

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



Country report MACEDONIA

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Conceptual framework and rationale

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

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

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

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

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

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

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

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

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

While describing corruption is a complex task per se, measuring it is even more challenging. Numerous scholars and practitioners have developed indices based largely on surveys of perceptions and experts (i.e. Transparency

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

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

6 Ibid.

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

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

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

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

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

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

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

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

Through the GRAPP project, we aim to address several explanations for the absence of sustainable positive reforms and developments. Academic literature argues that EU democratic conditionality in any area, including fight against corruption, works best where the local political costs of compliance are not high. However, in the areas where conditionality threatens to disrupt the power equilibrium of veto players (i.e. local political elites), progress is likely to be limited or unstable.¹¹ From the EU's point of view, the fight against corruption is embedded in two different categories assessed by the EU Country reports – Democratic conditionality and *acquis* conditionality¹². However, the success of the EC in its assistance to anti-corruption efforts in the accession countries depends greatly on the responsiveness of local actors. In addition, in designing realistic reforms and development benchmarks, the Commission requires an understanding of the local governance culture and the social drivers of corruption, as well as analysis of the effectiveness and efficiency of the accountability mechanisms in the local context. The EC is highly dependent on local political cooperation in assessing the different aspects of governance in order to design appropriate reforms. Yet local veto players are often reluctant to give up their power, leading to a variety of roadblocks to democratization and making the process challenging, slow and sometimes frustrating for many of the actors involved.

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

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

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

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

General methodological approach

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

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

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

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

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

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

Indicators and data packages covered by the assessment

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

Measurements and process of assigning values to different indices

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

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

For each of the 18 categories, two different measurements were provided:

a) Corruption Resistance Index and b) Capture Risk Index. These two differ in the standardized interpretation and require different logic in thinking by

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

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

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

Potential method in brief

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

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

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

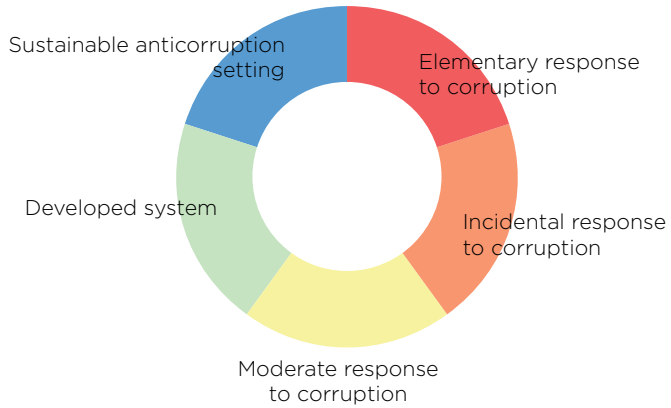
Values of the index

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

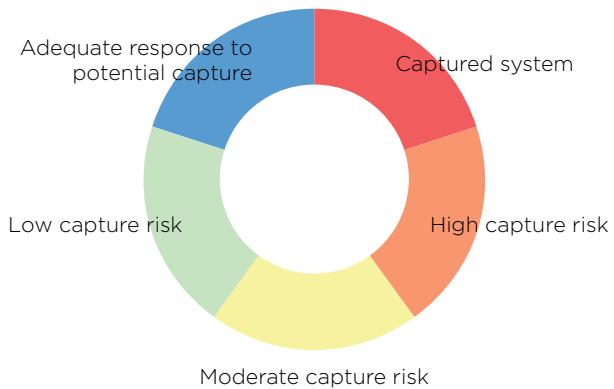
Important note

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

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



Public Procurement Capture Risk Index by level of risk



2. Country report Former Yugoslav Republic of Macedonia

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Abbreviations

CoI	Conflict of interest
CPC	State Commission for Prevention of Corruption
ESPP	Electronic System for Public Procurement
PPB	Public Procurement Bureau
PPC	Public Procurement Council
PPL	Public Procurement Law
PPO	Public Prosecutor’s Office
SACPP	State Appeals Commission on Public Procurements
SAO	State Audit Office
SCPC	State Commission for Protection of Competition

Summary

TABLE M.A. Overall Public Procurement Corruption Resistance Index 2017, FYR of Macedonia¹³

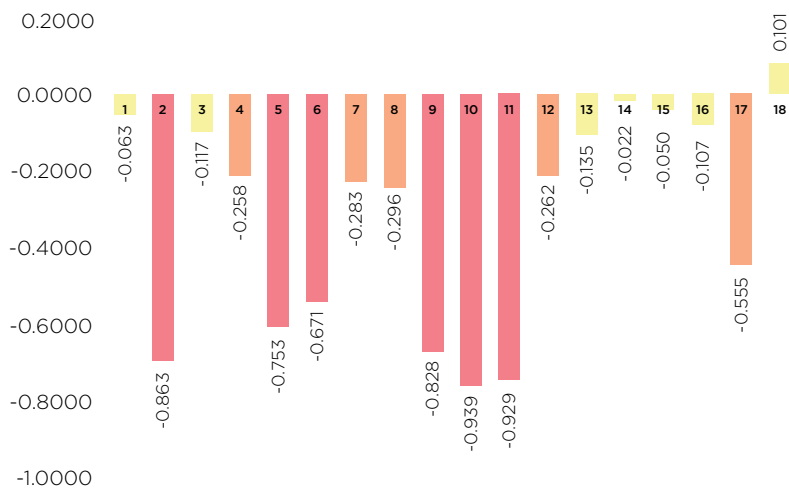
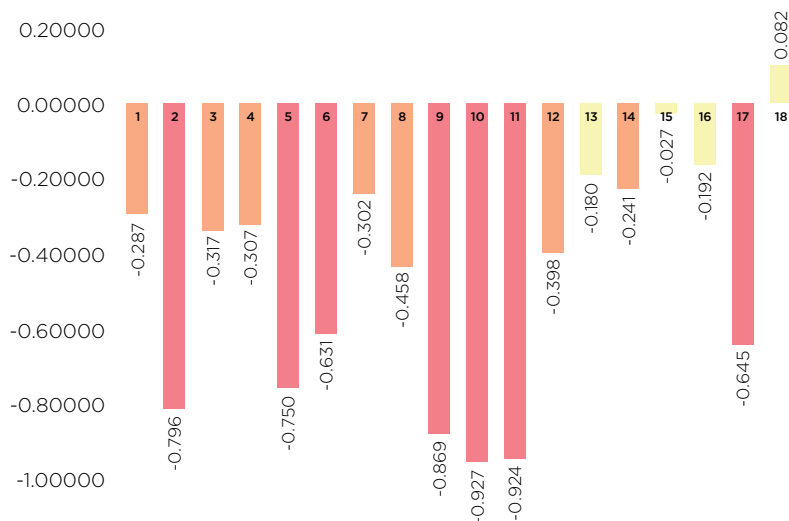


TABLE M.B. Overall Public Procurement Capture Risk Index 2017, FYR of Macedonia



¹³

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

Summary interpretation of overall indices

The public procurement system in FYR of Macedonia made visible progress in seven categories: 1. Public Procurement Regulatory Ecosystem; 3. Exceptions from the application of the PPL; 13. Criminal justice system; 14. Capacity and human resources management; 15. Trends in public procurement contracts; 16. Trends in framework agreements; and 18. Trends in petty public procurement. The regulatory framework is comprehensive in terms of procedures covered, and broad in terms of entities that are subject to the obligations in the PPL. Thresholds for exemptions due to petty procurement rules are appropriate, as is the relatively narrow scope of exemptions related to data secrecy provisions. The criminal justice system accounts for procurement-specific crimes and there is evidence of implementation in this area. There is adequate capacity to conduct public procurement, including more sophisticated procedures, with applied education, certification and re-certification of PP officers in place and accompanied by advancements in the area of e-procurement. Broadly speaking, data in the PP system is standardized, and there is an appropriate degree of centralization as well as proper macro reporting mechanisms, leading to relatively high scores in the area of trends in public procurement contracts. In addition, information on PP procedures and contracts allows for limited risk analysis as well as econometric observations of trends per specific contracting authority, or sector. The regulatory framework also adequately covers the Framework agreement (FA) contracting procedure, with adequate reporting mechanisms and evidence of implementation. FAs do not represent a significant share of overall PP value, and thus are not seen as an obstacle to competition, albeit there are some reservations. Moderate progress has also been observed in limiting petty procurement on an annual basis, as well as in reporting on low-value contracts.

However, there are significant issues of concern in the PP system in FYR of Macedonia that need to be addressed. The deficiencies observed include a lack of centralization of PP planning, non-obligatory publishing, and lack of sanctioning mechanisms for deviations in the planning stage of the process; these mean that regulation often plays more of an advisory role, rather than being a substantive mechanism to detect or prevent corruption and capture. The system does not respond properly to the corruption risks evident in the pre-bidding stage of procurement. The process of appointment of members of the Public Procurement Commission (PPC) in the pre-bidding stage is not adequately regulated and is exposed to direct political influence with no proper accountability measures applied. Standard operating procedures for the receipt and storage of bids (and other information in pre-bidding stage) is lacking, as are dual controls and proper accountability and sanctioning. Deficiencies observed in the pre-bidding stage affect the contracting process as well. The high risk of exposure of the PPC to undue political influence through selection and appointment procedures

is a serious concern. The absence of dual controls (i.e. lack of direct individual responsibility of the members of the PPC and other relevant actors) adds to the observed risk. Conflict of interest provisions are vague, with significant limits on enforcement and without proper oversight by respective an anti conflict of interest body or a proper sanctioning mechanism. The Public Procurement Bureau (PPB) exercises conflicting responsibilities in providing the opinion and advice to respective contracting authorities, while at the same time being responsible for oversight and potential sanctioning of PP actors; this raises a clear conflict in situations where sanctioning is to be executed in cases where the PPB previously provided advice. In addition, direct subordination of the office to the executive branch of government exposes it to high risk of undue influence, especially in situations where decisions of the PPB affect the economic and political interest of the government. Weak responses to the deviations in the PP process and implementation of the PP, make controls insufficient to control risks of corruption and capture. Control of execution of contracts is only optional and rather advisory in the PP regulation and practice in FYR of Macedonia, while the measures in place to mitigate conflict of interest throughout the system are ineffective, inefficient and inadequate for the risks that occur. Finally, while information management appears to be progressing, lack of evidence on proper use of data in the area of most successful bidders, for example, indicates significant deficiencies in the established infrastructure that need immediate attention.

Key findings

Public procurement procedures in former Yugoslav Republic of Macedonia are regulated by the Public procurement law (PPL). The law regulates procedures for awarding public procurement contracts, concessions and public private partnerships. In addition, it regulates the competences of the Public Procurement Bureau (PPB), and the State Appeals Commission on Public Procurements (SACPP). The PPL and secondary legislation and by-laws arising from it have undergone several changes over recent years. One change to the PPL relates to the lowest price award criterion. Namely, in May 2014, the lowest price award criterion was introduced as a mandatory criterion, with advice stipulating that the economically most advantageous offer award criterion should be used only as an exception. Opting for the lowest price as a mandatory award criterion represents a high corruption risk; such a practice diminishes competition and does not assure best quality for money.

There is no legal obligation to publish procurement plans nor is the contracting authority requested to send its procurement plan to the PPB (Public Procurement Bureau). It is entirely an internal document of the contracting authority and as such does not fulfil the purpose of procurement plans to foster competition and assure transparency as prerequisites for clean procurement.

The existing regulatory framework prescribes an obligation for the public procurement procedure type to be specified in a public procurement plan prior to launching a procedure. However, it does not envisage any sanctions if a procurement procedure is launched without being previously specified in procurement plan. In fact, the PPL does not prescribe any sanctions whatsoever for disregarding provisions on public procurement plans.

Exemptions from the PPL are stipulated in the law and include procurement in the defence sector, the diplomatic and consular offices of the FY Republic of Macedonia abroad, and classified state secrets by a competent body, or international organizations (donors and lenders). Exemptions from the PPL are defined as procurements with a monthly total that does not exceed EUR 500 (in Denar counter-value without value added tax). There is no obligation to inform the public about contracts for this petty procurement. This could give way to a lack of transparency and potentially unfair procedures, however the stated low threshold makes these potential threats very minor.

The Electronic System for Public Procurement (ESPP) enables the implementation of e-procurement in the FY Republic of Macedonia. The ESPP is a centralized system for public procurement used by all contracting authorities in the country. Each contracting authority is obliged to publish public procurement notices on the ESPP. Information published in the register is available to the public and can be downloaded in pdf or doc format. The system of reporting is standardized, but not digitalized and thus inadequate for in-depth analysis.

All tender documentation must be published on the electronic system for public procurement, and this is obligatory for each contracting authority. However, there is no obligation to publish a public procurement contract in an appropriate register under the PPL. Also, the PPL does not prescribe sanctions if there is a deviation between the technical specifications and the signed contract; nor if deadlines prescribed in the PPL are violated. This represents a high risk because not having sanctions for certain misbehaviours and deviations gives way to corruptive acts.

The division of powers established between the pre-bidding and bidding stage is insufficient to address the potential undue influence over public procurement procedure. The PPL is not explicit when it comes to who is responsible for producing tender documentation.

The Public Procurement Commission (PPC) is responsible for conducting the evaluation and proposing the award decision to the responsible person within the contracting authority. PPC members are obliged to act in accordance with the Code of Ethics in the course of implementing the public procurement and they (along with the chairman) are appointed by the contracting authority when it decides to initiate a public procurement procedure. PPC members must have a certificate for passing an exam in public procurement. During the PP procedure, the president, the vice-president, members and vice-members of the PPC are obliged to sign a statement for non-existence of conflict of interest (CoI). These statements are a mandatory part of the tender procedure and documentation.

The State Appeals Commission for Public Procurement (SACPP) is the remedy body responsible for reviewing procurement complaints and making decisions that are administratively final. The SACPP president is under obligation to the Law on the Prevention of Conflicts of Interest; however, there are no specific regulations in place to prevent undue influence on the members of the SACPP. A relatively high rejection rate of complaints in the observed period (2014 and 2015) is an issue of concern. The SACPP and the court do not have much capacity to deal with an increasing number of appeals, with lacking material and staffing conditions. This leads to a risk of low efficiency of the SACPP.

The Public Procurement Bureau (PPB) is responsible for the development of a public procurement system and assuring rationality, efficiency and transparency in the implementation of public procurement in the FY Republic of Macedonia. The instrument of negative references was introduced in 2013, which limits the right of certain economic operators to participate in public procurement procedures. Contracting authorities are obliged by the PPL to publish the negative references on the ESPP and the PPB has the authority to remove them when justified.

A potential risk of corruption arises because of the lack of sanctions for certain deviations in implementing regulations linked to public procurement. There are no sanctions for: technical specifications in the tender for competition differing from those described in the contract; Failure to imple-

ment a public procurement procedure in cases where such an obligation is prescribed by law; Concluding a contract which deviates from the technical specifications described in the tender competition; Violation of prescribed deadlines by the contracting authority.

Another corruption risk arises because the existing legislative framework does not foresee measures and instruments for monitoring the execution of public procurement contracts.

The Law on the Prevention of Conflicts of Interest applies to public procurement procedures in the FY Republic of Macedonia. There are no mechanisms nor sanctions that could prevent and detect abuse of the prescriptions in the mentioned law. The law prescribes authorizing subordinated personnel to adopt the award decision and to sign the contract in case of CoI, however this does not prevent undue influence over the procedure by the responsible person and the provisions of the law are observed as high risk in assuring fair competition and preventing CoI.

The State Audit Office (SAO) is the supreme audit institution carrying out, among other things, regular performance audits in public procurement.

Even though legislation and competent bodies are in place, there is still insufficient horizontal cooperation between the Public Procurement Bureau (PPB), the State Commission for Protection of Competition (SCPC), and the State Commission for Prevention of Corruption (CPC). This undermines the fight against corruption in general and the proper implementation of public procurement principles in particular.

There is an obligatory certification system for public procurement and this reduces risks.

Regarding framework agreements, even though the percentage of framework contracts in total public procurement is low, attention should still be paid because in 73% of framework contracts (77% of the total framework contract value), contracts were signed between a single contracting authority and a single economic operator.

Key recommendations

Immediate attention is needed in the areas of public procurement planning, pre-bidding, contracting, control over the implementation of law, execution of public procurement contracts, conflicts of interest; and risk detection. Interventions in the PP system should start from the ability of the system to detect, prevent and sanction corruption and capture in real time. Digital assistance tools for risk detection should be considered in the work of the horizontal accountability mechanisms (i.e. PPB, SAO, and criminal justice systems). To that end, further standardization, digitalization and public access to data should be developed in the area of procurement planning and reporting on the status of the execution of contracts, as well as more advanced digital reporting mechanisms on PP procedures conducted by respective contracting authorities. Proper standardized operating procedures accompanied by proper application of division of powers principles, dual controls and sanctioning of the wide range of deviations (with emphasis on the protection of privileged data and conflict of interest) in the pre-bidding stage of the procurement should be developed as either by-laws or as more detailed solutions prescribed by the PPL. The same applies to the contracting phase as well, where through development of proper conflict of interest management procedures and proper reporting and sanctioning of deviations, the system could significantly improve performance. Advanced reporting and on-sight controls in the area of the execution of contracts need to be established as independent from the existing PP institutional framework. And finally, significant measures need to be taken to depoliticize the system through substantial changes in the legislation (even outside of the PP regulation), especially in the area of direct appointments and subordination to the executive branch of government of key PP personnel at all levels (local, national).

Category 1

Public Procurement Regulatory Ecosystem

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

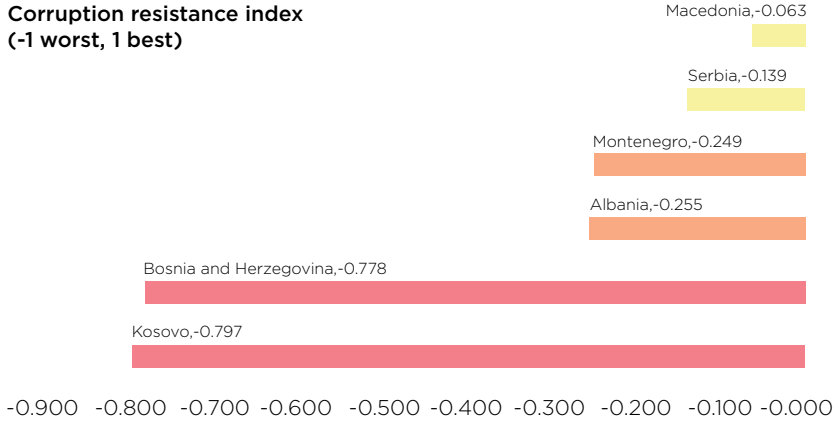
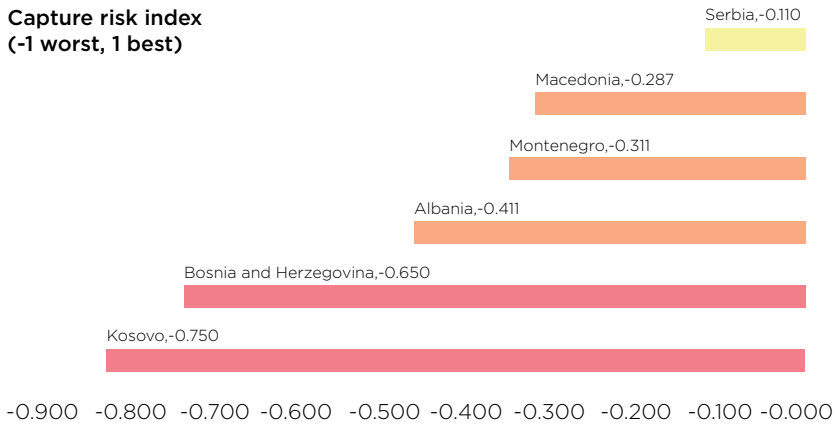


TABLE M.1.2: Capture Risk Index - Public Procurement Regulatory Ecosystem



Interpretation of indices FYR of Macedonia Category 1: Public Procurement Regulatory Ecosystem

The public procurement regulatory package indicates that FYR of Macedonia, together with Serbia has one of the most developed PP regulatory eco-systems among the observed countries. The corruption resistance index (table M.1.1 above) shows a moderate response to corruption, while the Capture risk index suggests a high risk of system capture (table M.1.2 above). The Public Procurement Law (hereinafter: PPL) and adopted by-laws comprehensively cover all of the relevant public procurement (PP) actors and their respective procedures. Appropriate steps have been taken towards standardization and provision of appropriate guidance in implementation of the PPL (see Findings in detail below) and the PPL covers a broad range of entities that are subject to PP legislation (see Findings in detail below).

However, the PPL that was assessed in this framework had deficiencies in the area of preferring the lowest price award criteria over the most advantageous offer due to complex procedures (see Findings in detail below). Two issues were observed in reference to this – the lowest price criteria is usually more prone to “fixing” by respective contracting authorities and is more prone to undue influence, while in terms of the capacity of the system, a dominant lower price criterion usually means lower capacity of the system to conduct more sophisticated procurement procedures, that consequently exposes the system to risks of corruption. In future developments of the legislation, PP actors in the FYR of Macedonia should pay specific attention to the enforcement of legislation, and further development in areas of pre-bidding, conflict of interest and established control mechanisms.

Findings in detail

The Public Procurement Law¹⁴ (PPL) aims to comprehensively cover all of the relevant public procurement actors and their respective procedures, introducing obligations for state bodies, local self-government units and the City of Skopje; legal entities established for a specific purpose for meeting public interest needs; associations established by one or several contracting bodies; public enterprises, joint stock companies and limited liability companies wherein the contracting bodies have dominant direct or indirect influence through ownership; as well as sectoral contracting authorities. A list of entities obliged by PPL is being published by the Government.

The PPL regulates procedures for awarding public procurement contracts, concessions and public private partnerships.¹⁵ In addition, it regulates the competences of the Public Procurement Bureau (PPB)¹⁶, and the State Appeals Commission on Public Procurements (SACPP)¹⁷.

During 2014, the PPL underwent four changes and amendments. Both in 2015 and 2016, the PPL was modified and changed on two occasions. Secondary legislation and by-laws arising from the PPL underwent several changes during the observed period, as well. In 2014, six new Rulebooks entered into force as well as one new one in each of 2015 and 2016¹⁸.

With the adoption of PPL amendments in 2017 (OG 165/2017), the Public Procurement Council (PPC) ceased to exist. The PPC previously functioned within the PPB and was responsible for legality in public procurement procedures. Namely, the PPL obliged contracting authorities to obtain the consent of the PPC before publishing a contract notice. This was normatively seen as an instrument to provide contracting authorities with specialized expertise and guidelines while drafting the terms of reference, in particular elements for calculating the economically most advantageous offer award criterion, but at the same time it made the procurement process more complex, expensive and time-consuming. The challenges were two-dimensional. First, the PPC faced a lack of specialized professionals to act as an expert pool for contracting authorities, and second, contracting authorities, in order to avoid the complex nature of the institutional set-up of the public procurement with the PPC, were not choosing the value for money principle, i.e. the economically most advantageous offer, but were opting for the lowest price as an award criterion, in order to avoid a procedure with the PPC. The lack of capacity at the PPC and the lack of specialized expertise (as the PPC needed to decide upon complex, diverse

14 Official Gazette of the Republic of Macedonia 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014, 130/2014, 78/2015, 192/2015, 27/2016, 120/2016 and 165/2017

15 For concessions and public private partnerships there is the separate Act on Concessions and Public-Private Partnerships.

16 See: <http://bjn.gov.mk/>.

17 See: <http://dkzjn.mk/>.

18 Please note that during the third level evaluation FYR of Macedonia engaged in modifications of the PPL that will be fully assessed within the GRASP exercise.

subjects) was obvious from its work load, i.e. the average number of cases dealt with per day per member of PPC. In 2015, for example, one member was dealing on average 13 cases daily and 11 cases in 2016 (or, monthly, this was 270 cases per month per member of the PPC in 2015, or 223 cases per month per member of the PPC in 2016).

As for the lowest price award criterion, in May 2014 it was introduced as a mandatory criterion and the economically most advantageous offer award criterion was advised to be used only as an exception (Article 160 PPL). Since then, the economically most advantageous offer criteria announcements have dropped dramatically, from 484 in 2014 to only 17 in 2015 (compared to 18,404 lowest price) and 16 in 2016 (compared to 18,403 with lowest price as the single criterion in 2016), i.e. fewer than 0.1% economically most advantageous criteria offer announcements in 2015 and 2016. In comparison, in 2011, the economically most advantageous criterion was used in 36% of cases and in 56% in 2010. In 2008, the economically most advantageous offer was used in 84% of cases.

Table 1 Public Procurement by type of award criteria, 2014- 2016

	2014		2015		2016	
	Lowest price	Economically most advantageous offer	Lowest price	Economically most advantageous offer	Lowest price	Economically most advantageous offer
Number of Contracts	15.204	484	18.404	17	18.403	16

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

Opting for the lowest price as a mandatory award criterion poses a high corruption risk; such a practice diminishes competition and does not assure best quality for money.

Public Procurement Planning

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

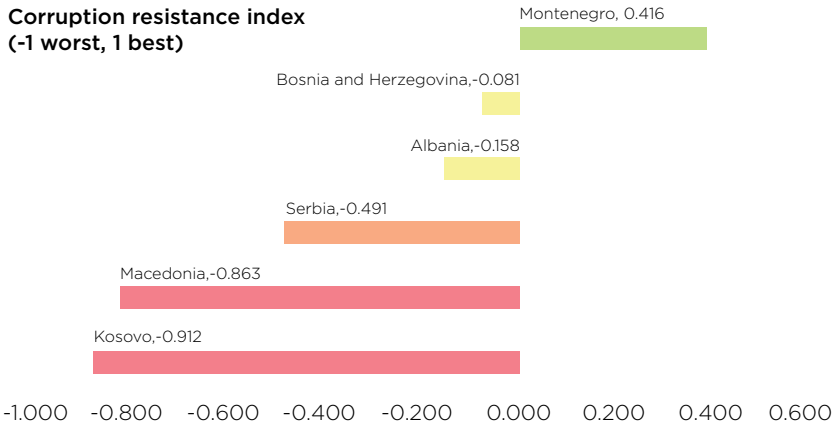
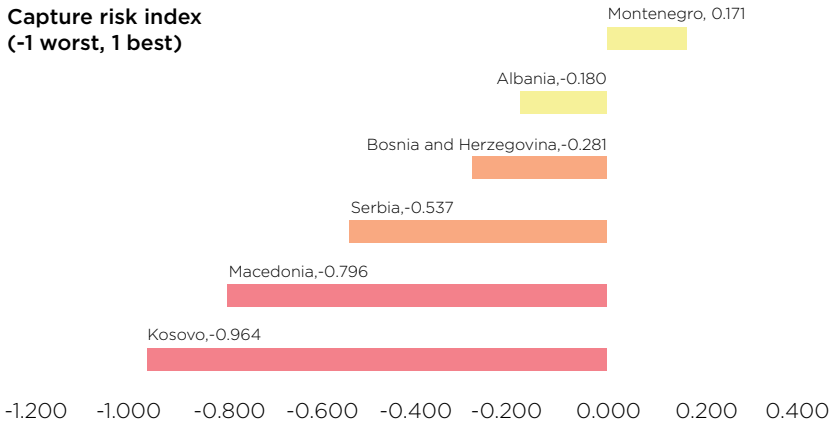


TABLE M.2.2: Capture Risk Index - Public Procurement Planning



Interpretation of indices FYR of Macedonia Category 2: Public Procurement Planning

In the area of procurement planning, the PP System in FYR of Macedonia is among the weakest performers. The PP Corruption Resistance Index in Category 2 (table M.2.1) suggests an elementary response to corruption accompanied with a captured system. While the PPL and supporting by-laws stipulate provisions on the adoption of PP plans, the standardization of the information in PP Plans remains at an early stage, and requires further attention and development. Deficiencies include the lack of centralization of PP planning, absence of obligations to publish plans, and lack of sanctioning mechanisms for any kind of deviations in this stage of the PP process. As such, regulation is effectively only advisory act rather than acting as a substantive mechanism for preventing or detecting corruption and capture (see Findings in detail below). This is further emphasized by slow developments in digitalization and information management, that overall make Procurement planning one of the weakest points in the PP system in the FYR of Macedonia in comparison to other assessed categories. The planning process could be improved by learning from the solutions and practice applied in Montenegro, supported by additional advancements in the digitalization of the PP system and the introduction of preliminary digital risk analysis. Standardized obligatory interconnection between financial plans (i.e. budgets and budget reporting) and PP plans should be considered as well.

Findings in detail

As stipulated in Article 26, paragraph 1 of the PPL, the contracting authority needs to adopt a procurement plan covering its total procurement needs by type of goods, services and works by the end of each January. If necessary, it can amend or modify the procurement plan during the year, in accordance with planned and provided funds for public procurement. It should be noted that on 17 December 2015, the PPB sent a recommendation to contracting authorities to publish their public procurement plans on their websites, with the aim of increasing transparency in public procurement procedures. However, there is no legal obligation to publish these plans nor is the contracting authority requested to send its procurement plan to the PPB. It is entirely an internal document of the contracting authority and as such does not fulfil the purpose of fostering competition and assuring transparency as one of the prerequisites for clean procurement.

The PPL prescribes standards for reporting on public procurement plans, i.e., the mandatory elements which such plans must contain. The Minister of Finance adopted the *Rulebook on the form and contents of the annual plan for public procurement*.¹⁹ The information to be included in public procurement plans includes the overall need for public contracts during the current year by types of goods, services and works, the period when the contract award procedure is expected to commence, the estimated value of the public contract or the framework agreement, and the type of contract award procedure or framework agreement procedure to be applied.

The existing regulatory framework prescribes an obligation for the public procurement procedure to be specified in the public procurement plan prior to launching the procedure, however, it does not envisage any sanctions in the event of non-compliance. In fact, the PPL does not prescribe any sanctions whatsoever for disregarding provisions on public procurement plans. The only competent authority which supervises the implementation of legal provisions on public procurement plans is the State Audit Office (and then only indirectly, via auditing the use and spending of public procurement funds by contracting authorities).

Overall, a lack of adequate management of public procurement plans was observed. It is not enough for the contracting authorities to prepare procurement plans, but they must also publish them transparently, because public procurement plans published in a timely manner allow economic operators to assess predictability in the market and prepare for participation, which in the long run enhances competition and leads to a more efficient market economy. This is not the case in the Former Yugoslav Republic of Macedonia.

¹⁹ Rulebook on the form and the contents of the annual plan for public procurement, Official Gazette no. 84, 04.07.2012. Available at: <http://www.bjn.gov.mk/content/documents/Rulebook-for-contents-of-Annual-Plan-for-PP.pdf>

Category 3

Exceptions from procurement legislation

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

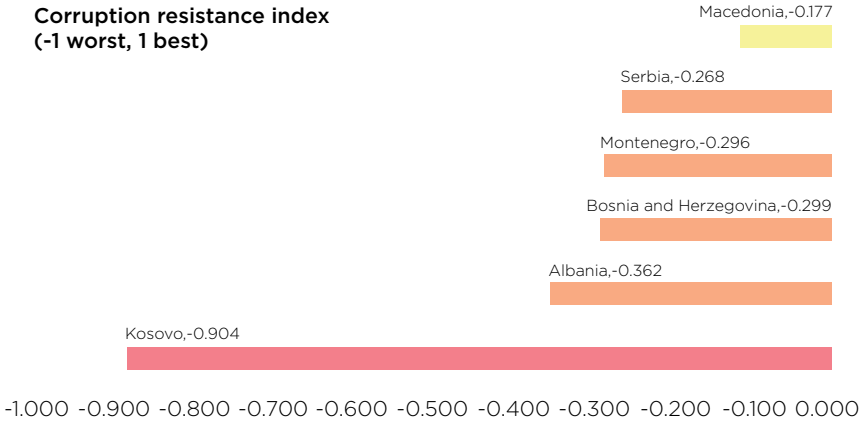
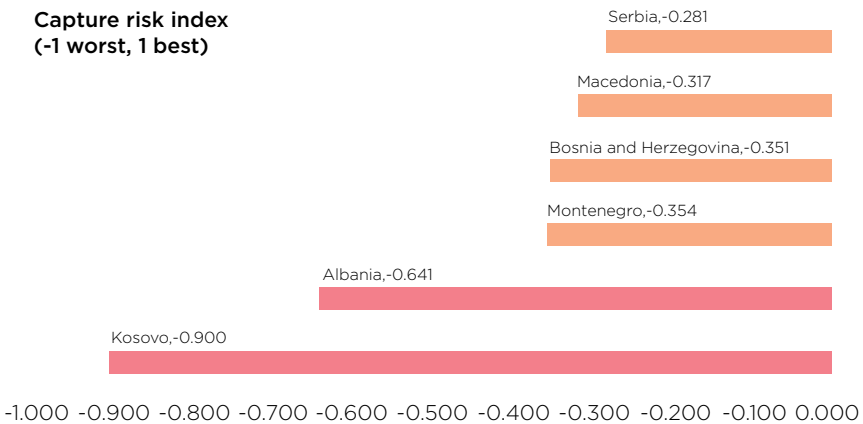


TABLE M.3.2: Capture Risk Index - Exceptions from procurement legislation



Interpretation of indices FYR of Macedonia Category 3: Exceptions from procurement legislation

In the area of exemptions from the PP legislation, the system is considered to be one of the most advanced relative to other observed countries in the GRAPP assessment. The PP corruption resistance index (table M.3.1 above) suggests a moderate response to corruption, while the capture risk index (see table M.3.2 above) indicates high capture risk. Thresholds for exemptions due to petty procurement rules are appropriate, as is the relatively narrow scope of exemptions due to data secrecy provisions, seen as a desirable development in preventing the abuse of exemption provisions. However, some of the issues remain. Deficiencies in proper guidelines on the application and conduct of such procedures contribute to the risks observed in this area. There is also a lack of proper evidence on strict deterrence to abuse of petty procurement rules, suggesting that more attention is needed in future reforms. Further standardization of collected information is needed, while petty procurement needs more advanced digital solutions for conducting such procurement, as well as reporting on such procurement by respective contracting authorities.

Findings in detail

Exemptions from the PPL are stipulated in Articles 7 – 11 and include procurement in the defence sector, the diplomatic and consular offices of the Former Yugoslav Republic of Macedonia abroad, and classified state secrets by a competent body, or international organizations (donors and lenders). Article 11 stipulates that “the law shall not apply to procurement which total monthly amount does not exceed Euro 500 in Denar counter-value without value added tax”. In their answer to the FOIA request, the PPB provided an interpretation of this article stating that “in cases when the estimated value of the contract is above EUR 500, the contracting authority is obliged to implement one of the procedures for awarding a public procurement”.²⁰ There is no obligation to inform the public about contracts for this petty procurement.

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

Category 4

Information management in Public Procurement system

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

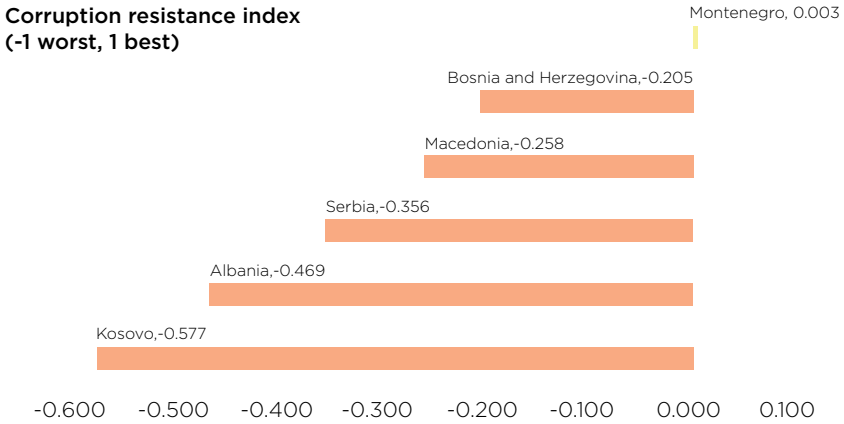
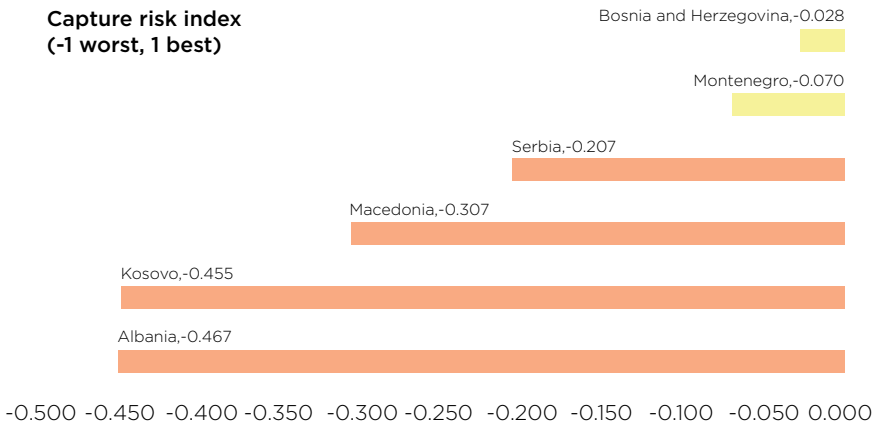


TABLE M.4.2: Capture Risk Index – Information management in PP system



Interpretation of indices FYR of Macedonia Category 4: Information management in PP system

In the area of information management, the system scores moderately in comparison to other observed countries. Indices M.4.1 and M.4.2 (above) show an incidental response to corruption, followed by high capture risk in this category. Strong progress is observed in the area of standardization of all relevant information, centralization of information, and transparency of the collected information, including references on previous conduct by respective economic operators (see Findings in detail below), which is a desirable development in the area of information management in PP systems. However, deficiencies were observed in terms of the lack of full digitalization of information management, while the absence of proper sanctioning for non-compliance weakens the system, with which thus rates as an incidental response to corruption and prone to undue influence. Full digitalization and primary source standardized reporting should be considered in this area, accompanied by effective sanctioning of the deviations, as well as the establishment of preliminary digital risk assessment tools to assist the respective control institutions.

Findings in detail

The Electronic System for Public Procurement (ESPP)²¹ enables the implementation of e-procurement in the former Yugoslav Republic of Macedonia. It was set up in 2006 as part of a pilot by the USAID e-government project. At first, it was used only by several contracting authorities as a pilot project, but in the course of time, its scope was extended to all contracting authorities. In 2008, a web information system was prepared by the PPB for the publication of contract notices and contract award notices and the ESPP was upgraded at the same time with the e-auction module. Finally, in 2012, the two systems were integrated into one ESPP system.

Today, the ESPP is a centralized system for public procurement used by all contracting authorities in the former Yugoslav Republic of Macedonia, through which it is possible to complete and publish contract notices for awarding public procurement contracts, calls for bids, notifications of concluded contracts, records of bid-seeking requests, annulment of procedures, implementation of procedures for awarding public procurement contracts using electronic means (use of electronic equipment for processing and storing data), and conducting auctions. Each individual without prior registration can access the electronic system for public procurement and review each public procurement procedure. Moreover, they can apply advanced filters and research the available content by contracting authority, economic operator, number of notice, subject of public procurement, type

21

See: <https://www.e-nabavki.gov.mk/PublicAccess/home.aspx#/home>.

of contract, type of procedure etc. Public procurement contracts are not available for the public through the electronic system for public procurement.

In addition, it should be noted that according to the PPL (Article 40), a list of economic operators with negative references is published on the ESPP. Those economic operators are denied the right to participate in public procurement.

Each contracting authority is obliged to publish public procurement notices on the ESPP. Information published in the register is available to the public and can be downloaded in pdf or doc format. The system of reporting is standardized, but not digitalized and thus inadequate for in-depth analysis.

All tender documentation must be published on the electronic system for public procurement, and this is obligatory for each contracting authority. The system itself does not allow publication of a call for public procurement without publishing the complete tender documentation. On the other hand, there is no obligation to publish a public procurement contract in an appropriate register under the PPL.

The PPL does not prescribe sanctions if the technical specifications and signed contract differ; nor if deadlines prescribed in the PPL are violated by the contracting authority.

Pre-bidding stage

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

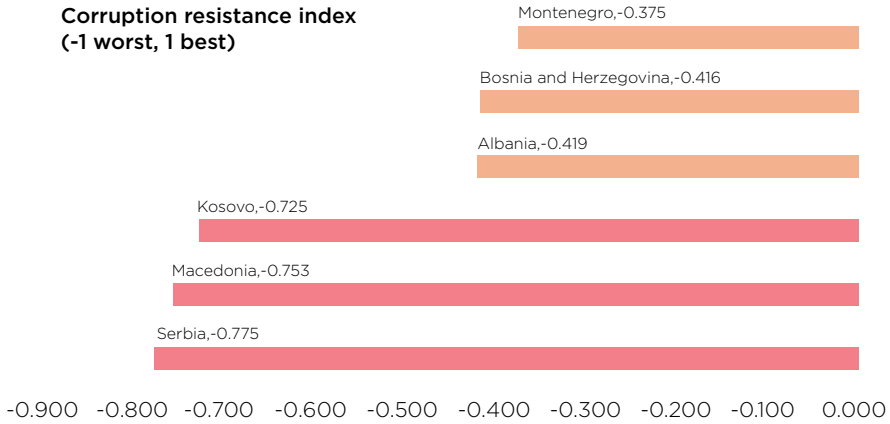
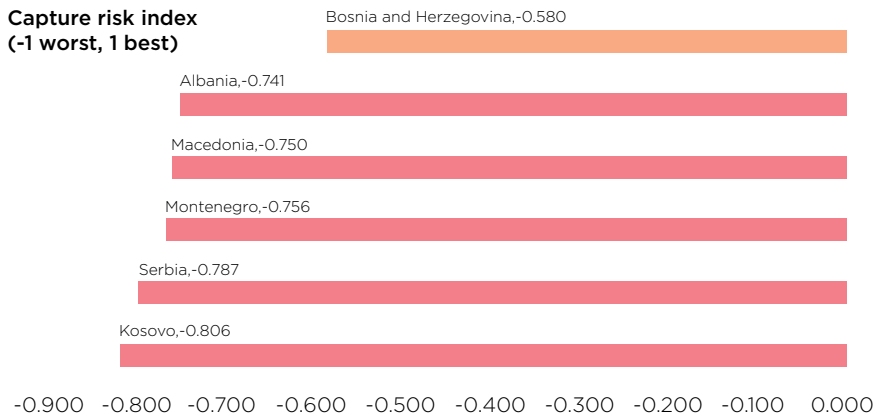


TABLE M.5.2: Capture Risk Index – Pre-bidding stage



Interpretation of indices FYR of Macedonia Category 5: Pre-bidding stage

The pre-bidding stage of PP in the FYR of Macedonia follows a negative trend in all observed countries. While the literature in general confirms that pre-bidding is one of the highest risk areas in Public Procurement, evaluators observed significant lack of attention to this issue by legislators and practitioners in the countries covered by the report. The indices in category 5 of PP assessment in FYR of Macedonia suggest an elementary response to corruption (see table M.5.1 above) accompanied by a captured system (see M.5.2 above). While the PPL generally addresses the risks in the pre-bidding stage, including the provision that members of the Public Procurement Commission shall act in accordance with the Code of Ethics in the course of implementing public procurement procedures, many deviations that occur at this stage are not addressed. The appointment of members of the Public Procurement Commission (PPC) in respective procedures is not prescribed and is exposed to direct political influence without proper accountability measures (see Findings in detail below). Standard operating procedures for receipt and storage of bids (and other information in pre-bidding stage) are lacking, as well as dual controls and proper accountability. As all of the observed countries have weak responses in this area, the proper solutions may have to come through improvement of the EU regulation, and/or within the technical assistance framework in pre-accession. These interventions shall focus on establishment of proper standardized operating procedures accompanied by proper application of division of powers principles, dual controls and sanctioning of the wide range of deviations (with emphasis on the protection of privileged data and conflict of interest) that can appear at this stage of PP process.

Findings in detail

Division of powers established between the pre-bidding and bidding stage is insufficient to address the potential undue influence over public procurement procedure. The PPL is not explicit when it comes to who is responsible for producing the tender documentation; it stipulates that the information to be included in the tender documentation should be prescribed by the Minister. In response to the FOIA request, the PPB stated that the responsibility for producing tender documentation lies with the following individuals: person responsible within contracting authority, members of the Public Procurement Commission (PPC) and internal experts.²²

Upon deciding to initiate a public procurement procedure, the contracting authority needs to establish a PPC and appoint its chairman and members, their number and duties, as well as engage external experts, if necessary. The PPC is responsible for receiving tenders and keeping documentation in order until the award decision is made. In addition, the PPC is responsible for conducting the evaluation and proposing the award decision to the responsible person within the contracting authority. PPC members are obliged to act in accordance with the Code of Ethics in the course of implementing public procurement.

22

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

Category 6

Public procurement Contracting

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

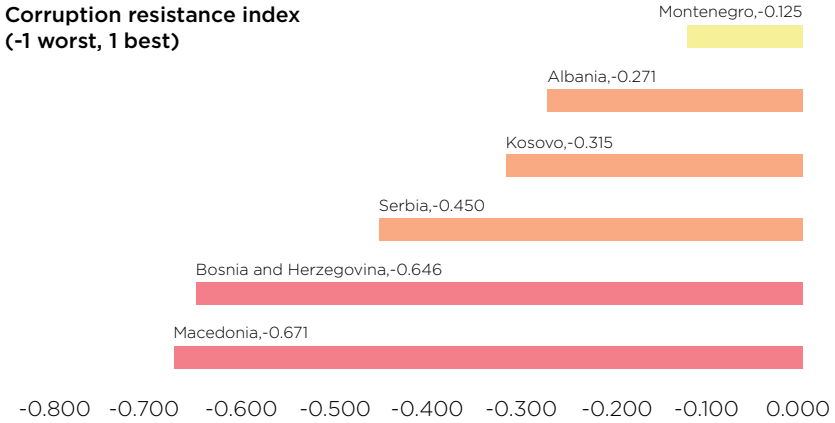
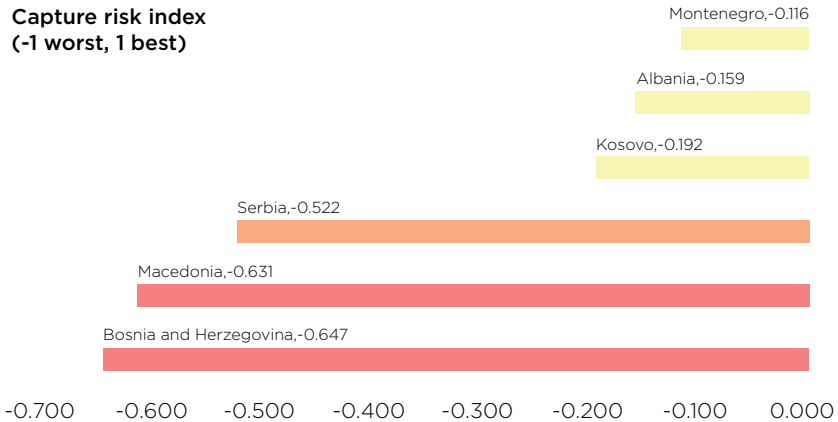


TABLE M.6.2: Capture Risk Index – Public Procurement Contracting



Interpretation of indices FYR of Macedonia Category 6: Public procurement Contracting

In the area of PP contracting, the FYR of Macedonia is among the weakest performers in comparison to the other countries. The Corruption resistance index (see the table M.6.1 above) is in the area of elementary response, while the Capture risk index (see table M.6.2 above) suggests a captured system. In this category, similar to the pre-bidding stage, the regulatory setting foresees a variety of measures to assure the integrity of the PP process and mitigate corruption risks (i.e. acting according to the code of ethics, preventing conflict of interest, obligatory certification of the PP officers). However, the risk of exposure of the PPC to undue political influence through selection and appointment procedures remains high, as observed in category 5 above. The absence of dual controls (i.e. lack of direct individual responsibility of the members of the PPC and other relevant actors) adds to the risk of an inadequate or improper organizational management of the contracting procedure. Conflict of interest provisions are vague, with significant limits on enforcement and without proper oversight by an anti-conflict of interest body or a proper sanctioning mechanism.

The PP system would moderately benefit from applying some of the solutions and approaches used in Montenegro (proper dual controls and sanctioning) and in Albania (in the area of exclusion criteria) . The authorities should also pay further attention to the development of integrity measures in contracting, the establishment of dual controls in this area (including pro-active inspections) the full digitalization of information management and further development of principles and precise guidelines for usage of exclusion criteria.

Findings in detail

As described in the previous chapter, the PPC is responsible for conducting the evaluation and proposing the award decision to the responsible person within the contracting authority. Regarding the appointment of the PPC, upon the decision to initiate a public procurement procedure, the contracting authority needs to establish a PPC and appoint its chairman and members, their number and duties, as well as engage external experts, if necessary (Article 28). PPC members are obliged to act in accordance with the Code of Ethics in the course of implementing public procurement. Further, Article 29, paragraph 1, of the PPL states that “The contracting body shall appoint a person or an organizational form within which limits activities in the area of public procurements are to be performed”. In paragraph 2 of the same article it is stated that “The person referred to in paragraph (1) of this Article shall be a person employed in the contracting body, trained to perform activities in the area of public procurements, in accordance with this Law and holder of a proper certificate for passed exam for a person for public procurement. If the contracting body has appointed an organizational form to perform the public procurement activities, all the persons within the organizational form shall hold a certificate for passed exam for a person for public procurement.”. Regarding conflict of interest, the Law on the Prevention of Conflicts of Interest²³ applies to public procurement procedures in the Former Yugoslav Republic of Macedonia. During the PP procedure, the president, the vice-president, members and vice-members of the PPC are obliged to sign a statement on absence of conflict of interest (CoI). These statements are a mandatory part of the tender procedure and documentation. In the case of a CoI with the president, the vice-president, members and vice-members of the PPC, the same must withdraw from the work in PPC and be substituted by other persons. (More information about conflict of interest is provided in chapter 11)

23

Law on the Prevention of Conflicts of Interest, Official Gazette no. 128/09, dated 22.10.2009

Petty public procurement

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

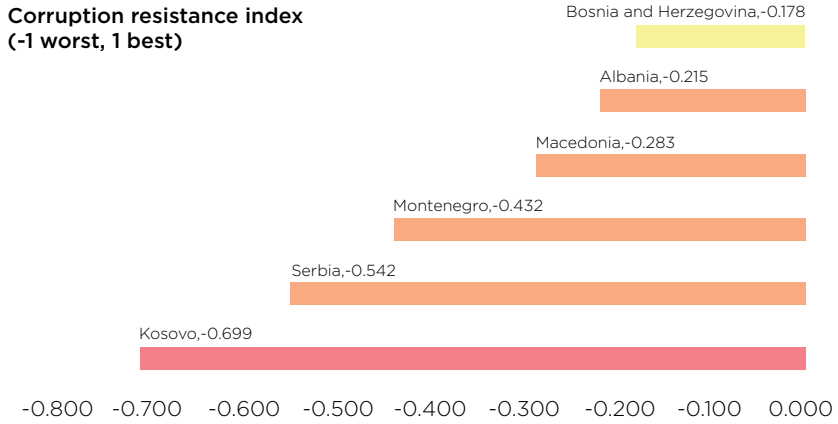
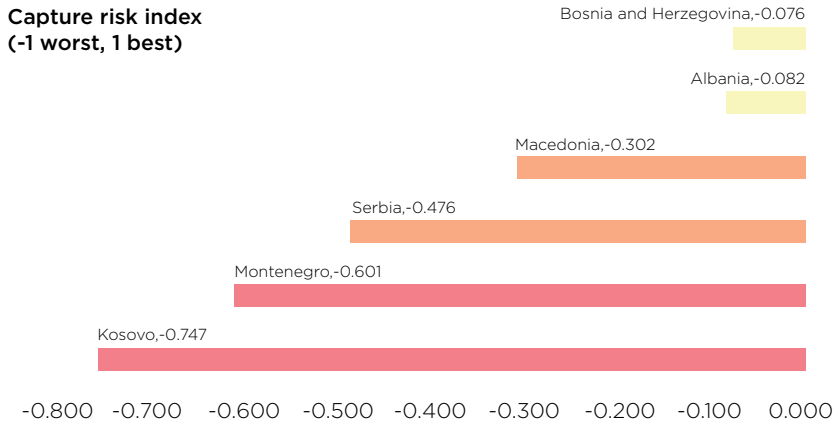


TABLE M.7.2: Capture Risk Index – Petty public procurement



Interpretation of indices FYR of Macedonia Category 7: Petty public procurement

In the area of petty public procurement, the value of the PP Corruption resistance index is in the area of incidental response to corruption (table M.7.1 above), while the Capture risk index is in the zone of high capture risk (table M.7.2 above). The system limits petty procurement to approximately EUR 8 per purchase, and to some extent has standardized uniform reporting on simplified procurement procedures. However, simplified procedures with thresholds where (A) the estimated value of the public procurement contract is equal or below EUR 5,000, and (B) with estimated value equal or below 20,000 - and for works equal or below EUR 50,000 - are not properly supported by dual controls, digitalization and accountability, thus representing significant risks in the overall economic context of FYR of Macedonia.

As simplified procedures represent significant value in overall PP annually of approximately EUR 84 million (2016, see as well category 18), the risks of abuse are significant. Moderate improvements of the system could be achieved through adoption of strict guidelines on low-value procurement (i.e. increase in the number of minimum bidders to five as in Bosnia and Herzegovina and Albania) and better reporting systems (detailed standardized reporting in the PP system). These measures, to maximise impact and enhance anti-corruption endeavours, should be accompanied by full digitalization of the system and real time reporting as observed in category 4. Dual controls and pro-active inspections of simplified procedure related procurement should accompany all other measures as well, followed by frequent public reporting.

Findings in detail

In Article 11, the PPL stipulates that “the law shall not apply to procurement which total monthly amount does not exceed Euro 500 in Denar counter-value without value added tax”. In their answer to FOIA request, the PPB provided the interpretation of this article stating that “in cases when the estimated value of the contract is above EUR 500, the contracting authority is obliged to implement one of the procedures for awarding a public procurement”.²⁴ There is no obligation to inform the public about contracts for this petty procurement.

In addition, a contracting authority may conduct a simplified procurement procedure when the estimated value of the public procurement contract for goods and services is equal to or below EUR 20,000 and for works equal to or below EUR 50,000, VAT excluded. There are two types of simplified procurement procedures: (A) one in which the estimated value of the public procurement contract is equal or below EUR 5,000, and (B) another with estimated value equal or below 20,000; and for works equal or below EUR 50,000.

²⁴ Public Procurement Bureau (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Category 8

Public Procurement Remedy mechanisms

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

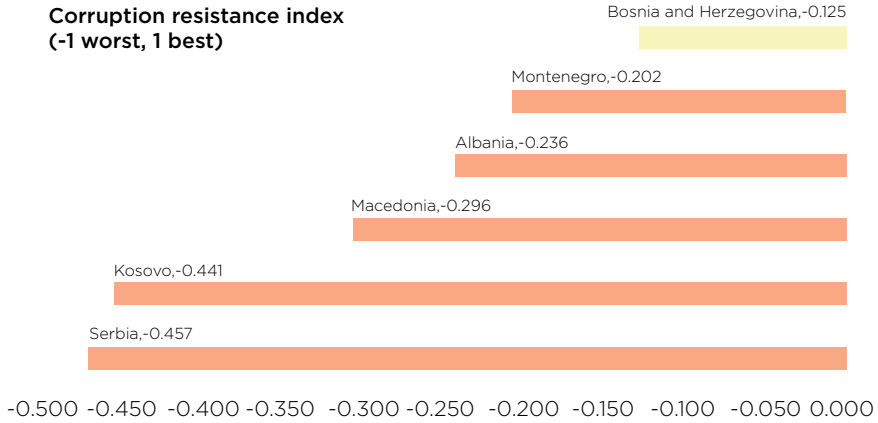
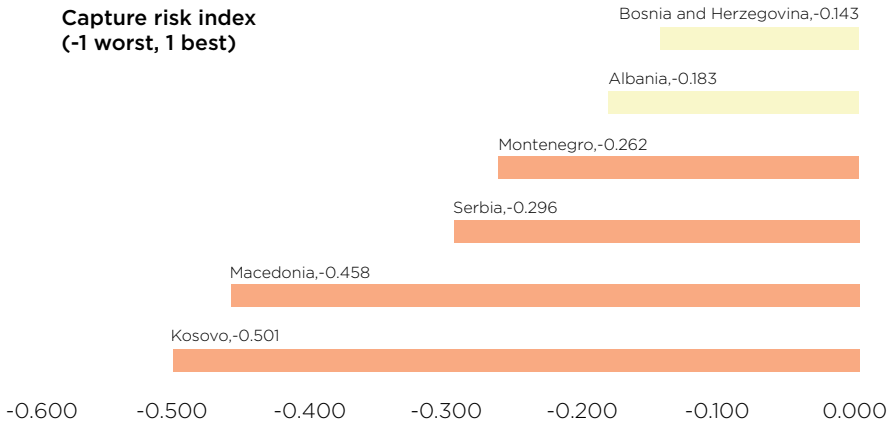


TABLE M.8.2: Capture Risk Index – Public Procurement Remedy mechanisms



Interpretation of indices FYR of Macedonia Category 8: Public Procurement Remedy mechanisms

The remedy mechanism in the FYR of Macedonia scores moderate in comparison to other covered countries. The Corruption resistance index (see table M.8.1 above) indicates an incidental response to corruption, while the Capture risk index value (table M.8.2 above) ranks the State Appeals Commission for Public Procurement (SACPP) in the area of high capture risk. Appointment of the leadership of the SACPP is through parliamentary procedure with the head of the agency's mandate being out of sync with election cycles (5 years) – both helpful steps in mitigating the risk of direct politicization and corruption in this area. The administrative fees for submitting a complaint to the SACPP properly reflect the economic reality in the FYR of Macedonia and do not limit access to justice.

However, there are issues of concern in this area observed by evaluators. Almost 30% of the cases against decisions of the SACPP are upheld by the respective administrative courts (see Findings in detail) which suggests weak capacity and high risk of corruption incidence and capture in this area. The rather low ratio of the complaints to the SACPP in comparison to the overall value of procurement (see table M.C. below) suggests limitations in access to justice.

Table M.C.: Ratio of filled complaints (remedy mechanisms) 2016 per PP system

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

The low ratio of complaints/total value of procurement, and high number of significant contracts signed annually (approx. 10,000, see category 15 below as well) often implies a lack of trust by contractors in the established system; this is in line with the high ratio of court rulings against the decision of the SACPP (see Findings in detail below).

Some of the weaknesses could be addressed through applying solutions used in Montenegro (i.e. the introduction of the PP inspectorate and transfer of jurisdiction for breaches other than stipulated in the complaint to other relevant institutions) or by applying the model developed in Bosnia and Herzegovina (i.e. establishment of two-level body based on value thresholds). In further development of the system, the access to remedy mechanisms should be improved, and the quality of the decisions made by SACPP assured (this could be assured through proper capacity building measures, strengthened education and an increase in the number of staff deciding complaints).

Findings in detail

The State Appeals Commission for Public Procurement (SACPP) is the remedy body responsible for reviewing procurement complaints and making decisions that are administratively final. The SACPP is composed of a president and four members appointed for a mandate of five years (with the right to re-election) by the Parliament upon proposal of Parliament's Committee on Election and Appointment Issues. The SACPP president is under obligation to the Law on the Prevention of Conflicts of Interest; however, there are no specific regulations in place to prevent undue influence on members of the SACPP.²⁵

Fees upon submitting requests for protection of rights are as follows: the claimant needs to pay a fee in the amount of EUR 100 in procurement with estimated value below EUR 20,000. When submitting a request for protection of rights in the procurement with estimated value above EUR 20,000 and below EUR 100,000, the claimant will pay a fee in the amount of EUR 200; for procurement with estimated value above EUR 100,000 and below EUR 200,000, the fee amounts to EUR 300. Finally, for procurement with estimated value above EUR 200,000 claimant will pay a fee in the amount of EUR 400.

The SACPP has 18 people employed. Five of them are functionaries, 13 are administrative officers.²⁶ In 2014, SACPP upheld complaints in 66 out of 575 cases it reviewed (11%) and the court delivered 66 judgments in cases brought against decisions of the SACPP, ruling against it in 13 instances (27% as per SACPP Annual Report for 2014, an increase compared

²⁵ State Appeals Commission for Public Procurement (2017) Freedom of Information Act, written response retrieved on July 7, 2017.

²⁶ State Appeals Commission for Public Procurement (2017) Freedom of Information Act, written response retrieved on July 7, 2017.

to 2013). In 2015, the SACPP upheld complaints in 91 of the 610 cases it reviewed (15%) and the court delivered 66 judgments on cases brought against decisions of SACPP, ruling against it in 24 instances (26% as per SACPP Annual Report for 2015). This relatively high rejection rate remains an issue of concern. Regarding implementation capacity, the capacity of the SACPP and the court to deal with an increasing number of appeals needs to be strengthened, along with material and staffing conditions for more efficient operation of the SACPP (staff levels, training, and budget). Finally, even though the SACPP president is elected by Parliament, appointments to the SACPP need to be freed from political interference; improving access to SACPP's decisions would also increase transparency.

Table 2 - Complaints received and resolved by SACPP for year 2014, 2015 and 2016²⁷

	2014	2015	2016
Complaints received	591	626	623
Complaints resolved	575	610	606

²⁷ State Appeals Commission for Public Procurement (2017) Freedom of Information Act, written response retrieved on July 7, 2017

Category 9

Control over the implementation of PP legislation

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

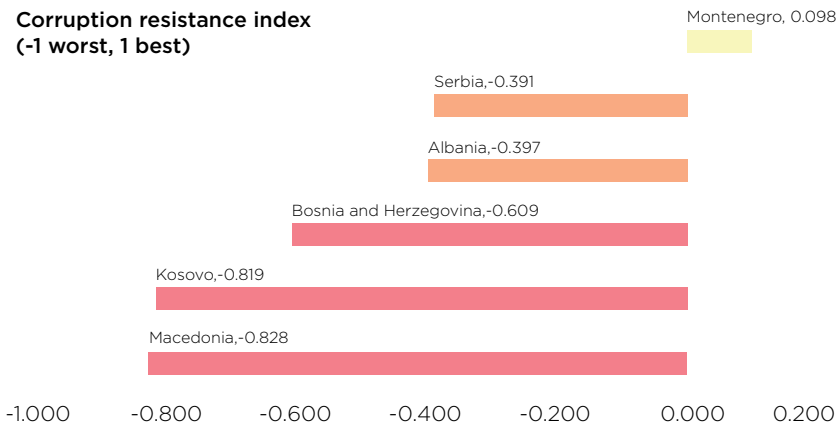
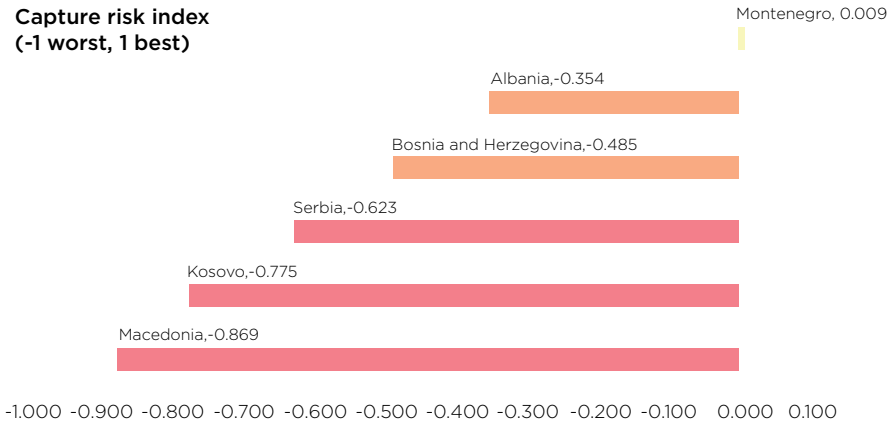


TABLE M.9.2: Capture Risk Index – Control over the implementation of PP legislation



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

In the area of controls over the implementation of the PP legislation, Macedonia is among the weakest performers. The Corruption resistance index (table M.9.1 above) is in the area of elementary response, while the Capture risk index (table M.9.2 above) indicates a captured system. Positive developments are observed in the area of collecting and publishing negative references from previous contracts. However, many of the aspects of the system require more advanced conceptual approaches to mitigate the corruption and capture risks.

The Public Procurement Bureau (PPB) exercises somewhat conflicting responsibilities in providing opinions and advice to respective contracting authorities, while at the same time being responsible for oversight and potential sanctioning of PP actors; these duties can be in conflict in situations where sanctioning applies in cases where the PPB provided advice (see Findings in detail below). In addition, the direct subordination of the office to the executive branch of government exposes it to high risk of undue influence, especially in situations where decisions of the PPB affect the economic and political interest of the government (see Findings in detail below). Finally, weak responses to deviations in the PP process and implementation of the PPL make controls insufficient to curb risks of corruption and capture occurrence that derive from misinterpretation of the law, or intentional misconduct, as shown in the table M.D. below.

To make immediate improvements the authorities could look in to the concepts and approaches developed in Montenegro. In the long run, the PP system needs more comprehensive approaches that will enhance the independence and ability of the PPB to conduct pro-active investigations, while assuring proper sanctioning of deviations in implementation of the PPL. Conflicting interests (between providing advices and sanctioning) should be mitigated as well. Further digitalization of data management (i.e. development of digital risk detection tools) should also be a priority.

Findings in detail

The Public Procurement Bureau (PPB) is responsible for developing the public procurement system and assuring rationality, efficiency and transparency in the implementation of public procurement in the Former Yugoslav Republic of Macedonia. The PPB Director is appointed by the Government at the proposal of the Minister of Finance for a 4-year mandate and is responsible to the Minister and the Government.

One of the PPB's responsibilities is to provide opinions regarding the provisions and application of the PPL as well as assisting contracting authorities and economic operators in implementing procurement procedures. During 2014, 1,308 requests for opinion were submitted to the PPB. During 2015 there were 1,275 requests and 1,271 requests during 2016.²⁸ The information about the number of employed in PPB was not available at the time of writing this report.

The instrument of negative references was introduced in 2013. Contracting authorities are obliged by the PPL to publish negative references on the ESPP, and the PPB has the authority to remove them when justified. In 2014, contracting authorities published 40 negative references and the PPB removed 3 of them (at the request of contracting authority and SAO). In 2015, there were in total 64 negative references published and the PPB removed 7 (at the request of contracting authority, SACPP and competent court). During 2016, 84 negative references were published and 14 were removed by the PPB upon a decision of the SACPP.²⁹

As the PPB is responsible for initiating proposals for the adoption of legal and other acts in the field of public procurement, it should be emphasized here that the PPL in the former Yugoslav Republic of Macedonia does not prescribe any sanctions for the following deviations in implementing regulations:

- Departure in the technical specifications in the tender for competition from those described in the contract
- Failure to implement a public procurement procedure in cases where such an obligation is prescribed by law
- Concluding a contract which deviates from the technical specifications described in the tender competition
- Violation of prescribed deadlines by the contracting authority.

A detailed overview of the answers given by the PPB to the FOIA request is presented in the table below. The table shows which sanctions (if any) are prescribed for the listed deviations in implementing regulations on public procurement:

²⁸ Public Procurement Bureau (2015, 2016, 2017) Annual report 2014, 2015 and 2016. Available at: http://bjn.gov.mk/ghodishni_izvieshtai-en.nspix. Pgs. 7, 6, 9.

²⁹ Public Procurement Bureau (2015, 2016, 2017) Annual report 2014, 2015 and 2016. Available at: http://bjn.gov.mk/ghodishni_izvieshtai-en.nspix. Pgs. 10, 10, 13.

Table M.D. Sanctions for deviations in implemented regulations linked to procurement:

Deviation	Sanction
Failure to publish a tender for competition	Such deviation is not possible. Each tender documentation has to be published on the electronic system for public procurement and this is obligatory for each contracting authority. The system itself doesn't allow publication of a call for public procurement without publishing the complete tender documentation.
Departure in the technical specifications in the tender for competition from those described in the contract	Not stipulated under the Law on public procurement
Failure to publish the public procurement contract in the appropriate register	According to the Law on public procurement there are no any obligations to publish the public procurement contract in the appropriate register
Failure to implement a public procurement procedure in cases where such an obligation is prescribed by law	Not stipulated under the Law on public procurement
Conflict of interest in the evaluating members of the evaluating committee	As stipulated in Article 62, paragraph 1 in the Law on public procurement, in the indicated situation the Law on prevention of conflict of interest will be applied accordingly. As stipulated in paragraph 3 under the same Article, in case of identified conflict of interest among the president, vice president, members and vice members of the commission for public procurement, they are withdrawn from their functions and are exchanged with new members.
Conflict of interest between the head of the contracting authority and selected bidder	As stipulated in Article 62, paragraph 1 in the Law on public procurement, in the indicated situation the Law on prevention of conflict of interest will be applied accordingly. As stipulated in paragraph 4 under the same Article, in cases when a conflict of interest between the head of the contracting authority and the bidder has been identified, then the head of the contracting authority with separate decision gives authority to other persons from the commission or another employee in the contracting authority to bring the decision and sign the contract.
Concluding a contract which deviates from the technical specifications described in the tender competition	Not stipulated under the Law on public procurement
Violation of prescribed deadlines by the contracting authority	Not stipulated under the Law on public procurement

Control over Execution of public procurement contracts

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

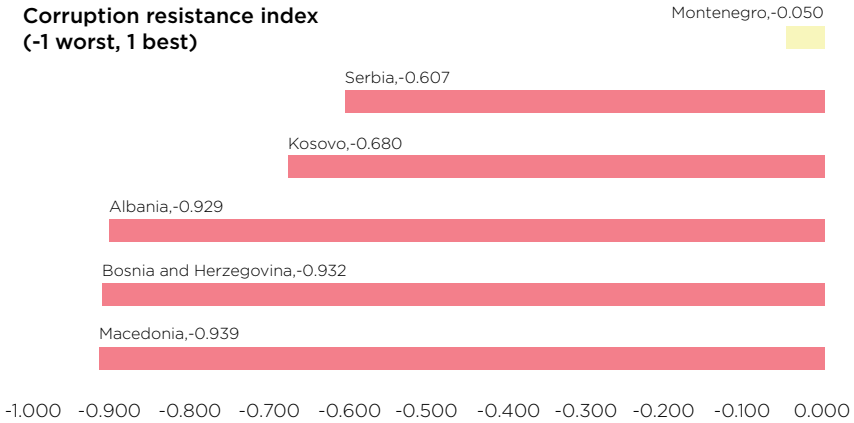
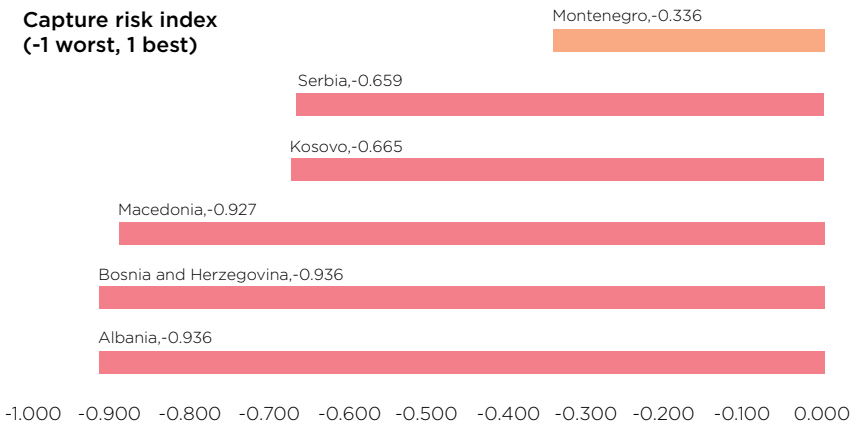


TABLE M.10.2: Capture Risk Index – Control over Execution of public procurement contracts



Interpretation of indices FYR of Macedonia Category 10: Control over Execution of PP contracts

In the area of control of execution of contracts, the PP system in FYR of Macedonia is among the weakest performers. The corruption resistance index value is in the stage of elementary response (see table M.10.1 above) while the Capture risk index indicates a captured system (see table M.10.2 above). According to the collected evidence, control over the execution of contracts is foreseen only as a possibility in the system in FYR of Macedonia. Detailed provisions, standardization of procedures and information management are missing in this area (see Findings in detail below). At the same time, publicly available reports suggest that there could be significant deviations at this stage, without proper accountability mechanisms in place for mitigation of such risks.

This stage of the PP process requires immediate regulatory and institutional attention as is currently outside of the existing oversight and legal protection mechanisms. While immediate improvements in this area could be gained from observing the principles and approaches in controls adopted by the PP system in Montenegro, in the long run, the PP regulation and institutional setting may need restructuring in order to properly address the risks observed in GRAPP report. At a minimum, in future developments, the PP system in FYR of Macedonia should establish more detailed standardized reporting, as well as independent control of the implementation (quality checks as well as detailed compliance with the contract).

Findings in detail

The existing legislative framework does not foresee measures and instruments for monitoring the execution of public procurement contracts. However, the PPB, in their answer to the FOIA request, stated that the contracting authority could within its internal act assign a person responsible for monitoring the execution of public procurement contracts. The evidence gathered does not suggest that any of the respective contracting authorities have taken such action.

The importance of monitoring the execution of public procurement contracts is pressing. This was confirmed inter alia in an affair with medicine imports in the Former Yugoslav Republic of Macedonia, revealed through journalist investigations.³⁰ In 2013, the Minister of Health launched a new policy on parallel imports of medicines in order to reduce average prices on the market. The pharmaceutical companies complained that this policy encouraged imports of fake medicines and, according to one the journalist, “40% of medicines imported through the parallel imports regime are fake”.

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Article by the journalist Meche Atanasova Tochi for NOVA TV: <http://novatv.mk/somne-zhi-deka-40-protsenti-od-lekovite-od-paralelen-uvoz-se-falsifikat/>. Accessed 28.09.2017

Category 11

Regulation of Conflict of Interest in PP System and procedures

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

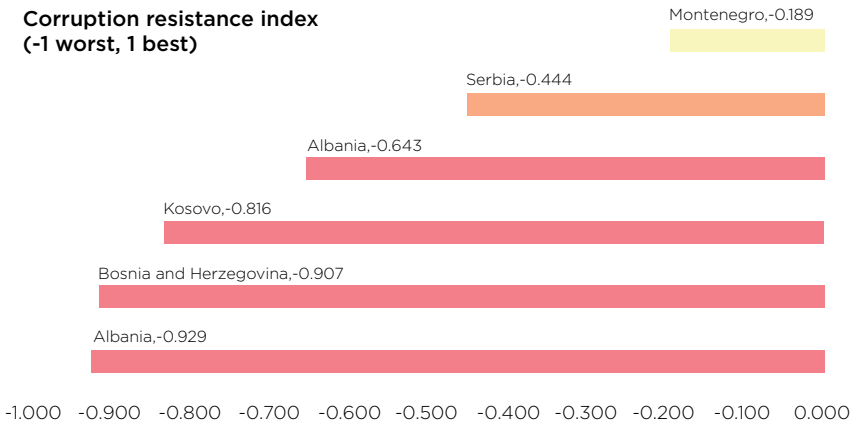
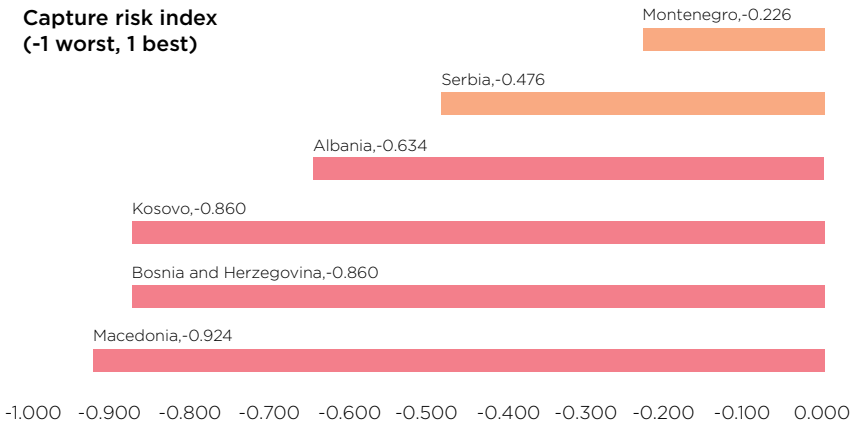


TABLE M.11.2: Capture Risk Index – Regulation of Conflict of Interest in PP System and procedures



Interpretation of indices FYR of Macedonia Category 11: Regulation of Conflict of Interest in PP System and procedures

In comparison to the other observed countries, in the area of managing of conflict of interest in the Public Procurement system, FYR of Macedonia scores low. The Corruption resistance index is in the area of elementary response (table M.11.1 above) accompanied by a captured system (table M.11.2 above). There is a rather weak attempt by legislators to address conflicts of interest through anti Conflict of Interest legislation, and requiring signature of statements by members of the PP commission (see Findings in detail below). Yet the solution in place does not properly mitigate potential conflicts of interest (through the procedure of appointment of the PPC) nor foresee any substantive sanctions if conflict of interest actually occurs (see table M.D. above). As in the case of the control over execution of the contracts (category 10. above), some improvements in this area could be achieved by applying the principles and solutions established in the PP system of Montenegro. However, in the long run, PP regulation and the institutional setting in FYR of Macedonia may need restructuring in order to properly address risks that derive from non-regulated conflicts of interest. At a minimum, in future developments, the PP system should establish dual controls, proper sanctioning, and proper prevention mechanisms for conflict of interest in the PP process.

Findings in detail

The Law on the Prevention of Conflicts of Interest³¹ applies to public procurement procedures in the Former Yugoslav Republic of Macedonia. During the PP procedure, the president, the vice-president, members and vice-members of the PPC are obliged to sign a statement for non-existence of conflict of interest (CoI). These statements are a mandatory part of the tender procedure and documentation. In case of CoI pertaining to the president, the vice-president, members and vice-members of the PPC, the individual shall withdraw from the PPC and be substituted by other persons. Further, in the case of CoI pertaining to the contracting authority responsible person, the individual shall by a special decision authorize another person among the officials or employees at the contracting authority to adopt the appropriate decision and to sign the contract (article 61 PPL). There are no mechanisms nor sanctions to prevent and detect abuse of these prescriptions; but more importantly, such provisions can hardly be efficient in preventing CoI in public procurement. Authorizing subordinated personnel to adopt the award decision and to sign the contract does not prevent undue influence over the procedure by the responsible person; hence these provisions are observed as high risk, likely to be ineffective in assuring fair competition and preventing CoI.

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Law on the Prevention of Conflicts of Interest, Official Gazette no. 128/09, dated 22.10.2009

Audit mechanisms

TABLE M.12.1: Corruption Resistance Index – Audit mechanisms

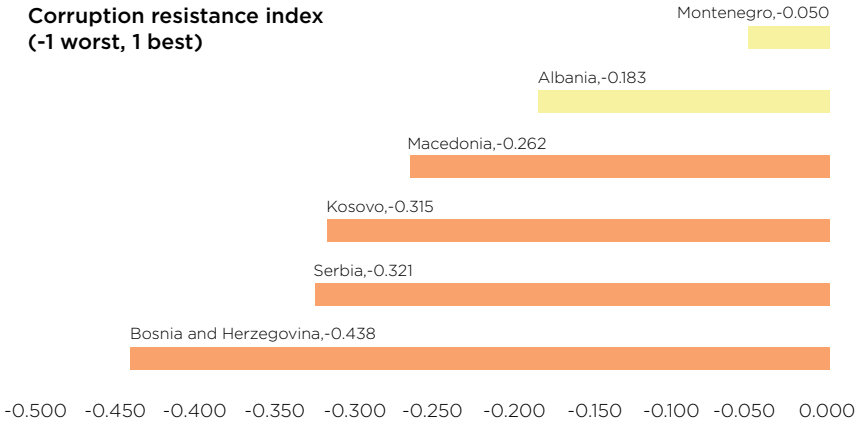
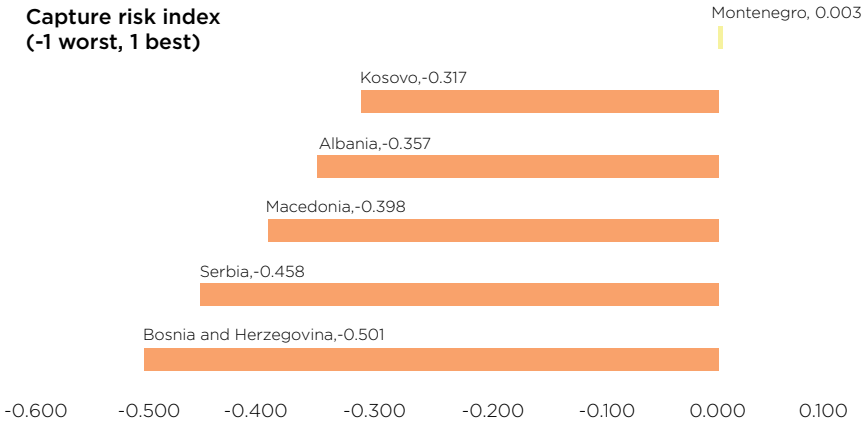


TABLE M.12.2: Capture Risk Index – Audit mechanisms



Interpretation of indices FYR of Macedonia Category 12: Audit mechanisms

In the area of audit mechanisms, the PP system in FYR of Macedonia scores moderate in comparison to other observed countries. The Corruption resistance index shows an incidental response to corruption (table M.12.1 above) accompanied by high capture risk (table M.12.2 above). Existing regulations suggest that the role of the State Audit Office (SAO) in FYR of Macedonia is to verify whether the public procurement procedure has been applied in line with the PPL within the general audit conduct of specific public entities. The audit system has established some elementary corruption prevention mechanisms (i.e. appointment and length of mandate of the Chief auditor). However, practice suggests (see table M.D. below) that the number of audits conducted per year is decreasing while the incidence of anomalies in public procurement is increasing, thus indicating that illicit conduct in the PP system is becoming more common practice in the FYR of Macedonia. The report, albeit based on a limited sample, suggests that control mechanisms and the role of sanctioning in preventing malpractice are not working properly.

This report recommends that the SAO further builds its capacity and increases the annual number of audits with a focus on PP anomalies. Horizontal cooperation between the SAO and other control mechanisms with the capacity to sanction malpractice should also be strengthened. Further standardization of reporting on public procurement in audit reports should be considered as a tool for external control mechanisms (i.e. civil society and media) to act upon the findings by the SAO.

Findings in detail

The State Audit Office (SAO) is the supreme audit institution in the Former Yugoslav Republic of Macedonia, carrying out, among other things, regularity and performance audits in public procurement. The SAO audits procurement planning and contracting. While implementing the 2014 audits, the SAO identified in total 1231 findings of which 40 related to public procurement.³² The most frequent irregularities related to signing the contract without implementing public procurement procedure; weaknesses in public procurement planning; and weaknesses in the contracting stage. In 2015, the SAO identified in total 858 findings, with 22 relating to irregularities in public procurement: weaknesses in public procurement planning; tender documentation lacking elements prescribed by the PPL; non-compliance of award criteria with PPL; etc.³³ In 2016, the SAO identified in total 795 findings of which 45 related to public procurement, mainly in the planning and contracting stages.³⁴ The mandate of the chief state auditor is 9 years without the right to re-election. Audit reports are accessible to the public on the web page of the SAO.

Table M.E. Audits by type of contracting authority carried out in 2014, 2015 and 2016

Conducted audits by State Audit Office, Macedonia

Year	2014 ³⁵	2015 ³⁶	2016 ³⁷
Total number of conducted audits	103	53	45
Number of public procurement findings	40	22	45

Source: Author's own computation based on responses to the FOIA request by the SAO and SAO annual reports

- 32 State Audit Office (2015) Annual report 2014. Available at: <http://www.dzr.mk/en/Uploads/SAO%20Annual%20Report%202014.pdf>. Pgs. 27
- 33 State Audit Office (2016) Annual report 2015. Available at: http://www.dzr.mk/en/Uploads/Annual_report_SAO_Macedonia_2015_100.pdf. Pgs. 28
- 34 State Audit Office (2017) Annual report 2016. Available at: <http://www.dzr.mk/en/Uploads/Annual%20Report%20SAO%202016.pdf>. Pgs. 29
- 35 State Audit Office (2015) Annual report for 2014. Pages 19 and 27. Available at: <http://www.dzr.mk/en/Uploads/SAO%20Annual%20Report%202014.pdf>
- 36 State Audit Office (2016) Annual report for 2015. Pages 19 and 28. Available at: http://www.dzr.mk/en/Uploads/Annual_report_SAO_Macedonia_2015_100.pdf
- 37 State Audit Office (2017) Annual report for 2016. Pages 20 and 30. Available at: <http://www.dzr.mk/en/Uploads/Annual%20Report%20SAO%202016.pdf>.

Criminal justice system response to PP anomalies

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

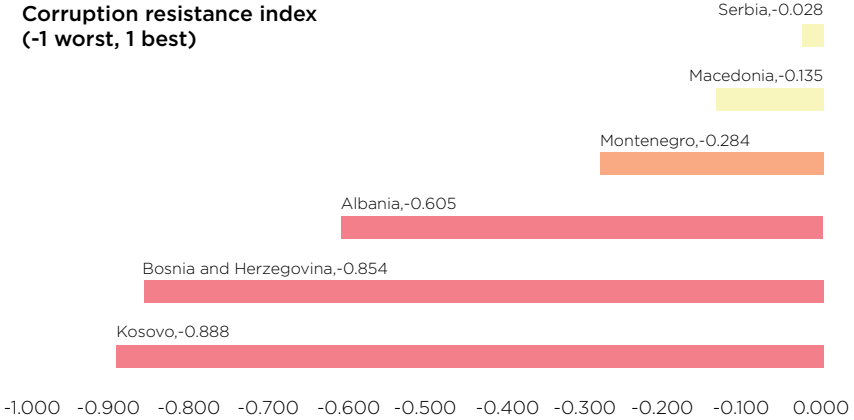
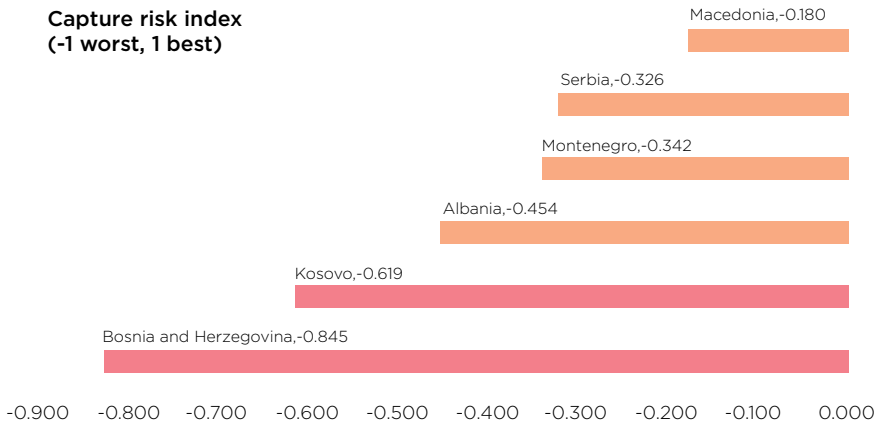


TABLE B.13.2: Capture Risk Index – Criminal justice system response to PP anomalies



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

The criminal justice system is the ultimate, final and most important response to corruption including in Public Procurement. In this area, the FYR of Macedonia is among the best performers. The Corruption resistance index is at the stage of moderate response (see the table M.13.1 above), while the Capture risk index value indicates a high capture risk (table M.13.2 above). The criminal code addresses procurement-related crimes, with evidence of moderate existing practice and policies on horizontal cooperation in this area (see Findings in detail below). However, the low number of cases conducted, with no evidence on final outcomes of proceedings, suggests a need for further attention and focus in this area, particularly given the weak performance observed in other horizontal accountability mechanisms (i.e. SACPP and PPB, SAO see above). In future reforms, a more strategic approach is required. More detailed statistics are needed, including standardization of statistics on outcomes and final verdicts of initiated proceedings.

Findings in detail

Related to the fight against and control of corruption, the State Commission for Protection of Competition (SCPC), the Police, the Public Prosecutor's Office (PPO) and PPB staff should work together in using the ESPP database. In addition, contracting authorities should include anti-corruption clauses in every public procurement contract signed, and the State Commission for Prevention of Corruption (CPC) in cooperation with the PPB should issue a Guideline on prevention of corruption and conflict of interest for contracting authorities and how to award public procurement contracts in a transparent, non-discriminatory way; avoiding conflicts of interest³⁸. The PP system in FYR of Macedonia shows evidence of such cooperation with concrete outcomes of the procedures (conducted investigations).

According to the 2015 Annual Report of the PPB, the number of corruption allegations related to public procurement submitted to the CPC in the period 2011- 2015 are given in the table below.

Table 2 Number of corruption allegations submitted to the State Commission for Prevention of Corruption by Public Procurement Bureau, 2011- 2015

	2011	2012	2013	2014	2015
Number of corruption allegations	45	29	14	25	10

Source: Author's calculations based on data from PPB Annual reports, 2015

The CPC submitted 2 out of 10 allegations in 2015 for possible criminal activities to the Public Prosecutor. The PPB states in its Annual Report that the decreasing number of possible corruption cases in public procurement can be explained by the continuing training of contracting authorities. To conclude, even though legislation and competent bodies are in place, there is still insufficient horizontal cooperation in the Former Yugoslav Republic of Macedonia between the PPB, SCPC, and CPC. This undermines the fight against corruption in general and the proper implementation of public procurement principles in particular.

³⁸ Public Procurement Bureau, Strategic priorities for the further development of the public procurement system in the Republic of Macedonia 2014-2018. Available at: <http://www.bjn.gov.mk/ns-newsarticle-strateski-prioriteti-en.nsp.x>.

Capacity and human resources management

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

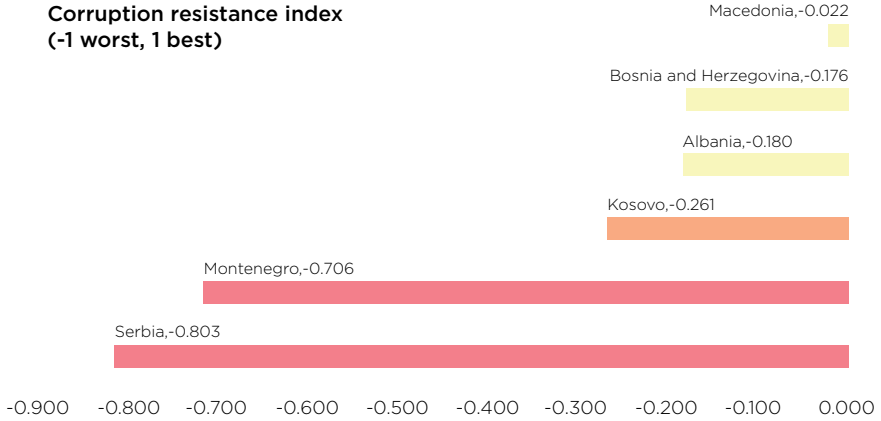
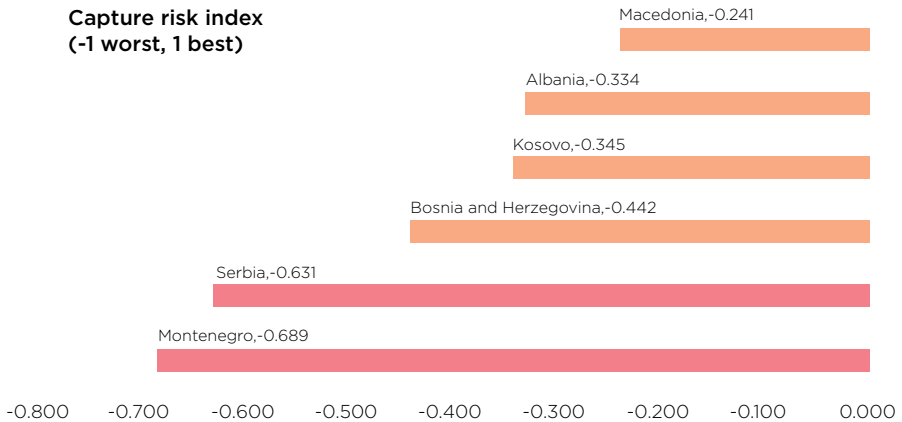


TABLE M.14.2: Capture Risk Index – Capacity and human resources management



Interpretation of indices FYR of Macedonia Category 14: Capacity and human resources management

In the area of Capacity and human resources management, the PP system in the FYR of Macedonia is evaluated as one of the best performers in comparison to other observed countries. The corruption resistance index is in the stage of moderate response to corruption (table M.14.1 above), while the Capture risk index (table M.14.2 above) suggests a high capture risk. The existing regulatory framework properly addresses the obligation for certification and periodic re-certification of PP professionals (PP officers) and proper training and examination procedures (see Findings in detail below). In addition, the e-procurement system is in an advanced process of development and implementation.

However, the risks that derive from the appointment procedure, and observed deficiencies in oversight mechanisms and sanctioning still need proper attention from the respective PP authorities. These risks are further emphasized as not all of the benchmarks have been met by the respective authorities prior to submitting data for the GRAPP report, and there are limits in the digitalization of the system, as observed in category 4. In further development, attention is needed to proper prevention of politicization of the system (appointment of the PP officers) as well as in the area of stronger controls and performance of control mechanisms. These efforts should be accompanied by full digitalization since all preconditions for implementing such a system already exist.

Findings in detail

An obligatory certification process for respective PP officers has been established. The person assigned by the contracting authority to perform work in the field of public procurement needs to have a certificate in public procurement. The regulation also stipulates that if there is a public procurement organizational unit at the contracting authority (i.e. practice in entities with significant number of contracts per year), all persons within the unit need to hold a certificate, as well. The certification is issued by the PPB after a successful written examination has been taken is valid for three years. Prior to the expiration of the certificate, each holder should apply for a one-day re-certification training course. After attending the training course, the person takes another written examination, to acquire a certificate for public procurement, valid for another three years.

The PPB does not possess information about the number of officials certified for public procurement in the country. Since 2010, when certification was introduced, around 3,000 people have attended the certification process. As per the annual reports prepared by the Training Department of the PPB, in 2014, 324 people attended the regular certification training course and 67 attended the re-certification training course. In 2015, 254 people attended the regular certification training course, while 144 attended the recertification training course. During 2016, 338 people attended the regular training course, while 283 attended the re-certification training.

As already discussed, the e-procurement Electronic System for PP (ESPP) was set up in 2006 and today, the ESPP is a unified, centralized system for public procurement used by all contracting authorities in the Former Yugoslav Republic of Macedonia. In accordance with the new provisions of the PPL, the contracting authority is obliged to conduct an open procedure, a restricted procedure and a procedure with a request for collection of bids for the use of electronic means through the ESPP: at least 30% of published notices from 1 January 2016; at least 50% of published notices from 1 January 2017, and 100% of published notices from 1 January 2018.

Trends in public procurement contracts

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

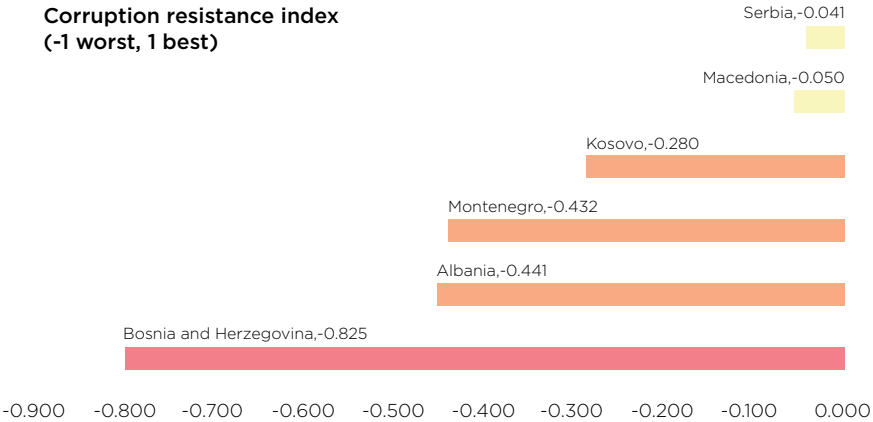
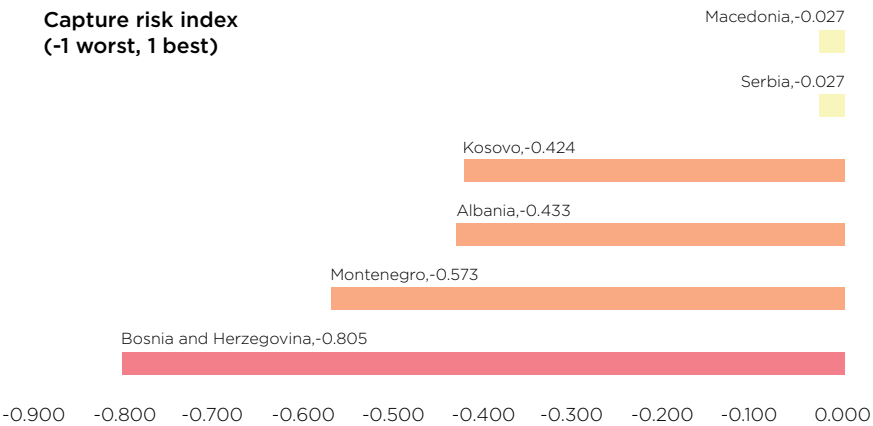


TABLE M.15.2: Capture Risk Index – Trends in public procurement contracts



Interpretation of indices FYR of Macedonia Category 15: Trends in public procurement contracts

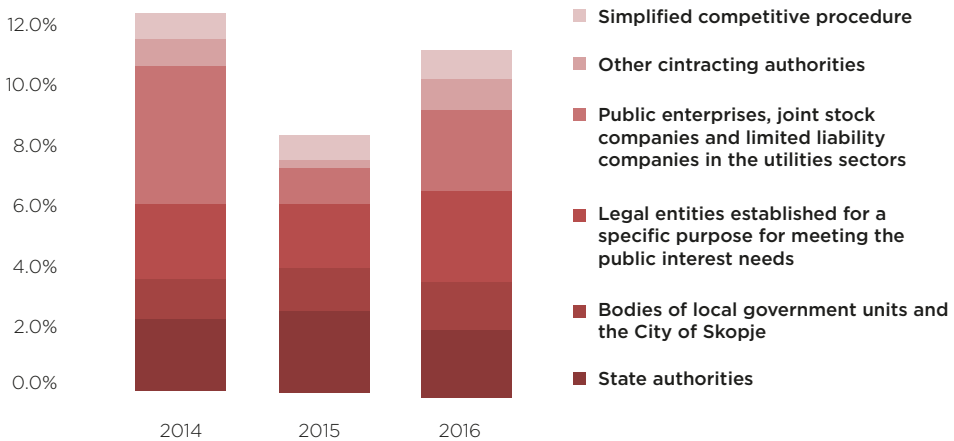
Statistics on public procurement contracts in Serbia indicate strong developments in this area placing FYR of Macedonia among best performers. The corruption resistance index suggests a moderate response to corruption (table M.15.1 above) accompanied by moderate capture risk (table M.15.2 above). Broad standardization of data in the PP system as well as centralization and proper macro reporting mechanisms contributed to these relatively high scores. Information on PP procedures and contracts allows preliminary risk analysis to be undertaken as well as econometric observations of trends per specific contracting authority, or sector.

However, weaknesses observed in category 4 above (i.e. insufficient controls and sanctioning for non-compliance with the PPL) leave room for significant improvements in this area. Our observations suggest that a large share of public procurement (50% of overall procurement value on annual basis, see the Findings in detail below) is conducted by organizational entities that are subject to weaker controls, accompanied by a significant value of contracts (4%) that are signed in an environment of limited transparency (i.e. contracts signed under Negotiated procedure without publication of notice). In addition, the weak oversight mechanisms observed as well as weak sanctioning, contribute to remaining risks in this area despite the many positive developments. In further developments of the system, special attention should be given to strengthening control mechanisms as well as sanctioning misconduct in general application of the PPL. Proper reporting in the area of horizontal controls should be established as well.

Findings in detail

In 2016, the total value of public procurement in the Former Yugoslav Republic of Macedonia increased by 38% in comparison with 2015 and amounted to EUR 1.04 bn, or 10% of the country's GDP. Simplified procurement procedures accounted for approximately 8% of total public procurement value during the observed period. In addition, around one-half of the total public procurement contracting value in the Former Yugoslav Republic of Macedonia during the period 2014-16 was executed by contracting authorities that were not public bodies³⁹ and are subject to weaker controls.

Figure 1 Structure of Total Public Procurement (works, goods and services) by type of contracting authority and % of GDP, 2014-16



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

Open procedures account for 76% of the total value of public procurement in 2016 (79% in 2014 and 76% in 2015). The value of less-competitive procedures represents approximately 24% of the total value of contracts concluded in the Former Yugoslav Republic of Macedonia during 2016.

³⁹ Legal persons/entities which are not public authorities and sectoral contracting authorities.

Table M.E Public Procurement Structure by type of procedure, 2016

	Number of contracts	% of total public procurement value
Procedure with a request for collection of offers	17.978	9
Open procedure	9.838	76
Restricted procedure	1	3
Qualification system	30	6
Negotiated procedure with publication of notice	34	1
Negotiated procedure w/o publication of notice	608	4
Services 17-27	1.679	2
Total	30.168	100

Source: Author's calculations based on data from PPB Annual reports, 2016

Trends in framework agreements

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

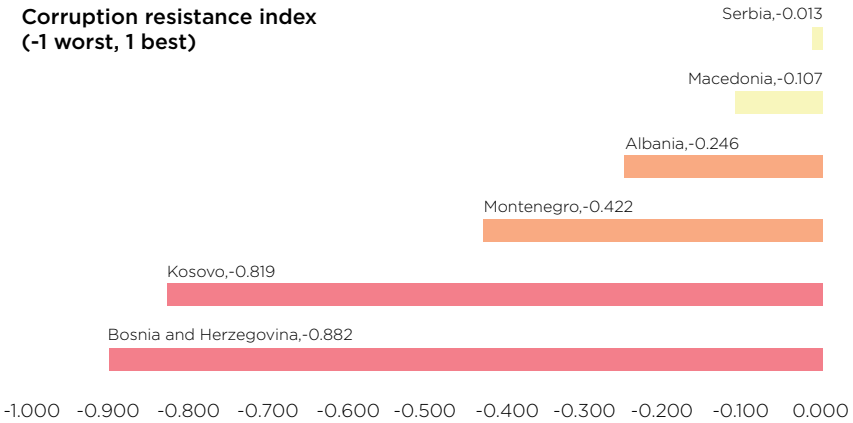
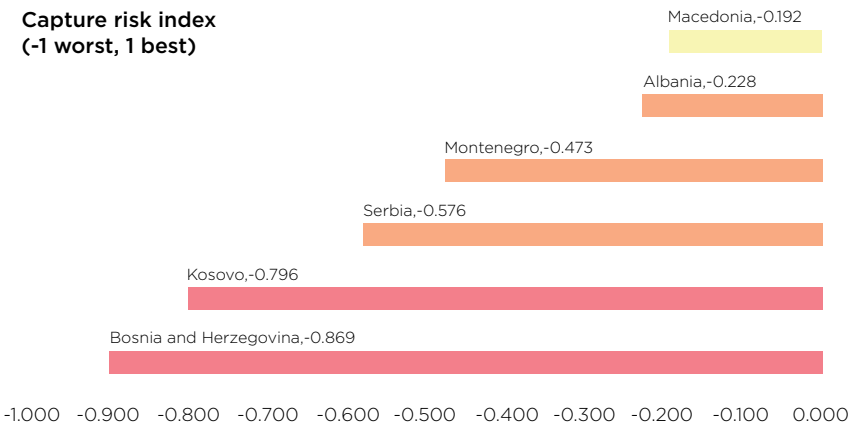


TABLE M.16.2: Capture Risk Index – Trends in framework agreements



Interpretation of indices FYR of Macedonia Category 16: Trends in framework agreements

In the area of framework agreements, the PP system shows a moderate response to corruption (table M.16.1 above) and moderate capture risk (table M.16.2 above). The regulatory framework adequately covers the Framework agreement (FA) contracting procedure, with adequate reporting mechanisms and evidence of such conduct. FAs do not represent significant value of overall PP thus are not seen as an obstacle to competition overall (see Findings in detail below), and the capacity of the system to conduct FA contracting appears to be sufficient (see category 14 above). However, weak controls, risks due to appointment procedures and lack of effective sanctioning do present significant risks in this area that need attention in future reforms. Special attention should be paid to proper reporting and evidence of procedures conducted, as well as in assessing potential conflicts of interest between the respective contracting authorities and successful bidders, bearing in mind deficiencies in the reporting mechanism observed in category 17 below.

Findings in detail

In 2016, there were 492 framework contracts signed in the amount of 6% of the total value of public procurement in the Former Yugoslav Republic of Macedonia for 2016. Even though the percentage of the framework contracts in total public procurement is low, attention should still be paid to this area, because 73% of framework contracts (77% of the total framework contract value) were signed between a single contracting authority and a single economic operator.

Table 4 Framework Agreements by type of procurement, 2014-2016

	2014		2015		2016	
	EUR	Number of Contracts	EUR	Number of Contracts	EUR	Number of Contracts
Works	12.200.262	59	6.073.508	20	10.068.278	60
Goods	114.804.264	493	47.524.722	392	37.990.744	284
Services	19.945.747	430	7.789.780	223	6.138.677	147
Total	146.950.273	982	61.388.010	635	54.197.699	491

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

The most successful tenderers

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

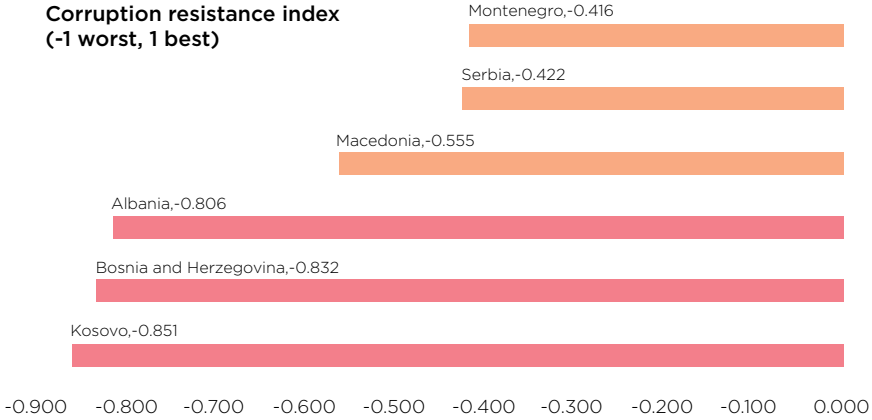
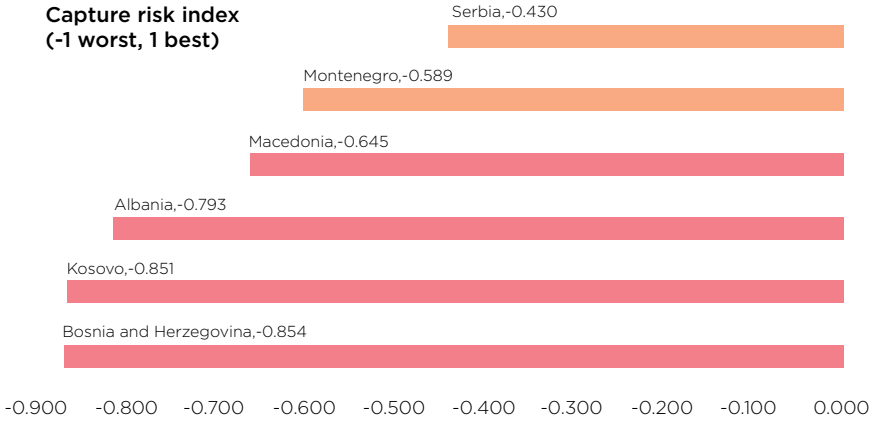


TABLE M.17.2: Capture Risk Index – The most successful tenderers



Interpretation of indices FYR of Macedonia Category 17: The most successful tenderers

The indices in the area of risks related to the most successful tenderers (corruption related risks) and preferential treatment (PP capture risks) suggest an incidental response to corruption (table M.17.1 above) and high capture risk (table M.17.2 above). The established data management system, including the (albeit limited) digitalization, provide solid insights into particular procedures and the contracting process in each individual procurement case. However, as data on the relationship between specific contracting authorities and successful bidders is not being collected and analysed in the primary system (it appears from the response given by the PPB, see findings in detail below), we have concerns about the ability of the system to proactively detect anomalies and corruption risks, or to react in a timely way. Further standardization and development of the data management system is needed, accompanied by advanced digitalization in these areas. Proper risk management tools need to be established and integrated into the operating procedures of the respective control mechanisms.

Findings in detail

Information about the most successful tenderers, i.e., the tenderers that were awarded the highest total value of public procurement contracts in 2014, 2015, and 2016, cannot be obtained owing to the shortcomings of the ESPP system. Namely, the PPB could provide the names of the economic operators that have signed the largest single contracts according to their value.⁴⁰ However, the PPB could not filter and calculate the total value of all contracts signed in one year with the same economic operator.

⁴⁰ Public Procurement Bureau (2017) Freedom of Information Act, written response retrieved on July 20, 2017.

Trends in petty public procurement

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

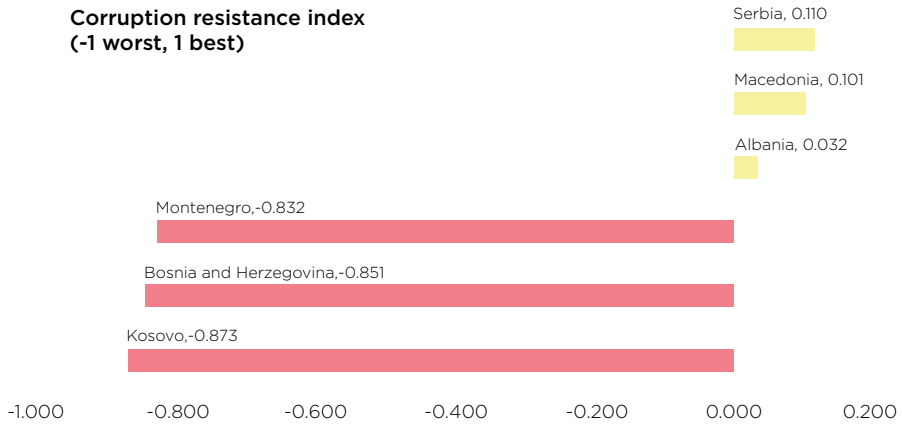
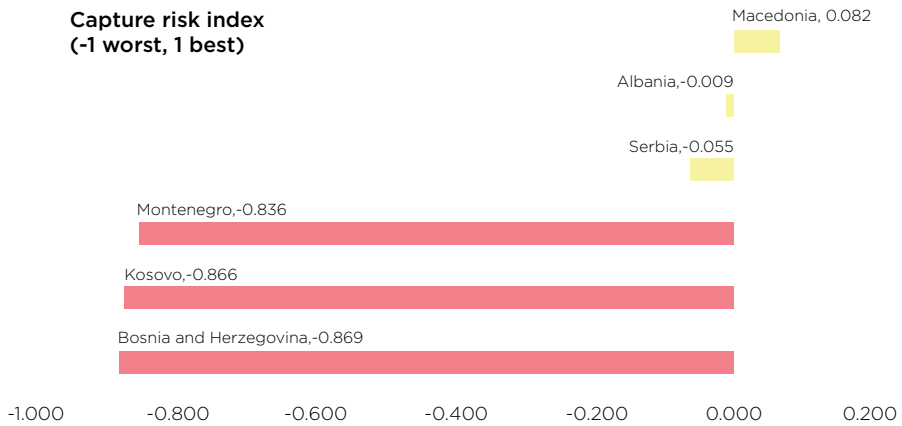


TABLE M.18.2: Capture Risk Index – Trends in petty public procurement



Interpretation of indices FYR of Macedonia Category 18: Trends in petty public procurement

In the area of trends in Petty public procurement, the FYR of Macedonia scores relatively high in comparison to other observed countries. The corruption resistance index score is in the stage of moderate resistance to corruption (table M.18.1 above) while the Capture risk index indicates moderate capture risk (table M.18.2 above). Moderate measures have been taken to limit petty procurement on an annual basis, as well as to improve reporting on low-value contracts (that in nature based on simplified procedures represent petty procurement). The standardization of data related to low-value procurement is improving but overall weak data management limits findings in this area (i.e. frequency of signed contracts between the contracting authority and single bidders was not available for assessment, see category 17 above). The relatively high total value of contracts signed under simplified procedures (approx. EUR 84 million) as well as the high ratio of cancelled procedures in low-value procurement adds to the overall risks observed in this category (see Findings in detail below). As reporting on low-value procurement is still limited, this requires thorough intervention in data management, with proper standardization of reporting aimed at appropriate digitalization of the system (to allow timely controls and responses by the established control mechanisms). The strengthening of horizontal controls by the PPB as well as proper sanctioning for deviations in this area should also be considered.

Findings in detail

The PPL, as explained earlier, applies to the procurement of works, goods and services of estimated value equal to or greater than EUR 500. However, the contracting authority may conduct a simplified procurement procedure when the estimated value of the public procurement contract for goods and services is equal to or less than EUR 20,000 and, for works, equal to or below EUR 50,000, VAT excluded. There are two types of simplified procurement procedures: (A) one in which the estimated value of the public procurement contract is equal to or less than EUR 5,000, and (B) another where the estimated value is equal to or below 20,000 and, for works, equal to or below EUR 50,000. The rules, and consequently control mechanisms related to such procedures, are relatively weak. Deadlines for submitting tenders are short (5-10 days), which affects overall access and competition, and reporting on signed contracts is looser (biannual publication of records for contracts signed in the previous six months). Simplified procurement procedures accounted for approximately 8% of total public procurement value in the former Yugoslav Republic of Macedonia.

Table 3. Public procurement value by type of procedure, 2014-2016 (EUR)

	2014	2015	2016
Standard public procurement procedures⁴¹	914.191.313	675.429.289	954.820.062
Simplified public procurement procedures⁴²	63.493.218	76.526.472	83.771.726
Overall value of public procurement	977.684.531	751.955.761	1.038.591.787
The proportion of simplified public procurement procedures in overall public procurement	6,5%	10,2%	8,1%

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

It is important to note that cancellation of tenders for the simplified competitive procedure increased in 2016, as reported by the Centre for Civil Communications⁴³. For example, there were 13% cancellations for public procurement procedures up to EUR 5,000, 29% cancellations for those from EUR 5,000-20,000, and 32% for public procurement procedures over EUR 20,000. As for the reasons, in over one-third of tenders, no offers were submitted, in 16% the bids did not meet the prescribed tender specifications, and in 12%, the bids were less favourable than market conditions.

⁴¹ Including: open procedure; restricted procedure; negotiated procedure with prior publication of a contract notice; negotiated procedure without prior publication of a contract notice, competitive dialogue.

⁴² Including both, type A and B.

⁴³ Centre for Civil Communications report no. 28, May 2017: <http://www.ccc.org.mk/images/stories/i28mm.pdf>.

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