

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



# Country report MONTENEGRO

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# Contents

<b><i>1. Introduction</i></b>	<b><i>5</i></b>
Conceptual framework and rationale	5
Methodology	9
General methodological approach	9
Indicators and data packages covered by the assessment	11
Measurements and process of assigning values to different indices	11
Potential method in brief	12
Values of the index	13
<b><i>2. Country report Montenegro</i></b>	<b><i>15</i></b>
Category 1 : Public Procurement Regulatory Ecosystem	21
Category 2 : Public Procurement Planning	25
Category 3 : Exceptions from procurement legislation	30
Category 4 : Information management in Public Procurement system	34
Category 5 : Pre-bidding stage	37
Category 6 : Public procurement Contracting	40

Category 7 : Petty public procurement	43
Category 8 : Public Procurement Remedy mechanisms	46
Category 9 : Control over the implementation of PP legislation	50
Category 10 : Control over Execution of public procurement contracts	54
Category 11 : Regulation of Conflict of Interest in PP System and procedures	57
Category 12 : Audit mechanisms	60
Category 13 : Criminal justice system response to PP anomalies	63
Category 14 : Capacity and human resources management	66
Category 15 : Trends in public procurement contracts	69
Category 16 : Trends in framework agreements	72
Category 17 : The most successful tenderers	75
Category 18 : Trends in petty public procurement	78
<b><i>3. References</i></b>	<b><i>81</i></b>

## *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 bidders<sup>1</sup>. 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 process<sup>2</sup>. 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 corruption<sup>3</sup>. However, the red flag approach is dependent on being able to gain access to high-quality data, which is rarely the case. It also fails to shed light on why such deviations occur and how serious the extent of corruption in the public procurement system is in any given country or sector.

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

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

only favoured bidders were successful<sup>4</sup>. 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”.<sup>5</sup> 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.<sup>6</sup> 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's<sup>7</sup> 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-Pippidi<sup>8</sup> (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

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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 2014<sup>9</sup>) 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.<sup>10</sup> 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.

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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](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](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.<sup>11</sup> 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* conditionality<sup>12</sup>. 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.

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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.

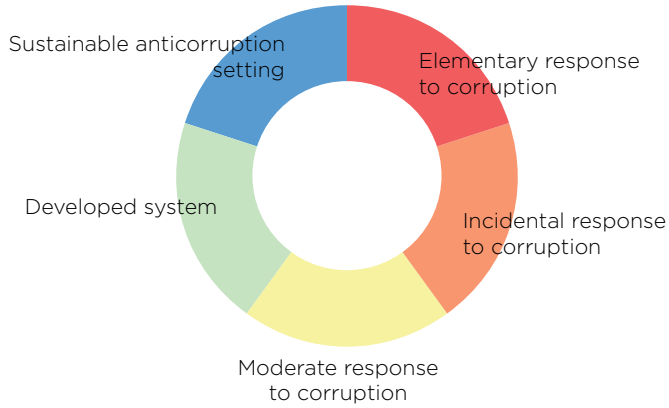
## *Values of the index*

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.

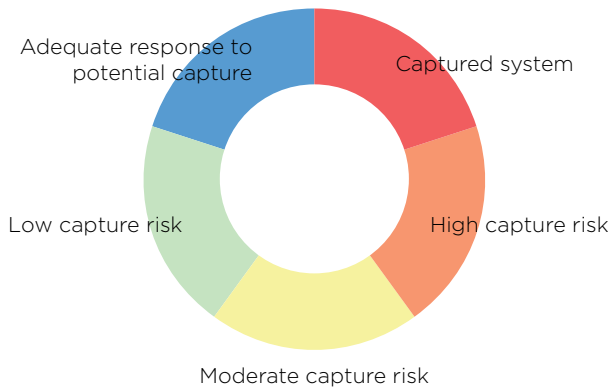
## *Important note*

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 Montenegro

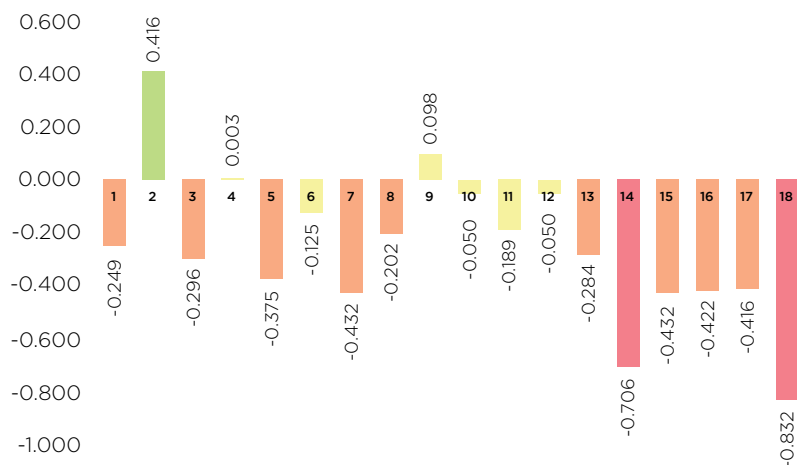
<b>Authors</b>	Munir Podumljak, Milana Čabarkapa-Macanović
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<b>Data collection</b>	Politikon Network (Montenegro)
<b>Fact checking</b>	Politikon Network (Montenegro), Partnership for Social Development (Croatia)
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<b>Third instance evaluator</b>	Munir Podumljak
<b>Correction of indices</b>	Sandra Gajić, Matea Matić

### Abbreviations

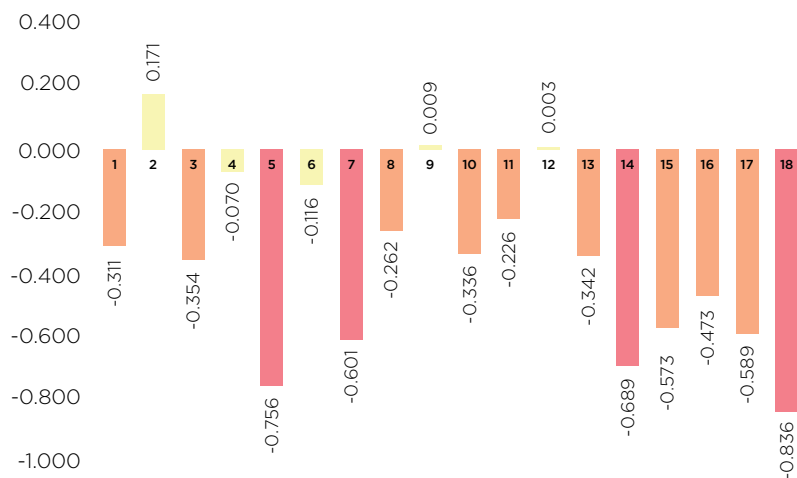
<b>FOIA</b>	Freedom of Information Act
<b>PP</b>	Public Procurement
<b>PPD</b>	Public Procurement Directorate
<b>PPL</b>	Public Procurement Law
<b>SAI</b>	State Audit Institution

# Summary

**TABLE C.A. Overall Public Procurement Corruption Resistance Index 2017, Montenegro<sup>13</sup>**



**TABLE C.B. Overall Public Procurement Capture Risk Index 2017, Montenegro**



<sup>13</sup>

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 Montenegro recorded significant progress in the areas 2. Public Procurement Planning; 9. Control over the implementation of law; and 12. Audit mechanisms. Both indices, corruption resistance (see table C.A. above) and capture risk (see table C.B. above), reflect the significant effort made to address corruption-related risks. In addition, Montenegro is one of the rare countries that has addressed control over the execution of public procurement contracts in its regulatory and institutional setting which is considered good practice.

Moderate progress and response of the system is also observed in categories 4. Information management; and 6. Contracting. In each of these categories, steps have been taken towards regulatory and institutional solutions (see key findings below and detailed report per category). Control over implementation of PP legislation, and control of the execution of contracts stand out as accomplished conceptual approaches to the reality of the problems in public procurement (placing such controls in the PP inspectorate is considered to be good practice). The approaches to planning and publishing of PP plans are also considered to be among the best practices in the observed countries. In addition, the work of the State Audit Institution (SAI) in overseeing the PP process, despite a lack of proper regulation, is assessed as good and recommended practice for other countries. Regulatory improvements are also evident towards proper sanctioning of malpractice, and there is evidence that such sanctioning is already applied.

However, deficiencies in the capacity of PP actors (i.e. a disproportionate number of PP officers, PP inspectors, and employees in the remedy mechanism) significantly undermine the performance of the system, and its capability to respond to the reality of corruption in Montenegro. Bearing in mind the observed high risk of political influence - except for the SAI, all institutions are directly under control of the executive branch government and therefore ruling party/ies - and deficiencies in the application of the law observed in most successful tenderers (i.e. lack of evidence of application of the administrative barriers in category 17), considerable limits remain on the system's effectiveness in responding to corruption and capture risks. While standardization in information management structure has significantly progressed, a lack of digitalization creates loopholes in corruption detection and sanctioning for established organizational infrastructure. Finally, the overall good progress of the system is undermined by the structural lack of resources invested in the PP system.

## *Key findings*

Our assessment of the Montenegro Public Procurement system reflects numerous governance risks as indicated by detailed analysis in each of the chapters. Legislative procedure applied in the adoption of the latest amendments to the PPL 2017, did not follow the previously announced Government's Annual Agenda for 2017 in this area, nor did legislation on obligatory public consultation. The adopted changes in legislation indicate a worsening trend in terms of the coverage of the law, leaving some the public entities with special risks (such as harbors for example), outside of the scope of the law. Previously adopted bylaws are not synchronized with the new legislation, which could lead to a variety of problems in implementation and control of the public procurement process. Procurement plans are standardized and provide sufficient information for purposes of monitoring and participation of the external actors in public procurement processes. However, the objectives of publishing procurement plans are undermined by frequent changes to the plans in practice (i.e. one entity has changed its procurement plan 27 times over the course of 1 year), inability to track changes in the system as well as weakness in protection mechanisms. Despite offences being prescribed for misdemeanor in the procurement planning stage, no evidence of sanctions applied has been provided by the competent authorities. New changes to legislation have substantially changed the type of procedures applied and introduced petty public procurement, which increased thresholds for applying the PPL. Increased thresholds increased the value of public procurement that will be left out from the control mechanisms prescribed by the law. Exact values will be available only in 2018, as changes were introduced in the middle of 2017, which sets further challenges for respective internal and external controls and leaves a significant value of public procurement outside the jurisdiction of legal remedy bodies.

General reporting and data management are still at the development stage. The data management system in the area on reporting on different stages of public procurement procedures and contracts is relatively standardized. However, the system is still not digitalized and respective contracting authorities report on public procurement in different non-digital formats which poses a challenge for general management of the public procurement system. In such circumstances, big data analysis and analysis of general behavior of different PP actors (economic operators and contracting authorities) is not possible, consequently affecting the ability of internal and external control mechanisms to detect an anomaly and act upon it.

The pre-bidding phase of public procurement is substantially exposed to undue influence through a variety of means. The system is prone to political influence through the appointment and employment procedures, while not even basic integrity mechanisms have been adopted to prevent it. There are no protocols for receipt and storage of bidding documents, or prescribed security over the tender documentation in the pre-bidding phase. There is

no division of power between personnel in different stages of the process (reception, storage, opening, evaluation, signing contract) and each of the stages is in substantial risk of political influence and particularistic control due to the appointment procedures and political reality in Montenegro. In the contracting phase, absence of effective measures to assure alignment of the contract with the technical specification described in the tender, further opens space for deviation in the post contracting phase of the procurement (changes of the conditions during the execution of the contract). While pre-qualification of the bidders seems to be adequately addressed, the practice detected where non-qualified entities are among most successful bidders in terms of the value of signed contracts raises a variety of questions of effectiveness of the internal and external controls. All relevant control mechanisms except SAI are under direct control of the executive branch of government through appointment and employment procedures. The capacity of the key control mechanisms is questionable, if not inadequate, due to a lack of resources to execute the wide scope of authority conferred on them by relevant legislation. In addition, the capacity of procurement personnel remains unsuitable for the sophisticated procedures and based on assessed numbers of contracting authorities that are covered by recent legislation.

Some key issues, such as thorough checks that the contract aligns to the specification described in the tender, are inadequately addressed by the regulatory framework and consequently by the institutional framework in charge of enforcement of the law. The lack of any procedures initiated by the criminal justice system in the area of public procurement further contributes to the culture of impunity for the crimes committed. A lack of horizontal cooperation between different state actors and subordination of the reporting between the SAI and other control mechanisms creates a culture of non-functional and non-coordinated fragments of the accountability system. Conflict of interest in public procurement is not adequately addressed as statistics on actual performance are missing. The weaknesses of the horizontal accountability mechanisms (internal and external controls) as well as challenges observed in data management, significantly limit the power of economic operators, civil society and media to act as adequate external control and ultimately vertical accountability mechanism. Overall corruption or capture of the system (whether based on state capture theories or the social capture theoretical framework) occurs where resources are high and barriers to malpractice are low<sup>14</sup>. The public procurement system in Montenegro fits into this equation based on the assessed categories. In such circumstances, there is a high probability that capture and systemic corruption are occurring in the public procurement system, as the barriers to it are inadequate, inefficient and lack capacity to scrutinize the integrity and accountability of public procurement actors.

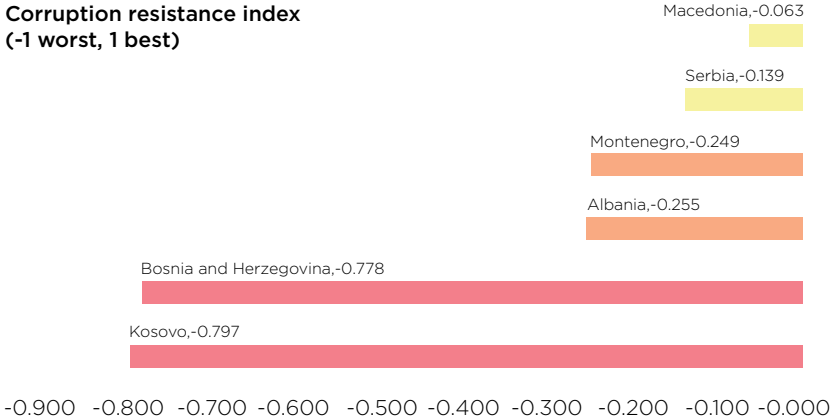
## *Key recommendations*

The priority in the future development of the PP system in Montenegro should be on further standardization and digitalization of the system, so as to improve the performance of the established organizational infrastructure and institutional setting, especially through assistance to the existing control mechanisms. This shall be accompanied by depoliticization of the system (control mechanisms shall not be directly subordinated to the executive branch government) and increased capacity (number of PP officers, PP inspectors, and employees in the remedy body should increase). Proper training, certification and re-certification should also be addressed. Standardized operating procedures accompanied by proper application of division of powers principle, dual controls and sanctioning in the area of pre-bidding need to be developed in the respective by-laws. In the area of capacity building, practices observed in FYR of Macedonia may provide easy to apply solutions to PP system in Montenegro. A stronger focus on existing control mechanisms should consider better design of the PP evaluation commissions and existence of certified procurement officers as well, while PPD shall assure further capacity building, as well as introduction of obligatory recertification of the PP officers. Loopholes detected in the area of application of administrative barriers need to be examined by proper authorities (i.e. inspectorate, SAI, and criminal justice system) as these may represent significant corruption potential.

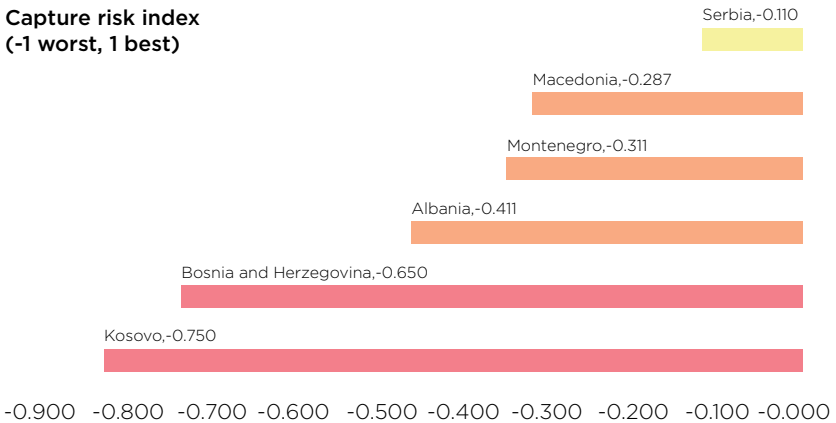
# Category 1

## Public Procurement Regulatory Ecosystem

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



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



## *Interpretation of indices Montenegro Category 1: Public Procurement Regulatory Ecosystem*

The procurement regulatory package, as shown in the tables C.1.1 and C.1.2 above, is assessed as being in the incidental response stage of corruption resistance with a high risk of system capture (high capture risk). The Montenegrin Public Procurement Law (hereinafter: PPL) and adopted bylaws comprehensively cover all of the relevant public procurement (PP) actors and their respective procedures. However, there are several issues of concern, including the unconvincing rationale behind the 2017 amendments to the PP Law, and inadequate public consultation in the design and adoption of the amendments which, among other things, increased the list of exceptions (see Findings in detail below). Some of the substantive changes in the PPL (i.e. changes of thresholds) weaken the PP control mechanisms (because of standardized statistics) especially considering that the Ministry of finance announced the new PP Law at the beginning of 2018, meaning that some parts of the bylaws are now in conflict with the PPL in force. Such practice has a negative impact on all PP actors, considerably limiting their ability to properly implement and control the PP legislation and affects the efficiency and effectiveness of established control mechanisms. While in the short run, in the area of comprehensiveness and synchronization of the PP regulation, the system in Montenegro may benefit from the solutions adopted in Serbia and FYR of Macedonia, in the long run, the changes to PP legislation should be more strategic and stable, avoiding the unnecessary legal uncertainty caused by frequent changes.

## *Findings in detail*

The Montenegrin Public Procurement Law (hereinafter: PPL) aims to comprehensively cover all of the relevant public procurement (PP) actors and their respective procedures, introducing obligations for state bodies, institutions, companies, legal persons and entrepreneurs at state and local levels.

Although the elucidation of the obligatory parties appears to be exhaustive, some companies previously covered by the PPL are omitted from the scope of the law as a result of the latest (2017) amendments to the PPL, which changed the criteria established for legal entities covered by the PPL regulation (Article 2). For example, the amendments introduced a new list of entities that have obligations under the PP legislation (the list is established by the Public Procurement Directorate (PPD) by decree). Many public companies were left out from the list, including the state-owned Montenegro Airlines (MA) and, according to our research, Barska plovodba a.d. – Bar, Crnogorska plovodba a.d. – Kotor, Luka Bar a.d. – Bar, Luka Kotor a.d. – Kotor and Montenegro Airlines a.d. – Podgorica.

The rationale for omitting such entities is not clear, especially given that these entities represent specific risks due to their nature and role in international trade and transport and receipt of state aid. In addition, the lack of transparency of data (i.e. lists on contracting authorities prior to the 2017 amendments were not available from public sources) sets challenges for adequate assessment of the progress/regress of the legislation in the areas of corruption and capture risks. This subject requires further research and explanation from the competent authorities.

A slight deviation was also observed in the process for adopting the 2017 amendments to the PPL. As established by the Government's Annual Agenda for 2017, the Ministry of Finance was in charge of drafting the above cited amendments to the PPL as well as conducting consultations with the relevant EU Commission representatives and initiating a public debate over the draft. However, no public debate was conducted over the draft proposal, despite the plan and the additional obligation set out in Article 4 of the Public Debate Decree. Moreover, the proposal was adopted through an accelerated procedure. The Government's rationale behind using the accelerated procedure to adopt the PPL 2017 amendments was that the previous PPL (2011) needed to be improved in the area of coverage of the contracting authorities, since many legal entities were in doubt as to whether they were under the remit of the PP legislation or not. The Minister of Finance during the parliamentary debate stated that "the new law is in the preparatory stage and the amendments should serve as an interim solution", adding that "the new law should be adopted by the end of 2017" (Report of the Committee on the Economy, Finance and Budget, 05/17-1/2, dated 28/06/2017). This has led to speculation as to the purpose of the latest amendments and efficiency of the legal drafting process. In addition, the frequent changes present challenges to the ability of the system to adjust, especially in the areas of the implementation of PP procedures, monitoring compliance of compe-

tent authorities with the existing regulation, and observing the trends in PP.

Secondary legislation and bylaws arising from the PPL attempt to enforce the general principles described in the law. However, several challenges have been observed in synchronisation and functionality of the by-laws. Not all of the foreseen bylaws have been adopted or aligned with the latest amendments, where the legal text suggested that such regulation shall be adopted. For example, the rulebook adopted to implement the 2006 PPL is still in force (regulating electronic public procurement procedures) and has not been replaced by new sets of regulation, though the later 2011 PPL changed the competent authority for implementation of e-procurement.

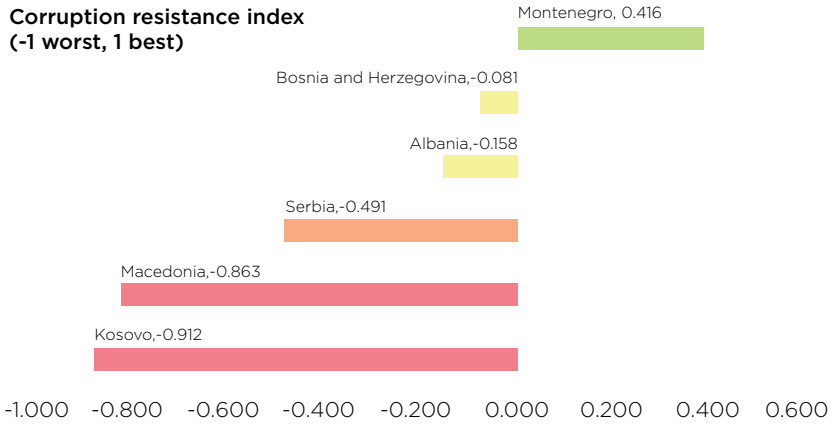
On the other hand, although newly regulated to some extent, urgent procurements remain vulnerable to a variety of deviations, integrity breaches and potential corruption, since they lack proactive transparency and precision in interpretation of circumstances that allow usage of such procedures (e.g. all information about urgent procurement was to be published only after the procurement was concluded: Article 6 of the Rulebook on Urgent Procurement).

The introduction of new thresholds in the middle of the year, following the need to amend previously adopted annual plans of public procurement, has additionally complicated the implementation of the PPL, while setting challenges for monitoring compliance with the existing legislation. For example, bylaws are not aligned with the PPL amendments as they still regulate the purchase method and direct agreement, while the PPL 2017 excluded such procedures from the PPL regulation.

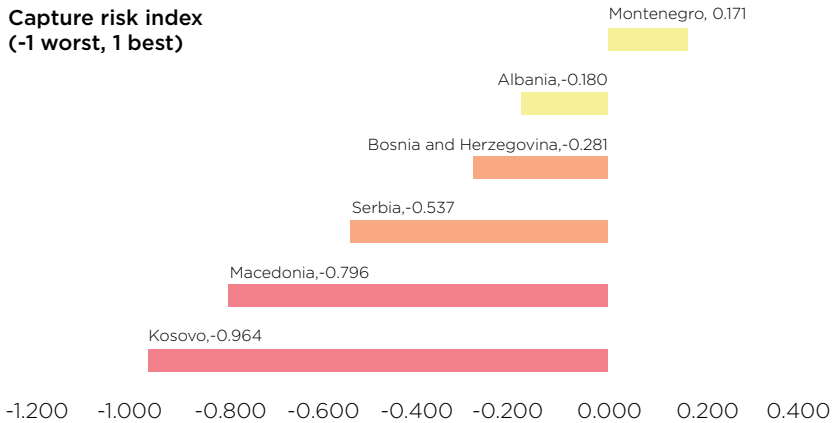


## Public Procurement Planning

**TABLE C.2.1: Corruption Resistance Index - Public Procurement Planning**



**TABLE BC2.2: Capture Risk Index - Public Procurement Planning**



## *Interpretation of indices Montenegro Category 2: Public Procurement Planning*

In the area of procurement planning, Montenegro has one of the most developed systems among the observed countries. The PP Corruption Resistance Index in Category 2 (table C.2.1) places Montenegro in the stage of having a developed anti-corruption response, while capture risk indicates moderate capture risk (table C.2.2). Adequate measures have been taken to standardize procurement plans, publish procurement plans, and link plans with other relevant documents (i.e. budgets and financial planning), and there are adequate control mechanisms and sanctions for deviations in this area. However, while the concepts, approaches and solutions applied in Montenegro in the area of PP planning may serve as a role model to many of the countries in the EU economic space, some deficiencies have been observed in terms of appropriate procedures for changing procurement plans, and the effectiveness and efficiency of control mechanisms (please see Findings in detail below). In future reforms, advanced standardization and further digitalization of the PP planning process should be considered (i.e. avoiding the intermediate points for publishing), as well as advanced standardization of PP plans (i.e. introduction of digital risk analysis in this area) and strengthening of control mechanisms and their respective reporting.

### *Findings in detail*

All public procurement regulated under the PPL must be planned in advance (PPL, Article 37), with public procurement plans (hereinafter: PPPs) as the prerequisite for initiating procedures (PPL, Article 38). Sanctions can be applied on those who fail to produce plans in due time and without all the mandatory information (PPL, Article 149, misdemeanours).

This approach indicates an attempt by the legislators to strengthen the accountability mechanisms within the PP system and to provide adequate information to support scrutiny by interested parties and the general public. However, since procurement planning depends on previously determined financing, a question arises as to whether the time limit for producing and publishing PPPs takes into account the need for consultations on the budgetary resources allocated for procurement. For example, state and local budgets should be adopted by 31 December for the next financial year, while the deadline for PPPs to be adopted and published is 31 January (PPL, Article 38).

While the state budget is adopted in line with the deadline, municipalities often fail to adopt local budgets on time. This forces them to engage in temporary financing, causing problems for proper, adequate public procurement planning that need to be mitigated.

The procurement plan is standardised and contains the following information: type of procurement, estimated procurement value, type of procedure, the planned commencement of the procedure, and position in the budget, or the financial plan where the funds allocated for the public procurement are.<sup>15</sup>

However, deviations have been observed in the procedure for modifications or amendments to the procurement plan: changes are not visibly indicated in relation to the basic procurement plan, and can be conducted as late as five days before the initiation of the public procurement procedure. On the other hand, the law does not stipulate the timeline for publishing such amendments, and there is no sanction for violating this norm.

These weaknesses could harm competition, conferring benefits on preferential economic operators and, moreover, providing no efficient remedy is found, undermining the principle of transparency as one of the prerequisites for clean procurement. In addition, the number of amendments per year as seen in practice (Annual Reports on Public Procurement) indicates that there are substantial issues in the area of public procurement planning and managing the PPPs.

While this problem has been evident since the first PPL, there have been no attempts by the relevant PP authorities to address this issue and establish the course of action to mitigate the risks that derive from such a loophole in the PP regulation.

The Public Procurement Directorate (PPD) is the competent authority for oversight of PPP preparation and publishing (PPL, Article 19). The PPD not only oversees the preparation of PPPs, but also manages centralised publishing via the Public Procurement Portal (hereafter, the Portal), which has been done in a unified manner, thus making it easier to access and analyse data (for additional interpretation please see chapter on data management).

In case a party to the PPL fails to act in accordance with the request in this regard, the PPD alerts the competent inspection department (PPL, Article 19), which initiates inspection control (PPL, Article 148). The data on implementation of the PPL suggests that the number of inspection controls in relation to PPPs has decreased over the years.<sup>16</sup> In 2014 there were in total 142 inspection controls conducted regarding the adoption, modifications or amendments, and publication of procurement plan. This number decreased in 2015 to 105 inspection controls. Data on established irregularities and undertaken measures related to procurement plan is not available for 2014 and 2015. For these years, the Sector for Public Procurement Inspection (SPPI) provided only information about the overall public procurement inspection control (Table 1).

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<sup>15</sup> Name or Description, Estimated value of the public procurement, Type of public procurement procedure, Indicative time of initiating the procedure, Account or budget position, Amount on the account or budget position, Source of financing

<sup>16</sup> Public Procurement Directorate (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

In 2016, however, detailed data on inspections, established irregularities and undertaken measures according to the subjects of inspection control is available. SPPI has conducted in total 50 inspection controls of adoption, modifications or amendments, and publication of procurement plan procedures. In 2016, out of total 14 established irregularities, 11 were removed, while the requests for launching the offence proceedings were submitted to competent courts for 3 offences (Table 2).

**Table 1 Inspections, established irregularities and undertaken measures, displayed according to the subjects of inspection control, 2016<sup>17</sup>**

<b>Adoption, modifications or amendments, and publication of procurement plan</b>	
<b>Number of inspections according to the subject of control</b>	<b>50</b>
<b>Number of established irregularities</b>	<b>14</b>
<b>Number of indications</b>	<b>9</b>
<b>Number of irregularities for which the removal was ordered by a decision</b>	<b>2</b>
<b>Number of offence orders</b>	<b>0</b>
<b>Number of requests for launching offence proceedings</b>	<b>3</b>
<b>Number of removed irregularities</b>	<b>11</b>
<b>Total number of contracting authorities</b>	<b>616</b>

<sup>17</sup> Sector for Public Procurement Inspection (2017) Freedom of Information Act, written response retrieved on July 3, 2017.

The low number of punishable offences observed (3), as well as the absence of data on actual outcomes of the proceedings does not create confidence in the effectiveness and efficiency of the respective inspectorate.

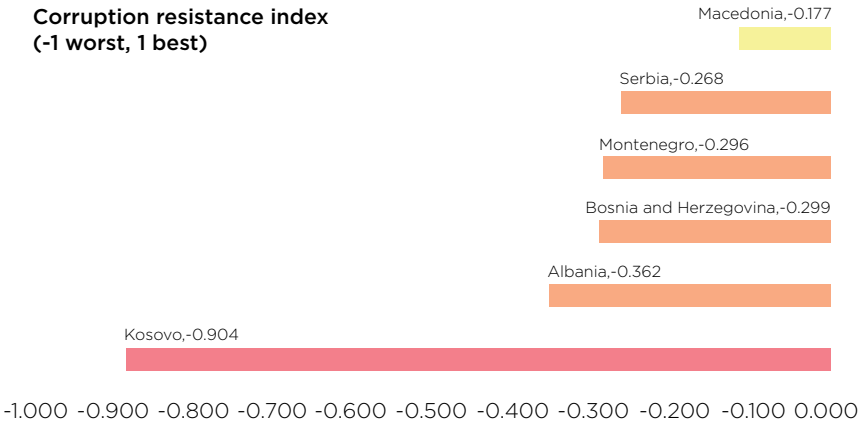
The PPD lists in its annual report parties that are in breach of the PPP relevant obligations. But these breaches do not represent punishable misdemeanours, according to the reports of the competent inspectorate.

The lack of public and structured information on procedures initiated and sanctions applied undermines efforts to assess the effectiveness of the control mechanisms as well as their efficiency, which consequently undermines the overall accountability of the PP system. All such reports by competent contracting authorities (with stated anomalies) have been adopted by the Government of Montenegro as satisfactory conduct, which further undermines the efficiency and effectiveness of the Public Procurement system, as well as trust in the public procurement system from external actors (civil society and economic operators).

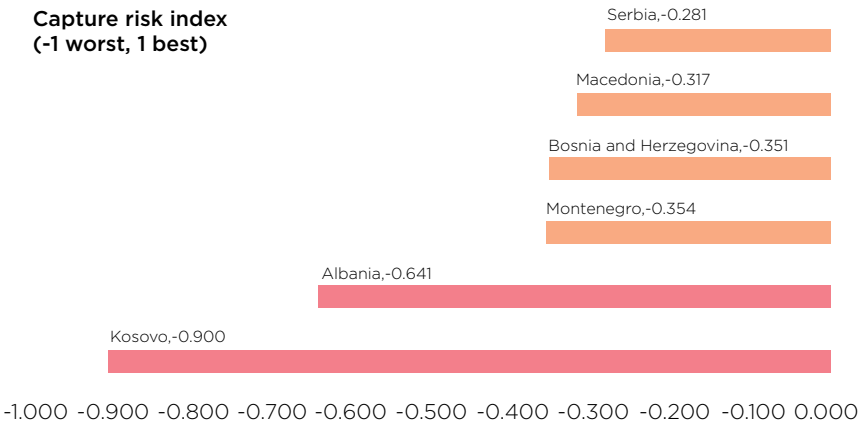
# Category 3

## Exceptions from procurement legislation

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



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



## *Interpretation of indices Montenegro Category 3: Exceptions from procurement legislation*

The Corruption resistance index in the area of exemptions from the PP legislation is at the stage of incidental response to corruption (see table C.3.1 above) accompanied by high risk of capture of the procurement system (see table C.3.2. above). State Audit reports reveal extensive use of simplified procedures (shopping method and direct agreement), representing a disproportionate share of the overall value of the procurement. Given that such procurement outside the jurisdiction of key control mechanisms, this is indicative of higher risks of corruption and capture of the system (see Findings in detail below). In addition, worsening trends in this area (i.e. 2017 PPL amendments and increase of the thresholds for simplified procedures) suggest that there is little expectation of improvement in this area. While quick improvements in the system might be achieved through adopting of more comprehensive reporting mechanisms, in the long run, additional regulation of simplified procurement (below thresholds) as well as additional control mechanisms need to be established in order to mitigate risks.

### *Findings in detail*

Observation of key indicators suggests a worsening trend in exemptions from the law resulting from the latest amendments to the law. The Public Procurement Act 2011 had lower thresholds: up to EUR 5,000 had to be completed by direct agreement; tenders from EUR 5,000 EUR to EUR 25,000 (for goods and services), and from EUR 5,000 to EUR 50,000 (for works) had to be completed via the purchase method. Finally, those above EUR 25,000 (for goods and services) and above EUR 50,000 (for works) had to be completed according to other procedures prescribed by the law (Article 21).

Since the direct agreement procedure was seen as the easiest, there was a common practice among contracting authorities of splitting higher value procurements into several parts so as to avoid complicated procedures. All State Audit reports from 2012 onward emphasise the extensive usage of this practice by most of the audited contracting authorities, meaning that a significant portion of procurement was carried out in violation of the existing legal framework (particularly in terms of breaches of stipulated percentage in total budget spending).

**Table 2 Public procurement value by type of procedure, 2014-2016 (EUR)**

	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Standard public procurement procedures<sup>18</sup></b>	<b>289.550.682</b>	<b>386.535.629</b>	<b>400.807.043</b>
<b>Simplified public procurement procedures<sup>19</sup></b>	<b>37.610.957</b>	<b>42.355.071</b>	<b>46.932.178</b>
<b>Overall value of public procurement</b>	<b>327.161.639</b>	<b>428.890.700</b>	<b>447.739.221</b>
<b>The proportion of simplified public procurement procedures in overall public procurement</b>	<b>11%</b>	<b>10%</b>	<b>10%</b>

*Data source: Author's own computation based on data from Directorate for Public Procurement, Montenegro*

However, due to the timeline of financial reporting (date of publishing of the budget expenditure report), it is too early to assess the impact of implementation of the PPL 2017 within the framework of this report. Since thresholds for simplified procedures under the new legislation are significantly higher (from 100% to 200%) – EUR 15,000 (for goods and services) and EUR 30,000 (for works), such interpretation leaves direct agreement and the purchase method outside of the scope of the PPL, as well as beyond the scope of the existing accountability mechanisms. The PPL general provisions forbid the practice of splitting higher value procurements for the purpose of avoiding the application of the Law. However, the available data suggests that sanctions are not applied to such practices and it is not even clear what the prescribed sanctions are.

Two newly-introduced procedures - petty procurement (Article 30) and urgent procurement (Article 29) - are not precisely defined and leave room for different interpretations. First, it is not clear whether such procurements should be covered by Public Procurement Plans (PPPs) or not. The PPL states that a public procurement procedure may be initiated only if covered by a PPP (Article 37) and neither urgent procurement nor petty procurement have been defined as exceptions to this rule. The Public Procurement

<sup>18</sup> Including: open procedure; restricted procedure; negotiated procedure with prior publication of a contract notice; negotiated procedure without prior publication of a contract notice; consulting services; contest.

<sup>19</sup> Including: shopping method and direct agreement.

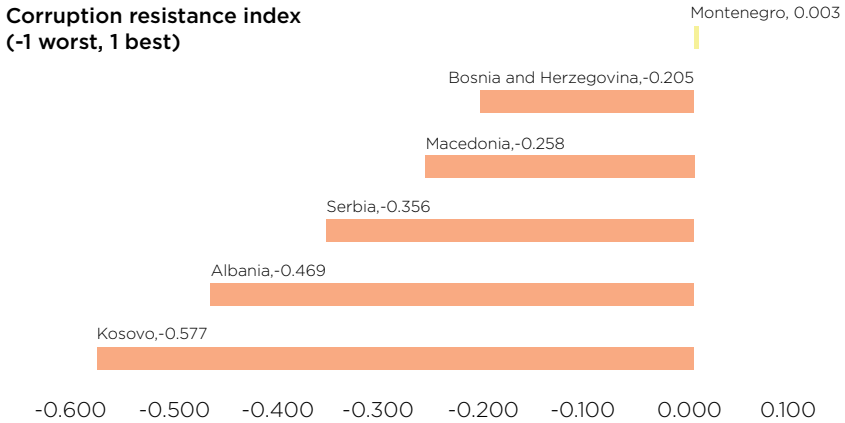


Directorate in their interpretation noted that urgent procurements could be launched without previous notification in the PPP (response to Q20), while the text of the PPL does not envisage such exclusions precisely, suggesting that petty procurement should be planned and noted in PP as well. In addition, the PPL does not precisely define the availability or type of legal remedy in cases of petty and urgent procurement. Interpretation of the PPL (Article 134) suggests that neither of these types of procurement fall under legal remedy as prescribed by the PPL. While this can be accepted for petty procurement, there is no clear basis or rationale for such an exemption in cases of urgent procurement. Additional risks have been observed in the institutional setting for conducting petty and urgent procurement also in the area of monitoring and controls. Petty and urgent procurement as prescribed by the law can be conducted by procurement officers that have not been licensed to decide in appellate proceedings, leaving both outside the reach of regular controls (Article 58). As procurement that is outside of the scope of the law is not subject to ex-ante and ex-post controls either (i.e. inspection) this area may be one of the key risks in terms of capture and corruption as there is no effective legal or normative barrier to extensive abuse of procedures. Moreover, exceptions to the PPL were extended in 2017, exempting the procurement of election materials, as well as procurement of goods and services related to the use of airplanes by the Government (Article 3, and other exceptions in Article 111 and 116b). As there was no public debate over the changes, the rationale is not clear. All observed anomalies are based on interpretation of the 2017 amendments to the PPL, however actual implementation cannot be assessed as yet, as the relevant statistical reports are not yet available. Therefore, in 2018 special attention shall be given to analysis of the impact of such changes on the performance of the PP system in Montenegro, especially identified as potential risks by this report.

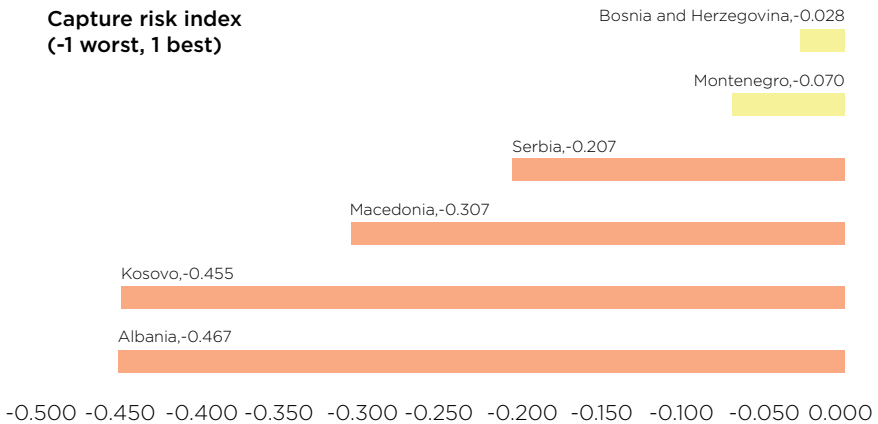
# Category 4

## Information management in Public Procurement system

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



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



## *Interpretation of indices Montenegro Category 4: Information management in PP system*

In the area of information management, the established system in Montenegro is among the most developed in comparison to the other countries covered by the GRAPP monitoring. Indices C.4.1 and C.4.2 (above) show moderate response to corruption in this category, followed by moderate capture risk. PP authorities in Montenegro have taken proper steps to standardize information, centralizing management of the relevant PP information and publishing adequately. As observed in other categories, breaches lead to sanctions. However, the set backs in the digitalization of the system, and role of the PPA as intermediary in publishing much of the relevant information undermines the overall effort made in other categories of the PP management and controls (see Findings in detail below). In future, the PP system in Montenegro should give proper attention to full digitalization of the PP processes and avoid intermediate institutions in centralized publishing of the information. These measures should be accompanied by facilitating access to such information by external control agencies (i.e. economic operators, civil society and media).

## Findings in detail

The PPL regulates the obligation for a number of notices to be published and made available via the Public Procurement Portal. These notices relate to public procurement plans, contract notices, decisions on candidates' qualifications, decisions on selection of the most favourable bid, decisions on the suspension of the public procurement procedure, decisions on the annulment of public procurement procedure, and public procurement contracts (including their amendments). Forms for each of these notices have been developed under the PPL bylaws, ensuring uniformity, and this has been observed as a positive development. However, the format of the data in PP still represents a challenge. Reporting and the PP management system is still not digitalised which consequently results in a variety of formats delivered to the Directorate for further use (Word documents, PDFs etc.). This significantly diminishes the transparency of the data and availability of the data for further analysis and management use.

At the current stage, interested parties and the public have partial insight into public procurement at all levels through the possibility to download specific information from the Portal. However, the system allows control of single procedures and contracts but creates challenges in big data analysis and observing behaviour of different procurement actors in Montenegro (contracting authorities and successful bidders). Loopholes in digitalisation of the data management in PP in Montenegro pose additional challenges in assessing the integrity of the PP system, accountability of the PP actors and performance of the internal and external controls. Therefore, observation in this area suggests that the system is far from the desired level of transparency and there is no adequate rational explanation why improvements in the PP legislation did not cover this area as well.

**Table 3 Number of publications on the Public Procurement Portal**

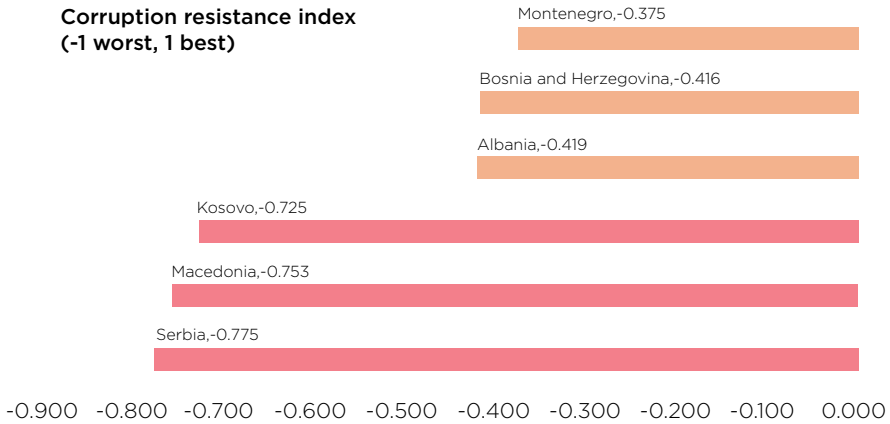
	2014	2015	2016
<b>Total number of publications on the Public Procurement Portal</b>	18.786	20.820	25.815

*Data source: Author's own computation based on data from Directorate for Public Procurement, Montenegro*

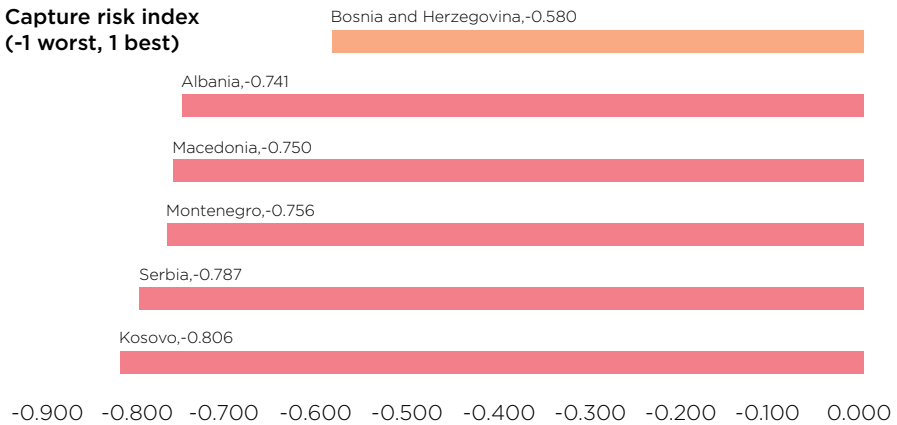
# Category 5

## Pre-bidding stage

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



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



## *Interpretation of indices Montenegro Category 5: Pre-bidding stage*

The pre-bidding stage of the PP in Montenegro conforms to the negative trend in all observed countries. While the academic literature confirms that pre-bidding is one of the highest risk areas in Public Procurement, the evaluators observed significant lack of attention to this issue by the legislators and practitioners in the countries covered by the report. In Montenegro, the indices show an incidental response to corruption (see table C.5.1 above) and a captured system (see C.5.2 above). The division of powers has not been addressed, nor have proper procedures and protocols been established for receipt and storage of tender documents prior to opening stage (see Findings in detail below). Dual controls in this stage are also missing from the regulatory documents. These deficiencies increase the risk of corruption and emphasize the role of discretionary decision making (capture risk) without proper accountability mechanisms in place. As all of the observed countries have weak responses in this area, the proper solutions may have to come through improvement of the EU regulation, and/or within the technical assistance framework in pre-accession. These interventions should focus on establishing adequate standardized operating principles accompanied by proper application of division of powers principles, dual controls and sanctioning of the wide range of deviations that can appear at this stage of PP process.

### *Findings in detail*

A variety of risks to corruption/capture have been observed in the pre-bidding phase of the public procurement. There is no division of powers principle amongst the separate entities for conducting activities in the pre-bidding procedure, which exposes the entire procurement process to easy capture by political powers if there is intention to do so. There are no strict rules on methods of storing bids received prior to opening, and selection of “outside” experts in pre-bidding consultations in case of the lack of in-house capacity is either inadequately regulated or not regulated at all.

According to the existing regulatory framework as observed in responses from relevant authorities, the Commission for Opening and Evaluating Bids opens and evaluates bids received, prepares the tender documentation and decides on the successful bidder (PPL, Article 59 paragraph 5). It is formed by the authorised official of each party to the PPL for each single procurement procedure separately, primarily employees of the contracting authority (Rulebook, Article 6). The PPL authorises the competent ministry to regulate the formation of the Commission in detail by a bylaw, but it appears that the bylaw mostly transfers competence to the authorised official, allowing the official to influence the creation of the Commission on a larger scale.

In political reality, where authorised procurement officials both at state and local levels are predominantly politically appointed, potential political pressure and undue influence - on members of the Commission or the public procurement officer - cannot be excluded (in cases of urgent or petty procurement which are to be conducted by the officer alone, without the Commission, PPL, Article 58). If the same people who prepare the tender documentation later assess the bids, this exposes the entire system to a high risk of capture and abuse, opening potential for preferential treatment of particular economic operators.

There is no clear procedure related to accepting and storing bids prior to their official opening and assessment. The PPL states that for such procedures, the contracting authority is in charge, but there is no by-law precisely regulating the procedure, and it is not clear how the contracting authority should protect the bids to prevent them from being opened by non-authorised persons (Article 97). The Public Procurement Directorate specified in their response that the person entitled to receive and store bids is the public procurement officer, which the PPL also states (but not precisely) in connection with the pre-bidding phase (simply stating that the officer stores the bids – Article 58). As part of the Commission at the same time, the person is at higher risk of being forced to divulge secret information to a privileged economic operator.

Prevention of corruption in the pre-bidding phase, as in other phases, is regulated by the PPL (Articles 15 to 18), along with the Act on Prevention of Corruption, as the general regulation in this regard, with all its bylaws.

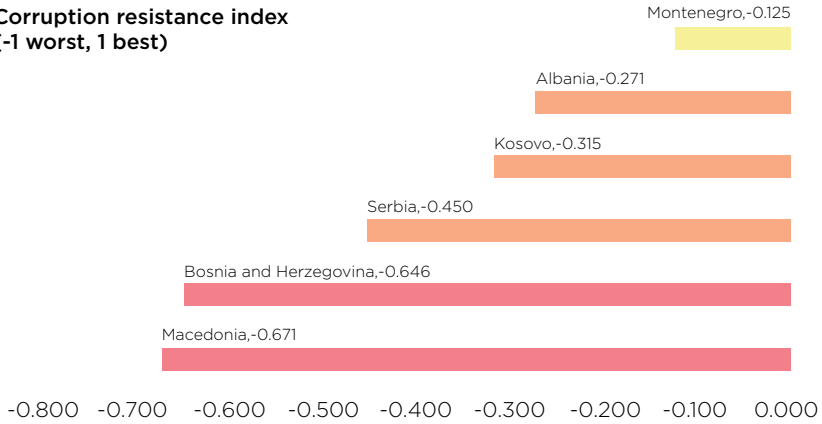
Bearing in mind all the above, the pre-bidding phase could be characterised as an area of high risk in terms of exposure to undue influence and therefore to capture and corruption-like practices due to the multiple tasks of personnel involved in this part of the procurement procedure, and their relationship to the politically appointed officials. Prevention mechanisms such as the four-eyes principles and division of powers are not part of the current regulation.

# Category 6

## Public procurement Contracting

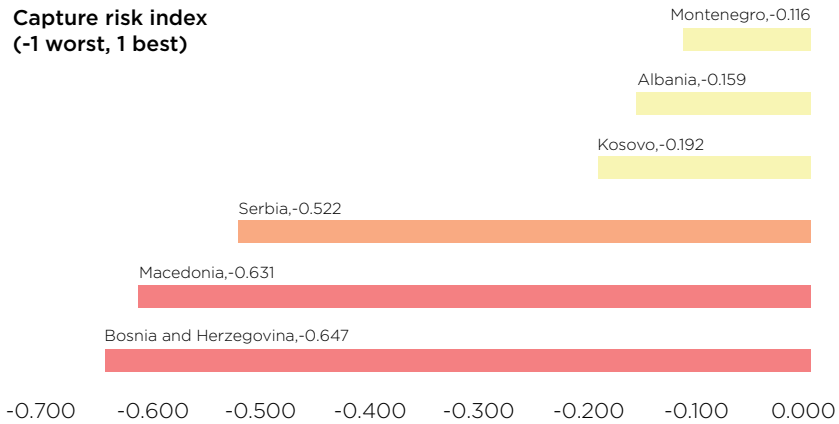
**TABLE C.6.1: Corruption Resistance Index – Public Procurement Contracting**

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



**TABLE C.6.2: Capture Risk Index – Public Procurement Contracting**

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





## *Interpretation of indices Montenegro*

### *Category 6: Public procurement*

#### *Contracting*

Montenegro is the strongest performer in the category of PP Contracting. Both the Corruption resistance index (see the table C.6.1 above) and Capture risk index (see table C.6.2 above) register as moderate response and capture risk. Regulation on conflict of interest and pre-qualification of bidders aims in the right direction in preventing corruption risks (see Findings in detail below). However, as there is no adequate information management in this area nor monitoring, assessing the effectiveness and efficiency of the anti-conflict of interest regulation and weak sanctioning mechanisms in this area remains a challenge. Lack of proper guidance on the selection of the independent (outside institution) experts contributes to an increase in corruption and capture risks in this area as these are left to the discretionary opinion of the head of the contracting authority. While many of the observed PP systems in GRAPP may benefit from the concepts, approaches and practice used in the contracting stage in Montenegro, legislators and practitioners need to pay further attention to developing integrity measures for PP evaluation commissions (i.e. guidelines for appointment of the independent experts) as well as to enhancing pro-active standardized controls in this area, accompanied by full digitalization of the information management and further development of the exclusion criteria.

#### *Findings in detail*

The Commission on Opening and Evaluating Bids is appointed by an authorised official for every procurement procedure separately, in accordance with the PPL and respective bylaw (Rulebook). As stated in the previous section, these rules are not absolutely clear, particularly in terms of recruiting an outside expert when there is no employee capable of conducting the affairs of the Commission. From the analysis of the responses and regulatory acts it appears that there is no legally binding procedure for selection of the members of the commission nor selection of outside experts based on the competence of the persons and relevant expertise; this multiplies the risks observed in pre-bidding phase.

According to the regulation in force, the members of the Commission must avoid potential conflict of interest situations in relation to particular bidders (PPL, Articles 16 and 17). If acting members of the Commission do not sign a statement on conflict of interest, they may cause the procurement contract to be annulled (Article 5). Tender documentation must contain statements on conflict of interest for both the contracting authority and bidders (PPL, Article 49 paragraph 1 item 3). The PPL allows the adoption of bylaws regulating the methodology for risk assessment in public procurement control, so these two, in addition to the general application of

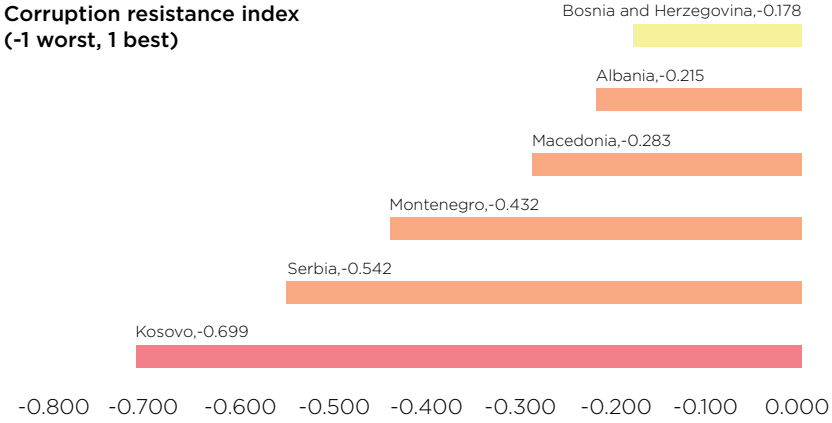
the Prevention of Corruption Act and its bylaws, serve as a solid basis for preventing conflict of interest. However, evidence on implementation of the stated regulatory framework is scant.

Potential reasons for excluding bidders from procurement procedures include failure to prevent occurrence of conflict of interest in particular (Article 18.2.). Another reason for exclusion is conviction for a criminal offence (organised crime with elements of corruption, money laundering, and fraud – Article 65 paragraph 1). If the bidder fails to present valid documents regarding these issues, the bid will be rejected.

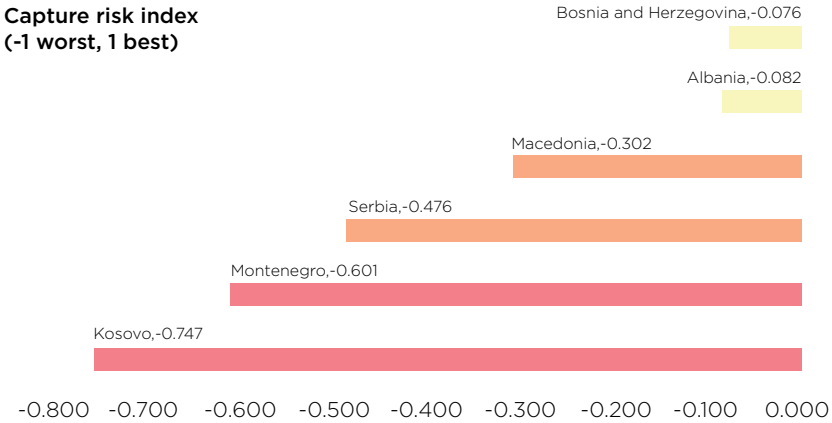
The assessment of bids received, based on which the Commission drafts a proposal for a decision on the most advantageous bid, is regulated in detail (PPL, Art. 101-104). Finally, the contract on procurement is signed by an authorised official (i.e. elected or appointed) who is responsible for ensuring it corresponds to the technical specifications described in competition documentation (Article 107 paragraph 2). However, neither the PPL nor the applicable bylaws prescribe any kind of sanctions if the law is breached in this area, which opens the door to a variety of malpractices in public procurement, especially in the post contracting (implementation) phase of the public procurement contract. Regulation on conflict of interest and pre-qualification of bidders aims in right direction in preventing corruption risks in contracting phase of the public procurement system. However, as there is no adequate information management in this area or monitoring, assessing the effectiveness and efficiency of the anti-conflict of interest regulation remains a challenge.

## Petty public procurement

**TABLE C.7.1: Corruption Resistance Index – Petty public procurement**



**TABLE C.7.2: Capture Risk Index – Petty public procurement**



## *Interpretation of indices Montenegro*

### *Category 7: Petty public procurement*

The regulation and practices relating to petty procurement, since it is exempted from Public Procurement legislation, is a significant loophole in the PP regulation in Montenegro. The Corruption resistance index is in the area of incidental response to corruption (table C.7.1 above), and captured system (table C.7.2 above). Simplified procedures in Montenegro's public sector (shopping method and direct award) are left to the discretionary power of the contracting authority (its head), who can decide how to organise and conduct such procedures with only two obligations: to publish the decision on commencing and conducting procurement on its website and to allow at least three days for bidders to submit their bids (see Findings in detail below). While the legislation forbids the practice of splitting higher value procurement with the intention of overriding procedures, sanctions for breaches of such conduct are absent (see Findings in detail below) which opens the door to a wide range of corruption or capture practices. Weak information management systems in this area (indirect and at the end of year publishing) further emphasizes the risks and limits the reach of external controls. Extensive use of simplified procedures, as reported by the State Audit report (see category 3 above) as well as lack of proper prevention, detection and sanctioning in this area, diminish positive efforts by the PP authorities in other categories. While digitalization and real time reporting on simplified procedures shall be the priority in the development of the Montenegro PP system, it could also benefit from observing the concepts, approaches and practices used in Bosnia and Herzegovina and Albania (i.e. in regulating the minimum number of bidders in simplified procedures).

## *Findings in detail*

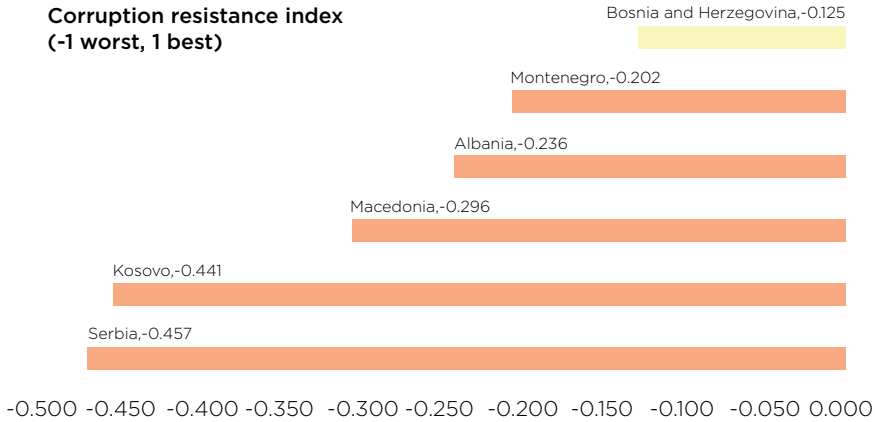
Petty procurement, as stated earlier, may potentially serve as an area for capturing the procurement system to a certain degree. Introduced as a category within the 2017 PPL amendments, it allows public procurement procedures to be waived for procurements valued under set thresholds (EUR 15,000 for goods and services, and EUR 30,000 for works). The contracting authority may, of course, decide to procure goods/services/works under one of the procedures regulated by the PPL. As stated, the PPL generally forbids the practice of splitting higher value procurement with the intention of overriding procedures (Article 21), but this provision remains without any sanctions in cases of a detected breach.

According to the regulation in force, the petty procurement procedure is almost unregulated. It is left to the contracting authority to decide how to organise and conduct such procedures (consult the respective Rulebook), with only two fairly firm obligations: to publish the decision on commencing and conducting procurement on its website (but with no timeline specified and not involving the Public Procurement Portal to make such information available at a centralised level); and to allow at least three days for bidders to submit their bids (PPL, Article 30). No sanctions are envisaged for the variety of possible breaches of the regulation, which further suggests that petty procurement corruption does not represent a significant interest of competent control and supervision authorities. While the regulation prescribes that certified public procurement officers should conduct petty procurements, they have no competence in deciding on potential appeals over procedures and decisions, which consequently limits the legal remedy in such cases (PPL, Article 58). In the area of monitoring petty public procurement there are registering and reporting mechanisms defined by the PPL Article 117 which obliges public procurement officers to manage registers of petty procurement (consult the respective Rulebook on registers), while being obliged to prepare annual reports on petty procurement and submit them to the Public Procurement Administration no later than 28 February for the previous year (Article 118). The elements of these reports are defined by the Rulebook on reports, Article 4, as mandatory. However, the reporting is defined only in terms of content not extending to the format of the reports, while the lack of digitalisation (digital forms and data collection) represents a further risk in this area. In addition, there is no obligation on the part of the Public Procurement Directorate to present aggregated or specific information on petty procurement publicly. Along with the previously presented problem of monitoring notices being published only via the websites of the competent authorities, rather than in a centralised manner, these issues may significantly affect the overall integrity of the procurement system.

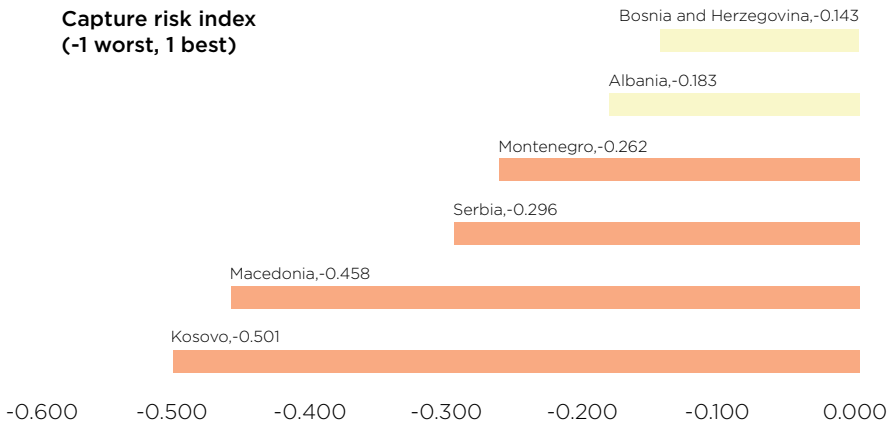
# Category 8

## Public Procurement Remedy mechanisms

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



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



## *Interpretation of indices Montenegro Category 8: Public Procurement Remedy mechanisms*

The remedy mechanisms in place in Montenegro score moderate in comparison to other covered countries. The Corruption resistance index (table C.8.1 above) indicates an incidental response to corruption, while the Capture risk index value (table C.8.2 above) ranks the Commission for the Control of Public Procurement Procedures in the zone of high risk of capture. While the regulatory framework of the Commission establishes proper jurisdiction and jurisprudence over the PP procedures and aims in the right direction, there are several deficiencies that may undermine its overall performance. The direct subordination of the Commission to the executive branch of government could be problematic in situations when the Commission must decide cases that involve the governing party, leading to a conflict of interest which itself creates a high risk of capture of the institution.

Administrative fees (1% of the estimated value of the contract with limit at EUR 20,000, see Findings in detail below) may represent a significant barrier for access to justice for small and mid-size enterprises. The increase in unresolved cases (i.e. from 8% in 2014 to 23% in 2016) indicates deficiencies in the capacity of the institution (i.e. inadequate number of staff to the referent number of complaints annually). This issue is further emphasized by the broad scope of investigations that the Commission conducts (any breach of legislation, not limited to the complaint) which can considerably limit the number of cases that the commission can manage. While some of the concepts in addressing the observed risks can be addressed through application of the solutions in Bosnia and Herzegovina (i.e. establishment of two level body based on value threshold) in further development of the system, the capacity of the Commission shall follow the reality of the PP system in Montenegro (number of complaints, scope of work). In addition, the risk of undue political influence over the work of the commission (i.e. relationship with the executive branch government through appointment procedures) should also be addressed.

## *Findings in detail*

The Commission for the Control of Public Procurement Procedures acts as a second-instance remedy body, with the competence to decide on complaints by bidders and interested parties (PPL, Article 123) against the decisions of contracting authorities (PPL, Article 122). It has been set as an independent body, and any influence on its operations is strictly prohibited (PPL, Article 137). The 2017 PPL amendments introduced administrative fees to be paid at the time of filing a complaint. The amount paid is defined as 1% of the estimated value of the public procurement, but not exceeding EUR 20,000. Although the fee will be returned to the bidder/interested party if their complaint is assessed as justified (PPL, Article 125), it is nonetheless a financial condition which may prevent some from exercising their right to protect their own interests, since it may represent a significant cost to the bidder. Nevertheless, the rationale behind it is to prevent bidders from abusing the complaint procedure.

The Commission has a period of 15 days (after receiving the complete procurement documentation) to decide on a complaint, with the option of prolonging the decision for 10 more days. Time limits have been set for complaints against tender documentation and those against decisions on the most advantageous bid (PPL, Article 131). Time limits as set by regulation may represent a challenge considering the capacity of the Commission based on assessment of the number of employees versus the number of complaints per year in 2014/2015/2016 (Response of State Commission, 09-128/2017, dated 11/07/2017). The fact that the number of complaints increased over the years (from 843 in 2014 to 1,213 in 2016), as did the number of decisions rendered (from 768 in 2014 to 938 in 2016), and that this was all accomplished by a team of 11 employees in 2014 rising to 13 in 2016 (with almost constant problems related to the appointment of a President or members of the Commission, as referred to in the Commission's response), may raise questions on the quality of the assessment conducted in each complaint. On average, the Commission dealt with 3 cases per day which, considering the scope of their work and need for multiple persons to work on one case, represents a significant burden for the organisational structure. In addition, there are discrepancies in the data on the Commission's performance. The performance statistics based on information requested under the GRAPP framework are somewhat lower than the official published reports available from public sources. According to published reports, the number of cases was somewhat higher, with a relatively high ratio unresolved (23% of the cases that are still pending before commission).



**Table 4 Effectiveness of State Commission for Control of Public Procurement Procedures, 2014- 2016**

	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Number of cases</b>	<b>969</b>	<b>1083</b>	<b>1310</b>
<b>Resolved cases</b>	<b>892</b>	<b>895</b>	<b>1011</b>
<b>Unresolved/ pending cases</b>	<b>77</b>	<b>188</b>	<b>298</b>
<b>% of pending cases in total number of cases</b>	<b>8%</b>	<b>17%</b>	<b>23%</b>

*Data source: Author's own computation based on data from State Commission for Control of Public Procurement Procedures, Montenegro*

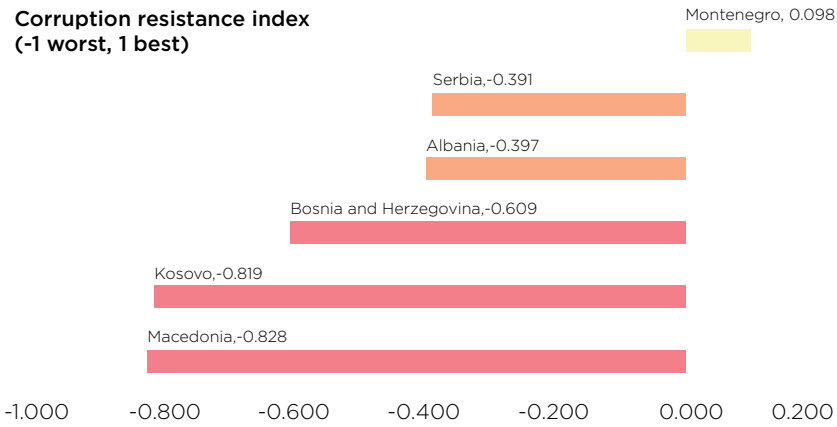
In addition, the broad scope of investigations (while assessing the case the Commission has to look into any significant breach of the PP regulation, not just those stipulated in the complaint) represents an additional burden on the limited capacity of the institution. Within the GRAPP framework, the issue of appointment of the Commission's President by the Government of Montenegro is assessed as problematic, not least because of the length of the procedure (the process took almost six months in 2015/2016 according to the Commission's response to Q80, 11/07/2017). The Commission by its jurisdiction and jurisprudence is to be considered a parajudicial body. As the executive branch of the government is in charge of appointing the president of the Commission, this represents a risk of direct influence of the executive branch (government) over the work and decisions of the Commission, although the regulation that forbids such influence. This risk is exacerbated by the fact that the Commission is responsible to the government, which to a certain extent also has political control over all other contracting authorities that derive from the executive branch. In such an environment, the Commission is often in the situation of deciding complaints filed against the interest of the executive branch, representing a conflict of interest per se.

Nevertheless, an adequate assessment of the Commission's operations, besides appointment aspects, would benefit from information on the number of lawsuits filed against the Commission's decisions before the Administrative Court which was not available for the purpose of this assessment. Finally, since they are obliged to act in accordance with the Prevention of Corruption Act, the Commission and its members must avoid conflicts of interest. Therefore, the implementation of the Act in relation to the Commission requires special monitoring.

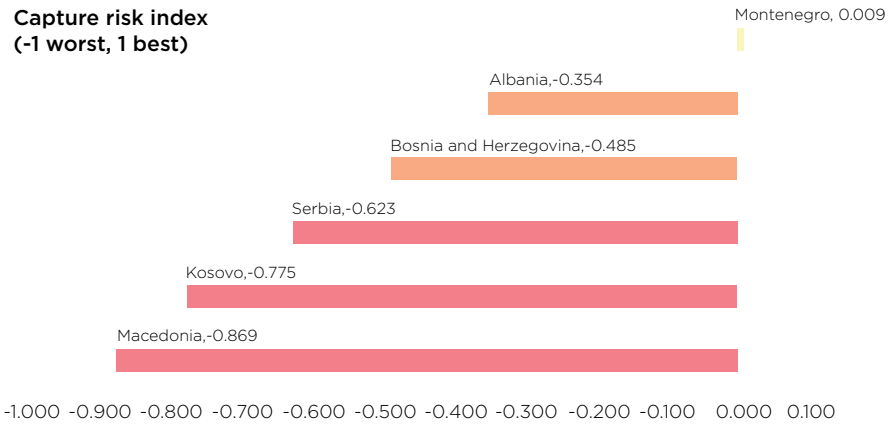
# Category 9

## Control over the implementation of PP legislation

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



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



## *Interpretation of indices Montenegro Category 9: Control over the implementation of PP legislation*

In terms of control over the implementation of the PP legislation, the PP system in Montenegro performs the best among the observed countries. The Corruption resistance index (table C.9.1 above) and Capture risk index (table C.9.2 above) values indicate moderate corruption response and moderate capture risk. The Inspectorate's jurisdiction over the implementation of the PPL is seen as good practice, with focus on proactive controls and relatively low potential conflict of interest in comparison to systems where this role resides with institutions that are at the same time in charge of other functions in the system (i.e. training, advisory, or managing the data).

However, there are several challenges in the approach to control over the implementation of PP legislation in Montenegro. The inspectorate has limited staff and conducts a limited number of inspections annually (see the Findings in detail below) which limits its overall ability to produce impact in detecting and sanctioning anomalies. The potential disproportionality of the fines prescribed and damage done through misconduct remains. The potential influence of the executive branch through appointment procedures and consequent conflicts of interest in cases when executive branch government is the subject of inspection requires attention from the standpoint of capture risk. Limited digitalization of the system also affects the ability of inspectors to focus on potential pre-determined risks instead of using other methods (i.e. sample method) in conducting inspections. While the Montenegrin system can serve as a role model for other systems in terms of the control of the implementation of the PPL, it is of significant importance that the deficiencies observed here are addressed in further development, especially in the area of increasing the capacity of the Inspectorate, digitalization of the data (i.e. development of digital risk detection tools), and building barriers to undue influence from the executive branch of government.

## Findings in detail

The competence for inspection control of implementation of regulations linked to public procurement has been given to the Public Procurement Inspectorate (PPL, Article 147), a section within the Directorate for Inspection Affairs. An authorised official of the Directorate has been appointed under the State Administration Act, with a five-year mandate, by the Government of Montenegro (Article 44), since the Directorate is an independent administrative body with no ministry to report to (Decree on State Administration, Article 28). To be more precise, actual inspection control is performed by public procurement inspectors, in accordance with the PPL and regulations governing the inspection control. They also all act in accordance with the Prevention of Corruption Act, since it relates to all civil servants and officials in terms of preventing and eliminating conflicts of interest. The observed performance data for 2014/2015/2016 show that inspection of 621 contracting authorities in 2014, 648 in 2015, 616 in 2016 and 614 in 2017 was entrusted to only two (2014/2015) or three inspectors (2016 and possibly the same for 2017, since it was not evident from the Public Procurement Directorate's response). Considering this limited capacity, the number of inspection controls conducted does not support the commitment to secure full implementation of the PPL (148 in 2014, 185 in 2015 and 219 in 2016), although there was an increase in the number of misdemeanour warrants and misdemeanour proceedings initiated (Directorate's response to Q48, 3/7/2017). However, even in this area a discrepancy was observed between the data submitted in response to the requests of the GRAPP project and publicly available data. According to publicly available reports in 2016, the sector conducted 339 inspection controls. Out of total 97 established irregularities, 69 were removed, while requests for launching the offence proceedings were submitted to competent courts in the case of 15 offences (Table 5).

**Table 5 Inspections, established irregularities and undertaken measures, 2016**

<b>Number of inspections conducted</b>	<b>339</b>
<b>Number of established irregularities</b>	<b>97</b>
<b>Number of indications</b>	<b>61</b>
<b>Number of irregularities for which the removal was ordered by a decision</b>	<b>17</b>
<b>Number of offence orders</b>	<b>6</b>
<b>Number of requests for launching offence proceedings</b>	<b>15</b>
<b>Number of removed irregularities</b>	<b>69</b>
<b>Total number of contracting authorities</b>	<b>616</b>

*Data source: Author's own computation based on data from Sector for Public Procurement Inspection, Montenegro*

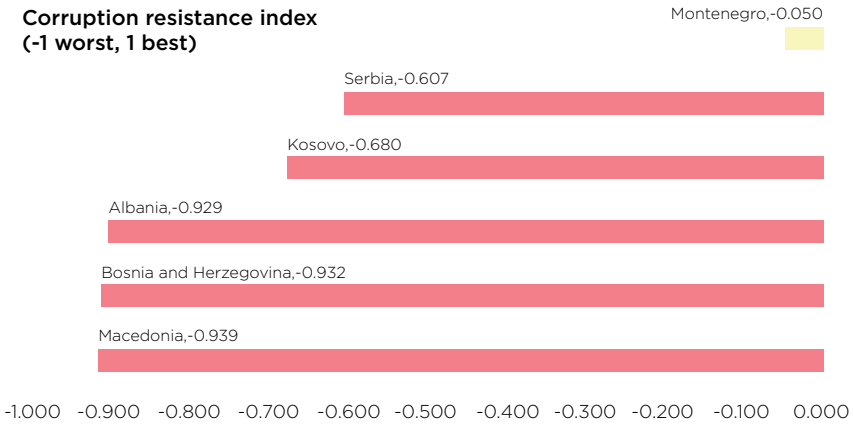
The discrepancy further raises questions about data management in the inspectorate and general trust in the data published and provided by relevant PP authorities.

The PPL also lists the obligations of parties to the PPL which are subject to inspection control (Article 148), amongst which are the adoption, amendment and publication of public procurement plans, fulfilment of criteria for appointing members of the Commissions for Opening and Evaluating Bids and public procurement officers, fulfilment of criteria for initiating public procurement procedures, contents, amendments, publication and adequate delivery of tender documentation, signing and implementing contracts on public procurement, etc. No inspection is envisaged however, if the contract signed differs from the tender documentation, thus the inspectorate cannot sanction such violations. Public procurement inspectors are given time limits to conduct inspections (during which the bidder/interested parties have the right to submit complaints against the decisions of contracting authorities). The actual procedure for deciding on a detected violation of the PPL is defined by a separate law regulating inspection control. Fines for detected violations range from EUR 2,000 to EUR 20,000 for legal persons; EUR 250-2,000 for authorised officials; and EUR 500-6,000 for entrepreneurs. However, there is no evidence of whether the fine imposed represents reciprocity to the observed misconduct and damage derived from it.

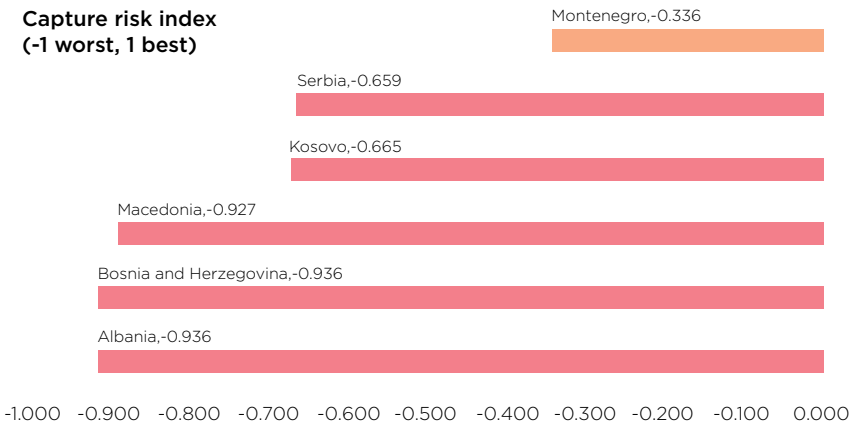
Based on the analysed data, the Public Procurement Inspectorate has no capacity to respond to the needs based on the assessed number of contracting authorities and the number of contracts and framework agreements signed per year (on average depending on the sources, one inspector has to conduct between 70 and 100 inspections per year and administer each one of them). In addition to the lack of capacity, exposure of the inspectorate to the executive branch of government through appointments procedure multiplies the risks of undue political influence over the decisions and actions of the inspectorate, especially in cases where the inspected contracting authority is under direct management structure of the executive branch, or where the economic operator (successful bidder) is directly or indirectly connected to the government or leading political party.

## *Control over Execution of public procurement contracts*

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



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



## *Interpretation of indices Montenegro Category 10: Control over Execution of PP contracts*

Montenegro is among the few countries in the EU economic space that has started to structurally address its control over the execution of PP contracts (as foreseen in the EU PP Directive 2014). In this category, Montenegro outperforms the other observed countries, with the Corruption resistance index in the area of moderate resistance (see table C.10.1 above) and Capture risk index remaining high (see table C.10.2 above). While the system is progressing in the right direction (independent controls with the authority to conduct inspections and impose fines) there are still some issues to be addressed. As this role rests in the same institution (the Inspectorate) that is in charge of control of PP legislation (which is considered to be effective and efficient use of human resources), the lack of capacity (only three inspectors are employed in this department) and potential undue political influence (see category 9 above) affect the overall impact of this solution in this category as well. Therefore, the same recommendations of increasing the capacity of the institution, developing proper sanctioning responses and building barriers to undue political influence are applicable in this category as well.

### *Findings in detail*

One of the competences given to the Public Procurement Inspectorate is to monitor the implementation of contracts signed in public procurement procedures (PPL, Article 148). Since the same inspector who monitors the implementation of public procurement legislation conducts controls related to the implementation of contracts, the illustration of data showing the relation between the numbers of public procurement inspectors and contracting authorities would be the same as in the previous unit. Data for 2014/2015/2016 shows that the inspection of 621 contracting authorities in 2014, 648 in 2015, 616 in 2016 and 614 in 2017 was entrusted to two (2014/2015) or at best three inspectors (2016 and possibly the same for 2017, since it was not evident from the Public Procurement Administration's response). Considering this limited capacity, the number of inspection controls of implementation of procurement contracts conducted remains a significant challenge for established organisational structure (issue not applicable for 2014, since competences were defined differently, 25 inspections in 2015 and 49 in 2016 (Administration's response to Q57 from 3/7/2017).

As previously stated, an authorised official of the Directorate for Inspection Affairs (of which the Public Procurement Inspectorate is a part) has been appointed under the State Administration Act, with a five-year mandate, by the Government of Montenegro (Article 44), since the Directorate is

an independent administrative body with no ministry to report to (Decree on State Administration, Article 28). The authorised official and inspectors also act in accordance with the Prevention of Corruption Act, since it relates to all civil servants and officials in terms of preventing and eliminating conflict of interest. There is, however, the open issue of appointing a Head of the Directorate for Inspection Affairs (since 1 July 2017 it has had an acting director). When appointed officials reach the end of their mandates and are replaced by acting officials, as is increasingly the case, problems arise, since acting officials cannot introduce changes or make plans due to the temporary nature of their position.

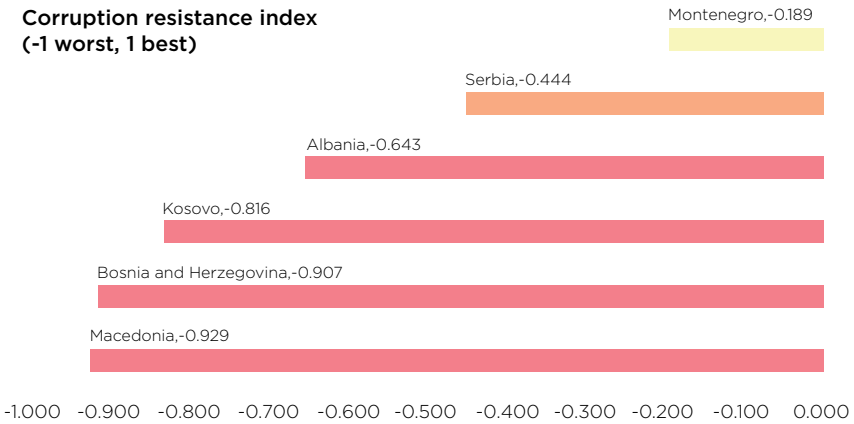
Although introducing control of the implementation of procurement contracts, the PPL does not regulate the outcome of such control, especially whether the information obtained should be made available to the public via the Public Procurement Portal. This seems a good solution that could increase transparency and help reduce corrupt behaviour. Again, a norm without stipulated sanctions introduces obligations for some entities covered by the PPL but makes no particular changes in terms of improving the overall situation. A lack of political will to improve the capacity, efficiency and effectiveness of PP Inspectorate has been observed within the scope of this assessment.



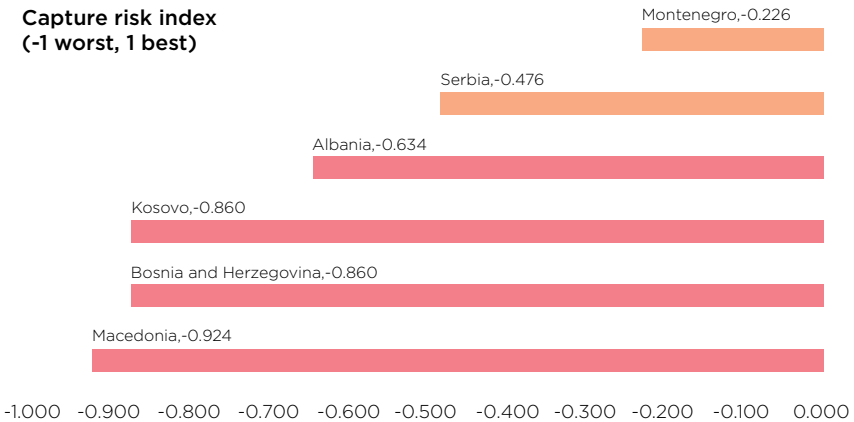
# Category 11

## Regulation of Conflict of Interest in PP System and procedures

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



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



## *Interpretation of indices Montenegro Category 11: Regulation of Conflict of Interest in PP System and procedures*

In comparison to the other observed countries, in the area of managing conflicts of interest in the Public Procurement system, Montenegro has made stronger progress. Indices on conflict of interest in PP system in Montenegro suggest moderate development of deterrence to corruption (Corruption resistance index, table C.11.1 above) and high capture risk (table B.11.2 above). The evidence obtained through the GRAPP exercise suggests that the Agency for Prevention of Corruption has a clear mandate over conflicts of interest in PP procedures and system, putting Montenegro ahead of other countries where this mandate is not clear, not stipulated in legislation or evident from practice. However, the lack of further evidence (i.e. statistics on conflict of interest related to PP procurement) suggests that there is still significant attention needed in this area (in terms of developing proper by-laws and evidence of work) in order for the system to become efficient in preventing, detecting and sanctioning these anomalies.

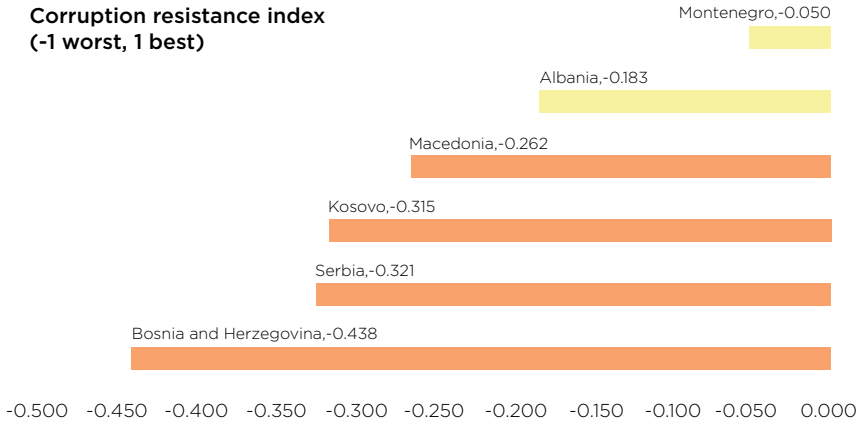
## *Findings in detail*

Although the PPL introduces obligations for contracting authorities and bidders in relation to the prevention of conflicts of interest within public procurement procedures, followed by the appropriate inspection controls, it does not envisage any additional procedures in this regard. Such procedures, if any, should be commenced before the competent authorities, as prescribed in the respective legislation (primarily the Prevention of Corruption Act). In this sense, relevant information on procedures on conflicts of interest in relation to public procurement procedures was supposed to be obtained from the Agency for Prevention of Corruption.

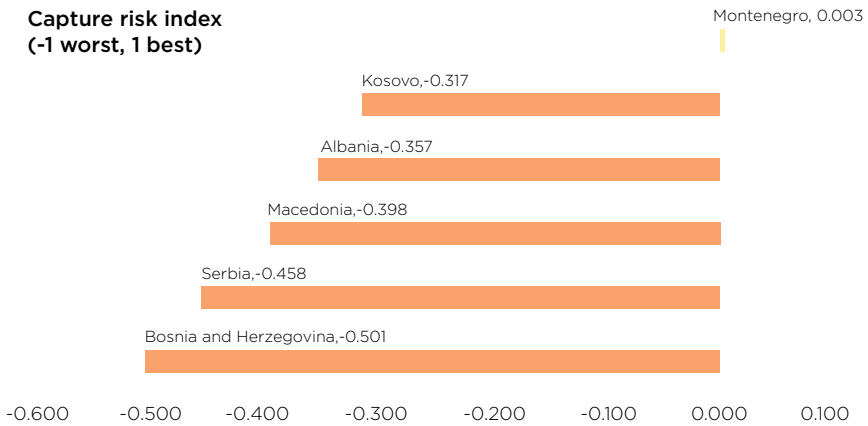
The Agency, however, stated in its response No. 03-04-2393/3 dated 5/7/2017 that it had no such data (number of decisions on conflicts of interest in public procurement procedures, procedure for appointment of the head of the body (Agency), its mandate, and not even on the number of its employees). The Agency, established to fight corruption by increasing transparency, among other competencies, did not respond adequately to the FOIA. Responses were not provided in a number of areas, pertaining to number of people employed in the Agency, the number of procedures stipulated under respective legislation conducted before the Agency, whether any of those procedures related to public procurement procedures (e.g. if public officials/members of the Commission for Opening and Evaluating Bids were in conflict of interest situations while deciding on the most advantageous bid, etc.). It is possible, however, that the Agency has no such detailed register that files documents by field or subject. Although this inadequate response inhibits assessment, some interesting data are available in the Annual Report of the Agency for 2016. For example, the Agency, in cooperation with the Public Procurement Directorate, produced a leaflet on the prevention of corruption in public procurement (Report, p. 49). The leaflet was made available to the public via the website of the Public Procurement Directorate, directly referring to the Agency as the body to be approached in cases of corruption in public procurement. More importantly, those institutions agreed to work on developing a system of data exchange (Report, p. 69). Lack of data, and obvious lack of the systematic approach in preventing and managing conflict of interest in Public Procurement as observed by the assessment may diminish all other aspects of accountability of the Public Procurement system and create opportunities for corrupt and capture practices to flourish.

## Audit mechanisms

**TABLE C.12.1: Corruption Resistance Index – Audit mechanisms**



**TABLE C.12.2: Capture Risk Index – Audit mechanisms**



## *Interpretation of indices Montenegro*

### *Category 12: Audit mechanisms*

In the area of audit mechanisms, the PP system in Montenegro scores relatively high in comparison to other observed countries, despite a lack of proper regulation that addresses this issue. The Corruption resistance index shows a moderate response to corruption (table C.12.1 above) accompanied by moderate capture risk (table C.12.2 above). While in conducting audits the State Audit Institution (SAI) has no specific obligation to perform particular audits related to public procurement (see the Findings in detail below), their practice indicates otherwise. In published audit reports, the SAI refers to public procurement in each audited entity, observing violations of the PP legislation and common practice, and providing recommendations, which is considered to be good practice. However, there are limits in the impact of the SAI endeavour due to overall accountability deficiencies in Montenegro. Recommendations are rarely implemented by audited entities (i.e. there are no sanctions for noncompliance) and the number of entities audited is limited due to capacity limits of SAI (see Findings in detail below). In future development of the PP system in Montenegro, this issue should be addressed through several measures. The capacity of the SAI (number of persons employed) needs to be increased, while their independence and topical capacity needs to be maintained. In the area of auditing of PP process, SAI needs to be supported by relevant regulatory improvements, while horizontal cooperation and digitalization shall focus on strengthening sampling method and providing assurance that recommendations will be implemented by respective public entities.

### *Findings in detail*

Audits of budgetary spending in Montenegro have been quite successful over the years and represent an area of constant improvement. Since its formation in 2004, the State Audit Institution (hereinafter: SAI) has been improving its capacity and knowledge, boosting the integrity of the Institution. In relation to its contribution to an analysis of the level of proper planning and spending in public procurement, the SAI has no specific obligation to perform particular audits related to public procurement (SAI audits public procurement within its common audit activities – SAI Act, Article 5). This has not prevented SAI auditors from gaining special knowledge and competences to audit public procurements, nor from preparing two reports with a special focus on public procurement (Response of SAI to Q87) – procurement of information technology and the Ministry of Defence - as well as a third one published after providing responses to the FOIA request, related to public procurement of medical equipment. Throughout the years, the SAI's audit reports have been used as valid illustrations of the situation in practice in public procurement. For each audited entity within the analysed period (2014 – 49, 2015 – 64, 2016 – 42), there has been an explanation of particular procurement legislation/procedures violations, as well as

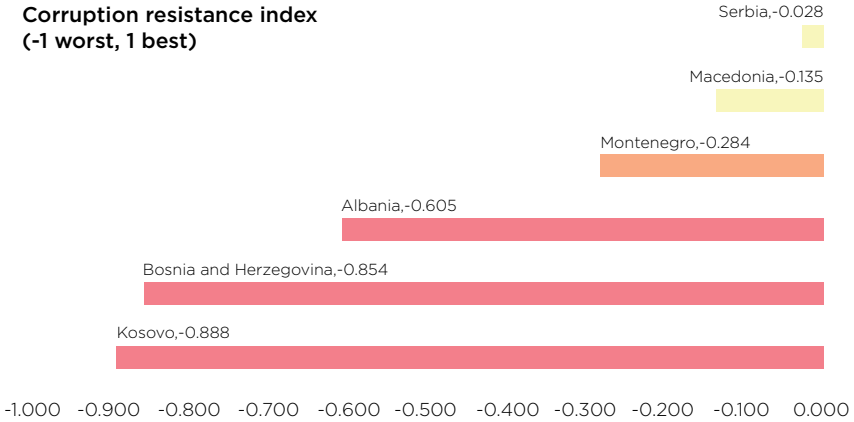
recommendations to prevent such violations in the future. Unfortunately, many of these reports simply conclude that no recommendation has been followed, or that it has been done partially, thus violations are permitted to occur almost constantly. All reports are available via the SAI website. Being independent in its operation, the SAI decides on which entities to audit itself (SAI Act, Article 9). However, the Act on Financing Political Parties and Campaigns obliges the SAI to audit the annual financial reports of political subjects (Article 43), thus increasing the number of entities subjected to audit per year. Due to this solution and the limited capacities of the SAI, it is disputable whether the SAI can significantly increase the number of audited entities beyond political subjects in the period ahead, to expand audits on public procurement. The standardised sample method applied by the SAI in deciding on which entities to audit cannot serve as a Public Procurement safeguard in specific entities, but rather as a mechanism for observing of trends in the management of public procurement from year to year.

The procedure of appointing members of the SAI Senate also represents one of the good practices observed in Montenegro. Namely, with five members appointed by Parliament (SAI Act, Article 33) and with a permanent seat (SAI Act, Article 34), the SAI is not exposed to direct political influence by the executive branch as other observed entities in the PP institutional setting. While on the good side SAI has had same organisational structure for more than 13 years, which allowed institutional memory to be established, new appointments in the SAI (two members appointed in 2017) triggered some critical voices by civil society representatives in recent months (please note that two members of the SAI were appointed in 2006, one in 2013, and two in 2017). Considering they are all public officials, they need to act in accordance with the Prevention of Corruption Act.

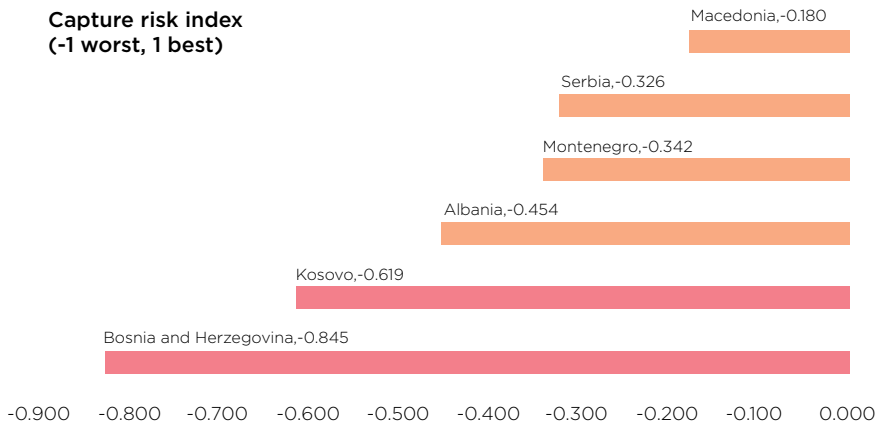
However, there is one aspect in the SAI's operations that does not satisfy requirements – the level of implementation of its recommendations. Since the SAI has no capacity or jurisdiction to enforce its opinions or recommendations, the effectiveness of SAI recommendations depend greatly on horizontal cooperation with other relevant institutions. This cooperation or potential subordination of the reporting mechanisms or administrative guidelines in such cases is not established.

## Criminal justice system response to PP anomalies

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



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



## *Interpretation of indices Montenegro Category 13: Criminal justice system response to PP anomalies*

In the area of the criminal justice system, Montenegro's PP system is among the moderate performers. The corruption resistance index value places Montenegro in the area of incidental response to corruption (see the table C.13.1 above), while Capture risk index value indicate high capture risk (table C.13.2 above). The criminal justice system approach to corruption in PP is through other corruption related crimes, failing to address specificities of corruption in PP, despite the high risk of such anomalies. Received information indicates that no investigation in PP-related corruption has been conducted in the observed period (2014 – 2017) by any of the prosecutors' offices in Montenegro. This lack of attention emphasizes risks that are observed earlier in the area of extensive use of the simplified procedures, and media claims about anomalies in the PP procedures. While quick improvements in the PP regulation and anti-corruption regulation in Montenegro could be achieved by building on concepts, approaches and solutions adopted in the FYR of Macedonia and Serbia, long term solutions should address the particular practices observed in Montenegro and should include strengthened horizontal cooperation between the SAI and Inspectorate, as well as digitalization of the system (including preliminary risk detection) and stronger involvement by external control mechanisms (i.e. media and civil society).

### *Findings in detail*

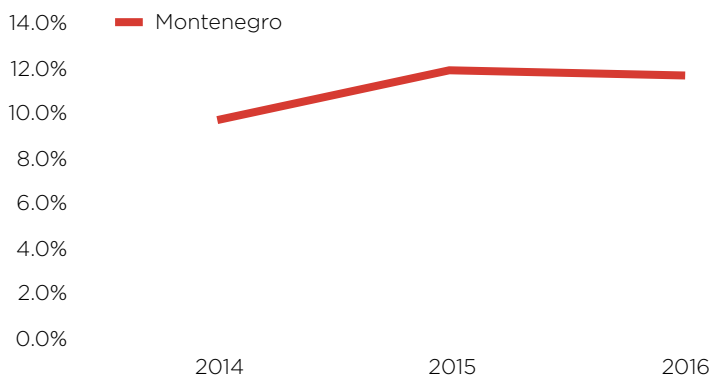
The criminal justice system plays an important role in preventing, detecting and punishing corruption in public procurement. Its key function is to filter anomalies detected through different control mechanisms (internal and external) and differentiate cases of bad governance from intentional crime. Within the scope of the GRAPP, specific information on performance indicators relevant to criminal justice (i.e. number of corruption investigations linked to public procurement in 2014, 2015 and 2016) were requested from thirteen Basic Public Prosecutor's Offices (first instance prosecution) and two High Public Prosecutor's Offices (second instance prosecution). Two Basic Public Prosecutor's Offices did not respond to the FOIA request (Niksic, Berane). All other respective institutions responded by saying that no investigation in this field has been conducted in the observed period. The same response was received in areas of indictments lodged for crimes linked to corruption in which public procurement was one of the counts on which the indictment was based, as well as in the number of sentences passed.

Given that academic and policy literature finds that public procurement is one of the hot-spots for corruption, the absence of criminal justice system



actions in this field suggests that significant challenges in fight against corruption in Montenegro remain. Despite the numerous risks, deviations in procedures and malpractice in public procurement that have been observed in previous chapters for the period 2014 - 2016, the relevant criminal justice authorities did not find any base for investigations or prosecution. Although procurement as a share of GDP is, in Montenegro, only 11.77%, significantly below the EU average, the total sum spent in in public procurement in Montenegro in 2016 was over EUR 450 million spent, exposed to a high risk of capture/corruption. The lack of actions by the criminal justice system seems anomalous. It may reflect a lack of capacity, lack of understanding, lack of interest or intentional malfunctioning of the system. It raises many questions that need to be further investigated and elaborated in future reports.

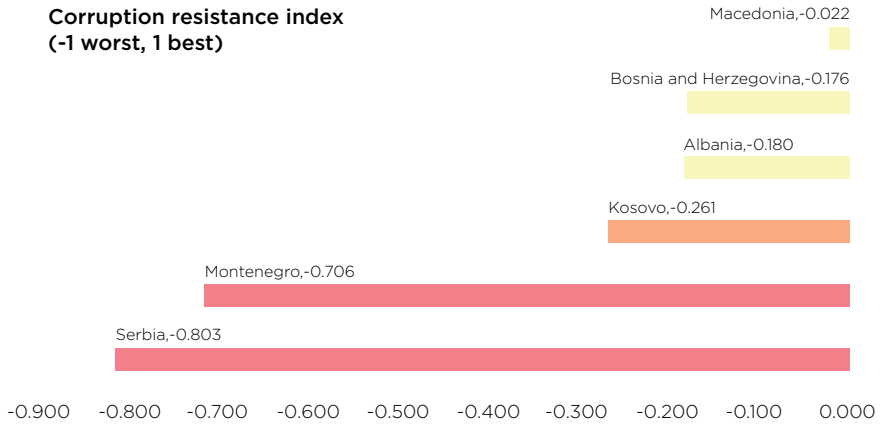
**Graph 1 Total Public Procurement (works, goods and services) as % of GDP, 2014- 2016**



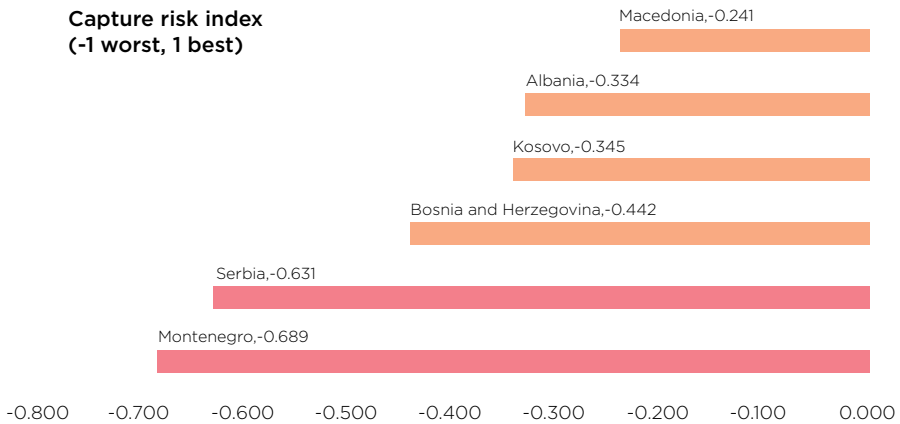
*Source: Author's calculations based on data from Eurostat and PPB Annual reports, 2014- 2016*

## Capacity and human resources management

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



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



## *Interpretation of indices Montenegro Category 14: Capacity and human resources management*

In the area of Capacity and human resources management, the PP system in Montenegro is among the weakest performers of all the observed countries. The corruption resistance index is in the stage of elementary response to corruption (table C.14.1 above), while the Capture risk index (table C.14.2 above) suggests a captured system. The professionalization of the PP system and improved capacity of the respective PP officers set out in legislation (e.g., only certified officers can conduct PP procedure) are positive steps. However, practices raise a variety of questions in this area. With a total of 442 certified officers in place in 2016, despite there being 621 contracting authorities registered, the apparent lack of qualified officers poses a significant risk of abuse of the system and potential for breaching the law in this area (see Findings in detail below). This is exacerbated by the absence of obligatory periodic renewal of certification, despite frequent changes of the law, and lack of evidence of such weakness in the reports from control institutions.

In addition, the e-procurement system is still not in place, while digitalization remains an issue as well, reducing the capacity of the system to respond to corruption risks in the area of prevention. Weak capacities also make the system prone to undue influence and consequently capture. In this area, Montenegro may significantly benefit from the practices observed in FYR of Macedonia and a stronger focus of existing control mechanisms on this aspect of procurement. In areas of further development, PP actors in Montenegro should pay attention to deficiencies in this area, and assure further capacity building, as well as the introduction of obligatory renewal of certification of PP officers.

### *Findings in detail*

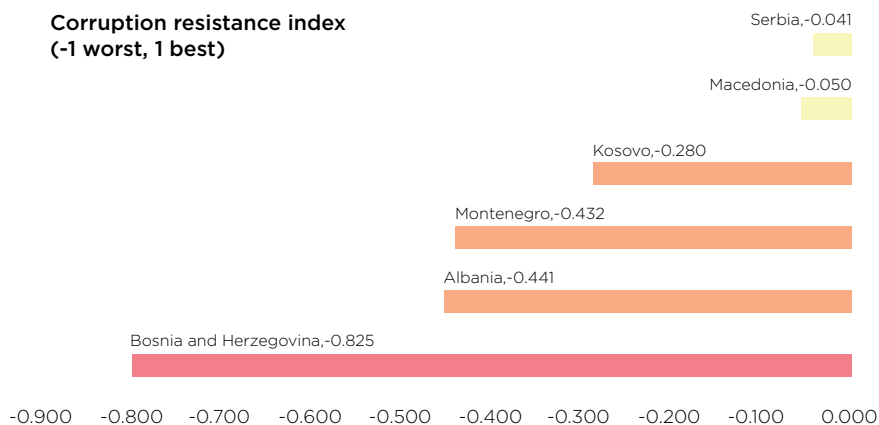
The professionalization of public procurement officers has been seen as a prerequisite for any improvement in the area. According to the PPL (Article 58), public procurement officers are obliged to pass professional examinations in order to be eligible to conduct public procurement. The same rule applies to at least one-third of the members of the Commission on Opening and Evaluating Bids (Article 59). The professional examination falls under the competence of the Public Procurement Directorate as well as providing professional training and education (Article 61), whilst the curriculum and means taking the examination are prescribed by the competent ministry (Article 60). However, relevant regulation in the field does not prescribe obligation on periodic re-certification and lifetime learning, despite PP being one of the most dynamic areas in terms of introduction of the new rules, procedures and competent authorities. The number of public procurement

officers has increased over the years, indicating increase in capacity of the contracting authorities to conduct public procurement procedures. In 2014 there were 247 public procurement officers, 338 in 2015, 401 in 2016 and 442 in 2017 (response to Q64 by the Public Procurement Administration, dated 3/7/2017). With 621 contracting authorities registered by relevant PPL bylaws in 2017, number of licensed procurement officers does not match even the basic needs in the field. The numbers raise questions as to who conducts procurement in contracting authorities that do not have certified personnel; and why the lack of certified staff has not been detected by relevant institutions (SAI, PP Inspectorate and PP Directorate). In addition, the e-procurement system has not yet been established in Montenegro, nor does the legislation foresee it (please note that restricted call for design of e-procurement has been published at the time of editing of this report).

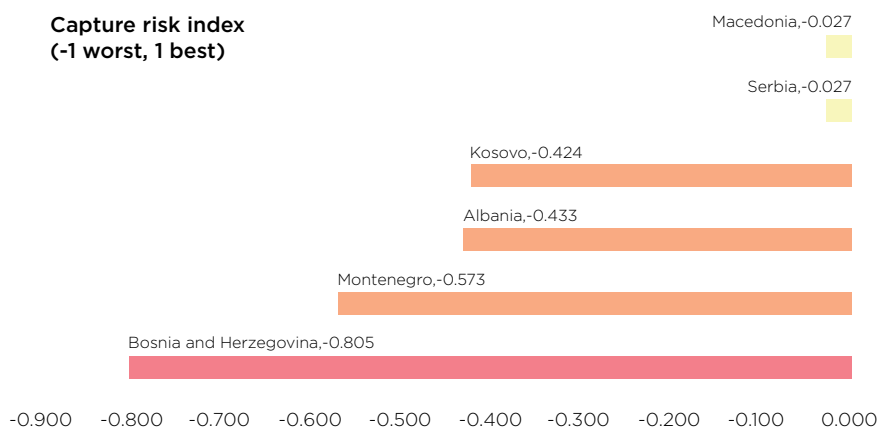
While certification of PP officers represents a positive trend in general, lack of re-certification obligations and lifetime education sets a challenge for respective procurement officers in understanding changes in legislation and PP system, as well as in addressing anomalies in already conducted procedures. This situation raises questions about implementation of the 2017 amendments to the PPL as some of the changes may affect the work of the certified officers. As over the years the number of certified officers has increased (meaning that new officers are being certified), assuming that the new training curriculum covers the recent changes, practices among PP officers may become more harmonised in the near future. However, a lack of competence usually represents a higher risk of exposure to undue influence by political patrons. Failing to train PP officers to deal with the complex issues that arise in public procurement exposes the system to undue private and partisan influence especially given the risks inherent in the appointment procedures in the PP system.

## Trends in public procurement contracts

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



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



## *Interpretation of indices Montenegro*

### *Category 15: Trends in public procurement contracts*

Statistics on public procurement contracts in Montenegro indicate an incidental response to corruption (table C.15.1 above) and high capture risk (table C.15.2 above) in this category. Multiple deficiencies in different categories include: a lack of differentiated statistics (data) on specific types of contracting authorities; lack of a plausible explanation in PP statistics for extensive usage of simplified procedures; and weak capacity. According to the responses from the competent authority (Public procurement directorate – PPD), information on the trends in public procurement appears to be limited and insufficient for adequate monitoring and usage of such data in different areas of governance. While in this area, the PP authorities of Montenegro can benefit from observation of the concepts, approaches and solutions applied in the FYR of Macedonia and Serbia, in the long run, the further standardization of the collected data and digitalization are priorities for system development.

### *Findings in detail*

Statistics in public procurement have not been unified throughout the respective reports on annual public procurement for the comparative period 2014 – 2016. Thus, the Public Procurement Administration did not insert data in the table provided in the request for information, but rather gave links to reports to be aggregated for the purpose of this report. However, the reports that were provided do not represent a response to the requests for information; this undermines and limits understanding of the key procurement performance indicators.

**Table 6 Public procurement value (works, goods and services), Montenegro, 2014- 2016 (in EUR)**

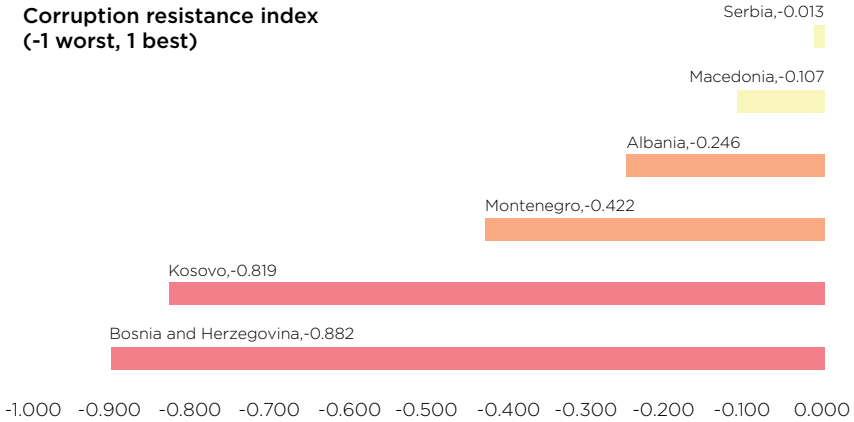
	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Goods</b>	<b>215.182.613</b>	<b>235.104.724</b>	<b>219.652.414</b>
<b>Works</b>	<b>60.619.151</b>	<b>127.149.626</b>	<b>155.745.038</b>
<b>Services</b>	<b>51.359.874</b>	<b>66.636.351</b>	<b>72.341.769</b>
<b>Total</b>	<b>327.161.638</b>	<b>428.890.701</b>	<b>447.739.221</b>

Only general information on the value of contracts for goods, services and work procured is presented in the statistical reports of the PP Directorate. No additional information by type of contracting authorities was provided for example, which would allow assessment of the relevance and impact of the internal and external controls in different institutions. Petty procurement was also omitted from the report, because there was no such type of procedure under the PPL before the 2017 amendments. The number of contracts signed was also not covered by statistical reports of relevant authorities.

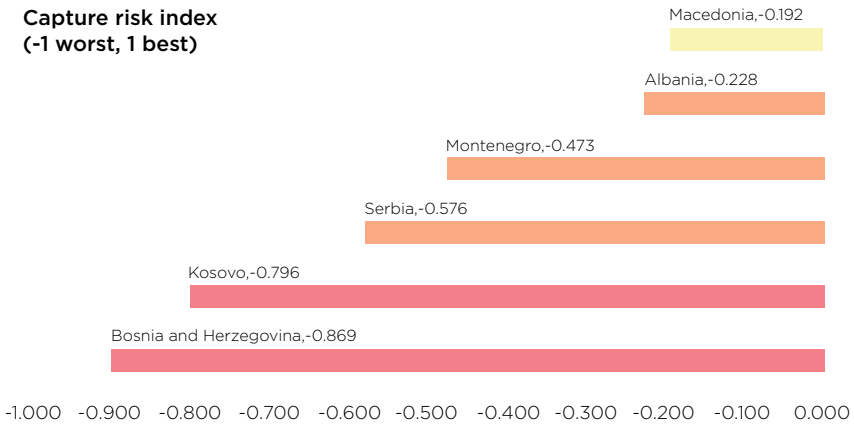
The main conclusion, besides the generally presented trend of higher spending, is that there is a need to establish an improved, reasonable, logical and cross-country comparable system for data recording. This could allow for comparison of different variables and provide information that could be used to better understand trends in public procurement in Montenegro, including in procurement management and the economic eco-system of public procurement.

## Trends in framework agreements

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



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





## *Interpretation of indices Montenegro Category 16: Trends in framework agreements*

In the area of framework agreements, the PP system in Montenegro shows an incidental response to corruption (table C.16.1 above) and high capture risk (table C.16.2 above). The share of the value of FAs in overall PP contracting is small and does not appear to significantly affect the PP market (see Findings in detail below). However, the absence of differentiated statistics on specific types of contracting authorities as well as a lack of plausible explanation in FA statistics on, for example, the significant share of FAs in procurement of works, accompanied by weak capacities to conduct FAs in an ever-changing regulatory framework contribute to the low value of the index. Judged by the response from the competent authority (Public procurement directorate – PPD), information on trends in FAs appears to be limited and insufficient for adequate monitoring. While in this area, the PP authorities of Montenegro can benefit from observation of the concepts, approaches and solutions applied in FYR of Macedonia and Serbia (as in the case of trends in PP contracts), in the long run, the further standardization of the collected data and digitalization are ultimate priorities for system development.

## Findings in detail

Statistics in public procurement have not been unified through the respective reports on annual public procurements for the comparative period 2014 – 2016. Thus, the Public Procurement Administration did not insert data in the table provided, but rather provided links to reports so that data could be aggregated manually for the purpose of this assessment. Similar to statistics on contracts, the published reports do not correspond to the information requested, which undermines and limits the ability to assess the performance of the system in this area.

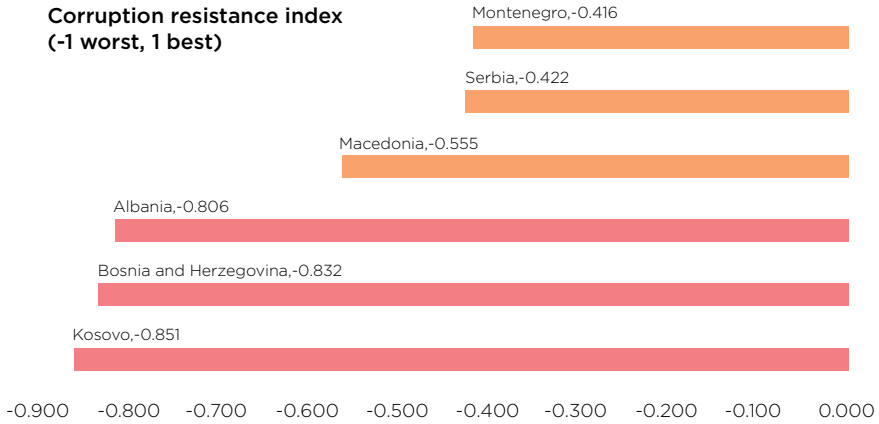
**Table 7 Framework agreements value (works, goods and services), Montenegro, 2014- 2016 (in EUR)**

	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Goods</b>	<b>248.812</b>	<b>352.873</b>	<b>267.150</b>
<b>Works</b>	<b>10.181.449</b>	<b>13.703.348</b>	<b>11.359.226</b>
<b>Services</b>	<b>3.155.565</b>	<b>5.943.478</b>	<b>7.790.033</b>
<b>Total</b>	<b>13.585.827</b>	<b>19.999.700</b>	<b>19.416.409</b>

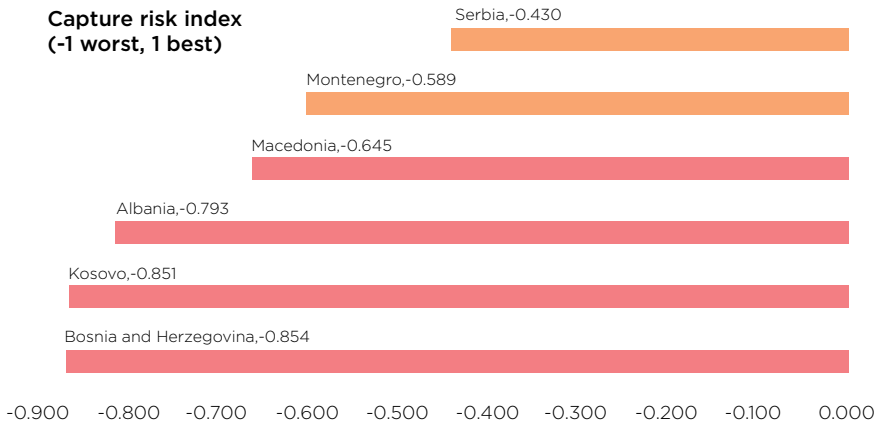
The conclusions in this area are similar to those represented in the previous chapter. However, due to greater corruption risks in the management of Framework Agreements, there are some issues that need to be highlighted. Framework agreements should be under the scrutiny of the competent authorities on a large scale, as they tend to limit competition and therefore represent fertile ground for corrupt behaviour, thus exposing the PP system to a higher risk of capture by collusive agreements. One of the main aims of the market is to secure free competition. Although some areas in relation to violation of free competition would not be sanctioned (one general example is intellectual property), public procurement should not by any means be one of those areas, especially since a significant portion of public money is spent in PP procedures.

## The most successful tenderers

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



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



## *Interpretation of indices Montenegro Category 17: The most successful tenderers*

Indices in the area of risks related to most successful tenderers (corruption related risks) and preferential treatment (PP capture risks) indicate incidental response to corruption (table C.17.1 above) and high capture risk (table C.17.2 above). While established control mechanisms, as observed in earlier categories, appear to properly address major risks in PP procurement procedures, in this area we observed significant deficiencies. Based on the public reports, and access to the relevant registries (see Findings in detail below), some of the most successful tenderers were contracted despite obvious inability to satisfy administrative criteria for participation (i.e. produce evidence of tax payments). Such findings raise many questions as to the performance of the control institutions, as well as about the performance and influence over actual procurement procedures; such contracts cannot be legally awarded. These deficiencies need immediate attention from the relevant PP actors and criminal justice system and are usually key risk indicators of preferential treatment (corruption) and capture of the system. Montenegro could significantly benefit from adopting the concepts, approaches and practices observed in FYR of Macedonia and Serbia. In the long run, improvement in the categories related to controls and implementation of the recommendations in these areas should improve the situation here.

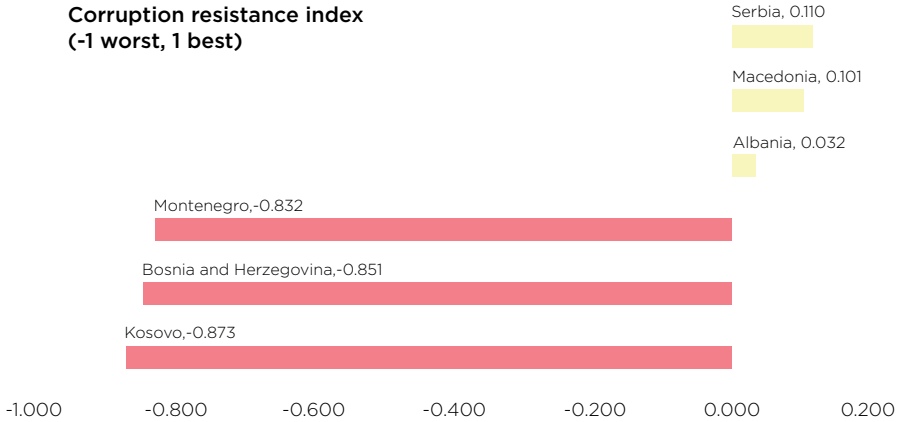
## *Findings in detail*

The information presented under the previous chapters, especially in relation to the number of investigations/prosecutions/sentences for a variety of crimes, including corruption (none for the comparative period 2014 – 2016) suggests that procurement processes and actors including economic operators are more or less clean from corruption. The assessment suggests that aside from lack of criminal investigations, there are no initiated procedures for breaches of conflict of interest-related legislation, nor fines prescribed for breaches of the law detected by relevant authorities (PP Directorate and Inspectorate). On the contrary, media reports on some bidders in Montenegro suggest that there is corruption and that successful bidders tend to have political affiliations. However, as there are no procedures initiated on these reports, they have not been used for the purpose of this assessment.

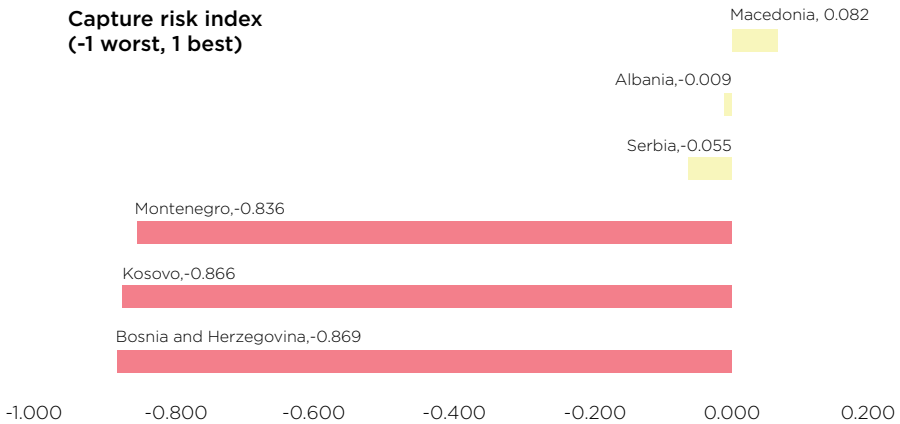
Other relevant and available sources provide some insights into successful bidders and anomalies detected in assessment of the top 10 companies (by value of awarded contracts). While analysis of the available information in public registers does not show direct political or economic relationships between some of the most successful bidders, such as DOO Glosarij Podgorica, AD Jugopetrol Podgorica, DOO Urion Podgorica, and DOO Veletex Podgorica, other issues have caught the attention of the researchers. All of the above were found on the so-called white list of tax payers, ensuring the fulfilment of the criterion that public procurement can be awarded only to those with no outstanding, unpaid taxes. However, analysis of data in public registers related to companies like Tehnopot PG and Cijevna Komerc Podgorica, which were listed as the most successful for the two years compared (Tehnopot), or for one year (like Cijevna Komerc), were found on the black list of the biggest tax debtors. This raises questions as to how such bidders could be awarded contracts, contrary to the regulation on qualification of bidders. These observations should be further explored in future reports.

## Trends in petty public procurement

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



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



## *Interpretation of indices Montenegro Category 18: Trends in petty public procurement*

In the area of trends in Petty public procurement, Montenegro scores low in comparison to other countries. The Corruption resistance index score is in the stage of elementary resistance to corruption (table C.18.1 above), while the Capture risk index indicates a captured system (table C.18.2 above). Petty procurement was introduced only with the 2017 PP amendments (before that it was under the terms of shopping method and to certain extent direct agreement, both using simplified procedures). Despite reporting obligations in the existing regulation, the reporting process and the available information on usage of such procedures, suggest extensive use and frequent breaches of the PPL in this area (see Findings in detail below). In addition, the SAI report frequently points at the practice of splitting procurement in order to avoid more complicated procedures, reflecting the observed weak capacities of the system, and a general tendency to avoid controls. With limited capacity and impact of the control mechanisms (i.e. SAI, inspectorate, criminal justice system), risks in this area multiply. Quick improvements in this area could be achieved through application of the regulatory solutions and practice in Serbia and FYR of Macedonia. However, on the strategic level, this aspect needs to be addressed through more effective and efficient data management (digitalization of the system), improved quality of controls and more sanctioning of malpractice.

### *Findings in detail*

Petty procurement was introduced via the 2017 PPL amendments, meaning that prior experience with this procurement procedure could not be reported by the Public Procurement Administration. Considering the thresholds for such procedures (up to EUR 15,000 for goods and services, and EUR 30,000 for works), with only a few rules imposed by the PPL (the procedure should be predominantly designed by the contracting authority itself), it might be expected that petty procurement would be “the new direct agreement”. In fact, under the previous regulation of procurement procedures, direct agreement had the lowest threshold and was the less complicated procedure. It is not surprising that many contracting authorities commonly divided their higher value procurements on a regular basis, simply to override strict and complicated procedures. For example, in 2014 there were 70,659 direct agreements with a total value of EUR 20,728,038.52; 79,303 direct agreements in 2015, with a total value of EUR 22,822,054.56; and 84,967 direct agreements in 2016, with a total value of EUR 23,384,217.11.

Despite the SAI constantly emphasising within its audit reports the necessity to eradicate malpractice, no efficient remedy was imposed. Moreover,

there were no misdemeanours reported for violations of the PPL, and no criminal investigations, indictments, or sentences for criminal offences related to public procurement. Although there are sanctions stipulated within the Montenegrin legal system for various breaches of legislation that might be connected with public procurement, these sanctions were not activated.

With the introduction of petty procurement, without the right to file a complaint against the decision of the contracting authority, and no inspection control foreseen in this regard, not even a time limit defined for publishing decisions on petty procurement, potential exposure to corruption and capture of the system is expected to a larger extent. Additionally, since the amendments to the PPL were introduced in the middle of the year, any decision by Parliament to make petty procurement applicable from the day of the entry into force of the PPL, would result in the need to amend public procurement plans to adjust previously planned procurements to the new procedures and rules. It is not known how many contracting authorities actually amended their PPPs or how this manifested in changes to plans.

Nevertheless, even given the risks, attempts should be made to at least try to implement the 2017 amended PPL.

**Table 8 The number of concluded contracts by type of procedure, 2014- 2016**

	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Open procedure</b>	<b>2.679</b>	<b>2.941</b>	<b>3.567</b>
<b>Restricted procedure</b>	<b>1</b>	<b>13</b>	<b>10</b>
<b>Negotiation procedure with prior publication</b>	<b>0</b>	<b>6</b>	<b>35</b>
<b>Negotiating procedure without prior publication</b>	<b>140</b>	<b>131</b>	<b>125</b>
<b>Framework agreement</b>	<b>198</b>	<b>258</b>	<b>354</b>
<b>Consulting services</b>	<b>6</b>	<b>6</b>	<b>0</b>
<b>Awarding public procurement by tender</b>	<b>4</b>	<b>6</b>	<b>6</b>
<b>Shopping method</b>	<b>2.771</b>	<b>3.144</b>	<b>3.556</b>
<b>Direct Agreement</b>	<b>70.659</b>	<b>79.303</b>	<b>84.967</b>
<b>Total</b>	<b>76.458</b>	<b>85.808</b>	<b>92.620</b>

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



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