important role in any national public procurement system, in particular as a method of safeguarding integrity.

For the purposes of this paper, monitoring refers to the process of observing, keeping track of and gathering data about performance. On the other hand, control may also refer to the process of actively exercising power over, guiding and supervising the behaviour, tasks and activities of organisations or persons concerned. Control and monitoring is often primarily the task of central procurement institutions, but other institutions, such as State Auditors or specialised inspection institutions, may also be involved. In some cases, the procurement review/challenge process may also be regarded as a form of control, particularly where the review body acts in an *ex officio* capacity. Monitoring, understood as a broad concept, can also include more general systematic observation of the public procurement system, intended to evaluate the development and functioning of the system. This can include activities of civil society, nongovernmental organisations (NGOs) or independent experts.

²⁶² <https://www.economie.gouv.fr/daj/oecp-recensement-economique-commande-publique>.

²⁶³ <http://www.konkurrensverket.se/upphandling/statistik/>.

²⁶⁴ <https://www.uzp.gov.pl/baza-wiedzy/analizy-systemowe/sprawozdania-o-funkcjonowaniu-systemu-zamowien-publicznych>.

²⁶⁵ <https://www.uzp.gov.pl/baza-wiedzy/analizy-systemowe/biuletyny-informacyjne/biuletyny-informacyjne-uzp-2019>.

²⁶⁶ <https://www.iub.gov.lv/lv/mekletiepirkumus>.

This chapter focuses on activities undertaken by central purchasing institutions to detect and remedy infringements of public procurement rules²⁶⁷. These can be divided into those conducted before the conclusion of a contract, either during or at the end of a procurement process (*ex ante* control), or those conducted after the procurement process has been concluded (*ex post* control) and monitoring implementation of contracts. For the purposes of this chapter, the following types of monitoring/control are considered:

- *ex ante* assessment of existence of grounds for application of the negotiated procedure without prior publication of a contract notice;
- obligatory or optional *ex ante* [compliance] control of procurement notices and procurement documents before their publication/dissemination, or control of the finalised procurement procedure before the conclusion of the contract;
- *ex post* [compliance] control of procurement processes initiated on the basis of requests from interested parties or on the *ad hoc* initiatives of central procurement institutions;
- *ex post* control conducted on the initiative of central procurement institutions in accordance with plans of control (planned monitoring);
- monitoring of implementation (execution) of contracts.

All public procurement offices in the Western Balkans conduct some monitoring and control of public procurement. In all administrations concerned, control is limited to an assessment of legality of procurement activities of contracting authorities (legal compliance control). In Montenegro, a specialised institution conducts compliance control, as well as the central purchasing institution.

A number of European Union Member States have specific regulations on compliance-type control of public procurement procedures. This is usually the responsibility of central procurement institutions. Its purpose is to assess whether, for specific procurements, public procurement rules have been applied in accordance with the relevant rules, with particular emphasis on provisions based on the EU requirements. Control of legal compliance may be conducted in response to complaints received from interested parties (usually economic operators) as well as on the own initiative of authorities (*ex officio*). To avoid concluding public procurement contracts with infringement of the procurement law, some EU Member States introduced a system under which selected procurement procedures are verified for their compliance before procurement contracts are concluded (*ex ante* control). The procedures are chosen either because of their value, the involvement of EU funds (EU co-financing) or based on previous risk analysis. For public procurement co-financed with EU funds, *ex ante* controls aim to avoid situations where, because of infringements of procurement rules, all or part of those funds would be lost²⁶⁸. *Ex ante* control is applied at least in the following countries: Bulgaria, Hungary, Poland, Romania and the Slovak Republic. A greater number of EU countries apply *ex post* or *ad hoc* control of compliance.

Ex ante and *ex post* controls have a variety of advantages and disadvantages. These should be assessed in considering whether to introduce new controls or in any review of the continued use of controls.

Advantages and disadvantages of *ex ante* controls: A key advantage of *ex ante* control – both planned and *ad hoc* – is its preventive or remedial function. As the control is conducted before the conclusion of the contract, it can prevent situations where a contract is concluded in a noncompliant manner and can

²⁶⁷ OECD (2013), "Monitoring of Public Procurement", *SIGMA Public Procurement Briefs*, No. 27, OECD Publishing, Paris, <https://doi.org/10.1787/5js4vmn81lhb-en>.

²⁶⁸ Application of so-called "financial corrections", as defined in the Commission Decision (C(2013)9527) on the establishment and approval of guidelines for determining financial corrections to be made by the Commission on expenditure financed by the Union under shared management, for noncompliance with the rules on public procurement.

provide an opportunity for the breach to be remedied. If that is not possible, for example because the results of the specific action are irreversible²⁶⁹, the procedure can be cancelled. *Ex ante* control, which is triggered by set criteria, should provide consistency, being systematic control of all procedures selected in accordance with specific methodology. *Ex ante* control may also absolve relevant control institutions from the task of searching for the procedures that are the subject of control. If the obligation to provide relevant documentation is imposed on the contracting authorities/entities, and they are penalised for a failure to fulfil this requirement, the procedures to be verified are randomly selected by information technology (IT) systems, etc. *Ex ante* control, however, prolongs the duration of contract award procedures and postpones any conclusion of the contract until the result of the control process is decided. With *ex ante* control, which is planned or triggered by set conditions, contracting authorities know that procedures will be verified. This precludes any unexpected outcomes, and leaves room for contracting authorities to take measures to avoid control, potentially compromising the integrity of the procurement process. It should also be emphasised that effective *ex ante* control requires knowledgeable, skilled, experienced staff in the body conducting it. Often, this exercise turns into a formalistic and over-legalistic verification of compliance due to a lack of knowledge of the specificities of the subject matter of the procurement or the special market segment. Real risks linked to competition, integrity etc. are often overseen. *Ex ante* control can only be effective if controllers are knowledgeable of the specificities of the product or service to be purchased and its market environment. *Ex ante* control that focuses on formal compliance may be a major obstacle to progress with implementation of sustainable or strategic procurement. To mitigate disruptive effects on the public procurement process, proper risk management is needed at national level and at contracting authority level in order to identify tenders with special, high (or medium) risks and identify them.

Advantages and disadvantages of *ex post* controls: *Ex post* control has the advantage of not prolonging the procurement process, since it does not suspend launching of the procedure or delay conclusion of the contract. It often leaves a longer time span for the process to be conducted and it may be more comprehensive, covering all aspects of the procurement procedure. Depending on the particular legal environment, it may, however, have a lesser preventive impact than *ex ante* control, because by the time the control is undertaken, the contract has already been awarded – although the potential that a concluded contract may be cancelled or declared ineffective in certain circumstances can be a deterrent²⁷⁰. Another disadvantage is that *ex ante* control does not provide enough protection against irregularities in spending public funds if, for example, contracts have already been fully implemented at the time of the control process.

The solutions to such issues used by national legislations, both in the Western Balkans region as well as in selected EU countries, are briefly presented below.

1. Assessment of grounds for application of the negotiated procedure without prior publication of a contract notice

Under certain national legislation, the contracting authorities' decisions on the selection of less transparent and less competitive procurement procedures (mainly the negotiated procedure without prior publication of a procurement notice) are subject to *ex ante* review and approval by central procurement institutions. This adds an extra layer of decision making: the contracting authority must have considered and concluded that specific legal conditions for use of the procedure have been met. This also requires a positive assessment or approval, or at least no refusal, on the part of the central procurement institution.

Assessment and approvals of this nature were used in some EU Member States before they joined the EU, for example, in Poland and Slovenia. The requirement to obtain approval was introduced to avoid

²⁶⁹ For example, it is not possible to repeat the action of opening of tenders.

²⁷⁰ For example, the EU procurement remedies regime requirements for ineffectiveness of concluded contracts in certain specified cases. Article 2 (d) Directive 89/665/EC, as amended.

abuse of provisions allowing exceptional recourse to other than competitive tendering. The existence of this requirement can also be explained by the fact that some countries based their first public procurement legislation on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services (1994), which suggested approval by state authorities in all cases where options other than an open tendering procedure were used²⁷¹. Also, again, in accordance with the UNCITRAL Model Law, the decision of the contracting authority to apply a given public procurement procedure could not be appealed by economic operators²⁷². Both Poland and Slovenia removed this solution from their national legislations shortly after acceding to the EU, to streamline the process of purchasing and reduce the administrative burdens. Removal of *ex ante* approvals were also related to the introduction of provisions that, in accordance with EU rules, allow economic operators to challenge decisions of contracting authorities to use nontransparent and noncompetitive procedures before an independent review body. Other solutions were then introduced in national procurement laws, allowing for control and monitoring by central procurement institutions of the proper application of those procedures. Some of these alternative solutions are outlined below.

Provisions for administrative approval of specific types of procedures were introduced, and are still applied in some cases, to avoid the abuse of provisions allowing contracting authorities to apply procedures that are less than transparent. Some countries used to have a high incidence of such procedures, as “single-source procurement” or “negotiated procedure without previous publication”. In **Poland** from 2005-2006, the negotiated procedure without procurement notice was applied in 25% of cases, rising to 29% in 2007. Use of this procedure has dropped since 2015, and in 2018, it was used in a more acceptable 9.56% of cases. Statistics show that in countries where an approval mechanism is in force, such procedures are rare. For example, in **Serbia** from 2017-2018, the negotiated procedure without prior publication of a notice accounted for 2% to 3% of all procedures, a significant reduction from 2009, when the rate was 27%. On the other hand, in Serbia, the percentage of contracts exempted from the scope of application of the PPL seems high, at 28% of the value of all public contracts in 2018 and 25% in 2019. The percentage of the value of contracts excluded due to the source of their financing (under international agreements and credits awarded by international banks) was 10% of the total value of excluded contracts in 2018 and 14% in 2019.

This type of control has some obvious disadvantages. It can be argued that it dilutes responsibility for improper application of public procurement procedures. If the final decision is made by the central procurement institution, the contracting authority making the request may take the initial decision less seriously, essentially shifting responsibility to the central procurement institution. The approval process also clearly prolongs purchasing negotiations, which may be problematic in the case of urgent procurement, unless an exemption in such situations is allowable. In cases where it is clear that the application of open or other competitive procedures has no purpose, given the objective lack of competition, such approvals merely consist of rubber stamping. In addition, the approval procedure may risk becoming a fiction in cases where a central purchasing institution is under political pressure to approve a particular procurement.

However, solutions are available that, on the one hand, increase the operational independence of contracting authorities and their responsibility for decisions taken, and on the other hand, allow for control or monitoring by the central procurement institution to ensure that those procedures are not abused. **Poland** has a system of notification of application of the negotiated procedure without prior publication of a contract notice. Where the contract value is equal to or exceeds the amount of EU thresholds for supplies or services contracts, the contracting authority making use of such procedures must inform the President

²⁷¹ https://uncitral.un.org/en/texts/procurement/modellaw/procurement_of_goods_construction_and_services; See Articles 20-22.

²⁷² See the Polish PPL, adopted in 1994 and inspired by Article 52 (2) of UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994).

of the Public Procurement Office (PPO) within three days of launching a procedure. This notification should contain factual and judicial justification of the procedure for awarding a contract. If the information indicates that noncompetitive procedures for awarding public contracts were used, in violation of the law, the PPO President is required to conduct a control procedure. In **Hungary**, contracting authorities are required to inform the Public Procurement Agency (PPA) of their intention to apply nontransparent and noncompetitive procedures, such as the negotiated procedure without the previous publication of a contract notice, informing it of the legal grounds for applying this procedure and the circumstances justifying its application. The PPA then checks whether the contracting authority's decision to apply this procedure complies with the PPL.

In the Western Balkans, three public procurement offices still verify and approve selection by contracting authorities of the negotiated procedure without previous publication of a contract notice: **North Macedonia**, **Montenegro** and **Serbia**. In **Kosovo**, contracting authorities are required only to notify the relevant institution, the Public Procurement Regulatory Commission (PPRC), of their decision to use such procedures, providing a detailed explanation of the facts considered and the justification for using the procedure.

In **North Macedonia**²⁷³, the contracting authority may initiate the negotiated procedure without prior publication of a contract notice only upon receiving a prior opinion from the Public Procurement Bureau (PPB), with the exception of cases involving a direct threat to human safety, life and health. The PPB must issue the opinion within ten working days of the day of receipt of the request, or five working days in cases where the negotiated procedure is justified by extreme urgency. If the PPB fails to issue the opinion within the prescribed deadline, the contracting authority may initiate a procedure without the opinion.

In **Serbia**, contracting authorities are required, prior to the initiation of a negotiated procedure without publication of a contract notice, to request the PPO's opinion on the justification of application of this type of procedure. The new PPL, due to take effect July 2020, introduces changes in that regard. It requires²⁷⁴ that contracting authorities/entities publish in the Public Procurement Portal a notice on the implementation of the negotiated procedure without publication of a contract, including justification for the application of this procedure. In some cases of negotiated procedure without previous publication of a procurement notice (where only one economic operator is available to perform the contract, or in cases of extreme urgency, for example) contracting authorities/entities must, at the time of publishing this notice, submit to the PPO documentation of the reasons justifying the implementation of this type of procedure. The PPO must notify the contracting authority/entity within ten working days of the date of receipt of the documentation, if it believes there is no basis for conducting this procedure or to request supporting documentation.

In **Montenegro**, the Public Procurement Directorate (PPD) issues opinions on the application of the negotiated procedures both with and without prior publication²⁷⁵. The PPD must decide on the request of the contracting authority, without conducting the examination procedure, within eight days of receipt of the duly submitted request. The approval is valid until the end of the fiscal or financial year in which the request was submitted. If the PPD fails to decide on the request by the deadline, the contracting authority may conduct a public procurement procedure without the required consent. Failure to issue an approval may also be appealed to the MoF.

²⁷³ PPL, Article 45 (1), indent 5.

²⁷⁴ The new PPL, Article 62.

²⁷⁵ PPL, Article 31.

2. *Obligatory or optional ex ante (compliance) control*

Obligatory or optional *ex ante* (compliance) control is typically conducted either before the start of the procurement procedure (“pre-procurement”), when the procurement documents have been prepared by the contracting authority and are ready for publication or dissemination, but before publication of a contract notice; or at “close of procurement”, when the procurement procedure is complete, with the best tender selected but before the conclusion of a contract.

The purpose of “pre-procurement” control is to check the legal compliance of documents with the procurement legal framework. This ensures that the public procurement as envisaged by the contracting authority is organised and may proceed, and that no irregularities have been identified in the documentation supporting the call for tenders. This type of control makes it possible to avoid irregularities in the content of finally released documents. If they do show any irregularities, they must be corrected before the procedure is even begun. Since this control occurs before the procurement process begins, it cannot address irregularities that occur later in the procurement process, for example in assessing the qualifications of economic operators, in the evaluation of tenders and in the selection of the best tender. This type of control does not detect any violations that occur later in the procurement process.

“Close of procurement” control occurs after the procedure has been conducted, the tenders submitted have been evaluated and the decision has been made about whom to award a contract, but before the contracting authority signs the contract. In this case, the controllers may check the compliance of the whole procedure with the law from the beginning to the end of procurement process. This solution clearly entails some risk. The procurement procedure will have to be repeated in the event that earlier breaches of the procurement legal framework cannot be remedied except by terminating the whole process and starting again.

Both solutions are disruptive for contracting authorities and participants in the procurement process, and inevitably extend the procurement process. They make sense only if the purpose of the control is not only to identify irregularities in the procurement process but to limit the risk of concluding a contract awarded in a process that is later identified as having serious irregularities.

Ex ante control of compliance in the Western Balkans region is performed only by the PPB in **North Macedonia**. Since the adoption of the PPL in 2019²⁷⁶, the PPB has been responsible for administrative/*ex ante* control conducted before making a decision on selection or cancellation of a procedure. Only selected procurement procedures are subject to this verification: in particular, those whose value exceeds EUR 500 000 (goods and services) and EUR 2 million (works); procedures flagged by the risk assessment system as “high-risk”; and other randomly selected procedures. Results of *ex ante* control may be appealed by the contracting authority concerned to the procurement review body.

The EU offers more examples. In **Poland**, the PPO conducts control of public procurement procedures. Control is limited to inspection of procurement documentation submitted by contracting authorities, their written explanations (replies to questions from the PPO’s inspectors) and opinions of external experts, if specific knowledge is required. The objective of this control is to assess whether contract award procedures conform to the PPL.

The PPL provides for two types of control: optional *ad hoc* control and obligatory or optional *ex ante* control of contracts co-financed from the EU funds. *Ex ante* controls are conducted before the conclusion of a contract but after the decision on the selection of the best tender has been taken by the contracting authority. *Ex ante* control is mandatory for all contracts co-financed from EU funds where the value of the contract or framework agreement for works is equal to or exceeds EUR 20 million or, in the case of supplies

²⁷⁶ PPL, Articles 172-179.

or services, is equal to or exceeds EUR 10 million²⁷⁷. Any contracting authority conducting procurement procedures co-financed with EU funds equal to or above those thresholds must submit a copy of the complete contract award procedure documentation. The PPO must finish *ex ante* control within 14 days of receiving complete documentation (or 30 days in particularly complicated cases). Having completed the control, the PPO submits to the contracting authority information on the results of the control. This is a statement either that there has been no violation of the PPL or information that confirms the existence of a breach. If, in the course of the control, the PPO concludes that it is necessary to cancel the procedure or to remedy irregularities, the information on the results of the control must include post-control recommendations (for example, evaluation of offers and the selection of the best tender). In the event the contracting authority: ignores post-control recommendations on cancellation of the procedure or removal of the confirmed breaches; concludes the contract before conclusion of *ex ante* control; or fails to submit complete contract award procedure documentation, the PPL provides for a possible invalidation of the contract and imposes a penalty for the violation.

In **Romania**, *ex ante* control relies heavily on the e-procurement system. The key institution for monitoring public procurement is the National Agency for Public Procurement (ANAP)²⁷⁸. For contracts over specified financial thresholds²⁷⁹, it monitors the award of public procurement contracts and verifies tender documents before their publication. The Electronic Public Procurement System (EPPS) is used for the entire process. The chief reason for introducing verification of tender documents was the fact that audits of compliance of procurement procedures showed a significant number of irregularities involving qualification and award criteria. In the case of EU-funded projects, EU auditors required financial corrections for these irregularities.

Within the statutory maximum of 14 days of receiving tender documents through EPPS, the NAPP must: either issue permission for the contracting authority to publish the contract notice and start the award procedure, if the tender documents comply with the law; or inform the contracting authority that the tender documentation has been rejected because of shortcomings identified during the verification, as well as an explanation of why, in NAPP's opinion, it is not compliant. In this case, the contracting authority has the option of correcting the errors and resubmitting the tender documentation seeking permission to publish the contract notice. In the event the procurement documents are deemed compliant, EPPS automatically generates the contract notice, which is sent electronically for publication in the *Official Journal of the EU* and the EPPS. All these operations are performed without any further intervention of the contracting authority. NAPP is not involved in verification of technical specifications.

In the **Slovak Republic**, the supervision of public procurement procedures is conducted by the PPO. Under the PPL, supervision may be initiated as a result of complaints by economic operators and other interested parties. In the case of contracts or concessions exceeding EU thresholds that are financed or co-financed with EU funds, contracting authorities may request *ex ante* assessment of relevant tender dossiers by the PPO before the procurement procedure is launched (a contract notice is published). This solution is similar to Romania's, as noted above. Also, as in Romania, *ex ante* assessment cannot be invoked in the application of technical specifications in the description of the subject matter of public procurement. The PPO must conclude an *ex ante* assessment within 30 days of the delivery of documents. In this period, the PPO must deliver a decision to the contracting authority that requested the assessment on whether the tender documents comply with the PPL. The PPO must publish this information on its website, with the supporting documents, within 40 days of the conclusion of a contract.

²⁷⁷ The total estimated value of the procurement contracts, not the amount of EU co-financing.

²⁷⁸ <http://anap.gov.ro/web>.

²⁷⁹ 2017/18 thresholds for *ex ante* control were RON 225 000 (approximately EUR 48 000) for supplies and services and RON 2.25 million (approximately EUR 486 000) for works contracts.

3. *Ad hoc and ex post control responding to requests from interested parties or initiated by central purchasing institutions*

Another type of control is *ad hoc* control, conducted at any point during the public procurement procedure, or even after the procedure is finalised, including after a procurement contract has been concluded. It may be initiated upon the request of interested parties such as economic operators, other institutions or NGOs. It may also be initiated by the central procurement institution, possibly to conform with an annual plan committing to a specified number of *ad hoc* controls. Such controls tend not to have time limitations, although there may be limits on how long after the conclusion of a contract the control process can be invoked. They usually do not require suspension of the procurement procedure if the procedure has not been concluded. The control performed by central procurement institutions and the review of appeals (complaints) by review bodies may overlap. However, as there are strict time limits for review by review bodies, such cases are infrequent. Normally, *ex post* control by the central procurement institution is performed where it is no longer possible to appeal to the review body, as time limits have elapsed.

In the Western Balkans, several examples may be noted. In **Serbia**, the current provisions of the PPL stipulate that the PPO is responsible for monitoring public procurement, but do not specify how it should be organised. The 2020 PPL offers more details on this PPO activity²⁸⁰. It stipulates that the PPO should monitor the application of public procurement legislation to prevent, detect and resolve irregularities that may arise or that have arisen in the application of the PPL. The monitoring must be conducted according to an annual monitoring plan adopted by the PPO by the end of the current year for the following year, in the event of a negotiation procedure without prior publication referred *ex officio*, as well as on the basis of notification from a legal or natural person, from state or local self-government units and/or from other state authorities. Monitoring conducted during a public procurement procedure does not suspend the public procurement procedure. It is not carried out if: it has been established that the PPO is not competent; if a period of three years has elapsed without conducting the procedure since the completion of the public procurement procedure or the conclusion of the contract; or when the applicant and information to be monitoring cannot be identified from the notification. The PPO must prepare an annual report on the monitoring and submit it to the Government and National Assembly no later than March 31 of the following year. Further details on monitoring are set out in the implementing regulation adopted by the PPO.

In **Montenegro**, tasks related to monitoring and control of compliance are divided between the PPD and the Administration for Inspection Affairs (AIA)²⁸¹. Monitoring activities are defined in the provisions dealing with the internal organisation of the Ministry of Finance (MoF). The purpose of the inspection AIA conducts is to verify the legal compliance of public procurement procedures, including low-value contract procurements. The inspection may be conducted until the expiration of the period for submission of complaints to the procurement review body (State Commission for Review of Public Procurement Procedures, or SC)²⁸². Inspections may not cover the activities and decisions of the contracting authority against which a complaint was submitted to the SC²⁸³. AIA inspections follow a list of procedural requirements ("objects of control"). Inspectors investigate 14 types of activities listed in the PPL, related among other things to: adoption and changes in public procurement plans; fulfilment of the conditions for performance of the tasks of public procurement officers; conditions for launching public procedures; content, publication and changes in procurement documentation; compliance procurement with deadlines for receipt of tenders; application of measures involving potential corruption and conflicts of interest; recording procurement activities, etc.

²⁸⁰ The new PPL, Article 180.

²⁸¹ PPL, Articles 147 and 148.

²⁸² PPL, Article 148 (2).

²⁸³ PPL, Article 148 (3).

In **Poland**, *ad hoc* controls may be conducted at any stage of the procurement procedure, including after the conclusion of a public procurement contract, but not later than four years after its conclusion. The PPO may initiate an *ad hoc* control on its own initiative (*ex officio*) or at the request of an interested party, but only if there is reason to suspect that in the course of a contract award procedure, a breach of the provisions of the PPL occurred that might have influenced the outcome of the procedure. For this procedure, unlike in obligatory *ex ante* control of contracts co-financed from the EU funds, the decision to launch a control is made exclusively by the PPO. In practice, *ad hoc* control is launched as a result of: complaints of economic operators or other entities on irregularities in contract award procedures; requests of other authorities if, based on the justification of the application, a justified presumption exists that during the contract award procedure a breach of the provisions of the PPL occurred that might have influenced its result; an analysis by PPO's employees of contract award notices and tender dossiers (procurement documents) that are published on contracting authorities' websites; and notifications of the contracting authorities concerning application of noncompetitive, nontransparent procedures. If a breach of the provisions of the PPL is disclosed, the PPO may: notify the competent agent for public finance discipline about the breach of public finance discipline²⁸⁴ or make a request to the relevant law enforcement committee asking to impose a penalty for the breach of public finance discipline; impose a financial penalty on the contracting authority; request that a court invalidate a procurement contract in its entirety or in part.

A different model is used in **Sweden**, whose Competition Authority (CA) is the authority that supervises public procurement²⁸⁵. Its task is to work for efficient competition and effective public procurement, for the benefit of the general public and economic operators in the market. Its supervisory activities include reviewing, investigating and adopting decisions determining whether contracting authorities (entities) have complied with the requirements of the public procurement regulations. In its supervisory capacity, the CA gives priority to cases where, in its opinion, the supervision will have the desired effect (for example, if the CA considers that a larger group of contracting authorities and economic operators could benefit from its investigation of the legal matter, and if the investigation might have preventative effects).

The CA selects cases to investigate on the basis of a prioritisation policy, taking the following factors into consideration: a deterrence effect and/or need for guidance; shortcomings in the conduct of the contracting authority; how great the public interest is; whether the CA is best placed to intervene; and whether resources are available to achieve the desired result. The CA has two types of supervisory activities: event-driven supervision (*ad hoc* supervision) and planned supervision. Event-driven supervision involves cases initiated after the CA has received a tip-off or discovered information that offers reason to suspect that an infraction has occurred. This type of supervision is performed reactively, on the basis of current information. Planned supervision, by contrast, works proactively. In this type of supervision, the CA first identifies legal issues in advance, as well as the areas and authorities to review. The planned supervision is preceded by an annual analysis. Annual analysis of the planned supervision is prepared on the basis of the tip-offs received; statistics from the CA's media monitoring tool and information from relevant economic operators, whether national or international. In-depth procurement reviews lead to a review report. The reports are directed at the contracting authority that has been under review. Usually, the reports contain the overall conclusions, the supervisory decisions and references to any applications for procurement fines that have been a part of the review. The AC is not authorised to decide that a procurement should be recommended or corrected, or to declare an agreement ineffective. Decisions of this kind can only be made by a court.

²⁸⁴ According to the law on public finance discipline, the most serious infractions of the PPL are treated as infringements of public finances discipline.

²⁸⁵ <http://www.konkurrensverket.se/en>.

In **Italy**, control processes may lead either to recommendations or to binding recommendations. The National Anti-Corruption Authority (*Autorità Nazionale AntiCorruzione*, or ANAC)²⁸⁶ is allocated tasks related to the control and monitoring of public procurement. In addition to control of public procurement procedures, the ANAC: monitors the execution of public contracts; operates the system for qualifying economic operators; proposes to the Government modifications of public procurement provisions; and notifies the Government and the Parliament about especially grave cases of misapplication of public procurement rules. The ANAC's control activities may be initiated: *ex officio*; on the ANAC's initiative, in accordance with the annual plan for its activities; or upon a request submitted to the ANAC. Requests that the ANAC conduct a control are submitted, in general, through forms (templates) available on its website. Control activities can be concluded with the following results: an act in which ANAC states that the contracting authority has in a given case adopted good administrative practices deserving of reporting; a recommendation concerning unlawful or unjustified acts committed during the tendering procedure or performance of the contract; binding recommendations related to activities undertaken during the procurement procedure.

Binding recommendations are adopted in particularly grave breaches of public procurement rules such as: award of a contract without previous publication of a call for competition; application of specific procedures in situations where the conditions for their application were not fulfilled; conclusion of a contract before the expiry of the standstill or suspension period, if that, in combination with other infringements of the public procurement rules deprived an economic operator of a chance to obtain a contract; conclusion of a public-private partnership (PPP) contract without transfer of risk; a failure to exclude economic operators in cases where they should be excluded from the public procurement procedures; and other cases of noncompliance with public procurement rules, as interpreted in the case law of the Court of Justice of the EU.

4. Planned control/monitoring

Another type of control/monitoring is conducted according to a published plan or programme of control. Central procurement institutions tend to focus in a given year on specific types of contracting authorities or types of procurement procedures.

A few examples of this type of monitoring occur in the Western Balkans region. In **Kosovo**, planned monitoring is conducted each year, under a plan approved by the Board of the PPRC. Essentially, the planned monitoring activities are *ex post* monitoring of procurement transactions of selected contracting authorities. If a violation is identified, the meeting is organised with the contracting authority, to clarify the situation and discuss the measures to be taken. Planned monitoring reports are circulated to the contracting authority concerned, the relevant oversight body of the contracting authority and to the Division of Information Technology of the PPRC, so the report can be published on the website of the PPRC. In **Albania**, monitoring of procurement is also conducted on the basis of monitoring plans, prepared according to data received from Data Administration and Publication Department. Until now, this type of monitoring related to the legality of the use of a negotiated procedure without prior publication of a contract notice and to conduct of low-value procurement procedures.

Italy, Poland, and Sweden also conduct planned, systematic monitoring.

5. Other approaches to planned monitoring and control

Until recently, **Serbia** had regulations in force on the use of civil supervisors. Under the Public Procurement Law (PPL) in force until July 2020, if the contracting authority conducted a public procurement procedure of an estimated value higher than RDS 1 billion, the procedure was required to be monitored by a civil

²⁸⁶ <http://www.anticorruzione.it/portal/public/classic>.

supervisor appointed by the PPO. This solution was introduced into the PPL in 2012, with the purpose of introducing additional control of the most valued public procurement procedures by independent experts, to limit corruption in public procurement and enhance the involvement of civil society in the public procurement process. Reports from activities conducted by civil supervisors were published on the website of the PPO²⁸⁷. According to data from the annual reports of the PPO, of 130 procedures involving the supervisor from 1 April 2013 until the end of 2018, the supervisors prepared reports in 42 proceedings, and only a few reports were considered before the relevant committee of the National Assembly (without yielding any specific conclusions). Provisions on civil supervisors allegedly did not yield the expected results and were not included in the most recent 2020 PPL. Another explanation was that the purpose of the new PPL was to harmonise the Serbian public procurement legislation with the EU procurement directives, which do not include an equivalent requirement. Poland employed a solution for EU-funded projects in the period 2004-2006. It was revoked after two years of application, purportedly to streamline and speed up conduct of procedures involving EU funds. The amendment proposal explaining the reason for the change stressed that observers were appointed only in the case of high-value contracts like those subject to mandatory *ex ante* control by the PPO. Removing the provisions for civil observers was thus justified by a need to avoid duplication of control mechanisms²⁸⁸.

In **Northern Macedonia**, a specialised *ex ante* control/approvals institution, the Public Procurement Council (PPC), was in operation from 2013-17. Its role was to consider applications for approval made by the contracting authorities, before publishing a contract notice or initiating the procurement procedure, in specified circumstances prescribed in the PPL. In particular, the approval of the PPC was required when the contracting authority intended to: in the context of the procurement of drugs, medical devices and/or medical consumables, form a lot with more items; use selection criteria (which only a limited number of economic operators could qualify for); use the most economically advantageous tender criteria; conclude a multiple framework agreement with less than seven economic operators; use technical specifications that only a limited number of economic operators could comply with; and use the negotiated procedure without prior publication of a contract notice, where no tenders or requests to participate had been submitted in response to two previously conducted procedures; for reasons of extreme urgency and for additional works or services not included in the original contract.

The PPC was set up to stimulate competition and promote the fundamental principles of transparency, value for money and nondiscrimination²⁸⁹. However, concerns were soon raised about the potentially negative impact of its creation and the approval process that contracting authorities were required to follow²⁹⁰. Comments critical of the approval process, and in particular the role played by the PPC, were also expressed by contracting authorities, economic operators and NGOs. They noted the additional burdens, administrative and financial, on the operation of the public procurement system and also reported on problems arising from the decision making of the PPC²⁹¹. The PPC was finally dissolved in November 2017, after numerous concerns were expressed by all parties and after it had been determined that it had resulted in few tangible positive effects in stimulating competition and promoting value for

²⁸⁷ <http://www.ujn.gov.rs/izvestaji/izvestaji-gradjanskog-nadzornika/>.

²⁸⁸ Interestingly, the scope of *ex ante* control by PPO was also limited two years later.

²⁸⁹ Opening statements of the Annual Report of the Operations of the Public Procurement Council for 2014 (PPC Annual Report 2014 and the Ministerial statement in the parliamentary debate on 30 September 2013).

²⁹⁰ EC (2015), The Former Yugoslav Republic of Macedonia Report 2015, p. 36, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf; and OECD (2015), *Baseline Measurement Report The former Yugoslav Republic of Macedonia*, p. 99, April 2015, OECD, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf>.

²⁹¹ CCC (2015), Monitoring of public procurements in the Republic of Macedonia, Report No. 25, pp. 12, 13.

money. At least two reports²⁹² provided empirical evidence that the sweeping control mechanism did not deliver the anticipated results. It was not only costly in its application, but wasteful of time and energy, irrelevant as far as the integrity of the procurement system was concerned and counterproductive in its lack of effectiveness. Studies conducted after the PPC was abolished indicated a number of positive consequences, including an increase in transparent and competitive rather than nontransparent and noncompetitive procedures and an increase in the average number of bids²⁹³.

6. Publication (dissemination) of the results of monitoring/control

To increase effectiveness and play a preventive role, results of the control are not only shared with the contracting authority concerned but also with other contracting authorities (as well as the public at large). Results of monitoring/control are published in some cases on the websites of central procurement institutions in the form of summary reports. In **Albania**, the PPA publishes general information about its monitoring and control activities in the annual reports on the functioning of the procurement system and the activities of the PPA²⁹⁴. The PPA publishes: some statistics on verified procurement processes; information about contracting authorities; as well as short presentations on the most frequently occurring or relevant irregularities. In **Serbia**, the PPO is required to prepare an annual report on the monitoring, to be submitted to the Government and National Assembly no later than March 31 of the following year. It appears, though, as of the time of writing, that such reports are not publicly available. No specific information seems to be available in the reports published by the PPB in **North Macedonia**, but since, at the time of writing, the most recent report on the PPB's activities is from 2017, newer reports may contain more detailed information about the PPB's control/monitoring activities.

The Public Procurement Agency in **Bosnia and Herzegovina**²⁹⁵ also publishes monitoring reports on its website, although not every year. At the time of writing, the only reports available date from 2015 and 2017. Under the implementing regulation²⁹⁶, the PPA must include the most frequent irregularities identified in the annual report on the monitoring conducted. Part of the report, to educate contracting authorities, must also present the most frequent errors committed in the course of public procurement. Certified trainers on public procurement (see Chapter 7 on Organising and Supporting Training and the annex on Bosnia and Herzegovina) were required to include in training programmes a module dealing with the subject of monitoring public procurement, in which they must present and discuss the most common irregularities, with recommendations on how to avoid them.

As for the EU, under Article 83 (3)(2) Directive 2014/24/EU, Member States are required to submit a monitoring report to the EC covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, at the level of the participation of small- and medium-sized enterprises (SMEs) in public procurement and on the prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflicts of interest and other serious irregularities. Monitoring reports submitted by Member

²⁹² State Audit Office (2017), "Efficiency of the policies and instruments in the public procurement system and the procedure for granting approval to publish a contract notice"; and *SIGMA Report - Overview of the Public Procurement System*, Public Procurement Bureau, North Macedonia, 2016, <http://www.bjn.gov.mk/razni-analizi/izveshta-na-sigma-pregled-na-sistemot/> (Macedonian only).f

²⁹³ OECD (2019), *Monitoring Report North Macedonia*, May 2019, OECD, Paris, <http://www.sigmaweb.org/publications/Monitoring-Report-2019-North-Macedonia.pdf>.

²⁹⁴ <http://www.app.gov.al/rreth-nesh/analizat-vjetoje>.

²⁹⁵ <https://www.javnenabavke.gov.ba/bs-Latn-BA/reports>.

²⁹⁶ Official Gazette of BiH No. 72/16 (2016), Rulebook on monitoring of public procurement procedures.

States (and also Norway, Iceland and Lichtenstein) are published on the EC's website²⁹⁷. Also, relevant PPOs publish results of their monitoring activities in the form of individual or summary reports. The PPO in the **Slovak Republic** publishes examples of the irregularities that occur most often, as identified in controls conducted by the PPO²⁹⁸. One interesting solution is to classify irregularities by their impact on the results. In **Bulgaria**, a summary of information on the activities conducted by the PPA for control and monitoring is included in annual PPA reports²⁹⁹.

In **Poland**, the PPO publishes information on the results of controls conducted in a given reporting period³⁰⁰. This, in addition to the list of irregularities identified, also contains: statistical data about results of control; number of procedures checked; value of the procurement concerned; a percentage share of procedures: either free of any irregularities; procedures in which there were irregularities that did not affect the result of the procedure; as well as procedures in which such irregularities were discovered that had or could have had an impact on the result of the procedure. In this way, the PPO measures the effectiveness of its control. As for *ex ante* control, for example, in 2017³⁰¹, 247 procedures were verified by the PPO. In 47% of those cases, no irregularities were discovered, and in 53%, at least one irregularity was discovered. However, only in 7% of cases did such an infringement have or potentially have an impact on the result of the procedure.

7. Consequences of identified irregularities – financial sanctions and penalties

As already discussed, where control processes identify irregularities, a range of outcomes is possible, depending upon the particular national legal framework. Contracting authorities may, for example: receive reports identifying future improvements; be given recommendations; or be subject to binding obligations concerning revision or cancellation of a procurement procedure. In addition, financial sanctions or other penalties may be imposed.

In **Albania**, one of the consequences of detecting irregularities may be that penalties are levied on contracting authorities. Types of fines and penalties, and their amount, are provided for under the PPL³⁰². Two types of penalties may be imposed: financial fines and disciplinary action. Contracting authorities or concerned persons are entitled to appeal the penalty before the court. Under the PPL, the fines imposed must be collected by the contracting authority. To prove this, the contracting authority is required to notify the PPA of the measures that have been taken to enforce the PPA's decision to impose a penalty. This notification must be sent no later than 30 days after the PPA has issued the decision. In **Serbia**, the PPO initiates misdemeanour proceedings when it discovers any breach of the provisions of the PPL. The request for the initiation of misdemeanour proceedings can also be filed by the Supreme Audit Institution (SAI), or it can be initiated *ex officio* by the procurement review body (the Republic Commission for the Protection of Rights in Public Procurement Procedures, or RCPRPP) just after the offence comes to light. The PPO also initiates proceedings to nullify a public procurement contract. It has the power to file a lawsuit in court to nullify a concluded public procurement contract if any grounds, as stipulated in the PPL, are determined.

²⁹⁷ https://ec.europa.eu/growth/single-market/public-procurement/country-reports_en.

²⁹⁸ <https://www.uvo.gov.sk/legislativametodika-dohlad/najcastejsie-porusenien-3b4.html>.

²⁹⁹ http://rop3-app1.aop.bg:7778/portal/page?_pageid=93,288249&_dad=portal&_schema=PORTAL.

³⁰⁰ <https://www.uzp.gov.pl/baza-wiedzy/kontrola-prowadzone-przez-uzp/analizy-okresowe-wynikow-kontroli-prezesa-urzedu>.

³⁰¹ https://www.uzp.gov.pl/_data/assets/pdf_file/0025/41596/Wyniki-kontroli-2017.pdf.

³⁰² PPL, Article 72.

Fines are also a possible outcome of supervision in **Sweden**. Supervision conducted by the CA can result in an application for a procurement fine, a supervisory decision or a report that is accompanied by supervisory decisions. The CA focuses especially on illegal direct awards of contracts and those cases where it may bring proceedings to a general administrative court, requesting that a contracting authority be ordered to pay a procurement fine. In public procurement cases that the CA chooses to treat as a priority, it is up to the CA to decide whether to apply for a procurement fine (discretionary powers). However, it must apply for a procurement fine (mandatory application), in the case of a breach of a standstill period or an extended standstill period. This applies even if a court, in an appeal concerning the effectiveness of a contract, has ruled that the contract may remain in force for reasons related to the public interest. Cases that result in a procurement fine usually also have a preventative effect in general. In a supervisory decision, the CA may inform contracting authorities of their obligation to apply the relevant procurement legislation. The decisions also provide concrete guidance for other contracting authorities. The CA publishes reports studying specific areas and discussing any problems. The reports also contain related supervisory decisions (on specific procurements) relevant to the same problems.

In **Estonia**, the PPL provides for financial penalties for specified infringements of procurement provisions, both on procurement officers and contracting authorities. Contracting authorities may be subjected to fines of up to EUR 32 000³⁰³. In **Finland** in November 2019, the Finnish Competition and Consumer Authority proposed that the Market Court impose four penalties, a total of EUR 160 000, on a contracting authority that had awarded public contracts without publication of a procurement notice³⁰⁴.

8. Monitoring of execution (implementation) of contracts

Another aspect of monitoring that has been attracting attention is monitoring of the proper implementation of concluded contracts. In **Serbia**, for example, if the contracting authority finds itself in a position where it must modify certain constituent parts of a public procurement contract after the conclusion of a contract, it is required to adopt the decision on contract modification and to publish that decision on the Public Procurement Portal, and then to submit a report to the PPO and the SAI. In **Kosovo**, control of compliance may also cover the management of public procurement contracts.

As for the EU, in **Hungary**, one of the PPA's tasks is control of the execution of public procurement contracts. The PPA monitors amendments to the contracts concluded pursuant to procurement procedures and supervises their performance according to the action plan, in the framework of an official control, according to the detailed rules set out in a separate act. If the PPA, after the results of this inspection, establishes that the procurement contract was illegally amended, or that violations of the PPL have occurred during its execution, it is obliged to initiate the review procedure by the Public Procurement Arbitration Board *ex officio*³⁰⁵. It is also required to submit a motion in court to declare the modification of a contract illegal.

In **Portugal**, the amendment of the Code of Public Contracts (CPC) which implements the provisions of the 2014 EU Procurement Directives and entered into force on 1 January 2018³⁰⁶, put greater emphasis on monitoring the execution of public contracts. Article 290 of the CPC states that a contracting authority must nominate a manager of the public contract as a permanent monitor of the execution of public

³⁰³ Chapter 10 of the PPL of 2017, <https://www.riigiteataja.ee/en/eli/505092017003/consolide>.

³⁰⁴ According to the information published on the website of FCCA (<https://www.kkv.fi/en/current-issues/press-releases/2019/18.11.2019-fcca-proposes-160000-euro-penalty-payment-to-hus-for-illegal-direct-awards>) the contracting authority (Hospital District of Helsinki and Uusimaa, or HUS) paid millions of euros for goods and services without putting them out to tender.

³⁰⁵ The public procurement review body composed of the commissioners appointed by the Council of the PPA.

³⁰⁶ <https://dre.pt/web/guest/pesquisa/-/search/108086621/details/maximized>.

contracts. For technically or financially complex contracts or contracts lasting more than three years, and independently of other tasks that may be entrusted to this person by the contracting authority, the manager of a contract must draft quantitative and qualitative indicators for a given contract. This should help assess the implementation of a contract and its financial, technical and material execution.

In the event the managers detect divergences, defects and other anomalies in the execution of a contract, they must notify the relevant authority about them without delay, proposing solutions and adequate remedies. The manager of the contract may also be entrusted with adoption of these measures, with the exception of the modification and cessation of a public contract.

The Public Procurement Portal (BASE) (see Chapter 9, Collecting and Publishing Statistical Data for further details) contains a section dedicated to information about all modifications of contracts that exceed 10% of the original price³⁰⁷. Annexes to the contracts raising the price above this margin are also published.

In **Poland**, in the case of contracts for works or services valued at EUR 1 million or more, a team in the contracting authority (supervision team) must be appointed to supervise the execution of the contract awarded. At least two members of the supervision team must also be members of the tender committee. A team need not be appointed if, in some other way, the contracting authority ensures the participation of at least two members of the tender committee during the execution of the contract award. A new PPL adopted in 2019 and due to take effect 1 January 2021 introduces new solutions for monitoring the execution of contracts. Contracting authorities are required to write a report evaluating the execution of a contract if: the final remuneration paid to the bidder amounts to at least 10% of the tender price; damages amount to at least 10% of the tender price; or if the execution of a contract is delayed more than 30 days. A notice on the execution of a contract must be published in the *Public Procurement Bulletin*, a central publication for publishing procurement notices at the national level.

9. Overlapping control/monitoring and consistency of the results of controls

Central procurement institutions are not the only institutions to play a role in control or monitoring of public procurement.

State audit institutions also have a role to play in *ex post* monitoring in performing their audit function. The European Court of Auditors publishes a toolkit for Public Procurement Audit on its website³⁰⁸. Originally prepared in 2004 by representatives of SAIs from the EU and the European Court of Auditors (ECA), an updated version of the 258-page document was published in 2018. It comprises: *Principles of Public Procurement: A Guideline for Auditors*, including a list of the most important judgements of the Court of Justice of the EU; *A Procurement Performance Model*, including key questions developed as reference pointers for auditors evaluating the performance of the procurement function in public sector bodies; *Checklists for Financial and Compliance Audit of Public Procurement*, to use when auditing public procurement processes; and summaries of audit reports published by EU SAIs.

Review of complaints from economic operators and other parties with a right to review by independent procurement review bodies (PRBs) may also be regarded as a form of control, particularly where the PRB acts *ex officio*.

A situation in which the same public procurement processes may be the subject of control or monitoring by two or more institutions is not a rare phenomenon. For example, an appeal may be made against a given decision of the contracting authority, submitted to a public procurement review body, and a complaint or request may be addressed to the central procurement institution requesting control of the public procurement process, to review its compliance with the relevant regulations. The central procurement

³⁰⁷ <http://www.base.gov.pt/Base/pt/Noticias/2018>.

³⁰⁸ <https://www.eca.europa.eu/sites/cc/Lists/CCDocuments/Toolkit-2018/Toolkit-2018-update.pdf>.

institution may also conduct, either on its own initiative or as required by law, *ex ante* control of a procurement procedure for which appeals have also been submitted to the procurement review body. This presents a risk of inconsistency between the results of the various controls. For example, the central procurement institution, the procurement review bodies and audit institutions may come to different conclusions when reviewing the same public procurement procedure.

The potential problems arising from the possibility of two or more institutions conducting control simultaneously is resolved in some countries by giving priority to a particular type of control or review. Priority is commonly given to a review undertaken by a procurement review body. In **Poland**, for example, where a procurement procedure is subject to mandatory *ex ante* control and an economic operator submits an appeal to the procurement review body, the National Appeals Chamber (NAC), the *ex ante* control by PPO is postponed and takes place after the NAC has concluded its review of the appeal. The contracting authority concerned only submits the full procurement documentation to the PPO to be checked until after the NAC makes its ruling.

In **Croatia**, administrative control by the PPA³⁰⁹ is not conducted if such a control is requested by an economic operator that, for a given procedure, has already submitted a complaint to the procurement review body, or has missed an opportunity to submit an appeal within the deadline prescribed by the provisions on procurement review³¹⁰. The Croatian PPL thus seems to make the point that the first (preferable) option concerning administrative control is a complaint (appeal) to the procurement review body and the request for administrative control by the PPO is an instrument that should be used by individuals (parties) who cannot rely on provisions on review. This solution makes it possible to limit the number of cases controlled by the PPO (in contrast to appeals, which require payment of an entry fee, requests for administrative control are submitted free of charge). **Estonia** takes a similar approach, where the relevant institution, the MoF, does not launch a supervision procedure if the complaining party is entitled to submit an appeal to the procurement review body or if the complainant fails to submit this appeal to the review body within the specified deadline³¹¹.

Some solutions have been devised to resolve the issue of potential inconsistency, requiring co-operation and an exchange of information on the conclusions of controls among various control bodies. **Poland's** new Public Procurement Law³¹², to take effect on 1 January 2021 (PPL 2021) contains provisions on control of public procurement procedures that are common for all control bodies and institutions³¹³. They do not, however, concern the independent procurement review office Procurement Review Board (PRB) as well as the Supreme Chamber of Control (the Polish SAI), since these are independent institutions and not control bodies in the sense of that the PPL 2021 stipulates. Under the PPL 2021, control bodies, in the controls they perform, are required to co-operate by exchanging information about the results they have obtained. In the event a given control body receives information that another control body has already conducted a control of a specific procurement process (procedure), that control body must request submission of information about the results of the control (the information must be submitted within 30 days of receiving the request). Results of this earlier control must then be taken into consideration. The PPL 2021 also provides for the establishment of the Public Procurement Control Committee (the Control Committee) as a forum for co-operation and exchange of knowledge between various control bodies³¹⁴.

³⁰⁹ That is, the Directorate for the Public Procurement System in the Ministry of Economy, Entrepreneurship and Crafts, <http://www.javnanabava.hr/default.aspx?id=3988>.

³¹⁰ Article 438 (2) of the Croatian PPL: https://narodne-novine.nn.hr/clanci/sluzbeni/full/2016_12_120_2607.html.

³¹¹ Article 206 (1) and (2) of the PPL of 2017, <https://www.riigiteataja.ee/en/eli/505092017003/consolide>.

³¹² The Act, PPL of 11 September 2019.

³¹³ PPL 2021, Articles 596-602.

³¹⁴ PPL 2021, Articles 493-499.

The Control Committee is a supporting body of the Ministry of the Economy and is made up representatives of the Ministry, the PPO, the Competition Authority and control bodies. The Control Committee will: monitor activities of control bodies; analyse cases where control bodies have identified irregularities in the application of public procurement provisions, as well as discrepancies in the interpretation of public procurement rules; submit proposals to the PPO on the organisation of training and other activities to ensure the uniform and correct interpretation of public procurement rules; and propose changes in provisions governing the control of public procurement.

Chapter 11. International co-operation

In the European Union and Western Balkans, public procurement systems do not function in isolation, chiefly for the following reasons:

1. the obligation to align public procurement normative acts and practices with the EU legislative framework;
2. the need to undertake daily co-ordination activities to ensure functional compliance of local procurement system with the relevant international requirements;
3. the need to compare the solutions and outcomes of public procurement systems between countries, to learn from successful examples and implement modern practices.

The 2014 EU Procurement Directives are one of the most respected, widely used international public procurement standards. For EU Member States and Western Balkan countries, their implementation is binding, thanks either to their EU Member status or to the commitments they have undertaken with a view to future membership in the EU. It is important to emphasise that Directives are not simply a top-down, mandatory legal obligation, since they were drafted after considering the best existing practices in the EU Member States and beyond. EU Member States are involved, at different levels, both in formulating the draft future Directives, and, once they have adopted them, harmonising their national legal framework with the Directives. Public administrations in Western Balkan administrations have also been working on this process.

The European Commission interacts with institutions of the EU Member States and Western Balkan administrations on a frequent basis, to monitor the implementation of the EU Directives, both at the legislative and the day-to-day, operational level. EU Member States and their designated officials are involved in the following activities:

- contributing to international regulatory activities in the field, including the meetings of the World Trade Organization's Committee of the Agreement on Government Procurement (GPA). EU Member States act as observers in the trade negotiations carried out by the European Commission on their behalf, with the parties to the GPA and the countries acceding to the GPA;
- contributing to the EC expert groups on public procurement, such as the Government Experts Group on Public Procurement;
- acting as a national contact point for EU services in public procurement matters.

Countries recognise the need for a public procurement system to reach both the targets of legal compliance and economic efficiency. The precondition for a public procurement system that functions successfully is the constant evaluation of its outcomes and a comparison of different approaches and solutions employed by other countries. This is being achieved by:

- maintaining constant working contacts between public procurement officials in different countries;
- organising outreach events, such as seminars, conferences and workshops;

- funding and support of development of public procurement institutions and systems by the EC or international financial institutions and donors, such as the European Bank of Reconstruction and Development (EBRD), the World Bank and USAID;
- targeted country-to-country administrative experience exchange projects, such as Twinning projects.

International co-operation projects, especially if they are implemented in a structured and coherent way, should ensure that the procurement system: is compliant with applicable international public procurement standards; has up-to-date knowledge of the solutions being implemented in other countries; and is ready to adopt the best international practices. The widespread trend towards Strategic Public Procurement – including green, social and innovation themes – using public procurement system and legal provisions. Electronic tools and open data have provided many new opportunities that were not available a decade or two ago. To reap the benefits of the new tools, international co-operation is as important for public procurement systems worldwide as it has ever been.

EU Member States and Western Balkan administrations have employed different solutions for ensuring international co-operation in public procurement:

In **Albania**, the Public Procurement Agency (PPA) co-operates with different international organisations active in the field of public procurement. Especially close co-operation has been developed with the OECD/SIGMA, the EU Delegation in Tirana, the World Bank and the Organisation for Security and Co-operation in Europe office in Tirana.

In **Bosnia and Herzegovina**, international co-operation in public procurement is not explicitly mentioned among the PPA's tasks, but PPA representatives take part in regional or international activities (such as study visits to procurement offices in EU Member States). The PPA is also responsible for managing support programmes funded by international donors.

Since its establishment, the MoF, the PPA and the Public Procurement Board (PRB) have been supported by a number of EU-funded projects, including technical assistance projects in the period 2004-2007³¹⁵ and 2014-2016, and Twinning Light projects in 2008-2009. Since February 2019, the PPA has benefited from technical assistance through the EU-funded project "Instrument for Pre-accession Assistance II; Strengthening of the Public Procurement System in Bosnia and Herzegovina," due to operate until August 2021, on a total budget of EUR 1 939 500.

In **Kosovo**, international co-operation is the responsibility of officials at the Public Procurement Regulatory Commission (PPRC) Division of Training and European Integration. They are responsible for liaison with international donors and of provision of support for the PPRC's participation in the activities of the European integration process. Within its mandate, the PPRC co-operates with the EU Delegation, OECD/SIGMA, USAID and the World Bank.

The USAID project was particularly active from 2017 until 2019. It is ongoing, and its focus is now on updating or modifying the functionality for contract management and developing a new tool to evaluate contractors' past performance. The "Improving Administrative Capacities in Public Procurement" project in Kosovo from 2012 to 2015 was managed by the EC Office in Kosovo and led by an international consortium and Planet S.A. Another project, "Technical Assistance to support the implementation of Public Finance Management Reforms in Kosovo," was launched on 27 February 2020. The project, which has several components in public finance management and one in public procurement, is to be managed by the EU Office in Kosovo.

In **Montenegro**, functions related to international co-operation are performed by the employees of the Public Procurement Department (PPD) regulatory-legal affairs and monitoring. The PPD serves as a

³¹⁵ EU support to Public Procurement system – Phase II.

contact point in public procurement for the EC and other international organisations. It is also a contact point for the World Trade Organization (WTO) Secretariat. PPD representatives take part in meetings of the WTO GPA Committee at the WTO headquarters in Geneva. The PPD's website has a section dedicated to the GPA, publishing information about all related events³¹⁶. Information on progress on accession to the EU is also reported³¹⁷. In co-operation with the United Nations Development Programme (UNDP), the World Bank and the EBRD, the PPD holds events related to public procurement, such as seminars or workshops. The PPD is also responsible for managing aid programmes in public procurement.

Two technical assistance projects for public procurement funded by the EU are under way. The IPA 2014 Project *"Improvement and Strengthening of the Institutional Set-Up and Legal Framework in the Areas of Public Procurement and State Aid"*, for example, valued at EUR 870 000, was launched in September 2018 and will run for the next two years. The PPD also participates in regional co-operation with the administrations of the Western Balkans and Turkey.

In **North Macedonia**, international co-operation is the responsibility of the staff of the Department for Normative Affairs, Education and International Relations. The PPB serves as a contact point in public procurement for the EC and other international organisations. Representatives of the Public Procurement Office (PPO) regularly participate in meetings of the Advisory Committee on public procurement and the Public Procurement Expert Group in Brussels. They also take part in meetings of the WTO GPA Committee. In co-operation with the UNDP and the World Bank, the PPB holds events on public procurement, including seminars and workshops. The PPB also manages assistance programmes funded by international donors.

In 2006-2008, the PPB was the beneficiary of a technical assistance project financed by the EU. In 2012-2013, it was supported by the German administration in a twinning project, *"Support to the Public Procurement System"*³¹⁸. The PPB is also supported by the EC's Technical Assistance and Information Exchange (TAIEX) and SIGMA. Another twinning project is planned in 2020.

In **Serbia**, international co-operation activities are the responsibility of the PPO Department for Development of the Public Procurement System and Economic and Financial Affairs. The PPO serves as a contact point in the field of public procurement for the EC and other international organisations. In co-operation with the UNDP and the World Bank, the PPO organises events on public procurement, such as seminars and workshops. The PPO is also responsible for managing support programmes funded by international donors.

Most recently, from July 2017 to May 2020 (with the possibility of further extension), the PPO has been the beneficiary of an EU-funded technical assistance project: "Support for further improvement of procurement system in Serbia" (IPA 2013). The value of the project, after an extension in December 2019, is EUR 2.6 million. The UNDP-funded project "Accelerating Accountability Mechanisms in Public Finances" (2016-2018) was also set up. Its focus was to drive public finance reform increasingly as a management reform, with the focus on efficient management of institutions, as opposed to the creation of additional bureaucratic features in the public finance sphere. The recent UNDP project "Accountable Public Finance Management Platform" (2019-2021) is a continuation of support provided to the PPO in improving the tools and promoting the application of economically advantageous tender criteria in public procurement, to increase efficiency, effectiveness and performance.

The PPO is also involved in regional co-operation with administrations of Western Balkans and Turkey. In June 2018, for example, PPO representatives took part in the regional conference organised by

³¹⁶ <http://www.ujn.gov.me/category/gpa-wto/>.

³¹⁷ <http://www.ujn.gov.me/category/eu-integracije/>.

³¹⁸ MK/2008/IB/FI/O1.

Montenegro's PPO, with the support of SIGMA. The PPO also represents the Republic of Serbia in the Procurement, Integrity, Management and Openness (PRIMO) Forum every year.

In **Poland**, the PPO is the primary institution engaged in international co-operation in public procurement. Within the PPO, international co-operation is handled by the Department of EU and International Co-operation. The responsibilities of the department include organising the international contacts of the PPO and co-operation with foreign authorities and international organisations, such as the OECD, United Nations and Council of Europe. The PPO also takes part in the Public Procurement Network initiative.

Part 2. Public procurement central institutions in the Western Balkans

Chapter 1. Albania

1. Legal framework

Public procurement in Albania is regulated by the Public Procurement Law (PPL), which entered into force in 2006 and was amended in 2007 (twice), 2009, 2010, 2012 (twice), 2014, 2017 and 2018³¹⁹. The PPL, which aims to implement the 2004 EU Public Procurement Directives, reflects the fundamental EU treaty principles of transparency, equal treatment and non-discrimination. The PPL covers both the classic and utilities sectors and regulates the awarding of contracts both above and below the EU thresholds. It also regulates the procurement process, from the early stages of planning to contract management.

A new draft Law on Public Procurement³²⁰ has been elaborated, harmonised with EU Public Sector Directive 2014/24, EU Utilities Sector Directive 2014/25 and the EU Remedies Directives.

The Law on Concessions and Public Private Partnerships³²¹ (PPP Law) provides regulations comparable with those of the EU Concessions Directive 2014/23 in many areas. According to the PPP Law, concession and PPP contracts have to be awarded according to the procedural rules of the PPL.

The EU Defence and Security Directive 2009/81 has not yet been implemented. To achieve this aim, a new draft Law on Procurement in the Field of Defence and Security Services was adopted by the Council of Ministers of Albania (CoM) on 12 March 2020.

2. Institutional framework

Public procurement: The Public Procurement Agency (PPA) is the central body responsible for co-ordinating and monitoring the public procurement system.

PPPs and concessions: The Ministry of Economy and Finance (MoEF) develops PPP and concession policy. The Agency for the Treatment of Concessions and PPPs (ATRAKO) within the MoEF plays an important role in this process by drafting and proposing PPP- and concessions-related legal acts and relevant amendments. ATRAKO currently has 11 employees and office premises within the Ministry of Finance. ATRAKO supports contracting authorities in implementing PPP projects. According to the newly adopted legislation, ATRAKO is also in charge of monitoring contract execution and preparing standard

³¹⁹ Law No. 9643, adopted 20 November 2006, amended by Law No. 9800 of 10 September 2007, Law No. 9855 of 26 December 2007, Law No. 10170 of 22 October 2009, Law No. 10309 of 22 July 2010, Law No. 22/2012, Law No. 131/2012, Law No. 182/2014, Law No. 47/2017 of 13 April 2017, and Law No. 103/2018.

³²⁰ The new draft PPL is currently undergoing public consultations. It is expected to pass parliamentary procedures by the end of June 2020.

³²¹ Law No. 125/2013.

tender documentation for PPPs. In 2020, ATRAKO plans to prepare guidelines to monitor contract execution, and to update the standard documents for tendering PPP projects, which were prepared by the PPA in the past. The MoEF is involved in budgetary and risk-assessment issues related to PPP projects.

Review body: The Public Procurement Commission (PPC) is the first-instance review body for complaints related to public procurement, concessions and PPPs³²². Economic operators are obligated to submit their complaints to the contracting authority prior to submitting them to the PPC. The Parliament of Albania approves the PPC's structure, staff and budget. The PPC has five members, one of whom acts as the head and another as the deputy head. In addition to its 5 member positions, the PPC has 31 staff.

Central purchasing body: The Central Purchasing Agency (CPA) is responsible for centralised procurement. The CPA was established in 2018 under the domain of the Ministry of the Interior and is subordinate to the minister; it currently has 25 employees. In 2019, the CPA signed 90 framework agreements for centralised procurement transactions, of which 11 were awarded to more than one economic operator. The CPA is currently in the process of preparing ten catalogues for different procurement categories to further standardise central purchasing in upcoming years.

3. Main developments: Evolution of the institutional framework

The PPA was established in 2007, and its functions and staff have been expanding continuously since then. The latest amendments to the PPA's structure, implemented in 2018-19, introduced new functions such as contract monitoring and co-ordination. They also extended the PPA's activities to all stages of procurement, from planning to contract implementation.

The PPC was established in 2010 under the prime minister, but PPL amendments of 13 April 2017 made it an institution under the parliament instead to increase its independence. Hence, the parliament approved the PPC's current structure, budget, number of employees and organisation, and it also approved new members in July 2018. An internal Regulation on the Organisation and Functioning of the Public Procurement Commission³²³ details the PPC's rules of procedure and actions.

The CPA was established in 2018.

4. Central public procurement authority

The PPA is the central public procurement body responsible for co-ordinating and monitoring the public procurement system. The PPA is subordinated to Prime Minister's Office: according to the PPL, it is "a central body, a public legal person reporting to the Prime Minister, and financed by the State Budget"³²⁴.

The PPA is entrusted with wide range of functions: monitoring procurement; elaborating draft secondary decrees; imposing fines for public procurement violations; and excluding economic operators from participation in procurement procedures. Overall, the PPA is responsible for developing, implementing and monitoring public procurement policy as well as the practical functioning of the system. It also plays an important role in co-ordinating and implementing the Public Finance Management Strategy that encompasses several high-priority public procurement components and actions³²⁵.

³²² PPC website: <http://www.kpp.gov.al/ppadv/default.aspx>.

³²³ Approved by PPC Decision No. 596/2018 of 12 September 2018.

³²⁴ PPL, Article 13(1).

³²⁵ For example, short- and medium-term actions include: establishing efficient mechanisms for policymaking, co-ordination and consultation; developing the institutional structures of the PPA, PPC and ATRAKO; fully aligning the public procurement and concession laws with the acquis; and improving the functionality of the public procurement system.

The PPA uses a database system to collect and disseminate procurement-related information. (More of the PPA's functions and responsibilities are described below.)

The **PPA website** is <http://www.app.gov.al/home/>.

Budget and finance: The PPA is financed from the public budget. Its actual assigned budget for 2018 was ALL 81 202 000 (approximately EUR 660 179), of which ALL 77 889 823 (approximately EUR 633 251) was spent. The 2019 budget totalled ALL 59 300 000 (approximately EUR 482 114).

PPA management, structure, organisation and staff: The PPA is led by a general director, appointed according to the established general terms and conditions for civil service employment.

The PPA is divided into three departments:

1. a Legal, Verification and Integration Department, further divided into:
 - a Legal Unit;
 - a Unit for Verification of Procurement Procedures;
 - an Integration Unit.
2. a Co-ordination and Monitoring Department, further divided into:
 - a Co-ordination Unit;
 - a Contract Monitoring Unit.
3. a Department of Data Administration and Publication, further divided into:
 - a Data Administration and Statistics Unit;
 - a Publication Unit.

There is also a Finance and Human Resources Unit that does not fall under any department but is instead directly accountable to the general director.

The PPA currently has 44 full-time employee positions. Six are related to support functions and 38 to the performance of public procurement functions (4 of these positions are currently vacant). The number of employee positions has increased from previous years.

PPA responsibilities and tasks are defined in Article 13 of the PPL. Its primary functions involve:

Legislation

- Submitting proposals for procurement regulations to the CoM.

Advice and support

- Drafting standard tender document templates.
- On request, providing contracting authorities with advice and technical assistance on conducting procurement procedures.
- Encouraging and supporting the use of international technical standards to prepare national technical specifications.

Training and education

- Providing training for central and local government procurement officials.

Data collection, publication, monitoring and control

- Verifying the implementation of public procurement procedures after a procurement contract has been signed as per the requirements set out in laws and regulations.

- Verifying the implementation of auditing bodies' recommendations.
- Monitoring public procurement system performance through information received from contracting authorities' periodic reports.
- Imposing fines or proposing disciplinary measures according to Article 72 of the PPL.
- Drafting and issuing a Public Notifications Bulletin that includes a list of excluded economic operators (the "blacklist").

International co-operation

- Planning and co-ordinating foreign public procurement assistance for Albania.

The new draft Law on Public Procurement does not seem to significantly change the PPA's functions.

The PPL describes the PPA's functions in a somewhat incomplete manner. For instance, its monitoring function should be clearer and described more comprehensively. Also, Article 13 of the PPL does not comment on the development and maintenance of the electronic procurement system, which is one of the PPA's key functions.

The PPA's responsibilities and tasks derive from the functions enumerated above. One of its most significant undertakings is to elaborate draft legal acts as well as templates and guidelines for conducting public procurement procedures. Another notable task is to provide training for contracting authorities.

The PPA's monitoring obligation can be divided into two parts: monitoring the legality of procurement procedures, and monitoring the execution of procurement contracts. The latter was entrusted to the PPA in 2018. For contract execution monitoring purposes, contracting authorities must fill in contract execution forms and send them to PPA.

While not explicitly mentioned in the PPL, developing, operating and supervising the electronic procurement system is of systemic importance. Achieving approximation with the EU *acquis* requires that every public procurement procedure and tool – at least for contracts above certain financial thresholds – be available and fully operational in electronic format.

5. National public procurement policy and strategic procurement: environmental, social and innovative

Albania does not have a dedicated public procurement strategy in place³²⁶. Public procurement-related issues are addressed in its Inter-Sectoral Strategy Against Corruption 2015-2020³²⁷, the Albania Public Finance Management Strategy 2014-2020 (the Strategy)³²⁸ and the Interinstitutional Strategy Against Corruption. Public procurement is not central to the Strategy, as it mainly covers aspects of general legal reform, approximation with EU *acquis*, and institutional capacity-building.

Furthermore, the Strategy does not cover some important elements of public procurement such as sustainable procurement (green/environmental procurement, social procurement or innovations), nor does it reflect on necessary public procurement reform issues in detail.

³²⁶ As of 1 March 2020.

³²⁷ http://rai-see.org/wp-content/uploads/2015/08/Albania_Inter-sectoral_Strategy_against_Corruption_2015-2020_Eng.pdf.

³²⁸ Pages 144-147 cover aspects of public procurement.

Elaborating a dedicated public procurement strategy was declared one of the PPA's main priorities for 2019³²⁹. As a result, a new National Strategy on Public Procurement has been developed and will be published for public consultations in 2020³³⁰.

6. Drafting of legislation (primary and secondary), draft legislation consultations and preparation of other documents

Primary legislation

The PPA is in charge of drafting primary public procurement legislation. In practice, the PPA takes a lead role in providing draft primary laws but other institutions are also involved, either as parties to the interinstitutional working group established by order of prime minister or as participants in the public consultation process or interinstitutional consultations. The PPA has elaborated the draft PPL, and the public consultation process is being launched by publishing the draft on the PPA website and allowing time for interested parties to submit comments and proposals³³¹. Roundtables have also been organised with various public procurement stakeholders, such as businesses, NGOs and international institutions. In addition, the PPA has assisted the Ministry of Defence in preparing the draft Law on Procurement in the Field of Defence and Security Services.

Secondary legislation (implementing regulations)

According to Article 13(2)(a) of the PPL, the PPA submits proposals for procurement regulations to the CoM, which has the authority and mandate to adopt them. For example, the PPA has drafted the Public Procurement Rules³³² as the main secondary decree for PPL implementation and it is currently in the process of preparing draft secondary decrees prescribed in the new draft PPL³³³.

Elaboration of operational tools: Model tender documents and templates

The PPA elaborates operational tools (standard forms and templates, tender dossiers and manuals). For instance, the list of manuals includes:

- the Manual on Review Procedures for Economic Operators;
- the Manual on Review Procedures for Contracting Authorities;
- the Guide to the Award of Public Contracts;
- the Public Procurement Manual.

The PPA website also contains a list of standard tender documents as well as documents related to procurement planning, such as model templates for making procurement forecasts and realisations. All these documents are available in Albanian only.

To help contracting authorities conduct electronic procurement procedures, the PPA website provides an electronic procurement user guide. It contains practical instructions for managing all available public

³²⁹ PPA Annual Report 2018, p. 118.

³³⁰ The new strategy is to be approved by the CoM at the end of June 2020.

³³¹ The consultation process is being organised according to Law No. 146/2014 on Notification and Public Consultation.

³³² <http://www.app.gov.al/GetData/DownloadDoc?documentId=34324c4a-f590-4e85-97d7-473c07357eb0>.

³³³ It is expected that all by-laws will be ready by the time the law passes parliamentary procedure.

procurement procedures and tools in electronic format, as well as instructions for economic operators, including video guides on how to use the electronic public procurement system properly.

Provision of legal information and opinions, and guidance on interpreting public procurement rules: General-interest issues

The PPA provides public procurement information on its website, including answers to frequently asked questions³³⁴ (FAQs) as well as a significant number of answers to individual questions.

Plus, in 2018 the PPA began providing advice to contracting authorities regarding their procurement procedures. This activity seems to include elements of both consultation and monitoring. According to the PPA, the main goal of helping contracting authorities draft documentation (and monitor it) is to eliminate irregularities before they have a negative impact on the tender procedure³³⁵. The PPA does not approve tender documents drafted by contracting authorities, it only provides recommendations regarding them.

Although there appears to be no dedicated phone line for consultations, the phone numbers of all departments and units are available on the PPA website. The PPA also provides answers and explanations regarding requests for consultations submitted by e-mail – for instance, in 2018 it provided 250 answers to contracting authorities and economic operators, in comparison with 150 answers in 2017. The PPA provides opinions on questions about specific situations and practices related to public procurement, concessions, PPPs and public auctions. The breakdown for 2018 is set out below.

Table 2. Practices reviewed by the PPA by type of request, 2018

Type of request	Number
Request for opinion/clarification	216
Request for opinion on submitted draft decisions/draft laws	7
Verifications requested by the Classified Information Security Directorate (CISD) of the Prime Minister's Office	23
Certificates issued to economic operators that are not in the process of being excluded	58
Requests made by the Prosecution Office of the District Courts/various institutions	35
Complaints of economic operators	58
Verifications requested by the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests (HIDAACI)	26
Decisions made by the PPC when the PPA has requested the initiation of administrative proceedings	4
TOTAL	427

Source: PPA Annual Report 2018, p. 50.

Consultations regarding operation of the electronic procurement system may be considered a separate line of work. In 2018 the PPA issued 674 memorandums and around 3 300 e-mails to contracting authorities and economic operators on electronic procurement system operations. Contracting authorities and economic operators receive consultations by phone as well.

7. Organising, maintaining and supporting national procurement training: professionalisation and capacity-building

There are currently no requirements for public procurement staff in Albania to undergo specific training programmes and/or have certificates to conduct procurement procedures. Hence the training activities the PPA provides and manages are dedicated to general capacity-building as well as specific topical issues in

³³⁴ <http://www.app.gov.al/other/trainings/frequent-questions/>.

³³⁵ PPA Annual Report 2018, pp. 73-74.

the procurement community. For instance, training sessions in 2018 were dedicated to recent amendments to public procurement legislation as well as application of the new guidelines for framework agreements and negotiated procedures without prior publication of a contract notice. It seems, however, that the PPA currently provides training for representatives of contracting authorities only, and not to other representatives of the procurement community such as economic operators and NGOs.

In providing training, the PPA co-operates with the Albanian School of Public Administration (ASPA). Activities include not only training sessions on general legal issues of applying legislation, but also dedicated training for IT professionals on using the electronic public procurement system. In 2018, 3 modules (each 10 days long) on public procurement in general were organised within the framework of institutional co-operation and 27 short sessions (each 1 day long) were offered on recent amendments to public procurement legislation. In addition, the PPA itself organised four short training sessions (each one day long) for line ministries and central government institutions on the use of framework agreements. Finally, one short training session (one day long) was arranged with OECD/SIGMA and CPA representatives on reorganisation of the CPA. A total of 690 people were trained in 2018, and in 2019 all the workshops organised in co-operation with ASPA amounted to 77 days; 448 specialists took part in these training events.

8. Publication and dissemination of procurement notices: web portal operations

The PPL provides for two types of financial thresholds (high- and low-value) according to the estimated financial value of the procurement. The precise threshold amounts are established in the procurement rules, and the CoM revises them every two years.

The current threshold values are³³⁶:

1. High-value thresholds:
 - ALL 100 000 000 (approximately EUR 81 301) for supply and service contracts;
 - ALL 600 000 000 (approximately EUR 487 805) for works contracts.
2. Low-value thresholds
 - ALL 2 000 000 (approximately EUR 16 260) for supply and service contracts;
 - ALL 3 000 000 (approximately EUR 24 390) for works contracts.

According to the PPL, contract notices for procurements above the high-value thresholds must be published in the Public Notifications Bulletin³³⁷ and at least one newspaper of European distribution. Notices for procurements valued below the high-value but above the low-value thresholds must be published in the Public Notifications Bulletin. All procurement notices shall be published on the website of PPA, as should notices for concession and PPP projects as well as auctions. Publication of notices is free of charge.

The Publication Unit of the Department of Data Administration and Publication is in charge of structuring and publishing the Public Notifications Bulletin. In 2018, 52 Public Notifications Bulletins with a total of 25 883 pages (average 498 pages per week) were issued. The publication unit also verifies the content of

³³⁶ Public Procurement Rules, Chapter II.1: <http://www.app.gov.al/GetData/DownloadDoc?documentId=34324c4a-f590-4e85-97d7-473c07357eb0>.

³³⁷ The Public Notifications Bulletin is a frequently issued publication (in Albanian) that contains information on public procurement transactions as well as a list of excluded economic operators: <http://www.app.gov.al/t%C3%AB-tjera/arkiva/arkiva-e-buletinit-t%C3%AB-prokurimit-publik/arkiva-e-buletinit-te-prokurimit-publik-2019/>.

public procurement notices submitted by contracting authorities before publishing them on the electronic procurement system. These verifications must take place within one working day of notice submission.

Since 2018, the PPA website has also been publishing a standard form with decisions adopted by the PPA according to its mandate. These decisions relate to administrative investigations, audit reviews and excluded economic operators. The PPA's website has a search function that allows information to be found according to key words. All information on the website is available to the general public for three years, but the PPA will circulate older information upon request.

9. Electronic procurement system

The PPA is the body responsible for operating the electronic public procurement system³³⁸, while maintenance is done by a private sector contractor. The system covers public procurement, PPPs and concessions, and public auctions. It allows the PPA to obtain primary data on all transactions, and it has been able to generate savings according to PPA reports³³⁹.

All public procurement procedures are currently conducted through the electronic public procurement system, including negotiated procedures without prior publication of a contract notice. Low-value procurements³⁴⁰ are also conducted electronically. The forecast and execution functionality, essentially a procurement planning module, was added to the system in January 2018. It has made information about forthcoming procurement transactions available not only to the PPA but to economic operators. Foreign operators are allowed to register in the system by filling in the required fields of information³⁴¹.

Within the PPA, the electronic procurement system is managed by the Department of Data Administration and Publication. Its main task is to ensure the continuous functioning of the system as well as to organise any necessary changes to the system in co-operation with the maintenance company. The PPA also runs an electronic archive system to store all historical information on transactions involving public procurement, PPPs and concessions, and public auctions.

10. Collecting statistical data on the public procurement market

The electronic procurement system allows the PPA to obtain primary data on all public procurement, PPP and concession, and public auction transactions. Information about public procurement collected by the PPA can be used for a variety of purposes, such as developing red flags for monitoring or targeted policymaking in the public procurement area.

Electronic procurement and real-time access to primary data on procurement transactions allow statistical information on the public procurement system to be collected on a constant basis, which is reflected in the PPA's annual reports. Among many other topics, the 2018 Annual Report contains information on:

- types of contract subject matter;
- types of procurement procedures;
- amount of savings;
- number of cancelled procedures;

³³⁸ <http://www.app.gov.al/e-procurement/>.

³³⁹ PPA Annual Report 2018. Savings are, however, calculated by comparing the estimated value of the procurement with the actual acquisition price, which may not be the most precise method.

³⁴⁰ The upper threshold for applying the low-value procurement procedure according to procurement regulations is ALL 800 000 (approximately EUR 6 666).

³⁴¹ Foreign economic operators can register through <http://www.app.gov.al/register-operator/>.

- usage of framework agreements;
- contracting authorities and economic operators within the system.

11. Application of procurement rules and related practices of contracting authorities

The PPA pursues various procurement monitoring activities. Monitoring initiatives stem from several sources:

- Potential breaches reported by economic operators, mostly in cases of low-value procurement transactions.
- The PPA's own findings, including from:
- Monitoring based on a monitoring plan, prepared according to data received from the Department of Data Administration and Publication. This type of monitoring can relate to legality of using the negotiated procedure without prior publication of a contract notice, and to conducting low-value procurement procedures.
- Findings of the Department of Data Administration and Publication regarding potential failures to submit contract-signing notices for publication.
- Reviews of reports from audit bodies, such as the Supreme Audit Institution, the Compulsory Health Insurance Fund, the Financial Inspection Department, and contracting authorities' internal audit departments.

PPA monitoring focuses on several substantive issues:

- choice of procurement procedure (particularly when the negotiated procedure without prior publication of a notice is chosen);
- determination of estimated contract value;
- qualification requirements;
- technical specifications;
- bid examination and evaluation;
- handling of complaints by contracting authorities.

According to the PPA, the most problematic and frequent of these issues are the failure to justify application of the negotiated procedure without prior publication of a notice; inaccurate determination of estimated contract value; and unclear or restrictive selection criteria³⁴². Monitoring the application of a negotiated procedure without prior publication is carried out according to monitoring plan. The PPA regularly publishes monitoring reports on its website (in Albanian only).

During monitoring, the PPC aims to not only identify irregularities and problems (and penalise those responsible), but to analyse the situations and make appropriate recommendations to avoid irregularities in the future.

Another area that arguably falls within the domain of public procurement monitoring is penalisation for failure to comply with public procurement legislation. The types of fines and penalties, and their amounts, are prescribed by the PPL³⁴³. The two types of penalties are financial fines and disciplinary action, and the contracting authority or person concerned is entitled to appeal the penalty before the court. According to

³⁴² PPA Annual Report 2018, pp. 57-62.

³⁴³ PPL, Article 72.

the PPL, imposed fines must be collected by the contracting authority: to prove that this has been done, the contracting authority must notify the PPA of measures taken to enforce the PPA's penalty decision. This notification must be sent within 30 days of issuance of the PPA decision.

12. International co-operation

The PPA co-operates with various international organisations active in the field of public procurement. Especially close co-operation has been developed with the OECD/SIGMA, the EU Delegation in Tirana, the World Bank, and the Organization for Security and Co-operation in Europe (OSCE) office in Tirana.

As part of an Interinstitutional Working Group established by order of the Prime Minister as well as in later stages such as public consultation and interinstitutional consultation round.

Chapter 2. Bosnia and Herzegovina

1. Legal framework

Public procurement in Bosnia and Herzegovina is regulated by the Public Procurement Law (PPL) adopted in 2014³⁴⁴. The PPL is largely aligned with the EU *acquis* and reflects fundamental EU treaty principles, transparency, equality of treatment, competition and proper use of funds³⁴⁵. However, the PPL is based on 2004 directives and so does not take solutions available under the EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25 into account. PPL amendment provisions were prepared in 2017-18 but have not yet been adopted³⁴⁶.

The PPL covers the classic as well as the utilities sectors and regulates the awarding of contracts both above and below the EU thresholds³⁴⁷. It also deals with procurement review and remedies available to economic operators to counter contracting authorities' decisions not compliant with the law.

The legal framework for public procurement is completed by implementing regulations adopted by the Council of Ministers of Bosnia and Herzegovina (CoM) as well as by operational instructions approved by the board of the Public Procurement Agency (PPA Board) and issued by its director.

The PPL also covers defence and security procurement contracts as defined in the EU Defence and Security Directive 2009/81. The PPL requires that defence procurement be regulated by special provisions adopted by the CoM. Relevant provisions were adopted at the end of February 2015³⁴⁸.

Concessions and public-private partnership (PPPs) are explicitly excluded from the scope of the PPL³⁴⁹. The existing legal framework for concessions and PPPs is highly fragmented: the awarding of concession

³⁴⁴ Official Gazette of BiH No. 39/14.

³⁴⁵ Application of domestic preference provisions was in June 2020 extended until 1 June 2021 and the level of preferential calculation of price in domestic bids was increased to 30 % according to the Decision on Obligatory Application of Domestic Preference Treatment, Official Gazette of BiH No. 34/20.

³⁴⁶ As of 1 April 2020.

³⁴⁷ Simplified procurement procedures (competitive quotation requests) are allowed if the procurement value is below the threshold of BAM 50 000 (EUR 25 576) for supplies and services or BAM 80 000 (EUR 40 922) for public works. If the value of contracts does not exceed BAM 6 000 annually, contracting authorities may use also the direct agreement procedure.

³⁴⁸ Official Gazette of BiH No. 60/15, <http://www.sluzbenilist.ba/page/akt/LvbwNhU2QNk>.

³⁴⁹ PPL, Article 10 (3) and (4).

and PPP contracts is regulated by the Law on Concessions of Bosnia and Herzegovina (state level)³⁵⁰, the Law on Concessions of the Federation of Bosnia and Herzegovina (FBiH)³⁵¹, the Law on Concessions of the Republika Srpska (RS)³⁵², the Law on PPPs of the RS³⁵³, and by cantonal laws on concessions and PPPs and in the Law on PPPs of the Brčko District³⁵⁴. Plus, a number of by-laws have been adopted pursuant to these laws³⁵⁵.

2. Institutional framework

Public procurement: The central body responsible for public procurement is the Public Procurement Agency (PPA), with an office in Sarajevo and two branch offices in Mostar and Banja Luka. The current PPL does not define the specific tasks of the branch offices. The PPA is an independent administrative body responsible for drafting procurement strategies and policies, preparing draft legislation, monitoring, and advisory and training activities in the field of public procurement³⁵⁶. The PPA Board is an advisory body for the PPA³⁵⁷.

PPPs and concessions: The distribution of functions and responsibilities among the relevant institutions in this area reflects the country's fragmented legislative framework. The administrative setup for regulating and managing concessions is complex. The relatively large Concessions Commissions are replicated at each level of government. The concession laws lay out the institutional structure for concessions: the BiH Concessions Commission³⁵⁸ in Banja Luka; the Federation of BiH Concessions Commission in Sarajevo; and the Republika Srpska Concessions Commission³⁵⁹ in Banja Luka. All three commissions act as independent regulatory legal entities and play an important role in awarding and implementing concessions. Regarding PPPs in the RS, the Ministry of Finance of the RS is responsible for monitoring the PPP Law.

Review body: The Procurement Review Body (the PRB)³⁶⁰ is an independent and autonomous institution responsible for reviewing complaints. It is composed of 17 members (7 in the central office in Sarajevo and 5 in each of the branch offices in Mostar and Banja Luka). Branch offices do not have the status of legal

³⁵⁰ Official Gazette of BiH Nos. 32/02 and 56/05.

³⁵¹ Official Gazette of the FBiH Nos. 40/02 and 61/06.

³⁵² Official Gazette of the RS No. 59/13.

³⁵³ Idem, Nos. 59/09 and 63/11.

³⁵⁴ Official Gazette of the Brčko District No. 7/10.

³⁵⁵ For example, the Rulebook on Request-Submitting Procedures and Concession-Granting Procedures, Official Gazette of BiH No. 65/06; the Rulebook on the Registry of Contracts on Concessions, Official Gazette of BiH No. 55/12; the Rulebook on Granting Concessions, Official Gazette of the FBiH Nos. 67/06 and 87/11; the Rulebook on Determining the Concession Fee, Official Gazette of the FBiH No. 67/06; the Rulebook on the Procedure of Ceding the Concession's Contract and the Change of the Ownership Structure, Official Gazette of the RS No. 65/14; the Rulebook on the Content and the Manner of Management of the Registry of Contracts, Official Gazette of the RS No. 65/14; the Instructions for Evaluation of Existence of Public Interest for Unsolicited Proposal, Official Gazette of the RS No. 103/05; and the Regulation of the Procedure for the Realisation of the PPP in the RS, Official Gazette of the RS No. 104/09.

³⁵⁶ <https://www.javnenabavke.gov.ba>.

³⁵⁷ PPL, Article 92.7-11.

³⁵⁸ http://www.koncesijebih.ba/home/index.php?option=com_frontpage&Itemid=1.

³⁵⁹ <http://koncesije-rs.org/>.

³⁶⁰ <http://urz.gov.ba/index.php?id=01&jezik=en>.

persons. Responsibility for review is divided between the office in Sarajevo and the branch offices depending on the value of procurement concerned and the type of contracting authority³⁶¹. All PRB members are nominated by the Parliament of Bosnia and Herzegovina for a five-year term, with the possibility of only one additional reappointment³⁶². Rulings adopted by the PRB are published on the Public Procurement Portal (PP Portal)³⁶³. The PRB has its own website but there is no functionality for publishing PRB rulings.

Central purchasing body: While the use of centralised procurement is covered by the PPL³⁶⁴, in practice centralised purchasing is limited, with no central purchasing body established at the state level. Some central purchasing bodies have, however, been established at the level of the cantons (Central Bosnia Canton and Tuzla Canton).

3. Main developments: evolution of the institutional framework

The PPA was established in June 2006 on the basis of the first (2004) PPL applicable across the entire country³⁶⁵. Prior to that, tasks related to public procurement were performed at the state level by the BiH Ministry of Finance.

The PRB was established in 2006. Amendments to the PPL³⁶⁶ in November 2013 made the PRB in Sarajevo responsible reviewing appeals for high-value procurements (above BAM 800 000) and for all procurement procedures of BiH and the Brčko District state institutions, whereas the branch offices in Banja Luka and Mostar became responsible for lower-value cases and for other contracting authorities.

The GO-PROCURE electronic system (<https://goprocure.javnenabavke.gov.ba>) for publishing notices electronically became functional in September 2011. Its launch was a significant improvement, even though the expensive publication of notices in the paper-based Official Gazette remained the main official method of publication until adoption of the second PPL in 2014³⁶⁷. Another electronic system, WisPPA (<https://wisppa.javnenabavke.gov.ba>), was used by contracting authorities to deliver statistical data and reports to the PPA. In November 2014, these two systems and the registry of contracting authorities and bidders were merged to create the PP Portal. After adoption of the current PPL in 2014, the basic source of information on procurement opportunities became the PP Portal, and only summaries of notices are published in the Official Gazette.

4. Central public procurement authority

The PPA is the central public procurement authority³⁶⁸. The PPA is a separate legal entity headquartered in Sarajevo, with two branch offices in Banja Luka and Mostar. The branch offices, which do not have legal

³⁶¹ PPL, Article 93 (6) – (7).

³⁶² PPL, Article 93 (10).

³⁶³ <https://www.ejn.gov.ba/Resolution/ResolutionSearch>.

³⁶⁴ PPL, Article 4(2), Rulebook on Joint Procurement and Central Purchasing Body, Official Gazette of BiH No. 55/15, July 2015.

³⁶⁵ The 2004 PPL was made applicable to the whole country on 1 May 2005: BiH institutions were obligated to apply it as of 10 November 2004; the FBiH and Brčko District as of 10 January 2005; and the Republika Srpska as of 1 May 2005.

³⁶⁶ Official Gazette of BiH No. 87/13.

³⁶⁷ Under the first PPL applied during 2005-14, contracting authorities were charged a fee to publish notices in the Official Gazette.

³⁶⁸ The PPL, Article 92, is the legal basis for establishment of the PPA.

person status³⁶⁹ and depend on the main office in Sarajevo, are headed by assistant directors. The PPA's functions and activities include legislative tasks, monitoring and control, providing opinions, training and supporting contracting authorities and economic operators.

The **PPA website** (www.javenenabavke.gov.ba) contains information in Bosnian, Serbian and Croatian, and very limited information in English.

Budget and finance: The PPA is financed from the state budget. Its 2019 budget was BAM 1 143 000 (EUR 584 000).

PPA management, structure, organisation and staff: The PPA is headed by a director and the PPA Board³⁷⁰. The PPA director has secretary status, and selection, appointment and dismissal of the director are the prerogative of the CoM, in accordance with provisions of the law dealing with state services of the institutions of Bosnia and Herzegovina³⁷¹. The PPA director may be reappointed only once and represents the PPA, manages its work, organises and ensures the lawful and efficient discharge of PPA tasks, adopts implementing regulations and other legal acts, and is responsible for the work of the PPA³⁷².

The PPA Board is responsible for considering issues related to public procurement functioning and public procurement system improvement, and for providing prior consent to acts regulating the public procurement system, to be adopted by the CoM or the PPA director³⁷³. The PPA Board is composed of five members appointed by the CoM for a five-year period³⁷⁴, with representatives from the Ministry of Finance and Treasury, the finance ministries of the entities, the Directorate for European Affairs and the Brčko District³⁷⁵. The PPA director and the PRB chairperson are observers, together with representatives from non-governmental organisations (NGOs): the Foreign Trade Chamber of Bosnia and Herzegovina, Associations of Employers of Bosnia and Herzegovina and others.

The PPA is divided into four divisions:

- a group for normative and legal affairs;
 - a group for training and analysis.
- 2) the division for information technology, general and financial affairs, further divided into:
 - a group for information technology;
 - a group for general and financial affairs.
 - 3) the division for legal affairs and training and analysis branch office in Banja Luka
 - 4) the division for legal affairs and training and analysis branch office in Mostar.

The PPA currently has 22 staff, with a number of vacant positions³⁷⁶. Three staff work in the policy development unit, four in training and research, five in control/monitoring, two in analysis, two in organisation and finance, and four in information technology (IT).

³⁶⁹ PPL, Article 92 (2).

³⁷⁰ PPL, Article 92 (4).

³⁷¹ Official Gazette of BiH No. 19/02.

³⁷² PPL, Article 92 (4) – (5).

³⁷³ PPL, Article 92 (7).

³⁷⁴ PPL, Article 92 (7).

³⁷⁵ PPL, Article 92 (8).

³⁷⁶ The PPA had 32 positions as of 1 April 2020.

PPA responsibilities and tasks are defined in Article 92 of the PPL. Its primary functions involve:

Legislation and policy development

- Elaborating drafts of public procurement laws, amendment laws and implementing regulations to ensure their effectiveness and efficiency.

Advice and support

- Publishing manuals and instructions as well as elaborating and updating templates and standard documents in accordance with PPL provisions.
- Providing technical support and interpreting procurement provisions for both contracting authorities and economic operators to enable correct application of the PPL and implementing regulations.

Training and education

- Informing contracting authorities and economic operators on public procurement provisions, particularly their purpose, procedures and methods.
- Organising training for authorised (certified) trainers and procurement officers.
- Publishing training-related information.
- Preparing public procurement manuals and other educational materials.
- Monitoring the work of certified trainers and keeping a register of certified trainers and public procurement officers.

Implementation of electronic procurement

- Developing and establishing electronic systems in the field of public procurement.
- Establishing and supporting the implementation of electronic communication and electronic public procurement.

Data collection, publication, monitoring and control

- Establishing a system to monitor public procurement procedures conducted by contracting authorities to educate contracting authorities and detect and remedy irregularities.
- Collecting data, elaborating analyses, and publishing information related to procurement procedures conducted and contracts awarded.
- Preparing annual reports for the CoM on the functioning of public procurement.

5. National public procurement policy and strategic procurement: environmental, social and innovative

National public procurement policy in BiH is established by means of public procurement strategies and action plans. The CoM holds competence in establishing public procurement policy while relevant proposals are prepared by the PPA and the PPA Board.

The current public procurement strategy is the Strategy for the Development of Public Procurement in Bosnia and Herzegovina in the Period 2016-2020 (the PP Strategy), adopted by the CoM on 13 October 2016. It provides an outline for developing, implementing and monitoring procurement policy³⁷⁷, and an Action Plan for 2016-17 was adopted as part of the PP Strategy.

³⁷⁷ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news>.

The PP Strategy does not provide for any activities related to the strategic use of public procurement, green procurement, the inclusion of social provisions or the purchase of innovative solutions.

6. Drafting of legislation (primary and secondary), draft legislation consultations, and preparation of other documents

Primary legislation

One of the PPA's tasks is to prepare drafts of the public procurement laws and regulations. The PPA also has an explicit mandate to prepare provisions on the financial thresholds of PPL application³⁷⁸. This initiative is to be implemented in urgent procedures, after obtaining PPA Board approval, for significant changes concerning: 1) the inflation rate; 2) economic conditions in Bosnia and Herzegovina; and 3) EU legislation in the field of public procurement.

Before adoption of the current PPL in 2014, public consultations were conducted in line with the Rules on Consultations of Drafting of Legal Regulations³⁷⁹. The draft PPL was published on the PPA website, with an invitation to submit comments and opinions.

In 2017-18 the PPA prepared a draft amendment to the current PPL to correct several of its deficiencies (mostly technical). The draft amendment also introduced a new function for the PPA, making it the central inspection body for various stages of public procurement procedures. A working group of representatives from the PPA, including its branch offices, the PRB and its branch offices, and the Directorate for European Integration prepared the draft and submitted it to the CoM in February 2019, but there has been no further legislative progress.

Secondary legislation (implementing regulations)

The two types of implementing regulations are:

1. regulations adopted by the CoM.
2. regulations adopted by the PPA director.

In both cases, the PPA prepares the drafts and the PPA Board approves them.

Implementing regulations adopted by the CoM cover:

- the application of the common procurement vocabulary (CPV): The Decision on the Use of CPV³⁸⁰;
- qualification systems: Instruction on the Establishment and Management of the Qualifications System³⁸¹;
- award of contracts for services covered by more flexible rules: The Rulebook on Service Contract Award Referred to in Annex II Part B of the Public Procurement Law³⁸²;
- specific provisions concerning utilities' procurement: Instructions on the Conditions and Methods for the Sectoral Contracting Authority to Award Contracts

³⁷⁸ PPL, Article 14 (6).

³⁷⁹ Official Gazette of BiH No. 81/06.

³⁸⁰ Official Gazette of BiH No. 54/15.

³⁸¹ Official Gazette of BiH No. 96/14.

³⁸² Official Gazette of BiH No. 66/16.

to an Affiliate Company, Business Partner or Sectoral Contracting Authority as an Integrated Part of the Business Partnership³⁸³;

- domestic preferences: The Decision on Obligatory Application of Domestic Preferences³⁸⁴;
- electronic procurement: The Rulebook on Terms and Conditions for the Use of E-auction³⁸⁵;
- centralised (joint) procurement: The Rulebook on Conducting a Joint Procurement and Establishing a Central Purchasing Body³⁸⁶;
- some procedural requirements: The Rulebook on Establishment and Conduct of the Procurement Commission³⁸⁷;
- public procurement training: The Rulebook on Training of Procurement Officers³⁸⁸ and the Rulebook on Training of Authorised Trainers³⁸⁹;
- monitoring and controlling the application of PPL provisions: The Rulebook on Monitoring of Public Procurement Procedures³⁹⁰.

Implementing regulations (instructions) of the PPA director cover:

- the list of contracting authorities: The Rulebook with the List of Contracting Authorities by Categories that are Under Obligation to Apply the Law on Public Procurement³⁹¹;
- the Rulebook on the Formats of the Tender Security and Performance Guarantee³⁹²;
- the Rulebook on Direct Agreement Procurement Procedure³⁹³;
- the Rulebook on Guarantees for Participation and Execution of the Contract³⁹⁴;
- guidance on the way of keeping minutes on the bid opening³⁹⁵;
- instructions on the conditions and method of publishing notices and submitting reports on public procurement procedures in the e-procurement information system³⁹⁶.

³⁸³ Official Gazette of BiH No. 97/14.

³⁸⁴ Official Gazette of BiH No. 83/16.

³⁸⁵ Official Gazette of BiH No. 66/16.

³⁸⁶ Official Gazette of BiH No. 55/15.

³⁸⁷ Official Gazette of BiH No. 103/14.

³⁸⁸ Official Gazette of BiH, No. 08/18.

³⁸⁹ Official Gazette of BiH, No. 62/15.

³⁹⁰ Official Gazette of BiH, No. 72/16.

³⁹¹ Official Gazette of BiH No. 21/15.

³⁹² Official Gazette of BiH No. 90/14.

³⁹³ Official Gazette of BiH No. 90/14.

³⁹⁴ Official Gazette of BiH No. 90/14.

³⁹⁵ Official Gazette of BiH No. 90/14.

³⁹⁶ Official Gazette of BiH No. 90/14.

Invitations to take part in consultations on various PPA-prepared documents, including secondary legislation, are regularly published on its website in the “Consultations” section³⁹⁷ as well as on the special E-konsultacije portal³⁹⁸. This is the case for reports concerning PPA activities (for example training events)³⁹⁹, plans for the future (programmes of planned activities)⁴⁰⁰ and drafts of legal acts. The PPA also publishes reports on concluded consultations (containing comments, suggestions and proposals submitted for consulted documents, and PPA feedback on accepted and rejected comments) on the E-konsultacije portal⁴⁰¹.

Elaboration of operational tools: Model tender documents and templates

The PPA director has adopted Instructions on the Preparation of Models on Tender Documentation and Offers⁴⁰². They define the content of tender documentation, how it should be prepared and how to proceed with it, as well as other relevant issues. They also detail the minimum conditions for economic operators to participate in public procurement procedures, the content of tenders, methods of proceeding with submitted tenders, the content of minutes from the opening of tenders, etc. Contracting authorities must prepare their tender documents in line with these instructions.

Template tender documentation for supplies, works and services to be used in the open procedure is published on the PPA website⁴⁰³. The PPA has also prepared a template of minutes from tender opening meetings and instructions on how to keep records of tender openings⁴⁰⁴.

Provision of legal information and opinions, and guidance on interpreting public procurement rules: General-interest issues

The PPA supports the correct application of the PPL and implementing regulations by publishing its interpretations in the “Practical implementation of legal provisions” section of its website⁴⁰⁵. Approximately 100 opinions are available concerning the PPL, implementing regulations and the electronic public procurement system. Interpretations are also published in the “Latest news” section of the PPA website. The most recent PPA interpretations⁴⁰⁶ relate to COVID-19: conducting negotiations with suppliers on the phone⁴⁰⁷, opening tenders⁴⁰⁸ and awarding contracts in the negotiated procedure without previous

³⁹⁷ <https://www.javnenabavke.gov.ba/bs-Latn-BA/public-consultations>.

³⁹⁸ <https://ekonsultacije.gov.ba/consultations/indexes>.

³⁹⁹ For example, <https://www.javnenabavke.gov.ba/bs-Latn-BA/articles/131/poziv-za-javne-konsultacije-u-vezi-prijedloga-informacije-o-održanim-obukama-iz-oblasti-javnih-nabavki-u-2018-godini>.

⁴⁰⁰ <https://www.javnenabavke.gov.ba/bs-Latn-BA/articles/149/poziv-za-javne-konsultacije-na-program-rada-agencije-za-javne-nabavke-bih-za-2020-godinu>.

⁴⁰¹ For example, <https://ekonsultacije.gov.ba/consultations/reports/21979>.

⁴⁰² Official Gazette of BiH No. 90/14.

⁴⁰³ <https://www.javnenabavke.gov.ba/bs-Latn-BA/legislation>.

⁴⁰⁴ Official Gazette of BiH, No. 90/14.

⁴⁰⁵ <https://www.javnenabavke.gov.ba/bs-Latn-BA/practical-application>.

⁴⁰⁶ March 2020.

⁴⁰⁷ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/266/misljenje-vezano-za-provo-enje-pregovora-sa-kandidatima-ponu-acima-telefonskim-putem>.

⁴⁰⁸ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/264/priopćenje-povodom-aktuelnih-desavanja-u-bosni-i-hercegovini-u-svezi-sa-coronavirksom-covid-19>.

publication due to extreme urgency⁴⁰⁹. There is also a separate manual on using the electronic procurement system (EJN)⁴¹⁰.

The PPA also offers a telephone help desk that provides legal support (concerning interpretations of the PPL and implementing regulations) and technical assistance (on notice publication, use of the PP Portal).

7. Organising, maintaining and supporting national procurement training: professionalisation and capacity-building

Training in the field of public procurement is regulated by two implementing regulations: one concerning procurement officers⁴¹¹ and the other on authorised procurement trainers⁴¹².

The PPA is obligated to organise public procurement officer training, which is conducted in co-operation with authorised trainers. Training consists of 30 school hours within one year, and dates and training programme are published on the PPA website (www.javnenabavke.ba). One or two participants may be delegated by each contracting authority, depending on the contracting authority's procurement budget; however, the maximum number of participants in any training event is limited to 30. The training framework programme is outlined in the annex to the Rulebook on Training Procurement Officers. The PPA must publish yearly reports on training sessions conducted in the previous year.

In February 2020 there were 199 certified procurement officers and 383 candidates were waiting to take the exam. The number of certified trainers increased recently from 70 to 136 thanks to support offered to the PPA through the technical assistance project⁴¹³.

An authorised public procurement trainer must have at least five years' public procurement experience obtained in the past ten years, have a valid authorised trainer certificate, and be listed in the PPA register. An authorised trainer should have expertise in Bosnia and Herzegovina's public procurement system, and have theoretical and practical knowledge of public procurement solutions in the neighbouring countries and the European Union, as well as in public procurement best practices, to be able to successfully, professionally and appropriately deliver public procurement training programmes.

Authorised trainer candidates should attend a five-day training course organised by the PPA, and three weeks later take a PPA-organised exam consisting of a written part, practical assignment, case study and oral section. A list of certified trainers and their contact details are published on the PPA website⁴¹⁴.

The PPA should also conduct training of authorised trainers to qualify them for successful, professional and high-quality delivery of public procurement training programmes. Authorised trainers are subject to recertification consisting of at least three days of training, including at least 30 lessons, within three years of expiration of their authorised trainer certification.

Authorised trainers are required to respond to PPA invitations to deliver training organised by the PPA, to deliver the training requested, prepare at least two opinions per year relating to certain issues on the basis of frequently asked questions during the training programme(s) for the PPA website, help develop manuals

⁴⁰⁹ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/265/saopstenje-povodom-aktuelnih-desavanja-u-bosni-i-hercegovini-u-vezi-sa-corona-virusom-covid-19>.

⁴¹⁰ https://www.ejn.gov.ba/content/manual/Pomoc%20e-Nabavke_bs.pdf.

⁴¹¹ The Rulebook on Training of Procurement Officers.

⁴¹² The Rulebook on Training of Authorised Trainers.

⁴¹³ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/262/svecana-dodjela-certifikata-ovlastenim-predavacima-iz-oblasti-javnih-nabavki>.

⁴¹⁴ <https://www.javnenabavke.gov.ba/bs-Latn-BA/lecturers>.

and other practical material for training programmes at the written request of the PPA, and act in accordance with the Code of Conduct of Authorised Trainers.

In 2019, the PPA organised 19 training events attended by 573 participants.

Training Information Management System

To streamline the implementation of training activities, the PPA, in co-operation with the German company *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), has devised a Training Information Management System (TIMS)⁴¹⁵. TIMS is addressed to people working in public procurement, certified trainers of public procurement trainers, and anyone interested in participating in PPA-organised training events.

All registered users of TIMS can: - Consult published information about training sessions.- Submit requests to participate in training programmes.- Withdraw submitted registration in a training event.- Download documents related to specific training (presentations, exercises, agendas, instructions, etc.).- Fill in an evaluation form after participating in a training session. - Download certificates confirming training participation.- Take part in surveys to aid analysis of training needs.- Consult statistical information about training sessions conducted.- Access news and announcements related to public procurement.- Manage their user profile.

8. Publication and dissemination of procurement notices:web portal operations

The PPL requires that procurement notices be published for all public procurement procedures, except for direct agreement procedures and negotiated procedures without prior publication of a notice. In accordance with the PPL⁴¹⁶, public procurement notices are published on the PP Portal⁴¹⁷. The PPA is responsible for maintaining the PP Portal.

To publish procurement notices on the PP Portal, contracting authorities must be registered. Registration for contracting authorities is free of charge. Notices must be prepared and sent for publication electronically in the form, manner and within the limits defined by the PPA director in the implementing regulation. Notices are publicly available on the PP Portal within 24 hours of being sent for publication (exceptionally within 72 hours). Notices are not checked by the PPA before their publication.

Notices on the PP Portal may be searched by reference to the contracting authority or the object of procurement⁴¹⁸. An interesting tool is the interactive map of Bosnia and Herzegovina, which enables users to find bidding opportunities in specific parts of the country (at the level of entities, cantons, towns, etc.)⁴¹⁹.

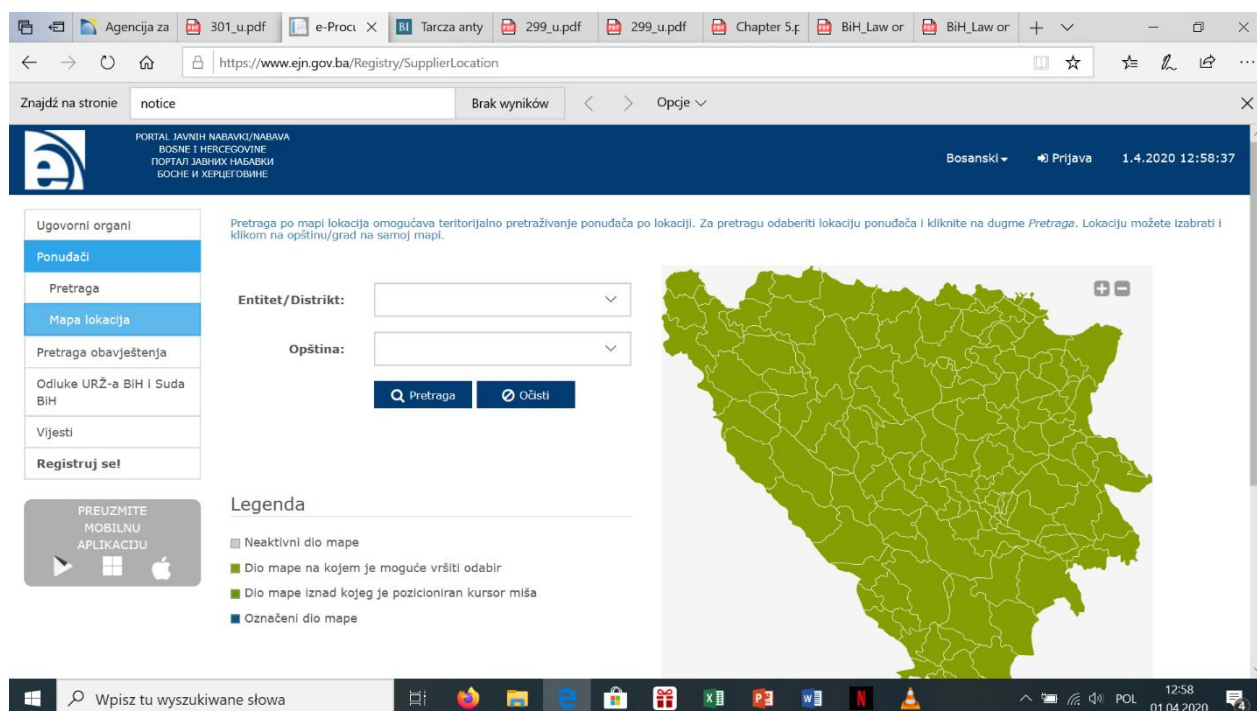
⁴¹⁵ <https://obuke.javnenabavke.gov.ba/>.

⁴¹⁶ PPL, Article 36 (1).

⁴¹⁷ <https://www.ejn.gov.ba/>.

⁴¹⁸ <https://www.ejn.gov.ba/Announcement/Search>

⁴¹⁹ <https://www.ejn.gov.ba/Registry/CALocation>.



Source: <https://www.ejn.gov.ba/Registry/CALocation>.

Information on contract notices is also summarised in the *Official Gazette of Bosnia and Herzegovina*⁴²⁰. Contracting authorities may also publish notices in other publications and websites, after having posted them on the PP Portal, but any additional publication must not differ from the notice published mandatorily on the PP Portal.

In 2019, 47 145 notices were published on the PP Portal, including 23 999 procurement notices.

9. Electronic public procurement system

The PP Strategy envisages gradual implementation of electronic procurement in Bosnia and Herzegovina. The PP Portal, launched in November 2014, merged the previously introduced functionalities of 'Go-Procure' (for publishing procurement notices), 'WisPPA' (for reporting by contracting authorities), and the registry of contracting authorities and bidders⁴²¹. The implementation of other modules, such as electronic tender submission and electronic tender evaluation, is forthcoming. The PP Portal is owned and managed by the PPA and financed from the state budget and donations. Its use is free of charge for everyone.

The PP Portal, established with the support of the German company GIZ, allows procurement notices and documents to be published, as well as reports on procurement procedures to be gathered by the PPA. The portal also posts legislation (new and previous), opinions interpreting the provisions of the law, periodic and annual monitoring reports, and PRB decisions.

The Rulebook on Terms and Conditions for the Use of E-auctions envisages that as of 1 January 2020 all procurement procedures for which price is the only award criterion should be finalised through electronic auctions. The PP Portal publishes public procurement information in such a way that division into lots, the

⁴²⁰ <http://www.sluzbenilist.ba>.

⁴²¹ <https://www.javnenabavke.gov.ba/bs-Latn-BA/eProcurement>.

use of framework agreements, the application of award criteria (lowest price or the most economically advantageous tender) and the application of e-auctions is clear at a glance.

10. Collecting statistical data on the public procurement market

Contracting authorities are obligated to report each procedure to the PPA, regardless of value or type, in addition to publishing them on their own websites⁴²². Public procurement-related data is automatically collected by the PPA directly from the PP Portal as it is published/provided.

The PPA receives information on the total value of procurement contracts awarded; the estimated value of procurements exempted from primary legislation; the values of different types of procurement contracts awarded (supplies, works or services); the types of procurement procedures used; and the share of contracts awarded to foreign bidders. Summary information about the most important statistical data is published on the PPA website⁴²³.

11. Application of procurement rules and related practices of contracting authorities

The PPL designates the PPA and the PRB as the two institutions responsible for monitoring application of the PPL and its implementing regulations⁴²⁴. The PPL does not provide any details on the PPA's monitoring activities, but a special implementing regulation adopted by the CoM deals with these issues⁴²⁵.

As part of its monitoring, the PPA verifies compliance with public procurement procedures on the basis of published procurement notices and contract award/cancellation notices, voluntary forecast transparency notices, reports on conducted procedures, texts of contracts and their annexes published on contracting authorities' websites, requests submitted by economic operators, contracting authorities and other interested parties, reports of other relevant bodies, reports of audit institutions, etc.

Criteria taken into account for monitoring are the estimated procurement value and the relevance of infringement and its impact. Relevance of infringement is defined as the seriousness of the procedure's infringement on the PPL and implementing regulations, particularly if it breaches fundamental public procurement principles such as fair and genuine competition among economic operators, equal treatment (non-discrimination), and transparency (with special emphasis on the fulfilment of conditions for applying negotiated procedures without previous publication of a contract notice).

PPA controls can be initiated either by the PPA or at the request of the abovementioned parties. The PPA is especially monitoring the correct application of the negotiated procedure without previous publication of a notice due to the urgency caused by COVID-19. For example, it is checking whether this procedure is being applied only to the extent strictly necessary, and that the relevant PPL provisions are not being abused⁴²⁶.

⁴²² PPL, Article 75.

⁴²³ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/263/informacija-o-objavljenim-obavjestenjima-u-postupcima-javnih-nabavki-u-2019-godini>.

⁴²⁴ PPL, Chapter 6.

⁴²⁵ The Rulebook on Monitoring of Public Procurement Procedures, 2016.

⁴²⁶ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/267/agencija-primijetila-zlouporebe-pregovarackog-postupka-bez-objave-obavijesti-o-nabavi>.

12. International co-operation

Although international public procurement co-operation is not explicitly mentioned as one of the PPA's tasks, in practice it does carry out this activity. PPA representatives take part in events organised within the regional⁴²⁷ or internationally (such as study visits in procurement offices of EU member states^{428, 429}).

The PPA is also responsible for managing support programmes funded by international donors. The Ministry of Finance, the PPA and PRB have been supported by a number of EU-funded projects, such as technical assistance projects during 2004-07⁴³⁰ and in 2014-16 as well as twinning programmes in 2008-09.

Most recently, since February 2019 the PPA has benefitted from the EU-funded technical assistance project IPA II Strengthening of Public Procurement System in Bosnia and Herzegovina, which is planned to last until August 2021 (with a total budget of EUR 1 939 500). The project's three components cover legislation (further approximation with the EU procurement rules, updating of manuals and guidelines, etc.); operational tools (enhancement of the national training system for public procurement officers, updating of models for standard bidding documentation); and training (seminars on different topics for 2 500 procurement officers, raising awareness of public procurement staff of contracting authorities and economic operators to prevent fraud, corruption and misappropriation of funds).

Chapter 5. Kosovo

1. Legal framework

Public procurement in Kosovo is regulated by the Public Procurement Law (PPL)⁴³¹, which entered into force on 5 October 2011 and was amended twice in 2016⁴³². It is largely compliant with the 2004 EU Public Procurement Directives, but the provisions of EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25 have not yet been fully transposed. The PPL covers both the classic sectors and the utilities sector, and it regulates the awarding of contracts both above and below the EU thresholds. It also regulates the entire procurement process, from the early stages of planning to contract management.

Implementation of the PPL is supported by secondary acts that regulate the procurement process in a detailed manner. A significant number of approved documents, such as templates and standard procurement dossiers are being provided, and templates for appealing the decisions of contracting authorities are also available⁴³³.

⁴²⁷ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/254/predstavnic-agencije-za-javne-nabavke-bih-ucestvovali-na-regionalnoj-konferenciji-o-javnim-nabavkama-u-crnoj-gori>.

⁴²⁸ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/243/studijska-posjeta-predstavnik-agencije-za-javne-nabavke-bih-institucijama-sistema-javnih-nabavki-republike-grcke>.

⁴²⁹ <https://www.javnenabavke.gov.ba/bs-Latn-BA/news/252/sudjelovanje-predstavnik-ajn-u-matra-programu-vladavine-prava-iz-oblasti-javnih-nabava-nizozemska-6-15-11-2019>.

⁴³⁰ EU Support to Public Procurement System – Phase II.

⁴³¹ Law No. 04/L-042 on Public Procurement.

⁴³² Law No. 05/L-092 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237 and Law No. 05/L-068.

⁴³³ Secondary acts and templates are accessible at https://krpp.rks.gov.net/Default.aspx?PID=StdForms&LID=2&PPRCMenu_OpenNode=62.

The Law on Public-Private Partnership (the PPP Law)⁴³⁴ complies with the basic standards set out in the EU *acquis*. It promotes prior publication of a notice as a general approach for awarding PPP contracts, but it contains only general guidelines on exclusion conditions, qualification requirements and technical specifications.

The provisions of EU Defence and Security Directive 2009/81 have not been transposed. The PPL provides for exceptions related to purchasing sensitive military equipment, but no further instructions on how to procure these items are provided in primary legislation. However, a secondary decree mandating further harmonisation with the EU *acquis* is in place⁴³⁵.

2. Institutional framework

Public procurement: The central body responsible for co-ordinating and monitoring the public procurement system is the Public Procurement Regulatory Commission (PPRC). The PPRC is led by a board composed of a chairperson and two members, all three proposed by the Government and appointed by the Assembly.

PPPs and concessions: PPP policy is developed by a Committee of five permanent members: the Minister of Finance (as chairperson) and four other members appointed by the Government⁴³⁶. The PPP Committee oversees, co-ordinates and approves PPP projects. The Central PPP Department within the Ministry of Finance (MoF) assists and advises the PPP Committee and the Minister of Finance. It also offers advisory services for contracting authorities, verifies the affordability of planned projects, and develops and promulgates best practices in the field⁴³⁷. It reports directly to the PPP Committee.

Review body: The Procurement Review Board (PRB), functional since August 2008, is a review body for complaints related to public procurement, concessions and PPPs⁴³⁸. The PRB has five members, including the chairperson. All members are appointed for a five-year term without the possibility of reappointment, and there are 18 board support staff. The Assembly appoints PRB members based on the recommendations of an independent selection body comprised of three judges appointed by the Judicial Council. The Assembly also approves the PRB budget. Economic operators are obliged to submit their complaints to the contracting authority before initiating a PRB review process.

Central purchasing body/bodies: The Centralised Procurement Agency (CPA) under the MoF implements centralised procurement solutions. Centralised procurement is mandatory if the item figures in a list proposed by the MoF and approved by the Government⁴³⁹, and for agencies with fewer than 50 employees accountable to the Assembly⁴⁴⁰. The CPA may also decide to undertake procurement procedures in place of the relevant contracting authority for reasons related to professional capacity and cost-effectiveness. It also organises complex procurement procedures at the request of contracting authorities.

⁴³⁴ Law No. 04/L-045.

⁴³⁵ Competency for issuing relevant secondary decrees is provided by the PPL, Article 3(4).

⁴³⁶ PPP Law, Article 16(2).

⁴³⁷ PPP Law, Article 18.

⁴³⁸ PRB website: <https://oshp.rks-gov.net/en/>.

⁴³⁹ PPL, Article 95(2); Administrative Instruction No. 03/2017 to Supplement and Amend Administrative Instruction No.05/2016 on Implementation of Central Public Procurement Procedures, approved by the Government on 24 February 2017 with Decision No. 02/133.

⁴⁴⁰ PPL, Article 21A.

Other central public procurement bodies: The MoF, the National Audit Office and the Anti-Corruption Agency are also active stakeholders in public procurement. The Anti-Corruption Agency monitors the quality of tender documents.

3. Main developments: evolution of the institutional framework

The PPRC was established by Article 81 of PPL No. 2003/17, which entered into force 9 June 2004. The PPRC began operating in February 2005, and 2016 amendments to the PPL assigned it additional duties, such as sole responsibility for developing training models and curricula for procurement qualifications. (Before these amendments, the PPRC had shared the responsibility for educational activities with the Kosovo Institute of Public Administration [KIPA]⁴⁴¹).

4. Central public procurement authority

The PPRC is the central body responsible for co-ordinating and monitoring the public procurement system. According to the PPL, the PPRC is a public, independent regulatory authority, accountable to the Assembly and financed from the public budget⁴⁴².

The PPRC is entrusted with numerous functions, including monitoring procurement; providing technical assistance and advice to contracting authorities and economic operators; supporting the development of electronic procurement; drafting and approving secondary legislation; and maintaining the electronic public procurement platform. The PPRC uses a database system to collect and disseminate procurement-related information.

In addition, it provides regular training for contracting authorities as well as *ad hoc* training for economic operators and other interested parties such as non-governmental organisations (NGOs)⁴⁴³. (More of the PPRC's functions and responsibilities are described below.)

The **PPRC website** (<https://krpp.rks-gov.net/>) is available in Albanian, Serbian and English, although less data are available in English than in Albanian. Nevertheless, the English-language version of the website does provide detailed and comprehensive information.

Budget and finance: The PPRC's independent budget is approved by the Assembly and financed from the public budget. The PPRC's assigned budget for 2018 was EUR 542 875, of which EUR 505 308 was spent. The 2019 budget was EUR 796 875.

PPRC management, structure, organisation and staff: The PPRC is led by a board made up of a chairperson and two members, all appointed by the Assembly on the basis of Government proposals. They are appointed for five years without the possibility of reappointment, and the PPL stipulates that the chairperson and board members must have at least a university degree and five years' experience in public finance and procurement. The PPL also provides conditions for removing a chairperson or board member from office.

The PPRC is structured into five divisions:

- Rules
- Monitoring
- Training and European Integration

⁴⁴¹ A government institution established to train civil servants, KIPA was designed to identify civil service training needs; draft and develop training programmes; and co-ordinate capacity-building projects for civil servants.

⁴⁴² PPL, Articles 86 and 87.

⁴⁴³ KIPA remains responsible for providing training facilities and co-issuing procurement certificates only.

- Information Technology
- Finance and Services.

The PPRC has 39 full-time positions, including the chairperson and board members, with 38 currently filled and 4 vacant. For comparison, total staff numbered 26 in 2015 and 31 in 2016.

Further information on PPRC structure and management can be found on its website.

The **main functions and tasks of the PPRC**, as defined in Articles 87 and 88 of the PPL, involve:

Legislation

- Establishing and publishing detailed public procurement rules regarding implementation of the PPL's public procurement procedures.

Advice and support

- Issuing opinions to contracting authorities regarding their decisions during procurement and contract management activities.
- Raising awareness among contracting authorities and economic operators regarding public procurement legislation and its objectives.
- Providing technical assistance and advice to contracting authorities and economic operators regarding application of public procurement legislation.
- Supporting the development of electronic procurement, e-auctions and communication within the field of public procurement.
- Providing and publishing written administrative interpretive rulings for both contracting authorities and economic operators.
- Developing and implementing detailed rules regarding disposal of contracting authorities' assets.
- Preparing and disseminating standard forms, materials and guidelines.

Data collection, publication, monitoring and control

- Monitoring procurement and contract management.
- Monitoring the application of negotiated procedures without publication of a contract notice.
- Establishing and maintaining the electronic Public Procurement Register.
- Establishing manual and electronic systems for monitoring compliance.
- Collecting, analysing and publishing information about public procurement procedures and awarded public contracts.
- Preparing and submitting an annual public procurement report to the National Assembly and the Government.
- Establishing and maintaining a website providing unrestricted access to public procurement-related information.
- Developing a website and electronic information system to improve the publication of notices.
- Developing and maintaining a list of contracting authorities subject to the present law.

International co-operation

- Liaising and co-operating with other organisations at home and abroad on public procurement matters.

Of all the PPRC tasks deriving from these functions, one of the most significant is the elaboration of draft legal acts as well as templates and guidelines for conducting public procurement. Another notable activity is the development of training modules and curricula for public procurement officers. Training sessions are provided by the PPRC in co-operation with KIPA.

The PPRC is also entitled, by virtue of its office or upon request from the PRB or any contracting authority, to initiate proceedings to revoke procurement officer certification. In such a case, a special commission is established within the PPRC to prepare an opinion for consideration by the PPRC board. If the board finds that the relevant certification conditions are no longer being met, it can revoke the certificate.

5. National public procurement policy and strategic procurement: environmental, social and innovative

The National Public Procurement Strategy 2017-2021 (the Strategy)⁴⁴⁴ is the first of its kind in Kosovo. It was adopted in January 2017 together with an Action Plan for 2017-2019. The Strategy aims to offer a coherent strategic framework for longer-term procurement system development. The overall objective is to continue to improve and modernise the integrated public procurement system to enable the more efficient use of public funds through greater transparency, competition and equal treatment. This would result in substantial budget savings and contribute to Kosovo's overall economic development.

The Strategy includes provisions for the PPRC and the National Public Procurement Strategy Monitoring Group to implement the monitoring process. The Action Plan for 2017-19, published on the PPRC website, envisaged Strategy implementation activities, but the Action Plan for 2020 onwards is not yet available.

Some important aspects, such as sustainable procurement (green/environmental, social or innovative), are covered in only a very general way, without specific details.

6. Drafting of legislation (primary and secondary), draft legislation consultations and preparation of other documents

Primary legislation

The PPRC is responsible for providing drafts of primary public procurement legislation. To do so, it co-operates with other institutions such as the Office of the Prime Minister, the MoF and the PRB. Before draft primary public procurement legislation is circulated, a concept document is drafted and discussed with stakeholders, in accordance with the Guidelines and Manual for Elaborating Concept Documents⁴⁴⁵. During the consultation process, all interested parties are entitled to submit their opinions. For instance, the consultation process for the draft Concept Document on Public Procurement was open from 8 October to 11 November 2019, allowing at least 15 working days for the submission of comments.

⁴⁴⁴ The National Public Procurement Strategy 2017-2021 and its Action Plan are available at: <https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=2&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=234>.

⁴⁴⁵ https://kryeministri-ks.net/wp-content/uploads/2018/06/Udhezuesi-dhe-Doracaku-per-Hartimin-e-Koncept-Dokumenteve-ENG-24-05-18_Publish.pdf.

Secondary legislation (implementation regulations)

Secondary decrees are issued by the PPRC according to PPL mandate. The current approach is to provide very detailed implementation measures in secondary decrees, the main secondary decree being A01 Rules and Operational Guidelines for Public Procurement⁴⁴⁶.

The PPRC has also issued a wide range of supporting templates, such as tendering dossiers and form letters for communicating with interested suppliers, candidates and tenderers during tendering procedures. In fact, there does not appear to be a clear and distinguishable border between secondary decrees and templates, as they are all drafted and approved by the PPRC and apparently fall under one classification.

Elaboration of operating tools: Model tender documents and templates

The PPRC designs standard forms and document templates, including tendering dossiers, to be used in public procurement procedures. These templates and dossiers, which are mandatory for contracting authorities, include:

- templates for Indicative Notice; Contract Notice; Design Contest Notice; Contract Award Notice; and Design Contest Award Notice;
- procurement forecasts;
- tender dossiers for Open, Restricted and Price Quotation Procedures;
- a tender dossier for Competitive Negotiated Procedure;
- rules for abnormally low tenders;
- a procurement code of ethics;
- a contract management plan;
- rules for filing complaints.

Standard documents and templates, including standard contract templates, are available for works, services and supply contracts but not for special procurement areas (pharmaceuticals, for instance). The electronic procurement platform, managed by the PPRC, contains manuals for users to familiarise themselves with the functionality of the system. These manuals involve activities such as economic operator registration; preparing tender dossiers for procurement procedures; preparing and submitting bids to contracting authorities; the opening of bids and the evaluation process; preparing contract award notices; signing contracts; filing requests for the clarification of tender dossiers; filing requests for reconsideration; and filing complaints with contracting authorities and the PRB through the electronic procurement platform.

Provision of legal information and opinions, and guidance on interpreting public procurement rules: General-interest issues

The PPRC provides information about public procurement on its website as well as through consultations at its premises. In addition, the PPRC help desk has been providing information on the interpretation of primary and secondary legislation to contracting authorities, economic operators and other interested parties since October 2009. It operates on business days and can be contacted by phone or e-mail, and in 2018 the Rules Department officials in charge of the help desk provided answers/explanations for 2 601 enquiries:

⁴⁴⁶ <https://krpp.rks.gov.net/krpp/PageFiles/File/STRforms2016/English/A01%20Rules%20and%20Operational%20Guidelines%20for%20Public%20Procurement.pdf>.

No.	Manner of response	Number of responses	Responses to contracting authorities	Responses to economic operators
01	Written letter (through the PPRC archive)	22	17	5
02	E-mail	967	477	495
03	Telephone	1 436	999	437
04	Meetings/consultations	171	118	53
05	Total responses	2 601	1 611	990

Source: PPRC 2018 Annual Report, pp. 51-52.

The website also contains answers to frequently asked questions (FAQs) as well as numerous responses to questions raised by individual contracting authorities.

7. Organising, maintaining and supporting national procurement training: professionalisation and capacity-building

The 2016 amendments to the PPL assigned additional duties to the PPRC, making it solely responsible for developing training models and curricula for procurement qualifications (these tasks had previously been carried out by the PPRC together with KIPA). Since the amendments, KIPA has been responsible for providing training facilities and for co-issuing procurement certificates only. Within the PPRC, the Training and European Integration Division both prepares and provides training for procurement officer certification, and also offers ongoing training. Gaps and weaknesses identified in the procurement monitoring process are used to design training curricula.

According to the PPL, each contracting authority must employ a responsible public procurement officer. Procurement officers must hold a university degree as well as a valid basic or advanced professional procurement certificate, for which the PPRC organises training (for both basic and advanced certification). Under the Memorandum of Co-operation between the PPRC and KIPA, basic training programmes should last at least 15 days and advanced programmes at least 10. Upon programme completion, trainees undergo testing and retesting that consists mostly of open questions aimed at assessing their ability to solve problems and meet procurement-related challenges.

The basic training programme conducted in 2018 lasted 15 days and was structured into 10 training modules: Legal Framework (PPL, Regulations and Procurement Guidelines); Restricted Procedures; Negotiated Competition Procedures and Negotiated Procedures without Publication; Procurement of Services; Integrity in Public Procurement; E-tendering; Tender Dossiers; Contract Management; Framework Contracts; and Appeals and Complaint Review Procedures. The 37 trainees who attained a passing score of over 51 points were awarded a Basic Professional Procurement Certificate valid for three years (2019-21). At the end of 2019, 684 procurement officers had basic certification.

All trainers selected by the PPRC must be field specialists, have professional experience and be certified in train-the-trainer skills. In addition, some experience in best international procurement practices and the EU public procurement system is required. Qualified trainers are put on a list that is renewed every five years, from which the PPRC selects trainers for each particular training activity. There were 39 certified trainers on the list at the end of 2019.

The Training and European Integration Division of the PPRC periodically analyses the training needs of public procurement officers, economic operators and PPRC staff to identify future training directions. Thus, the following general training programmes were organised in 2018:

- basic procurement training for auditors;

- basic training for directors of municipal departments on procurement and the Code of Ethics;
- basic training for school directors on procurement and the Code of Ethics;
- contract management training.

A separate and crucial training direction for the PPRC is electronic procurement. Kosovo began transitioning from paper-based to electronic procurement in 2016⁴⁴⁷, and all procurement is now undertaken electronically. The transition required considerable training, and in 2018 the following electronic procurement-related courses were offered:

- training on electronic tendering for economic operators and NGOs;
- training on electronic tendering for municipal officials (members of bid-opening and evaluation committees).

In addition, the PPRC has ensured that manuals and guides that allow users to practise and fine-tune their platform-usage skills are available on the electronic procurement platform.

The PPRC Training and European Integration Division works closely with the Monitoring Division to design training curricula that address gaps and weaknesses identified during the procurement monitoring process. One of the Monitoring Division's obligations is to periodically notify other PPRC divisions, including Training and European Integration, of identified shortcomings and recommendations to improve public procurement transactions.

8. Publication and dissemination of procurement notices: web portal operations

The PPL defines three types of financial thresholds according to estimated value:

1. High-value contracts:
 - Supply and service contracts worth EUR 125 000 or more.
 - Works contracts worth EUR 500 000 or more.
2. Medium-value contracts:
 - Supply and service contracts worth EUR 10 000 to EUR 125 000.
 - Works contracts worth EUR 10 000 to EUR 500 000.
3. Low-value contracts:
 - Supply, service and works contracts worth EUR 1 000 to EUR 10 000.

Notices must be published for high-, medium- and low-value contracts. The PPRC is responsible for publishing procurement notices and for managing the electronic public procurement web portal, and the PPL also obligates it to publish contracting authorities' notices on its website and in the Public Procurement Register. Electronic publication of notices is instantaneous, and notices are drawn up and published in all applicable languages (Albanian, Serbian and English). If the PPRC discovers errors or omissions in notice templates, it has until the bid submission deadline to notify the contracting authority. The contracting authority is then obligated to amend the notice and inform the PPRC. The PPL also mandates that the PPRC establish more detailed rules for the following notice submissions:

⁴⁴⁷ The electronic procurement system became operational for central-level contracting authorities on 1 January 2016.

- Indicative Notice
- Contract Notice
- Design Contest Notice
- Contract Award Notice
- Contract Signing Notice.

All notices are drawn up according to templates elaborated by the PPRC and there is no fee for publishing them. The PPRC website contains a search engine through which one can browse notices by various search criteria (e.g. contract value, type of contract or publication date).

9. Electronic public procurement system

The PPRC is responsible for the electronic public procurement platform's operations and maintenance⁴⁴⁸. The platform was introduced on 1 January 2016, when it became operational for central-level contracting authorities; local-level contracting authorities were able to switch their procurement operations to the platform one year later on 1 January 2017. When the platform was first launched, electronic procurement existed in parallel with paper-based procurement, so economic operators could submit bids either as hard copies or electronically through the platform. As of 5 July 2018, however, centralised procurement procedures became electronic only, and since 1 September 2018 all high-value procurement and bid submissions have had to be done through the platform. Since 1 January 2018, all procurement procedures with an estimated value of over EUR 1 000 (around 97% of all procedures) have been carried out electronically, and bid submissions in this category became electronic-only on 1 January 2019. The platform covers all procurement-cycle activities, from the formulation of annual procurement plans and procurement initiation to contract signing, including communications between contracting authorities and economic operators before bid submission.

All 190 Kosovar procurement authorities and around 7 500 economic operators are currently registered on the electronic public procurement platform. Internal and external auditors have had access to the platform for auditing purposes since October 2018, and processing and reviewing functions for public procurement complaints were also introduced at that time. The platform is financed from the state budget and is free of charge for users.

Within the PPRC, the Information Technology Division manages the platform. The division's activities include:

- Daily management of the system's hardware and software infrastructure; implementation of preventative measures and problem-solving to ensure system sustainability and uninterrupted operations.
- Co-operation and co-ordination with institutions indirectly involved in system operations, such as the MoF and the Agency for Information Society.
- Technical assistance and providing system usage instructions for contracting authorities and economic operators through the help desk (by phone and e-mail) and in-person consultations on PPRC premises.
- Providing support for PPRC officials in their respective functions.
- Updating the two portals for which the PPRC is responsible⁴⁴⁹ with new notices and PPRC decisions, answers to FAQs, etc.

⁴⁴⁸ <https://e-prokurimi.rks-gov.net/>.

⁴⁴⁹ See PPRC website: <https://krpp.rks-gov.net/> and electronic procurement platform - <https://e-prokurimi.rks-gov.net/>.

10. Collecting statistical data on the public procurement market

One of the PPRC's functions is to maintain a Public Procurement Register that, according to the PPL, shall serve as a repository for electronic copies of all notices, invitations, declarations, tender dossiers, reports, complaints and decisions issued in connection with procurement transactions. The Public Procurement Register thus provides the PPRC with considerable raw data, and the electronic public procurement platform gives the PPRC access to all public procurement transactions of an estimated value of more than EUR 1 000.

Information about public procurement transactions collected by the PPRC can be used for a variety of purposes, such as developing red flags for monitoring as well as for targeted policymaking in the public procurement area.

Statistical information on the public procurement system is provided in the PPRC's annual reports⁴⁵⁰. Among the data included in the 2018 Annual Report are:

- the number of contracts signed in 2018 by type of contracting authority;
- the value of contracts signed, by type of contracting authority;
- the value of contracts signed, by type of contract;
- the total number of contracting authorities and breakdown by type;
- the share of public procurement in gross domestic product (GDP);
- the total value of contracts exceeding the EU Procurement Directives' application thresholds;
- the value of contracts signed, by source of financing.

11. Application of procurement rules and related practices of contracting authorities

The PPL tasks the PPRC with monitoring and supervising the implementation of public procurement legislation. To this end, the PPRC practises three types of monitoring: planned; *ad hoc*; and notice-based.

All monitoring is undertaken by the PPRC's Monitoring Division and concerns the legality of contracting authorities' actions (i.e. whether they have properly adhered to the requirements of the PPL and secondary decrees).

Planned monitoring is done each year according to a PPRC board-approved schedule and is essentially *ex post* monitoring of procurement transactions of selected contracting authorities; these activities may also cover public procurement contract management. When violations are identified, a meeting is organised with the contracting authority to clarify the situation and discuss measures to be taken. Planned monitoring reports are circulated to the relevant contracting authority, its oversight body and the PPRC's Information Technology Division for publication on the PPRC website.

Ad hoc monitoring may be initiated for specific procurement transactions (including for contract implementation) based on information received from other contracting authorities, economic operators or third parties. In cases of violation, particularly when the contracting authority has failed to document its decision, advice is provided to rectify the problem if possible. A meeting is also arranged with the contracting authority to clarify the situation and discuss measures to be taken. A monitoring report is then circulated to the relevant contracting authority, its oversight body, the Information Technology Division for publication on the PPRC website and, finally, the economic operator, if applicable.

⁴⁵⁰ https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=2&PCID=-1&CtlID=HTMLStatic&CID=PPRCannual&PPRCMenu_OpenNode=90.

Monitoring based on notices is carried out upon:

- Reception of a notice from a contracting authority on the intent to apply a negotiated procedure without contract notice. The PPRC issues an opinion to the contracting authority on the correctness of the decision and it is up to the contracting authority to decide whether to take the opinion into account.
- Reception of a notice from a contracting authority on the intent to reject a tender because of an abnormally low price offer. The PPRC issues the contracting authority its opinion on the correctness of the decision and the contracting authority may decide whether to take the opinion into account.
- Reception of a notice template for publication. If any breach or omission is detected, the PPRC notifies the contracting authority, which is then obligated to rectify the mistake and submit the amended notice.
- Observation of any potential irregularity in any type of procurement transaction-related information created by the contracting authority in the electronic procurement system up to the bid opening date. In such cases, the PPRC issues an opinion to the contracting authority regarding a possible breach of the law, and it is up to the contracting authority to decide whether to act on this opinion.

Approximately 8 396 public procurement notices were monitored by the PPRC in 2018.

In addition to these activities, the PPRC Information Technology Division should:

- Develop and approve a methodology and manual for monitoring compliance and measuring public procurement system performance, and set quantitative and qualitative indicators for both.
- Develop a work plan to implement the methodology and manual; regularly report to the PPRC board on all findings and integrate them into reports; and support any actions arising from performance and compliance findings.
- Prepare and elaborate annual compliance and performance reports for submission to the PPRC board, to inform preparation of a public procurement system enhancement strategy as well as recommendations for improvement.

12. International co-operation

Functions related to international co-operation are performed by the PPRC Training and European Integration Division, which liaises with international donors and provides support for PPRC participation in the European integration process. Part of the PPRC's mandate is to co-operate with the EU Delegation, the Organisation for Economic Co-operation and Development/Support for Improvement in Governance and Management (OECD/SIGMA), the US Agency for International Development (USAID) and the World Bank. The ongoing USAID project, particularly active from 2017 to 2019, is now focused on updating/modifying contract management functionality and developing a new tool for contractor performance evaluation.

The Improving Administrative Capacities in Public Procurement in Kosovo project, operational from 2012 to 2015, was managed by Kosovo's European Commission Office and implemented by a Planet S.A.-led international consortium. The project consisted of four components:

- Provision of support for procurement policymaking, by offering guidelines for public procurement officers and assistance in implementing managerial and organisational enhancement measures for the PPRC, PRB and CPA.

- Implementation of a public procurement training programme to strengthen administrative capacities and co-ordination among the main stakeholders.
- Assistance in implementing primary and secondary legislation at the central and municipal levels; training and mentoring in contract monitoring; and advising on the regular use of the framework contracts.
- Information campaigns to raise public and private sector (as well as general public) awareness and understanding of the benefits of an accurate public procurement system.

The Technical Assistance to Support the Implementation of Public Finance Management Reforms in Kosovo project was launched on 27 February 2020. The project has several public finance management components and one in the sphere of public procurement (support for central public procurement institutions to effectively implement public procurement legislation). The project is managed by the EU Office in Kosovo and implemented by the German development agency *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) GmbH, the Ernst and Young Law Partnership and the European Institute for Public Policy.

Chapter 4. Montenegro

1. Legal framework

Public procurement in Montenegro is regulated by the Public Procurement Law (PPL)⁴⁵¹ which was adopted on 17 December 2019 entered into force on 7 January 2020 and became applicable 7 July 2020. The PPL replaced provisions of the previous public procurement law from 2011⁴⁵². The legal framework in this field is complemented by a number of implementing regulations adopted by the Government and the Ministry of Finance.

The PPL covers public procurement in the public and utilities sectors for contracts above specified thresholds⁴⁵³, and it covers all the procurement procedures envisaged in EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25.

As regulated by the EU Concessions Directive, concessions are covered by the Law on Public-Private Partnerships (the PPP Law)⁴⁵⁴ adopted on 17 December 2019 and applicable as of 4 July 2020. The PPP Law defines the PPP concept and regulates the procedures for PPP project approval and the selection of private partners. In the awarding of works or service concessions, PPL provisions are applied along with the additional specific rules of the PPP Law.

⁴⁵¹ Official Gazette No 074/19 of 30 December 2019.

⁴⁵² Official Gazette Nos. 042/11, 057/14, 028/15 and 042/17.

⁴⁵³ The PPL provides for the following application levels (thresholds): 1) contracts of up to EUR 5 000; 2) supply and service contracts from EUR 5 000 to EUR 20 000; 3) works from EUR 5 000 to EUR 40 000; 4) supplies and services from EUR 20 000 to the EU thresholds; 5) works from EUR 40 000 to the EU thresholds; and 6) works from EUR 40 000 to the EU threshold. Contracts not exceeding the threshold values specified in points 1-3 are not covered by the PPL; instead, the procedure for conducting such procurements will be defined in the implementing regulations to be adopted by the Ministry of Finance (MoF).

⁴⁵⁴ Official Gazette No. 073/19 of 27 December 2019.

Procurement in the area of defence and security is covered by the PPL⁴⁵⁵ but details concerning relevant contract procedures should be defined in the regulation adopted by the Government. At the moment of writing the text of the draft has been already published⁴⁵⁶.

2. Institutional framework

Public procurement: Public procurement competency is the domain of the Ministry of Finance (MoF), a line ministry for procurement. The MoF discharges relevant functions through one of its organisational units, the Public Procurement Directorate (PPD). The MoF is responsible for public procurement policy development and is also the competent body for drafting legislation, co-ordinating implementation of the public procurement system and co-operating with international and other organisations.

PPPs and concessions: The MoF is in charge of policy development for PPPs and concessions and is also the competent body for drafting relevant legislation, co-ordinating its implementation and co-operating with international and other organisations in the PPP and concessions area. The new PPP Law established a new authority – the Montenegrin Investment Agency (MIA) – which has the status of a legal entity. It is managed by a council and a director: the council consists of a president and four members, all nominated by the Government for five-year terms, and its director is nominated by the council following a public competition, and also appointed for five years. MIA is financed from the state budget, donations and other sources. Its role is to review and accept PPP proposals, provide opinions and suggestions concerning the implementation of PPP projects, promote and monitor investments, and keep a register of PPP projects. MIA deals mostly with implementing Montenegro's investment policy and promoting wider investment opportunities, while PPP-related activities represent a smaller part of its duties and responsibilities.

Review body: The independent State Commission for the Review of Public Procurement Procedures (the SC)⁴⁵⁷ is the institution responsible for reviewing public procurement complaints. The SC is composed of a president and six members appointed by the Government through a public selection process; their term of office is five years, with the possibility of reappointment.

Central purchasing body: The Property Administration (PA) undertakes centralised purchasing. On 1 January 2018, the role of the PA was expanded to cover mandatory centralised procurement for central government bodies and state agencies in twelve categories of products and services (central government contracting authorities and state agencies are obligated to procure these goods and services through the PA⁴⁵⁸). The PA conducts procurement procedures for these goods and services in accordance with the contracting authorities' procurement plans and signs the relevant contracts⁴⁵⁹.

Other central public procurement bodies: Through its public procurement division, the Administration of Inspection Affairs (AIA) carries out inspection controls, verifying the legal compliance of public procurement procedures as well as procedures for awarding PPP projects and concessions.

⁴⁵⁵ PPL, Article 174 – 177.

⁴⁵⁶ <http://www.ujn.gov.me/2020/06/predlog-uredbe-o-nabavkama-u-oblasti-odbrane-i-bezbjednosti-shodno-zakonu-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019/>.

⁴⁵⁷ <http://www.kontrola-nabavki.me>.

⁴⁵⁸ The goods and services subject to this centralised procurement are: office supplies, computer materials and equipment, fuel and engine oils, office furniture, means of transport, electronic communications services (mobile and fixed telephony), electronic communications services (internet), sanitary and other services (disinfection, insect and animal pest control), insurance of civil servants and state employees, and insurance of assets held by the state of Montenegro (movable and immovable property).

⁴⁵⁹ Decree on Planning and Conducting Centralized Public Procurement (Official Gazette, no, 069/20).

3. Main developments: Evolution of the institutional framework

The Public Procurement Commission (PPC)⁴⁶⁰ and the Public Procurement Direction (PPDi)⁴⁶¹ were established based on Montenegro's first PPL adopted in 2001⁴⁶². The PPC basically acted as both a public procurement monitoring and regulatory institution and as a review body for dealing with economic operators' appeals of contracting authorities' decisions. The PPDi (which had previously operated as the Administration for Joint Services of State Authorities) in turn performed the functions of a central purchasing institution (for state authorities) and also supported other contracting authorities (such as local authorities) in discharging their procurement activities. There was also a separate Public Works Direction responsible specifically for public works contracts.

In 2007, the Public Procurement Administration (PPA) was established on the basis of the second PPL⁴⁶³. It became operational in July 2007, and in 2008 the new independent public procurement review body (the SC) was established. Thus, regulatory (monitoring and advisory) functions (the responsibility of the PPA) became clearly separated from public procurement review (the purview of the SC).

A unified inspection administration was created in 2012 (the AIA) to make inspections more efficient, prevent positive and negative competency conflicts, promote co-operation among inspection bodies, raise inspector professionalism, suppress possible corruption, and improve inspector co-operation with other bodies in performing inspections.

At the beginning 2019 the PPA became the PPD – part of the MoF – to ensure that public procurement policymaking rests within the jurisdiction of the ministry responsible for the area⁴⁶⁴.

4. Central public procurement authority

As one of the MoF's organisational units (directorates), the PPD is responsible specifically for public procurement⁴⁶⁵. The legal bases for the functioning of the PPD are the 2001 PPL, Article 19, and the new PPL, Article 44, but it does not have the capacity of a legal entity. When the PPA was incorporated into the structure of the MoF at the beginning of 2019, the PPD took over all its employees.

The PPD carries out numerous functions and activities, including preparing legal drafts, providing advice and support to contracting authorities, disseminating information relevant to public procurement, organising professional development and procurement officer training, collecting data, and monitoring. The PPD also manages the Public Procurement Portal (PP Portal), which is used to advertise public procurement procedures.

The **PPD website** (<http://www.ujn.gov.me>) provides detailed and accurate PPD contact information, including staff names and telephone numbers. The website's information in English is very limited, and at the time of writing some information in Montenegrin had not been updated, so that new information about the PPD is mixed with outdated text on the PPA⁴⁶⁶.

⁴⁶⁰ Komisja za javne nabavke.

⁴⁶¹ Direkcija za javne nabavke.

⁴⁶² Official Gazette No. 40/01.

⁴⁶³ Official Gazette No. 46/06.

⁴⁶⁴ OECD (2019), *Monitoring Report Montenegro*, p. 28, OECD, Paris.

⁴⁶⁵ Pravilnik o unutrašnjoj organizaciji i sistematizaciji, (retrieved from the PPD website, 8 December 2019).

⁴⁶⁶ For example, the Responsibilities section contains obsolete information about the PPA instead of the PPD.

Budget and finance: PPD funding is provided from the State Budget, as part of MoF financing. EUR 385 725 of the MoF budget is dedicated to the PPD.

PPD management, structure, organisation and staff: The PPD is managed by a general director and is based in Podgorica, with one employee working in Berane, a town in north-eastern Montenegro. It comprises three departments⁴⁶⁷:

1) the department for public procurement regulatory-legal affairs and monitoring (nine employees), divided into two units (divisions):

- the division for regulatory-legal affairs in the field of public procurement;
- the division for monitoring in public procurement.

2) the department for training, professional development and professional examination for public procurement (six employees);

3) the department for improvement of the public procurement system and the management of electronic public procurement (four employees).

The PPD currently has 19 full-time employees.

The responsibilities (tasks) of the MoF (PPD) concern legislative activities; monitoring and control; and providing opinions, training and support to contracting authorities. Its primary functions involve:

Legislation

- Preparing legal drafts, initiating and participating in the adoption of public procurement regulations.

Advice and support

- Providing advisory assistance at the request of contracting authorities.
- Establishing and maintaining the PP Portal to ensure public procurement transparency.
- Disseminating information specific to public procurement procedures.
- Preparing and publishing a list of contracting authorities on the PP Portal.
- Encouraging electronic public procurement.

Training and education

- Organising and conducting professional development and procurement officer training.
- Organising professional exams for officials performing tasks in the area of public procurement.

Data collection, publication, monitoring and control

- Monitoring functioning of the public procurement system.
- Monitoring the compliance of national public procurement legislation with EU legislation.
- Verifying grounds for applying certain public procurement procedures.
- Preparing and submitting annual public procurement reports to the Government.
- Performing control inspections.

⁴⁶⁷ <http://www.ujn.gov.me/sistematizacija/>.

International co-operation

- Co-operating with international organisations, institutions and specialists in the field of public procurement.

5. National public procurement policy and strategic procurement: environmental, social and innovative

The Strategy for Development of the Public Procurement System 2016-2020 was prepared by the PPA and published on a dedicated page of the PPD website⁴⁶⁸. The Strategy is comprehensive, and although it does not include a chapter on PPPs/concessions, it identifies the main problems of the public procurement system and priorities for 2016-20. It also contains recommendations and proposals for activities related not only to improving the public procurement system but to harmonisation with the EU *acquis*.

Furthermore, the Strategy covers the strategic use of public procurement, including aspects of green procurement, the promotion of socially responsible procurement, innovative procurement and access to public contracts for small and medium-sized enterprises (SMEs).

As the MoF is the line ministry responsible for creating and implementing national public procurement policy, it monitors implementation of the Strategy.

Co-ordinating and monitoring Strategy implementation

A permanent monitoring and co-ordination body has been established to streamline Strategy implementation. It is made up of representatives of the MoF, the PPD, the SC and other relevant state authorities, non-governmental organisations (NGOs), businesses and other interested stakeholders. It publishes meeting minutes as well as annual Strategy implementation reports on the PPD website⁴⁶⁹.

An Action Plan that lists numerous activities, together financing sources and activity costs, supports implementation of the Strategy. The current Action Plan covers July 2019 to December 2020.

The MoF plans to have a new strategy on public procurement and PPPs for 2021-25 drafted by the end of 2020. The drafting process is expected to involve several state authorities as well as business sector and NGO representatives, international partners and the general public.

⁴⁶⁸ <http://www.ujn.gov.me/strategija-razvoja-sistema-javnih-nabavki-u-crnoj-gori-za-period-2016-2020-godine/>.

⁴⁶⁹ <http://www.ujn.gov.me/category/koordinaciono-tijelo/>.

Support for SME access to public procurement

The Strategy identifies problems and obstacles faced by SMEs wishing to participate in public procurement procedures, both on their own and together with other bidders (issues involve responsibility, qualifications and cumulative evidence of eligibility).

It also proposes actions to counteract undue disadvantages and put SMEs on equal footing with their larger competitors, including offering training for SMEs and contracting authorities. To strengthen SME access to public procurement system, the Strategy proposes to:

- Harmonise public procurement legislation with the new EU directives in this area.
- Initiate and promote the use of green, social and innovative public procurement.
- Encourage the exchange of good practices among contracting authorities by establishing a platform for sharing experiences, information and knowledge.
- Elaborate specific advice, criteria and indicators to be used in public tenders.
- Stimulate the integration of these criteria at the public procurement planning stage.
- Improve SME public procurement capacity by offering training, developing guidelines and organising seminars for SMEs.
- Encourage greater SME employment and development by increasingly favouring the most economically advantageous bids.
- Train contracting authorities on how to facilitate procurement to access of SMEs.
- Analyse the possibility of abolishing or substantially reducing the fee for review procedures.
- Lift the fees to obtain various certificates.
- Encourage contracting authorities to implement public procurement by lots.

As part of a project implemented in conjunction with the World Bank, the PPA published a Guide to Promote the Participation of Small and Medium-Sized Enterprises in the Public Procurement Market in Montenegro, which figures in its training programme. The PPA also organised four roundtable meetings in 2016 specifically on SME participation in public procurement procedures.

6. Drafting of legislation (primary and secondary), draft legislation consultations and preparation of other documents

Primary legislation

The MoF is responsible for submitting drafts of public procurement laws and their amendments to the Government, with the drafts prepared by the PPD. The draft of the new PPL was originally prepared by the PPA (it was initiated in 2017), but work was continued by the PPD after the PPA was transferred to the MoF.

The process of preparing and adopting the new draft PPL was transparent, unlike the PPL amendments of 2017, for which public consultations were not held. For the new PPL, all stakeholders had the opportunity to make comments/suggestions on the draft during the two rounds of public consultations. The first round was in February-March 2019, and consultations were then repeated with a much shorter time frame (the MoF⁴⁷⁰ and PPD websites accepted comments and suggestions 6-17 June 2019).

⁴⁷⁰ <http://www.mif.gov.me/vijesti/202312/Javne-konsultacije-povodom-teksta-Predloga-zakona-o-javnim-nabavkama.html>.

Secondary legislation (implementing regulations)

Implementing rules issued on the basis of the PPL are adopted mainly by the MoF. They deal with, for example, further details concerning the use of electronic procurement such as operating conditions and instructions for use of EPPS and application of electronic auctions the functioning of tender committees⁴⁷¹; detecting and combatting corruption in public procurement⁴⁷²; programme and method of professional education in public procurement field ; correcting arithmetical errors in tenders⁴⁷³; applying contract award criteria⁴⁷⁴; forms of documents used in public procurement⁴⁷⁵; award of low-value public procurement⁴⁷⁶ and recording public procurement activities⁴⁷⁷. Implementing regulations also deal with the application of environment-related criteria⁴⁷⁸. Furthermore, the Government should adopt decrees related to method of planning and implementation of centralised procurement, types of works activities covered by the PPL⁴⁷⁹, the method of conducting procurement of goods and services for diplomatic and consular missions and military – diplomatic representatives, the list of military equipment and products and procedure concerning implementation and on reporting and keeping of records concerning procurement in the field of defence and security.

Elaboration of operational tools: Model tender documents and templates

The MoF designs standard forms and document templates for public procurement procedures. In practice, these documents are prepared by the PPD and supplied through rulebooks that also provide instructions on how to fill them in. Standard forms (templates) are currently available among others for tender documentation for all types of procedures: open procedure, restricted procedure, competitive procedure with negotiations, competitive dialogue, innovation partnership etc., minutes and records concerning various activities and forms of decisions adopted by contracting authorities in the process of procurement (decision on exclusion of an economic operator, selection of the best tender, cancellation of the procedure etc.).

Provision of legal information and opinions, and guidance on interpreting public procurement rules: General-interest issues

The PPD supports contracting authorities and economic operators by offering legal consultations on PPL interpretation, consultations on procurement planning and reporting, and help using the PP Portal. A call centre/help desk can also be contacted by e-mail and telephone (a call centre is available every day from 10:00 to 13:00). The annual 2018 report prepared by the PPD does not provide information on the number

⁴⁷¹ Rulebook on More Detailed Criteria for Setting up Commission for Conducting Public Procurement Procedures, Official Gazette No. 055/20.

⁴⁷² Rulebook on Methodology and Contents of Records on Violations of Anti-corruption Rules, Official Gazette Nos. 063/11 and 056/15.

⁴⁷³ Rulebook on Methodology of Determining Calculation Errors in Tenders in Procurement Procedures, Official Gazette No. 24/15.

⁴⁷⁴ Rulebook on the Methodology of Expressing Sub-criteria for Selection of the Most Advantageous Tender in Procurement Procedures, Official Gazette No. 024/15.

⁴⁷⁵ Rulebook on Standard Forms for Application of Public Procurement Procedures, Official Gazette No 066/20.

⁴⁷⁶ Rulebook on the Way of Conducting Simple Procurement, Official Gazette No 061/20.

⁴⁷⁷ Rulebook on Forms of Records in Public Procurement Procedures Official Gazette, No. 061/20.

⁴⁷⁸ Rulebook on Methodology for Determining Energy Efficiency in Public Procurement, Official Gazette No. 09/16.

⁴⁷⁹ Official Gazette No. 057/20.

of legal opinions issued by the PPD, but the report for 2017⁴⁸⁰ states that 102 requests for interpretation were submitted. Requests resulted in the organisation of 68 meetings between the requesting parties and PPD staff, and in the PPD issuing written opinions.

A number of opinions issued by the PPA in response to questions submitted by contracting authorities during 2015-17 have also been published⁴⁸¹, as well as opinions of other relevant authorities concerning documents used in public procurement procedures⁴⁸².

The public procurement manual prepared by the PPA in 2012 and published on the PPD website has apparently not been amended to take account of changes to the PPL since its adoption.

7. Organising, maintaining and supporting national procurement training: professionalisation and capacity-building

The PPD is tasked with preparing and delivering public procurement training/education for public procurement officers.

According to the PPL⁴⁸³, a public procurement officer must have level seven (VII) of the national qualification framework and a certificate confirming that she has passed the professional exam for performing public procurement tasks.

Implementing regulations should determine programme content (topics covered, literature) and the organisation of professional exams for procurement officer candidates. In 2018, the PPD organised seven exams for public procurement officers: 130 candidates took part and 80 passed. There are currently 660 certified procurement officers whose names, contact details and workplace are published on the PPD website.

The PPD also publishes an online public procurement course on its website⁴⁸⁴, developed by the EU-financed project Training in the Field of Public Procurement for the Western Balkans and Turkey. The telephone numbers of the 12 people trained and certified over the course of the project, along with those of the trainers, are posted on the PPD website⁴⁸⁵.

In 2018, the PPD has organised 15 public procurement training sessions attended by 476 participants. Most training activities are in Podgorica, but a few also take place in Pljevlja and Berane. The speakers (lecturers) for PPD-organised training sessions are the PPD director, heads of MoF/PPD departments (units) and members of the SC⁴⁸⁶. More intense training is planned for 2020 within the framework of the technical assistance project (see below) due to adoption of the new PPL. Training-of-trainers instruction will also be included.

⁴⁸⁰ <http://www.ujn.gov.me/2018/07/godisnji-izvjestaj-o-javnim-nabavkama-u-cg-za-2017-godinu/>.

⁴⁸¹ <http://www.ujn.gov.me/pregled-najvaznijih-misljenja-u-2015-godini/>.

⁴⁸² <http://www.ujn.gov.me/strucna-misljenja-nadleznih-institucija/>.

⁴⁸³ PPL, Article 47.

⁴⁸⁴ <http://www.ujn.gov.me/obuka/player.html>.

⁴⁸⁵ <http://www.ujn.gov.me/2013/12/obuka-u-oblasti-javnih-nabavki-namijenjena-korisnicima-instrumenta-pretpostupne-pomoci-ipa-za-zapadni-balkan-i-tursku-u-organizaciji-uprave-za-javne-nabavki-i-internacionalnog-trening-centra-iz-tor-2/>.

⁴⁸⁶ For an example of a training agenda, see: <http://www.ujn.gov.me/2019/09/poziv-za-ucescenadvodnevnoj-obuciu-okviru-programa-strucnog-osposobljavanja-i-usavršavanja-iz-oblasti-javnih-nabavki-kojace-se-odrzati-u-podgorici-16-17-oktobra-2019-godine/>.

The PPD signed a memorandum on interinstitutional co-operation in public procurement with the Chamber of Commerce and the anti-corruption agency in order to jointly organise and support seminars, roundtables and other professional meetings. Their aims are to introduce good public procurement practices, to prepare and promote innovative public procurement plans, and to develop and distribute various publications and other informational materials to raise public awareness about the PPL. The PPD also co-operates with NGOs⁴⁸⁷, and in 2018 they jointly organised one panel discussion and two conferences.

8. Publication and dissemination of procurement notices: web portal operations

Public procurement-related material is published on the PP Portal⁴⁸⁸ maintained by the PPD. Information is submitted by contracting authorities registered on the portal and is reviewed by the portal administrator before final publication⁴⁸⁹. Additionally, notices should be published in at least one daily national newspaper within three days of procurement documentation being published on the PP Portal⁴⁹⁰. The PPL particularly stipulates the publication of public procurement plans, contract notices, decisions on candidates' qualifications, decisions on selection of the most favourable bid, decisions on suspension of public procurement procedures, decisions on annulment of public procurement procedures, public procurement contracts, changes or amendments to public procurement plans, contract notices, decisions or contracts, and other decisions referred to in the PPL.

The obligation to publish procurement notices (and other documents) depends on specific threshold values. The PPL requires for contracts reaching (on the annual basis) EUR 20,000 for supplies and services and EUR 40,000 for works, full compliance with the procedural requirements of the PPL⁴⁹¹. For contracts valued less than these amounts (referred to by the PPL as 'simple procurement'), contracting authorities may apply simplified procedures established by the MoF. They may also (but are not obligated to) apply regular procurement procedures.

The new PP Portal was launched in May 2015, and the PPD provides instructions on how to submit information to the portal on its website⁴⁹². Using the portal's search function does not require registration – registration is mandatory only for contracting authorities to publish notices and other documents. Procurement data can be searched by subject, contracting authority or type of procedure, but not by bidder or contract registration number. In 2018, 19 062 documents were published on the PP Portal. This is less than in previous years⁴⁹³ because in 2017 documents related to low-value procurement became no longer subject to mandatory publication. An average of 71 documents is published every day, but as much as 27% of those submitted are refused due to non-fulfilment of the PPL requirements⁴⁹⁴.

⁴⁸⁷ NVO Institut alternativa (<https://institut-alternativa.org/>) and the Center for Democratic Transition (<http://www.en.cdtmn.org/>).

⁴⁸⁸ <http://portal.ujn.gov.me/delta2015/login.jsp>.

⁴⁸⁹ <http://www.ujn.gov.me/2015/06/english-uputstvo-za-objavljivanje-dokumenata-na-portalu-za-javne-nabavke/>.

⁴⁹⁰ PPL (2011), Article 62.

⁴⁹¹ PPL, Article 27 (2).

⁴⁹² <http://www.ujn.gov.me/category/uputstva/>.

⁴⁹³ 25 815 in 2016 and 23 106 in 2017.

⁴⁹⁴ According to the 2018 report on public procurement.

9. *Electronic public procurement system*

The use of electronic tools in public procurement is currently limited to the publication of notices and other documents on the PP Portal⁴⁹⁵; submitting tenders electronically is possible but not generally required. However, the EU-funded technical project and the legislative changes introduced by the new PPL should lead to the establishment and implementation of e-procurement.

The PPL requires that communications and information exchanges between contracting authorities and economic operators, including tender submissions and requests to participate, be fully electronic, conducted through the Electronic Public Procurement System (EPPS). However, the PPL does list some specific situations in which the use of electronic means is not mandatory.

The PPL also specifies general availability, interoperability and non-discriminatory requirements for the EPPS. Tender submissions may require the use of advanced electronic signatures supported by a qualified digital certificate when contracting authorities deem the risk level high enough to warrant it. Public procurement (tender) documents are to be directly available to any interested economic operator electronically through the EPPS, and procurement documents should be available from the moment the public procurement procedure is launched. In fact, publication of the tender documentation (through the EPPS) should initiate any public procurement procedure, except for negotiated procedures without previous publication. Access to tender documentation through the EPPS should be free of charge.

10. *Collecting statistical data on the public procurement market*

The MoF (PPD) is responsible for collecting and analysing statistical data on public procurement. Data are collected through the reports submitted by contracting authorities and the notices and procurement documents published on the PP Portal.

By 28 February every year, contracting authorities are obligated to deliver a report to the PPD about public procedures conducted and contracts concluded in the previous year, including information on urgent, low-value and defence and security procurements. Reports are delivered in electronic and written form, in accordance with the standard forms established by the MoF⁴⁹⁶.

In turn, the MoF must deliver an annual report to the Government by the end of May about the preceding year's activities and including data on public procurement system functioning. The reports, prepared by the PPD and submitted by the MoF, are published on the PPD website.

⁴⁹⁵ As of 1 July 2020.

⁴⁹⁶ Rulebook on Reporting about Conducted Public Procurement Procedures and Concluded Contracts, Low-Value Procurement and Urgent Procurement, Official Gazette No. 52/17.

Since 2019, the PPD's annual reports on the functioning of Montenegro's public procurement system have had a new, more visually attractive format⁴⁹⁷. They are also more concise than previous reports but still contain all relevant statistical data, although some information about PPD activities is missing⁴⁹⁸. Especially useful is a one-page summary (entitled Identity Card of Public Procurement) at the beginning of the report, as it offers the reader a synopsis of the most important data⁴⁹⁹.

Annual reports contain information about legislative changes during the reporting period (i.e. the adoption of new laws, amendments and implementing regulations); various activities of the PPD and other institutions relevant to public procurement (i.e. the Agency for the Protection of Competition, the Anti-Corruption Office); progress in implementing the public procurement strategy; and information about the public procurement market (the value of contracts awarded, the number of concluded contracts, numbers and percentages of applications of various procedures, the average number of tenders submitted, and the number of procurement procedures cancelled). Finally, the report concludes with recommendations for public procurement development.

The MoF plans to broaden the scope of information collected and published, mainly to measure system efficiency. Access to this information is currently restricted by the limited reporting obligations of the implementing regulations, so the MoF is planning to adopt new implementing provisions to collect information on:

- the share of contracts awarded based on most economically advantageous tender (i.e. the best price-quality ratio);
- the number and value of framework agreements concluded;
- the number of procurement procedures for which only one tender was submitted;
- the number of procurements divided into lots;
- procurements exempted from the PPL;
- SME participation;
- activities related to green public procurement;
- activities related to socially responsible procurement.

11. Application of procurement rules and related practices of contracting authorities

The PPD is responsible for monitoring the functioning of the public procurement system. Monitoring activities, as defined in the provisions for MoF internal organisation, include:

- overseeing the public procurement system;
- collecting and analysing information about the public procurement system and proposing improvement measures;
- preparing situational analyses concerning infringement of anti-corruption rules;

⁴⁹⁷ <http://www.ujn.gov.me/2019/06/godisnji-izvjestaj-o-javnim-nabavkama-u-cg-za-2018-godinu/>.

⁴⁹⁸ For example, information about support provided to contracting authorities or economic operators concerning the interpretation of PPL provisions.

⁴⁹⁹ Names of relevant institutions, references to binding legal provisions, the number of contracting authorities and economic operators, the value of the public procurement market, shares of public contracts awarded to national and foreign bidders, the number of notices published, percentage shares of respective public procurement procedures, etc.

- collecting and analysing of statistical data and other information on concluded contracts and conducted public procurement procedures;
- helping prepare lists of contracting authorities and contractors based on contract-award decisions;
- reporting in accordance with the obligations of the Central European Free Trade Agreement (CEFTA) and the Agreement on Government Procurement (GPA); preparing and delivering annual public procurement reports for the Government; etc.

Prior approval to apply the negotiated procedure: The PPD issues opinions on the application of negotiated procedures both with and without prior publication⁵⁰⁰. Without conducting an examination procedure, the PPD should make a decision on a contracting authority's request within eight days of receiving the request. Approvals should be valid until the end of the fiscal or financial year in which the request was submitted. If the PPD does not issue a decision within the time limit, the contracting authority may conduct a public procurement procedure without the required consent. In addition, rejections of approval may be appealed to the MoF. In 2018, 79 requests to apply negotiated procedures were submitted to the MoF: 49 were approved, 29 were rejected as unfounded and 7 were withdrawn.

Administration of Inspection Affairs: The compliance of public procurement activities with the PPL and implementing authorities is inspected in accordance with Articles 209 and 210 of the PPL. The purpose of inspections is to verify the legal compliance of public procurement procedures, including low-value contract procurements.

Inspections are performed by the public procurement section of the AIA (composed of eight inspectors), and in 2018 it inspected 351 contracting authorities/entities (compared with 220 in 2017). AIA inspectors follow a list of procedural requirements (objects of control), with the number of objects of control rising from 1 459 in 2017 (with 139 irregularities identified) to 3 518 in 2018 (with 309 irregularities identified). The AIA has the authority to impose fines, which it did in 42 cases in 2018 (for a total of EUR 43 750). Inspectors control 14 types of activities listed in the PPL, related to, among other things, adopting and changing public procurement plans; fulfilling conditions for the performance of public procurement officer tasks; meeting the requirements for launching public procurement procedures; ensuring the correctness and completeness of procurement documentation content, publication and changes; complying with time allowances for the receipt of tenders; applying anti-corruption and conflict-of-interest measures; and recording procurement activities.

12. International co-operation

Functions related to international co-operation are performed by the PPD department responsible for public procurement regulatory-legal affairs and monitoring.

The PPD serves as the public procurement contact point for the European Commission and other international organisations. It is also a contact point for the GPA Secretariat, as representatives of the PPD take part in meetings of the World Trade Organization (WTO) GPA Committee in Geneva.

There is a special section on the PPD website dedicated to the WTO/GPA, where information about all related events is published⁵⁰¹. Information about developments in EU integration is provided in EC progress reports and statements about the Chapter 5 (Public Procurement of EU Negotiations) working group, etc.⁵⁰². In co-operation with the United Nations Development Programme (UNDP), the World Bank,

⁵⁰⁰ PPL, Article 31.

⁵⁰¹ <http://www.ujn.gov.me/category/gpa-wto/>.

⁵⁰² <http://www.ujn.gov.me/category/eu-integracije/>.

and the European Bank for Reconstruction and Development (EBRD), the PPD organises public procurement-related events such as seminars and workshops.

The PPD is also responsible for managing aid programmes related to public procurement. Two technical assistance projects funded by the European Union are currently being implemented:

- A 2014 Instrument for Pre-accession Assistance (IPA) project, Improvement and Strengthening of the Institutional Set Up and Legal Framework in the Areas of Public Procurement and State Aid (valued EUR 870 000), was launched in September 2018 and will last two years. Its two components relate to public procurement and state aid⁵⁰³, with the public procurement element targeting further harmonisation of the PPL and implementing regulations with the EU procurement directives; the elaboration of manuals, guidelines and other instructions for implementing a new legal framework; training in the field of public procurement and providing support for relevant authorities; and public awareness campaigns.
- The second project, Implementation of an Electronic Public Procurement System in Montenegro, is valued at EUR 1.65 million. The three-year project was implemented in December 2018, and its action plans envisages a range of activities to establish an e-procurement system, ensure its operability, implement it and provide training. The first (pilot) phase of the project should be completed by September 2020.

Concerning PPPs, the MoF was supported by the EBRD-financed project Capacity Enhancement and Enabling Framework Development for Public-Private Partnerships (PPPs) and Concessions Projects in Montenegro. The project began in May 2019 and is expected to be completed in January of 2020. Its core objective is to provide the MoF/Commission for Concessions with technical assistance for PPP project preparation and implementation, capacity-building (including the development of regulatory and guiding materials) and training.

The PPD also participates in regional co-operation with Western Balkan administrations and Turkey. For instance, in June 2018 the PPA (predecessor of the PPD) organised a regional conference on procurement in co-operation with SIGMA. The event was dedicated mainly to harmonising public procurement systems with international standards, practical experience in implementing new legal provisions, forthcoming developments and recent challenges in the field of public procurement.

Chapter 5. Republic of North Macedonia

1. Legal framework

Public procurement in North Macedonia is regulated by the Public Procurement Law (PPL)⁵⁰⁴. The PPL was adopted on 28 January 2019 and became applicable 1 April 2019. The PPL implements EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25 and, except for some minor deviations, it is highly compliant with relevant EU legislation. The regulatory framework reflects the fundamental EU Treaty principles of transparency, equal treatment and non-discrimination.

The PPL covers the classic sectors as well as the utilities sector, and it regulates the awarding of contracts both above and below the EU thresholds. It envisages all the award procedures which are provided for in

⁵⁰³ The project's two beneficiaries are the PPD (previously the PPA) and the Agency for Protection of Competition.

⁵⁰⁴ Official Gazette No. 24/19.

the EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25. It has no specific exemptions that exceed what is allowed by these directives, and techniques and instruments for electronic and aggregated procurement, including innovation partnerships and electronic catalogues, are also covered. Furthermore, the PPL has special provisions to prevent corruption and conflicts of interest.

PPL implementation is supported by implementing regulations (rulebooks) that regulate the technical, detailed aspects of procurement procedures and provide document and form templates, instructions on how to fill them in, and lists of participation fees for training activities and for using the electronic procurement system. Additionally, standard procurement documents and model contracts are available for various types of procurement procedures⁵⁰⁵ and subject matters (separately for goods, services and works).

Public-private partnerships (PPPs) and concessions are subject to a separate Law on Concessions and Public-Private Partnerships (C&PPP Law)⁵⁰⁶. The material scope of the C&PPP Law covers various types of concessions, including both those defined by EU Concessions Directive 2014/23 and those for goods of general interest (e.g. land). The general principles of transparency, equal treatment and non-discrimination are well reflected in national legislation. Except for concessions for goods of general interest, the PPL provisions for awarding works and services contracts (including review and remedies procedures) must be applied to procedures for awarding concession/PPP contracts. However, EU Concessions Directive 2014/23 has yet not been transposed.

There is also separate legislation for procurement in the area of defence and security, adopted 27 August 2019⁵⁰⁷ to transpose the provisions of EU Defence and Security Directive 2009/81.

2. Institutional framework

Public procurement: The central body responsible for co-ordinating and monitoring the public procurement system is the Public Procurement Bureau (PPB), organised as a legal entity within the Ministry of Finance (MoF).

PPPs and concessions: The C&PPP Law established⁵⁰⁸ a 15-member PPP Council comprising representatives of ministries, the General Secretariat, the Government, the PPB, the Association of the Units of Local Self-Government, and independent experts to promote PPPs, recommend PPP projects and propose amendments to PPP regulations. The PPP Unit in the Ministry of Economy (MoE) is the competent authority for PPPs and maintains the PPP Register of awarded contracts.

Review body: The State Appeals Commission (SAC) is an independent, five-member state-financed authority with the capacity of a legal entity⁵⁰⁹. It resolves appeals of contract-award procedures, as prescribed by the PPL, as well as appeals of procedures to award concessions and conclude PPPs. In

⁵⁰⁵ E.g. for low-value procurement, simplified open procedures, etc.

⁵⁰⁶ Law on Concessions and Public-Private Partnerships with subsequent amendments, Official Gazette No. 6/2012 of 11 January 2012.

⁵⁰⁷ Official Gazette No. 180/19.

⁵⁰⁸ C&PPP Law, Article 13.

⁵⁰⁹ State Appeals Commission website: <https://dkzjn.gov.mk/>.

addition, the SAC is required to act ex officio concerning six major violations listed in the PPL⁵¹⁰. Review procedures may be initiated by economic operators⁵¹¹ as well as the PPB and the state attorney when state or public interests are involved⁵¹².

Central purchasing body: National legislation stipulates that the Government may establish central purchasing bodies⁵¹³. Centralised procurement is currently conducted by the Common Government Services (CGS)⁵¹⁴, for example for landline and mobile phone services, airline tickets and other items. Framework agreements concluded by the CGS are available to central government entities, including the PPB.

3. Main developments: Evolution of the institutional framework

The PPB was established in February 2005, on the basis of the first PPL⁵¹⁵, to take over the tasks previously performed by the MoF's Department for Public Procurement. The PPB became operational in June 2005 after appointment of its director and staff of 12⁵¹⁶. Originally deprived of legal personality, the PPB became a legal entity within the MoF in September 2009.

The organisational structure of the PPB has changed over the years to reflect its evolving responsibilities, its staff slowly growing to reach the current 35. The largest increase in human resources staff followed adoption of the new PPL in 2019 and the discharging of new PPB-related administrative control functions. In 2006 the first e-procurement system was established with US Agency for International Development (USAID) assistance, and the information system for contract notices became operational in 2008 following adoption of the second PPL. In 2010 both systems were integrated.

Following amendment of the second PPL⁵¹⁷ in 2013, a new institution – the Public Procurement Council (PPC) – was established to consider applications submitted by contracting authorities under specified circumstances prescribed in the PPL before publishing a contract notice or initiating procurement procedures. PPC approval was required particularly when the contracting authority intended to:

- Form a lot of multiple items in the procurement of drugs, medical devices and/or medical consumables.
- Use selection criteria (other than personal situation and the ability to pursue a professional activity) that could be fulfilled by only a limited number of economic operators.

⁵¹⁰ PPL, Article 141: time allowances set by the contracting authority shorter than required by the PPL; non-publication of contract notice modifications when required; lack of exclusion of economic operators despite the existence of grounds for exclusion; conducting negotiations after expiry of time allowances for tender submissions in open or restricted procedures; use of qualification criteria contrary to the PPL; and discriminatory or competition-restricting provisions in procurement documents.

⁵¹¹ Any economic operator that has a legal interest in the award procedure and has suffered damage, or may suffer damage, consequent to violation of the PPL may initiate an appeal. Any economic operator having legal interest in obtaining the public contract or framework agreement, and which has suffered or could suffer damage by a possible PPL violation may initiate a review of the contracting authority's decisions, actions and failures to undertake action in the public procurement procedure.

⁵¹² PPL, Article 138 (2).

⁵¹³ PPL, Article 61 (7).

⁵¹⁴ <https://vlada.mk/sozr>.

⁵¹⁵ 2004 PPL, Article 112, Official Gazette No. 19/2004.

⁵¹⁶ According to the PPB annual activities report for 2006: <http://www.bjn.gov.mk/category/godishni-izveshtai/page/2/>.

⁵¹⁷ The second PPL was in force January 2008-April 2019.

- Base selection on the criterion of most economically advantageous tender.
- Conclude a multiple framework contract with fewer than seven economic operators.
- Use technical specifications that only a limited number of economic operators could comply with.
- Use the negotiated procedure without prior publication of a contract notice when no tenders or participation requests had been submitted in response to two conducted procedures; for reasons of extreme urgency; or for additional works or services not included in the original contract.

The PPC dealt with a significant number of requests in 2015 (19 407) and 2016 (16 068).

The PPC was established to stimulate competition and promote the fundamental principles of transparency, value for money and non-discrimination⁵¹⁸. However, both the European Commission and SIGMA expressed their concerns about the potential negative impact of PPC establishment and the approval process that contracting authorities were obligated to follow⁵¹⁹. Contracting authorities, economic operators and non-governmental organisations (NGOs) also criticised the approval process (particularly the role of the PPC), highlighting the additional burdens – both administrative and financial – on the public procurement system, and they also reported problems arising from PPC decision-making⁵²⁰.

The PPC was finally dissolved in November 2017 due to numerous concerns expressed by all parties and the lack of tangible evidence that it stimulated competition and promoted value for money. At least two reports⁵²¹ provided empirical evidence that the PPC's sweeping control mechanism did not deliver the results expected. On the contrary, it was costly to apply; time- and energy-consuming; irrelevant for the integrity of the procurement system; and counterproductive in terms of efficiency and efficacy. Studies conducted after PPC abolishment showed positive results in an increasing number of transparent and competitive versus non-transparent and non-competitive procedures, and an increase in the average number of bids⁵²².

4. Central public procurement authority

The PPB, organised as a legal entity within the MoF is the central body responsible for co-ordinating and monitoring the public procurement system. The legal basis for the PPB's establishment and functioning is Article 43 of the PPL (2019), and the MoF is in charge of submitting proposed changes to public procurement legislation to the Government.

⁵¹⁸ Opening statements of the Annual Report of the Operations of the Public Procurement Council for 2014 (PPC Annual Report 2014 and ministerial statement in parliamentary debate of 30 September 2013).

⁵¹⁹ EC (2015), *The Former Yugoslav Republic of Macedonia Report 2015*, p. 36, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf; and OECD (2015), *Baseline Measurement Report The former Yugoslav Republic of Macedonia*, p. 99, OECD, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf>.

⁵²⁰ CCC (Center for Civil Communications) (2015), *Monitoring the Implementation of the Public Procurement Procedures in the Republic of Macedonia*, Report No. 25, CCC, Skopje, pp. 12-13.

⁵²¹ State Audit Office (2017), "Efficiency of the policies and instruments in the public procurement system and the procedure for granting approval to publish a contract notice"; and *SIGMA Report - Overview of the Public Procurement System*, Public Procurement Bureau, North Macedonia, <http://www.bjn.gov.mk/razni-analizi/izveshta-na-sigma-pregled-na-sistemot/> (Macedonian only).

⁵²² OECD (2019), *Monitoring Report North Macedonia*, OECD, Paris, <http://www.sigmaweb.org/publications/Monitoring-Report-2019-North-Macedonia.pdf>.

Overall, the PPB is responsible for: monitoring the application of legislation; providing advisory and operational support for contracting authorities and economic operators; elaborating manuals and guidelines on public procurement rules; organising and conducting public procurement training activities; managing and developing the Electronic Public Procurement System (EPPS); preparing reports on public procurement procedures based on public procurement data collected; and co-operating with international institutions (including co-ordination with the European Union).

The EPPS⁵²³ is used to advertise public procurement contracts and to conduct public procurement electronically. Under the new PPL, the PPB is now tasked with administrative/*ex ante* control of decisions on procedure selections and cancellations before they can be dispatched.

The **PPB website** (<http://www.bjn.gov.mk>) information is primarily in Macedonian, with some limited content available in English.

Budget and finance: PPB funding comes from various sources: the State Budget (30%) and from its own revenues, i.e. fees for publishing procurement notices (20%), registration of economic operators on the EPPS (26%), and fees paid for PPB educational activities (4%). The remaining 20% is drawn from previous budget years' savings. Since the PPB is a part of the MoF, it has a dedicated part of the MoF budget rather than a separate budget of its own. Fees collected from EPPS users are considered PPB revenue for the improvement and development of the public procurement system. The annual PPB budget amounts to approximately MKD 85 million (EUR 1.4 million).

PPB management, structure, organisation and staff: The PPB is managed by a director who organises and ensures the legal and efficient performance of duties and tasks, and undertakes measures within the competence of the PPB according to the PPL.

Upon MoF proposal, the Government appoints PPB directors for four-year terms (and can also dismiss them). The PPL sets the minimum conditions candidates must satisfy to be considered for this post: a candidate should be a lawyer or economist with at least seven years' working experience and five years in the field of public procurement. The PPL also regulates the circumstances in which directors may be dismissed before their mandate expires.

Following adoption of the new PPL, the PPB was reorganised to assume new tasks related to administrative control. A new department dealing with issues of control was created, bringing the number of PPB departments to three:

- the department for normative issues, training and international relations (eight employees)
- the department for monitoring the public procurement system and managing the EPPS (eight employees)
- the department for control (nine employees).

The greatest number of staff are employed in the units dealing with public procurement control, monitoring and analysis. Legal issues, policy development, training, European integration and international relations all fall within the purview of one department.

The PPB currently has 31 full-time staff and 4 part-time employees, including those responsible for managing finances, human resources, access to information, protection of personal data, etc.

PPB responsibilities and tasks are defined in Article 45 of the PPL. They concern legislative activities; monitoring and control; and providing opinions, training and support to contracting authorities and economic operators. Its primary functions involve:

⁵²³ <https://e-nabavki.gov.mk/PublicAccess/Home.aspx#/home>.

Legislation

- Submitting proposals to the MoF for the adoption of laws and other legal acts in the field of public procurement.

Advice and support

- Issuing opinions on PPL provisions and implementation.
- Answering questions of contracting authorities and economic operators.
- Developing models for standard tender documentation and contracts.

Training and education

- Organising and delivering public procurement training for civil servants and other people.
- Establishing minimum professional qualifications for public procurement officers and developing guidelines and manuals.

Data collection, publication, monitoring and control

- Collecting, processing and analysing public procurement data and preparing statistical reports.
- Maintaining and updating records of public procurement contracts awarded.
- Performing oversight (control) of the legality of public procurement procedures and submitting annual reports to the Government on its involvement in public procurement system functioning.

International co-operation

- Co-operating with international institutions and other foreign entities on matters related to public procurement system development.

5. National public procurement policy and strategic procurement: Environmental, social and innovative

The latest public procurement policy document, Strategic Priorities of the PPB for Further Development of the Public Procurement System in North Macedonia, covers 2014-2018 - and relates to all aspect of the public procurement system. Published on the website of the PPB⁵²⁴, it covers public procurement as well as concessions/PPPs. It does not, however, address sustainable public procurement (green/environmental or socially responsible procurement, or innovation) in any detail.

The PPB also prepares drafts of strategies, and other institutions involved in creating public procurement policy are the MoF; the Government of North Macedonia; the MoE; SAC; and the State Anticorruption Commission. The views of contracting authorities, economic operators, business associations and NGOs are also considered during the consultation process leading to policy adoption.

A new strategy is expected to be drafted as part of a Twinning Project, and it will also cover concessions and PPPs.

⁵²⁴ <http://www.bjn.gov.mk/wp-content/uploads/2018/11/Strategic-Priorities.pdf>.

6. Drafting of legislation (primary and secondary), draft legislation consultations and preparation of other documents

Primary legislation

The PPB is the main institution involved in elaborating legislative drafts to align national public procurement legislation with EU provisions. The draft of the PPL adopted in 2019 had been prepared by the PPB.

Adoption of public procurement legislation is preceded by public consultations involving stakeholders such as economic operators, contracting authorities, business associations and NGOs; the European Commission is also consulted once the draft has been prepared. Stakeholders are involved in procurement legislation-related public consultations through roundtables and organised and *ad hoc* public procurement forums, and they are also invited to submit comments on draft documents published on the Internet. They receive feedback indicating whether their comments or suggestions will be included.

Secondary legislation (implementing regulations)

Implementing rules issued on the basis of the PPL are adopted mainly by the MoF. Only two implementing regulations are adopted by the Government: one concerning the Common Procurement Vocabulary and the other containing an indicative list of contracting authorities. Drafts of implementing regulations are elaborated by the PPB.

Following adoption of the new PPL in 2019, a number of implementing regulations were issued, such as the Rulebook on the Manner of Filing, Form and Contents of the Report from Public Procurement Procedures, the Rulebook on the Format and Contents of the Minutes from the Opening of Tenders Meetings, the Rulebook on the Method of Correcting Arithmetical Errors in Tenders During the Evaluation of Tenders⁵²⁵, the Rulebook on the Method of Keeping Records of Public Procurement and the Rulebook on using the Electronic Public Procurement System⁵²⁶. The MoF also adopted the Code of Conduct in Application of Public Procurement to ensure that the basic principles of awarding public contracts are respected⁵²⁷.

The draft of the new PPL prepared by the PPB in 2017-2018 was subject to extensive public consultation. It was published twice on the National Electronic Registry of Legislation (ENER)⁵²⁸: first the initial draft, and then the second draft resulting from the initial round of consultations. All stakeholders on both occasions had the opportunity to submit comments/suggestions online. The results of the public consultations were also published in a special report with a table listing all comments submitted and indicating whether they were accepted, partially accepted or not accepted⁵²⁹. For comments accepted and partly accepted, the report detailed all relevant modifications to the draft, and for those rejected, the reasons for rejection are also provided.

⁵²⁵ All three published in the Official Gazette No. 225/19.

⁵²⁶ Official Gazette No. 64/19.

⁵²⁷ Official Gazette No. 263/19. Also available at: <http://www.bjn.gov.mk/podzakonski-akti-zjn/kodeks-na-odnesuva-e-pri-sproveduva-e-na-avnite-nabavki/>.

⁵²⁸ <https://ener.gov.mk/>.

⁵²⁹ https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=41840.

Elaboration of operational tools: Model tender documents and templates

The PPB is responsible for elaborating standard forms and templates of documents used in public procurement. These standard forms and templates are provided in rulebooks adopted by the MoF.

The PPB prepares, for example, standard forms for procurement notices (other than those for publication in the Official Journal of the European Union), standard procurement documents, and templates of various documents used in public procurement procedures. There are two types of standard documents:

- model contracts⁵³⁰ for mobile telephone services, the elaboration of information technology (IT) programmes (software), and works and supplies;
- model tender documentation⁵³¹ for low-value procurement, simplified open procedures, open tenders, and declaration of independent preparation of a tender.

It appears that only some of the standard documents published on the PPB website were updated following adoption of the new PPL⁵³². Standard forms and templates are prepared by PPB staff without any external support.

Provision of legal information and opinions, and guidance on interpreting public procurement rules: General-interest issues

The PPB provides information about public procurement on its website, particularly through a number of manuals (on public procurement in general, on the most frequent errors in public procurement procedures, on using the EPPS, etc.), brochures (on public procurement planning, contract award criteria and tender evaluation, legal protection, etc.) and guides (on negative references). The manual on public procurement published on the PPB website⁵³³ was last updated in 2017, so has not yet been revised to cover the new PPL.

The PPB supports contracting authorities and economic operators by offering legal consultations with experts from the PPB concerning procurement planning and reporting, tasks related to the PPL, and use of the EPPS. On request, the PPB also provides legal interpretations of PPL provisions. Email (electronic) and telephone help desks are available (a call centre is open every day from 13:30 to 15:30).

In addition, the PPB publishes answers to frequently asked questions (FAQ) on its website. To make it easier to find the relevant answer, FAQs are divided into 18 categories, including public procurement planning, legal protection, negative references, e-auctions, technical dialogue, market research, reliance on third-party resources and evaluation of tenders.

⁵³⁰ <http://www.bjn.gov.mk/category/modeli-na-dogovori/>.

⁵³¹ <http://www.bjn.gov.mk/category/tenderska-dokumentaci-a/>.

⁵³² As of 1 March 2020.

⁵³³ <http://www.bjn.gov.mk/priracnici-za-avni-nabavki/priracnik-za-avni-nabavki-chetvrto/>.

7. Organising, maintaining and supporting national procurement training: Professionalisation and capacity-building

The PPB is responsible for preparing and delivering public procurement training/education activities for public procurement officers. It issues certificates confirming that participants have passed exams⁵³⁴.

The MoF implementing regulations prescribe the education programme, the planning and implementation of education and examinations, and the method for issuing certificates and extending their validity for exams passed by public procurement officers.

The PPB website has a publicly available register of certified procurement officers. The register lists the names of certified procurement officers, the institutions they work for and their certificate validity period. There are 1 171 procurement officers with valid certificate⁵³⁵, and 300 new procurement officers are certified each year on average, while 270 have their certificate renewed.

Training sessions provided by the PPB are aimed at both contracting authorities and economic operators, although the former are much more frequent participants⁵³⁶. Public invitations to participate in the training are published on the PPB website, and anyone interested has to submit a request electronically as well as proof of fee payment in accordance with the MoF Tariff Book⁵³⁷.

The PPB offers the following types of training: five-day and one-day sessions for contracting authorities and two-day events for economic operators. Agendas of all individual training sessions of the same type are identical and are published on the PPB website. There must be at least 12 participants but not more than 22, and the dates of training activities (for certification, recertification and exams [see below]) for each month are posted on the PPB website⁵³⁸, as is an annual plan of training sessions⁵³⁹.

In 2019 the PPB organised 30 training events attended by 540 participants. After training sessions, participants must write an exam as per the public procurement education programme. Exams are conducted by committees charged with implementing the education and examination, and the committee delivering trainer education is made up of managerial-level administrative servants from the PPB staff working on professional activities in the field of public procurement.

Two new trainers were certified in 2019, both from the PPB, bringing the total number of certified trainers to 34⁵⁴⁰.

⁵³⁴ PPL, Article 46. Certificates confirming passed exams are valid for a limited period: three years from the date of issue for public procurement officers and two years for trainers. It is possible to extend certificate validity (by three years for officers and two years for trainers) by attending a certificate extension training session and passing an exam, but an application to participate in the training event must be submitted to the PPB before expiry of the certificate or it will not be renewed.

⁵³⁵ As of 20 April 2020.

⁵³⁶ For example, in 2017 there were 20 training sessions for contracting authorities and one for economic operators.

⁵³⁷ <http://www.bjn.gov.mk/podzakonski-akti/tarifnik-za-edukacija>.

⁵³⁸ <http://www.bjn.gov.mk/plan-za-edukaci-a/>.

⁵³⁹ <http://www.bjn.gov.mk/novosti/objaven-godisen-plan-za-edukacija-2019/>.

⁵⁴⁰ In principle, public procurement training should be provided by trainers holding a certificate issued by the PPB based on their having passed the exam for trainers. However, the PPB may exceptionally issue certificates to trainers who have not passed the exam if they have at least three years of professional experience related to public procurement obtained in the PPB or SAC.

8. Publication and dissemination of procurement notices: web portal operations

The PPL provides for all types of procurement-related notices required by the 2014 EU Directives⁵⁴¹, and it also requires the publication of notices on performed contracts. The thresholds for notice publications are relatively low: EUR 1 000 for supplies and services in the public sector and EUR 5 000 for works.

Contracting authorities publish notices on the PPB-managed EPPS; however, the PPB does not verify the content of notices before they are published.

Contract notices are also published in the Official Gazette (<http://www.slvesnik.com.mk/jn.nspix>) for simplified open procedures; open procedures; restricted procedures; competitive procedures with negotiation; negotiated procedures with publication of a contract notice; competitive dialogues; and innovation partnerships. Contract notices and design contest notices must be also published in the OJEU⁵⁴², provided that the estimated value (without VAT) is equal to or greater than the following thresholds:

1. in the classic public sector

- EUR 130 000 for supplies or services and for design contests;
- EUR 5 000 000 for works;
- EUR 750 000 for social and other special services.

2. in the utilities sectors

- EUR 400 000 for supplies or services and for design contests;
- EUR 5 000 000 for works;
- EUR 1 000 000 for social and other special services.

Contracting authorities/entities must pay a fee of MKD 600 to publish procurement notices on the EPPS, and a higher fee of MKD 6 150 is charged to publish notices on the qualification system and about concessions.

Access to the EPPS, including to the content of notices, requires prior registration. It is possible to view contract notices in the Official Gazette free of charge, but it does not offer any search tools and notices are published in pdf format.

9. Electronic public procurement system

The PPB manages and operates the EPPS, which is a custom-designed system⁵⁴³. The EPPS enables the filling in and publishing of annual procurement plans, contract notices, notices for simplified competitive procedures, contract award notices, records on simplified competitive procedures and procedure cancellations, and it permits contract award procedures and auctions to be carried out electronically (using electronic devices for data processing and storing).

Simplified competitive, open and restricted procurement procedures can be conducted through the EPPS. All procurement procedure-related activities (the publication of contract notices and tender documentation, tender submissions, public openings and evaluations, decision making, decision notifications, and communication with economic operators) are carried out electronically.

⁵⁴¹ PPL, Article 63.

⁵⁴² PPL, Article 41 (3).

⁵⁴³ <https://e-nabavki.gov.mk/PublicAccess/Home.aspx#/home>.

In addition, e-auctions can be held through the EPPS as the last phase of a simplified competitive procedure, open procedure, restricted procedure, competitive dialogue or negotiated procedure with prior publication of a contract notice, as well as to reopen competition among the economic operators party to a framework agreement. The EPPS does not cover the invoicing phase. However, procurement reviews (the submission of appeals) can be conducted through the platform.

The EPPS can be used for the types of procurement covered by the PPL as well as by the law concerning defence and security contracts. For procurement in the fields of defence and security, however, the EPPS is not used to submit tenders in electronic form. The EPPS system can also be used for contracts to establish a PPP, as long as they are awarded in accordance with the provisions of the PPL. In 2018, the EPPS was used by 1 458 contracting authorities and 6 608 economic operators (out of a total 14 813 registered), while 21 406 contract notices were published on the platform (17 227 in 2017).

Submitting tenders requires the use of an advanced electronic signature supported by a qualified digital certificate. System usage requires previous registration by economic operators, and they are charged fees for its use on the basis of Tariff Book established by the MoF⁵⁴⁴. The amount of the annual fee depends on the type (size) of the economic operator⁵⁴⁵.

10. Collecting statistical data on the public procurement market

The PPB is responsible for collecting and analysing statistical data on public procurement. Data is collected directly from information published regularly on the public procurement portal (the EPPS). Information is made available to the PPB through the records of public procurement procedures kept by contracting authorities on the EPPS in separate record books that should contain all documents on any given public procurement procedure.

Following completion of a public procurement procedure, the contracting authority should also prepare a dossier of the procedure that contains the public procurement decision, the contract notice, tender documentation, received tenders or requests, a report on the evaluation conducted, the decision on selection of the most advantageous tender or on cancellation of the procedure, the signed public contract or framework agreement, the contract award notice and the notice on performance of the contract.

The PPB collects information covering public sector and utilities procurements, but not PPPs/concessions or defence and security contracts. The following types of information are collected: total value of public procurement; values of different types of procurement contracts awarded (supplies, works, services); types of procurement procedures used; and percentage shares of contracts awarded to SMEs and foreign bidders, etc.

Public procurement information is available to the general public in the form of open data⁵⁴⁶.

The MoF prescribes the manner of record-keeping for public procurement procedures and the content of the record book⁵⁴⁷. Information collected by the PPB is published in its annual activity reports to the Government, and all reports are also published on the PPB website⁵⁴⁸.

Annual reports contain information about legislative changes that took place in the reporting period (the adoption of new laws, amendments and implementing regulations), various activities of the PPB and other

⁵⁴⁴ <http://www.bjn.gov.mk/podzakonski-akti/tarifnik-esjn/>.

⁵⁴⁵ Micro enterprises pay around EUR 35, small and medium-sized enterprises (SMEs) around EUR 70, and large enterprises around EUR 130.

⁵⁴⁶ <https://e-nabavki.gov.mk/opendata-announcements.aspx#/home>.

⁵⁴⁷ <http://www.bjn.gov.mk/podzakonski-akti/pravilnik-za-evidentna-kniga/>.

⁵⁴⁸ <http://www.bjn.gov.mk/category/godishni-izveshtai/>.

institutions relevant to the public procurement (SAC, the administrative courts, the court of auditors, the Commission for Protection of Competition and the anti-corruption office), and information about the public procurement market (the value of contracts awarded, number of conducted procedures, competition in public procurement, the use of electronic procurement, etc.).

11. Monitoring and control of application of procurement rules and related practices of contracting authorities

In accordance with the new PPL⁵⁴⁹, the PPB is now in charge of administrative/*ex ante* controls to be performed before decisions on selection or cancellation of a procedure can be dispatched. Only selected procurement procedures should be verified, particularly those with a value above EUR 500 000 (goods and services) and EUR 2 million (works), as well as procedures flagged as high-risk by the risk assessment system and other randomly selected procedures.

The PPB conducts the administrative control before the contracting authority dispatches a decision on selection or cancellation of the procedure. The administrative control should be performed within ten days of the PPB informing the contracting authority that it will be conducting a control. The last step of the process is the submission of minutes from the administrative control performed.

If no irregularities are identified during the administrative control that would affect the outcome of the procurement procedure, the contracting authority may continue the procedure. However, if the PPB identifies irregularities affecting the procedure's outcome, it should instruct the contracting authority on how to remove the irregularities or cancel the procedure if remedies are not possible at that phase of the procedure. If in performing the administrative control the PPB identifies one or more irregularities that qualify as a breach of the PPL or as an offence, it may file misdemeanour charges with the competent court or notify the appropriate public prosecution office.

The contracting authority is obligated to act in accordance with the PPB's instructions unless it submits an additional explanation to the PPB within three working days of receiving the minutes on the administrative supervision performed. The PPB should then decide within five working days of receiving the additional explanation whether it will accept it, and modify and supplement the initial minutes if it agrees with the additional explanation, or whether it will confirm the initial findings of the minutes and send the contracting authority's additional explanation to SAC. In the latter case, SAC should review both the PPB instructions and the additional explanation to decide whether the additional explanation is acceptable.

The MoF should describe in more detail how to select the procedures that will be subject to administrative control, and the manner of performing the administrative control.

The PPB also issues opinions on applying negotiated procedures without prior publication⁵⁵⁰. A contracting authority may initiate a negotiated procedure without prior publication of a contract notice only upon receiving a prior opinion from the PPB, with the exception of cases in which there is a direct threat to human safety, life or health. The PPB should issue the opinion within ten working days of receiving the request, or five working days when the negotiated procedure is justified by extreme urgency. If the PPB fails to issue its opinion within the prescribed time limit, the contracting authority may initiate a procedure without it.

Since adoption of the new PPL in 2019, the PPB has received 310 requests for opinions concerning application of the negotiated procedure without prior publication.

⁵⁴⁹ PPL, Articles 172-179.

⁵⁵⁰ PPL, Article 45 (1), indent 5.

12. International co-operation

Functions related to international co-operation are performed by employees of the PPB's department for normative issues, training and international relations.

The PPB is the public procurement contact point for the European Commission and other international organisations. It is also the contact point for the Agreement on Government Procurement (GPA) Secretariat: North Macedonia has had observer status since 2013 and is in the process of acceding to the GPA.

In co-operation with the United Nations Development Programme (UNDP) and the World Bank, the PPB organises public procurement-related events such as seminars and workshops. The PPB is also responsible for managing support programmes funded by international donors.

In 2006-2008, the PPB was a beneficiary of an EU-financed technical assistance project, and in 2012-2013 it was supported by the German administration through the twinning project "Support to the Public Procurement System"⁵⁵¹. The PPB is also assisted by the EC Technical Assistance and Information Exchange (TAIEX) instrument and SIGMA, and in 2020 the "Strengthening budget planning, execution and internal control functions"⁵⁵² twinning project was launched with a consortium of EU Member State administrations from the Netherlands, Croatia, Bulgaria and Latvia. One of the project's goals is to improve the legal compliance, efficiency and transparency of the public procurement system. For the procurement component, the leading partner is Croatia.

Chapter 6. Serbia

1. Legal framework

Public procurement in the Republic of Serbia is regulated by the Public Procurement Law (PPL) which was adopted on 23 December 2019 (the PPL)⁵⁵³, entered into force on 1 January 2020 and is applicable as of 1 July 2020. Application of some of its provisions has been postponed, however, until Serbia's accession to the European Union. The PPL was adopted to harmonise national public procurement provisions with EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25, and also to fulfil one of the benchmarks set in Chapter 5 (Public Procurement of the Negotiations Concerning Accession of Serbia to the European Union). The PPL covers public procurement above specified thresholds⁵⁵⁴ and introduces fully electronic communications into the field of public procurement, including electronic tender submissions and a new public procurement portal (PP Portal). The PPL replaced the previously applicable provision included in the old PPL which was in force since 1 April 2013⁵⁵⁵.

The legal framework for public procurement is completed by implementing regulations adopted by the Government, Minister of Finance or Public Procurement Office (see below for more details).

⁵⁵¹ MK/2008/IB/FI/O1.

⁵⁵² MK 18 IPA FI 0119.

⁵⁵³ Official Gazette No. 91 of 24 December 2019.

⁵⁵⁴ RSD 1 000 000 (approximately EUR 8 500) for supplies and services contracts and design contests, and RSD 3 000 000 (EUR 25 500) for public works contracts. Higher thresholds are envisaged for procurement by Serbia's diplomatic missions abroad (respectively RSD 15 000 000 and RSD 650 000 000, i.e. EUR 128 000 and EUR 5 500 000) and for social and other special services: RSD 15 000 000 (EUR 128 000) in the public sector and RSD 20 000 000 (EUR 170 000) in the utilities sector.

⁵⁵⁵ Official Gazette No. 124 of 29 December 2012, No. 14 of 4 February 2015 and No. 68 of 4 August 2015.

Public-private partnerships (PPPs) and concessions are subject to a separate PPP Law⁵⁵⁶. The main principles and EU rules are well reflected in national legislation, the list of exclusions does not extend beyond those permitted by EU rules, and competitive procedures for awarding concession contracts are provided in the PPP Law. Nevertheless, the provisions of EU Concessions Directive 2014/23 have not yet been transposed.

The PPL also covers defence and security procurement contracts as defined by EU Defence and Security Directive 2009/81. However, further details concerning this type of procurement, such as procedures, conditions and the manner of their implementation, as well as communications during the procedures, are defined in the implementing regulation adopted by the Government - a Decision on Procurement in the Field of Defence and Security⁵⁵⁷.

2. Institutional framework

Public procurement: The Public Procurement Office (PPO) is the central administrative body responsible for public procurement. The PPO is an independent entity with legal personality, and it is directly accountable to the Government.

PPPs and concessions: The distribution of responsibilities among central institutions in the PPP and concessions area was unclear until late June 2017. According to the Law on Ministries⁵⁵⁸, the Ministry of Trade, Tourism and Telecommunications (MTTT) was responsible for issues related to concessions and PPPs, but in practice it was not performing the corresponding tasks. The Ministry of Economy (MoE) played the most important role within the Commission for Public-Private Partnerships (the PPP Commission)⁵⁵⁹, as a representative of the minister serves as its president. A change in the Law on Ministries⁵⁶⁰ vested the MoE with competency for preparing, proposing and implementing PPP and concession regulations and measures. The PPP Commission is an interdepartmental public body, with nine members (including its president and vice-president) representing various ministers, the autonomous provinces and the City of Belgrade.

Review body: The Republic Commission for the Protection of Rights in Public Procurement Procedures (RCPRPP)⁵⁶¹ is the first-instance review body for both public procurement and PPP/concession procedures. It is an autonomous institution accountable only to the National Assembly (the Parliament), and the PPL prescribes its statutes, responsibilities and composition, which generally comply with EU requirements. The RCPRPP consists of a president and eight members elected for five-year terms, and the same person may not be appointed more than twice. The president and members can be appointed and removed only by the National Assembly for cases specified by the PPL. Three-person panels make the RCPRPP's final decisions, and 54 staff currently support the work of the members⁵⁶².

⁵⁵⁶ Official Gazette No. 88/2011, with amendments.

⁵⁵⁷ Official Gazette No. 93/20.

⁵⁵⁸ Official Gazette No. 44/2014.

⁵⁵⁹ RCPRPP website: <http://www.jpp.gov.rs>.

⁵⁶⁰ Official Gazette No. 62/2017 of 27 June 2017.

⁵⁶¹ <http://www.kjn.rs>.

⁵⁶² kjn.rs/wp-content/uploads/informator_o_radu_30_10_2019-1.docx.

Central purchasing body: The Administration for Joint Services of Republic Bodies⁵⁶³ is the central purchasing body for national authorities and organisations, including judicial authorities. There are also several local purchasing bodies, the most important being for the cities of Belgrade and Kragujevac.

3. Main developments: evolution of the institutional framework

The PPO was established in 2002 on the basis of the first PPL, and a new PP Portal was created following adoption of the second PPL in 2009⁵⁶⁴. In 2010, a scheme for certifying public procurement officers was established and the first certificates were issued.

PPO tasks were expanded when the second PPL was adopted in 2012 to (among other things) strengthen the mechanisms for detecting and combatting corruption in public procurement. In co-operation with the anti-corruption office, the PPO was entrusted with preparing a plan to reduce public procurement corruption and with appointing civil supervisors for particular contracts, especially high-value ones. The PPO was also required to receive annual procurement plans; give non-binding opinions on whether the requirements for using negotiated procedures without prior notice or competitive dialogue were being met; and provide opinions on the use of centralised purchasing and joint procurement arrangements. Because many requests for various approvals caused serious problems in practice, the PPO was initially unable to meet all its obligations in a proper and timely fashion, although the situation later improved and delays became shorter⁵⁶⁵. Some of its responsibilities were modified in 2015⁵⁶⁶ or revoked altogether by the new PPL, such as those related to civil supervisors.

The first public procurement review body was established in 2002, and in 2009 a new independent review body (the RCPRPP) was created on the basis of the second PPL. In 2011, RCPRPP staff numbers increased dramatically, it moved to modern, well-equipped premises, and a new website was established (www.kjn.gov.rs)⁵⁶⁷.

4. Central public procurement authority

The central authority responsible for public procurement is the PPO, and the legal basis for its establishment is Article 178 of the PPL. The PPO has separate legal entity status and legal personality. Its functions and activities include legislative tasks, monitoring and control, and providing opinions, training and support for contracting authorities and economic operators.

The **PPO website** (www.ujn.gov.rs) was in Serbian only at the time of writing. The PPO also manages the PP Portal⁵⁶⁸, which is used to advertise public procurement procedures and should also be able to accept electronic tender submissions once the new portal is operational.

Budget and finance: The PPO is financed from the State Budget. Including EU funds related to implementation of the technical assistance project (see below), the PPO budget for 2019 amounted to

⁵⁶³ <http://www.uzzpro.gov.rs/>.

⁵⁶⁴ Official Gazette No. 116/08.

⁵⁶⁵ OECD (2014), "Serbia assessment report 2014", *SIGMA Country Assessment Reports*, No. 2014/04, OECD Publishing, Paris, <https://doi.org/10.1787/5jm0xw1lpc40-en>.

⁵⁶⁶ The amended PPL (Official Gazette No. 68/2015) instead obligated the PPO to prepare a model internal plan for contracting authorities to combat corruption.

⁵⁶⁷ OECD (2012), "Serbia Assessment Report 2012", *SIGMA Country Assessment Reports*, No. 2012/02, OECD Publishing, Paris, <https://doi.org/10.1787/5jz2rqnf9p6g-en>.

⁵⁶⁸ <http://portal.ujn.gov.rs>.

RSD 187 382 000 (almost EUR 1.6 million). The budget for 2020, also including support from EU funds, is RSD 102 743 000 (approximately EUR 874 000).

PPO management, structure, organisation and staff: The PPO is headed by a director appointed by the Government from among the ranks of public procurement experts through public competition⁵⁶⁹.

Under the new PPL, the director of the PPO must have held for at least four years a master's degree (or equivalent) in law, economics or a technical science, or higher education legally equivalent to the academic title of Master in Basic Studies, have at least seven years' experience in public procurement, and meet the other conditions normally required of candidates wishing to work in state administration.

The PPO director should adopt an act on the systemisation of job positions, and the work and organisation of the PPO are subject to the usual civil service regulations unless otherwise stipulated by the PPL. Regularly updated information on the PPO's internal organisation, contact details, financial resources and discharge of tasks and functions are provided on its website under the rubric Information on Work in the Public Procurement Office⁵⁷⁰.

The PPO comprises two departments:

1. The department for regulating and supervising public procurement, divided into groups for:
 - regulatory affairs (four employees);
 - monitoring public procurement procedures (six employees);
 - reviewing grounds for conducting negotiated procedures (three employees);
 - human resources and general affairs (two employees).
2. The department for developing the public procurement system and economic and financial affairs, divided into groups for:
 - international co-operation (four employees);
 - analysing and developing the public procurement system (four employees);
 - economic and financial affairs (three employees).

The PPO has 38 employees (including the director and the deputy director), and there are currently 8 vacancies⁵⁷¹.

The **main functions and responsibilities of the PPO**, defined in Article 179 of the PPL, involve:

Legislation and policy development

- Participating in adoption of the PPL and other public procurement provisions, and adopting implementing regulations.
- Preparing the strategy for developing and improving Serbia's public procurement system.

Advice and support

- Providing opinions on applying the PPL and other provisions in the field of public procurement.
- Providing expert support, and adopting guidelines, manuals and other public procurement publications and ensuring they are accessible free of charge to contracting authorities and economic operators.

⁵⁶⁹ PPL, Article 178.

⁵⁷⁰ <http://www.ujn.gov.rs/o-nama/informator-o-radu/>; information dated 10 February 2020 at the time of writing.

⁵⁷¹ Information retrieved from the PPO website in February 2020.

Training and education

- Defining the procedures and conditions for issuing public procurement officer certificates and managing the public procurement officer register.

Data collection, publication, monitoring and control

- Managing the PP Portal.
- Monitoring the application of public procurement provisions and reporting to the Government.
- Submitting requests to initiate misdemeanour procedures related to PPL infringement.
- Submitting requests for legal protection and initiating other relevant proceedings when irregularities are identified through monitoring.
- Collecting statistical and other information about conducted public procurement procedures and concluded contracts and preparing an annual public procurement report.

International co-operation

- Conducting necessary activities related to EU accession negotiations in the field of public procurement.
- Co-operating with national and international organisations and public procurement experts to improve the public procurement system, and managing programmes funded by international donors.

As compared with previous provisions the PPL underlines its role in adopting national public procurement strategies and in preparing public procurement laws. While the PPL limits the PPO's reporting obligations to annual reports on public procurement system functioning (whereas previous provisions mandated quarterly and bi-annual reports), it also obligates it to prepare annual procurement system monitoring plans as well as post-monitoring reports (see below).

5. National public procurement policy and strategic procurement: environmental, social and innovative

Serbia's national public procurement policy is established through public procurement strategies and action plans adopted by the Government on the basis of PPO proposals. Other institutions involved in policy creation are: the Ministry of Mining and Energy, the Ministry of Public Administration and Local Self-Government, the MTTT, the Republic Secretariat for Legislation, the MoF, the MoE, the Ministry of European Integration, the RCPRPP, the PPP Commission, the Office for Information Technology and E-Government, the State Audit Institution (SAI), the General Secretariat of the Government, the Chamber of Commerce and the Republic Secretariat for Public Policies. The views of contracting authorities, economic operators, business associations and non-governmental organisations (NGOs) are also considered during the consultation process leading to policy adoption.

The most recent strategy (adopted November 2019) is the Public Procurement Development Programme for the Period 2019-2023 ("the Programme")⁵⁷². The draft Programme was prepared by the PPO (supported by the EU technical assistance project), and the accompanying action plan presents detailed activities to implement the Programme. The current action plan covering 2019-20 was published on the PPO website along with the text of the Programme.

⁵⁷² <http://www.ujn.gov.rs/vesti/program-razvoja-javnih-nabavki-u-republici-srbiji-za-period-2019-2023-godine/>.

The Programme's primary aim is to further modernise Serbia's public procurement system, mainly by making all communications in public procurement procedures fully electronic to raise the efficiency and transparency of the process and reduce the risk of irregularities. The Programme also envisions significant progress in EU accession negotiations conducted within the framework of Chapter 5 (Public Procurement). It is a comprehensive document that addresses the entire public procurement system, including concessions and PPPs (though only the legal and institutional developments).

Furthermore, the Programme includes some activities to implement environmental/green, socially responsible and innovative procurement as well as to further professionalise procurement (through intensified procurement officer training and certification).

Before the Programme was adopted, the draft was published on the PPO website and the E-Administration portal and extensive public consultations were held, with all interested parties encouraged to submit requests, proposals, comments and suggestions. The PPO received very few comments and suggestions, however, so the process was repeated⁵⁷³. Next, a roundtable meeting was organised in Belgrade, where PPO representatives presented the draft Programme and invited public discussion. Finally, the PPO published a report on the consultations it had conducted, together with a table summarising all comments submitted and indicating whether they had been accepted or not, as well as providing justification (but not disclosing who submitted the comments and proposals)⁵⁷⁴. According to the report, comments were submitted by five entities representing NGOs, the Chamber of Commerce, utilities and private bodies.

6. Drafting of legislation (primary and secondary), draft legislation consultations and preparation of other documents

Primary legislation

The PPO is authorised to help prepare public procurement laws, initiate the adoption or amendment of public procurement regulations for which the MoF or the Government are responsible, and participate in similar initiatives of other bodies and organisations. The development of new legislation (the new PPL) based on the 2014 EU directives was scheduled for 2017, according to the 2017 Action Plan for implementation of the previous Strategy (2014-18). A MoF-led working group was established, made up of representatives from the MoF, the PPO, the RCPRPP and Serbia's Chamber of Commerce. Comprehensive legal gap analyses were prepared for EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25 as well as for Remedies Procurement directives.

The draft of the new PPL was subjected to extensive public consultation. It was published on the PPO website and all stakeholders had an opportunity to submit comments/suggestions online. Feedback concerning suggestions was presented in the form of a table listing submitted comments and whether they had been accepted, partially accepted or rejected. For accepted and partially accepted comments, the report details relevant modifications to the draft, and for those rejected, the report explains why.

Secondary legislation (implementing regulations)

Under the PPL, implementing regulations are adopted by: 1) the PPO; 2) the MoF; or 3) the Government.

The PPO prepares and adopts the implementing regulations entrusted to it, and it also helps prepare the implementing regulations belonging to the second and third groups.

⁵⁷³ <http://www.ujn.gov.rs/vesti/izvestaj-o-sprovedenoj-javnoj-raspravi-za-strategiju-razvoja-javnih-nabavki-u-republici-srbiji-za-period-2019-2023-godine/>.

⁵⁷⁴ <http://www.ujn.gov.rs/vesti/izvestaj-o-sprovedenoj-javnoj-raspravi-za-strategiju-razvoja-javnih-nabavki-u-republici-srbiji-za-period-2019-2023-godine/>.

All implementing regulations required by the PPL were adopted within required time limits⁵⁷⁵.

The PPO has prepared and adopted a number of rulebooks regulating various public procurement issues, such as the Rulebook on the Procedure of Opening of Bids⁵⁷⁶, the Rulebook on Monitoring of Application of Public Procurement Provisions⁵⁷⁷, the Rulebook on Adoption of the Common Procurement Vocabulary⁵⁷⁸, the Rulebook on Establishment of the Content of the Standard Forms of Public Procurement Notices to be published on the Public Procurement Portal⁵⁷⁹, the Rulebook on the Procedure and Conditions for Obtaining Certificates of Public Procurement Officers and Keeping the Register of Public Procurement Officers⁵⁸⁰, Instructions on the Method of Sending and Publishing Public Procurement Notices⁵⁸¹, Instructions on Using the Public Procurement Portal⁵⁸², Statement on the Fulfilment of Qualitative Selection of Economic Operators⁵⁸³ and Instructions on Publication on Information about Public Procurement exempted from the PPL⁵⁸⁴.

The Minister of Finance adopted two implementing regulations:

- values of EU public procurement thresholds as expressed in RSD⁵⁸⁵;
- the Rulebook on the Content of the Register of Bidders and Documents Submitted with Request for Registration in the Register of Bidders⁵⁸⁶.

In turn, the Government has adopted:

- a Decision on the List of Contracting Authorities⁵⁸⁷;
- a Decision on Procurement in the Field of Defence and Security⁵⁸⁸.

Elaboration of operational tools: model tender documents and templates

The PPO is responsible for designing standard forms of documentation for various types of procurement procedures and matters, as well as templates for a number of internal acts to be adopted by contracting authorities. On its website, the PPO has published⁵⁸⁹ standard documents for procuring surgical needles and thread; services and vehicle maintenance; and food – all through framework agreements. The website

⁵⁷⁵ <http://www.ujn.gov.rs/vesti/objavljeni-novi-podzakonski-akti/>.

⁵⁷⁶ Official Gazette No. 93/20.

⁵⁷⁷ Ibidem.

⁵⁷⁸ Ibidem.

⁵⁷⁹ Ibidem.

⁵⁸⁰ Ibidem.

⁵⁸¹ Ibidem.

⁵⁸² Ibidem.

⁵⁸³ http://www.ujn.gov.rs/wp-content/uploads/2020/07/01-lzjava-o-ispunjenosti-kriterijuma_standardni-obrazac-komentari-052020.pdf.

⁵⁸⁴ <http://www.ujn.gov.rs/wp-content/uploads/2020/07/Uputstvo-objavljivanje-podataka-za-SG3a.pdf>.

⁵⁸⁵ Official Gazette No. 93/20.

⁵⁸⁶ Official Gazette No. 17/20.

⁵⁸⁷ Official Gazette No. 85/20.

⁵⁸⁸ Official Gazette No. 93/20.

⁵⁸⁹ As of 01 July 2020.

also provides standard procurement documents for conducting open, low-value, and restricted procedures. Documents are available for both the first (qualification) and the second (tendering) phases, for the qualification procedure (a special procedure available under the old PPL) and for the negotiation procedure (with and without publication of a procurement notice); a model internal plan for protecting against corruption in public procurement is also supplied. All the standard forms developed by the PPO are for optional use. Those materials are based on the former PPL so they do not reflect at the moment of writing latest legislative changes. New operational tools adopted in accordance with the provisions of the new PPL, prepared with the help of the EU technical assistance project (see below), were also published on the EU project website: <http://eupodrska.ujn.gov.rs/dokumenta/>.

Provision of legal information and opinions, and guidance on interpreting public procurement rules: general-interest issues

The PPO disseminates public procurement information on its website. In addition to offering model procurement documents, guidelines, instructions, analyses, etc., the website provides official opinions and interpretations. Since 2015, these have been posted in the website's separate Professional Support section⁵⁹⁰, which currently contains 52 documents⁵⁹¹. Those documents referred, however, to the old PPL and do not, at the moment of writing reflect provisions of the current PPL. The website also presents answers to frequently asked questions (FAQs), but this section will be modified in the near future as the PPO site is undergoing adjustment.

The PPO also supports contracting authorities and economic operators by providing legal consultations and conferences on procurement planning and reporting, interpreting the provisions of the PPL and using the PP Portal. The PPO communicates with the public through its call centre, providing information on professional examinations for public procurement officers between 7:30 and 15:30; on the PP Portal, public procurement plans and quarterly reporting between 9:00 and 14:00; and on PPL implementation between 9:00 and 11:00.

Concerning the PP Portal, the website contains three video tutorials and one PDF on publishing procurement notices and plans; searching notices; and using the PP Portal. These materials and operational tools relate to the older PP Portal which is still applied with regard to those public procurement procedures which were launched before 1 July 2020. Tutorials, guidelines and other supporting materials such as answers to FAQs concerning the new PP Portal are published directly on the website of the Portal: <https://jnportal.ujn.gov.rs>.

In November 2019, the PPO and the EU project organised two public procurement forums to present the most significant changes brought about by the latest reforms to Serbia's public procurement system.

Supported by the EU project, the PPO developed a set of brochures and guidelines on various aspects of public procurement (including sustainable procurement) to offer guidance on estimating public procurement values⁵⁹²; life-cycle costing; market research; appraising and justifying public procurement needs; centralised purchasing; framework agreements; green procurement; monitoring; and combatting corruption. All these brochures and guidelines are available on the EU project website⁵⁹³. In addition, informative fiches were developed jointly by the EU project and the PPO to support application of the new PPL. These resources deal with topics such as the principles of awarding of public contracts; public procurement preparation; public procurement procedures covered in the new PPL (open procedures,

⁵⁹⁰ <http://www.ujn.gov.rs/dokumenti/misljenja-i-objasnjenja/>.

⁵⁹¹ As of 01 July 2020.

⁵⁹² Developed with the support of SIGMA.

⁵⁹³ <http://eupodrska.ujn.gov.rs/documents/?lang=en>

restricted procedures, competitive procedures with negotiation, etc.); minimum time periods to be applied; framework agreements; dynamic purchasing systems; qualifications systems; and electronic auctions. These documents are also supplied on the EU project website, to which the PPO website provides a link⁵⁹⁴.

7. Organising, maintaining and supporting national procurement training: professionalisation and capacity-building

The PPL requires that contracting authorities make it possible for public procurement staff to be trained in procurement activities and pass the procurement officer examinations, as well as have access to continuous training⁵⁹⁵.

The PPO organises examinations, issues certificates and registers public procurement officers. From the launch of the second round of certification in October 2014 to the end of 2019, a total of 4 844 candidates took part in the examination process, with 2 917 passing the exam, fulfilling all requirements and becoming certified⁵⁹⁶.

To receive certification, procurement officer candidates must obtain a score of at least 75% on a written exam that tests their knowledge of both the legal and regulatory frameworks in addition to their professional judgement. The PPO uses a software system during the examination process to manage exam administration and securely store the database of potential exam questions.

To strengthen contracting authorities' capacities, the PPO developed a Manual for Training and Examination for PP Officer Certification⁵⁹⁷ and posted it on its website to help candidates prepare for the exam. Although the PPO does not publish the list of certified officers on its website, each examination session's results are posted, along with the names and workplaces of all successful candidates. Certificates are valid for an undetermined period and are not subject to renewal.

The PPO also organises its own workshops/seminars and provides speakers for events organised by other organisations or bodies. In 2019, it organised 15 training events attended by more than 400 participants, with the technical assistance project supporting a number of them.

8. Publication and dissemination of procurement notices: web portal operations

In accordance with the PPL⁵⁹⁸, public procurement notices are published on the PP Portal (see below) in accordance with the standard form of notices defined by the PPO.

Notices for public procurement procedures reaching the threshold of RSD 5,000,000 are also published on the portal of the Official Gazette of the Republic of Serbia and the Legislation Database⁵⁹⁹.

A contracting authority that does not have a web page is not obligated to create one for the sake of publishing public procurement notices. However, under the PPL, contracting authorities are also required to publish notices of procurement procedures in the Official Journal of the European Union when they

⁵⁹⁴ <http://eupodrska.ujn.gov.rs/dokumenta/>

⁵⁹⁵ PPL, Article 185 (2).

⁵⁹⁶ Annual Report of the Public Procurement Office for 2019.

⁵⁹⁷ <http://www.ujn.gov.rs/sluzbenik-za-javne-nabavke/prirucnik>.

⁵⁹⁸ PPL, Article 105 (6).

⁵⁹⁹ PPL, Article 105 (7).

reach the EU procurement thresholds, but this obligation will apply only after Serbia's accession to the European Union⁶⁰⁰.

The PPO is responsible for maintaining the PP Portal, which is part of its internet services⁶⁰¹. The PP Portal started with the basic function of enabling the publication of public procurement notices as well as other related information (such as PPO opinions on the application of negotiated procedures).

Portal access is free of charge and searching it does not require previous registration. Interested parties can seek information simply by filling in the relevant fields to search all available data – for example by name of contracting authority, municipality, locality, type of procurement (goods, services, works), subject matter, date of publication (from – to), CPV code, etc.

⁶⁰⁰ PPL, Article 105 (10).

⁶⁰¹ <http://jnportal.ujn.gov.rs>.

9. *Electronic public procurement system*

The new PP Portal

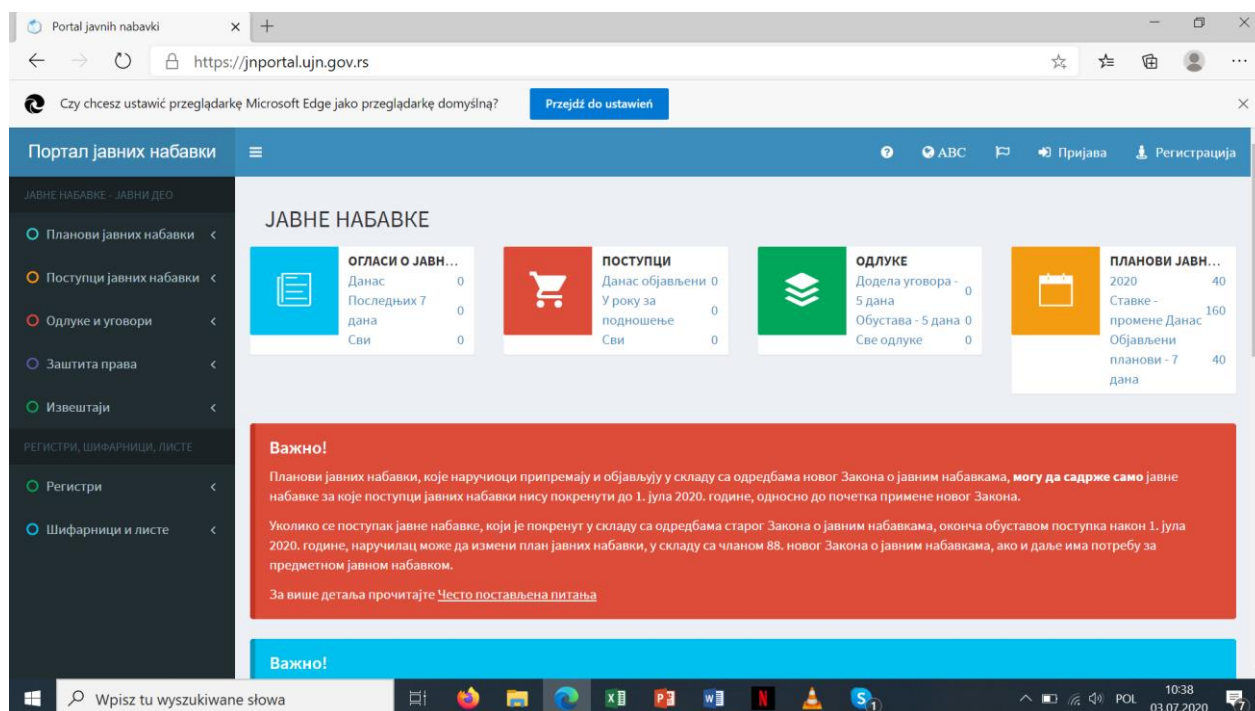
The PPL provides for a PP Portal⁶⁰², which it defines as a single information system dedicated to public procurement. The new PP Portal, compliant with the new PPL, was developed by the EU technical assistance project and was launched on 1 July 2020 when the PPL started to be applied. The Office for IT and E-Government, in charge of the electronic administration system's design, harmonisation, development and functioning, is obligated to provide the technical conditions for its application. In particular, it is tasked with maintaining and upgrading the PP Portal and with ensuring technical support, availability and security for its users.

The PP Portal is comprehensive, designed to support the entire public procurement process by enabling electronic communication among all parties involved at all the stages of the procedure. Its five components are: 1) public procurement planning (activities related to contracting authorities' annual procurement plans: their preparation and publication, modifications and amendments, searches by economic operators); 2) public procurement announcements (publication of notices and procurement documentation: uploading by contracting authorities and downloading by economic operators); 3) electronic tender submissions and communications between contracting authorities and bidders (see below); 4) electronic techniques and instruments (awarding contracts within framework agreements, establishing and operating dynamic purchasing systems, using electronic catalogues); and 5) legal protection (the new portal enables the electronic submission of complaints to the RCPRPP – although submission by the traditional means is still possible – as well as against contracting authorities' decisions on appeal resolutions).

Access to the PP Portal is free of charge and permits users to conduct only those public procurement activities allowed under the PPL. It helps the PPO to report on whether contracting authorities are fulfilling their duty to prepare and publish annual public procurement plans; to prepare statistical reports about the functioning of Serbia's public procurement system; to manage the portal and report on its performance; and to track public procurement system operations.

To reinforce deployment of the portal, the PPO (supported by the EU project) offered intensive training for contracting authorities and economic operators: 320 participants attended the eight seminars organised across Serbia.

⁶⁰² PPL, Article 183.



Source: <https://www.inportal.ujn.gov.rs>.

Electronic procurement is a functionality of the new PP Portal, with the system enabling the preparation and submission of electronic tenders; the replacement, completion and recall of tenders; the opening of tenders; and communication between contracting authorities and bidders after the opening of tenders (for tender clarifications, the correction of computational errors, justification for abnormally low tenders, the submission of evidence to prove fulfilment of qualification criteria, etc.).

The e-tender module contains information about bidders, prices and other elements, which are evaluated in accordance with contract evaluation criteria. It also contains documents such as a declaration of fulfilment of qualification criteria established by the contracting authority; technical solutions; descriptions of elements evaluated under the contract award criteria; plans; tender securities; contact models; a cost structure form; and a tender-preparation cost form.

The PPO and the Office for IT and E-Government have also prepared a manual for PP Portal use. Users are cautioned that they must use the portal in accordance with the provisions of the PPL and the manual, and they are solely responsible for the veracity and accuracy of data entered.

10. Collecting statistical data on the public procurement market

The PPO keeps records on public procurement procedures and public procurement contracts, by means of automated collection from the PP Portal. The PPO may also, if needed, request, from contracting authority (entity) information on each individual public procurement procedure or each concluded contract. The contracting authority (entity) concerned should respond as soon as possible and no later than within eight days from receiving the request.

Contracting authorities (entities) are obliged to record data on values and types of public procurements exempted from the PPL, for each exemption ground separately, as well as the public procurements value of which is below thresholds defined in Article 27 of the PPL. Those data should be published in aggregated form no later than January 31 of the current year for the previous year, in accordance with instructions prepared by the PPO.

The PPO must prepare annual reports on public procurement containing, in particular⁶⁰³:

- information on the most frequent causes of incorrect application of this law, including possible structural or recurring problems in the application of the PPL and implementing regulations;
- information on degree of participation of SMEs;
- statistical data on public procurement;
- information on the measures taken regarding prevention, detection and reporting of corruption, conflict of interest and other irregularities;
- proposals of measures for the suppression of irregularities and corruption in public procurement, strengthening the efficiency of the public procurement system and increasing competition in public procurement procedures; and
- other information of relevance to the public procurement system.

The report should be submitted to the Government by the Public Procurement Office and published on the PP Portal no later than March 31 of the current year for the previous year.

The PPL requires that the PPO keep records on public procurement procedures and contracts by means of automated collection from the PP Portal⁶⁰⁴. If necessary, the PPO may also request that a contracting authority/entity provide information on individual public procurement procedures or concluded contracts within eight days of receiving the request.

On the basis of information collected in this manner, the PPO must prepare an annual public procurement report⁶⁰⁵ detailing the most frequent causes of incorrect application of the PPL; possible structural or recurring problems in application of the PPL and the implementing regulations adopted on its basis; the degree of small and medium-sized enterprise (SME) participation; statistical data on public procurement in Serbia; measures taken to prevent, detect and report corruption; conflicts of interest and other irregularities in PPL application; proposed measures to suppress irregularities and corruption; how to strengthen public procurement system efficiency and raise competition in procedures; and anything else relevant to the public procurement system. The PPO must submit this report to the Government and publish it on the PP Portal by 31 March of the current year for the previous year. To comply with this duty, it provides two types of reports: an Annual Report on Public Procurement Procedures, which contains statistical data, and an Annual Report on Monitoring Public Procurement, which provides an analysis of the public procurement system and some general recommendations for contracting authorities.

11. Application of procurement rules and related practices of contracting authorities

The PPO is responsible for monitoring public procurement. Monitoring is conducted by the Group for Monitoring Public Procurement Procedures (total staff of six) within the Department for Regulations and Supervision in the Area of Public Procurement⁶⁰⁶.

The PPL specifies that the PPO should monitor the application of public procurement legislation to prevent, detect and remove irregularities that may arise or have arisen⁶⁰⁷. Monitoring should be based on an annual

⁶⁰³ PPL, Article 182.

⁶⁰⁴ PPL, Article 181.

⁶⁰⁵ PPL, Article 182.

⁶⁰⁶ Information retrieved from the PPO website 17 January 2020.

⁶⁰⁷ PPL, Article 180.

monitoring plan adopted by the PPO by the end of the current year for the following year, requests for approval of application of the negotiation procedure without prior publication. It should be conducted also on the basis of notification from legal or natural persons, state or local self-government units and other state authorities. Monitoring of a public procurement procedure that is in the process of being conducted does not suspend that procedure. When the PPO requests data and information relevant to its monitoring function from state administration and autonomous territorial bodies, local self-government units, contracting authorities/entities and economic operators, they must supply it within 15 days of receiving the request.

Monitoring is not carried out if PPO incompetency has been established, if three years have elapsed since the public procurement procedure has been completed, if the contract was concluded without a procedure having been conducted, or if the applicant and information to be monitored cannot be identified from the notification. The PPO should submit an annual monitoring report to the Government and the National Assembly by 31 March of the current year for the previous year. Further details concerning monitoring are to be regulated by the implementing regulations adopted by the PPO.

In 2018, the PPO conducted monitoring procedures for 88 cases of irregularities reported by economic operators, contracting authorities (and their employees), other bodies and anonymous entities. The PPO was required to collect additional information and data for these cases, primarily from the contracting authorities but also from other bodies, to complete the documentation, review all the facts and determine possible further action. In 2019, the PPO conducted 80 monitoring procedures.

Prior approval to apply the negotiated procedure: Prior to initiating a negotiated procedure without publication of a contract notice, the contracting authority must request the PPO's opinion on whether applying this type of procedure is justified. In 2018, the PPO issued 1 816 opinions regarding the fulfilment of grounds for applying negotiated procedures without previous publication, of which 1 722 were positive and 94 negative.

The PPL obligates contracting authorities/entities to publish notices on implementing negotiated procedures without publication – as well as contract notices detailing justification for applying this procedure – on the PP Portal⁶⁰⁸. In some cases of negotiated procedures without previous publication of procurement notice (for instance if only one economic operator is available to perform the contract or in cases of extreme urgency), contracting authorities/entities should submit to the PPO, simultaneously with publication of this notice, their justification for implementing this type of procedure, along with all supporting documentation.

The PPO must notify the contracting authority/entity within ten working days of receiving the documentation if it considers there is any basis for conducting this procedure, or to request supplementary documentation.

Posting contract changes and notification: If the contracting authority has to modify certain constituent parts of a public procurement contract after its conclusion, it must adopt a decision on contract modification, publish that decision on the PP Portal and submit a report to the PPO and the SAI.

Misdemeanour proceedings: The PPO initiates misdemeanour proceedings if it discovers that PPL provisions have been violated in any way. The SAI or another competent body may also submit a request to initiate misdemeanour proceedings, or it can be initiated ex officio by the RCPRPP immediately upon being informed of the offence. The PPO also initiates proceedings for determining the nullity of a public procurement contract, and it has the power to file a lawsuit to determine the nullity of a concluded public procurement contract if there is any reason for nullity as stipulated in the PPL.

In 2017, the PPO filed 12 petitions for misdemeanour proceedings, all against contracting authorities. The irregularities related to such issues as concluding a contract without conducting a public procurement

⁶⁰⁸ PPL, Article 62.

procedure; unauthorised modification of a public procurement contract; non-publication of procurement notices or procurement documentation; and conducting the negotiation procedure when conditions for its application had not been met.

In monitoring implementation of the PPL, in 2017 the PPO acted on 37 requests submitted by the Anti-Corruption Agency, the Prosecutor's Office and the police.

Furthermore, the PPO monitors information published by contracting authorities on the PP Portal, particularly to inform them about errors they've made when publishing notices or documentation, or omissions when publishing advertisements and other documents.

Civil supervisor: When a contracting authority conducts a public procurement procedure above an estimated value of RSD 1 billion, the procedure should be monitored by a civil supervisor appointed by the PPO. This solution was added to the PPL in 2012 to increase control of the highest-value public procurement procedures by independent experts, limiting corruption in public procurement and enhancing civil society involvement in the public procurement process. Reports on activities conducted by civil supervisors are published on the PPO website. According to data from PPO annual reports, of the 130 procedures involving supervision from 1 April 2013 to the end of 2018, supervisors prepared reports on 42 proceedings but only several reports were considered by the relevant National Assembly committee (without the committee providing any specific conclusions). Provisions on civil supervisors are not included in the new PPL.

12. International co-operation

Tasks related to international co-operation are performed by the four-employee Group for International Co-operation within the PPO's Department for Development of the Public Procurement System and Economic and Financial Affairs.

The PPO serves as the public procurement contact point for the European Commission and other international organisations.

In co-operation with the United Nations Development Programme (UNDP) and the World Bank, the PPO organises public procurement-related events such as seminars and workshops.

The PPO is also responsible for managing support programmes funded by international donors. Most recently, from July 2017 to May 2020 the PPO benefitted from the EU-funded technical assistance project Support for Further Improvement of the Procurement System in Serbia (Instrument for Pre-accession Assistance [IPA] 2013). The purpose of the project is to develop Serbia's public procurement system to make it more stable, transparent and competitive, in accordance with EU standards, and to improve implementation of the strategic and policy frameworks for public procurement. In addition to the PPO, other beneficiaries of the project were the MoF and the RCPRPPP, as well as contracting authorities, central purchasing bodies and bidders. The value of the project after its extension in December 2019 is EUR 2 622 330.

The UNDP-funded project Accelerating Accountability Mechanisms in Public Finances (2016-18) was designed to hasten public finance reform as a management reform, with a focus on the good and efficient management of institutions instead of on the creation of additional bureaucratic features for risk mitigation in public finance. The project helped upgrade the public procurement system, from both a regulatory and appeals-mechanism perspective, by instituting a 'good management' approach and establishing managerial accountability through the automation of processes such as public debt management and segments of public procurement, and by introducing an open data concept. A new UNDP project (Accountable Public Finance Management Platform [2019-21]) will continue to provide valuable support to the PPO to improve its procurement tools and promote greater application of the criterion of 'most economically advantageous tender', to increase efficiency, effectiveness and performance.

The PPO is also involved in regional co-operation with Western Balkan administrations and Turkey. For example, representatives of the PPO took part in the regional conference organised by the Montenegro PPO and supported by SIGMA in June 2018, and the PPO is also Serbia's representative at the Procurement, Integrity, Management and Openness (PRIMO) Forum every year. In 2019, the 15th PRIMO Forum, held in Uzbekistan, was organised by the Asian Development Bank, the European Bank for Reconstruction and Development, the Islamic Development Bank, and the World Bank Group in co-operation with the European Investment Bank and the Organisation for Economic Co-operation and Development (OECD).

A PPO representative also participated in the conference entitled Experiences of Romania and Other Member States in the Adoption of the *Acquis Communautaire* in the Field of Public Procurement, held in Romania and organised by the Romanian National Agency for Public Procurement in the context of Romania's EU presidency.

The SIGMA Programme

SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the OECD and the European Union (EU), principally financed by the EU. SIGMA has been working with partner countries on strengthening public governance systems and public administration capacities since 1992.

In partnership with the European Commission (EC) Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR), we currently work with:

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- Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Jordan, Lebanon, Moldova, Morocco, Palestinian Authority¹, Tunisia and Ukraine as EU Neighbourhood countries.

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SIGMA reviews and gives feedback on:

- Governance systems and institutions
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- Reform strategies and action plans
- Progress in reform implementation.

SIGMA provides:

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- Methodologies and tools to support implementation
- Recommendations for improving laws and administrative arrangements
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