

EBRD 2010

**Regional Assessment of Public
Procurement Legal Frameworks**

Astana, May 19th 2011



European Bank
for Reconstruction and Development

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EBRD Core Principles on an Efficient Public Procurement Framework

The core principles on an efficient public procurement framework (the “Core Principles”) are based on a review conducted by the EBRD in September 2009. The review looked at international public procurement standards and current best practice relating to the procurement cycle, and all international public procurement instruments presently under revision.

The Core Principles reflect the standards generally regarded as international best practice in the public procurement process. The principles also draw on the practical experience of the EBRD as a direct investor and financier in the region.

The Core Principles are based on the assumption that the primary role of a public procurement law is to accommodate the business process of negotiating a contract in a public governance context. As public procurement constitutes a major economic activity for all governments, regulation is a sensitive component of a country’s legal framework, and is an essential supplement to public finance legislation. Since power dynamics within the public procurement process are inherently unequal, regulatory and enforcement institutions are of immense importance. Consequently, the Core Principles focus, in particular, on the issues of objectivity, consistency and enforceability of public procurement regulation.

The principles apply not only to the tendering phase, but also to the pre- and post-tendering phases. The contracting entity launching the public procurement needs to ensure that the fundamental principles of public procurement are maintained throughout the entire process.

Modelling the content of a national public procurement framework will depend on the contractual traditions of individual transition countries. At the same time, public procurement legislation needs to comply with international standards to ensure that key internationally recognised public governance values are respected. The Core Principles therefore may serve

as an aide-mémoire and a checklist for the drafting process.

1. The Public Procurement legislative framework should foster accountability of public sector spending

The framework should promote accountability across all stages of the procurement process, balancing public and business dimensions of the process.

In the procurement process, accountability begins with a requirement for a clear chain of responsibility between management, budget, technical, legal and procurement officials. Furthermore, a separation of duties and authorisation should be enforced to ensure a transparent and smooth decision making process. Public procurements should be managed by a dedicated procurement specialist, responsible for coordinating of the entire procurement process and acting as a contact point for all tenderers competing for a contract.

It is essential that the framework require a sound contract profile and procurement plan to be established before the tendering process is launched, to avoid economically unjustified and unnecessary purchases. For large value contracts a special approval process should be in place.

The framework should also require technical specifications of tenders to be based on relevant quality characteristics and/or performance requirements.

The scope for rejecting all valid tenders should be clearly and narrowly defined. In cases where all tenders are rejected, the framework should require the contracting entity to provide reasons, and compensation, if valid tenders are received in response to the terms of reference, whenever appropriate.

A public procurement remedies system should strike a balance between protec-

tion of public finance and the right of the tenderer to seek effective remedy or compensation. There should be an independent review body with the authority to impose sanctions upon parties who do not comply with the public procurement values. In resolving disputes, the review body must treat contracting entities and tenderers in a fair and impartial way.

2. The Public Procurement legislative framework should ensure the integrity of the procurement process

The PP framework should promote integrity between the procurement function, transparency in delivering government policy and value for money.

The law should ensure that the behaviour of management and procurement officials is consistent with the public purpose of their organisation. It should contain measures to limit the scope for undue influence and to avoid conflict of interests at all stages of the procurement process.

Disclosure of a public investment and procurement information should be broad but regulated and information should be provided equally to all parties of the process.

In the public procurement process, communication between the contracting entity and tenderers should be made by best available means (preferably electronic) that provide a record of the content of the communication.

The law should limit the opportunities for negotiations or amendments to final tenders and proposals after submission.

3. The Public Procurement legislative framework should provide an adequate level of transparency

For public procurement to be acceptable to all stakeholders it should be seen to be public, transparent and objective. Any

suggestion of an un-disclosed resolution must be avoided. The law should promote the extensive use of e-procurement as one of the methods to prevent collusion with tenderers.

PP regulation should:

- require an effective, official and dependable publicising of the procurement opportunities, through a single point of access;
- underline the importance of advance procurement and contract award notices;
- and require the public procurement process is real-time recorded, preferably through electronic means, accessible to the public free of charge.

A contracting entity should whenever possible publish tender documents free of charge on the contracting entity's website, instead of supplying same by request only and for a fee.

As a rule, tenders should be opened in public opening session promptly after the deadline for the submission of tenders.

A contract award notice should be published for all contracts finalised by the contracting entity.

4. The Public Procurement legislative framework should enable competition

To begin with, the PP framework should promote fair competition and prevent discrimination in public procurement. Tenders and tenderers of equivalent status should be given equal treatment, without regard to nationality, residency or political affiliation. The law should not allow domestic preferences.

For regular understanding of grounds for exclusion, the PP framework should distinguish between the public procurement eligibility criteria, qualification and technical requirements to be met by tenderers.

The law should comprise minimum tender deadlines to ensure a level playing

field and should demand consistency in its application throughout the procedure. In addition, where tenderers are eliminated, a sufficient standstill period or an alternative procedure should be in place to provide for immediate conservatory and protective measures.

Secondly, the law should encourage competitive contract through the tendering process. Sound PP law should permit both tendering and competitive negotiations, wherever appropriate, to ensure fit-for-purpose outcome. Selection of tender type or procedure should be based on the value of the tender, specifics of the purchase and the contract profile. The law should provide clear tests for the choice of procedure – it should be explicit to both the contracting entity and potential tenderers what circumstances may justify exceptions to open tender arrangements.

To ensure genuine competition takes place it is essential for the law to require tendering processes to stipulate reasonable technical specifications, requirements and suitable award criteria, adequate to the scope and value of the contract prior to embarking on the tendering process. The law should enable potential tenderers to decide quickly whether to tender. Confusions or complexities in the tender documents may result in too few or too many submitted tenders or a biased evaluation.

For the same reason, the contracting entity should be instructed on how best to deal with an abnormally low tender – it should be able to ask for clarifications and either reject the tender or increase the contract security to mitigate or limit perceived risks.

5. The Public Procurement legislative framework should promote economy in the procurement process

The law should enable public procurement to be accomplished professionally in a reasonable time. Formal requirements

essential for transparency reasons should be kept simple and the costs low. All of the costs involved in the public procurement process are eventually paid for by taxpayers' money. High costs of participation in the procurement procedure (including tender document fees, cost of certified statements and translations, inappropriate cost of producing a tender excessive in size, disproportionate tender security and so on) will increase the cost of contract and diminish the efficacy of the process. Enforcement costs will reduce the profit margin on the contract and may negatively impact the quality of contract delivery.

The law should grant the tenderers an ability to submit an inquiry or tender in a confidential but simple and time and cost-effective manner.

The PP law should encourage aggregation of lots, and whenever possible, the use of a life cycle costing for the purchase of goods and works. It should instruct the contracting entity in the pre-tendering phase not to divide contracts into small lots unless it is absolutely unavoidable. Aggregation of lots also allows for a 'double check' of the accuracy of the needs assessment.

6. The Public Procurement legislative framework should promote efficiency of the public contract

Sound programming and planning of the procurement is crucial to agree a cost effective and accurate public contract. An efficient public contract starts with an accurate and unbiased assessment of the contracting authority's needs. Once this has been achieved, the public procurement process should not normally be initiated until the appropriate budget has been allocated or a source of financing is defined.

The PP framework should ensure value for money is achieved, and promote methods of tender evaluation considering both the quality and cost of purchase.

Contract terms and conditions should be fair and balanced and reflect the best available business practice. The law should clearly identify when a contracting entity may obtain a tender deposit or contract security, and specify relevant limits.

The law should mandate proper contract management. The mismanagement of the contract or fraudulent payments may increase the costs of the contract. Variations to the signed contract should be permissible, once carefully scrutinised from an integrity perspective, and should be prohibited when amendments significantly alter the economic balance of the contract in favour of the tenderer in a manner which was not provided for in the tender and terms of the initial contract.

7. The Public Procurement legislative framework should recognise the value of proportionality

Effective and efficient procurement regulation calls for a proportionality rule. Although these core principles apply to any public procurement, the formality and extent of the procedure should reflect the scope and size of the procurement. The contracting entity should align the value and scope of the contract with a choice of the contract type and formal tendering procedure.

The PP law should comprise cascaded (monetary and other) thresholds to instruct contracting entities how to produce an effective procurement strategy for a public contract.

The proportionality test should also be employed to decide on the use of languages; the contracting entity should allow proposals, offers or quotations to be formulated in a language customarily used in international trade except where, due to the low value of the goods, works or services to be procured, only domestic tenderers are likely to be interested.

8. The Public Procurement legislative framework should be comprehensive and limit derogations to reasonable exemptions acknowledged by international instruments yet should distinguish between state and utilities public procurement

For public procurement to be feasible, the PP regulation should be unitary, comprehensive and cover all public contracts. Notwithstanding, state/municipal budget contracting authorities and the entities in a utilities sector may have very different requirements in terms of function and commitments and an effective PP framework should be clear in determining the requirements of contracting entities of a different status.

At the same time, the PP framework should limit the exemptions from regulation to contracts outside the public procurement domain for evident and justified reasons, specifically defence procurement, special housing arrangements or development projects. For example, in providing finance to development and transition projects, International organisations are bound by their charters to observe special arrangements in relation to procurement, and have as a result developed special procurement policies, quality assurance systems and methods for publishing information pertaining to procurement opportunities. For this reason, all international PP regulation instruments, including the WTO Government Procurement Agreement, EU Treaty and UNCITRAL Public Procurement Model Law recommend that national procurement laws should not apply to public contracts awarded pursuant to international rules.

9. The Public Procurement legislative framework should be stable, but flexible

To make the process efficient, stakeholders must learn their roles, rights and obligations, within a stable legislative framework. Any market with a public procurement sector cannot operate smoothly if there are frequent changes to the law.

At the same time, the framework should be capable of flexible so as to accommodate the changing market. This is often best done through secondary legislation. Rules of the procedure should be reasonably constant, with a primary legislation constituting the basic principles and general framework of the procurement process. Secondary legislation should model specific matters, giving sufficient instruction to produce satisfactory tender documents and procurement reports.

10. The Public Procurement legislative framework should be enforceable

Public procurement law should be easy to enforce. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ corrective measures when necessary.

The dedicated national PP regulatory agencies should be professional, independent and provide audit and monitoring of the PP sector to raise the profile of procurement and drive up PP sector capability.

EBRD Benchmark on an Efficient Public Procurement Process

Phase of Procurement Life Cycle		Best Practice
Pre-Tendering phase		The pre-tendering phase includes the programming and planning of a public procurement requirement by the contracting entity. Sound planning is crucial. The decisions made during the pre-tendering phase influence all subsequent stages of the public procurement process. The programming of the procurement should be conducted in line with the fundamental principles of accountability, efficiency, economy and integrity to allow the tendering process to be fair and transparent.
Assessment of contracting entity's needs	<i>Before the procurement starts the contracting entity needs to clarify its priorities and interests.</i>	<ol style="list-style-type: none"> (1) Public resources linked to public procurement should be used in accordance with intended purposes. (2) Public sector investments should be economically justified. (3) Procurement should be aligned with overall investment decision making. (4) The assessment of the contracting entity's needs should result in a match of good business case and realistic budget.
Budget allocation		The public procurement process should not normally be initiated until the appropriate budget has been allocated or financing for the project is defined.
Aggregation of lots	<i>The contracting entity should not divide contracts into small lots, unless it is absolutely unavoidable.</i>	<ol style="list-style-type: none"> (1) Valuation of public procurement contract shall take into account all forms of remuneration, including any form of option and renewals of the contract, any premiums, fees, commissions and interest receivable and shall be valid from the time that the contract notice or invitation is sent. (2) Tender prices shall be requested on the basis of Incoterms CIP, DDU or similar, for foreign goods and ex-factory for local goods. (3) Tender prices for supply of goods must include import duties and taxes payable on imported goods and on directly imported components to be incorporated locally supplied goods and all costs associated with the supply, delivery, handling and insurance of the goods to the final destination. (4) Tender prices for works and services contracts to be substantially executed in the purchaser's country may be requested inclusive of all duties, taxes and other levies.
Establishing a contract profile	<i>It is prerequisite for a contracting entity to establish a sound contract profile to avoid economically unjustified purchase.</i>	<ol style="list-style-type: none"> (1) The contracting entity shall determine what goods, works and services are required to carry out the project, when they must be delivered, what standards are needed and which procurement and contracting procedure is most suitable for each contract. (2) The contracting entity shall complete the overall procurement plan before any procurement begins.
Setting requirements	<i>The contracting entity decides what competences of tenderer are required to ensure proper delivery of a public contract.</i>	The candidate qualification criteria shall be based entirely upon the capability and resources of prospective tenderers to perform the particular contract satisfactorily, taking into account such factors as their (a) experience and past performance on similar contracts, (b) capabilities with the respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.
Award criteria	<i>Establishing the award criteria decides what technical features are required to satisfy the contracting entity procurement needs.</i>	<ol style="list-style-type: none"> (1) The tender evaluation aims at identifying the most economically advantageous tender. (2) The contracting entity shall award the contract to the tenderer who meets the appropriate standards of capability and resources and whose tender has been determined (a) to be substantially responsive to the tender documents and (b) to offer the lowest evaluated cost. (3) Factors which may be taken into consideration include, inter alia, the costs of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the operating and maintenance costs, the efficiency and compatibility of the equipment, performance and quality, environmental benefits, the availability of service and spare parts, and minor deviations, if any.

		(4) demonstrable reason, given a relative weight in the evaluation provisions of the tender documents.
Selection of tender type and or procedure	<i>The contracting entity makes a decision what procurement procedure is to be employed to ensure the best terms of a public contract.</i>	<p>(1) The contracting entity shall obtain goods, works and services through open or restricted tendering procedures, which may include qualification of tenders and two-stage tendering.</p> <p>(2) Other procedure may be appropriate for special circumstances, depending on the nature and value of the goods, works or services to be obtained, the required completion time and other considerations.</p> <p>(3) All procurement methods other than open tendering shall be clearly justified.</p>
Safeguards	<i>The contracting entity may decide that it is necessary for a tenderer to confirm the validity of the tender with a payment of refundable tender security – the amount of cash that is returned to the tenderer once the procedure is completed.</i>	<p>(1) When the contracting entity requires tenderers to provide a tender security:</p> <ol style="list-style-type: none"> a. The requirement shall apply to all tenderers; b. The tender documents may stipulate that the issuer of the tender security as well as the form of the tender security, must be acceptable to the contracting entity; <p>(2) The contracting entity shall specify in the tender documents any requirements with respect to the issuer and the nature, form amount and the other principal terms and conditions of the required tender security; any requirement that refers to directly or indirectly to conduct by the tenderer shall not relate to conduct other than:</p> <ol style="list-style-type: none"> a. Withdrawal or modification of the tender after the deadline for submission of tenders; b. Failure to sign the procurement contract if required by the contracting entity to do so; c. Failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents. <p>(3) The contracting entity shall make no claim to the amount of the tender security, and shall promptly return, or promptly procure the return of the tender security document, after whichever of the following that occurs earliest:</p> <ol style="list-style-type: none"> a. The expiry of the tender security; b. The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the tender documents; c. The termination of the tendering proceedings without the entry into force of a procurement contract; d. The withdrawal of the tender prior to the deadline for the submission of tenders.
Tender documents	<i>The tender documents prepared by the contracting entity consists of terms of reference for the public contract.</i>	<p>(1) The tender documents must furnish all information necessary to permit tenderers to submit responsive tenders.</p> <p>(2) The tender documents shall clearly define the scope of works, goods, services to be supplied, the rights and obligations of the contracting entity and of the tenderers and the conditions to be met in order for a tender to be declared responsive, and they shall set out fair and non-discriminatory criteria for selecting the winning tender.</p> <p>(3) The tender documents should include an invitation to tender, instructions to tenderers, the form of tender, tender security requirements, the conditions of contract, advance payment guarantees, performance security requirements, technical specifications and drawings, a schedule or requirements for the goods, works and services, and the form of contract.</p>

		(4) The tender documents should be published on the contracting entity website, whenever possible and appropriate.
Tendering phase		<p>The tendering phase of the public procurement process begins with the publication of contract notice or circulation of invitations to tender. It encompasses the publication of tender documents, collection of the tenders and evaluation of the tenders and finishes with the contract award.</p> <p>It is essential for the tendering phase to ensure fair competition, equal treatment of tenderers and full integrity and transparency of the process.</p>
Notices and invitations to tender		<p>(1) General procurement notice. Contracting entities are encouraged to publish in the appropriate paper or electronic medium as early as possible in each fiscal year a notice regarding their future procurement plans. The general procurement notice should include the subject-matter of the procurement, the planned date of the publication of the contract notice and a statement that interested suppliers or contractors should express their interest in the procurement to the contracting entity. Whenever the suppliers or contractors expressed their interest, the contracting entity should invite them to tender once the intended procurement is started.</p> <p>(2) Contract notice. A contracting entity shall publish a contract notice of intended procurement in the appropriate paper or electronic medium and such notices shall remain readily accessible to the public by electronic means free of charge, through a single point of access, until expiration of the tender submission deadline indicated in the notice. The notice shall contain at least following information:</p> <ol style="list-style-type: none"> The subject-matter of the procurement; The final date for the submission of requests for participation in the procurement, proposal or tenders; The website from which tendering documents relating to the intended procurement may be obtained. <p>(3) Contract award notice. For any procurement a contracting entity shall publish a notice of contract award in the appropriate paper or electronic medium, accessible to the public by electronic means free of charge, through a single point of access.</p>
Communication	<i>In the public procurement process communication between the contracting entity and tenderers should be made by a means that provide a record of the content of the communication.</i>	<p>(1) All communication may be executed by post, by fax, by electronic means or by a combination of those means, according to the choice of the contracting authority.</p> <p>(2) Providing for the law of the country the proposals and tenders may be submitted by any means generally available to ensure the validity of the offer.</p> <p>(3) Communication shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and proposals are preserved within stipulated deadlines.</p>
Opening of tenders	<i>With the expiry of the deadline for the submission of the tenders the contracting entity collects all received tenders and opens them to start the evaluation.</i>	<p>(1) The time for the tenders opening shall be the same as for the deadline receipt of tenders or promptly thereafter, and shall be announced, together with the place for tenders opening, in the invitation to tender.</p> <p>(2) The contracting entity shall open all tenders at the stipulated time and place.</p> <p>(3) Tenders shall be opened in public; tenderers or their representatives shall be allowed to be present (in person or online, when electronic tendering is used).</p> <p>(4) Tenders shall be opened in public; tenderers or their representatives shall be allowed to be present (in person or online, when electronic tendering is used).</p> <p>(5) The name of the tenderer and total amount of each tender, and of any alternative tenders if they have been requested or permitted, shall be read aloud (and posted online when electronic tendering is used) and recorded when opened.</p>

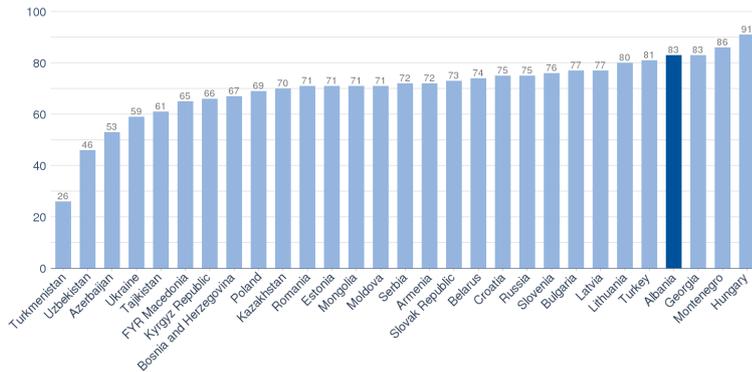
		(6) Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.
Grounds for exclusion	<i>The tenderers need to know in advance whether are eligible to be awarded a public contract.</i>	<p>(1) Grounds for exclusion must be objectively justifiable and must not discriminate on grounds of nationality.</p> <p>(2) No affiliate of the contracting entity, or of a procurement agent engaged by the contracting entity shall be eligible to tender or participate in a tender in any capacity unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the contracting entity or the contracting entity's agent and the affiliate.</p> <p>(3) Exclusion of tenderer is permitted only on the grounds of:</p> <ol style="list-style-type: none"> a. non eligibility: bankruptcy or similar, pursuant to administrative suspension or disbarment proceedings, conviction of a criminal offence by the firm or its directors concerning professional conduct, failure to fulfil certain tax and social security obligations; b. personal disqualification: lack of financial standing to perform the contract, lack of legal capacity to perform the contract, lack of technical standing to perform the contract, false statement or misrepresentation in providing information (exclusion in discretionary if the information is merely in accurate or incomplete); c. tender's technical inadequacy
Languages	<i>The tenderers need to know in advance what languages are to be used in the procedure.</i>	<p>(1) The tender documents shall be formulated in the contracting entity's official language and in a language customarily used in international trade except where:</p> <p>(2) The procurement proceedings are limited solely to domestic suppliers or contractors;</p> <p>(3) The contracting entity decides, in view of the low value of the goods, construction or services to be procured, that only domestic suppliers or contractors are likely to be interested.</p> <p>(4) Similar principles should apply to all communication, including proposals and tenders.</p>
Amendments of tenders, proposals and contracts	<i>In the procedure a contracting entity decides on completeness of the proposal and tenders.</i>	<p>(1) A tender must, at the time of opening, conform to the essential requirements of the notices or tender documents and be from a supplier or contractor which complies with the conditions for participation in the tender.</p> <p>(2) Variation of the submitted proposal and tenders or signed contracts should be generally prohibited.</p>
Methods of evaluation	<i>Tender documents specify the relevant factors to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the best tender.</i>	<p>(1) The contracting entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which in terms of the specific criteria and essential requirements set forth in the notices or tender documentation is determined to be the most advantageous.</p> <p>(2) The tender with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be selected for award.</p>
Abnormally low tenders	<i>The contracting entity needs to be instructed on how to deal with a tender that is significantly lower than all other tenders received.</i>	<p>(1) The contracting entity should be able to ask for clarifications of the tender which is abnormally low.</p> <p>(2) If the clarifications are unsatisfactory the contracting entity should be able to reject the tender or increase the contract security to limit perceived risks.</p>

Rejection of all offers	<i>The tenderers need to know in advance whether and why the contracting entity may terminate the procedure without the contract award.</i>	<p>(1) The contracting entity may reject all offers only if:</p> <ol style="list-style-type: none"> a. All tenders remain substantially above the budget; b. One tender is received; c. Two tenders with the same price are submitted; d. There is a lack of competition. <p>(2) Lack of competition shall not be determined solely on the basis of the number of tenderers.</p> <p>(3) Even when only one tender is submitted, the tendering process may be considered valid, if the tender was satisfactorily advertised and prices are reasonable in comparison to market values.</p>
Records of tender evaluation	<i>For the reason of accountability the public procurement process shall be recorded.</i>	<p>(1) The contracting entity shall maintain a real time record of the procurement proceedings containing, at a minimum, the following information:</p> <ol style="list-style-type: none"> a. a brief description of the goods, construction or services to be procured, or of the procurement need for which the procuring entity requested proposals or offers; b. the names and addresses of tenderers that submitted tenders, proposals, offers or quotations, and the name and address of the tenderer with whom the procurement contract is entered into and the contract price; c. information relative to the qualification or lack thereof, of suppliers or contractors that submitted tenders, proposals, offers or quotations; d. the total price and a summary of the other principal terms and conditions of tenders where these are known to the contracting entity; e. a summary of the evaluation and comparison of tenders and proposals; f. if all tenders were rejected statement to that effect and the grounds therefore; g. in procurement procedure involving methods of procurement other than open tendering grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used; h. if, in procurement procedure involving methods of procurement other than open tendering, those proceeding did not result in a procurement contract, a statement to that effect and of the grounds therefore; i. a summary of any requests for clarification of the tender documents, the response thereto, as well as a summary of any modification of those documents. <p>(2) The record shall, on request, be made available to any person after a tender has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.</p> <p>(3) However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose:</p> <ol style="list-style-type: none"> a. information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would be inhibit fair competition; b. information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would be inhibit fair competition; c. information relating to the examination, evaluation and comparison of tenders;

		d. proposals, offers or quotations, and tender, proposal, offer or quotation prices, other than the summary.
Standstill period	<i>Suspension of the procedure to allow the verification of the compliance of the decision of the contracting entity.</i>	The timely submission of a compliant shall suspend the procurement proceedings for a period of then days, provided that the compliant is not frivolous and contains a declaration the contents of which, of proven, demonstrate that the supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the compliant will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to other suppliers or contractors.
Remedies	<i>For the reasons of accountability of the public procurement process the procedure to verify the compliance of the decisions of the contracting entity may be employed.</i>	<ol style="list-style-type: none"> (1) The remedies shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers or contractors to challenge breaches arising in the context of procurement in which they have, or have had, an interest. (2) The remedies procedures shall be recorded and documentation relating to all aspects of the process shall be retained. (3) The interested tenderer may be required to initiate a remedies procedure and notify the contracting entity within specified time-limits from the time when the basis of the compliant is known or reasonably should have been known, but in no case within a period of less than 10 days. (4) Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. (5) A review body shall have procedures which provide that: <ol style="list-style-type: none"> a. participants can be heard before the opinion is given or a decision is reached; b. participants can be represented and accompanied; c. participants shall have access to all proceedings; d. proceedings can take in public; e. opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions; f. witnesses can be presented; g. documents are disclosed to the review body. (6) A review procedures shall provide for: <ol style="list-style-type: none"> a. rapid interim measures to correct breaches and to preserve commercial opportunities; b. an assessment and possibility for a decision on the justification of the challenge; c. correction of the breach or compensation for the loss or damages suffered, which may be limited to costs for tender or compliant preparation; d. completion in a timely fashion.
Post-tendering phase		The post-tendering phase of the public procurement process starts with the formal signature of the public contract and finishes with the complete delivery of the contract. It is essential for the post-tendering phase to preserve the outcome of the tendering and ensure accountability, integrity and transparency of the public contract delivery.
Management of the public procurement contract	<i>If not provided for, outcome of the tendering can be annulled by mismanagement of the contract delivery or fraudulent payments.</i>	<ol style="list-style-type: none"> (1) The contracting entity shall administer contracts with due diligence and shall monitor the performance of contracts. (2) Any modification or waiver of the terms and conditions of a contract or granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the procuring entity) shall be subject to the review.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Albania is regulated by the Law On Public Procurement no. 9643 November 20th 2006 and amended in 2007 and 2009 (PPL).

In the EBRD 2010 assessment PPL scored high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of the legislation are presented in Chart 2.

Regulatory institutions

In Albania there is a central administrative body for procurement functions, the Public Procurement Agency (PPA) financed by the State.

The Director of the PPA is appointed by and reports to the Prime Minister.

The PPA's core functions are:

- a) submitting proposals for procurement regulations to the Council of Ministers;
- b) promoting and organising the training of central and local government officials engaged in public procurement activities;
- c) editing and issuing a Public Procurement Bulletin (PP Bulletin);
- d) preparing standard tender documents to be used in awarding procedures, in accordance with public procurement;

e) on request, giving advice and providing technical assistance to contracting entities, when launching and conducting awarding procedures;

f) presenting an annual report to the Council of Ministers regarding the overall functioning of the public procurement system;

g) cooperating with international institutions and with other foreign entities on issues related to the PP system;

h) planning and coordinating foreign technical assistance to Albania in the field of PP;

i) encouraging and supporting the use of international technical standards for the preparation of national technical specifications, as well as maintaining an ongoing relationship with the National Directorate of Standardisations;

j) monitoring the reports that contracting entities submit at least quarterly;

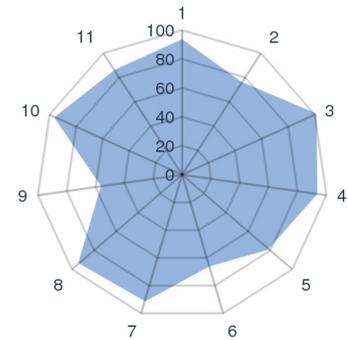
k) monitoring the application of public procurement procedures in compliance with the requirements established by the law, requiring the contracting entities to submit all the relevant information;

l) biannually carrying out controls on the awarding procedures as directed by the Central purchasing body;

m) in the case of misconduct, penalising with fines or proposing disciplinary measures;

n) regulations;

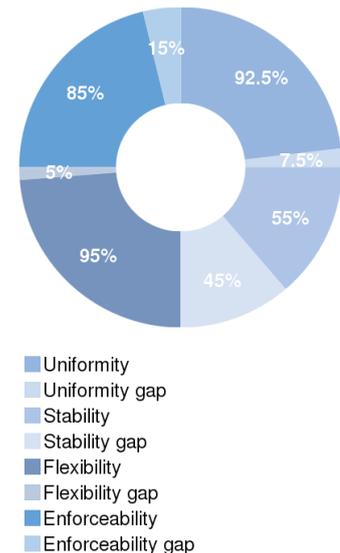
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

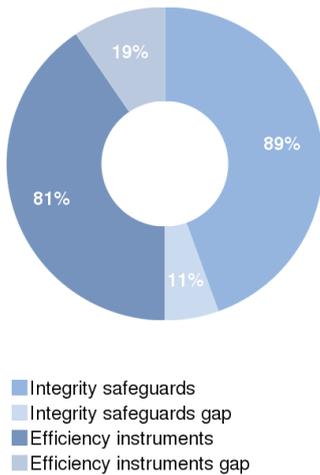
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

o) carrying out any other task, as specified by the law.

The Albanian system also has a Public Procurement Advocate (PPAd) which is an ombudsman-type body with review powers safeguarding the legal rights and interests of tenderers against unlawful actions or lack of action by the contracting entities. Chart 3 illustrates the results of the review of the Albanian PP institutional framework.

Scope of regulation

PPL covers government procurement on a national and local level. It includes specific rules for contracting entities in the utilities sector and for public law institutions as well. Exceptions and exclusions provided for are compliant with EU PP directives. Concessions are regulated under separate legislation, the Law on Concessions 9663 adopted 18 December 2006. Unfortunately, there is no swap mechanism between the public procurement contract and concessions.

n) preparing and adapting its internal PPL provides for a decentralised procurement function. Nevertheless, PPL introduces

a Central Purchasing Body. The Council of Ministers may assign a particular contracting entity as the Central Purchasing Body for specific procurements.

Eligibility rules

PPL establishes eligibility rules respecting the general principles under which public contracts are awarded. Tenderers will be excluded from the PP process if they have participated in:

- a criminal organisation,
- corruption,
- fraud,
- money laundering and forgery.

Moreover, the contracting entity has the right to exclude the tenderer, if he:

- has been declared bankrupt and the bailiff is confiscating his property;
- is subject to proceedings for declaration of bankruptcy;
- has been convicted of any offence concerning his professional conduct;
- has not fulfilled his obligations to pay social security contributions and taxes;
- is guilty of supplying false information and/or has not supplied information and documentation as required.

PPL distinguishes between eligibility criteria and qualification requirements to be met by tenderers as defined by the contracting entity.

The Contracting entity may use various criteria when evaluating tenders as well as lowest price, as long as these criteria are related to the subject-matter of the public contract.

In order to show compliance with requirements specified in tender documentation, the tenderers can be required to offer evidence, such as certificates.

The procurement procedures

Albanian PPL provides for various types of procedures:

- open tender;
- restricted tender;
- negotiated procedures, with or without prior publication of a contract notice;
- request for quotations,
- design contests.

These options provide for tendering and negotiated PP procedures.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. In Albania open tender is the default procedure. Restricted procedures may be applied only when it is necessary to pre-qualify tenderers before they are invited to submit proposals.

For small value contracts the contracting entities may use negotiated procedures and requests for quotations.

For contracts above thresholds, the contracting entities should mainly use open procedures, restricted procedures and design contests; negotiated procedures may be used only in specific circumstances. PP procedures are conducted electronically; in Albanian eProcurement is mandatory for all types of contracts.

The procurement time and cost effectiveness

PPL allows for the estimation of the typical length of the procurement process for works and goods contracts of a significant value. The minimum deadline for the submission of tenders in an open tender is no less than 52 days (for procedures above the thresholds), 30 days (for procedures between high and low value contracts) or 10 days (for low value contracts).

There is a mandatory deadline for the contracting entity to evaluate tenders: contracts should be awarded within the original tender validity period. The contracting entity should conclude the contract within 30 days of publication of the contract award in the PP-Bulletin. PPL requires mandatory aggregation of lots. No public contract may be divided to prevent its coming within the scope of the provisions of PPL.

Contracting entities should keep the costs of tender participation low and tender documents are available free of charge on the eProcurement website, administered by the PPA.

The use of the foreign languages is allowed; the rules on the use of currency should be explained in the tender documents.

Albania

Review and remedies

Any person having or having had an interest in obtaining a public contract and who has been or risks being harmed by a decision taken by a contracting entity, which infringes PPL, may challenge such a decision.

Objections should be filed in the first instance with the concerned contracting entity. If the contracting entity fails to examine the objection within the deadlines specified in PPL, or rejects the objection, the complainant may file a written appeal with an independent review body, the Public Procurement Review Commission. A review decision issued by the Commission may be challenged in the commercial court. Within 5 days of the publication of the Commission's decision, the parties have the right to lodge a complaint before Tirana District Court.

Public contract management

Albanian law clearly defines the obligation of contracting entities to prepare and submit an annual procurement plan. In addition, appropriate budget or financing authorisation prior to publication of a contract notice is required as well as budgetary authorisations for contract payments falling due beyond the current financial year. The law includes a test to determine when the contracting entity should seek a contract performance guarantee and limits its maximum amount. PPL requests that contracting entities provide for contract management of the public contract. The contracting entity may determine special conditions relating to the performance of a contract, provided they are lawful and indicated in the invitation to tender or in the tender documents. All terms of the contract should be adhered to in good faith by both parties and are subject to Albanian Civil Law.

Assessment overview

Strengths

In the 2010 assessment the Albanian PPL reached high compliance with international standards (more than 90%), specifically in accountability, transparency, competition, uniformity and flexibility indicators. PPL strongly promotes transparency and competition in the PP framework. In addition, government procurement officials must follow a published code of ethics. Cancellation of the procurement process has to be reasonably justified and all participants have to be informed of the reasons. In addition, the participants have access to both administrative and judicial review procedures if they feel their rights have been infringed.

Due to the mandatory use of the eProcurement platform, Albanian PPL is highly transparent. PPL provides for the mandatory publication of all tender related documents and reports on the contracting entity's website. In addition, an interested party has easy access to the procurement records due to the fact that eProcurement platform provides real time records of the procurement process. Current Albanian PPL is well structured and based on sound principles and provides a well coordinated comprehensive legal framework.

Weaknesses

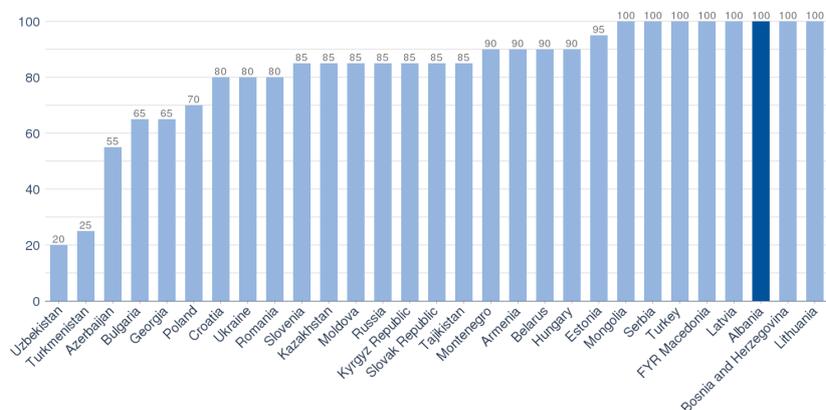
PPL has no major weaknesses: no indicators fell below 50%.

Given Albania's enviable assessment record, there are few areas of weakness. The framework is not stable yet, as PPL has been changed frequently within the last five years in order to harmonise the Albanian framework with EU legislation. Other minor weaknesses are as follows: 1) there is insufficient regulation with reference to electronic auction and dynamic purchasing systems; 2) there is no competitive dialogue procedure; 3) services have not been divided into "priority" and "non-priority" categories; 4) the contracting entity is always obliged to request tender security for all public sector contracts.

Opportunities

PPL in Albania is balanced and most integrity safeguards and efficiency instruments recommended by international best practice have been implemented. eProcurement, introduced as mandatory in 2009, has improved the situation significantly and will further decrease corruption. A specific regulation for the utilities sector has been introduced as well as an independent review body.

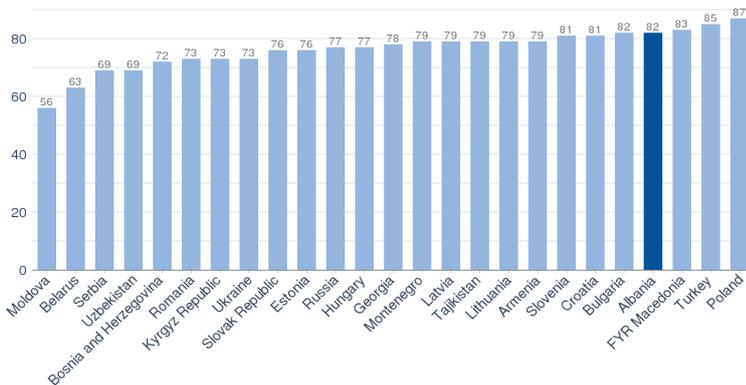
5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Regulatory risks

In spite of the excellent scores for its PP legal framework, there are still some regulatory risks. The gap in the efficiency instruments regulation, at 19%, could be decreased. Enforceability of the regulation could also be improved.

Detailed and unbiased assessment of the contracting entity's needs is not required by PPL so far. Furthermore, PPL does not require the contract terms and conditions to be fair and balanced, reflecting best available business practice.

Legal framework

The assessment of practice revealed that PPL is considered to be clear, comprehensive, and enables fair competition (see Chart 6). Secondary and tertiary regulation provides guidance on most operational issues. In addition, contracting entities frequently adopt internal procurement rules to allocate the roles in their procurement function. Internal procurement rules and procurement decisions are disclosed. To date no regular training for PP process stakeholders has been provided. The PPA provides training ad hoc, whenever PPL is amended.

Chart 7 presents the scores for the general quality of local PP practice in Albania.

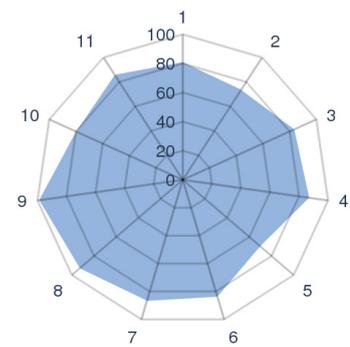
Regulatory institutions

The compliance of PP procedures with PPL is monitored by the dedicated public regulatory authority, PPA, and independent bodies, such as the PP Review Commission and PP Advo-cate. Chart 3 illustrates how the Albanian PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

The survey of local practice confirmed that procurement in the public sector in Albania is covered by PP regulation. Government authorities on a national and local level as well as companies in the utilities sector are registered and conduct procurements electronically in accordance with PPL. In practice, all procurement phases are regulated either by PPL or internal procurement rules adopted by contracting entities. A mandatory test to ensure that the scope and subject of procurement is economically justified is in place. Completion of a procurement plan is mandatory before the procurement process is initiated and the coordination of technical and financial procurement planning is provided for.

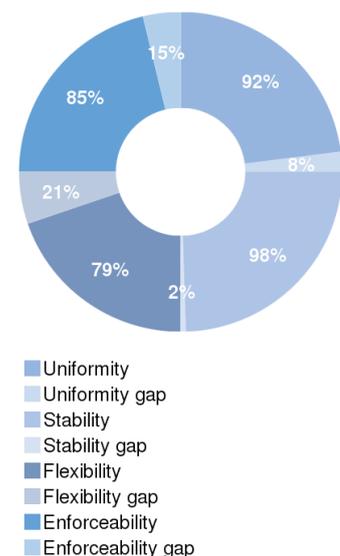
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

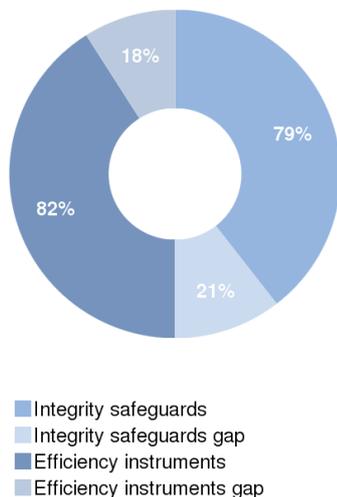
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Albania

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Eligibility rules

In practice, general eligibility rules are respected. Typically, qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities as well as financial position. On the other hand, false declarations and significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts are grounds for exclusion from the procurement procedure. In Albania, affiliates of the contracting entity are generally not eligible to tender, unless it can be demonstrated that there is no significant degree of common ownership, influence or control between the contracting entity and the affiliates.

The procurement procedures

Open tender is recommended by the law

as a default procedure and is the most frequently used in practice. Contracting entities apply other procedures only in situations where the law allows; however, it is not always necessary for the contracting entity to explain the choice of the procurement method. Negotiated procedures are used for specific or complex contracts.

The procurement time and cost effectiveness

In Albania the procurement procedure for goods to the value of 250,000 Euros as well as the procurement of works to the value of 500,000 Euros lasts approximately 60 to 90 days (from the contract notice publication to signing a contract). Sufficient time is provided to prepare and submit tenders. Standard tender documents, standard contract notices, and procurement reports are provided for and widely used. However, PP regulations rarely allow the use of standard international contract forms for procurement. There are standard tender documents for goods, works and services. In general, the standard tender documents provided are mandatory. Moreover, standard national contract forms are mandatory and available.

Tender evaluations are completed within the original tender validity period. Procurement reports are easily available free of charge to the general public.

Once the PP process has been launched, changes in procedure as well as changes made to the contract are generally not monitored. In addition, modifications or waivers of the terms and conditions of the contract are not always subject to review and approval procedures.

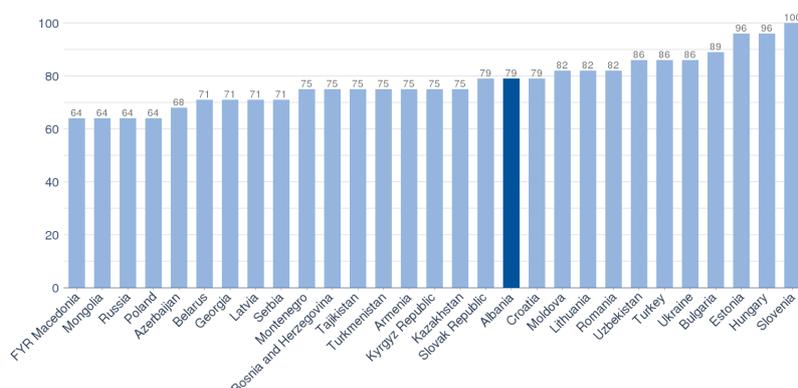
Review and remedies

Local practitioners consider the Albanian review and remedy procedures straightforward, effective, and non-discriminatory. Complaints are heard by an independent review body, established in 2010. The speed of the remedies procedure is reasonable with decisions obtained in 15 to 20 days. The remedies body is not perceived to be corrupt. The cost of the remedies procedure is also bearable. Generally, parties are able to present their position during the remedies proceedings and all procurement records are disclosed; however, hearings are not provided for and proceedings do not take place in public. The remedies procedures are recorded

Public contract management

According to local practitioners, contract administration is mandatory for public contracts. Changes to the contract once the procurement process has finished are monitored by most contracting entities. However, regular contract monitoring

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

systems have not been established and are not provided for by the Albanian eProcurement platform. There are appropriate procedures to monitor the delivery of goods and services and payments. Public contracts are generally completed within the originally approved budget and/or contract price but they are not always completed on schedule. Contract cancellation and compensation policies are only partially established. Compensation is provided only when the contract terms provide for it. When a public contract is cancelled, the contracting entity is required to specify a reason for doing so.

Assessment overview

Strengths

The assessment of local PP practice revealed that the current PP framework embracing mandatory eProcurement is clear, comprehensive, and enables competitive procurement (average 82% compliance).

Due to mandatory use of eProcurement, PP practice in Albania is strong in terms of its stability and uniformity. There is a mandatory assessment of all relevant procurement risks prior to the start of a procurement procedure. The procedure is conducted within a reasonable time, lasting from 60 to 90 days. Tender evaluations are normally completed within the original tender validity period.

Local contracting entities have regulated internal procurement including monitoring and auditing arrangements not provided for by PPL. Contract administration for public contracts is mandatory. However, not all modifications or waivers of the terms and conditions of a contract subject are subject to a review and approval procedure.

Weaknesses

No element of local practice in Albania has been identified as weak (below 50%

compliance). The existing PPL has been consistently implemented in practice. However, some areas of local practice offer room for improvement: the lowest marks were for the economy of the procurement process and integrity indicators (both less than 80% compliance rate).

Opportunities

Albanian PP practice is surprisingly good; the survey confirmed that tenders conducted via the eProcurement platform are in most cases compliant with international good practice. The PP institutional framework is not perceived to be corrupt, which is a significant achievement considering local business culture. Albanian contracting entities are trying hard to be seen as accountable and transparent and achieve good value for money in their public procurement.

Risks

There are some areas of concern in public procurement practice. Tenders are not always opened in public promptly after the submission deadline. Moreover, the tenderers or their representatives are not always allowed to be present at the tender opening session. Contracts are generally completed within the originally approved contract price but sometimes contracts are extended, consequently raising the contract price without sufficient monitoring or contract management. The remedies proceedings do not take place in public and not all the decisions of the remedies body are published, and easily accessible to the public. The tender documents are generally formulated in the contracting entity's official language.

III. Conclusions

The quality of the PP framework in Albania scored high among the EBRD countries of operation, with a compliance rate of 83%. Recently adopted laws have improved PP regulation significantly and provide a

modern basis for future development. The Albanian institutional framework is also doing well; no significant regulatory gaps were identified.

PPL is lacking in stability, but this is mainly due to recent improvements designed to align Albanian PPL with EU PP Directives. Thanks to the eProcurement platform, Albanian PPL promotes uniformity, integrity and competition in public procurement.

In addition, current Albanian PP policy making is well balanced and responsive to challenges in the local market; most of the anti-corruption measures recommended were adopted (a regulatory gap of 11% has been identified). Albania scored slightly lower in efficiency instruments, but several efficiency instruments have been adopted (a regulatory gap of 19% has been identified).

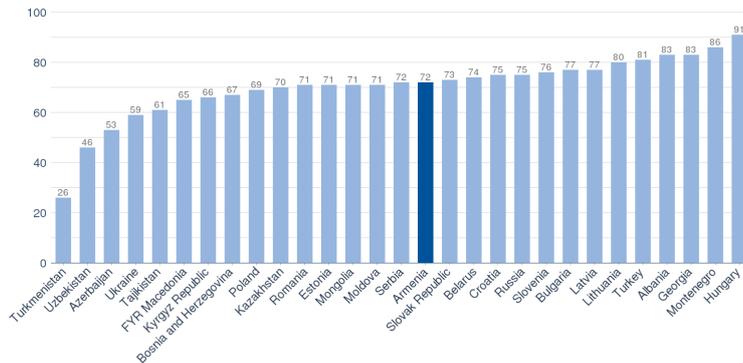
In the assessment of local PP practice, Albania scored 82% almost matching its compliance rate in the assessment of the legislation. This is an outstanding result in the EBRD region, where almost no other country has achieved such consistency in the implementation of its laws. Based on the local practitioners' reports, Albanian practice is uniform and stable.

Despite this laudable achievement, a small implementation gap was identified in the implementation of integrity instruments (9%). As in many countries in the EBRD region, Albanian contracting entities are learning to draw up internal procurement rules to improve the efficiency of the PP process (in Albania the regulatory gap in adopting efficiency instruments is bigger than the efficiency implementation gap observed in local practice).

Finally, local PP practice in Albania scored a 51% compliance rate in the PP sustainability survey. These marks reveal a medium level of compliance with international PP sustainability standards but are one of the better results in the EBRD region.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The Public Procurement System in the Republic of Armenia is governed by the Law on Procurement enacted in July 2004, enforced on January 1st, 2005 (PPL). In the EBRD 2010 assessment PPL scored medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

The Public Procurement Regulatory Body in Armenia (the PPA), responsible for procurement policies and monitoring of compliance, is not fully independent. The PPA core functions are:

- Drafting laws and regulations on public procurement;
- Developing standards and good practice in conducting procurement;
- Organising professional training for procurement officers;
- Approving and publishing contract notices;
- Coordinating cooperation among international organisations, foreign states and state and local self-government bodies related to procurement;

- Reviewing procurement records;
- Reviewing complaints related to public procurement.

Chart 3 illustrates the results of the review of the Armenian PP institutional framework.

Scope of regulation

PPL covers both national and local government procurement and public law institutions. There are no specific rules for the public procurement of utilities.

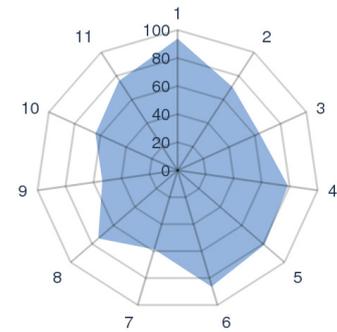
There is no dedicated concession law in Armenia. A reference to concession can only be found in the Law on Foreign Investments, providing that concessions are one of the forms of foreign investment. Two sector-specific laws (in the mining and water treatment sectors) regulate concessions. There is no clear distinction between a public procurement contract and procedure and concessions.

Eligibility rules

PPL does not establish the general public procurement eligibility criteria.

To participate in the procurement process the tenderer must meet the qualification criteria stipulated by the contracting entity

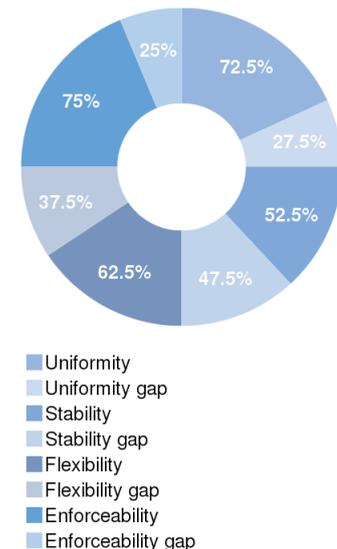
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

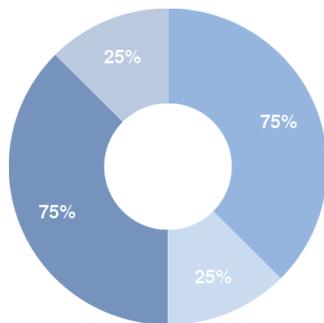
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

in the contract notice or in the tender documents. PPL introduces a closed list of qualification criteria, and consequently, it prohibits establishing any qualification criteria other than those prescribed by law.

According to PPL tenderers:

- a) must have the capacity required to fulfil obligations envisaged under the procurement contract, including professional qualifications, technical resources, financial resources and labour resources;
- b) may not be deemed bankrupt, be under liquidation proceedings, or have had property intended for the fulfilment of the contract, confiscated;
- c) may not have outstanding debts to tax and social security as of the last day of the reporting period prior to the day of tender submission;
- d) and representatives of its management body at the moment of tender submission may not, within the last three years,
 - have been convicted for offences against economic activities or public services;
 - have submitted false records in order to sign the procurement contract;
 - have violated obligations under the

procurement contract, which resulted in unilateral termination of the contract by the contracting entity.

To show compliance with qualification criteria the tenderers may be obliged to offer appropriate evidence, such as certificates.

The procurement procedures

PPL provides for various types of procurement procedures:

- a) Open tender;
- b) Restricted tender;
- c) Competitive negotiations with publication;
- d) Request for quotations;
- e) Direct contracting.

PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile. PPL incorporates a clear test as to the choice between tenders and negotiated procedures.

PP may be conducted as a competitive negotiation, if the subject of the contract is not covered by an existing procurement contract, and both a) owing to an emergency or contingency, there is an urgent need for the procurement and, in terms of time, it is impossible to use a tender, provided this need was impossible to predict; and b) the price of the procurement item does not exceed the base procurement unit.

Tenders and proposals may be submitted electronically when it is allowed by the contract notice. eProcurement is subject to special regulation.

The procurement time and cost effectiveness

PPL requires public procurement to be accomplished in a reasonable time and provides for the formalities to be kept simple. PPL allows for the accurate estimation of the duration of the procurement process for works and goods contracts of a significant value (average 53 days). Aggregation of lots is mandatory. The formality of the

procurement procedure is linked to the scope and value of the contract; cascaded thresholds are established. PPL does not provide for a maximum tender validity period: it is discretionary for the contracting entity and is stipulated in the contract notice.

PPL regulates communication. In principle, electronic communication is enabled, subject to specific regulation by secondary laws on eProcurement. Nevertheless, the rules on communication are not clear. PPL does not require the costs of tender participation to be kept low. No rules on currency have been established. Public procurement is, in principle, conducted in Armenian; however, contract notices for open tenders have to be published in both English and Armenian.

Review and remedies

In Armenia, any person is entitled to seek an administrative review if he claims he suffered damages as a result of actions of the contracting entity or tender commission. The complaint should be submitted to the PPA in writing. The decision of the PPA can be appealed to the commercial court. Contractual disputes are decided by the courts.

Public contract management

PPL requires mandatory planning of public procurement as well as appropriate budget authorisation prior to publication of a contract notice. Budgetary authorisations for payments falling due beyond the financial year are also obligatory. PPL requests that contracting entities provide for contract management of the public contract. Procurement staff are required to have adequate contract management skills. PPL includes a clear test as to when the contracting entity should seek a contract performance security, and limits its maximum amount. The amount of the contract performance security is specified in the contract notice and should be no less than 5% and no more than 10% of the contract price. There is no mandatory

Armenia

computerised monitoring and administration.

Assessment overview

Strengths

In the 2010 assessment Armenian PPL demonstrated few specific strengths; however, the legal framework is highly compliant with the accountability standards. PPL covers all phases of the procurement process: it requires the contracting entity to prepare a procurement plan, manage the process transparently and monitor contract delivery. Cancellation of any procurement has to be reasonably justified and all tenderers have to be informed about the reasons. Administrative reviews of procurement procedures are accessible.

Weaknesses

PPL has no major weaknesses. PPL and secondary laws are not stable since they have been frequently amended over the last three years. PPL does not provide rules for compensation when a public contract is cancelled.

Opportunities

PPL in Armenia is modern and mainly based on sound principles; it promotes competition and public accountability yet several areas of local regulation require further improvement.

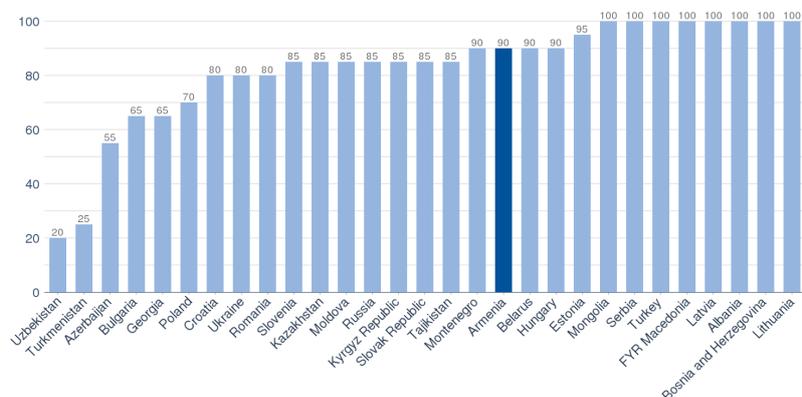
Regulatory risks

PPL in Armenia still lacks transparency and integrity. In addition, the local institutional framework is weak; it scored particularly low in uniformity and flexibility indicators.

PP policy is well adjusted to the challenge of the local market; however, a significant regulatory gap has been identified in both integrity safeguards and procurement

efficiency instruments. General eligibility rules are not established. The qualification process for tenderers is underregulated. Electronic communication is enabled but advance procurement notices, contract notices and tender documents are not published electronically on the contracting entity's website. No specific rules for the utilities sector have been established, all public procurement is under the same inflexible regulation. PPL does not forbid a significant change to the scope of contract once the procurement process has been launched.

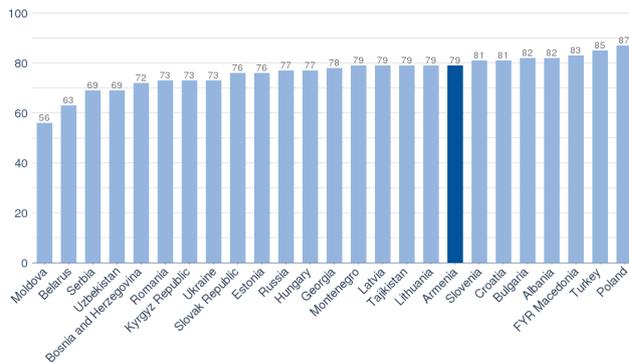
5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Local contracting entities believe that the legal framework is clear and comprehensive. Internal procurement rules are commonly used and updated each year when needed. Roles in the procurement process are clearly allocated. In practice, internal procurement rules are disclosed. In addition, regular training for all internal stakeholders and procurement officers is provided. Chart 2 presents the scores for the general quality of local PP practice in Armenia.

Regulatory institutions

In Armenia compliance with PPL is monitored by a dedicated administrative body, the PPA. Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

A survey of local practice confirmed that procurement in the public sector in Armenia is covered by PP regulation.

Eligibility rules

There are no general eligibility rules established. Local contracting entities decide on the qualification criteria individually.

Typical qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. A false declaration is grounds for exclusion from participation in the procurement procedure. Affiliates of the contracting entity are, in practice, eligible to tender unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

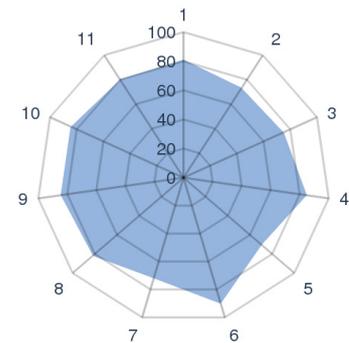
A tender should come from a tenderer who complies with the qualification criteria; however, this rule is not applied, in practice, by all contracting entities.

The procurement procedures

Open tender as the default procedure is generally respected. Negotiated procedures are not always used for specific or complex contracts. In practice, it is necessary for the contracting entity to explain the choice of the procurement method.

Results of the 2010 research do not indicate which procurement procedure is typically used in Armenia: it is different for different contracting entities.

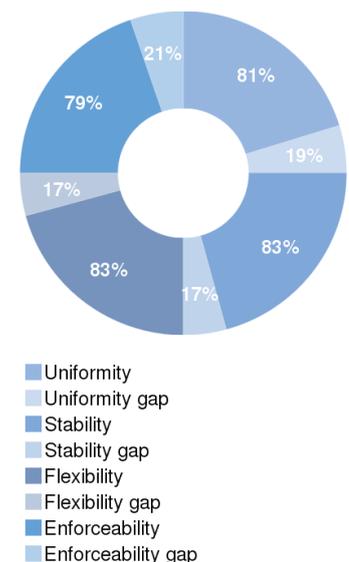
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

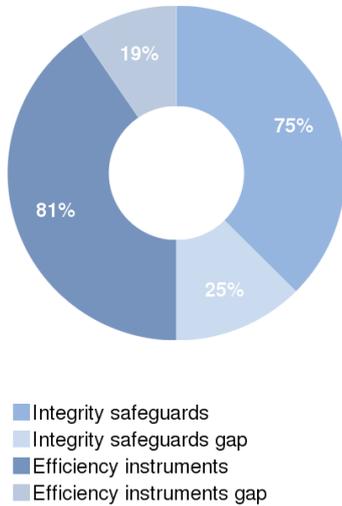
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Armenia

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

Based on the survey results, the procurement procedure for goods valued at 250,000 Euros as well as works valued at 500,000 Euros lasts approximately 60 to 70 days (from the initial phase to signing a contract).

Local practitioners reported that there is sufficient time allowed to prepare and submit tenders. It is difficult to estimate whether participation costs are high or low in Armenia; however, tender documents are not available free of charge.

There are no significant delays in the procurement process; the tender evaluation is normally completed within the original tender validity period.

Review and remedies

The administrative review procedures in Armenia are believed to be straightforward, effective and non-discriminatory. The PPA is not perceived to be corrupt.

The speed of the remedies proceedings is reasonable. It takes 15 to 20 days to obtain a decision. In addition, it is claimed that the costs of the remedies procedure are bearable. All procurement reports are disclosed to the review body, proceedings take place in public and are duly recorded.

Public contract management

A survey of local practice confirms that contract administration is mandatory for public contracts in Armenia. Public contracts are generally administered in a fair and equitable manner, completed within the budget and on schedule. Amendments and contract extensions are monitored. Modifications or waivers of the terms and conditions of a contract are subject to a review and approval procedure. In practice, a contract monitoring system, manual or computerised, is employed.

Internal rules or policy on contract cancel-

lation have been established as well as internal policies regarding compensation when there is a cancellation. Contracting entities are required to specify a reason for doing so.

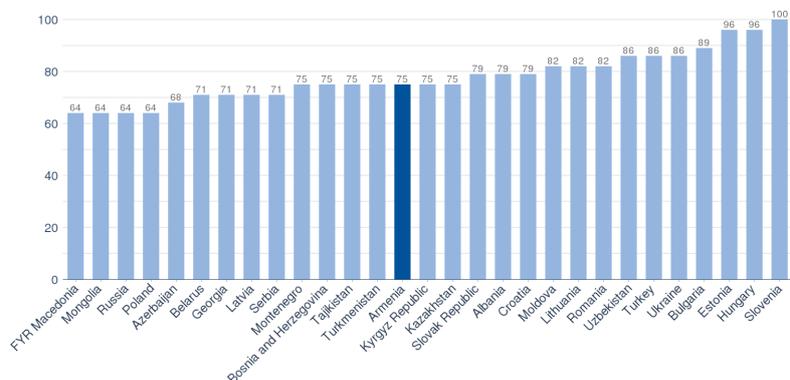
Assessment overview

Strengths

Armenian local procurement practice scored better than its legal framework and seems to be more consistent. In practice, efficiency is the most important factor for contracting entities and received good marks for compliance with international standards.

There is a mandatory test to ensure that the scope and subject of public procurement is economically justified. Contracting entities conduct various tests to verify whether a good business case can be made for a public procurement matched with a realistic budget (i.e. an internal record of contract prices and unit prices used to monitor costs, a benchmark on similar public or commercial project in progress, an independent external evaluation report). Detailed procurement plans are prepared each fiscal year and in most cases a financial authorisation is required to start the procurement process. For most contracting entities, contract administration is mandatory and, to meet

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

this requirement, monitoring systems have been implemented. All claims are handled fairly based on a clear recognition of both parties' obligations under the contract. Contracts are generally completed within the original budget and on schedule. Adequate contract administration records are maintained.

Weaknesses

There are no major weaknesses in local practice in Armenia (below 50% compliance). However, scores for integrity and transparency of the public procurement are lower than expected (72% and 73 % compliance rate, respectively). Economy of the process could be generally improved. The implementation gap regarding efficiency instruments is smaller than the efficiency regulatory gap by 5% but, in practice, nothing has been done to improve the transparency and integrity of public procurement (the assessment identified a regulatory and implementation gap of 25% in both cases).

In addition, the review process may be time-consuming; sometimes it takes more than 45 days to obtain a decision.

Opportunities

The PPA is not perceived to be corrupt. Contracting entities have successfully supplemented the existing legal framework with internal procurement rules covering the pre-tendering and post-tendering phases. The contract monitoring phase is very precisely regulated.

Risks

Only some contracting entities in Armenia publish contract notices and tender documents on their websites. Electronic communication is not always available. Public procurement records are not generally available to the public. The assessment revealed that the lack of transparency and shortcomings in the institutional framework are a major problem in local PP practice.

III. Conclusions

PPL scored a 73% compliance rate in the assessment of the legal framework, placing Armenian PPL in the medium compliance range in the EBRD region. PPL scored exceptionally well in the accountability indicators, where it achieved a 92.5% compliance rate. In other legal framework indicators, PPL scored consistently well but slightly lower.

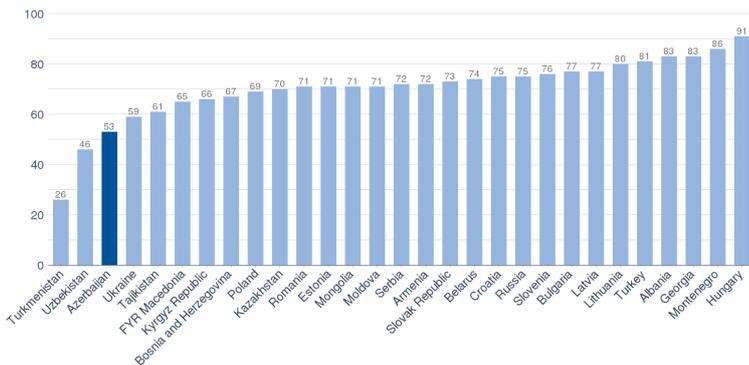
However, analysis of the institutional framework regulation revealed that there are areas with significant regulatory gaps (from 25% to 27% in enforceability and uniformity measures and 37.5% to 47.5% in flexibility and stability indicators) to be improved. Similarly, not all recommended integrity safeguards and efficiency instruments have been adopted in PPL (a 25% gap has been identified in both fields).

In the assessment of PP practice, Armenia, in principle, scored better than it did on institutional framework regulation: an 80% compliance rate with the benchmark. Average scores for Armenian PP practice range from 69.4% to 88.7% compliance with the benchmark (medium to high compliance). Some implementation gaps were identified; for instance, for the accountability and economy indicators the assessment revealed a 20% implementation gap between Armenian law and practice. The general conclusion is that Armenian contracting entities supplement PP regulation in order to achieve good value for money (a smaller gap regarding implementing efficiency instruments has been identified in practice than provided for by the laws) and this positively influences local PP practice. However, there is a shortfall in the implementation of the law. In particular, improvements in integrity and accountability of PP are needed. Finally, local PP practice in Armenia scored a 47% compliance rate in the PP sustainability survey. These marks stand for low compliance with the benchmark, but are higher than the scores of some other countries in the EBRD region.

Azerbaijan

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Azerbaijan is regulated by the law of the Republic of Azerbaijan on Public Procurements, 27 December 2001 N 245-IIQ, (“PPL”).

In the EBRD 2010 legislation the Azerbaijan PPL scored low compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Azerbaijan an executive public procurement authority has been established (“Procurement Authority”), which is responsible for developing PP policy. This body is not independent and the Chairman of the Procurement Authority reports to the Ministry of Finance.

The Procurement Authority’s core functions are:

- a) development of a regulatory framework for the PP sector;
- b) monitoring of PP procedures compliance with national law;
- c) review of complaints related to PP procedures and suspension of procurement

- procedures for up to 7 banking days;
- d) providing capacity building activities for contracting entities within the scope of PP, including training for procurement officers;
- e) monitoring the transparency of PP procedures;

Chart 3 illustrates the results of the review of the Azerbaijan PP institutional framework.

Scope of regulation

Public procurement (PP) in Azerbaijan is regulated by a separate body of law. However, PPL and related regulations are not well coordinated. PPL covers national and local government procedure and provides for a decentralized procurement function. However, PPL does not include rules for utilities and public law institutions and there is no Central Purchasing Body. Concessions are not regulated by Azerbaijan law.

Eligibility rules

In Azerbaijan public procurement eligibility rules are not directly established. Except in cases indicated in regulations governing PP, all resident and non-resident legal or physical persons or a union of legal persons irrespective of the state they

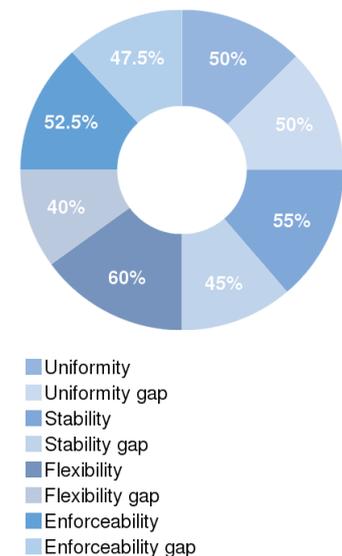
2. Quality of PP legal framework



1. Accountability
2. Integrity
3. Transparency
4. Competition
5. Economy of the process
6. Efficiency of public contract
7. Proportionality
8. Uniformity
9. Stability
10. Flexibility
11. Enforceability

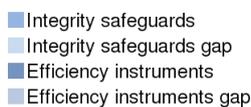
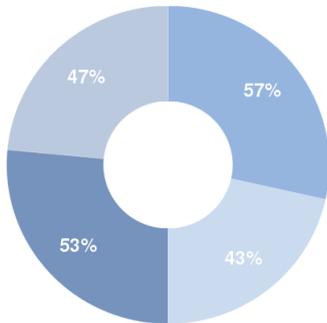
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

belong to shall be entitled to take part in PP procedures held in the Republic of Azerbaijan as tenderers.

PPL does not distinguish between general public procurement eligibility criteria and qualification and technical requirements to be met by tenderers as defined by the contracting entity. In order to participate in procurement procedures, contractors shall meet the following criteria: professionalism, experience, technical and financial possibilities, workforce, competency in management, reliability in relevant field to ensure performance of procurement contract; authority to enter into procurement contract; possibility of free and unlimited use of its assets as well as solvency. Contractors shall not have been declared bankrupt, their property shall not have been seized, mortgaged or otherwise charged, their commercial activity should not have been suspended by court decision; absence of overdue tax or other mandatory payment obligations in the Republic of Azerbaijan; absence of previous conviction within 5 years preceding to commencement of procurement procedures for any crime connected with their professional activity

as well as the professional activity of their business-managers and employees or misrepresentation of their qualification indices for conclusion in a procurement contract and absence of a court ban with respect to their professional activity.

To show compliance with eligibility rules and prequalification requirements specified in contract notice or tender documents the tenderers may be obliged to demonstrate appropriate evidence, such as certificates.

The procurement procedures

In Azerbaijan PPL provides the following procurement procedures:

- a) open tender;
- b) two-stage tender;
- c) restricted tender and closed tender;
- d) request for proposals;
- e) request for quotations;
- f) direct contracting.

PPL provides for negotiation during the procedure but does not provide separate negotiated procedures. For this reason there is no test to determine the choice between tendering and negotiated procedures.

If the proposed price for goods (works and services) is higher than the minimum price set by the executive authority, they shall be procured through open tender. In addition, as goods and works are procured, the contracting authority is entitled to use procurement methods other than tender only in circumstances specified by PPL. This rule does not apply for the procurement of services.

Open tender is the default procedure for services only if it is possible to compile a detailed list of services and conducting of open tender procedures is the most expedient due to the technical nature of the services. Procurement of services in general is governed by a separate procedure, request for service, regulated by a separate chapter of PPL. PPL does not provide for the electronic communication nor electronic submission of tenders.

The procurement time and cost effectiveness

PPL does not require PP to be accomplished in a reasonable time. PPL generally allows for the an accurate estimation of the duration of the public procurement process for the procurement of works and goods contracts of a significant value. However, details (such as the number of days) have not been provided.

PPL allows for the deadline and time of submission of a tender is to be set forth in tender conditions. There is also reference to the tender validity period. PPL provides some deadlines; for instance tender documents shall be submitted to the contracting entity no later than 7 banking days before commencement of a tender. There is a deadline for submitting a request relating to an explanation of a tender documents as well as the deadline for the contracting entity to prepare a response. Tender validity period shall be set out in tender documents. Such a term shall commence no less than 30 banking days from the day the tenders are opened. The validity of a tender or proposal can be extended with the consent of tenderer. The contracting entity shall send notice to the tenderer who submitted the winning tender within 3 banking days of the tender validity period.

PPL does not require mandatory aggregation of lots and does not provide for contract valuation methods taking into account all-life costs of the purchase or works. Cascaded thresholds have not been established. PPL does not distinguish between short term and long term contracts.

Traditional written communication is preferred in all cases. Where communication is by electronic means or fax, written confirmation of such communication is mandatory. PPL does not provide for the mandatory use of electronic communication.

PPL does not stipulate that the costs of tender participation should be kept low; the law allows for a fee to be charged for participation in the PP procedure. The ten-

Azerbaijan

derer shall pay a tender participation fee in order to receive the tender documents and register as tenderer. The tender participation fee is set by the contracting entity and must not exceed 0.5% of the estimated value of the contract and 1.5 times tender costs. All costs related to conducting the tender including costs of the contract notice, lease of office space for conducting the tender, funding the evaluation commission, preparation and delivery of tender documents to tenderers as well as all other costs directly associated with conducting the PP procedure are reimbursed from the participation fee. PPL contains clear requirements on the use of languages. Documents on prequalification, basic tender conditions, proposals, offers and quotations shall be submitted in the official language of the Republic of Azerbaijan. Exceptionally, specified documents can be in one of languages widely used in international trading. PPL does not contain clear rules on currency. Prices in tender proposals shall be expressed in a currency or currencies specified by the contracting entity in tender documents (not more than three types of currency). Prices in tenders or proposals shall be expressed in convertible foreign currencies for comparison purposes as well as the currency or currencies of the tender. In a case such as the one described, the rate set by the National Bank of the Republic of Azerbaijan on the last day for submission of tender or proposal shall be used.

Review and remedies

In Azerbaijan, a tenderer who has suffered or will suffer losses or damage as a result of a contracting entity not complying with obligations specified by PPL is entitled to lodge a complaint. Complaints should be lodged in writing with the manager of the contracting entity before the contract is signed. The tenderer may also lodge complaints with the Procurement Authority in cases brought under PPL. The executive authority shall render a written decision within 20 banking days.

The following issues cannot be the subject of a complaint: a) selection of the procurement method; b) limitation of procurement procedures because of nationality; c) a decision by the procurement agency to reject all tenders, proposals, or quotations.

The review decision of the Procurement Authority is final, unless the tenderer appeals the decision to the court.

Public contract management

PPL in Azerbaijan requires neither mandatory planning of public procurement nor a detailed and unbiased assessment of the contracting authority's needs. PPL does not require appropriate budget or financing authorisation prior to publication of a contract notice nor budgetary authorisations for contract payments falling due beyond the current budget year. PPL does not regulate the contract performance security. In the tender documents there should be information covering what is required, including forms, amounts of the contract performance security, if required. The winner of a tender shall sign a procurement contract and submit a contract performance security within the terms specified in the tender documents. PPL does not require contracting entities

to provide contract management of the public contract nor does it require staff to have adequate contract management capabilities. PPL does not require procurement monitoring and administration to be computerised.

Assessment overview

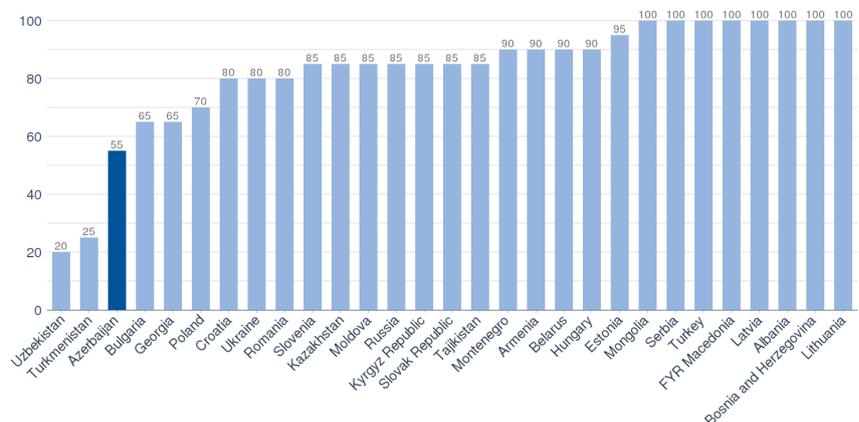
Strengths

In the 2010 assessment the Azerbaijan PPL did not demonstrate any specific strengths; highest compliance rate is 60% for competition benchmarks. Average scores are well below 50% of the benchmark.

Weaknesses

PPL in Azerbaijan has several major weaknesses; significant regulatory gaps were identified in almost every indicator. PPL is lacking integrity safeguards and has not adopted efficiency instruments either. The institutional framework is inadequate; the PP regulatory body is not independent and there is no independent PP review body. General eligibility rules are not directly established. There are no clear rules on the choice of the PP procedures and PP regulation is clearly incomprehensive.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Opportunities

The basic principles of competition in PP are established, including the use of the open tender as a default procedure. However, this is deterred by domestic preferences. PPL contains some provisions aimed at curbing corruption in the PP process and requires that procurement officers avoid any conflict of interest while conducting PP procedures.

Regulatory risks

Several features of the PP policy in Azerbaijan fall below any international standard. A major shortcoming is the preferential treatment of local tenderers, as PPL allows for domestic preferences. The 2010 assessment revealed substantial regulatory gaps in adopting key elements of the PP framework (43% gap in adopting the integrity safeguards and 47% gap in incorporating the efficiency instruments).

III. Conclusions

The quality of Azerbaijan PPL is low, with the 51% compliance rate with the international standards. Most marks on the core principle indicators are rather low.

The Azerbaijan institutional framework is insufficient and little enforcement is provided; the assessment identified substantial regulatory gaps in key elements of the institutional framework and insufficient integrity safeguards and efficiency instruments have been adopted.

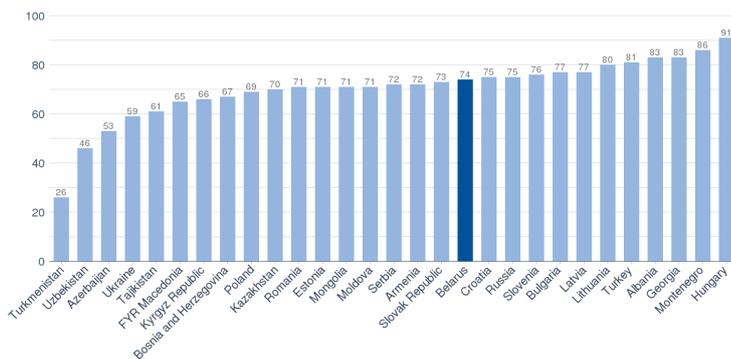
Local PP policy making is not responsive to market challenges; PP sector in Azerbaijan is generally closed to international suppliers.

All effort were made to interview local contracting entities. In spite of several attempts, it turned impossible to obtain any feedback from local contracting entities. Azerbaijan obtained medium compliance with the benchmark in respect of analysis of review and remedies system in public procurement, scoring 72%.

The revealed, that the procedures are straightforward and fit to the context, the review bodies are perceived predictable and the speed of the procedure is in principle reasonable, also the cost of the procedure is bearable for small and medium enterprises. Interviewed legal advisers didn't comment on whether review bodies are perceived corrupt or impartial, stating only, that they did not encounter the corrupt practices. When it comes to the right of the tenderer to seek compensation, legal advisers claimed that PPL entitles the tenderer to seek compensation either through administrative procedure or through courts. However, such a right to seek compensation is realizable if either the Agency of the court decides that the tenderer has incurred losses or damages because of contracting authority's illegal actions or decisions.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in Belarus is mainly regulated by a resolution of the Council of Ministers of the Republic of Belarus “On some issues of conducting Public Procurement” enacted on Dec 20th, 2008 № 1987 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Belarus, there is no independent regulatory authority for public procurement. A unit in the Ministry of the Economy is assigned with some regulatory functions in the field of procurement; however, we were not able to identify its core functions or regulatory responsibilities. Chart 3 illustrates the results of the review of the Belarus institutional framework.

Scope of regulation

PP is not regulated by a separate body of primary law. A resolution of the Council of

the Republic of Belarus of December 20, 2008 № 1987 - On public procurement in Republic of Belarus and several pieces of secondary legislation regulate public procurement in the country.

PPL covers national and local public procurement. However, there is no distinction between general PP rules and rules for public law institutions or contracting entities in the utilities sector.

The independence of the contracting entity when organising and conducting public procurement was established in paragraph 3 of Decree № 618. Paragraph 5 of Decree № 618 outlines exceptions to the centralisation of procurement.

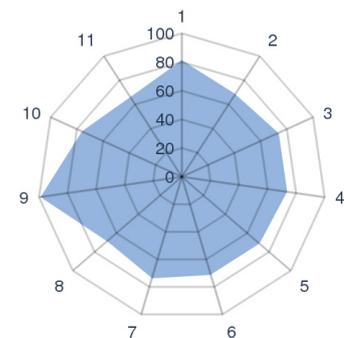
Eligibility rules

PPL establishes some general eligibility rules.

PPL excludes certain individuals and organisations from participating in public procurement procedures, including:

- Those who represent the contracting authority or are in any way involved in the organisation of a particular procurement procedure;
- Any organisation or individual entrepreneurs in the process of liquidation or reorganisation or declared insolvent in a

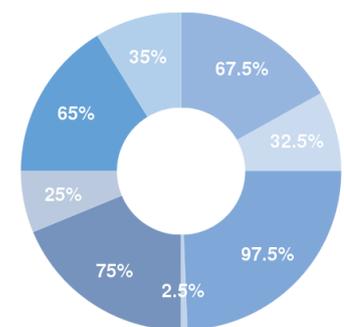
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

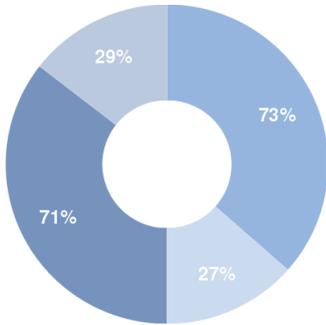
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

legislative act, except those in the process of readjustment,

- c) Organisations or individuals submitting false or incomplete information about themselves or who refuse to provide relevant information at the contracting authority's request,
- d) Any tenderer who does not meet requirements stipulated in the tender documents.

Any offer submitted by a tenderer covered by the exclusions listed above will be rejected.

The procurement procedures

PPL provides for a number of tendering and negotiated procedures:

- a) Open tender;
- b) Restricted tender;
- c) Request for quotations;
- d) Negotiated procedure;
- e) Design contest.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

The procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process for goods and works contracts of a significant value (e.g. equivalent to 500,000 Euros or higher). There are several specific deadlines for tenderers established by PPL but the length of the tender evaluation is at the discretion of the contracting entities.

PPL only indirectly stipulates that the costs of tender participation should be kept low. The maximum amount of tender security is 5% of the estimated contract value.

Review and remedies

There is no special public procurement review procedure or remedies body in Belarus. PPL provides that a tenderer may file a complaint with the contracting entity (or the contracting entity's superior organ), about a violation of its rights or a failure by the contracting entity to perform certain actions. As a rule, this complaint must be considered and a decision issued within 7 business days upon receipt of the complaint by the contracting

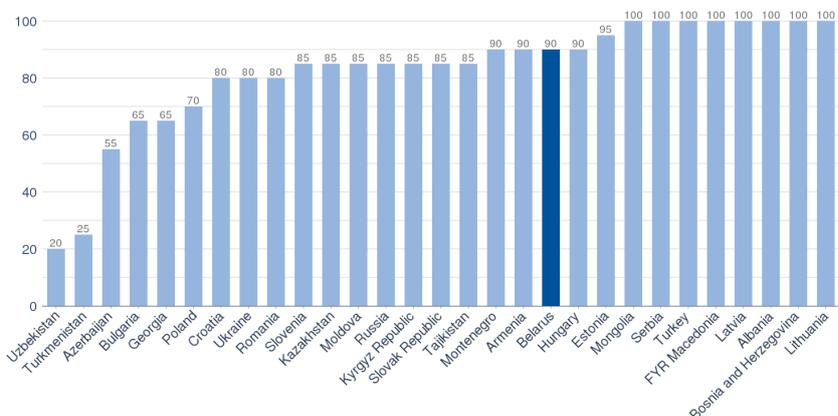
authority. This is extended to 14 calendar days upon receipt by the contracting authority of a notice of suspension of procurement procedures by the superior authority, subject to extension for a period not exceeding 30 calendar days.

In addition, until conclusion of the public contract, tenderers may appeal the award decision of the evaluation panel to the administrative court in accordance with general administrative procedures.

Public contract management

There is no requirement to complete a detailed and unbiased assessment of the contracting entities' needs, nor for receiving appropriate budgetary authorisation prior to publishing a contract notice or for contract payments falling due beyond current financial year. PPL requests that contracting entities provide for contract management of the public contract; however, PPL does not require the procurement staff to have adequate contract management capabilities.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Belarus

Assessment overview

Strengths

In the 2010 assessment the Belarus PP framework did not demonstrate specific strengths; Belarus PP regulation has low to medium compliance with international standards and is fairly stable.

Weaknesses

The Belarus institutional PP framework shows several deficiencies: regulatory gaps are substantial (between 25% and 35%). There are no elements scored below 50% compliance, but several indicators scored just above the medium compliance rate: competition, economy of the process, and efficiency of the public contract indicators had particularly low scores.

In addition, substantial gaps were identified in adopting both transparency and integrity safeguards and PP efficiency instruments.

PPL does not provide well for a decentralised procurement process and is not modern. E-Procurement solutions and electronic communication are not generally available.

Opportunities

During the 2010 assessment we were informed about PP reform initiatives but we were not able to obtain details of the initiatives nor evaluate any new draft legislation.

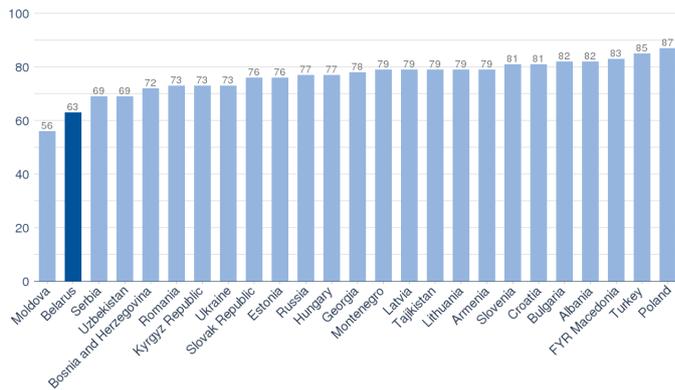
Regulatory risks

PPL in Belarus allows for domestic preferences (domestic preferences may be applied to any kind of procurement contract) and does not promote fair competition. In addition, several transparency and integrity safeguards as well as efficiency instruments have not been adopted in Belarus. PPL does not provide for a decentralised

PP function, does not address the distinction between the nature and the scope of the procurement contract and the type of procurement method to be applied. In general, PP regulation is outdated and may lead to unnecessary bureaucracy.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The 2010 assessment revealed that the Belarus contracting entities have not fully implemented all mechanisms included in PPL. Furthermore, it is not common for the local contracting entities to adopt internal procurement rules; however, they assert that internal roles in the procurement process are clearly allocated. Not all of the contracting entities provide training for all their PP stakeholders regarding their roles, rights, and obligations. Chart 7 presents the scores for the general quality of local PP practice in the Belarus.

Regulatory institutions

PPL is not monitored by a dedicated public regulatory authority. To a certain extent the monitoring function is provided by the Ministry of Economy. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

PPL covers government public procurement. Due to a lack of data, we were not able to verify whether exceptions and exclusions are compliant with UNCITRAL Model Law.

Eligibility rules

In practice eligibility rules established by PPL are adhered to.

The procurement procedures

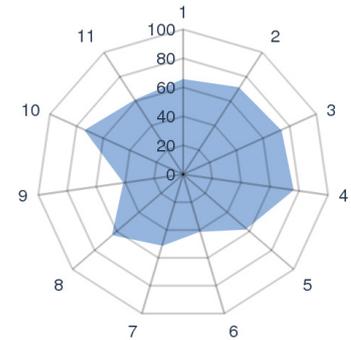
As PPL recommends tenders as a default procedure they are the most common. Negotiated procedures are also available for specific or complex contracts, yet local contracting entities did not report that they use negotiated procedures. The contracting entity is generally obliged to explain the choice of the procurement method.

The procurement time and cost effectiveness

Based on the local practice review, the length of the PP process is unpredictable: signing a PP works contract with a value of 250,000 Euros may last from 25 business days to more than 6 months.

In practice, standard forms of contract notices are used as well as local or internal standard forms for procurement reports. Contracting entities may also use standard international contract forms for all types of procurement.

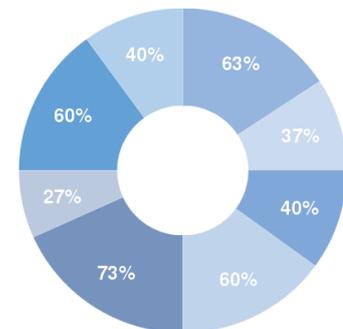
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

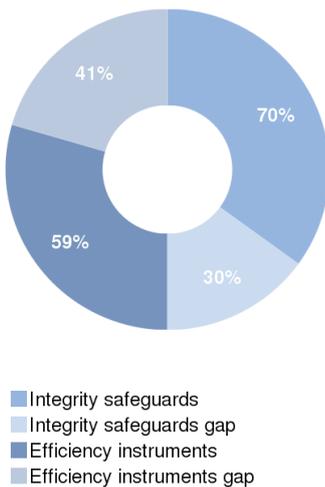


- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Belarus

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Typically changes in the PP procedure are monitored; however, amendments to public contracts are not monitored at all. It has been reported that, in practice, public contracts are seldom completed on time or within the original budget.

Review and remedies

The review process is timely: it takes about 15 days to obtain a review decision.

Contracting entities are obliged to disclose most of the procurement reports to the authority that decides on a complaint. The review procedures are recorded.

According to local contracting entities, review decisions are generally predictable.

Assessment overview

Strengths

There is no element of practice in Belarus which scored above 90%, or highly compliant with international standards. Local PP practice received its highest marks for transparency and flexibility indicators.

Weaknesses

In Belarus, the quality of local PP practice has been scored lower than the quality of existing PP regulation. As regular PP training is not provided, procurement capacity is low and it is particularly weak in key PP indicators such as competition, economy and efficiency of public procurement.

Opportunities

In Belarus there is mandatory disclosure of internal procurement regulations and procurement decisions. It is also mandatory to complete a procurement plan before a public procurement process is started.

Risks

Local PP practice is unstable and unpredictable. The contract notices are published electronically; however, access

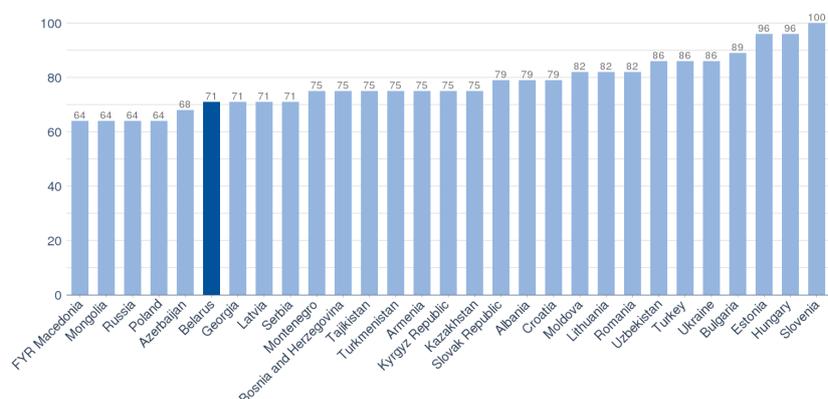
is not free of charge. Electronic communication is very limited and contracting entities do not allow for qualification documents to be submitted electronically. In addition, procurement records are not published electronically. Even basic PP features provided by PPL are not implemented in practice. In addition, local contracting entities do not regulate the pre-tendering and post-tendering phases internally. Specifically, contracting entities do not monitor changes in the public contract once the procurement process has finished and do not monitor supplier and contractor payments.

III. Conclusions

In the 2010 assessment Belarus achieved low to medium compliance in the assessment of its legal framework (average 73% compliance rate). The assessment of local PP regulation did not identify any outstanding compliance with PP core principles. Regulation of its institutional framework is inadequate; substantial regulatory gaps were revealed (between 25 and 35%) which may lead to the conclusion, that although the local legislation is stable, it is outdated and too bureaucratic. Due to its centralised nature, it also lacks unity.

In addition, only some transparency and integrity safeguards and PP efficiency

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

instruments have been adopted. The assessment revealed substantial regulatory gaps in adopting integrity safeguards (27%) and efficiency instruments (29%).

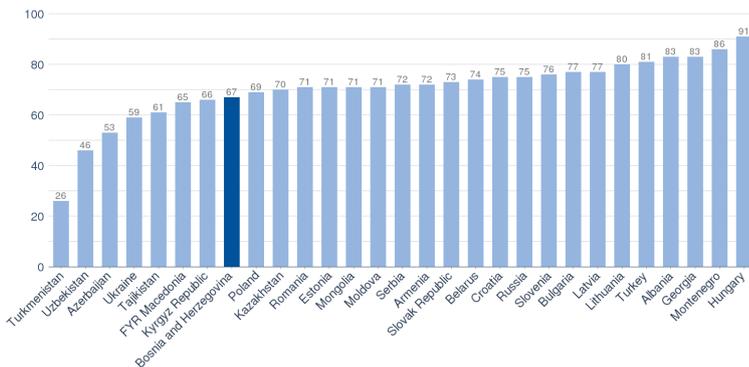
In the assessment of local PP practice, Belarus scored 62% compliance with the assessment benchmark (low to medium compliance). Substantial gaps in implementing PPL were also observed. To our surprise, the survey of local practice revealed that in spite of very stable legislation, procurement practice is not stable and procurement decisions may be discretionary.

The 2010 assessment also covered the implementation of sustainable public procurement policies in local procurement practice. The Belarus practice scored 10% compliance, the lowest in the EBRD region.

Bosnia and Herzegovina

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Bosnia and Herzegovina is regulated by Law no. 49, 2 November 2004 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Bosnia and Herzegovina two dedicated public procurement bodies have been established: the Public Procurement Agency (PPA) and the Procurement Review Body (PRB). PPA is an independent administrative authority and its main function is to ensure the proper implementation of PPL, whereas the PRB is responsible for public procurement review and remedies.

The PPA's core functions are:

- a) proposing amendments to PPL and implementing regulations in order to ensure the effectiveness and suitability of legislation;
- b) publishing procurement manuals and guidelines and the development and maintenance of standard forms and

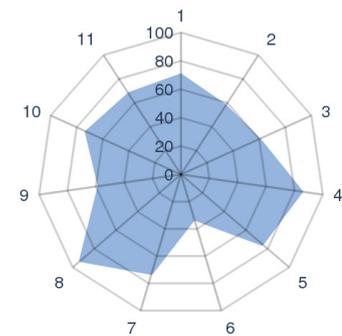
- models, to be utilised by the contracting entities;
- c) providing technical assistance and advice to both the contracting entities and suppliers on the application and interpretation of PPL;
- d) monitoring the compliance of contracting entities with PPL;
- e) collecting and publishing information about public procurement procedures and public contracts that have been awarded;
- f) submitting an annual report to the BiH Council of Ministers;
- g) developing a nationwide electronic information system to supplement the Official Gazette and publish tender documents electronically;
- h) supporting the development of e-Procurement and electronic communication;
- i) maintaining the register of accredited trainers in the field of public procurement.

Chart 3 illustrates the results of the review of the Bosnia and Herzegovina institutional framework.

Scope of regulation

PPL covers both national and local government procurement and contains specific procurement rules for public law institutions and the utilities sector. Concession contracts are awarded according to BiH's laws on concessions (separate from PPL).

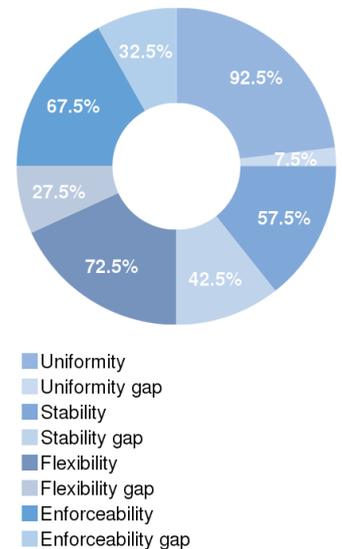
2. Quality of PP legal framework



- 1. Accountability 2. Integrity 3. Transparency
- 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity
- 9. Stability 10. Flexibility 11. Enforceability

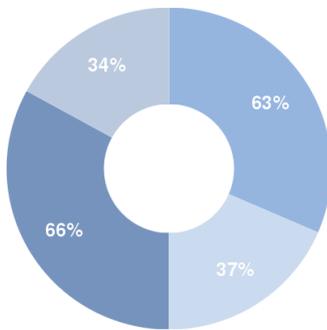
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

PPL makes a clear distinction between the public procurement contract and procedures and concessions. PPL provides for a decentralized procurement function and does not establish a central purchasing body.

Eligibility rules

PPL provides for some general eligibility criteria and allows the contracting entity to decide on individual prequalification requirements.

The qualification requirements are divided into 4 categories:

- a) the minimum requirements for the qualification of candidates and tenderers with respect to their personal situation (the main questions relate to bankruptcy, professional misconduct, fulfilment of obligations relating to payment of taxes, social security contributions);
- b) their suitability to pursue professional activity (right to pursue the relevant professional activity);
- c) economic and financial standing (the

minimum requirement specified by the contracting entity);

d) professional ability (the minimum requirements specified by the contracting entity).

To show compliance with requirements specified in the tender documentation, the tenderers can be obliged to offer appropriate evidence, such as documents and certificates.

The procurement procedures

PPL provides for various types of procurement procedures:

- a) open procedure;
- b) restricted procedure with pre-qualification;
- c) negotiated procedure with publication of a procurement notice; negotiated procedure without publication of a procurement notice;
- d) design contest.

Open and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. PPL incorporates a clear test between the choice of tendering and negotiated procedures, based on EU PP Directives.

The procurement time and cost effectiveness

PPL does not require public procurement to be accomplished in a reasonable amount of time. Furthermore, PPL does not allow for an accurate estimation of the length of the PP process for the procurement of works and goods of significant value. PPL does establish several specific deadlines throughout the public procurement procedure, such as a deadline for submitting tenders and a deadline for publishing information about a concluded contract. However, no time limit has been established for a tender evaluation. PPL requires mandatory aggregation of lots. PPL provides for aligning the value and scope of the contract with the formality of the procedure.

PPL does not contain clear requirements on the use of specific methods of com-

munication. PPL only states, that “written” or “in writing” includes information that is transmitted and stored electronically, provided the security of the content is ensured and the signature identifiable. PPL does not stipulate that the costs of tender participation should be kept low. The regulation directly concerned with the cost of participation is a provision for tender security. The contracting entity may request that the effectiveness of tenders should be guaranteed by appropriate tender securities. The tender security shall not exceed 1-2% of the tender price.

Review and remedies

The Procurement Review Body (PRB) is an independent administrative body; its members are appointed by Parliament from candidates recommended by the Council of Ministers.

Any tenderer who has a legitimate interest in a specific public procurement contract and believes that the contracting entity, during the contract award procedure, has breached one or more provisions of PPL or its implementing regulations, has the right to raise an objection against the procedure in the manner and within the time limits set forth in PPL to the PRB.

The PRB has the right to suspend the contract award procedure.

In a case when the decision or action taken by the contracting entity was in breach of any of its obligations, the PRB has the power to annul in whole or in part any act or decision of the contracting entity inconsistent with PPL or instruct the contracting entity to correct any breaches. In addition the PRB may order the termination of the PP procedure and award damages to the complainant who, as a tenderer, has suffered loss or damage as a result of a breach of PPL.

Furthermore, when a contract has been concluded, the PRB may award damages to the complainant who, as a tenderer, has suffered loss or damage as a result of a breach of PPL. The review decision is final unless appealed to the court within 45 days of its announcement to the complainant.

Bosnia and Herzegovina

Public contract management

PPL does not require the mandatory planning of public procurement. Nor does it require that contracting entities provide contract management of the public contract. Moreover, PPL does not require procurement monitoring or for the administration to be computerised. However, electronic procurement monitoring and administration is partially enabled through an Electronic System for Report Submission on contract award notices in public procurement procedures.

Assessment overview

Strengths

In the 2010 assessment, Bosnia and Herzegovina's PPL showed some areas of strength, including competition and uniformity of the PP legal framework. The public procurement regulations of Bosnia and Herzegovina are quite comprehensive and cover both national and local government procurements, providing specific rules for the utilities sector and public law institutions.

Weaknesses

In the 2010 assessment Bosnia and Herzegovina's PP regulation scored below 50% compliance on efficiency of public contract indicators, and in general, scored low in the economy of the PP process and proportionality indicators (65% compliance rate only). These results are mainly due to unsatisfactory regulation of the pre-tendering and post-tendering phases of public procurement. PPL does not require any of the following:

- a) mandatory planning of public procurement;
- b) mandatory detailed and unbiased assessments of the contracting entity's needs;
- c) appropriate budget or financing authorisation prior to the publication of a contract notice;

d) budgetary authorisation to be obtained for contract payments due beyond the current financial year. PPL does not include a clear test as to when the contracting entity should seek a contract performance guarantee. According to Article 16(2) the contracting entity has the right to decide on that matter. However, performance securities cannot exceed 10% of the contract value. PPL does not require contracting entities to provide contract management of a public contract nor does it require procurement staff to have adequate contract management capabilities.

Despite of recent amendments PPL provides for basic features of modern PP regulation only; several integrity safeguards and efficiency instruments recommended by international good practice have not been adopted.

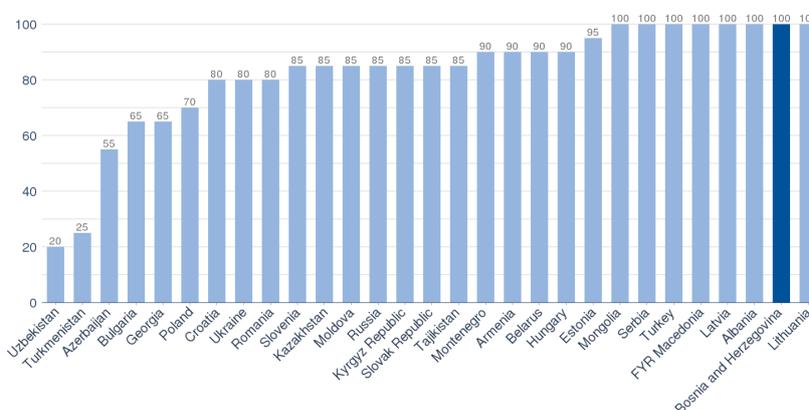
Opportunities

PPL has adopted several provisions to curb or control corruption and monitor conflicts of interest. There are appropriate anti-corruption rules on the opening of tenders: for instance, tenders are opened at a public tender opening immediately after the expiry of the time limit for submission of the tenders as indicated in the tender documents.

Regulatory risks

PPL does not forbid preferential treatment of domestic bids. Domestic preferences are limited, but they are allowed. The 2010 assessment revealed that in

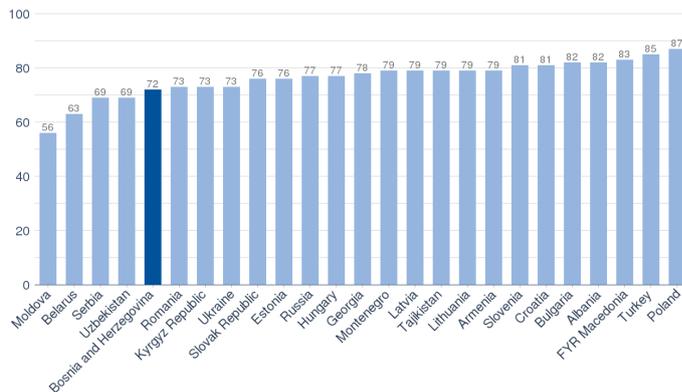
5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The 2010 assessment of local procurement practice results show that, in general, local practitioners consider PPL to be clear and comprehensive. In addition, some local contracting entities have adopted internal procurement rules and update them when necessary. In practice, internal rules and procurement decisions are disclosed to public. Moreover, local contracting entities claim that internal roles in their procurement process are clearly allocated and they provide regular training in most cases for their internal PP stakeholders.

Chart 2 presents scores for the general quality of local PP practice in Bosnia and Herzegovina.

Regulatory institutions

The compliance of PP procedures with the law is monitored by a dedicated public regulatory authority, the PPA.

Chart 8 illustrates how the local institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

A survey of local practice confirmed that public sector procurement in Bosnia and Herzegovina is covered by PP regulation.

Eligibility rules

In practice the general eligibility criteria are adhered to. In addition, local contracting entities have declared that they usually establish qualification criteria, which include experience, past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

Tenderers are generally obliged to submit documents which prove their compliance with the conditions for participation in the process. In practice there are no regulations which prevent affiliates of the contracting entity from participating in public procurement procedures.

The procurement procedures

Tenders are typically used though negotiated procedures can be used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain their choice of procurement method.

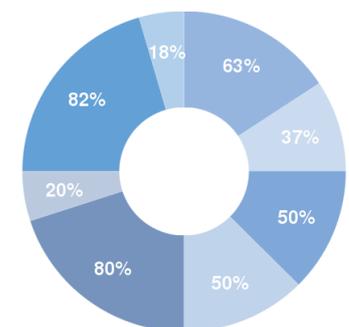
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

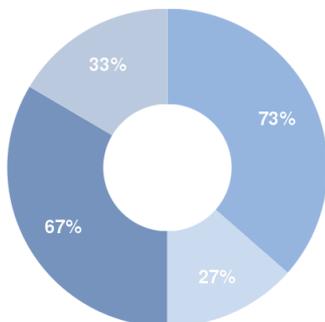


Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Bosnia and Herzegovina

9. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

In Bosnia and Herzegovina it is difficult to estimate the duration of the procurement procedure leading to the signing of PP goods or works contracts of significant value.

In practice it is mandatory to complete a procurement plan before a public procurement process is started. However, technical, financial and procurement planning coordination is not mandatory. The internal procurement process and decision making is only partially regulated. Internal PP monitoring and auditing arrangements are not common.

Standard tender documents, national standard contract forms and the use of a procurement records template are, in practice, mandatory. Nevertheless, as

a general rule, standard international contract forms for all types of procurements are not used. There are guidelines regarding how to draft the appropriate tender documents and standard forms of contract notices are widely used. In practice sufficient time is provided to prepare and submit tenders. Evaluation of tenders is normally completed within the original validity period. In practice, tender documents are never available free of charge.

Review and remedies

In the 2010 assessment local contracting entities answered only part of the questionnaire and refused to answer questions regarding the quality of public procurement review in Bosnia and Herzegovina.

Based on the data provided, the remedies procedure is considered to be straightforward, non discriminatory but not necessarily effective. The speed of the remedy proceedings is reasonable: it takes about 30 days to obtain a review decision. The cost of the remedies procedure seems to be affordable. Of greatest importance, the remedies body is not perceived to be corrupt.

Public contract management

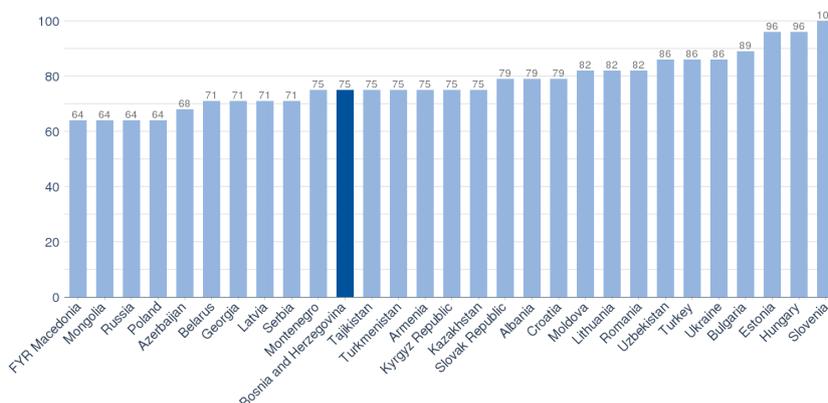
The results of the assessment of local PP practice reveal that changes in the public contract are usually monitored but no specific contract administration procedures have been adopted. There are no manual or computerised procurement and contract monitoring systems. The system lacks the appropriate procedures to monitor the delivery of goods and services to verify quantity, quality and timeliness. Contracts are generally completed within the originally approved budget, but contracts are completed on time in only some cases. There are no internal policies regarding compensation in the case of public contract cancellation; however, the contracting entity is obliged to specify the reason for the cancellation.

Assessment overview

Strengths

Local procurement practice received low to medium scores (average compliance rate below 70%). The quality of local PP practice is comparable with the quality of national PP legislation; however, several implementation gaps were identified. There are some con-tracting

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

entities which have all the appropriate PP procedures in place to plan procurement, manage the PP process, and monitor the delivery of public contracts, but this is not the general rule.

Weaknesses

Review of local practice revealed that there are no elements of practice which scored below 50% in Bosnia and Herzegovina; however, several indicators scored low and some implementation gaps were identified. In particular, efficiency and economy of the PP process could be improved.

In addition, institutional PP capacities could be improved, as the PP practice survey revealed implementation gaps of between 10% and 50% on all institutional capacity indicators.

Furthermore, local PP practice is not modern and e-Procurement solutions should be more widely promoted as they are hardly ever used in practice.

Opportunities

The newly established PP review body received relatively good marks from local practitioners and is not perceived to be corrupt.

Risks

The pre-tendering and post-tendering phases of the PP process are not internally regulated by local contracting entities because this is not required by law. Internal PP monitoring and auditing arrangements are not provided for. In practice, access to electronic communication is limited. In spite of requirements under PPL, contract notices are not always published electronically.

III. Conclusions

In the 2010 assessment Bosnia and Herzegovina's legal PP framework achieved low to medium compliance with international standards (average 67% compliance rate).

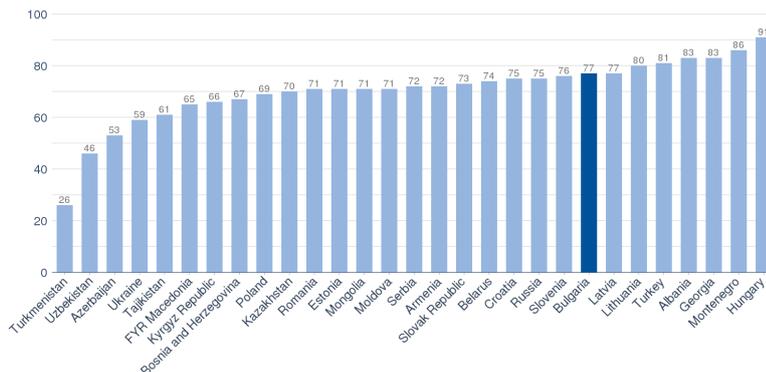
PPL provides for basic PP regulatory features but several significant regulatory gaps were identified. Some integrity safeguards and efficiency instruments have been adopted, but not all of the instruments recommended by current international PP standards have been.

In the assessment of local practice Bosnia and Herzegovina scored low to medium compliance (average 78% compliance rate) again. Several implementation gaps were identified and the general conclusion is that there are substantial gaps in implementation of laws and institutional framework capacities.

Finally, local PP practice scored a 13.1% compliance rate in the PP sustainability survey. This is significantly lower than other countries in the Western Balkans.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Bulgaria is regulated by the Law on Public Procurement adopted in April 2004 (in force from October 1st 2004) (PPL). In the EBRD 2010 assessment PPL scored medium to high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

Bulgaria's Minister of Economy, Energy and Tourism has established an authority for public procurement functions, the Public Procurement Agency (PP Agency). This agency supports the Minister in developing PP policy, providing methodology and implementing European Union directives.

- The PP Agency's core functions are to:
- develop PP regulation;
 - instruct contracting entities on the implementation of PPL;
 - provide guidance on international PP instruments and agreements;
 - appeal before the Commission for the Protection of Competition;
 - manage the PP Register and other dis-

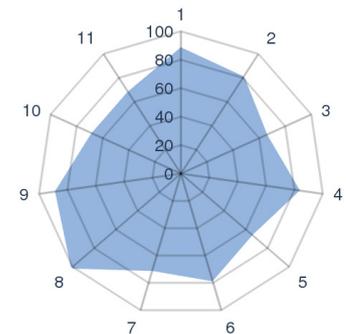
cretionary elements of the PP system (e.g. approve announcements and terms or requirements giving privileges or restricting participation in public procurement procedure);
 f) monitor local procurement practice;
 g) support the implementation of eProcurement processes.

Scope of regulation

PPL covers both national and local government procurement. There are specific procurement rules for public law institutions. PPL provides separate regulations regarding the utilities sector. However, PPL is not applied to contracts for water, energy supply and energy production which are concluded by the contracting entity: public enterprises and their associations or the traders or other persons who, given special or exclusive rights, carry out activities related to natural gas, heating, electric power or drinking water.

Concessions are regulated by separate legislation and consequently PPL is not applied to contracts granting a concession for construction within the meaning of the Law for the concessions. PPL provisions clearly differentiate between the PP contract and procedures and concessions.

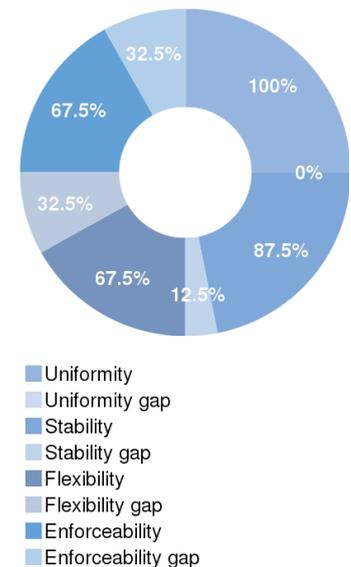
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

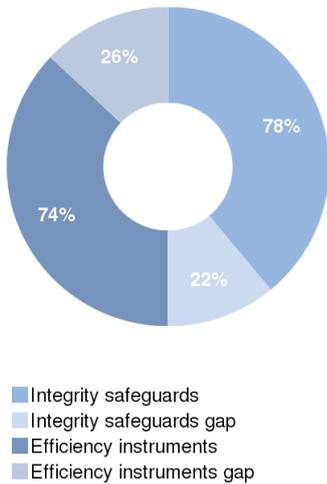
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

Although PPL provides a decentralised procurement function, a Central Purchasing Body has been established to conduct public procurement or frame agreements.

Eligibility rules

Bulgarian PPL establishes primary public procurement eligibility rules. Mandatory grounds for exclusion are, among other things:

- declared bankruptcy and/or liquidation proceedings;
- committing a crime against the financial or tax system;
- committing certain offences against property and economy provided in the Penal code;
- committing other crimes provided in PPL.

PPL not only establishes obligatory grounds for exclusion, but also introduces facultative grounds for exclusion, which include:

- initiated bankruptcy proceedings;
- retraction of the right to practice a particular profession or activity according

to the legislation;

- monetary liabilities to the state or to a municipality.

According to PPL the contracting entity establishes qualification criteria regarding professional ability, technical capacity, economic and financial standing, which must be declared in advance.

At the signing of a public procurement contract the chosen participant is obliged to present appropriate documents, such as certificates, proving eligibility and compliance.

The procurement procedures

Bulgarian PPL provides for various types of procurement procedures for awarding goods, service and works contracts :

- open tender;
- restricted tender;
- competitive dialogue;
- negotiated procedure with prior publication of contract notice;
- negotiated procedure without prior publication of contract notice.

In Bulgaria open and restricted tender are the default procedures.

The contracting entity may apply other procedures only in situations where the law allows. PPL incorporates a clear test between the choice of tendering and negotiated procedures.

The contracting entity may select a contractor in the open or restricted tender or negotiated procedure with prior notice supplemented by electronic auction. In this event, PPL provides specific regulation to ensure fair competition.

The procurement time and cost effectiveness

PPL does not require public procurement to be accomplished in a reasonable amount of time. Furthermore, PPL does not allow for an accurate estimation of the length of the PP process for the procure-

ment of works and goods of a significant value. PPL does establish several specific deadlines throughout the public procurement procedure such as a deadline for submitting tenders and a deadline for publishing information about a concluded contract. However, no time limit has been established for a tender evaluation committee to choose a winning tender.

PPL requires mandatory aggregation of lots and provides contract valuation methods taking into account all potential costs of the purchase or works.

PPL does not require formalities to be kept simple, yet it introduces reasonable delegation of contracting authority. There is no rule stating that the contract terms and conditions should be fair and balanced, and reflect best available business practice.

Information may be transmitted by post, fax, or electronically (a certified electronic signature is mandatory) as chosen by the contracting authority. In the case of electronic or fax communication, a written confirmation is requested.

PPL does not require the costs of tender participation to be kept low. The price of tender documents may not exceed the actual cost of copying them.

The contracting entity may request tender security as well as contract performance security. The tender security may not exceed 1% of the value of the procurement, whereas the amount of the contract performance security may not exceed 3% of the value of the procurement.

Review and remedies

PPL provides both an administrative review mechanism and a judicial review mechanism. Every decision of the contracting entities may be the subject of an appeal before the Commission for the Protection of Competition. The complaint must be lodged within 10 days of notification of tenderers about the award decision. If the public procurement contract has been concluded before the expiry of the 10 day period following notification of the award decision, the tenderer cannot submit a complaint to the Commis-

Bulgaria

sion; however, the tenderer is entitled to declare the contract void before the civil court.

The Commission examines the legal compatibility of the decision, especially in terms of the presence of discriminatory economic conditions or meeting financial, technical or qualification requirements. Decisions of the Commission for the Protection of Competition may be appealed to the three-member board of the Supreme Administrative Court, within 14 days of its announcement. The decision of the Supreme Administrative Court is final and should be issued within one month of its receipt.

Public contract management

PPL requires mandatory planning of public procurement. Contracting entities are obliged to adopt internal rules for public procurement planning and organisation procedure and control the implementation of public procurement contracts that have been concluded. Moreover, PPL requires appropriate budget or financing authorisation prior to publication of a contract notice. No regulations require the contracting entities to obtain budgetary authorisations for contract payments falling due beyond the current financial year. PPL regulates PP contract modification. No new conditions which change the nature of the contract established in the contract notice and which were the basis for selection of the tenderer may be added to the contract. Amendments which violate the law on public procurement are deemed invalid.

Assessment overview

Strengths

In the 2010 assessment, the Bulgarian PPL showed several areas of strength, including stability, integrity, competition and accountability of the PP legal framework. The strongest point was uniformity of the framework with a score of 100%. Bulgarian

PP policy is balanced, comprehensive and covers all public contracts.

Weaknesses

Even though Bulgarian PPL has no major weaknesses (scored below 50%), the assessment revealed unsatisfactory development of transparency safeguards and insufficient emphasis on the economy of the process, both scored at 65% compliance rate only.

There is no mandatory publication of tender documents on the contracting entity's website. There is no requirement for the public opening of tenders promptly after the deadline for the submission of tenders or procedures to be completed in a reasonable time. In addition, there is no requirement for formalities to be kept simple or contract terms and conditions to be fair and balanced, reflecting best available business practice. eProcurement is limited and, in the case of electronic or fax communication, written confirmation of documents submitted is obligatory. All of this may lead to unnecessary bureaucracy.

Opportunities

Bulgarian PPL was amended in 2006 at the time of the accession of Bulgaria to

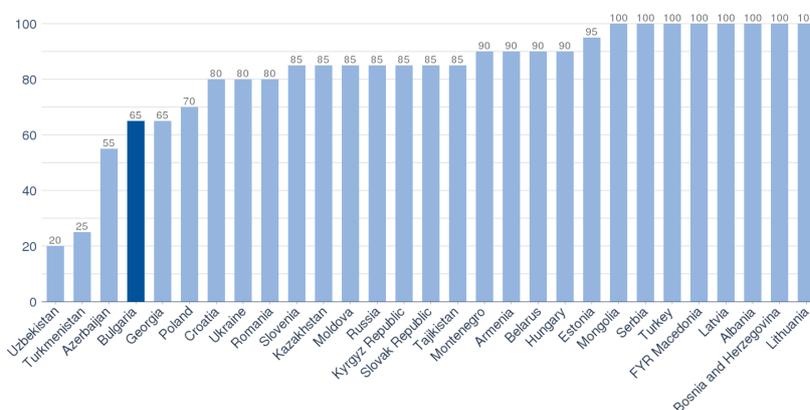
the European Union in order to ensure its full compliance with European legislation. The assessment results reveal that this opportunity has not been followed up.

Regulatory risks

Although the Bulgarian framework is generally comprehensive, it is still not fully compliant with international standards. PPL does not make a distinction between short term and long term contracts and provides no instructions for dealing with an abnormally low tender.

Insufficient enforcement is also a major issue.

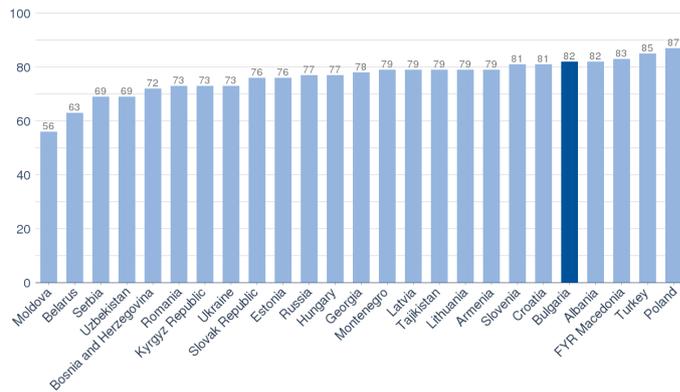
5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The 2010 assessment of local procurement practice results show that, in general, PP regulation is considered to be clear and comprehensive. In addition, contracting entities frequently adopt internal procurement rules and update them when necessary.

In practice, internal rules and procurement decisions are disclosed to public. Moreover, local contracting entities claim that internal roles in their procurement process are clearly allocated and they provide regular training for all internal stakeholders.

Chart 7 presents scores for the general quality of local PP practice in Bulgaria (average compliance rate equals 83%).

Regulatory institutions

Compliance of PP procedures with the law is monitored by a dedicated public regulatory authority, the PP Agency. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

A survey of local practice confirmed that procurement in the public sector in Bulgaria is covered by the PP regulation.

Eligibility rules

PPL provides for mandatory and optional grounds for exclusion from public procurement. Contracting entities play a role in determining specific qualification criteria. In practice, qualification criteria cover experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. Failure to pay taxes or fulfil other public duties and significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts were mentioned as the main reasons for exclusion from the procurement procedure.

Tenders have to be responsive to requirements stipulated in the tender documents and are evaluated on the basis of the criteria specified in the contract notice.

The procurement procedures

PPL recommends tenders as the default procedure. In practice, negotiated procedures are used for specific or complex contracts; however, contracting entities are not always obliged to explain the choice of the procurement method. Moreover, local contracting entities did

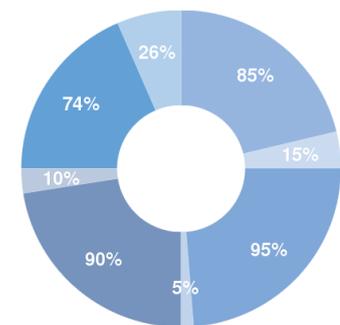
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

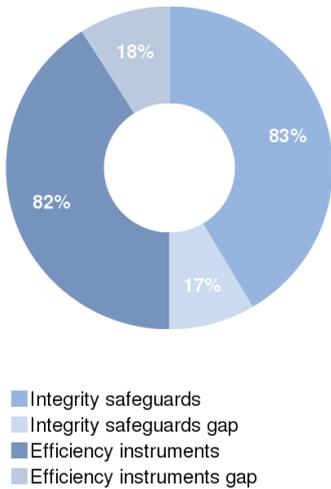


Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Bulgaria

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

not mention circumstances that enable procedures other than tenders to be used as general conditions expressed in PPL.

The procurement time and cost effectiveness

In Bulgaria procurement plans are prepared to support the procurement activities of each budget year. Consequently, technical and financial procurement planning is coordinated. Moreover, in order to complement the appropriate procurement plan, contracting entities provide a reasonable assessment of relevant procurement risks. To speed up procurement process a wide range of standard documents is available. In addition internal guidelines outlining how to draft the tender documents, contract notices, procurement reports as well as tender securities are commonly used. As a general rule, contracting entities may use

international contract forms for all types of procurement.

Contracting entities are generally able to estimate how long it takes in practice to sign a public procurement contract of significant value and state that it may take from 90 to 120 days to conclude a public procurement goods contract of the value of 250,000 Euros and from 100 to 120 days to sign a public procurement works contract to the value of 500,000 Euros. Sufficient time is provided to prepare and submit tenders and the evaluation is usually completed within the original validity period.

Due to the prevailing use of traditional means of communication, prequalification participation costs can be quite substantial. In addition, tender documents are not available free of charge.

Review and remedies

The review procedure is straightforward, effective and non-discriminatory. However, the remedies body is perceived to be corrupt. In practice the cost of the remedies procedure is generally affordable. Obtaining a remedies decision may take from 30 days to more than 45 days.

Hearings are conducted and all procurement reports are disclosed. The remedies proceedings are public and duly recorded.

Public contract management

In Bulgaria contracts are generally administered in a fair manner. Adequate contract administration records are maintained. However, modifications or waivers of the terms and conditions of a contract are not subject to a review and approval procedure.

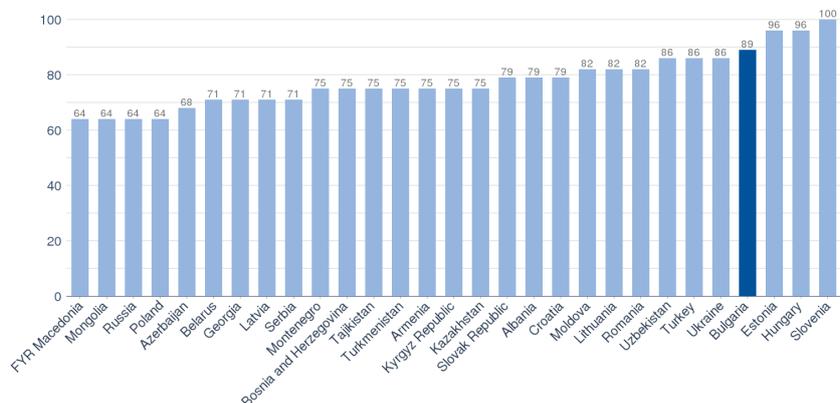
Contracting entities have established internal policies on contract cancellation and compensation. When a public contract is cancelled, the contracting entity is obliged to specify the reason for doing so. Contracts are usually completed on schedule and within original budget and/or contract price.

Assessment overview

Strengths

In the review of local PP practice, Bulgaria scored medium to high compliance with international best practice and achieved particularly good marks in accountability, stability and flexibility indicators (over 90% compliance rate).

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

The outstanding result for the accountability indicator was achieved due to good practices adopted in the fields of public procurement planning and monitoring, transparency in access to the procurement information and remedies procedures. Procurement planning is mandatory and most contracting entities have developed a specific methodology for high value projects.

Weaknesses

Local PP practice was scored lowest for insufficient implementation of the integrity safeguards, although the score in this indicator is still above 50% compliance rate.

Bulgarian practice is a bit outdated and bureaucratic: electronic communication is not mandatory by law and, as a result, hardly used in practice; communication is conducted mainly by fax, with confirmation in writing required. Some contracting entities do not allow for the electronic submission of qualification documents at all.

Opportunities

In areas where Bulgarian PPL does not provide any regulation (e.g. pre-tendering and post-tendering phases), local contracting entities have adopted internal procurement rules covering planning of the procurement process, implementation of competition rules in practice and public contract monitoring and management. This covers the existing regulatory gaps but leads to a lack of uniformity in local PP practice.

Risks

In practice, some phases in the PP process are not adequately covered by legislation or the contracting entities' internal regulations. Contracting entities prepare public procurement plans but there is no procedure for obtaining budgetary authorisation for contract payments falling due beyond the current financial year. Modifications or waivers of the terms and conditions of a contract are not subject

to any review and approval procedure. In addition, enforcement is insufficient and lacking integrity: the Bulgarian remedies body is perceived to be corrupt.

III. Conclusions

The quality of Bulgarian PP regulation is good in principle. Bulgarian PPL scored high compliance in the assessment of the legal framework (77%), which placed the Bulgarian legislation amongst countries with high compliance in the EBRD region, although at the lower end of that group.

The assessment results have shown that the Bulgarian institutional framework is inadequate; substantial regulatory gaps were identified, mainly in the PP enforcement measures (32.5%).

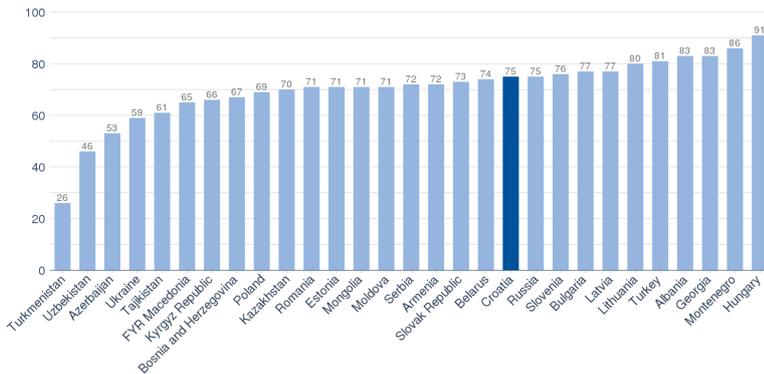
Local PP policy making is responsive to the challenges of the local market. Several integrity safeguards and efficiency instruments have been incorporated. However, the regulation provided by current PPL is clearly inadequate, regulatory gaps of more than 20% were identified in both key policy areas.

In the assessment of local practice, Bulgaria scored 83% compliance rate, slightly higher than in the assessment of quality of legislation (77%). Lack of enforcement has been reported as a major weakness; the survey revealed a significant implementation gap of 26% in implementing PP legislation. The general conclusion is that there are substantial deficiencies in local institutional capacities.

Finally, local PP practice in Bulgaria scored 80% compliance rate in the PP sustainability survey. These marks indicate a high compliance rate and placed Bulgaria highest in the EBRD region.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in Croatia is regulated by the Public Procurement Act (OG 110/07, 125/08) (PPL) and seven secondary regulations adopted pursuant to Article 174 of PPL.

Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Croatia there is no independent PP regulatory body, the PP regulatory and monitoring functions are delivered by a department in the Ministry of Finance (PPA).

PPA is responsible for:

- a) the development, improvement and coordination of the PP system;
- b) issuing opinions, instructions and legal assistance in relation to the application of PPL and other regulations regarding public procurement;
- c) harmonisation of PPL and regulations with European Union PP Directives;
- d) monitoring PP functions in the country;
- e) developing and implementing professional training in public procurement;
- f) maintaining the Public Procurement Portal, where procurement opportunities are published, monitoring compliance of contract notices with PPL and providing

e-Procurement solutions;
g) providing statistical reports on the national PP system to the Croatian government.

Chart 3 illustrates the results of the review of the Croatian PP institutional framework.

Scope of regulation

PPL covers both national and local government procurement. There are also specific procurement rules for public law institutions and for procurement in the utilities sector.

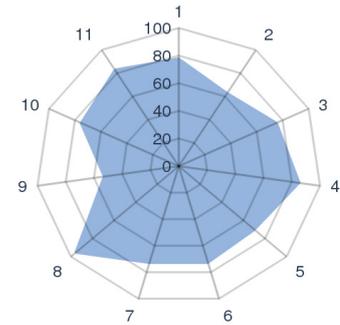
Concessions are regulated by separate legislation and PPL clearly differentiates between public procurement contracts and procedures and concessions.

Although PPL provides a decentralised procurement function, a Central Purchasing Body has been established.

Eligibility rules

PPL establishes primary public procurement eligibility rules and provides for prequalification criteria compliant with EU PP Directives.

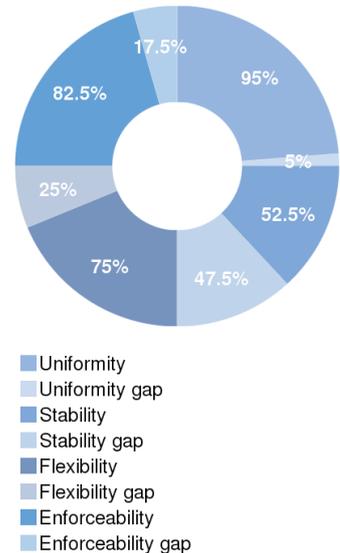
2. Quality of PP legal framework



1. Accountability
2. Integrity
3. Transparency
4. Competition
5. Economy of the process
6. Efficiency of public contract
7. Proportionality
8. Uniformity
9. Stability
10. Flexibility
11. Enforceability

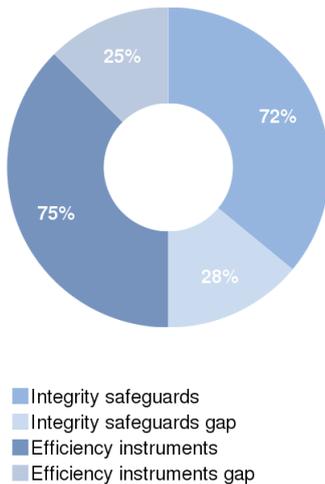
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

A tenderer is excluded from competing for a public contract if:

- a) the tenderer (or the person authorised to represent him) has been convicted by final judgment for one or more of the following criminal acts: associating for the purpose of perpetrating criminal offences, accepting a bribe in business activities, offering a bribe in business activities, abuse of position and official powers, abuse of position while performing governmental duty, illegal intercession, accepting a bribe, offering a bribe, fraud, computer fraud, fraud in business activities or concealing unlawfully obtained money, or the corresponding criminal acts in accordance with the legal provisions of the country in which he is established.
- b) the tenderer has failed to fulfil obligations to pay all outstanding tax liabilities and contributions for pension and health insurance.
- c) the tenderer is subject to a bankruptcy procedure, except in a case where there is a final judgment confirming a recovery plan, or when the tenderer is in the process of liquidation (or any analogous situation arising from a similar procedure

under legal provisions of the country in which he is established);
 d) the tenderer is in the process of winding up her/his business or has already suspended her/his business activities,
 e) the tenderer has been convicted (or the person authorised to represent him) has been convicted by a judgment which has the force of res judicata of any offence concerning his professional conduct,
 f) the tenderer has been found guilty of professional misconduct which the contracting entity can prove by any means, and
 g) the tenderer has not submitted evidence of his ability, appropriate evidence of ability or if he has submitted untruthful evidence.

PPL provides a distinction between general public procurement eligibility criteria and qualification and technical requirements, which can be adopted by the contracting entities in individual PP procedures. To show compliance with requirements specified in contract notice or tender documents the tenderers may be obliged to demonstrate appropriate evidence, such as certificates.

The procurement procedures

PPL provides for the following tendering and negotiated procedures:

- a) open tender;
- b) restricted tender;
- c) negotiated procedure with or without notification;
- d) competitive dialogue.

Tenders are the default procedures; the contracting entity may employ other procedures only when the law allows.

PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

Basic e-Procurement regulation has been established in Croatia.

The contracting entity may allow for submitting tenders or proposals electroni-

cally in the tender documents; however, electronic communication is not generally available. Submission of a tender electronically requires a certified electronic signature.

The procurement time and cost effectiveness

PPL does not allow for an accurate estimation of the length of the PP process for goods and works contracts of a significant value; however, it requires the procurement to be accomplished in a reasonable amount of time and provides for several specific deadlines.

PPL provides for aligning the value and scope of the contract to the formality of the procedure (cascaded thresholds) and requires mandatory aggregation of lots. PPL does not directly provide for contract valuation methods taking into account whole-life costs of the purchase or works.

Communication in PP procedures is neither wholly traditional nor wholly modern. The contracting entity may require the tenderer who submitted his request by fax, to confirm it by post or electronically, before the deadline for such a submission. PPL does not directly require formalities to be kept simple. It is indirectly implied that the costs of tender participation should be kept low. Tender documents are not available free of charge; the contracting entity may request reimbursement for the cost of production and delivery of the tender documents from the tenderer.

PPL includes a clear test as to when the contracting entity should seek a tender security, and limits its maximum amount. The tender security may not exceed 5% of the estimated contract value.

Review and remedies

Any dissatisfied party (tenderer) is entitled to seek protection of its rights by filing an appeal or other petitions against a decision, action or failure to take an action by the contracting entity related to public

Croatia

procurement. PPL provides for administrative PP review. Appeals are reviewed by a remedies body, the State Commission. The State Commission's decision is final if not appealed to the Administrative Court of the Republic of Croatia.

Public contract management

Contracting entities are obliged to prepare a procurement plan for the budget year; however PPL does not require a mandatory detailed and unbiased assessment of the contracting entities' needs. The contracting entity may request a contract performance security; however, PPL does not limit its maximum amount. PPL does not require contracting entities to provide contract management of the public contract; amendments and extensions to the public contract are not necessarily monitored. Moreover, procurement officers are not required to have adequate contract management capabilities.

Assessment overview

Strengths

In the 2010 assessment, PPL scored medium to high compliance with international standards. PPL creates a hierarchical and well-coordinated legal framework, yet not all procurement phases are covered.

Weaknesses

The 2010 assessment revealed no major weaknesses in PPL scored below 50% compliance with the benchmarks. PPL is not stable, as amendments are very frequent; however, these are mainly due to the continuous harmonisation process with EU PP Directives.

PPL is not modern; e-Procurement solutions are scarcely regulated and generally unavailable. Communication methods are primarily traditional and do nothing to improve the speed of the PP procedures.

Opportunities

PPL is fairly comprehensive and compliant with EU PP Directives.

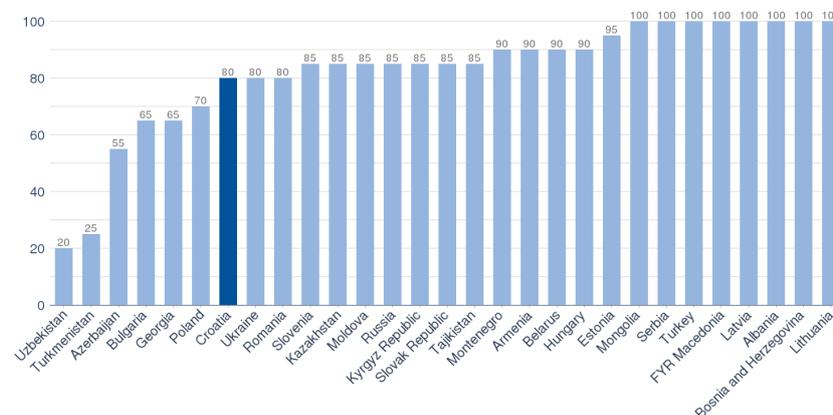
Regulatory risks

Tender documents are not necessarily available on the contracting entity's website and are not available free of charge. Procurement records are not easily accessible; there is no obligation to publish a contract award notice for every public contract.

PPL does not regulate all procurement phases, specifically, contract management regulation is rare and no monitoring is provided for public contracts.

Professional training for procurement staff is not mandatory. PPL states that if one person who has completed a specialist training programme in the field of public procurement is involved in the public procurement procedure for high value contracts, it is enough.

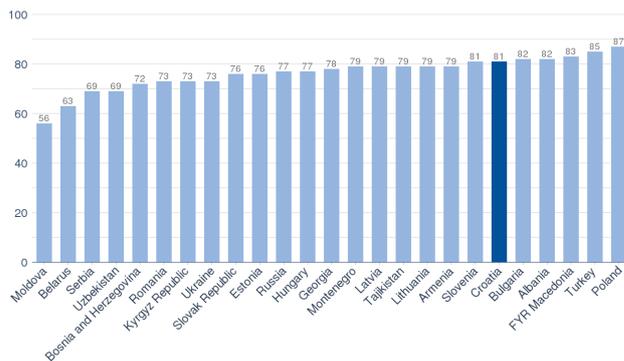
5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The 2010 assessment revealed that the Croatian contracting entities have implemented mechanisms ensuring the objective of PPL. Croatian practitioners consider the legislative framework to be clear and comprehensive. Internal procurement rules are commonly adopted and internal roles in the procurement process are usually clearly allocated. Internal rules are updated whenever the PPL is amended. In principle, contracting entities disclose internal procurement rules and procurement decisions.

In practice, most contracting entities provide training to their public procurement officers. No regular training structures are provided by national regulatory bodies or public universities. Chart 7 illustrates the general quality of practice.

Regulatory institutions

Regulation and enforcement is considered to be insufficient.

Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

In the local practice survey both government and utilities sector public entities confirmed that their procurement is covered by PPL.

Eligibility rules

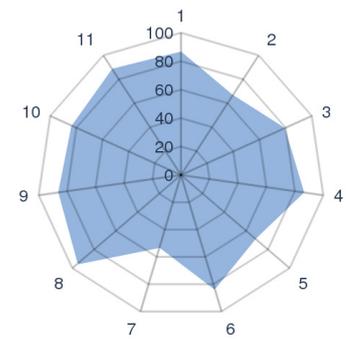
In practice, general eligibility criteria are respected. Typical qualification criteria, as established by the contracting entities, include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. False declarations are grounds for rejection.

Based on the survey, it's not clear whether affiliates of the contracting entity are generally eligible to tender. Answers to the practice questionnaire are contradictory.

The procurement procedures

Tenders, recommended as the default procedure, are commonly used. Negotiated procedures and competitive dialogue, available for specific or complex contracts, are very seldom used in practice.

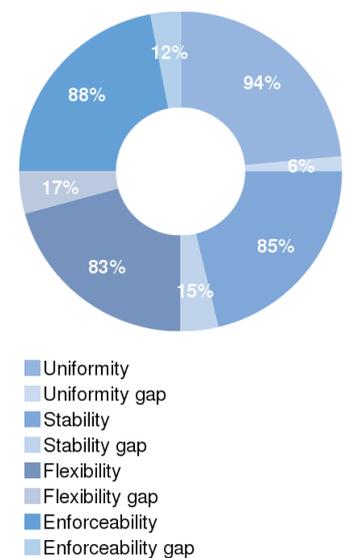
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

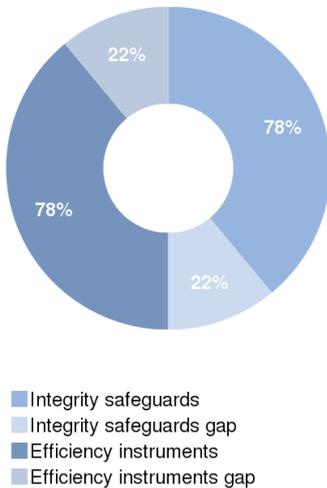
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Croatia

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

Standard tender documents and contract notice forms are available but not commonly used. Standard international contract terms and conditions are not available.

Local practitioners reported that the procurement of goods to the value of 250,000 Euros as well as works to the value of 500,000 Euros lasts approximately 102 days (from the beginning to signing a contract).

Generally, sufficient time is allowed to prepare and submit a tender; however, tender documents are never available free of charge and obtaining these from the contracting entity is time consuming.

There are typically no major delays in the

evaluation process: the tender evaluation is usually completed within the original tender validity period.

Review and remedies

Complaints are reviewed by the State Commission for the Supervision of Public Procurements, which decides on the basis of the procurement reports provided by the contracting entity. It takes from 30 to 45 days to obtain a review decision. Remedies procedures are reported to be straightforward and not discriminatory. However, they are not considered effective and are usually delayed. Nonetheless, the remedies body is not perceived as corrupt.

The remedies proceedings do not take place in public, and tenderers can present their position only in writing. The remedies proceedings are recorded and the review decisions are published.

Public contract management

In practice, needs assessment and procurement risk assessments are not completed. Technical, financial and procurement planning is coordinated; however, no procurement plans are prepared or published. To improve efficiency, internal PP monitoring and auditing arrangements are

usually in place. In some cases, changes in procedure once the PP process has been launched as well as changes to the contract are monitored.

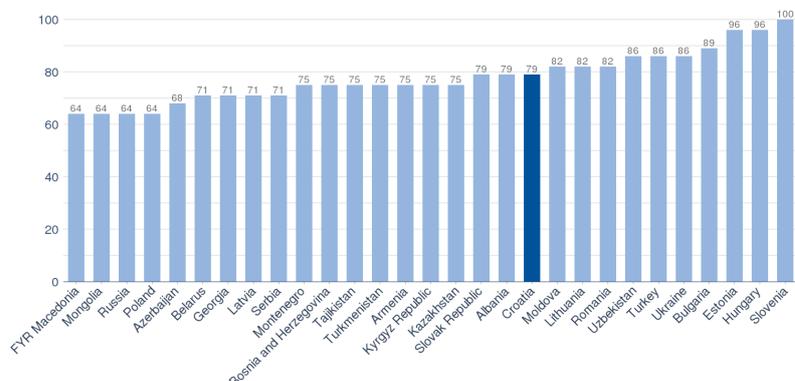
Public contracts are usually administered and in most cases completed on schedule and within the original budget, with the exception of works contracts. There are appropriate procedures to monitor the delivery of goods and services to verify quantity, quality and timeliness. Public procurement is conducted manually, only contract notices are published electronically; monitoring systems are usually computerised. Internal policies regarding public contract cancellation and compensation, in such cases, are rarely provided; contract provisions are decisive in this matter.

Assessment overview

Strengths

Local PP practice scored at a high level of compliance in the 2010 assessment and reached the highest marks for its uniformity. Contracting entities adopted internal procurement rules and supplemented PPL in the areas where the PP process has not been sufficiently regulated. The roles in the procurement process are clearly

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

allocated and there are internal monitoring and auditing procedures in place to increase the efficiency of procurement. Contracting entities administer public contracts diligently and modifications or waivers of the terms and conditions of a contract are subject to internal review and approval procedures.

Weaknesses

In the assessment of local practice, no element scored low compliance in Croatia (below 50%). However, in practice contracting entities do not align contract value and type with the choice of the procurement method. Furthermore, procurement is bureaucratic (lower marks on proportionality indicators). There are elements of practice which are not compliant with international standards. There is no mandatory test to ensure that the scope and subject of public procurement is economically justified. Only for high-value investment projects is a feasibility study mandatory. In general, PP procedures are not modern: electronic communication is available to a limited extent and, in practice, is not enabled by contracting entities.

Opportunities

Although there are no mandatory regulations for the pre-tendering and post-tendering phases, the contracting entities have adopted internal regulations covering those phases of the PP process. The internal regulations are not always comprehensive but usually cover key elements of the pre-tendering and post-tendering phases.

However, enforcement is considered to be insufficient. The remedies body is not perceived as corrupt.

Risks

In spite of commercially driven elements of local PP practice several implementation gaps were revealed by the assessment

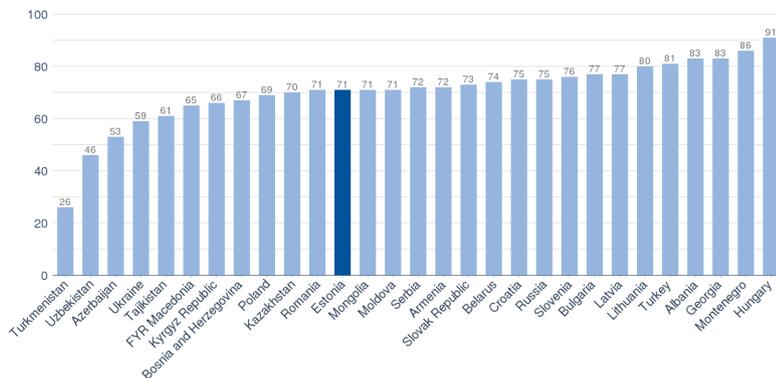
III. Conclusions

PPL in Croatia scored medium to high compliance (average 75% compliance rate) in the assessment of quality of legal framework. However, the review of the Croatian institutional framework revealed a very high level of instability in the local regulatory institutions (47% gap) and a significant gap in adopting flexibility instruments ensuring a less bureaucratic PP process. Local PP policies are balanced and to some extent responsive to local market challenges; however, not all integrity safeguards and efficiency instruments recommended, in accordance with international standards, were adopted in Croatia PPL (significant 25% regulatory gaps call for improvement).

In the survey of local PP practice, Croatia achieved slightly higher results (average 81% compliance rate), mainly due to the contracting entities' efforts to increase the efficiency of procurements by implementing procurement planning and contract management procedures, although these are not mandatory.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in Estonia is regulated by the Public Procurement Act, (PPL).

In the EBRD 2010 assessment PPL scored medium to low compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

Since 2010 the public procurement regulatory function in Estonia has been delivered by a unit in the Ministry of Finance; no independent regulatory authority has been established.

The core procurement regulatory functions are:

- a) advising the contracting entities on PPL;
- b) monitoring public procurements.

Chart 3 illustrates the results of the review of Estonia's PP institutional framework.

Scope of regulation

PPL covers both national and local government procurement and provides specific rules for public law institutions. PPL establishes specific provisions for the utilities sector. PPL generally introduces regulation concerning concluding concessions. Other procedures and issues related to concessions are regulated by separate legal acts. PPL clearly distinguishes between public procurement contract procedures and concessions.

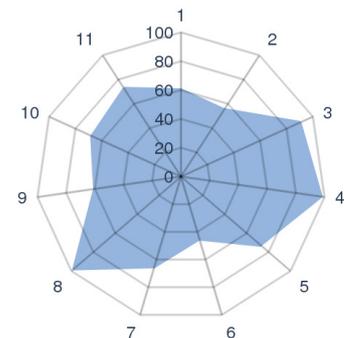
Although PPL in general provides a decentralised procurement function, it has established a Central Purchasing Body.

Eligibility rules

PPL establishes grounds for obligatory exclusion which are, among others:

- a) conviction by a final judgement for organising a criminal group or belonging to one;
- b) violation of the requirements of public procurement and committing certain offences;
- c) bankruptcy, liquidation procedure or suspension of business activity;
- d) lack of fulfilment of obligations regarding payment of taxes or social insurance;
- e) submission of false data.

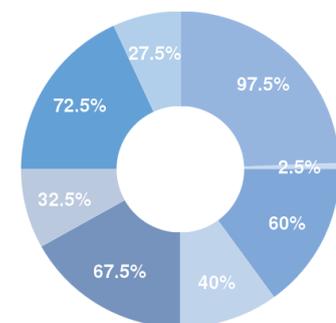
2. Quality of PP legal framework



1. Accountability
2. Integrity
3. Transparency
4. Competition
5. Economy of the process
6. Efficiency of public contract
7. Proportionality
8. Uniformity
9. Stability
10. Flexibility
11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

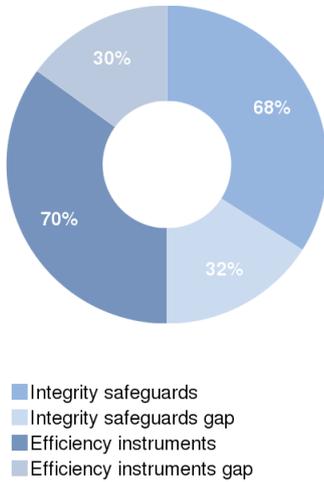
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

In addition to general grounds for obligatory exclusion, PPL also establishes facultative grounds for exclusion such as grave professional misconduct concerning professional or occupational behaviour. Misconduct of this nature can be proven with the decision of the court of honour of an occupational or professional association or similar.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities. Tenderers may be requested to demonstrate: professional activity, technical capacity, economic and financial standing, and professional qualifications.

PPL enumerates all certificates that may be required from the tenderer by the contracting entity to prove his compliance with the qualification criteria set out in the contract notice.

The procurement procedures

PPL provides both tendering and negotiation procedures including:

- open tender
- restricted tender
- negotiated procedure
- competitive dialogue
- direct contracting.

Open tender and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile. PPL incorporates a clear test as to the choice between tendering and negotiated procedures, following EU PP Directives.

The procurement time and cost effectiveness

PPL requires the public procurement to be accomplished in a reasonable time; however, it does not allow for an accurate estimation of the length of the PP process for the procurement of public works and goods of significant value. Several specific deadlines have been established, both for tenderers and contracting entities, and deadlines for submitting tenders are com-

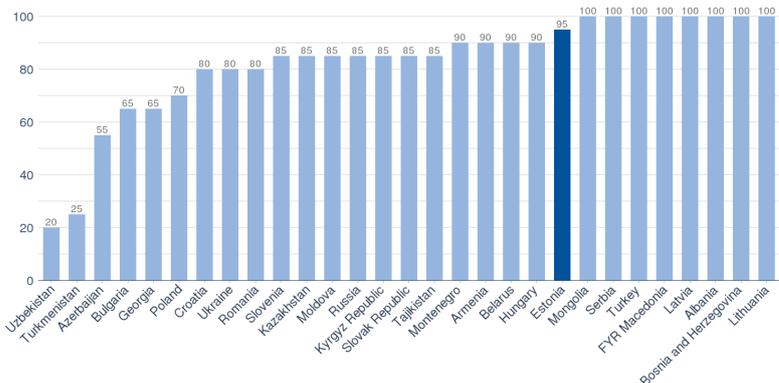
pliant with EU PP Directives. There are no general rules on the tender validity period: contracting entities establish the tender validity period in the tender documents. PPL requires mandatory aggregation of lots and provides contract valuation methods taking into account all potential costs of the purchase or works. PPL establishes regulations regarding the use of specific communication methods, including mandatory use of electronic communication.

The cost of the procedure should be kept low. The contracting entity may request tender security amounting to no more than one percent of the estimated value of the public contract. The contracting entity is entitled to determine language requirements and the currency in which the value of the tender should be submitted.

Review and remedies

Estonian PPL provides for administrative review of PP complaints. A complaint may be lodged in cases where the contracting entity has infringed PPL provisions or violated the tenderer's rights. The review is conducted by the independent Public Procurement Appeals Committee. The review decision is final unless appealed to the court within 30 days (since its announcement).

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Estonia

Public contract management

Procurement planning is not mandatory under PPL and PPL does not provide for budget or financing authorisation prior to publication of a contract notice.

PPL does not require the contracting entity to provide management of the public contract; however, amendments to the public contract should be monitored.

not all integrity safeguards and efficiency instruments generally recommended by international PP standards have been adopted.

Regulatory risks

PPL does not sufficiently regulate the pre-tendering and post-tendering phases of the PP process. Accountability of contracting entities should be increased and e-Procurement solutions should be more actively promoted.

Assessment overview

Strengths

PPL in Estonia clearly promotes transparency, competition and uniformity in public procurement and scored a very high level of compliance in these areas (average 90% compliance rate). PP policy has focused on adopting integrity safeguards; it is less comprehensive when it comes to efficiency instruments.

PPL provides for an enforcement mechanism and a remedies system. In addition, PPL stipulates that, if applicable, PP remedies should be simple, quick, and inexpensive. PPL provides for different procurement procedures suitable for different contract types.

Weaknesses

In the 2010 assessment Estonian PPL scored low in efficiency and stability indicators (50% - 60% compliance rate respectively).

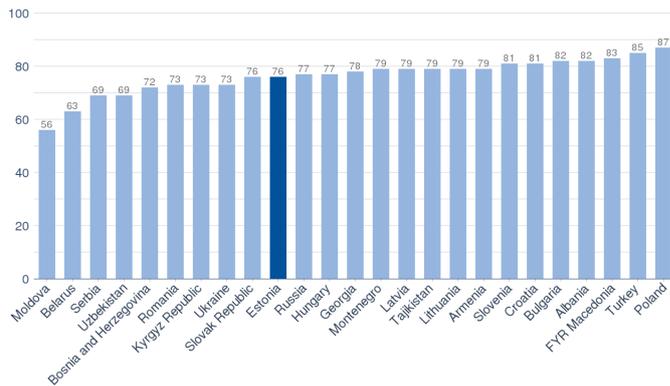
The PP framework is not stable and certain specific rules have been amended several times; however, most of the PPL amendments have resulted from implementation of EU PP directives.

Opportunities

PPL provides for modern, uniform and quite comprehensive regulation, in accordance with EU PP Directives; however,

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Some local practitioners do not consider the legislative framework to be clear, comprehensive, and conducive to a competitive procurement environment and several contracting entities supplement PPL with internal procurement rules. With some exceptions, internal roles in the procurement process are not clearly allocated in spite of regular training for PP staff. Chart 2 presents the scores for the general quality of local PP practice in Estonia (average compliance rate 76%).

Regulatory institutions

PPL is monitored by a dedicated unit in the Ministry of Finance. Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

IA survey of local practice confirmed that PPL covers both government and utilities procurement. Exceptions and exclusions are compliant with EU PP Directives.

Eligibility rules

In practice the contracting entities establish prequalification criteria which include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities.

Affiliates of the contracting entity are generally eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

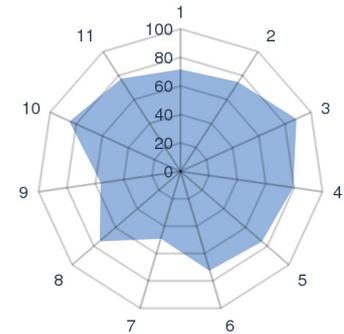
The procurement procedures

Tenders are typically used although negotiated procedures can be used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain their choice of procurement method.

The procurement time and cost effectiveness

Procurement plans to govern the procurement activities in each fiscal year are prepared only in some cases. A test to ensure that the scope and subject of public procurement is economically justified is not always mandatory and PPL does not

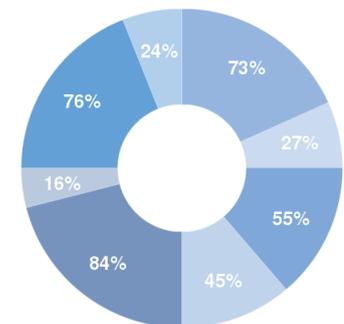
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

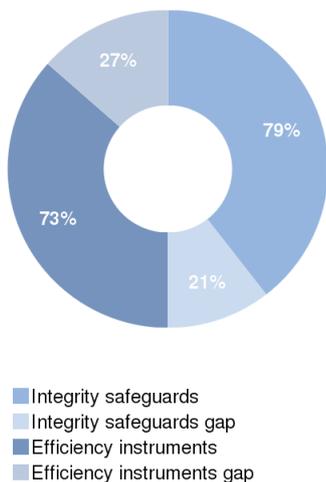


Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Estonia

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

always provide for a mandatory assessment of all relevant procurement risks. Contracting entities are not able to estimate how long it takes in practice to sign PP goods or works contract of significant value.

In Estonia a wide range of standard documents is available and used in practice. However, standard forms of contract notices, standard forms of procurement reports and local or internal standard forms of tender securities have not been fully introduced in practice. Tender documents are available free of charge. In most cases sufficient time is provided to prepare and submit a tender; tender evaluation is also usually completed within the original validity period. Several contracting entities have established internal PP monitoring and auditing procedures.

Review and remedies

Complaints are heard by a court or by an impartial and independent review body, the Public Procurement Appeals Committee.

Estonian PP remedies procedures are, in principle, straight-forward and effective; they are not always non-discriminatory but they are not perceived to be corrupt. Both the cost and speed of the proceedings are considered reasonable. Obtaining a review decision takes between 30 and 45 days. Procurement reports are fully disclosed to the remedies body. Remedies procedures may take place in public and are duly recorded.

Public contract management

In practice, contract administration is provided for and management of contracts is quite well developed in Estonia. Not all contracting entities have established internal policies on public contract cancellation. However, in cases where a public contract has been cancelled, the contracting entities are obliged to specify a reason for doing so.

Although public contracts are generally completed on schedule, they are not always completed within the original contract price.

Assessment overview

Strengths

In the survey of local PP practice, Estonian practice scored high in transparency, competition and flexibility indicators. In practice, tender documents furnish all information necessary to submit a responsive tender. Contract notices and tender documents are published on the official website and are available free of charge.

Weaknesses

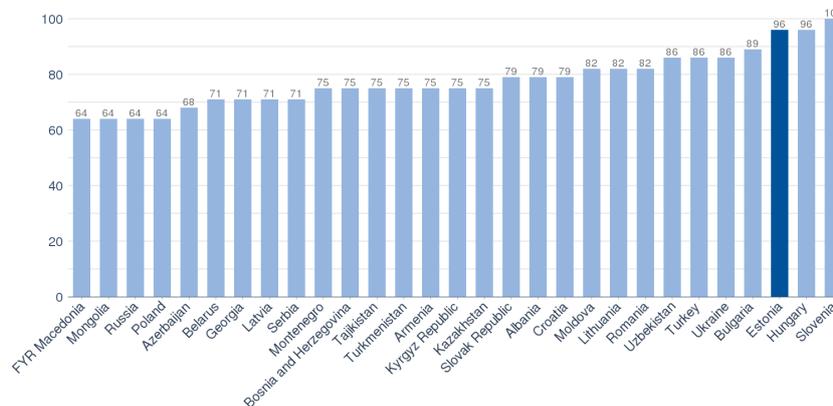
Estonian PP practice scored low on the stability and proportionality indicators which suggest that distinguishing between short and long term contracts, small and high value contracts as well as aligning suitable procurement procedures with different contract types is not well implemented in practice.

Opportunities

In spite of some implementation problems regarding local institutional framework, the Estonian remedies body received relatively good marks from local practitioners.

Risks

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Local PP practice in Estonia is good and highly compliant with international standards but not outstanding in the EBRD region. It is common for contracting entities to adopt internal procurement rules, supplementing national legislation. However, not all of the contracting entities have clearly allocated internal roles in the procurement process with key PP functions assigned and duly staffed. Moreover, internal PP monitoring and auditing arrangements have not always been established. It has also been reported that public contracts are not generally completed within the original contract price.

III. Conclusions

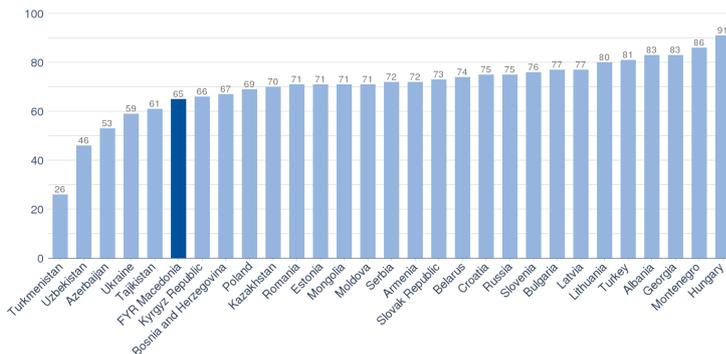
Estonia achieved a medium to high level of compliance in the quality of its legal PP framework (average 71% compliance rate) and its PPL is the most uniform legal framework in the EBRD region (100% compliance rate). The Estonian institutional framework is comprehensive, yet some substantial regulatory gaps were identified. PP policy making is reasonably responsive to local market challenges and several (but not all those recommended) integrity safeguards and efficiency instruments have been adopted.

In the assessment of local practice Estonia scored 76% compliance rate (high compliance), yet several implementation gaps were identified: in particular, in implementing procurement efficiency instruments.

Finally, local PP practice in Estonia scored 11% compliance rate in the PP sustainability survey. These marks are significantly lower than the scores of other EU Member States in the EBRD region.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public Procurement Law in FYR Macedonia is regulated by the Law on Public Procurement adopted on December 3rd 2007, published in the official Gazette of R.M. No.136/07; 130/08 (PPL). In the EBRD 2010 assessment, PPL scored at a low to medium level of compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of law are presented in Chart 2.

Regulatory institutions

FYR Macedonia established the Public Procurement Bureau (PPA), as a central government body within the Ministry of Finance. The Minister of Finance proposes the Director of PPA who is then appointed by the Prime Minister for a four-year term of office.

The Public Procurement Bureau's core functions are:

- a) submitting proposals to the Minister of Finance in the field of public procurement;
- b) monitoring and analysing enforcement of the law and public procurement;
- c) initiating amendments for improving the public procurement system;

- d) preparing standard tender documentation and standard model forms for the contract award procedures;
- e) keeping and updating records of the public contracts awarded, and publishing them on its website;
- f) determining minimum requirements for professional qualifications for the persons performing professional activities in the field of public procurement;
- g) organising and conducting training for civil servants and other competent persons with respect to public procurement;
- h) managing and updating its website and the ESPP (Electronic System for Public Procurement).

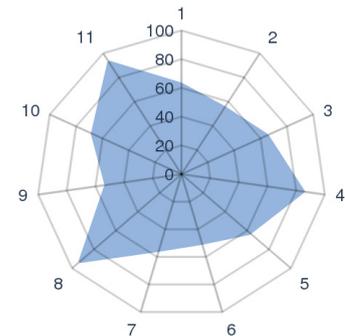
Chart 3 illustrates the results of the review of the Macedonian PP institutional framework.

Scope of regulation

PPL covers both national and local government procurement and provides specific procurement rules for public law institutions. PPL covers the utilities sector, which is regulated in a separate chapter within PPL.

Concessions are regulated by separate legislation. A new Law for Concession and other types of Public Private Partnerships was adopted in January 2008. In spite of

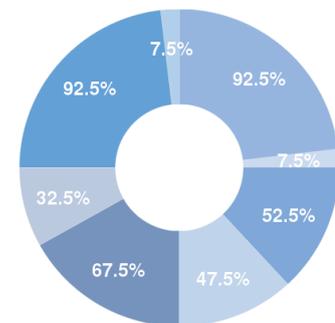
2. Quality of PP legal framework



- 1. Accountability
- 2. Integrity
- 3. Transparency
- 4. Competition
- 5. Economy of the process
- 6. Efficiency of public contract
- 7. Proportionality
- 8. Uniformity
- 9. Stability
- 10. Flexibility
- 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

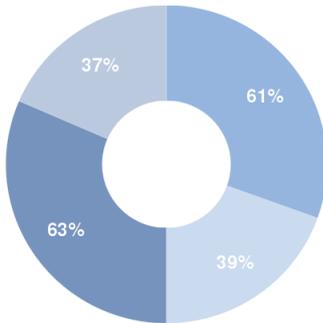
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

recent legislation, PPL has failed to introduce a clear differentiation between public procurement contracts and procedures and concessions. Generally, PPL provides a decentralised procurement function and may establish a Central Purchasing Body, at the government's discretion.

Eligibility rules

In principle PPL establishes primary eligibility rules. Among the grounds for exclusion are:

- a) bankruptcy, liquidation procedure;
- b) lack of fulfilment of obligations regarding payment of taxes or social insurance;
- c) submission of false data;
- d) suspension of business activity resulting from professional misconduct and conviction by a final judgement for certain crimes.

PPL allows the contracting entities to assess and verify whether a tenderer is competent, reliable and capable of executing the contract against the minimum qualification criteria, set by the contracting entities in the tender documentation.

PPL determines the following qualification criteria:

- a) personal situation;
- b) ability to pursue the professional activity;
- c) economic and financial standing;
- d) technical and professional ability;
- e) quality assurance standards;
- f) environmental management standards.

To show compliance with eligibility rules and prequalification requirements specified in tender documents, the tenderers may be obliged to provide appropriate evidence, such as certificates.

The procurement procedures

PPL provides for various types of procedures:

- a) open tender;
- b) restricted tender;
- c) negotiated procedure with publication;
- d) competitive dialogue;
- e) negotiated procedure without publication;
- f) direct contracting;
- g) design contest.

Open and restricted tenders are the default procedure. Following EU PP directives, PPL incorporates a clear test as to the choice between tendering and negotiated procedures. The contracting entity may apply other procedures only

in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

Open procedure is carried out in one phase and the contracting authority may use electronic auction as an additional phase. Moreover, PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

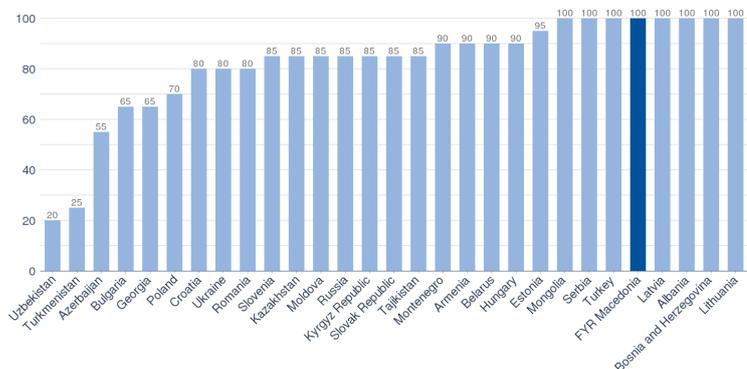
PPL has introduced some e-Procurement solutions, but conducting PP electronically is not mandatory for Macedonian contracting entities.

The contracting entities may conduct open and restricted tenders electronically using the central e-Procurement platform, Electronic System for Public Procurement (ESPP).

ESPP enables contracting entities and tenderers to:

- a) publish contract notices and contract award notices;
- b) publish and access all tender documents;
- c) ask and answer questions during the procurement procedure;
- d) submit and evaluate tenders;
- e) conduct auctions.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

FYR Macedonia

The procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process. PPL determines several specific deadlines but does not require PP procedures to be finalised in a reasonable time. Following EU PP Directives, deadlines for submitting tenders are well regulated. Yet, PPL does not provide any deadlines for tender evaluation or for concluding a contract after award decision.

The value and scope of contracts are not aligned to the formality of the procedure. PPL does not provide contract valuation methods taking into account all-life costs of the purchase or works; however, it requires mandatory aggregation of lots. The contracting entity may not divide the public contract into multiple separate contracts with lower value, nor apply methods for calculating the estimated value of the contracts to avoid certain PP procedures. PPL does not require the contract terms and conditions to be fair and balanced, reflecting best available business practice. If a tender is not conducted on the e-Procurement platform, communication may be traditional or modern, as chosen by the contracting entity.

The contracting entity also determines the currency or currencies in the tender documentation, as well as the base currency to be used in the evaluation of tenders. PPL does not establish any clear guidelines regarding languages; it is assumed that tenders can be submitted only in the official language.

PPL does stipulate that costs of participation in the process should be kept low. In addition, PPL provides a clear test as to when the contracting entity should seek a tender security. Tender security should be valid at least 14 days after the tender validity period and its value should not exceed 3% of the tender value.

Review and remedies

The law in FYR Macedonia provides administrative review mechanisms, with a

judicial review of the remedies decisions. Tenderers who suffered or could suffer damage by an alleged infringement of PPL may lodge a complaint against the decisions and other actions or failures to undertake action during PP procedure.

All complaints should be submitted to and are reviewed by the State Appeals Commission, an independent PP remedies body. Submitting a complaint suspends the signing and execution of the public contract. The review decision of the State Appeals Commission is final, unless appealed to the administrative court.

Public contract management

PPL requires mandatory planning of public procurement. The contracting entity adopts a procurement plan covering its procurement for the budget year by types of goods, services and works, setting out the time it expects to initiate the procedure, the estimated value of the contracts and the type of procedure to be used for each contract. The annual procurement plan may be amended or modified during the year.

The contracting entities are not required to provide contract management of a public contract. There is no mechanism to introduce amendments or modifications in the post tendering phase.

Assessment overview

Strengths

In the 2010 assessment the FYR Macedonia PPL scored a medium level of compliance with the benchmark, with exceptionally high scores in uniformity and enforceability indicators (92.5% compliance rate) and good marks for competition measures. PPL provides for modern and uniform regulation in accordance with EU PP Directives. PPL introduces dedicated public procurement enforcement mechanisms and an independent remedies system is in place.

Weaknesses

The 2010 assessment revealed that PPL shows some significant regulatory deficiencies. PPL is not comprehensive; the pre-tendering and tendering phases of PP are regulated, but no contract administration regulations are provided. There are substantial regulatory gaps in recommended integrity safeguards (39% gap) and efficiency instruments (37% gap). PPL is not stable, but this is due to the recent alignment with EU PP Directives. The legal framework is also lacking in terms of flexibility, a 32.5% regulatory gap has been observed.

Opportunities

Efficiency instruments are slightly better regulated in FYR Macedonia than integrity safeguards. Establishing an e-Procurement platform is a step in the right direction. If use of the e-Procurement platform was made mandatory, it would significantly improve compliance with integrity and transparency standards.

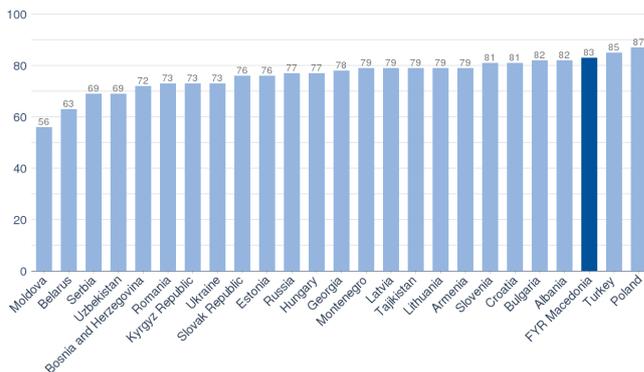
The assessment results confirm that a modern efficiency-oriented approach to PP regulation has been adopted, and PP reform is underway in FYR Macedonia. With further improvements, a high level of compliance with international PP standards can be achieved.

Regulatory risks

The assessment revealed that PPL does not sufficiently curb corruption in the PP process and the accountability of contracting entities should be improved. Currently, not all efficiency instruments recommended by EU PP Directives have been adopted.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

In the local PP practice survey, local practitioners reported that the PP framework is considered to be clear and comprehensive. In order to eliminate legislative gaps, the contracting entities frequently introduce internal procurement rules covering the pre-tendering and post-tendering phases of the PP process, which are updated following amendments of PPL, usually once per year. The local contracting entities claim that internal roles in the procurement process are, in principle, clearly allocated and contracting entities generally disclose procurement rules and decisions to the public.

It is not common practice to provide regular training for procurement staff and only some contracting entities organise such training.

Chart 2 presents the scores for the general quality of local PP practice in FYR Macedonia (average 84% compliance rate).

Regulatory institutions

Compliance with PPL is monitored by a unit in the Ministry of Finance, the PPA, as well as a dedicated and independent

PP remedies body. Chart 3 illustrates how the Macedonian institutional framework has been evaluated by local contracting entities and PP practitioners.

Scope of regulation

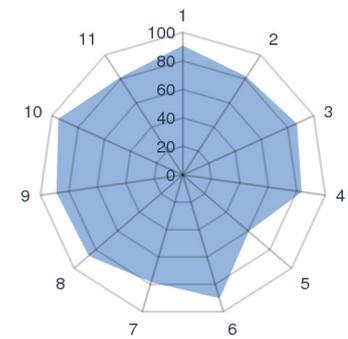
A survey of local practice confirmed that, in the FYR Macedonia, both the government and utilities sector entities apply PPL to their procurements. Exceptions and exclusions are compliant with EU PP Directives.

Eligibility rules

In practice, eligibility rules are adhered to. Contracting entities will usually set prequalification criteria, regarding experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. False declarations are grounds for exclusion from the procurement procedure.

Finally, in practice, affiliates of the contracting entities will tender for public contracts, as there is no restriction to forbid their participation.

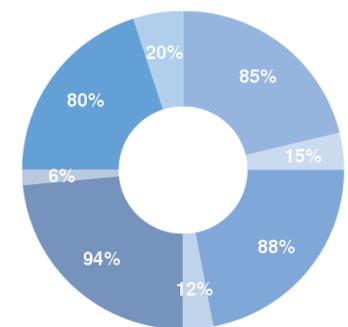
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

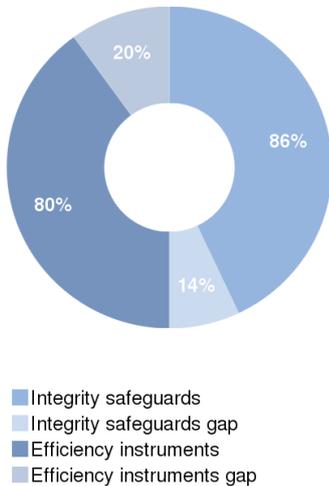


Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

FYR Macedonia

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement procedures

Tenders are typically used though negotiated procedures can be used for specific or complex contracts. In most cases, it is necessary for the contracting entity to explain their choice of procurement method.

The procurement time and cost effectiveness

In practice, a test to ensure that the scope and subject of public procurement is economically justified is mandatory. PP plans are prepared to coordinate procurement each budget year using internally produced templates or standard software packages. For most contracting entities it is mandatory to complete the PP plan before a process is started. As a consequence, technical, financial and procurement planning is coordinated. Reasonable assessment of relevant procurement risks is not always mandatory; however, each

procurement is evaluated by a specially appointed evaluation panel and monitored by the relevant supervisor.

The contracting entities establish internal procurement rules and auditing and monitoring arrangements, which monitor changes in the procedure as well as amendments to public contracts once the procurement process has been launched. The local contracting entities reported that modifications or waivers of the terms and conditions of a contract are, in principle, subject to an internal review and approval procedure.

A wide range of standard PP forms and templates is available (some of them are mandatory) as well as national and internal guidelines on how to draft the tender documents, contract notices, and procurement reports. However, contracting entities do not always allow the use of standard international contract forms for all types of public contracts.

According to local practitioners, PP of goods to the value of 250,000 Euros as well as PP of works to the value of 500,000 Euros takes from 44 to 100 days (from initiating the PP to signing a contract). In principle, sufficient time is allowed to prepare and submit tenders.

There are no delays in tender evaluation: normally tender evaluation is completed within the original tender validity period.

Finally, tender documents are available but not free of charge.

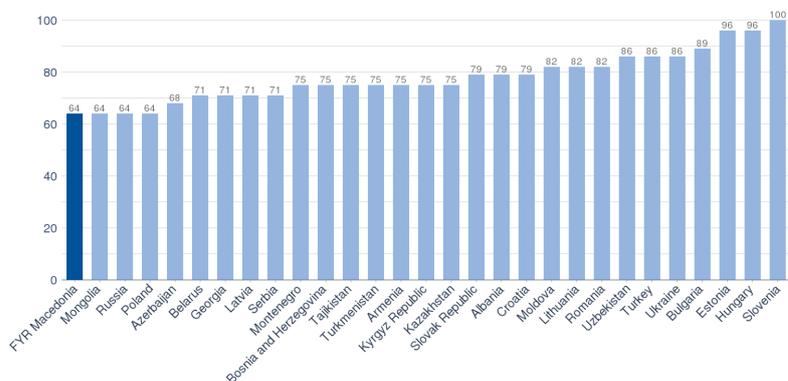
Review and remedies

In the survey of local practice the remedies proceedings were evaluated by local contracting entities as effective, straightforward and not discriminatory. This statement is, however, in contrast to the reports of local practitioners who perceive the remedies body as corrupt.

The cost of the remedies is mostly bearable and the speed of the proceedings is considered timely, but it takes more than 45 days to obtain a review decision.

In principle, tenderers have access to all remedies proceedings and may defend their position, as public hearings are conducted and duly recorded. However, local practitioners claim that frequently some procurement reports are not disclosed to the remedies body.

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Public contract management

In practice, contract administration is generally mandatory for public contracts. Contracts are generally completed on schedule, within the originally approved budget. Procurement evaluations or audits are conducted and followed by periodic reports on PP function. Typically, contracting entities adopt internal policies on public contract cancellation. Compensation, in cases when a public contract is cancelled, is not available. However, in a case of cancellation, the contracting entity is required to specify a reason.

Assessment overview

Strengths

Local procurement practice in the FYR Macedonia scored a high level of compliance (average 84% compliance rate), better than the evaluation of local PPL. Local contracting entities have supplemented PPL with internal procurement rules, so PP procedures are perceived to be competitive and transparent. Usually, in practice, there are appropriate internal procedures in place to plan procurement, manage the PP process and monitor delivery of public contracts.

Weaknesses

In the local PP practice survey, there is no element of practice which scored low compliance (below 50% compliance rate). However, the assessment revealed that the economy of the PP process is insufficient and scored a relatively low compliance rate of 59.38 %. In the practice survey, the Macedonian institutional framework got lower marks than the regulatory framework, with increasing gaps in the implementation of PPL (gaps in implementation are twice the size of gaps in legislation). The 2010 assessment revealed that implementation of PP laws is still problematic and capacity building efforts should be increased.

Opportunities

Local PP practice in the FYR Macedonia is generally of good quality and scored a high level of compliance in 9 out of 11 key benchmark indicators (80% to 89.47% compliance rates).

Local contracting entities aim to achieve 'value for money' and supplement national PP regulation with internal procurement rules, increasing the transparency and efficiency of procurements. This has resulted in better scores for both integrity and efficiency indicators in the quality of practice evaluation.

In addition, due to a wide range of standard forms and guidelines on drafting tender documents, a good level of uniformity of local PP practice has been achieved.

Risks

Based on the assessment results, there are major risks arising from inadequate enforcement and failure to use the e-Procurement solutions available. Although the contracting entities confirm that PPL provides for electronically conducted PP procedures, not all of them are keen to conduct their PP procurements electronically on the central e-Procurement platform. Some disincentives to international trade were also observed, as typically tender documents are formulated only in the contracting entity's official language and they are not usually available in other languages. Only rarely do contracting entities allow the tender or proposal to be submitted in a language commonly used in international trade.

III. Conclusions

PPL in FYR Macedonia achieved a medium level of compliance in the assessment of the quality of legal PP framework (63% compliance rate). In spite of the medium level of compliance, the Macedonian institutional framework is comprehensive and no substantial regulatory gaps in the insti-

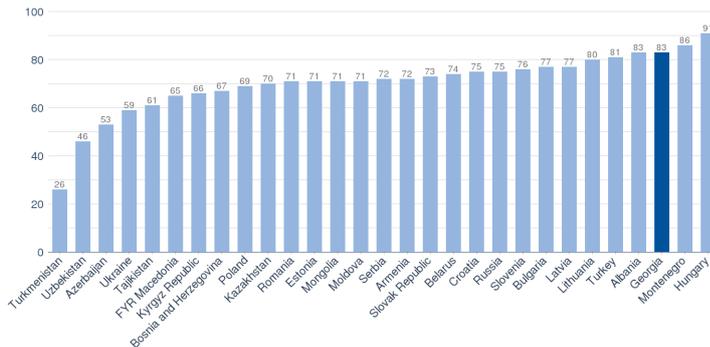
tutional framework were identified. Local PP policy making is somewhat responsive to local market challenges, but several of the recommended integrity safeguards and efficiency instruments have not been incorporated. Substantial regulatory gaps were identified in the assessment.

In the assessment of local practice FYR Macedonia scored an 84% compliance rate (high compliance). This is significantly higher than in the assessment of quality of legislation (medium compliance). In spite of this assessment, several implementation gaps were identified and the general conclusion is that there are substantial gaps in the implementation of PP laws and enforcement capacities.

Finally, local PP practice in FYR Macedonia scored a 33% compliance rate in the PP sustainability survey. This mark is similar to the scores of other countries in the EBRD region.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Georgia is regulated by the law of Georgia on State Procurement (April 20, 2005) PPL. In the EBRD 2010 assessment PPL scored high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

An independent public procurement regulatory body, the Public Procurement Agency (PP Agency) has been established and is responsible for developing the PP policies and monitoring compliance of PP practice. The Chairman of the PP Agency is appointed by and reports to the Prime Minister of Georgia.

The main functions of the PP Agency are:

- a) development of PP regulation and standard tender documents;
- b) harmonisation with international standards;
- c) monitoring procurement procedures;
- d) carrying out tenders when consolidated.

Chart 3 illustrates the results of the review of the Georgian PP institutional framework.

Scope of regulation

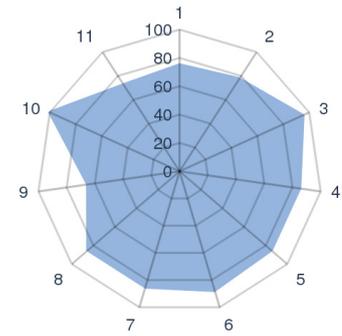
The law covers national and local government procurement and includes procurement rules for public law institutions when those entities spend public funds. PPL does not contain specific procurement rules for the utilities sector.

Concessions are regulated by a separate Law (The Law of Concessions), and PPL clearly differentiates between public procurement contracts and procedures and concessions. The law does not establish a Central Purchasing Body. However, according to PPL, at the discretion of the Government of Georgia, a consolidated tender may be used in the procurement of similar objects.

Eligibility rules

PPL does not establish primary public procurement eligibility rules. However, the Public Procurement Agency, based on a secondary law, has established a register which includes blacklisted participants, bidders and suppliers who are forbidden to participate in procurement procedures (Register). Those tenderers entered into

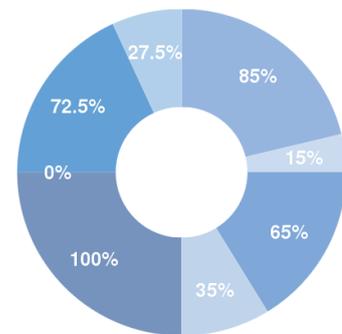
2. Quality of PP legal framework



- 1. Accountability 2. Integrity 3. Transparency
- 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity
- 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

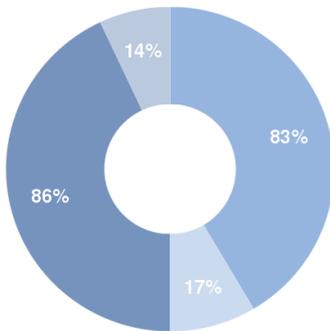
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

the Register are unable to submit tenders for a year.

In addition, the contracting entity for each procurement sets forth qualification requirements for the tenderers. Qualification criteria have to be fair, non-discriminatory and conducive to the promotion of competition principles.

To show compliance with eligibility rules and prequalification requirements specified in tender documents the tenderers may be obliged to demonstrate appropriate evidence, such as certificates.

The procurement procedures

PPL provides for various types of procurement procedures:

- a) open tender;
- b) direct contracting;
- c) request-for-quotations;

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows.

In addition, requests for quotations may be used for the procurement of goods or services, with an estimated value of less than GEL 100,000 as well as for the procurement of works with an estimated value of less than GEL 200,000.

PPL does not provide for negotiated procedures and forbids any negotiations during the tender.

eProcurement is carried out in a simplified e-tender.

The procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process. PPL establishes several specific deadlines for procurement stages:

- a) the tender notice must be published not less than 20 days from opening the tenders.
- b) tenderers must be informed about tender results 5 days after the decision was made.
- c) the contract must be concluded within 10 days of informing the tenderer the contract was awarded.

PPL provides for mandatory aggregations of lots. Procurement of similar goods,

services or works during a contracting entity's budget year shall be regarded as one procurement if it is funded under the same budget. Splitting a procurement to avoid monetary thresholds set forth in PPL is not allowed.

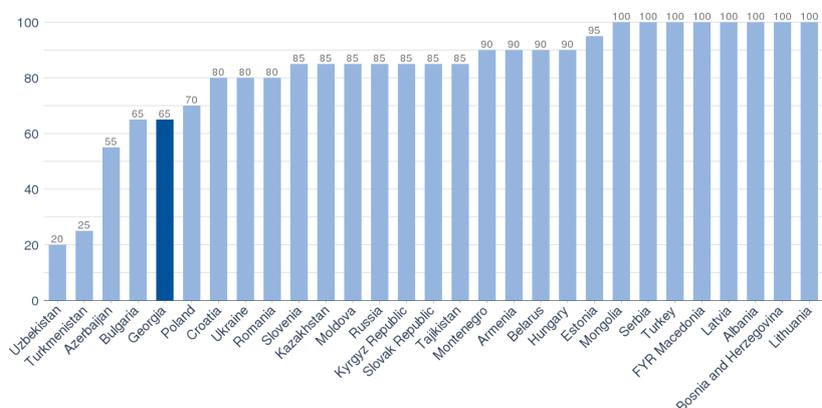
PPL requires formalities to be kept simple and aligns the value and scope of the contract to the formality of the procedure.

PPL contains clear requirements on methods of communication including the mandatory use of electronic communication where the law allows.

PPL stipulates that the costs of tender participation should be kept low. A flat fee of GEL 150 (63 Euros) shall be set for tender documents, and GEL 50 (21 Euros) for the submission of a tender or proposal. Detailed rules for fee payment are established in a secondary law. The contracting entity may seek a tender security, stating its maximum amount in the contract notice.

If the estimated value of goods or services subject to procurement is over GEL 600,000 and, if the estimated value of works is over GEL 8,000,000, the contracting entity shall publish the tender announcement in one of the languages

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Georgia

accepted in international trade. If the estimated value of goods or services to be procured is over GEL 500,000 and the estimated value of works is over GEL 1,000,000 publishing an e-tender announcement in English is mandatory. In all other cases, tender documents may be published in a foreign language at the discretion of the contracting entity.

Review and remedies

Prior to the conclusion of a public procurement contract, tenderers may take legal action against the contracting authority or tender commission which violated PPL rules and infringed their rights.

There are certain exemptions from the general right of the tenderer to appeal.

The tenderer may not file a complaint about:

- a) selection of the procurement method as long as it is in compliance with PPL;
- b) the decision of a contracting entity to suspend or terminate a procurement procedure which has been adopted in compliance with PPL ;

A unit within the PP Agency has been established to review complaints, and consists proportionately of the PP Agency's and the NGO's representatives. The contracting entity or the PP Agency delivers a decision and informs the claimant within 10 days of receiving a complaint.

Public contract management

PPL requires mandatory planning of public procurement. The contracting entity shall perform procurement functions in accordance with an approved annual plan. In the case of a long-term procurement, the PP Agency shall be notified after the Georgian Ministry of Finance and/or a finance unit of a relevant local self-government body has approved the procurement.

PPL does not require contracting entities provide for contract management of a public contract.

No new conditions which change the

nature of the contract established in the contract notice and which were the basis for selection of the tenderer may be added to the contract.

Amendments which violate the law on public procurement are deemed invalid. Contract performance security, if requested, must be submitted in the form required by the contracting entity.

Assessment overview

Strengths

PPL contains sound basic principles and comprehensively regulates the procurement process and guides the drafting of tender documents. PPL allows the use of standard international contract forms for all types of procurement. In addition, PPL allows tenders and qualification documentation confirming compliance with requirements to be submitted electronically (i.e. without a certified electronic signature).

PPL has demonstrated high compliance in terms of transparency, competition and flexibility, mainly due to the extensive use of e-procurement and effective publicising of procurement opportunities. PPL makes advertisement of contracting opportunities mandatory, and requires the mandatory publication of contract award notices and tender documents. Documents related to the tender are available to the public. PPL requires the public tender opening to take place promptly after the deadline for the submission of tenders and the procurement process is duly recorded.

Weaknesses

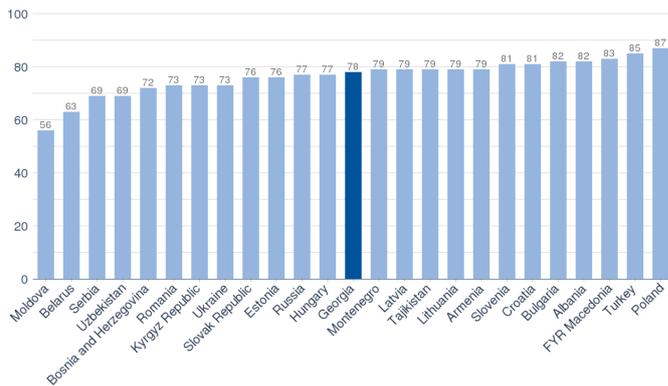
Georgian PPL scored low in stability as it has been substantially changed within the last three years. This weakness can be easily forgiven as these amendments to PPL improved the legal framework dramatically.

Opportunities

PPL in Georgia focuses on efficiency and economy of the public procurement. Efficiency instruments are better regulated in PPL than integrity safeguards, yet the assessment has revealed some gaps in both efficiency (14%) and integrity (17%) measures. The Georgian PP policy features are balanced and at a relatively high compliance level.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The assessment of local PP practice confirms that the Georgian PP framework is essentially clear, comprehensive, and conducive to a competitive procurement environment. Internal procurement rules are effective and frequently updated. The roles in the procurement process are generally clearly allocated. In practice internal procurement rules and decisions are disclosed. Not all contracting entities organise regular training for their PP process stakeholders.

Chart 7 presents the scores for the general quality of local PP practice in Georgia.

Regulatory institutions

Compliance of PP procedures with the law is monitored by a dedicated and independent public regulatory authority, the PP Agency. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

A survey of local PP practice confirmed that PPL covers most of the public sector in Georgia, government and utilities contracting entities, in particular.

Eligibility rules

In practice, eligibility rules are respected. Typical qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities. False declarations submitted by the tenderer may be used as a reason to exclude the tenderer from the procurement procedure. Tenders are evaluated on the basis of the criteria specified in the tender. Moreover, submission of responsive tenders, compliant with conditions stipulated in the tender documents, is a requirement.

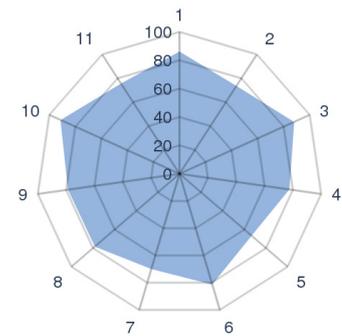
The procurement procedures

Generally PPL recommends tenders as the default procedure. In practice, negotiated procedures are used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain the choice of procurement method.

The procurement time and cost effectiveness

Review of local practice revealed that contracting entities employ a mandatory test to ensure that the scope and subject of public procurement is economically just.

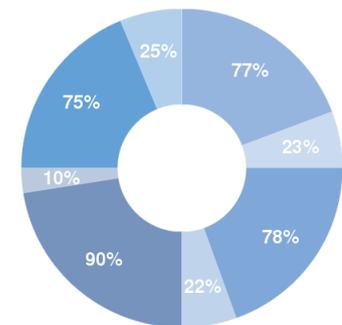
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

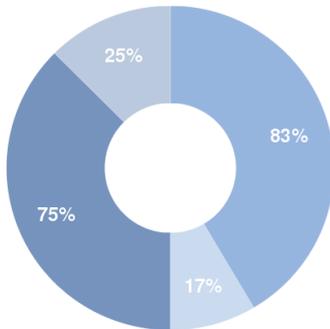
8. Institutional framework of PP practice



Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

9. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

tified, as well as providing for coordination of technical and financial procurement planning. Procurement plans are prepared every budget year using international or internal computerised standards.

For most contracting entities it is mandatory to complete the procurement plan before a PP process is initiated. In addition, internal PP monitoring and auditing arrangements are usually in place. With some exceptions, PPL provides a mandatory assessment of all relevant procurement risks.

Internal guidelines on drafting tender documents and standard forms of contract notices and reports are well provided for. Use of standard international contract forms for all types of procurement is not always possible. There are standard national tender documents for goods, works and services and their use is generally mandatory. Moreover, standard national

contract forms are also mandatory in Georgia. Once the procurement process has been launched, changes in procedure are monitored.

Local practitioners have said that that they are able to estimate the length of the procurement procedure for public procurement works contracts of between 500,000 Euros and 250,000 Euros. They have not, however, reported the actual duration.

Based on the assessment, sufficient time is allowed to prepare and submit a tender. The tender evaluation is generally completed within the original validity period.

Review and remedies

An administrative review procedure is available for all tenderers: it is straightforward and affordable. However, as it is not independent, not all contracting entities believe that it is effective and non-discriminatory. In most cases the speed of the review procedure is reasonable and it takes from 20 to 45 days to obtain a decision. Public contract management

In practice, contract administration is generally mandatory for public contracts. Contracts are generally completed on

schedule, within the originally approved budget. Procurement evaluations or audits are conducted and followed by periodic reports on PP function. Typically, contracting entities adopt internal policies on public contract cancellation. Compensation, in cases when a public contract is cancelled, is not available. However, in a case of cancellation, the contracting entity is required to specify a reason.

The review body is not perceived as corrupt. With few exceptions, hearings are held and all procurement reports are disclosed. The review proceedings are in public and fully recorded.

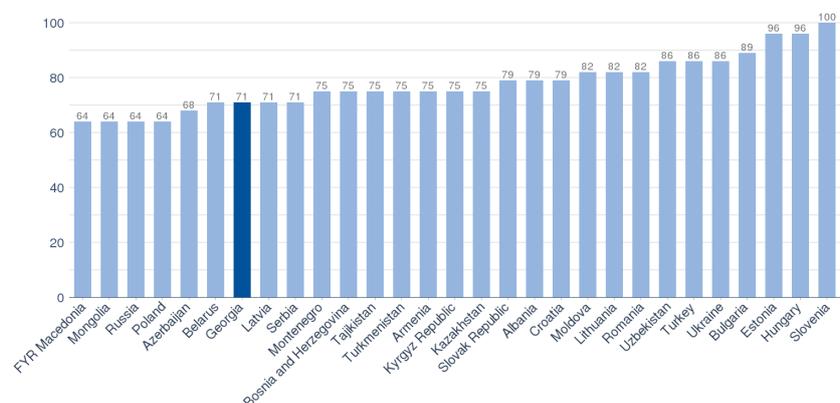
Public contract management

Contracts are generally well managed; however, the local practice is not fully compliant with international standards.

In practice, there are manual and computerised procurement and contract monitoring systems and appropriate procedures to monitor delivery of goods and services and payments.

Moreover, changes in contracts that take place after the procurement procedure has finished are also monitored. Also modifications or waivers of the terms and

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

conditions of a contract are generally subject to a review and approval procedure. Adequate contract administration records are maintained and there are periodic reports prepared on public procurement activities. Contracts are generally completed within the originally approved contract price and time. There are no internal rules or policy on contract cancellation nor are there internal policies regarding compensation when a public contract is cancelled. A review of practice shows that the reasons a contract has been cancelled have to be specified in general.

Assessment overview

Strengths

The quality of local procurement practice in Georgia is consistent and scores well above average in the EBRD region (84%). Implementation is still a problem, due to laws adopted only recently, and the desired efficiency of the PP system has not been achieved yet.

Weaknesses

There are no distinctly weak elements of practice, as the lowest score is above 60% (economy of the process). The whole life costing approach is not mandatory nor have all contracting entities got recurrent contract planning in place. The contracting entity may not always apply the requirement for tender security in public procurement.

Opportunities

Although there are no mandatory regulations for the pre-tendering and post-tendering phases in Georgia, the contracting entities supplement PPL with internal rules regarding those stages of procurement. The internal regulations are not always comprehensive, but usually cover key elements of the procurement process. Local PP practice is becoming more modern: the contract notice and procurement reports are generally published electronically.

Tender documents are formulated in the contracting entity's official language and in a language customarily used in international trade (except in cases when, due to the low value of the goods, construction or services to be procured, only domestic suppliers or contractors are likely to be interested).

Risks

Implementation of the revised PP legal framework is still an issue in Georgia. Electronic communication is not always available. Tender documents are not always published on the contracting entity's website and are not generally available free of charge. The PP institutional framework could be stronger and more effort put into capacity building. The review body is not perceived to be predictable and market aware. There are generally no regulations nor internal rules or policies on contract cancellation and compensation in cases where a public contract is cancelled.

In the assessment of local PP practice Georgia scored 78% compliance rate, lower than in the assessment of quality of PP legislation. Several implementation gaps were identified and a general conclusion is that there are substantial gaps in implementation of PP laws and institutional framework capacities. Local PP institutions were reported to be lacking uniformity and stability in their practice and providing insufficient enforcement (a 25% implementation gap has been identified in the enforcement indicators).

As a result, in local PP practice both integrity safeguards and efficiency instruments have not been properly implemented.

Finally, local PP practice in Georgia scored a 48% compliance rate in the PP sustainability survey. These marks revealed a very low compliance with international PP sustainability standards but these are similar to the scores of other countries in the EBRD region.

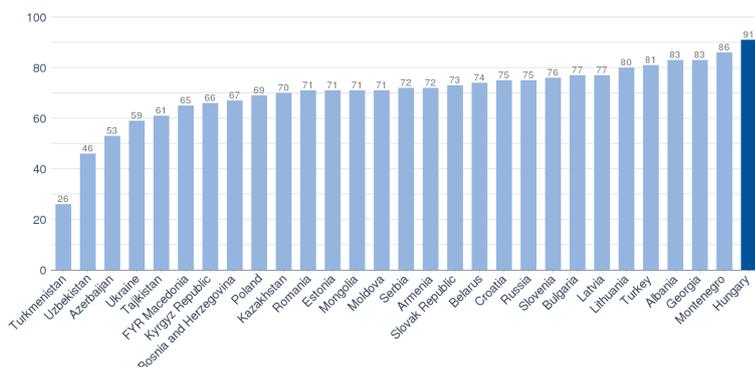
III. Conclusions

The quality of the PP framework in Georgia scored high among the EBRD countries of operation, with a compliance rate of 84%. The newly adopted PPL improved PP regulation significantly and provides a modern basis for future development.

The Georgian institutional framework is not yet sufficiently robust: some regulatory gaps in the institutional framework were identified (15% in the uniformity measures, 27.5% in the enforceability indicators and 35% in the stability of the local framework). As the newly adopted laws have improved PP regulations, this lack of stability is a minor issue yet insufficient enforcement and uniformity regulation could be a problem. In addition, current Georgian PP policy making has focused on adopting efficiency instruments and overlooked anti-corruption measures somewhat (a regulatory gap of 17% has been identified in the integrity safeguards).

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Hungary is regulated by the Act CXXIX of 2003 on Public Procurement (PPL), (amended on several occasions) and secondary legislation (Government Decrees and Ministry of Justice and Law Enforcement Decrees). In the EBRD 2010 assessment Hungarian PPL scored high to very high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Hungary, the Public Procurement Council (PPA), an independent authority has been established as a public procurement (PP) regulatory body. It consists of nineteen members, reporting to the Parliament.

The core function of the Public Procurement Council is monitoring enforcement of the legislation as well as initiating and amending legislation related to public procurement. Moreover, the Public Procurement Council is responsible for publishing the Public Procurement Bulletin contain-

ing contract notices, monitoring amendments and delivery of public contracts, and maintaining a register of the contracting entities.

Chart 3 illustrates the results of the review of the Hungarian PP institutional framework.

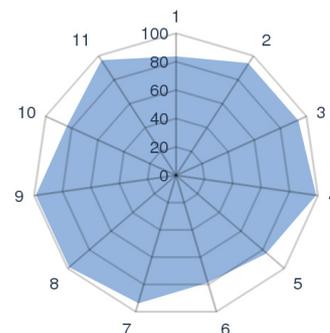
Scope of regulation

PPL covers both national and local government procurement and establishes specific procurement rules for public law institutions. PPL enumerates groups of governmental buyers, including state and local government agencies, organisations performing tasks in the public interest, and agencies that intend to realise their procurements from subsidies under EU funds, which are subject to public procurement obligations and which are deemed contracting entities.

PPL includes specific procurement rules for the utilities sector for organisations performing tasks in the public interest and operating in the sectors of water management, energy, transport and electronic communications.

Public works concessions and service concessions are partly regulated by PPL; however, a separate law – Law on Conces-

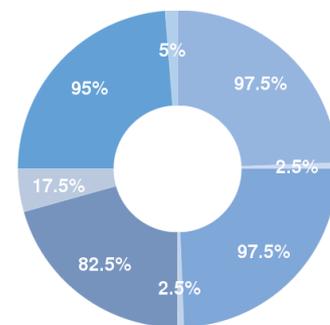
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

sion has been established regarding this issue. PPL provides the swap mechanism between the public procurement contract procedures and concessions.

PPL provides a decentralised procurement function as well as a Central Purchasing Body. The Government may conduct any public procurement in the framework of a centralised procedure. Local government is entitled to implement a public procurement process in the framework of a centralised procedure as well.

Eligibility rules

PPL determines primary eligibility rules which clearly state when tenderers are excluded from participation in the procurement procedure.

The main reasons for excluding tenderers are:

- bankruptcy, liquidation proceedings, suspension of business activity; professional misconduct; final conviction of an offence concerning professional activity,
- failing to fulfil obligations relating to

payment of taxes or social security contributions; submission of false information in previous procedures.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities. Tenderers may be requested to demonstrate: professional activity, technical capacity, economic and financial standing and professional qualifications.

PPL enumerates all certificates that may be required from the tenderer by the contracting entity to prove his compliance with the qualification criteria set out in the contract notice.

The procurement procedures

PPL provides both tendering and negotiation procedures including:

- open tender
- restricted tender
- negotiated procedure
- competitive dialogue
- direct contracting.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures.

Open tender and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. As far

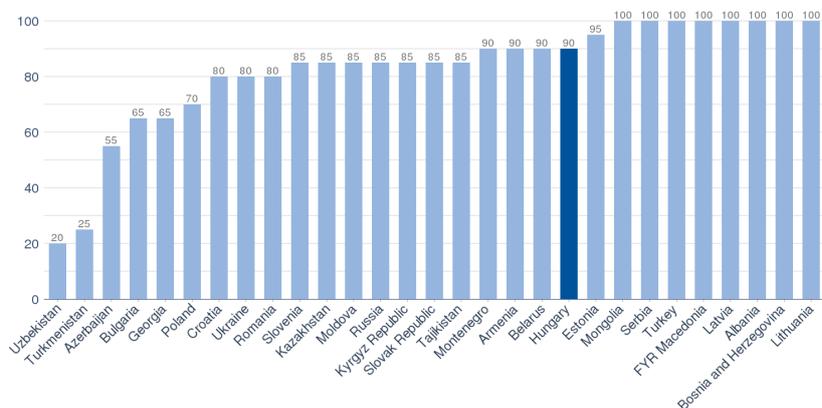
as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

The procurement time and cost effectiveness

PPL allows for an accurate estimation of the length of the PP process for the procurement of public works and goods of significant value. PPL requires the public procurement to be accomplished in a reasonable time. Therefore, several specific deadlines have been established to achieve this objective, both for tenderers and contracting entities. Deadlines for submitting tenders are compliant with EU PP Directives. PPL requires mandatory aggregation of lots but does not provide for contract valuation methods taking into account all-life costs of the purchase or works; nonetheless such a method can be introduced by the contracting entity. The cascaded thresholds have been established and the formality of the procedure is adjusted to the contract type and value.

PPL does not contain specific provisions regarding electronic or fax communication; this is regulated by Government Decree 257/2007. Currently, electronic communication or eProcurement has not been adopted as a mandatory solution.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Hungary

PPL stipulates indirectly that the costs of tender participation should be kept low. PPL does not contain a direct provision requiring the contract terms and conditions to be fair and balanced or reflecting best available business practice. If a tender security is requested, the contracting entities are obliged to set it forth details of it in the contract notice. PPL does not provide for a maximum amount of tender security, but requires setting the amount of the tender security proportionately to the contract value.

PPL allows for the use of languages other than the official language of Hungary; however, it does not clearly state rules on the use of languages. Contracting entities are obliged to set forth those rules in the contract notice. PPL does not contain any specific rules concerning currency in procurement procedures.

Review and remedies

PPL provides for independent remedies mechanisms. In addition, public procurements and public contract award procedures are regularly audited by the national audit bodies.

The Arbitration Committee for Public Procurement (the Remedies Body) works under the Public Procurement Council reviewing complaints regarding public procurements and deciding on PP remedies. In Hungary, tenderers may challenge a tender evaluation report by submitting a request for reconsideration. The contracting entity is obliged to reply within three days of receiving such a claim and notify all tenderers. When a request for reconsideration has been received, the contracting entity may not enter into a procurement contract within 10 days of its reply to the tenderers. If the tenderer is not satisfied with the decision of the contracting entity, the tenderer may file a claim for a remedy with the Remedies Body. This claim needs to be submitted within 15 days of notification of the contract award or from obtaining the tender evaluation report. The decision of the Remedies Body is final, unless the tenderer appeals the decision to the court.

Public contract management

PP planning is mandatory for contracting entities, except for the utilities sector. The plan should be prepared at the beginning of each budgetary year, preferably by April 15th, and should cover all public procurements for the next 12 months. PPL requires the contracting entities to provide appropriate contract management of the public contract. In addition, the contracting entity is requested to submit notification of any public contract extension or amendment and contract performance to be published in the Public Procurement Bulletin. In the case of long term public contracts, such notification is submitted annually and includes information about the performance of the contract to date.

Assessment overview

Strengths

PPL in Hungary clearly promotes transparency, integrity, and competition in public procurement and scored very high compliance in these areas (average 90% compliance rate). PP policy has focused on adopting integrity safeguards and providing significant enforcement instruments; it's less comprehensive when it comes to efficiency instruments.

PPL provides for a dedicated public procurement enforcement mechanisms and remedies system. PPL balances administrative and civil aspects of the PP framework well. In addition, PPL stipulates that, if applicable, PP remedies should be simple, quick and inexpensive. PPL provides for modern, uniform and comprehensive regulation, in accordance with EU PP Directives. In addition, the PP framework follows the principle of proportionality, distinguishing short and long term contracts, small and high value contracts as well as providing for different procurement procedures suitable for different contract types.

Moreover, the PP framework in Hungary

is stable. Certain specific rules have been amended several times; however, the core principles of the framework are very stable. Most of the PPL amendments have resulted from implementation of EU PP directives.

Weaknesses

PPL is based on sound principles and has no major weaknesses, scored below 50% compliance rate. Marks for efficiency and economy of the PP process are relatively low, due to insufficient adoption of the procurement efficiency instruments in the regulation of pre-tendering and post-tendering phases. In certain aspects PPL is outdated: electronic communication is not mandatory and limited and PPL does not require procurement monitoring and administration to be computerised.

Opportunities

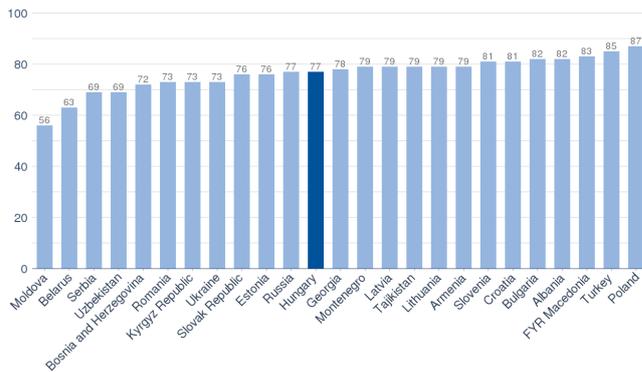
The Hungarian PP framework is, in principle, highly compliant with international procurement standards. Specifically, PPL fully implements EU rules on public procurement. In addition, the PP institutional framework is of high quality and provides sufficient enforcement; no significant regulatory gaps were identified. PPL strongly promotes anti-corruption policies, with good results. The Hungarian PPL scored best in the EBRD region in the 2010 assessment.

Regulatory risks

In spite of very high marks, PPL could improve by adopting some procurement efficiency and economy measures and increasing accountability of contracting entities. PPL does not provide a code of ethics for PP officers, nor does it require the procurement staff to have adequate contract management capabilities. Communication rules are outdated and there is no general requirement to publish all tender documents and procurement reports on the contracting entity's website.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Local PP practitioners reported that PPL is generally considered clear and comprehensive. The contracting entities have established internal procurement rules to eliminate eventual regulatory gaps. Internal PP rules are disclosed to the public and are updated every year. Roles in the procurement process are usually clearly allocated and contracting entities organise regular training for all internal stakeholders. Chart 7 presents the scores for the general quality of local PP practice in Hungary (average compliance rate above 75%).

Regulatory institutions

Compliance with PPL is monitored by a dedicated public regulatory authority, as well as a dedicated and independent remedies body. Chart 8 illustrates how the Hungarian institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

In Hungary PPL covers both government and utilities public procurement. Exceptions and exclusions are compliant with EU PP Directives.

Eligibility rules

In practice, eligibility rules are generally respected. Submitting false declarations is grounds for exclusion from the procurement procedure.

In practice the contracting entities establish prequalification criteria which include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities.

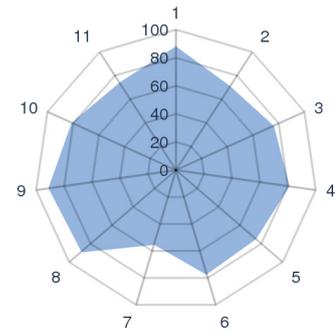
Affiliates of the contracting entity are generally eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

The procurement procedures

Tenders are typically used though negotiated procedures can be used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain their choice of procurement method.

The procurement time and cost effectiveness

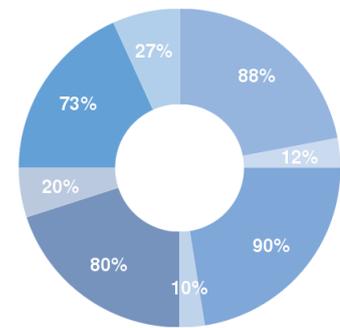
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

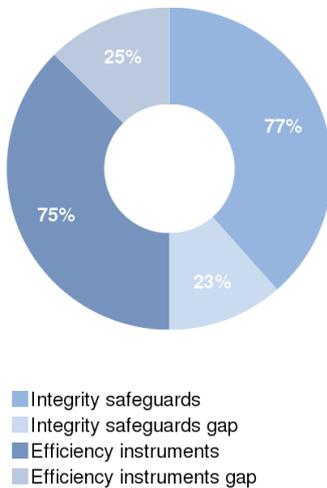


Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Hungary

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

In Hungary public procurement planning procedures are implemented. In most cases a PP plan is prepared each budget year. Contracting entities are obliged to complete the PP plan before a process is started and, as a result, coordination of technical, financial and procurement planning is achieved. Moreover, reasonable assessment of relevant procurement risks is mandatory, therefore enhancing performance of the procurement.

In practice, the contracting entities have introduced internal PP monitoring and have established auditing arrangements. Consequently, changes in PP procedure are monitored and, in most cases, amendments and extensions to a public contract will be monitored as well. As a result, modifications or waivers of the terms and conditions of a contract are subject to an internal review and approval procedure.

Contracting entities have also adopted

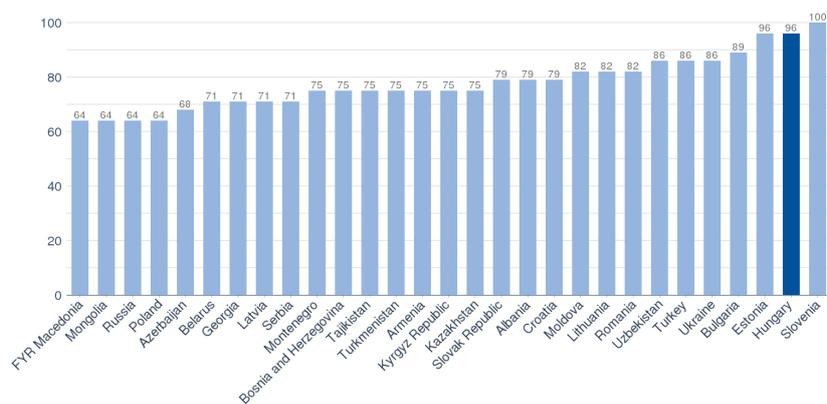
standard procurement forms and templates, but they are not uniform across the country. Internal PP regulations do not always allow the use of standard international contract forms.

In practice it is possible to estimate the length of the PP procedure. It takes about 170 days to sign a public procurement goods contract of the value of 250,000 Euros and a works contract of the value of 500,000 Euros. Generally sufficient time is allowed to prepare and submit tenders. In practice the evaluation of tenders is completed within the original tender validity period.

Review and remedies

In Hungary complaints are heard by an impartial and independent Remedies Body. The remedies procedures are considered to be straightforward, effective and not discriminatory. This is confirmed by the fact that the Remedies body is not perceived to be corrupt. Both the cost and the speed of the remedies proceedings are deemed to be reasonable: it takes from 30 to more than 45 days to obtain a review decision. All procurement reports are disclosed to the Remedies Body and, in principle, a tenderer may explain their position during the remedies proceedings. However, it is not clear whether the hearings and the proceedings are fully open to the public.

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Public contract management

Public contracts are generally administered in a fair and equitable manner. There are appropriate procedures to monitor the delivery of goods and services and all contract payments. Evaluations and audits of PP are also conducted.

Generally, contract management is well developed in Hungary. Public contracts are generally completed within the budget and on schedule. However, manual or computerised procurement and contract monitoring systems do not exist in practice. Internal rules on contract cancellation and compensation in such cases have been only partially established. When a public contract is cancelled, the contracting entity is required to specify a reason for doing so.

Assessment overview

Strengths

Local procurement practice in Hungary received high scores (average above 75% compliance rate). Local PP practice is perceived to be transparent, competitive and well managed. Contracting entities supplement PPL with internal procurement rules. There are appropriate procedures in place to plan procurement, manage the

PP process and monitor delivery of public contracts. The PP framework is deemed clear, comprehensive, and conducive to a competitive procurement environment.

Weaknesses

Review of local practice revealed that there are no elements of practice scored below 50% in Hungary. However, several implementation gaps were identified, as the scores on the quality of local PP practice are generally lower than for the quality of the PPL; in particular, integrity and economy of the PP process could be improved. In addition, institutional PP capacities could be improved, as the PP practice survey revealed implementation gaps of between 10% and 27% on every institutional capacity indicator. Furthermore, significant implementation gaps were identified in implementing integrity safeguards and procurement efficiency instruments (above 23%) in practice.

Opportunities

Hungarian PP practice is medium to high compliant with international standards.

There are several positive features in the local practice: there are many internal regulations which cover the pre-tendering and post-tendering PP phase; public contracts are generally completed on schedule; procurement evaluations and audits are conducted; and the Remedies Body is not perceived to be corrupt.

Risks

The quality of local PP practice is distinctly lower than the quality of local PP laws; significant implementation gaps were exposed in the assessment. Regular procurement capacity building is not sufficient and PP practice does not measure up to the standards imposed by PPL.

In addition, not all contracting entities have introduced internal rules regarding the pre-tendering and post-tendering phase.

There is limited use of electronic communication and the tender documents are, in most cases, not available on the contracting entity's website and formulated only in the contracting entity's official language. In most cases the only tender currency allowed is the domestic currency.

III. Conclusions

Hungary achieved the highest result among all of the EBRD countries of operation in quality of legal PP framework (91% compliance rate), the only country in the region to achieve very high compliance with international PP standards.

The Hungarian institutional framework is comprehensive; no substantial regulatory gaps in institutional framework were identified. However, PPL is somewhat bureaucratic and not flexible enough - a regulatory gap of 17.5% in flexibility indicators has been observed.

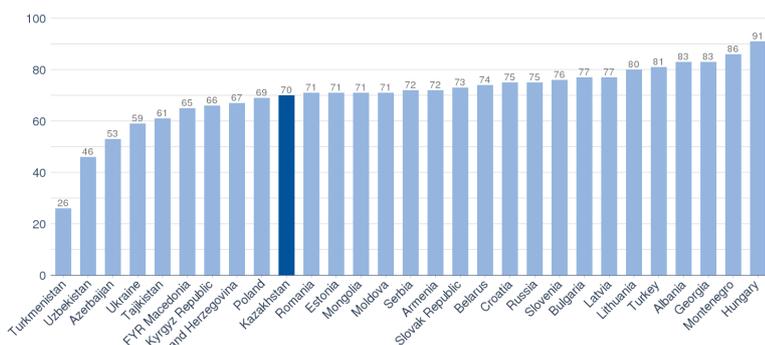
PP policy making is reasonably balanced and responsive to local market challenges; both integrity safeguards and efficiency instruments have been adopted in PPL. Regulatory gaps of no more than 12% were identified in the assessment.

However, in the assessment of local practice Hungary scored 78% compliance rate (high compliance), significantly lower than in the assessment of quality of legislation (very high compliance). Several implementation gaps were identified and a general conclusion is that there are substantial gaps in implementation of laws and institutional framework capacities.

Finally, local PP practice in Hungary scored a 33% compliance rate in the PP sustainability survey. These marks are similar to scores of other EU Member States in the EBRD region.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in Kazakhstan is regulated by the Law on Public Procurement enacted on December 29th, 2009 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Kazakhstan, there is no independent regulatory authority for public procurement. A unit in the Ministry of Finance has been assigned some regulatory functions in the field of procurement; however, we were not able to identify its core functions or regulatory responsibilities. Chart 3 illustrates the results of the review of the Kazakhstan institutional framework.

Scope of regulation

PPL covers national and local government public procurement. However, there is no distinction between general PP rules and rules for public law institutions or utilities sector procurement. Concessions are

regulated by a separate body of law. PPL clearly distinguishes between concessions and public contracts. PPL provides for a decentralised PP function as well as establishing a Central Purchasing Body.

Eligibility rules

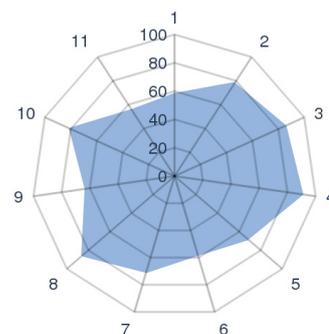
PPL establishes some general eligibility criteria. Potential tenderers will be excluded from the PP process if:

- they have been declared bankrupt or are in the process of declaring bankruptcy;
- they fall behind with the payment of taxes or other obligatory payments;
- they are a close relative of a public procurement officer involved in the procurement procedure;
- they were involved in the preparation of the tender documents.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities.

Tenderers may be requested to demonstrate professional and technical competence, experience and reputation, financial resources, equipment and other physical facilities necessary to perform the activities specified in the contract

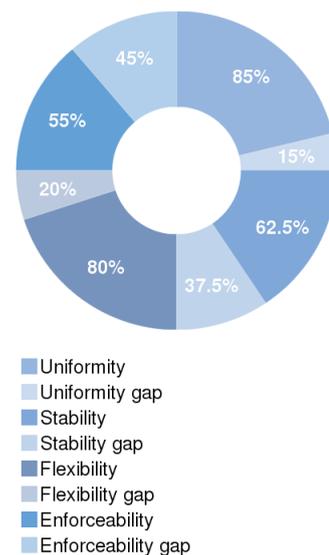
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

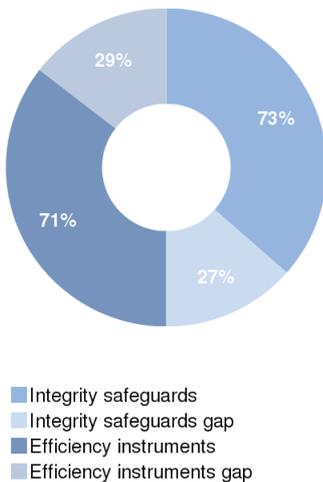
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

as set forth in the tender documents or contract notice.

The procurement procedures

PPL provides for various types of procedures:

- open and restricted tender;
- request-for-quotations;
- direct contracting;
- electronic procurement;
- via regulated exchange.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of PP procedure.

The procurement time and cost effectiveness

PPL requires PP procedures to be accomplished in a reasonable time, but does not require formalities to be kept simple.

The formality of the procedure does not correspond with the scope and value of the contract. PPL provides for mandatory aggregation of lots and contract valuation methods taking into account the primary cost and additional expenses (e.g. taxes and other payments due) related to the purchase, although it does not provide for the whole life cost valuation method.

PPL allows for an accurate estimation of the length of the procedure leading to the signing of a public contract of significant value. PPL provides clear rules regarding methods of communication to be used during the procedures and allows for the use of electronic communication. According to PPL, two stage procedures can be conducted via an electronic platform.

The contracting entity is entitled to request a nonrefundable fee for providing tender documents, but it may decide not to request it as the fee is not obligatory.

Review and remedies

PPL does not provide for a dedicated PP review or remedies system. All PP related complaints and disputes may be referred to the civil court. Any tenderer may appeal against the action of a contracting entity or evaluation panel member, if their actions (or omissions) violate the legal rights and interests of the tenderer. The

tenderer may not file a complaint about:

- the choice of the procurement procedure;
- rejection of all tenders.

Public contract management

PPL requires contracting entities to prepare a PP plan annually, in accordance with the budget planned for the following year. Such a plan shall contain information on the range of goods, works and services the entities have planned to purchase; the planned methods of purchase, and a provisional timing. The plan may be subject to change and information about it shall be disclosed within five working days after approval.

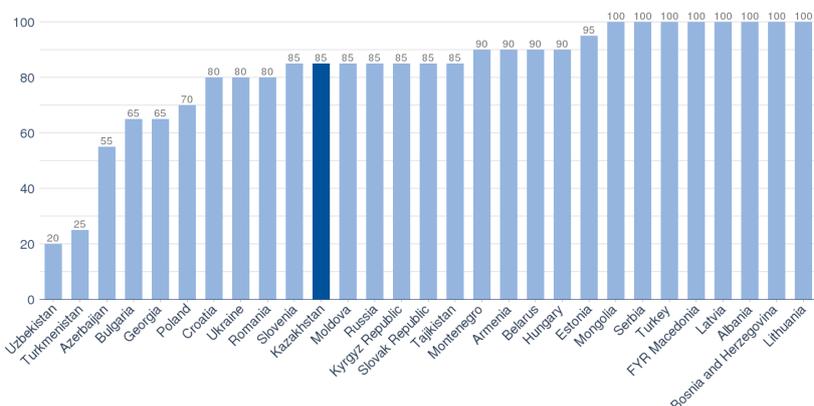
In principle, there is no requirement for local contracting entities to provide for public contract management.

Assessment overview

Strengths

PPL in Kazakhstan, originally based on the 1994 UNCITRAL Model Law, scored very high in the competition indicators (90% compliance rate), with average medium compliance with international PP standards (69% compliance rate). Local PP policy focused on adopting transparency safeguards and providing enforce-

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Kazakhstan

ment; it is less comprehensive in regard to accountability, efficiency, and economy instruments.

Weaknesses

PPL does not provide for a dedicated PP enforcement mechanism and remedies system. General public administration deals with this procurement function. The PP framework is based on sound principles but it is now outdated. It does not distinguish between low and high value contracts, short and long term contracts nor does it provide for different procurement procedures suitable for different contract types.

Opportunities

A very positive feature of the Kazakhstan PP legal framework is the establishment of the national e-Procurement portal and the development of local procurement capacities by the Central Purchasing Body.

Although still under development, the Kazakh e-Procurement portal, run in both the Kazakh and Russian languages, is designed to be comprehensive and provides the following functions:

- a) public procurement planning;
- b) information on procurement opportunities through the web portal;
- c) registration of tenderers;
- d) e-procurement procedures, including the exchange of electronic documents between clients and potential tenderers;
- e) collecting and archiving of procurement records;
- f) providing reports on completed PP procedures;
- g) publishing PP related legislation and legal interpretations;
- h) publishing the register of public procurements.

Regulatory risks

In the 2010 assessment some significant regulatory gaps were identified (27%-29%). These gaps in the local PP legisla-

tion are the result of several integrity safeguards and efficiency instruments recommended by international PP standards not being incorporated.

III. Conclusion

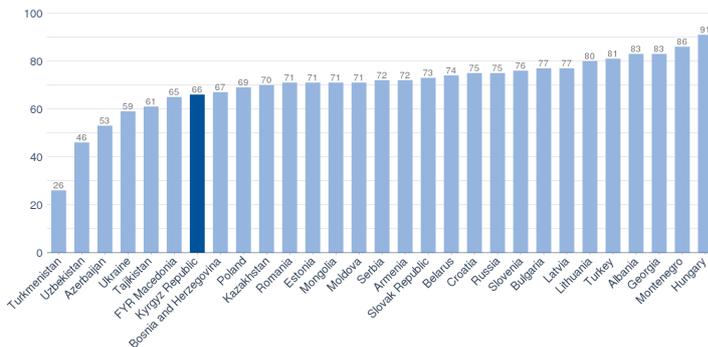
Kazakhstan scored medium compliance in quality of its legal PP framework (average 69% compliance rate). The local PP legislation is outdated and provides insufficient regulation of PP processes. The Kazakhstan regulatory and institutional framework is rudimentary and several substantial regulatory gaps have been identified. Specifically, Kazakh PPL does not provide for an independent PP review and remedies system. In addition, PPL has not adopted several integrity safeguards and efficiency instruments recommended by current international PP standards. The PP sector in Kazakhstan is generally closed to international suppliers.

During the course of the 2010 assessment many attempts were made to interview local contracting entities. In spite of these attempts, it was impossible to obtain any feedback from any local contracting entity in Kazakhstan. Data on the implementation of sustainable public procurement is not available either.

Kyrgyz Republic

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in the Kyrgyz Republic is regulated by law № 69 May 24th, 2004, with later amendments № 172 July 28th, 2008 and № 236 July 20th, 2009, (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

The Kyrgyz Republic has established a dedicated and independent regulatory body, the State Public Procurement Authority (Procurement Authority), which is responsible for developing PP policy. The Head of the Procurement Authority is appointed by the President at the Prime Minister's request and reports to the Prime Minister.

The Procurement Authority's core functions are:

- a) development of a regulatory framework for the PP system;
- b) coordination and regulation of activities connected with procurement procedures

- in public institutions;
- c) the monitoring of PP procedure and its compliance with national law;
- d) cooperation with contracting entities within the scope of PP, including training for procurement officers;
- e) monitoring the transparency of PP procedures;
- f) reviewing complaints filed in the course of PP procedures and issuing decisions within its competence.

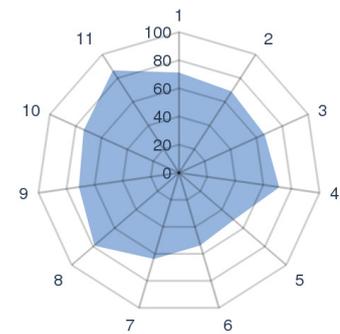
Chart 3 illustrates the results of the review of the Kyrgyz PP institutional framework.

Scope of regulation

The law covers both national and local government procurement. There are separate regulations for the procurement of goods in some areas, for example, national defence.

The law provides procurement rules for public law institutions. According to PPL, the status of public law institutions is devolved to: legal persons, organisations financed by the national budget; governmental agencies; municipal organisations funded by local budgets; local governments; institutions and funds established by public funds; joint stock companies in which the state owns at least 51% of

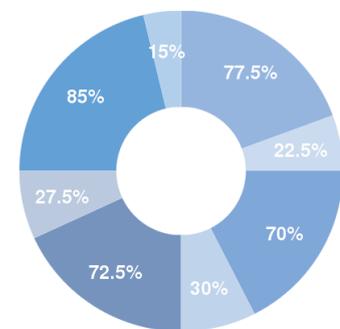
2. Quality of PP legal framework



- 1. Accountability 2. Integrity 3. Transparency
- 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity
- 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework

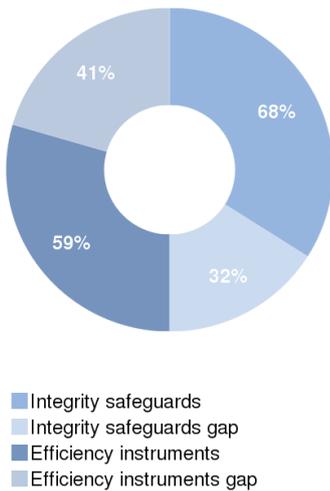


- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

Kyrgyz Republic

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

shares.

PPL does not provide any specific regulations for procurement in the utilities sector. Concessions are not regulated in Kyrgyz law.

PPL provides decentralised functions; it also establishes a Central Purchasing Body.

Eligibility rules

PPL establishes some general eligibility criteria such as tenderers will be excluded from the process if:

- within two years prior to commencement of procurement procedures, they have improperly completed at least one public procurement contract;
- they are declared bankrupt or are in the process of declaring bankruptcy;
- they fall behind with payment of taxes or other obligatory payments.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tender-

ers shall be established by contracting entities. Tenderers may be requested to demonstrate:

- professional and technical competence, experience and reputation, financial resources, equipment and other physical facilities necessary to perform the activities specified in the procurement contract as set forth in the tender documentation;
- not have property subject to judicial control;
- their affairs are not at the disposal of the court or a court officer and the tenderers' business activities may not be suspended or may not be subject to lawsuits that threaten their business activities;
- that, together with senior staff and the providers themselves, they should not have given false information or misrepresented or misled the entity about their qualifications for the procurement contract;
- legal ability to enter into a procurement contract.

The requirements listed above apply to all tenderers except in cases where the value of the procurement is less than the minimum threshold.

In addition, the contracting entity has the right to exclude the tenderer when information submitted regarding qualifications is inaccurate or incomplete and the tenderer fails to eliminate these shortcomings immediately at the contracting entities' request.

The contracting entity evaluates the tenderers in accordance with the eligibility rules and qualification requirements (if pre-qualification is available); tender documents or other documents soliciting proposals or quotations should explain all requirements.

The procurement procedures

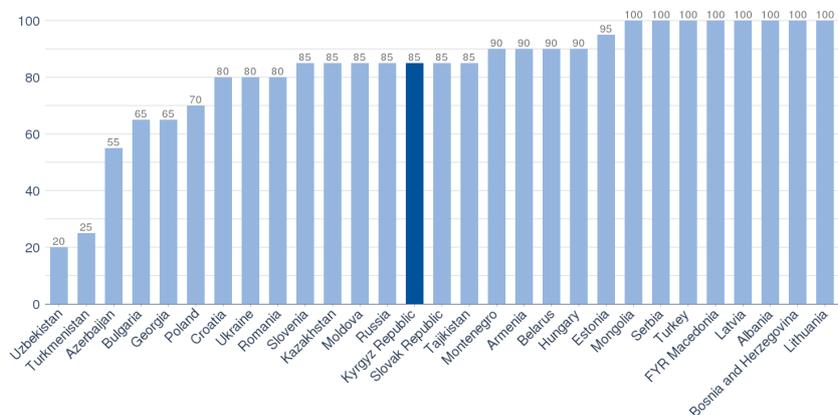
Kyrgyz PPL provides for various types of procurement procedures:

- Open tender,
- Restricted tender,
- Two-stage tender,
- Request for quotation,
- Direct contracting.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts. Unlike the other procured services, when procuring consulting services, the contracting entity may adopt the most advantageous offer approach and evaluate tenders under a broader set of criteria, inter alia: quality; quality together with price or individual consultants.

The procurement time and cost effectiveness

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

PPL does not allow for an estimation of the standard length of the procurement process for works or goods contracts of a significant value. There is also no requirement for the procurement process to be accomplished in a reasonable time.

There is no general requirement that the cost of participation in the procedure should be kept low. PPL stipulates only that the contracting entity may charge a non-refundable fee for a copy of tender documents, although it should not exceed the cost of printing and delivery. In addition to that fee, the contracting entity may also require the tenderer to submit, together with the offer, a refundable tender security. For small value contracts tender security may not be applied.

PPL enables the Procurement Authority to conduct procurement procedures electronically; eProcurement is not available to regular contracting entities.

PPL provides for the use of three languages in the preparation of tender documents: the Kyrgyz language, Russian, the official language, and English. However, if the contracting entity decides that due to the small value of the purchase only local tenderers may be interested in participating in the tender, tender documents may be prepared in the national and/or the official language only.

Review and remedies

Kyrgyz Republic Law provides for administrative review of PP complaints by the Public Procurement Authority.

PPL stipulates that the tenderer has the right to submit a complaint to the contracting entity within 10 days of the contract award notice. The contracting entity has to review the complaint and issue a decision within 7 days. If the tenderer is not satisfied with the decision or, if the contracting entity fails to issue it within the stipulated period of time, the tenderer has the right to appeal to the Procurement Authority, and then to the court. If,

however, the tenderer does not exercise his right to appeal, the decision of the contracting entity is deemed final.

Moreover, the tenderer loses the opportunity to appeal if he fails to submit the complaint within 15 days of the moment when he found out or should have found out about the decision. There are certain exemptions from the general right of the tenderer to appeal. The tenderer may not file a complaint about:

- a) the choice of procurement method, the choice of a selection procedure made in accordance with the Law on Procurement, providing benefits for domestic suppliers in accordance with PPL;
- b) the decision of the contracting entity, taken in accordance with the Act.

The tenderer or any governmental entity, whose interest is violated or may be violated as a result of appeal, has the right to participate in the review proceedings.

If the complaint is reasonable, the tender procedure shall be suspended for 10 days. If the procurement contract has already been concluded within this time, the Procurement Authority may delay bringing the contract into force for 10 calendar days. The suspension may be prolonged but may not exceed a limit of 30 days.

Public contract management

Contracts are generally completed within the original contract price and on schedule. Only some of the contracting entities found contract administration mandatory for public contracts. In practice, contracts are generally administered in a fair and equitable manner. However, not all of the contracting entities maintain contract administration records. There are internal rules on contract cancellation; however, the reason for contract cancellation does not always have to be specified.

Assessment overview

Strengths

In the 2010 assessment the Kyrgyz PP framework did not demonstrate specific strengths; enforceability, with a score of 85% compliance, is the strongest point of the local framework.

PPL provides for an administrative review mechanism and allows for a judicial review as an alternative. Provisions of PPL also allow a tenderer to seek compensation in a case where a contract has been cancelled.

Moreover, PPL limits the authority to cancel a public procurement contract by naming specific conditions. Contracting parties also have the right to adapt the contract provisions about settling disputes resulting from the contract before the courts need to intervene.

Weaknesses

The Kyrgyz institutional PP framework shows some deficiencies: regulatory gaps are substantial (between 15% and 30%).

The weakest point is economy of the process, where the score is only 50% compliance. Substantial gaps were identified in both integrity safeguards and efficiency instruments regulation. PPL is outdated: it does not match a contract type with tender selection processes or require contract terms and conditions to reflect the best available business practice.

Electronic communication is limited and available only when accompanied by written confirmation. Furthermore, PPL does not provide for the difference between a public procurement contract and concessions.

Opportunities

Integrity safeguards are better regulated in the Kyrgyz PPL than efficiency instru-

Kyrgyz Republic

ments, yet the assessment has revealed significant gaps in both integrity (32%) and efficiency (41%). The PP policy features are balanced, but at medium compliance level.

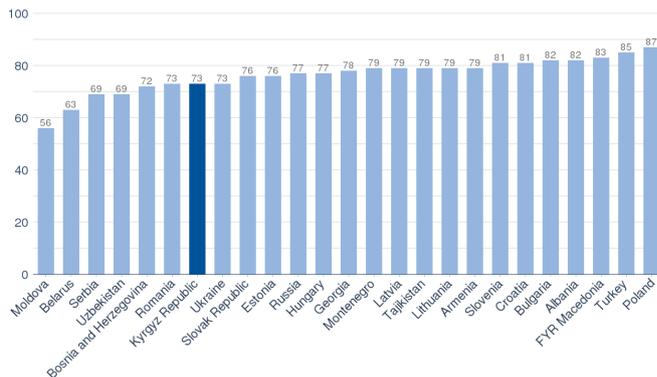
Regulatory risks

PPL allows for domestic preferences. The contracting entity is entitled to apply a 20% discount to the offer of any tenderer who offers products of domestic origin or 10% for local tenderers in the procurement of works. Domestic preferences may be applied to any kind of procurement contract.

PPL does not address the distinction between the nature and the scope of the procurement contract and the type of procurement method to be applied. This may lead to unnecessary bureaucracy.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The 2010 assessment revealed that the Kyrgyz contracting entities have not fully implemented mechanisms ensuring the objectives of PPL. Several Kyrgyz practitioners consider the legislative framework to be unclear, incomprehensible, and not conducive to a competitive procurement environment, although others express the opposite view.

Furthermore, some of the local contracting entities stated that they have substantial internal procurement procedures and their procurement decision making process is mainly regulated by internal rules. Internal procedures are updated on an ad hoc basis. Internal roles in the procurement process were evaluated by participants as clearly allocated. Not all of the contracting entities provide training for all their stakeholders regarding their roles, rights, and obligations.

Chart 7 presents the scores for the general quality of local PP practice in the Kyrgyz Republic.

Regulatory institutions

The compliance of PP procedures is monitored by a dedicated Procurement Authority. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

PPL covers both government and utilities public procurement. Exceptions and exclusions are compliant with UNCITRAL Model Law.

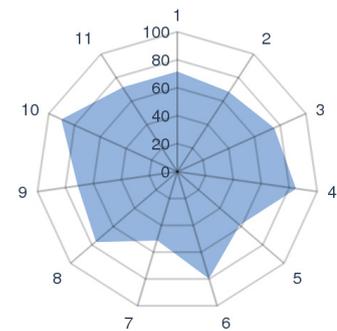
Eligibility rules

In practice, PP qualification criteria include experience, past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. As grounds for exclusion, significant or persistent deficiencies in past performance or poor performance on any substantive requirement or obligation of the contract or contracts have been indicated.

The procurement procedures

Negotiated procedures are not available

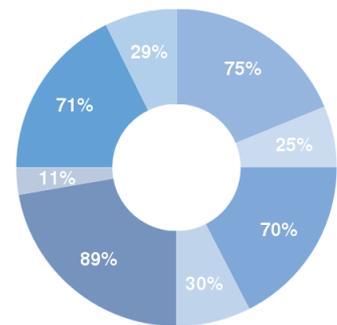
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

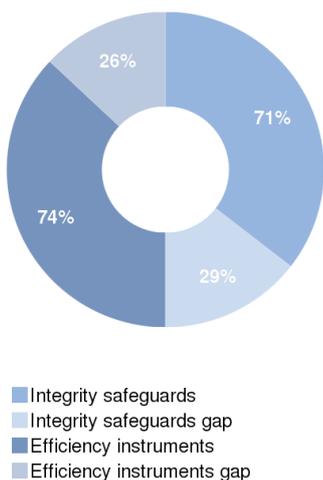


Uniformity
Uniformity gap
Stability
Stability gap
Flexibility
Flexibility gap
Enforceability
Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Kyrgyz Republic

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

for specific or complex contracts. An open tender procedure is not a default procedure in practice, although PPL states otherwise.

The procurement time and cost effectiveness

It takes from 120 to 180 days to sign a PP works contract to the value of 500,000 Euros. To sign a contract for goods to the value of 250,000 Euros takes from 45 to 80 days. Review of local practice shows that there is sufficient time allowed to prepare tenders. Evaluations of submitted tenders are normally completed within the original tender validity period and contracts are generally completed on schedule. Tender documents are never published on the contracting entity's website nor are they available free of charge.

Review and remedies

According to local practitioners remedies procedures are not always straightforward, effective, and non-discriminatory. The speed and cost of the remedies procedure is not reasonable. Generally participants have access to review proceedings and these proceedings take place in public. All procurement documents should be disclosed; however, not all contracting entities share this opinion. Moreover, the review proceedings are not always recorded.

Public contract management

Contracts are generally completed within the original contract price and on schedule. Only some of the contracting entities found contract administration mandatory for public contracts. In practice, contracts are generally administered in a fair and equitable manner. However, not all of the contracting entities maintain contract administration records. There are internal rules on contract cancellation; however, the reason for contract cancellation does not always have to be specified.

Assessment overview

Strengths

There is no element of practice in the Kyrgyz Republic which scored above 90%. The Kyrgyz framework scored well on the flexibility indicator.

Contracting entities generally have internal rules on how to draft tender documents and organise the procurement process. There are also standard forms of contract notices and standard internal forms for tender securities. Sufficient time is allowed for tenders to be prepared. Contracting entities monitor changes in the procedure once the procurement process has been launched and changes in the contract once the procurement process has finished.

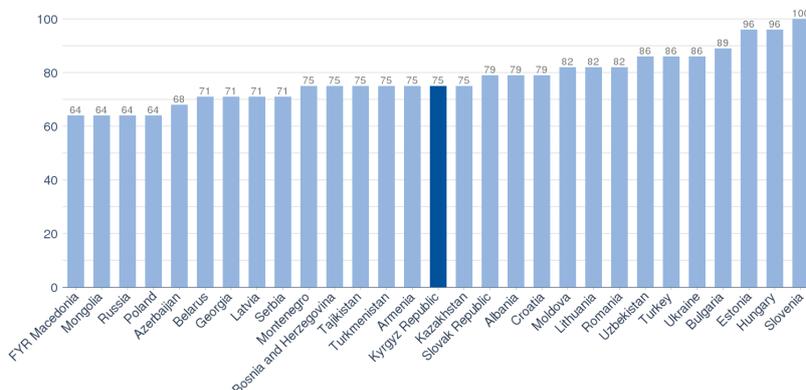
Weaknesses

Local practice was scored lowest for its proportionality (50% compliance). Negotiated procedures are not available for specific or complex contracts. Nor is it necessary for the contracting entities to justify their choice of procurement method. The tender documents are usually formulated in the official language and are not always available in English, even if the law allows for it. According to local practitioners there is a significant implementation gap in both integrity safeguards and efficiency instruments. In addition, the Procurement Authority is perceived as corrupt.

Opportunities

Pre-tendering and post-tendering phases are regulated to some extent. There is a mandatory test to ensure that the scope and subject of the public procurement is

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

economically justified. Contract notices are published electronically and remain readily accessible to the public and free of charge until the expiration of the tender submission deadline indicated in the notice. PP regulation does not allow for the use of standard international contract forms for all types of procurement, but contracting entities have developed their own standard forms for tenders. In practice, contracting entities make contract administration mandatory for public contracts. All modifications or waivers of the terms and conditions of a contract are subject to a review and approval procedure.

Risks

PPL does not cover all phases of procurement and the contracting entities' internal regulations do not always make up for this. There are some internal regulatory frameworks covering both the pre-tendering and post-tendering phases but internal regulations are not comprehensive. Even if PPL provides for it, contracting notices are not always published electronically.

Moreover, electronic communication is usually unavailable. Proposals and tenders may not be submitted electronically (i.e. without a certified electronic signature). The public procurement record is not published electronically and not available to the general public.

The remedies proceedings are deemed to be reasonable: it takes from 30 to more than 45 days to obtain a review decision. All procurement reports are disclosed to the Remedies Body and, in principle, a tenderer may explain their position during the remedies proceedings. However, it is not clear whether the hearings and the proceedings are fully open to the public.

III. Conclusions

The most apparent shortcoming of Kyrgyz procurement regulation is the bias towards domestic goods and tenderers as well as the inefficiency and lack of competition in local public procurement practice. In addition, outdated regulation leads to unnecessary bureaucracy in procurement procedures.

The Kyrgyz public procurement regulation achieved a result of 64% in the assessment of legislation, which placed the country near the bottom of the medium compliance range in the EBRD region (average compliance rates vary from 50% to 85%). The analysis of the institutional framework showed the biggest gap in stability and flexibility indicators, amounting to 30% and 27.5% respectively. Two remaining regulatory gaps in uniformity and enforceability are substantially smaller, 15% and 22.5% respectively. In addition, the assessment revealed substantial regulatory gaps in PPL regarding the implementation of the integrity safeguards (31%) and the procurement efficiency instruments (41%).

In the survey Kyrgyz procurement practice was scored at 73% which represents medium compliance with international standards. The marks for practice are better than the results of the assessment of legislation, but local practice is inconsistent (average compliance rates vary from 50% to 88%) leaving plenty of room for improvement.

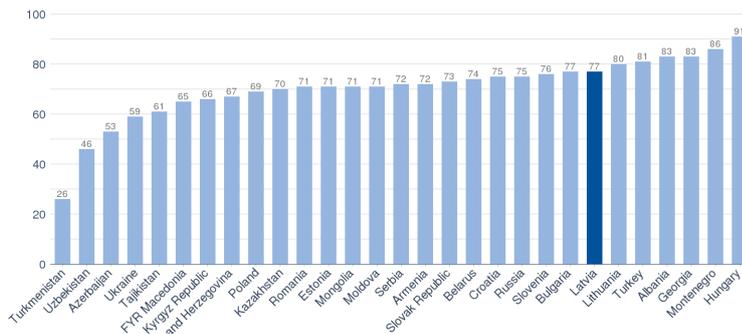
An assessment of the institutional framework revealed that the legislation in place has not been implemented. Substantial implementation gaps have been observed in every indicator (average gap of 29%). In addition to weak institutions, the implementation of integrity safeguards and efficiency instruments in practice is very low, with implementation gaps at 26% and 29% respectively.

The survey of local procurement practice

looked at the level of implementation of sustainable procurement policies and it revealed very low compliance with the sustainability benchmark (30%).

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

There are two main laws regulating the public procurement in Latvia: Public Procurement Law, 2006; and Law on Procurement for the Needs of Public Utilities Providers, 2004.

General quality of the law has been presented on chart 2.

Regulatory institutions

Monitoring of the observance of regulatory enactments in the area of procurements is performed by the Procurement Monitoring Bureau (PMB). The PMB is a state institution financed by the State budget.

The Procurement Monitoring Bureau has inter alia the following rights and duties:

- a) to monitor the conformity of the procurement procedures with the requirements of PPL;
- b) to request and receive without hindrance at any stage of a procurement procedure, as well as to receive free of charge full information regarding the procurement;
- c) to compile and analyze the statistical information on procurement in the State;
- d) to provide methodological assistance and consultations, and to organize training

ing for institutions that are contracting authorities, for sellers of goods, lessors, providers of services and performers of construction work;

- e) to make sure that complaints with respect to violations of procurement procedures are examined;
- f) to publish the notices in the website of Procurement Monitoring Bureau and to send those notices to be published in the Official Journal of EU, to provide European Commission with the requested information;
- g) to prepare reports of procurements in the State.

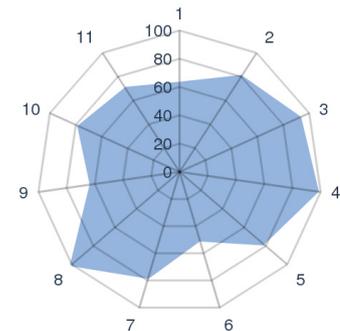
Chart 3 illustrates PP institutional framework.

Scope of regulation

Public procurement is regulated by a separate body of law and has a well coordinated legal framework. Hierarchy of sources of the public procurement regulation is well established.

The scope of the Public Procurement Law covers the service, supply or works contracts executed by local and governmental public bodies, public law institution and certain private bodies, other than activities of public utilities. In its turn, the Law on Procurement for the Needs of Public

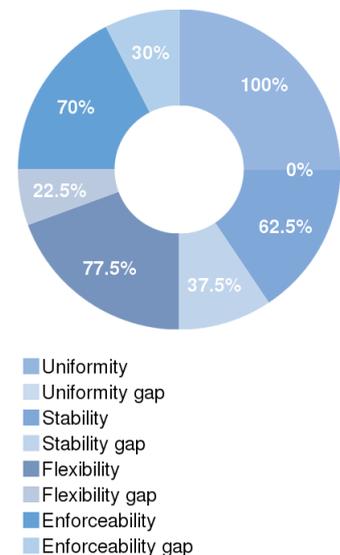
2. Quality of PP legal framework



1. Accountability
2. Integrity
3. Transparency
4. Competition
5. Economy of the process
6. Efficiency of public contract
7. Proportionality
8. Uniformity
9. Stability
10. Flexibility
11. Enforceability

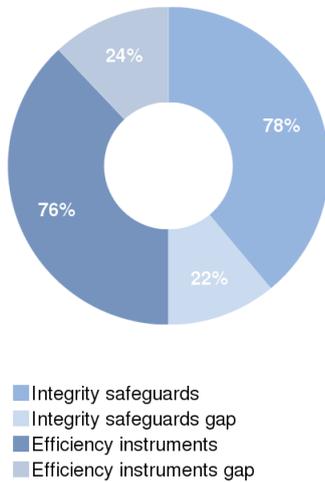
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

Utilities Providers applies to contracts executed by the utilities providers related to the energy and water supply, transportation and postal services.

Concessions are regulated by separate legislation. The Public and Private Partnership Law regulates the works concession and service concession, as well as institutional partnership.

Generally PPL provides a decentralised procurement function, however there is also a Central Purchasing Body. The contracting authority may make purchases from and through the Central Purchasing Body.

Integrity or anti-corruption safeguards and efficiency measures are a major factor in public procurement policies and should still be considered of greatest importance as regulatory element. Adequate incorporation of these elements ensures “value for money”, and can be the most important factor shaping public procurement policies. Chart 4 illustrates application of these policies in the law of Latvia.

Eligibility rules

The public procurement regulations provide distinction between general public procurement eligibility criteria and qualification and technical requirements. PPL establishes primary public procurement eligibility rules.

The commissioning party shall exclude a tenderer from further participation in a procurement procedure, and shall not review the tender in the following cases:

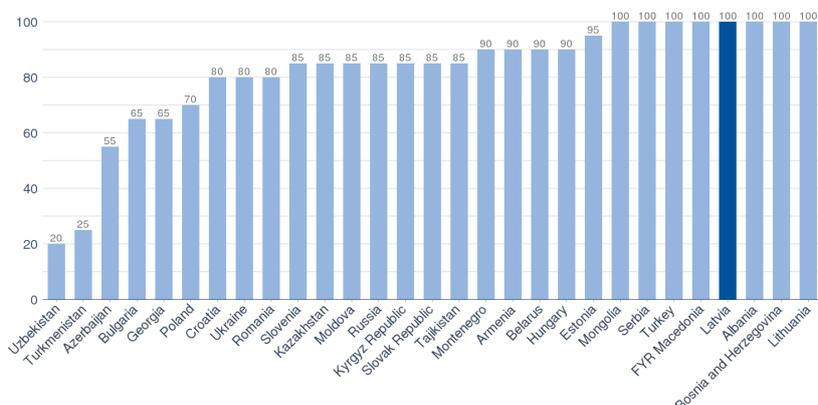
- 1) Pursuant to a court judgment, which has come into effect, the candidate or applicant has been found guilty of committing a criminal offence of corruptive nature, fraudulent activities in the field of finance, in legalisation of illegally acquired resources or participation in a criminal organisation;
- 2) Pursuant to a court judgment, which has come into effect, or a decision of another competent authority, which has come into effect, the candidate or applicant has been found guilty of a significant violation of regulatory enactments, including a significant violation of environmental protection, competition and employment rights, which is related to employment of persons without entering into a written employment contract;
- 3) A candidate or applicant is being liquidated, declared insolvent, economic

activities thereof have been suspended or discontinued, or legal proceedings have been initiated regarding the bankruptcy of the candidate or applicant;

- 4) The candidate or applicant has tax debts or debts of compulsory State social insurance contributions in Latvia or another state, where it is registered;
- 5) The candidate or applicant has provided false information for evaluation of its qualification or has not provided the requested information at all;
- 6) The conditions referred to in Clauses 1, 2, 3, 4, and 5 are applicable to the person indicated by the candidate or applicant, on whose abilities the candidate or applicant is relying on in order to confirm that the qualification thereof conforms with the requirements specified in the notice regarding a contract or in the procurement procedure documents;
- 7) The person who has the right of representation of the candidate or applicant, or a person who has the right to take a decision or supervise in relation to this candidate or applicant, conforms with the conditions referred to in Clause 1.

PPL establishes also qualification criteria regarding: authorisations to perform specific activities or action; knowledge and experience; appropriate technical potential and personnel capable of performing a contract; economic and financial standing. The minimum levels of the required ability

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

for a specific contract must be related and proportionate to the subject-matter of the contract and shall be indicated in the contract notice.

To show compliance with requirements specified in tender documentation the tenderers could be obliged to demonstrate appropriate evidence, like documents and certificates.

The procurement procedures

PPL provides tendering and negotiated procedures. Article 8 introduces the following procurement procedures.

- a) open tender;
- b) restricted tender;
- c) request for quotation
- d) negotiated procedure; and
- e) draft design competition.

Contracting entities must in general choose between the open and closed procedures and are only permitted to apply the negotiated procedure and competitive dialogue procedure in a limited number of situations.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. Selection of procurement procedure depends on thresholds and the procurement category (construction works, goods or services). PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile. Contracting entity may also choose the draft design competition if the contract will be entered into for the preparation of draft designs for construction works or territorial planning.

The law allows the contracting entity to use electronic reverse auctions. The contracting entities are allowed to decide that, after an initial full evaluation of the tenders, the award of a public contract is preceded by an electronic auction.

The procurement time and cost effectiveness

PPL provisions do not allow for the accurate estimation of the duration of the procurement process for goods and works contracts of a significant value. However PPL requires the public procurement procedure to be accomplished in a reasonable time. There are several specific deadlines established by the law (eg. evaluation of tenders time limit). Formal requirements are proportional to the value of the public contract.

As far as contract valuation methods are concerned, the estimated contract price shall be determined as the total planned payment by the contracting entity for implementation of the contract. The contracting entity, when planning the total payment, shall take into account any selection opportunity and any supplements to the contract. According to PPL contract valuation method of public works contracts takes into account all-life costs of the purchase or works.

PPL provides for aligning value and scope of the contract to the formality of the procedure. In order to select the method of procurement, estimated contract price has to be determined. PPL establishes cascaded thresholds. The Cabinet is obliged to determine margins of contract prices at least once in every two years within one month after the European Commission has announced the relevant margins of contract prices in the Official Journal of the European Communities.

An exchange of information between the contracting entity and tenderers shall take place by post, fax, electronically or by telephone, depending on the choice of the contracting entity. The law allows the contracting entity to decide to use electronic means of communication whereas avoiding the possibility of discriminating suppliers on these grounds.

PPL indirectly stipulates that the costs

of tender participation should be kept low. The procurement procedure documents shall be accessible free of charge, including in electronic form. The contracting entity may request payment for the issuance of the procurement documents not exceeding the actual costs for copying documents. The maximum amount of tender security is 5% of the estimated contract value.

Review and remedies

Generally a complaint shall be filed with the Procurement Monitoring Bureau. Decisions of this authority may be appealed to administrative court. In certain cases provided by the law the complaint shall be brought directly to the administrative court or to the contracting entity. PPL provides for rights of the participants to appeal the Procurement Monitoring Bureau's decision pursuant to the procedures provided by the Administrative procedure law. However, appeal of the decision does not stop implementation of the adopted decision.

PPL provides the right to submit complaint regarding violation of the public procurement procedure. Any person who is or has been interested in acquiring the right to enter into a procurement contract, who is qualifying for winning, and whose rights have been infringed by a potential violation of European Union regulatory enactments or other regulatory enactments - is entitled to submit a complaint regarding the provisions for selection of candidates or applicants, technical specifications and other requirements, which relate to the specific procurement procedure, or regarding the activities of the commissioning party or the procurement commission, during the course of the procurement procedure.

Public contract management

PPL does not require mandatory planning on public procurement. All planning and budget related issues are regulated by the separate act of law. Contracting entity may

publish a prior information notice about contracts or framework agreements envisaged for the following 12 months, however is mandatory only in limited situations.

PPL does not request that contracting entities provide for contract management of the public contract. The only regulation is concerned with amendments to the concluded contract. The binding regulation does not provide for procurement staff to have adequate contract management capabilities.

Assessment overview

Strengths

Latvian legislation received the highest score for compliance with transparency, competition and uniformity indicators.

The law assessment in Transparency is mainly due to promote the extensive use of e-procurement and effective publicizing of the procurement opportunities. Latvian PPL provides the mandatory advertisement of contracting opportunities, requires the mandatory publication of advance procurement notices and mandatory publication of a contract award notice. Documents related to the tender are open to the public. PPL requires the public tender opening to take place promptly after the deadline for the submission of tenders. Actions of contracting entity are recorder, records are open for the public.

The object of evaluation in Competition is reinforcement for fair competition and regulations aimed to prevent discrimination in public procurement. Latvian PPL provides for competition rule. The law states that the purpose of PPL is to ensure openness of the procurement procedure and free competition of suppliers, as well as equal and fair treatment. Moreover preferential treatment of domestic entities is forbidden.

The main issue assessed in Uniformity is consistency of the public procurement legislation. In Latvia PP is regulated by the

separate act of law. PPL is part of well coordinated legal framework. It covers local and national procurement and contains separate rules public law institutions. Concessions and utilities procurement are regulated by separate legislation.

Weaknesses

PP assessment relieved that Latvian PPL legislation has no major weaknesses (scored below 50 %). However, in the scope of efficiency of the public contract the score equals to only 50 %.

The law does not provide detailed regulations regarding pre-tendering phase and post-tendering phase understood as contract management. PPL does not require mandatory planning of public procurement. The same lack of regulation refers to mandatory detailed and unbiased assessment of the contracting authority's needs. PPL does not require appropriate budget or financing authorisation prior to publication of a contract notice and does not require that contracting entities obtain budgetary authorisations for contract payments falling due beyond the current financial year.

As far as post-tendering phase is concerned, PPL does not provide for procurement staff to have adequate contract management capabilities. Procurement monitoring and administration is not required to be computerized.

Opportunities

It is found that the public procurement system of Latvia overall maintains a good standard. Frequent changes during last year were determined by adoption of the EU legislation. The overall score of compliance is very high - 77,08 %.

Latvian law is comprehensive, it covers public construction works contracts, public supply contracts and public service contracts. PPL provide aggregation and anti-avoidance rules. PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

Regulatory risks

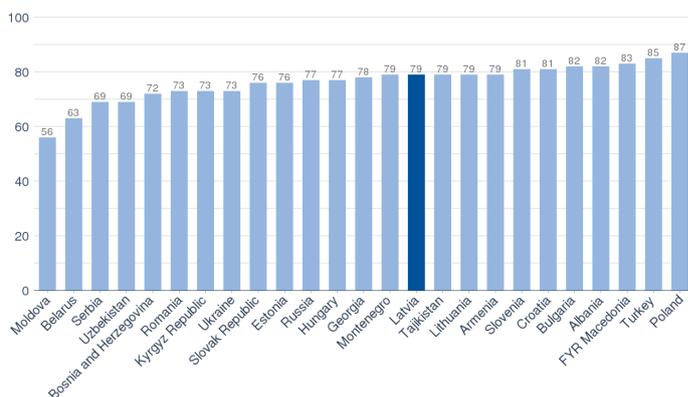
Despite deficiencies of public procurement system in the scope of Efficiency of the public contract, there are also other, more specific, negative features of the Latvian PPL:

- a) Provisions aimed to curb or control corruption in the public procurement process (whistle-blower statutes) are not directly provided;
- b) PP regulations does not include a legal requirement for the public disclosure of secondary and tertiary public procurement regulations. Moreover the law does not directly require the contract terms and conditions to be fair and balanced, reflecting best available business practice. This may cause uncertainty for potential contractors;
- c) PPL does not contain specific provisions on the cancellation of a public contract, as well as obligation for specifying reason for such cancellation and no obligatory rules regarding compensation;
- d) PPL has been changed a lot recently, however, it is connected with implementation of EU law.

Training of procurement staff is not mandatory.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

PP framework in Latvia is clear, comprehensive, and conducive of a competitive procurement environment, PP regulation mandates the disclosure of internal procurement regulations and procurement decisions. Regular training for all internal stakeholders regarding their roles, rights and obligations in the public procurement process is provided. Internal procurement process and decision making regulation has been established and all internal roles in the procurement process are clearly allocated. Amendments in the internal procurement process are made approximately once a year depending on the results of the internal audit procedures and taking into consideration the amendments in the law regulating procurement process.

General quality of the law has been presented on chart 7.

Regulatory institutions

Compliance with PPL is monitored by the independent and dedicated public regulatory authority - Procurement Monitoring Bureau.

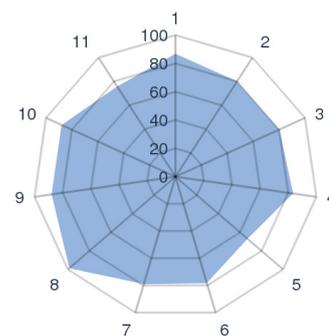
Chart 8 illustrates PP institutional framework in practice.

Scope of regulation

There is not always a reasonable assessment of all relevant procurement risks mandatory before the procurement process has been launched. Therefore it is not always mandatory to complete the procurement plan before a public procurement process is started. However, internal PP monitoring and auditing arrangements have been established.

Contracting entities monitor changes in the procedure once the procurement process has been launched and all changes in the contract once the procurement process has been finished. Modifications or waiver of the terms and conditions of a contract are subject to review and approval procedure. Contracting entities have their internal roles in the procurement process clearly allocated. They also have local or internal guidelines how to draft the tendering documents and generally have standard forms of contract notices and procurement notice. Despite of above regulations not all of contracting entities have standard tender documents for goods works, services procurements. There are also no standard forms of tender securities. Standard forms documents

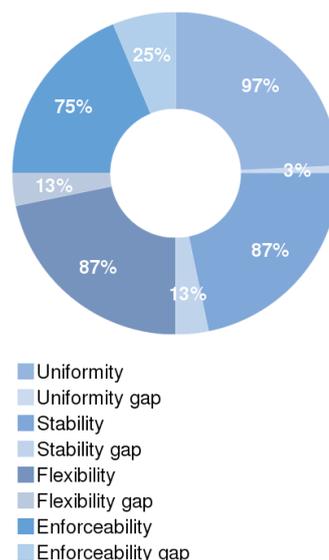
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

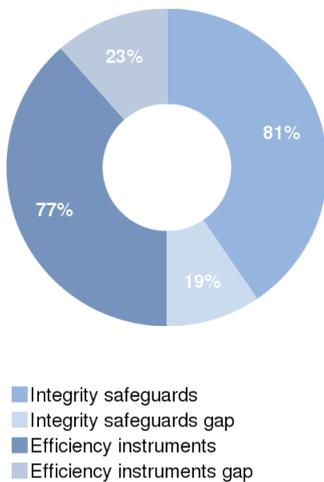
Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Scope of regulation

There is not always a reasonable assessment of all relevant procurement risks mandatory before the procurement process has been launched. Therefore it is not always mandatory to complete the procurement plan before a public procurement process is started. However, internal PP monitoring and auditing arrangements have been established.

Contracting entities monitor changes in the procedure once the procurement process has been launched and all changes in the contract once the procurement process has been finished. Modifications or waiver of the terms and conditions of a contract are subject to review and approval procedure. Contracting entities have their internal roles in the procurement process clearly allocated. They also have local or internal guidelines how to draft the tendering documents and

generally have standard forms of contract notices and procurement notice. Despite of above regulations not all of contracting entities have standard tender documents for goods works, services procurements. There are also no standard forms of tender securities. Standard forms documents are not mandatory. PP regulation allows use of international standard contract forms for all types of procurement. Integrity or anti-corruption safeguards and efficiency measures are a major factor in public procurement policies and should still be considered of greatest importance as regulatory element. Adequate incorporation of these elements ensures “value for money”, and can be the most important factor shaping public procurement policies.

Eligibility rules

Contracting entities in most cases exclude tenderer from public procurement procedure on the bases of failure to pay taxes or other public duties and significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts. The qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as

financial position. Tenders are evaluated only on the basis of the criteria specified in the tender documents. There are no regulations which prevent affiliates of the contracting entity from participating in public procurement procedures.

The procurement procedures

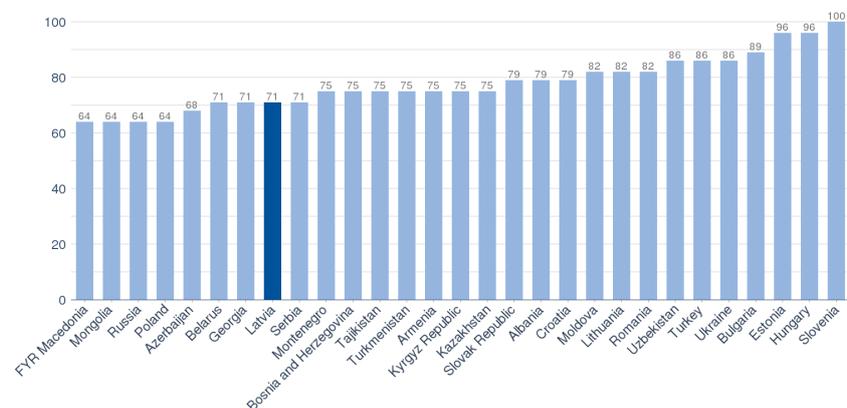
The law recommends tenders as a default procedures however negotiated procedures are available for specific or complex contracts. PPL sets forth the circumstances which enables procedures other the tenders to be used and it is always necessary for the contracting entity to explain the choice of the procurement method.

The procurement time and cost effectiveness

The assessment of Latvian practice revealed that it takes form 55 to 90 days to sign a public procurement works contract of the value of 500.000 euro, and from 60 to 80 days to sign a public procurement goods contract of the value of 250.000 euro.

It is always sufficient time provided to prepare tenders and the tenders evaluations are normally completed within the original tender validity period. Contracts

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Latvia

are generally completed on schedule. All tender documents are available free of charge.

Review and remedies

The remedies procedures seem to be straightforward. Nonetheless its claimed that the remedies procedure is not effective and it is not always considered non discriminatory. The remedies bodies are not corrupted, and the procedures are recorded.

The speed of the remedies procedure is not always reasonable. It takes at least 45 days to obtain a remedies decision but in cases of judicial procedures it may last even up to 5 years to obtain a final sentence. As a general rule complaints are heard by court or by an impartial and independent review body. Still the cost of the remedies procedure are not always perceived bearable.

Generally participants have access to all remedies proceedings, but it is not clear whether all remedies proceedings take place in public. Remedies body have access to all procurement documents, as it entirely disclosed to them.

Public contract management

Contract administration is mandatory for all public contracts. In order to meet this requirement manual and computerized procurement and contract monitoring systems have been established. There are appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness. Contracts are generally administered in a fair and equitable manner with adequate contract administration records maintained.

All modifications or waiver of the terms and conditions of a contract are subject to review and approval procedure. In Latvia contracts are completed within the originally approved contract price and time.

There are no internal rules or policy on the contract cancellation, provisions of individual contract deals with this matter.

In such cases PPL does not require the contracting entity to specify a reason for doing cancellation. Moreover, there are no internal policies regarding compensation in case a public contract is cancelled.

Assessment overview

Strengths

According to the Assessment methodology, the strongest point of the public procurement practice in Latvia is. The main objectives of Uniformity have been achieved.

Contracting entities have regulated internal procurement and decision making process. Also the contracting entity internal roles in the procurement process are clearly allocated. The contract administration is mandatory for public contracts. All modifications or waiver of the terms and conditions of a contract is subject to review and approval procedure. There are appropriate procurement and contract monitoring systems including procedures to monitor delivery of goods and services to verify quantity, quality and timeliness. Supplier and contractor payments are monitored and the contracts are generally completed within the originally approved contract price. There are periodic reports prepared on public procurement activities.

Weaknesses

There in no element of practice component, which is scored below 50%. However the least effective component is Economy of the process.

To evaluate a public contract contracting entities takes into account: total amount payable upfront, net of VAT, embracing any form of option and renewals of the contract, including all maintenance costs for 5 years or total amount payable upfront, net of VAT, including any form of option and any renewals of the contract.

Procurement function is generally not provided with market surveys to update knowledge of prevailing prices for goods,

works and services. Contracting entity requires tenderers to provide a tender security for high risk contracts and high value contracts.

Opportunities

In areas where PPL does not require obligatory regulations contracting entities issues their own regulations. Those regulations are focused on achievement the best "value for money". The main contributory factors are: planning of the procurement process, implementation of competition rules, public contract monitoring and management.

The contract administration is mandatory for public contracts and it is specifically regulated by internal and local regulations. Remedies procedures are effective as the remedies bodies are not perceived corrupt.

Risks

There is no financial authorisation required to start the procurement process. Taking into account also lack of internal rules or policy on the contract cancellation there is a risk that the budget will be insufficient to execute the contract.

Not all of the contracting entities established local or internal standard forms of procurement reports and forms of tender securities.

Electronic communication is generally allowed during the entire public procurement procedure. However, the tenders and qualification documentation confirming compliance with requirements can not be submitted in electronic form (i.e. without the need for certified electronic signature). The public procurement record is not published by the electronic means.

The tender documents are generally formulated only in the contracting entity's official language, but in some cases tender documents are also available in a language customarily used in international trade.

III. Conclusions

In the EBRD 2010 assessment Latvian PPL scored high compliance in the EBRD region. PPL provides for modern, uniform, and quite comprehensive regulation, in accordance with the EU PP Directives.

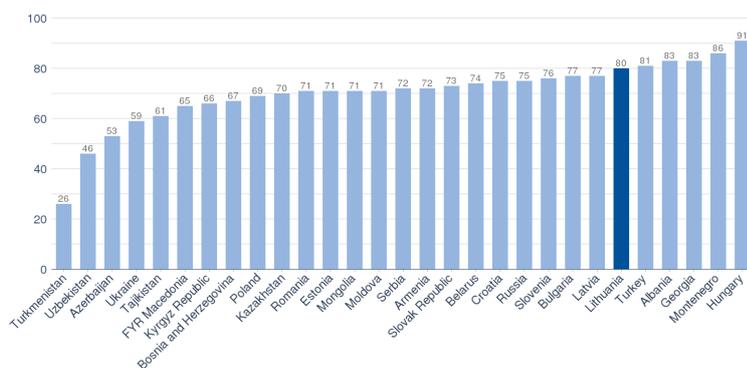
PPL clearly promotes transparency and competition in public procurement (average 77% compliance rate). Latvian PP policy is focused on adopting transparency safeguards; it's less comprehensive when it comes to implementing PP efficiency instruments.

PPL provides for enforcement mechanisms and remedies system and is based on sound principles; in the 2010 assessment no major weaknesses, scored below 50% compliance rate, were identified. Yet marks for efficiency of the PP process are lower, due to insufficient adoption of the procurement efficiency instruments. In certain aspects PPL is very modern: eProcurement is being successively implemented as mandatory.

Local PP practice received high scores (average above 80% compliance rate) and is perceived to be transparent, competitive and well managed, especially when conducted electronically. Local contracting entities supplement PPL with internal procurement rules, when necessary. Most contracting entities implemented appropriate planning and monitoring procedures and manage the PP process in order to achieve best value for money.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in the Republic of Lithuania is regulated by the Law on Public Procurement of 6 September 1997, No. I-1491, revised on 22 December 2005, No. X-471 (PPL). In the EBRD 2010 assessment PPL scored a high to very high level of compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

There is no independent regulatory body for public procurement (PP) in Lithuania; the PP regulatory functions are provided by a dedicated unit in the Ministry of Economy of the Republic of Lithuania (PPA).

The PPA is responsible for:

- implementation of PP policy;
- coordination of PP activities;
- monitoring compliance with PPL.

Chart 3 illustrates the results of the review of the Lithuanian institutional framework.

Scope of regulation

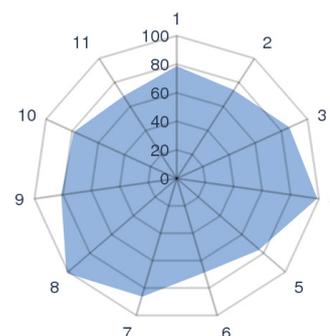
PPL is comprehensive; it covers both national and local government procurement. There are also specific procurement rules for public law institutions and for the utilities sector. Concessions are regulated by separate legislation. PPL clearly differentiates between public procurement contracts and procedures and concessions.

PPL has established a decentralised procurement function as well as a Central Purchasing Body. A contracting entity may manage their own procurements or purchase goods, services or works from the central purchasing body.

Eligibility rules

PPL establishes primary public procurement eligibility rules. The tenderer is excluded from PP procedure if convicted for participation in a criminal organisation, corruption, fraud, or money laundering. A contracting authority may also state in the procurement documents that a tenderer who is undergoing bankruptcy proceedings, liquidation or similar procedures, or has outstanding obligations related to payment of taxes and/or social contributions, etc., will be excluded from the tender.

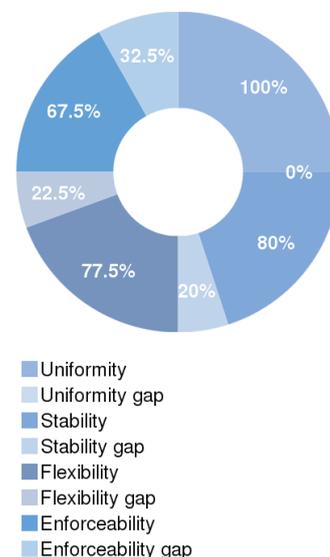
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

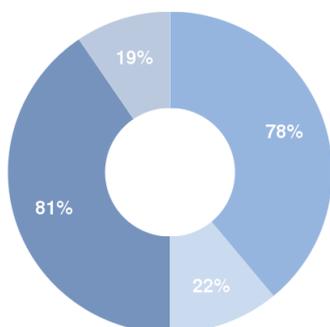
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

The law provides a distinction between general public procurement eligibility criteria and qualification and technical requirements to be met by tenderers as defined by the contracting entity for individual contracts.

A contracting entity may request that tenderers demonstrate their legal and professional capacity as well as economic and financial standing and examine their technical and financial abilities in contract notice or tender documents. To comply with requirements specified in a contract notice or tender documents, the tenderers may be obliged to provide appropriate evidence, such as certificates.

The procurement procedures

PPL provides for tendering and negotiated procedures including:

- a) Open tender;
- b) Restricted tender;
- c) Competitive dialogue;
- d) Dynamic purchasing systems;
- e) Negotiated procedure with or without notification;
- f) Design contest.

Open and restricted tenders are the default procedures that can be used for all procurements without limitations. The contracting entity may apply other procedures only in situations where the law allows.

Moreover, in open, restricted or negotiated procedures, electronic auction can be employed as the final stage of the PP procedure.

The procurement time and cost effectiveness

PPL does not allow for an estimate of the length of a procurement process for goods and works contracts of significant value; PPL provides several deadlines but mainly for tender submission.

PPL requires mandatory aggregation of lots and valuation methods taking into account whole life costs of the purchase or works. PPL provides for aligning value and scope of the contract with the formality of the procedure (cascaded thresholds). There are special simplified procedures for small value contracts. PPL provides for mandatory e-Procurement for no less than 50 percent of the total value of the contracting entity's procurements and publishes all contract notices and tender documents on the e-Procurement platform, Central Public Procurement Information System (CPPIS).

Access to the e-Procurement platform is open to the public and is free of charge.

Electronic and fax communication is available and no mandatory written confirmation of such communication is required, unless specifically requested by the contracting entity.

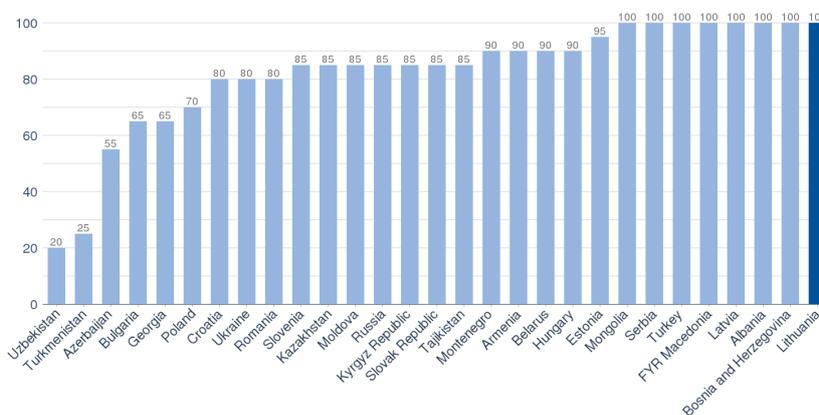
PPL does not directly require public contract terms and conditions to be fair and balanced, reflecting best available business practice. However, contracting authorities are required to ensure proportionality, equal treatment and fair competition across all PP procedures.

PPL includes a clear test when the contracting entity should seek a tender security, but limits on the amount have not been stipulated. Contract performance security is not regulated by PPL. PP procedures are conducted in the official language of Lithuania; the contracting entity may allow for tenders and proposals in other languages.

Review and remedies

Every tenderer who has an interest in procurement and believes that the contracting entity has not complied with PPL, has the right to file a complaint with contracting entity. Where a tenderer is not satisfied with the review of the complaint

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Lithuania

by the contracting entity, the tenderer may appeal its decision to the court. In addition, a reconciliation procedure is available, set down in Article 125 of PPL.

In addition, if the contracting authority or the tenderer fails to satisfy its obligation under PPL or other laws, then the injured party has the right to claim damages in the commercial court.

Public contract management

PPL requires mandatory planning of public procurement. The Law on the Budget Structure requires appropriate budget or financing authorisation prior to the publication of a contract notice.

PPL does not require contracting entities to provide for contract management of the public contract, nor for procurement staff to have contract management capabilities.

Assessment overview

Strengths

In the 2010 assessment Lithuanian PPL scored high to very high compliance with international standards, with exceptionally high compliance in uniformity (100%) and competition indicators (97.5% compliance rate).

PPL is based on the sound principles of the EU PP Directives, and consistent, if not fully comprehensive (no regulation for contract management is provided). PPL is uniform, well coordinated with most integrity safeguards and several efficiency instruments in place. Some regulatory gaps have been identified, in stability and enforceability; this is mainly due to the changes brought about by the EU harmonisation process.

Weaknesses

The assessment identified no major

weaknesses in PPL scored below 50% compliance rate; the lowest score is the 67.5% compliance rate for enforceability and efficiency of the public contract indicators. Lithuanian PPL could be improved in terms of:

- a) mandatory detailed and unbiased assessment of the contracting entity's needs;
- b) mandatory contract management of the public contract;
- c) increased mandatory use of e-Procurement (currently 50% of procurements are conducted electronically).

Opportunities

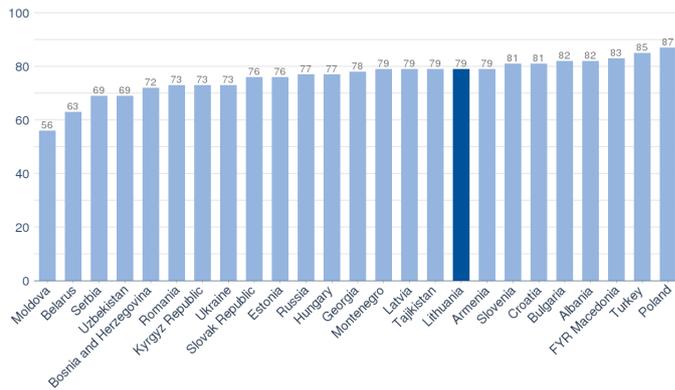
PPL provides for a modern, highly competitive and transparent legal framework. E-Procurement and modern purchasing techniques are employed to improve the efficiency of procurements. In addition, procurement capacities have been developed and PPA is obliged to provide training for contracting entity procurement staff; procurement officers have to be professional, of high integrity and follow a well established code of ethics.

Regulatory risks

The 2010 assessment results revealed that Lithuanian PPL could be improved by strengthening enforcement and providing public contract management regulation.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

In the local PP practice survey, the Lithuanian national PP framework was reported to be generally clear and comprehensive. If any internal procurement rules are adopted, it is mandatory for the contracting entity to disclose them to the public. Internal PP policies and rules are frequently updated. Regular training for all internal procurement stakeholders is provided and internal roles in the procurement process are clearly allocated. However, the 2010 assessment revealed that the local contracting entities have not yet fully implemented mechanisms provided by PPL. Charts 6 and 7 illustrate the general quality of local PP practice.

Regulatory institutions

The compliance of PP procedures with the law is monitored by an administrative unit (PPA). Chart 8 illustrates how the local institutional framework has been evaluated by local contracting entities and public procurement practitioners.

Scope of regulation

The local PP practice survey confirmed that both government entities as well as contracting entities in the utilities sector

have their procurements regulated by and conducted according to PPL.

Eligibility rules

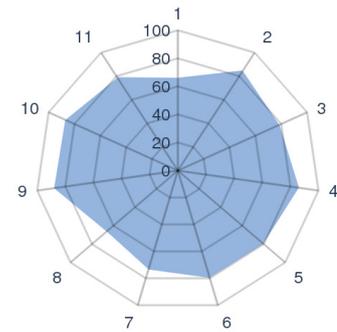
In practice, general eligibility criteria are respected. Typical qualification criteria include primarily experience and past performance on similar contracts and, sometimes, capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

Affiliates of the contracting entity are considered eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control amongst the contracting entity and the affiliates.

The procurement procedures

Tenders recommended by PPL are the most commonly used PP procedures. Negotiated procedures, available for specific or complex contracts, are less frequently used. There are a significant number of framework agreements in use, specifically those established by the Central Purchasing Body and available electronically via the e-Procurement platform.

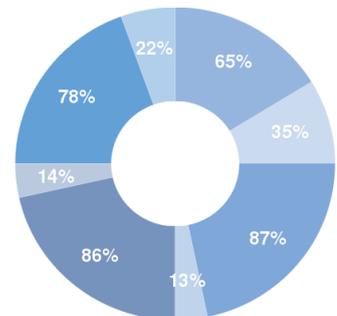
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice

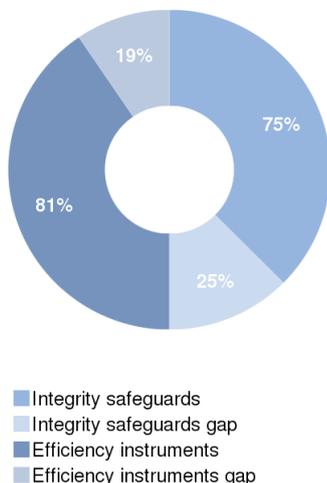


■ Uniformity
 ■ Uniformity gap
 ■ Stability
 ■ Stability gap
 ■ Flexibility
 ■ Flexibility gap
 ■ Enforceability
 ■ Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Lithuania

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

In practice, it is mandatory to complete a procurement plan before a public procurement process is initiated. Contracting entities prepare plans each budget year. The technical, financial and procurement planning is well coordinated. Nevertheless there is no mandatory test to ensure that the scope and subject of public procurement is economically justified. There are no standard national contract forms available but there are several standard internal tender documents for goods, works and services contracts, established by the Central Purchasing Body; however, they are not mandatory for all contracting entities. The tender documents are available free of charge. There are no delays in the evaluation process: tender evaluation is normally completed within the original tender validity period.

Local practitioners reported that it takes about 50 days to sign a public procurement works contract to the value of 500,000 Euros, conducting the procedure electronically using the e-Procurement platform and about 80 days when the procurement is conducted traditionally. It takes about 40 days to sign a public procurement goods contract to the value of 250,000 Euros, conducting the procedure electronically using the e-Procurement platform, and about 52 days when the procedure is conducted traditionally. There is always sufficient time allowed to prepare and submit tenders.

Review and remedies

In practice, remedies proceedings are considered straightforward, effective, non-discriminatory and not corrupt. In principle, the cost of the remedies procedure is bearable. It takes around 15 days to obtain a remedies decision, yet some contracting entities consider this unreasonably long. All procurement records are disclosed for the review. The remedies proceedings take place in public and a real time record of the proceedings is kept.

Public contract management

In practice contracting entities employ manual and computerised procurement and contract monitoring systems. Contracts are generally completed on schedule but not always within the original budget. Modifications or waivers of the terms and conditions of a contract are not always subject to a review and approval procedure.

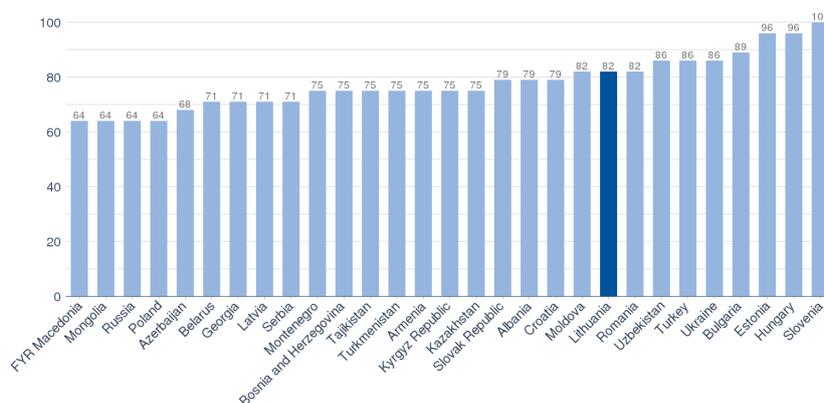
Most contracting entities have adopted internal policies on the cancellation of public contracts, but compensation is not clearly regulated. However, the contracting authority must specify the reasons for a public contract cancellation.

Assessment overview

Strengths

Local PP practice in Lithuania scored a medium to high level of compliance with international standards. There are no areas of practice scored very highly compliant (above 90% of the benchmark), although Lithuanian practice was scored as exceptionally stable (86.67% compliance rate).

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Moreover, a substantial proportion of public procurements is, in practice, conducted electronically, using modern and very competitive procurement techniques, increasing the economy of PP in Lithuania.

Weaknesses

The 2010 assessment revealed no areas of practice scored as low compliance with international standards (below 50% compliance rate). The lowest marks were recorded for accountability indicators (64.91% compliance rate), due to insufficient regulation of PP programming and contract management.

Opportunities

Local PP practice is stable and highly compliant with international standards. With further development of e-Procurement policies and full implementation of the improved PPL, Lithuanian practice could be considered exemplary in the region, in terms of the contracting entities efforts to achieve the best value for money.

Risks

Lithuanian PP procedures are not open to international trade; tender documents are, in most cases, formulated in the contracting entity's official language only. Not all of the contracting entities have implemented internal policies to monitor changes in a procedure once the procurement has been launched. Nor do they provide for public contract management.

III. Conclusions

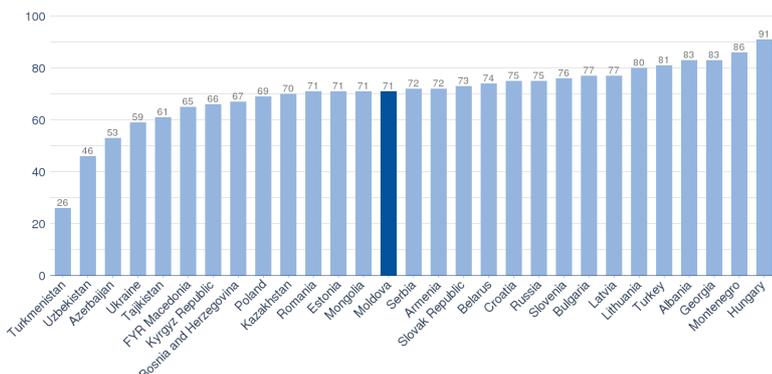
Lithuania achieved a high level of compliance in the assessment of its legal framework with a result of 80%. That result places Lithuania in the list of the top 10 countries in the region. The result also indicates a general balance of the regulatory gaps within the PP institutional framework with the exception of the Uniformity indicator, where Lithuanian law was assessed as 100% compliant with the benchmark. The Integrity and Efficiency

measures are also balanced with gaps at the level of 22% and 19% respectively.

Lithuania obtained a similar result in the assessment of local practice and in the assessment of quality of legal framework (79%). In the assessment of Institutional framework in practice, some gaps were observed: smaller gaps in the Stability (13%) and Flexibility (14%) indicators, and a substantially larger gap in Uniformity (35%). The assessment of the Adequacy of policy making revealed a balance between the Integrity gap and the Efficiency gap, which fluctuate around 19% and 25%.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Moldova is regulated by the law on Public Procurement Nr. 96 enacted on April 13th 2007, and published July 27th 2007 in Monitorul Oficial Nr. 107-111, Article №: 470, (PPL).

In the EBRD 2010 assessment Moldovan PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

PPL has established the Agency for Material Reserves, Public Acquisitions and Humanitarian Assistance (“The Agency”), the central administrative body with legally binding characteristics and functional independence, subordinated to the Government of Moldova.

The Agency was created in order to supervise, control and coordinate public procurement (PP). It has the authority to develop PP policies in Moldova including: development of legislation, drafting regulations for the execution of PPL, and

monitoring PP procedures. Moreover, it maintains lists of qualified tenderers, as well as the list of tenderers excluded from participation in public tenders in Moldova. The Agency is also responsible for developing and enforcing standard documentation as well as organising training for the contracting entities and their procurement staff.

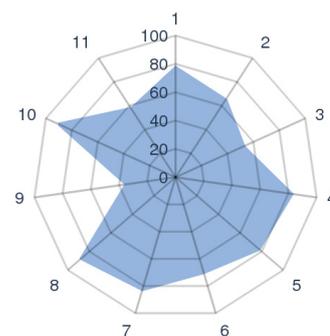
In addition, the Agency is responsible for PP review and resolves complaints related to public procurement. Chart 3 illustrates the results of the review of the Moldovan PP institutional framework.

Scope of regulation

PPL provides regulations for both public and local government procurement and establishes specific procurement rules for public law institutions. PPL does not provide any specific regulations for procurement in the utilities sector. PPL is also applied to PP contracts subsidised directly by the contracting entity in more than 50% of cases.

PPL outlines circumstances in which procurement procedure is not applied (which are generally parallel to circumstances named in EU Directives) and it refers to the following contracts:
a) arbitration services;

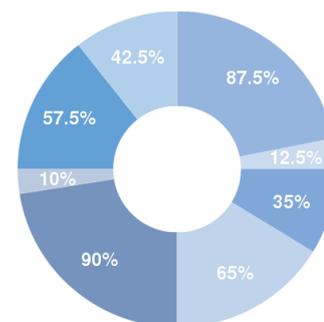
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency
4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity
9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

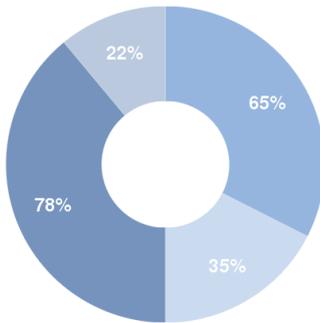
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

- b) emissions, purchase, sale or transfer of securities or other financial instruments, particularly with operators of procuring organs for the accumulation of money or capital;
- c) printing banknotes or minting coins, as well as their transport;
- d) services provided by the National Bank of Moldova;
- e) employment;
- f) public works and services concession contracts;
- g) government procurement contracts, awarded by one procuring entity to another, or to an association for procuring organs, on the basis of exclusive rights provided in law.

Concessions are regulated by a separate body of law; nevertheless, the swap mechanism between (a) the public procurement contract and procedures and (b) concessions is not clear.

PPL provides for decentralised procurement functions and establishes a Central Purchasing Body.

Eligibility rules

PPL establishes no general eligibility criteria. Under PPL any local or foreign entrepreneur is eligible to tender, unless only local entrepreneurs are invited to tender. Also, entrepreneurs can create a consortium and are allowed to submit a tender offer together.

Contracting entities may set forth pre-qualification criteria, such as:

- a) managerial competence;
- b) experience;
- c) reputation;
- d) availability of qualified personnel;
- e) technical equipment;
- f) a satisfactory financial situation;
- g) evidence of not being bankrupt or insolvent;
- h) fulfilment of public obligations and the payment of taxes;
- i) non-use of administrative or criminal penalties in the last 3 years;
- j) information about founders and affiliates.

Tenderers will be excluded from the process if:

- a) submitted data is unreliable or incomplete;
- b) the tenderer fails to deliver information upon request.

The qualification of the tenderer may be conducted solely in accordance with criteria and procedures set forth in tender documents.

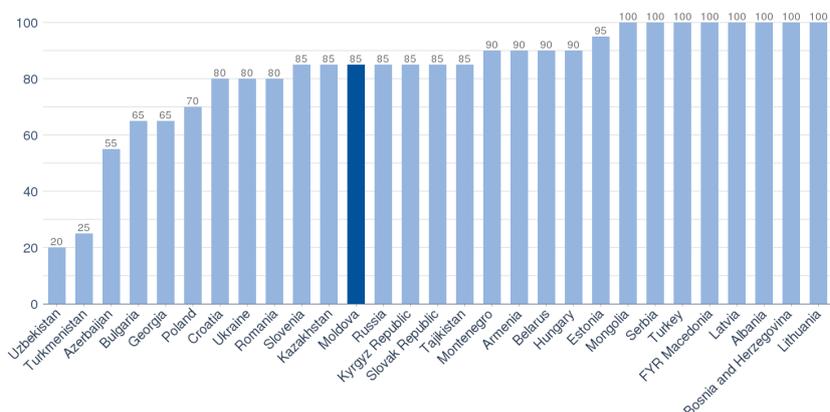
The Agency is responsible for maintaining lists of qualified and unqualified tenderers. Blacklisted participants are excluded from participation in the procurement procedure for 3 years from the time they are added to the list.

The procurement procedures

Among the PP procedures, open tender is the default procedure, while other procedures may be used only under conditions stipulated in PPL. PP procedures may include:

- a) Open tender,
- b) Restricted tender,
- c) Competitive dialogue,
- d) Negotiated procedures,
- e) Direct contracting,
- f) Request for quotations,
- g) Dynamic purchase system,
- h) Electronic auction,
- i) Procurement for planning of government council housing,
- j) Framework agreement,
- k) Procurement through universal trade stock.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Moldova

The procurement time and cost effectiveness

PPL contains neither provisions regarding contract valuation methods based on an all-life costing of the purchase or works, nor requires contract conditions to be fair, balanced or based on the best available business practice.

It also does not require the formalities of the procurement process to be kept simple.

Tender documents are delivered to the tenderers at their request, but they are not free of charge. PPL stipulates only that the contracting entity may charge a non-refundable fee for a copy of tender documents, although it should not exceed the cost of printing and delivery.

The contracting entity may require tender security (in the form requested in the tender documents) to be submitted together with the offer. Tender security shall not exceed the limit of 3% of the value of the offer submitted. The contracting authority may not require any tender security for tenders with an estimated value of less than 200,000 MDL (about 12,300 Euros) for goods contracts, and 1,000,000 MDL (about 61,700 Euros) for works contracts.

PPL allows for an accurate estimation of the duration of the PP process for works and goods contracts of a significant value. PPL enforces a general rule that requires the PP to be accomplished in a reasonable time. It takes around 35 days to select a tenderer. PPL also stipulates that public contracts shall be signed within 20 business days, from the day the contract is awarded, if such a requirement was set forth in the tender documents.

PPL introduces both tendering and negotiated procedure and distinguishes between short and long term contracts, enabling contracting authorities to adjust the procedure to the specific features of the purchase. At the discretion of the con-

tracting entity, all means of communication are available to tenderers: mail, fax, electronic means, telephone or a combination of those. The contracting entity may request confirmation of documents in written form, only if such a requirement was directly set forth in the tender notice.

PPL stipulates that all tender documents should be formulated in the official language exclusively, unless the nature of the purchase requires foreign tenderers or the estimated value of the contract exceeds 2,500,000 MDL (about 154,000 Euros) for public procurement goods and services contracts; and 99,000,000 MDL (about 6,000,000 Euros) for public procurement of works contracts. If a tender is submitted in a foreign language, it has to be submitted in the official language as well.

Foreign currency may be used in the course of the procedure. However, its use has to be clearly stipulated by the contracting authority in tender documentation. In this case, the contracting authority is also obliged to recalculate the proposed price in the currency of Moldova, MDL.

Review and remedies

PPL provides for an administrative review of PP complaints. Tenderers are entitled to file a complaint with the Agency. Any tenderer who believes that his legally recognised interests or rights have been infringed by the contracting entity during the procurement procedure, or that the contracting entity violated a law when awarding the contract which resulted in or might result in damage to the tenderer, is entitled to challenge the contracting entity's decision or the way the PP decision was made, according to law.

There are certain exemptions from the general right of the tenderer to appeal. The tenderer may not file a complaint about:

- a) the selection of tendering procedure for consulting services;
- b) the limited participation in the procure-

ment procedure envisaged in law;
c) the contracting entities' decision to purchase domestic goods and services;
d) the decision to reject all offers;
e) the absence of notification about the right to appeal.

Complaints regarding invitations to tender and tender documents can be submitted until the opening of tenders. If the Agency has not issued a decision within the prescribed period of time (20 days), or the tenderer is not satisfied with the decision, he is entitled to refer the complaint to the appropriate administrative court and, as a result, the Agency loses the jurisdiction to resolve the complaint.

Public contract management

Contracting entities must prepare procurement plans on a yearly and quarterly basis. A detailed financial plan for a PP contract is required when the contract is signed.

The contracting entity may establish, in tender documents, requirements regarding and the conditions of contract performance security. Contract security shall not exceed a limit of 15% of the value of the contract.

The contracting entity is under no obligation to conduct proper contract management. The law does not require a computerised contract monitoring system nor does it provide a requirement for procurement staff to have adequate contract management skills.

Assessment overview

Strengths

In the 2010 assessment the Moldova PPL did not demonstrate specific strengths; flexibility, with a score of 90% compliance, is the strongest point of the local framework.

PPL commits contracting entities to draft tender documents and provides standard

forms of contract notices, procurement reports and tender securities, standard terms of reference, tender documents for all types of procurement and the standard terms and conditions of contracts for all types of procurement.

Weaknesses

The weakest point of Moldovan PPL is Stability, scored at 35% compliance. Frequent changes to PPL have had a negative influence on stability. In addition, the stability of specific procurement procedures is not ensured; PPL does not prevent a change of procedure or significant changes to the scope of the contract once the procurement process has been launched.

Electronic submission of tenders is not allowed unless the tender is submitted with a certified electronic signature. PPL does not authorise the re-submission of information and documents during the procurement process. There is also no specific provision for the cancellation of a public contract, consequently there are no rules on compensation.

Opportunities

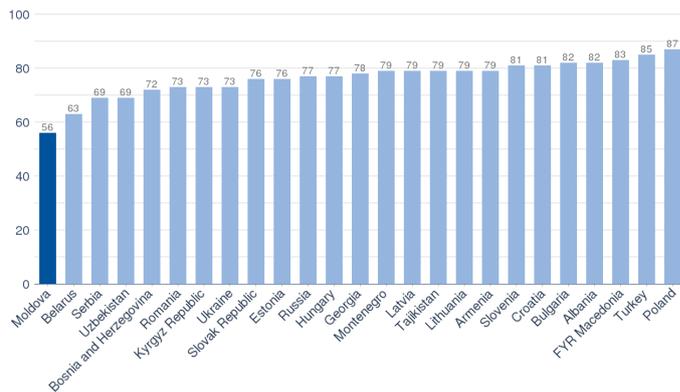
PPL contains explicit anti-corruption policy regulations, yet it is not satisfactory: the assessment has revealed a 35% regulatory gap in PPL integrity safeguards. Similarly, a 22% regulatory gap has been observed in the efficiency instruments.

Regulatory risks

PPL suffers from a lack of stability and PP policy-making is inconsistent and unbalanced. Other negative features include the lack of contract management regulation and the lack of a requirement for mandatory publication of contract notices and tender documents on the contracting entity's website.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Several local practitioners consider the legislative framework to be unclear, incomprehensible, and not conducive to a competitive procurement environment. Internal regulation of the procurement process is not very popular among local contracting entities; however, roles in the procurement process were found in most cases to be clearly allocated. Since PPL does not mandate the disclosure of the internal procurement rules, transparency of the procurement process is affected.

No regular procurement capacity building training is organised for procurement officers.

Chart 7 presents the scores for the general quality of local PP practice in Moldova.

Regulatory institutions

The compliance of PP practice with PPL is monitored by the Agency.

Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

PPL requires mandatory procurement planning before a PP process is started; however, the technical, financial and procurement planning is not well coordinated. Assessment of all relevant procurement risks is not mandatory either. Generally, once the procurement process has been launched, changes in procedure are monitored. In some cases contract administration is provided.

Manual or computerised procurement or contract monitoring systems have been introduced generally.

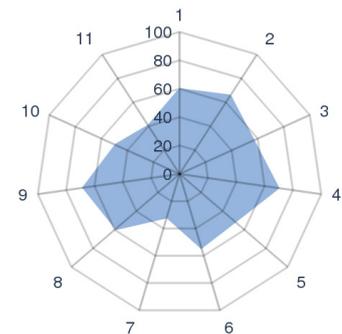
Both national and internal guidelines concerning the drafting of tender documents have been introduced. Standard forms of contract notices, procurement reports, tender securities and standard international contract forms are not employed in practice.

Eligibility rules

The assessment of practice revealed that eligibility rules are correctly applied.

The qualification criteria set by contracting entities include experience and past performance on similar contracts and ca-

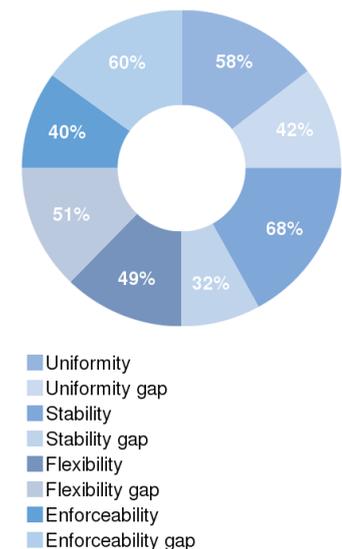
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

pabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. Financial information is routinely requested in order to assess the tenderer's capacity to deliver the contract.

The procurement procedures

PPL recommends open tender as the default procedure and this tender is most commonly used. Negotiated procedure is not utilised for specific or complex contracts, although PPL provides for it. Consequently, the contracting entity is not making use of the choices available when choosing a suitable procurement method.

The procurement time and cost effectiveness

In Moldova it is not possible to estimate how long it takes to sign a public procurement goods contract to the value of 250,000 Euros or a public procurement

works contract to the value of 500,000 Euros.

Nevertheless, tender evaluation is normally completed within the original tender validity period. It is claimed that contracts are mainly completed on time.

Review and remedies

An administrative review of complaints related to PP procedures is conducted, but local practitioners reported that complaints are rarely heard in an impartial or independent manner.

The review process is not efficient and it takes from 30 to 45 days to obtain a decision. Most local contracting entities declared that the review process does not fit the business context. The Agency is perceived to be unpredictable. The remedy procedures are neither effective nor straightforward. They are also discriminatory. The cost of the review procedure is not considered bearable for the private sector.

The Agency is generally perceived to be corrupt. Participants have access to all review proceedings; however, these proceedings rarely take place in public. Review proceedings are not recorded but the remedies bodies have access to nearly all the procurement reports.

Public contract management

In Moldova, contract administration is not mandatory for public contracts. To improve the post-tendering PP phase contracting entities introduce internal procedures to monitor contract delivery and/or termination. Any modifications or waivers of the terms and conditions of a contract are subject to a review and approval procedure. A manual, rarely computerised, procurement and contract monitoring system has been introduced. In practice the reasons for contract cancellation do not always have to be specified.

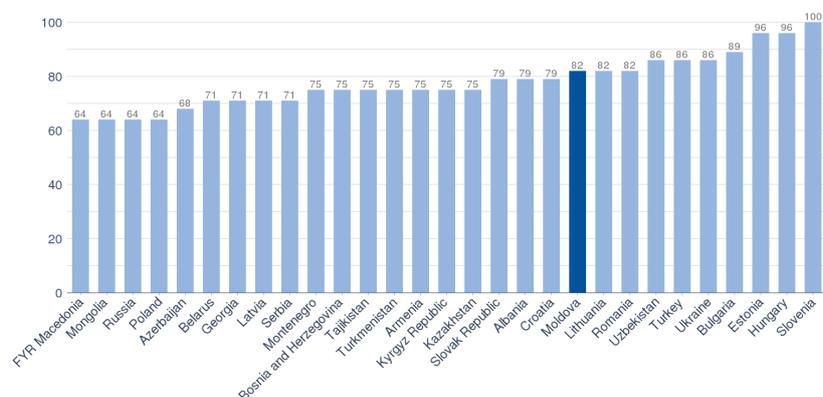
Assessment overview

Strengths

There is no element of practice in the Moldovan PP practice which scored high compliance with international standards. The highest marks (69%) are for the competition indicators, due mainly to the fact that the both the lowest price and the most economically advantageous responsive tender approach is enabled.

Weaknesses

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Moldova

There are many weaknesses in Moldovan procurement practice. The main weakness is lack of enforceability (40% compliance rate), flexibility (48.75% compliance) and formality of PP procedures (marks for proportionality are 31%).

There is no mandatory test to ensure that the scope and subject of PP is economically justified. Negotiated procedures are not used for complex contracts, although they are provided for in PPL. Furthermore, it is not mandatory for the contracting entity to explain their choice of procurement method. Tender documents are formulated only in the contracting entity's official language and are not available in a language customarily used in international trade.

The contracting entity is not required to maintain a real-time written record of the procurement proceedings. PPL compliance monitoring is evidently non-existent.

The contracting entity's internal procurement rules do not always sufficiently supplement gaps in PPL regulation.

Opportunities

Financial authorisation is required to start the procurement process. Many contracting entities have internal rules for drafting tender documents and standard forms of contract notices increasing the system's transparency. There are also internal PP monitoring and auditing arrangements in place. Several contracting entities have internal rules or policies on contract cancellation.

Risks

Local PP practice in Moldova is generally weak (average 55% compliance rate). Significant implementation gaps have been identified in several areas. In addition, the PP review and remedies proceedings seem to be inadequate, corrupt and discriminatory. Moreover, review decisions are not published, or otherwise available to the public.

III. Conclusions

The quality of Moldovan PPL achieved medium compliance with international standards (average 71% compliance rate). PPL scored well on the competition, uniformity and flexibility indicators; otherwise marks were rather low.

The Moldovan institutional framework is fragmented and substantial regulatory gaps in the institutional framework were identified (a 42.5% regulatory gap in enforcement instruments and a 65% gap in stability measures have been identified). Local PP policy making is reasonably balanced and responsive to local market challenges but insufficient integrity safeguards and efficiency instruments have been adopted. Regulatory gaps of 35% and 22% respectively were revealed by the assessment.

In the assessment of practice, local PP practice in Moldova scored 55% compliance with the international standard, significantly lower than in the assessment of quality of legislation.

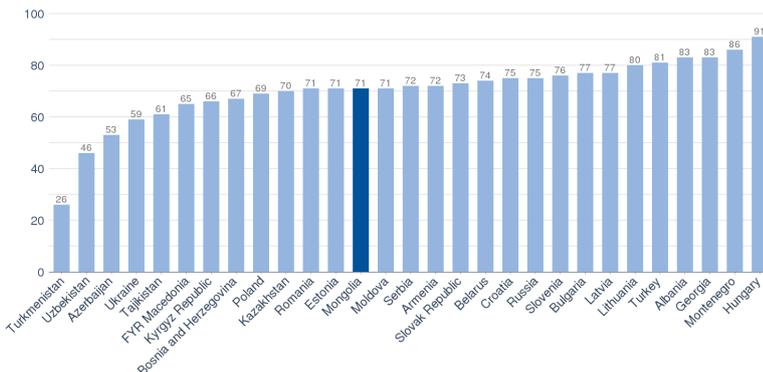
The assessment revealed that there is no compliance with any key PP standards and average compliance rates vary from 31% to 69% of the benchmark. Several implementation gaps were identified and a general conclusion is that there are very substantial gaps in the implementation of laws and institutional framework capacities in Moldova. Local practice is lacking in terms of stability and uniformity and the enforcement is generally insufficient (a 60% implementation gap in enforcement has been reported).

Finally, local PP practice in Moldova scored a 14% compliance rate in the PP sustainability survey. These marks are significantly lower than the scores of other countries in the EBRD region.

Mongolia

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in Mongolia is regulated by Law on Public Procurement, December, 1st, 2005 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Mongolia there is no dedicated public procurement regulatory or remedies body. A unit in the Ministry of Finance (State Central Administrative Body in Charge Of Budget Matters) (PPA) is assigned with some regulatory functions in the field of public procurement (PP).

The PPA's core functions are:

- legislative function, including development of legislation, drafting rules, procedures, instructions, methodologies and model documents;
- advisory function, including advice to the contracting entities regarding PP business and methodology as well as to the law-enforcement authorities;
- control function, - including monitoring

of compliance with PPL,
d) review function – deciding on complaints regarding public procurements.

Chart 3 illustrates the results of the review of the Mongolia's PP institutional framework.

Scope of regulation

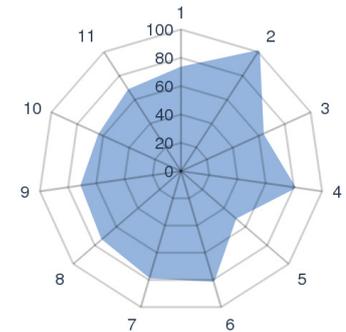
PPL covers national and local government procurement and contains specific procurement rules for public law institutions. However, PPL does not include any specific provisions for the utilities sector procurement.

PPL provides for a decentralised procurement function; a Central Purchasing Body may be established, if so decided by Minister of Finance. The Mongolian legal system does not contain provisions regarding concessions.

Eligibility rules

PPL establish primary PP eligibility rules, based on the 1994 UNCITRAL Model Law. The tenderers will be excluded from the PP process because of insolvency, liquidation procedure, suspension of business activity; failure to pay state contributions (taxes, penalties, pension), failure to perform a procurement contract, submitting

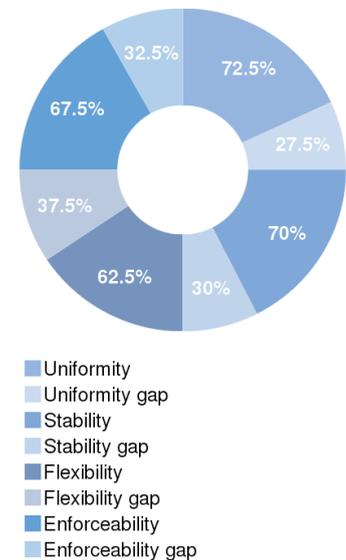
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

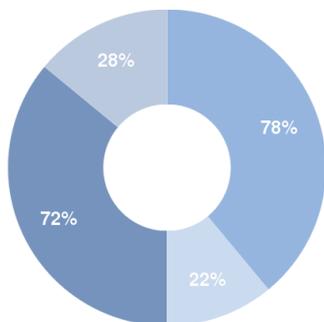
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

false information, committing a crime, or being involved in the tender preparation.

In addition, PPL allows the contracting entity individually decide on the prequalification requirements in order to assess and verify whether a tenderer is competent, reliable and capable of executing the public contract. The contracting entity defines and includes qualification criteria in the tender documents for particular tender.

PPL determines certain restrictions regarding frequency of participating in the PP procedures. The legal entity may participate in no more than six tenders relevant to its field of activities annually, and if was selected in three of these tenders, it is prohibited from participating in another tender within the given budget year.

The procurement procedures

PPL provides for the following procurement procedures:

- a) Open tender;
- b) Open tender with prequalification;

- c) Request for quotations;
- d) Direct contracting;
- e) Procedures for selection of consultants.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows. PPL does not provide for negotiated procedures; the only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts. Also, PPL does not introduce any eProcurement solutions.

The procurement time and cost effectiveness

With several deadlines specified, PPL generally allows for estimation of the length of PP process for works and goods contracts of a significant value. PPL does not require mandatory aggregation of lots and it does not provide for contract valuation methods taking into account whole life costs of the purchase.

Communication within procedure is conducted only in writing, thus excluding other forms of communication including fax and electronic means, except for contract notices publication. PPL does not stipulate that the costs of tender partici-

pation should be kept low nor require the contract terms and conditions to be fair and balanced, reflecting best available business practice. Still PPL limits maximum amount of the tender security to 1-2 per cent of the total tender price.

PPL allows using foreign currency in public tenders and contracts. The information concerning currencies in the tender evaluation should be specified in the tender documents.

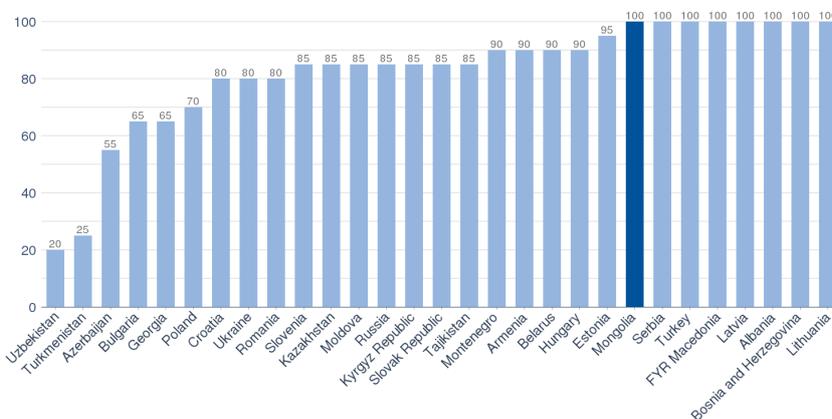
Typically tenders are published in the official language only. Still contract notices and tender documents for high value public works contracts are additionally published in the language widely used in the international trade.

Review and remedies

PPL provides for administrative review of PP complaints, based on the 1994 UNCITRAL Model Law.

PPL stipulates that the tenderer has the right to submit a written complaint to the contracting entity within 5 days since becoming aware of a breach of the PPL with documentary evidence attached. The contracting entity has to review the complaint and issue a decision within 10 days.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

If the tenderer is not satisfied with the decision or, if the contracting entity fails to issue it within the stipulated period of time, the tenderer has the right to appeal to the PPA. If an appeal is not submitted within stipulated deadline, the decision of the contracting entity is final.

If the complaint is reasonable, the tender procedure shall be suspended for 14 days. If the PPA fails to decide within the stipulated period or if complainant disagrees with the PPA review decision, he may file a complaint to the commercial court.

After conclusion of the public contract, unsatisfied complainant may refer a dispute only to the court, demanding the public contract cancellation or compensation and damages.

Public contract management

In Mongolia contracting entities prepare annual plan of procurements in consistency within the approved budget and submit to the General Budget Manager within 30 days since approval of the state budget. Moreover, PPL requires the contracting entities to obtain budgetary authorizations for public contract payments falling due beyond the current budget year. PPL includes a clear test as to when the contracting entity should seek a contract performance security and limits its maximum amount. Finally, PPL introduces a general rule on contract management and restricts amending and extending concluded contracts. In general public contracts may be amended because of necessity of the amendments, unforeseen circumstances and reasonable increase in the contract price.

Assessment overview

Strengths

In the 2010 assessment the Mongolian PP framework demonstrated full compliance with the integrity indicators (100% compliance), high compliance with com-

petition indicators (80% compliance rate) and medium compliance with remaining benchmark indicators.

Mongolian PPL provides for basic PP framework feature recommended by the 1994 UNCITRAL Model Law, provides for the administrative PP review and a judicial review as an alternative.

Weaknesses

The Mongolian PP frameworks is not modern and when assessed against current international PP standards show some deficiencies, with substantial regulatory gaps in the institutional framework (between 27% and 37%) and implementation of efficiency instruments.

PPL scored lowest on the economy of the process and efficiency indicators, where only 50% compliance rate has been identified in the assessment. PPL is generally outdated: it does not match a contract type with a tender selection processes, require mandatory aggregation of lots or request contract terms and conditions to reflect the best available business practice. Neither modern purchasing techniques are implemented nor electronic communication.

Opportunities

Integrity safeguards are very well regulated in the PPL and in the integrity indicators the Mongolian PPL scored best in the EBRD region.

Regulatory risks

PPL allows for domestic preferences.

III. Conclusions

Mongolia scored medium compliance in the assessment of the quality of PP legal framework (average 71% compliance rate). The 2010 assessment revealed outstanding compliance with the integrity indicators; Mongolia with full compliance achieved the highest result among all of the EBRD countries of operation.

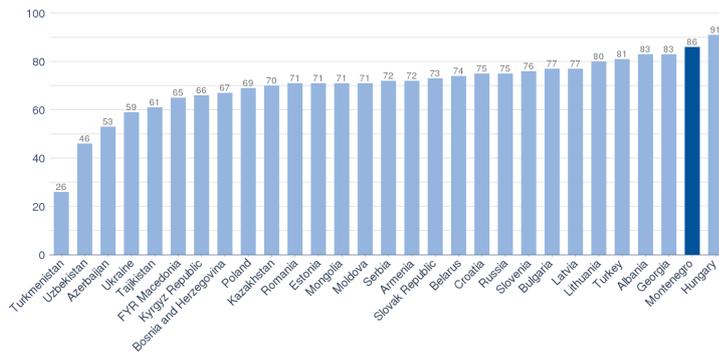
The Mongolian PP framework is not modern and assessed against current international PP standards show several regulatory gaps in the institutional framework and implementation of efficiency instruments. The Mongolian PP framework is also very centralized, 80% of all procurements are handled by the central government agencies. Local practitioners reported that remedies proceedings and timely and affordable but in general review decisions are not predictable and discriminatory and PPA, acting as a remedies body is perceived to be corrupt.

All efforts were made to interview local contracting entities in Mongolia. In spite of several attempts, it turned impossible to obtain any feedback from any local contracting entity. Data on implementation of sustainable public procurement is also not available.

Montenegro

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



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Legal framework

Public procurement in Montenegro is regulated by the Public Procurement Law no 07-7354, in July 2006 and came into force in November 16th 2006, (PPL). In the EBRD 2010 assessment PPL scored high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of the legislation are presented in Chart 2.

Regulatory institutions

In Montenegro a separate independent administrative body, the Competent Administration Directorate (the PPA) has been established. The core functions of the PPA include:

- developing PP policies;
- monitoring compliance with PPL;
- participating in drafting primary and secondary laws within the scope of PPL;
- developing standard forms for PP practice;
- monitoring implementation of PPL especially its compliance with EU laws;
- monitoring the choice of PP procedures by the contracting entities;
- advisory and consulting services in PP practice;

- organising staff training in conducting public procurements;
- publishing contract notices and contract award notices.

Scope of regulation

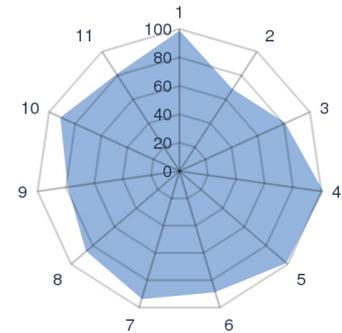
PPL applies to both national and local government procurement and provides specific procurement rules for public law institutions. PPL provides rudimentary regulation for the utilities sector. However, it does not include private companies operating in the utilities sector on the basis of special or exclusive rights. Concessions are regulated by separate legislation, Law on Concessions which was adopted on January 26th 2009 and came into force on February 12th 2009. PPL does not distinguish between public procurement contracts and procedures and concessions. PPL provides a decentralised procurement function and has not established a Central Purchasing Body.

Eligibility rules

PPL establishes primary public procurement eligibility rules. A tenderer will be excluded from a public procurement process if he/she has:

- been convicted (by final judgement) for committing a crime connected with

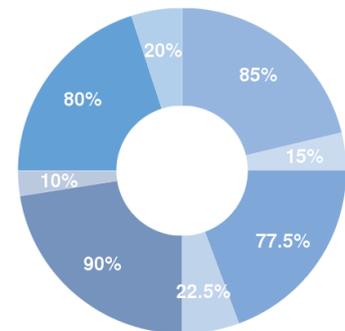
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

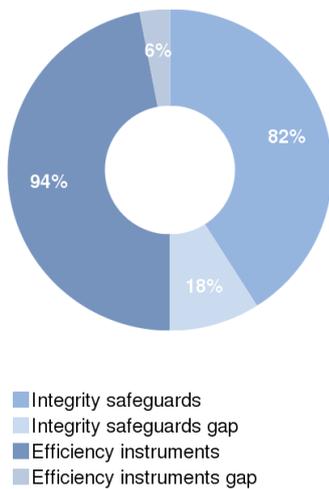
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

professional conduct;

- b) been deprived of the right to conduct business activity;
- c) been subjected to liquidation proceedings;
- d) been suspended from business activity,
- e) submitted false information;
- f) failed to fulfil obligations relating to payment of social security contributions and due taxes.

The tenderer may also be excluded if he/she:

- a) is undergoing bankruptcy proceedings;
- b) fails to fulfil conditions stated in the tender notice and in tender documents with respect to professional competencies, staff, and technical abilities;
- c) failed to meet contractual obligations to the contracting entities in previous public contracts.

Contracting entities may also establish individual prequalification criteria, such as economic and financial capacity and professional, technical and staff capacity. The contracting entity may request that tenderers confirm compliance with the requirements by submitting certificates.

The procurement procedures

PPL provides for both tendering and negotiated procedures:

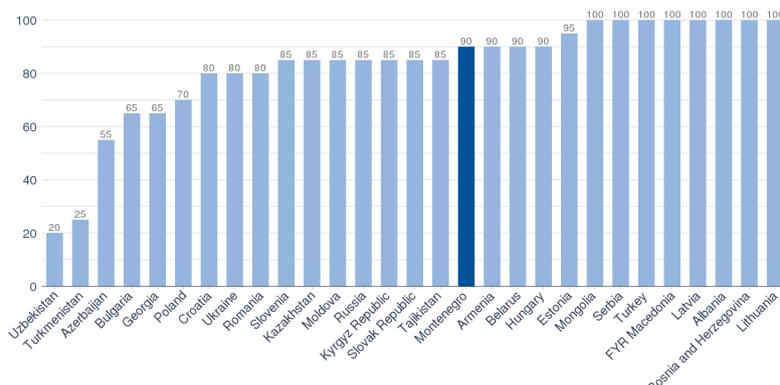
- a) Open tender;
- b) Restricted tender;
- c) Negotiated procedure with and without prior publication of a contract notice;
- d) Framework agreement;
- e) Request for quotations;
- f) Direct contracting.

In Montenegro tender is the default procedure. As a general rule when awarding public contracts, the contracting entities should choose open or restricted tender. PPL establishes cascaded contract value thresholds and some procedures are available only for small value contracts (request for quotations may be applied only if the value of the contract ranges from 2,000 to 10,000 Euros in the case of goods and services contracts and from 2,000 to 30,000 Euros in the case of a works contract). PPL stipulates that the selection of tender type or the method used is to be based on the specifics of the purchase and contract profile. PPL introduces some e-Procurement solutions; public procurement can be conducted electronically in open and restricted tenders, compliant with laws on electronic signature and laws on electronic trade. If chosen by the contracting entity, the information about conducting the tender electronically has to be indicated in the contract notice.

The procurement time and cost effectiveness

PPL allows for an accurate estimation of the length of the public procurement process for goods and works contracts of a significant value. PPL determines several deadlines throughout the whole public procurement procedure, for both contracting entities and tenderers and requires the public procurement procedure to be accomplished in a reasonable time. The contracting entities are obliged to determine deadlines in the contract notice, compliant with PPL requirements for minimum time limits for submission of tenders and proposals. Deadlines depend on the type of procurement procedure, e.g. in an open tender the deadline for tenders may not be shorter than 26 days from contract notice publication, in negotiated procedures and restricted tenders the deadline for expressions of interest may not be shorter than 20 days from contract notice publication. Other deadlines concern time limits for concluding the contract, submitting minutes and decisions to tenderers and submitting the procurement report. PPL requires tenders to be opened immediately after the expiry of the submission deadline, no later than one hour after expiry of the deadline. Tenders should be evaluated before the tender validity period has expired. PPL requires the mandatory aggregation of lots. The contracting entity may not

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

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divide the contract into small lots with the intention of avoiding prescribed PP procedures. PPL requires contract valuation methods take into account all-life costs of the purchase or works when estimating contract value (Article 32).

PPL requires the contract terms and conditions to be fair and balanced, reflecting best available business practice. PPL requires formalities to be kept simple and provides for the alignment of value and scope of the contract to the formality of the procedure.

PPL only indirectly stipulates that the costs of tender participation should be kept low. The contracting entities may charge only the cost of copying and distributing the tender documents. PPL includes a clear test as to when the contracting entity should seek a tender security and limits its maximum amount. The tender security may not exceed 2% of the tender value, and the contract performance security may not exceed 5% of the contract value.

Electronic communication is not mandatory. PP procedures may be conducted in traditional or electronic form; all communication and exchange of information between the contracting entity and the tenderer may be carried out by post, by electronic means or by a combination of those, as decided by the contracting entity. PPL introduces clear currency rules; the estimated value of the public procurement and all tenders should be expressed in Euros. Contracting entities formulate all tender documents and conduct PP procedure in the official language of Montenegro; however, they may decide to provide tender documents in a foreign language commonly used in international trade. If a tender is submitted in a language other than the official language of Montenegro, the contracting entity will request the tender to be translated and allow time for that. However, in the case of a dispute, the official language version of tender documents prevails.

Review and remedies

According to PPL any tenderer is entitled to lodge a complaint (an objection) against irregularities in the public procurement procedure and unlawful decisions of the contracting entity. The objection in the name of public interest may also be submitted by a prosecutor, relevant administrative authority, the supreme audit body and other authorities.

All complaints should be submitted to the remedies body, the Commission for Control of Public Procurement Procedures, within 8 days of the contracting entity decision. The Commission is required to decide on the complaint within 15 days from receipt of the complete procurement report from the contracting entity. The contracting entity cannot award the public contract until a review decision is adopted. The review decision of the Commission is final, unless an appeal is lodged with the Administrative Court of the Republic of Montenegro.

Public contract management

PPL requires mandatory planning of public procurement and an appropriate budget or financing authorisation prior to publication of a contract notice. PPL requires the contracting entity to provide management of the public contract; however, no detailed contract management regulation is provided nor mandatory policies regarding public contract extensions and amendments.

Assessment overview

Strengths

PPL scored high to very high compliance with international PP standards, especially in accountability, competition, economy of the process and proportionality indicators. Most of recommended accountability and transparency safeguards have been adopted (a code of ethics, anti-corruption PP rules and conflict of interest management). Contracting entities and other stakeholders are obliged to promote high standards of transparency, efficiency and fair competition. PPL requires PP process-

es to be well prepared and managed and no preferential treatment is allowed. In the case of irregularities, PPL provides for a PP administrative review mechanism.

Weaknesses

The assessment of PPL revealed no major weaknesses (compliance scored below 50 %); however, the lowest scores were recorded for compliance with the integrity benchmark (67.5% compliance rate). This is mainly due to the lack of transparency in handling amendments and extensions to public contracts.

Opportunities

PPL adopted in 2006 was a step in the right direction towards improving the Montenegrin public procurement system. PPL introduced corruption control regulations and provided a fairly robust institutional framework to ensure appropriate enforcement of the laws. PPL is quite comprehensive and based on sound principles. If e-Procurement were implemented as mandatory, this regulation could become a standard for all Western Balkan countries.

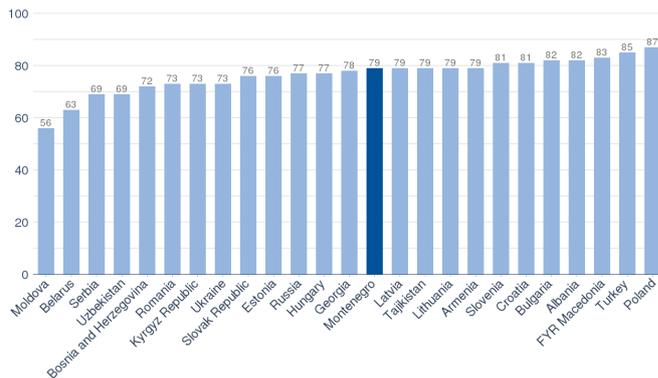
Regulatory risks

Although Montenegrin PPL scored well in terms of the quality of its framework, it lacks certain features. PPL does not provide a separate public procurement regime for utilities and public contract management regulations could be more detailed and specific.

There is room for improvement in the tender evaluation criteria in restricted procedures. The only evaluation criterion in restricted procedures is the lowest price. Currently both lowest price and most economically advantageous tender criteria are recommended for all procurement methods. Finally, minimum tender submission deadlines are significantly shorter than those recommended by EU PP Directives.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

In the local PP practice survey, PPL has been assessed as clear and comprehensive. In addition, in order to avoid eventual regulatory gaps local contracting entities have adopted internal procurement rules which are updated when necessary. Local practitioners reported that internal roles in the procurement process are clearly allocated; however, there is no customary practice of disclosing all procurement laws and internal regulations to the public via the contracting entity's website. The contracting entities admitted that regular training for public procurement officers is not always provided.

Chart 7 presents the scores for the general quality of local PP practice in Montenegro.

Regulatory institutions

Local practitioners reported that enforcement is not satisfactory and compliance is not always effectively monitored by the national regulatory and remedies bodies.

Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

The law covers both national and local government procurement as well as state-owned companies in the utilities sector.

Eligibility rules

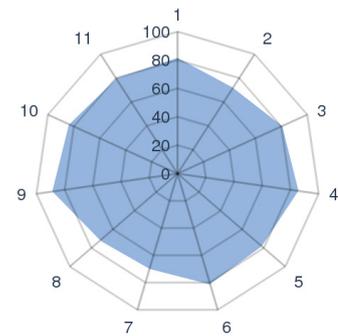
Eligibility rules established by the PPL are adhered to. In addition, contracting entities assess whether a tenderer is competent, reliable and capable of executing the public contract. Typical qualification requirements include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. False declarations are grounds for rejection from the PP procedure.

In specific cases affiliates of the contracting entity are eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

The procurement procedures

Tenders include most popular procedures; however, in principle negotiated procedures can only be used for specific

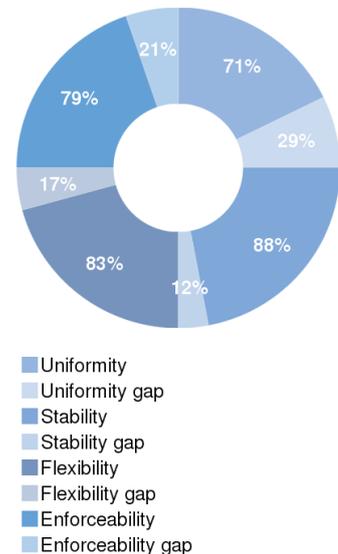
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

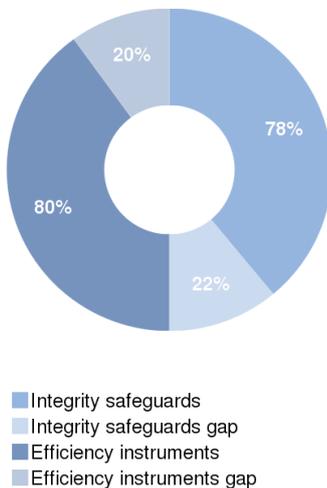
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

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9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

or complex contracts. If a negotiated procedure is employed, the contracting entity is obliged to explain its choice of the procurement method.

The procurement time and cost effectiveness

In practice, local contracting entities are able to estimate duration of the PP process. A procedure to sign a public procurement goods contract of the value of 250,000 Euros lasts from 30 to 50 days whereas it takes from 40 to 50 days to sign a public procurement works contract of the value of 500,000 Euros. Local practitioners reported that tender documents are not available free of charge but sufficient time is provided to prepare and submit tenders.

In practice tender evaluation is completed within the original tender validity period and public contracts are usually completed on schedule and within budget.

Review and remedies

Complaints are reviewed by an independent remedies body, the Commission for Control of Public Procurement Procedures. The PP remedies proceedings are considered straightforward, effective and non-discriminatory. Moreover, the Montenegrin remedies body is not perceived to be corrupt. Both the speed and cost of the remedies proceedings are reported as reasonable. It takes from 15 to 20 days to obtain a review decision. Procurement records are obligatorily disclosed to the remedies body. The remedies proceedings are recorded but not made public; no hearings are held.

Public contract management

Although PPL provides for mandatory procurement planning, in practice not all contracting authorities prepare their procurement plans each budget year. Those contracting entities that prepare public procurement plans, usually complete the procurement plan before a public procurement process is initiated and employ a mandatory test to ensure that the scope and subject of public procurement is economically justified. Technical, financial and procurement planning is coordinated.

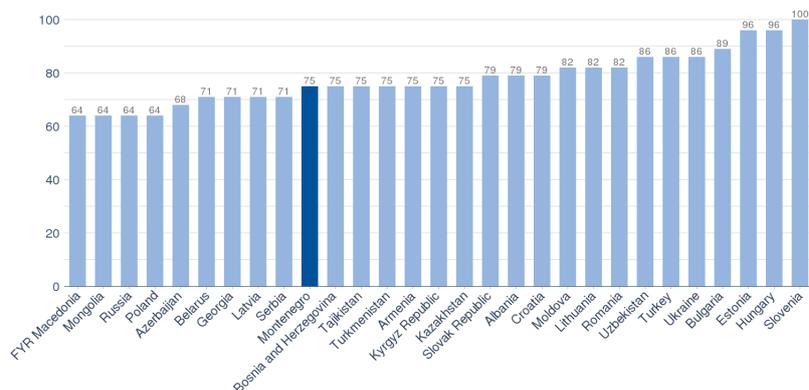
Some contracting entities have adopted monitoring and auditing arrangements, based on their internal procurement rules. These contracting entities monitor changes in the PP process once the procedure has been launched and monitor public contract delivery. However, internal rules do not usually regulate procedures for dealing with modifications or waivers of the terms and conditions of a public contract.

In practice standard tender and contract notice forms are not commonly used; however, most standard documents have been made available. With some exceptions, contracting entities may use standard international contract forms for all types of procurement.

In practice, contract management regulations are quite well developed. There are internal policies regulating public contract cancellation (but no compensation) and the reason for cancellation of the public contract has to be specified.

Public contracts are generally administered; contracting entities have adopted appropriate procedures to monitor the delivery of goods and services to verify quantity, quality and timeliness. Contracts are generally completed on schedule and within the original budget; however, no manual or computerised procurement and contract monitoring systems exist and procurement evaluations and audits are hardly ever conducted.

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Assessment overview

Strengths

In general, the quality of Montenegrin local PP practice scored lower than the quality of PP laws. The local practice scored consistently at a level of medium compliance with international PP standards, with the exception of stability indicators, with a high compliance rate (87.5%).

Weaknesses

In the assessment of local practice, no element scored low compliance (below 50%). However, in practice contracting entities do not align contract value and type with the choice of the procurement method. Procurement is bureaucratic (scoring lower marks on proportionality indicators (68.75 %). There are elements of practice which are not clear, such as PP planning procedures and the availability of tender documents in foreign languages. Electronic communication has been enabled to a limited extent; however, in practice, it is not utilised at all.

Opportunities

Thanks to recent PP reform public procurement procedures are no longer perceived as corrupt, nor are local regulatory and remedies institutions. Yet, according to local practitioners, the remedies body lacks consistency in its review decisions as well as impartiality.

Risks

Assessment of local PP practice reveals that PPL is not yet fully implemented; implementation gaps are significant in both integrity safeguards and efficiency instruments.

Procurement capacity building is not mandatory by law and is not provided in practice at all. e-Procurement solutions, provided by PPL, are not implemented and, in practice, PP procedures are traditional and can be bureaucratic.

Contracting entities in the utilities sector are making up for regulatory gaps by adopting internal procurement rules to make their procurement more efficient and aligned with commercial practices.

III. Conclusions

In 2010 assessment, Montenegro achieved high compliance rate in quality of legal PP framework (85% compliance rate) and the second best result in the assessment of legal framework in the EBRD region. The Montenegrin institutional PP framework is satisfactory; no substantial regulatory gaps in institutional framework were identified. PPL is not stable but this is due to the recent harmonisation with EU PP Directives. Local PP policy is reasonably balanced and responsive to local market challenges; most of the recommended efficiency instruments were adopted (a small gap of 6% has been recorded) and several integrity safeguards have been adopted in PPL (a more significant gap of 18% has been identified).

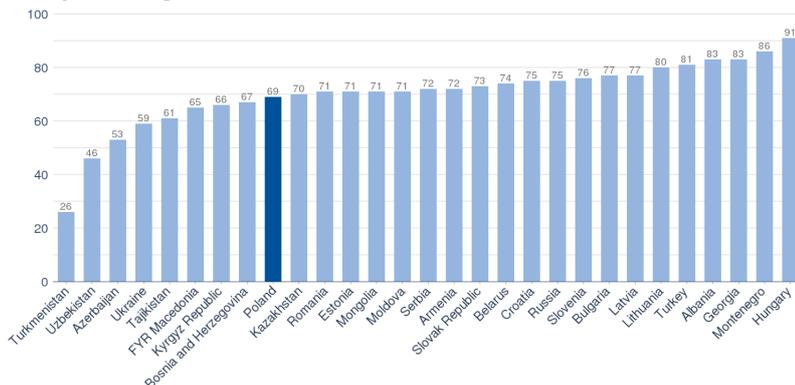
In the assessment of local practice Montenegro scored 79% compliance rate (high compliance), with slightly lower marks than for quality of legislation (85% compliance). In the local practice survey several implementation gaps were identified (gaps vary from 12% to 29% between indicators) and a general conclusion is that implementation of laws is not yet completed and institutional capacities are still not matching high regulatory standard. In addition, the survey revealed that implementation of both integrity safeguards and efficiency measures by local contracting entities is not satisfactory, with implementation gaps above 20% respectively.

Finally, local PP practice in Montenegro scored a 27 % compliance rate in the PP sustainability survey. These marks are similar to scores of other countries in the EBRD region.

Poland

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Poland is regulated by the Act of 29 January 2004, Public Procurement Law (PPL); consolidated text published in Journal of Laws of the 25th June 2010 (Dz. U. of 2010, No. 113, item 759).

In the EBRD 2010 assessment PPL scored medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework.

Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Poland there is a regulatory authority, the Public Procurement Office, as well as the collegial, Public Procurement Council, responsible for developing PP rules and monitoring compliance. The Chairman of the Public Procurement Office is part of the executive and is appointed by, and reports to, the Prime Minister.

Chart 3 illustrates the results of the review of the Polish PP institutional framework.

Scope of regulation

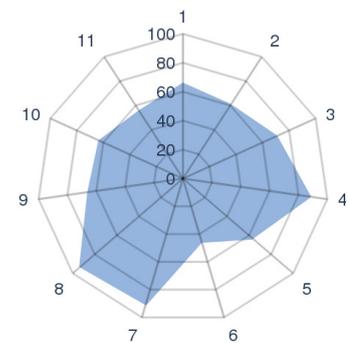
PPL covers both national and local government procurement and establishes specific procurement rules for the utilities sector. Concessions are regulated by separate legislation. PPL constitutes a decentralised procurement function. There is, however, the possibility of establishing a Central Purchasing Body for government purchases.

Eligibility rules

PPL establishes primary PP eligibility rules. Tenderers are excluded from PP contracts if:

- they have caused damage by failing to fulfil a contract or by fulfilling a contract improperly, if such damage was upheld by a legally valid decision of the court in the past 3 years prior to the launch of the procedure;
- the winding up procedure has been started or bankruptcy has been declared, except for those who, upon declaration of bankruptcy, have entered into a composition approved by a valid court decision, unless such a composition provides for payment to the creditors by a liquidation of the assets of the bankrupt entity;
- they are in arrears with the payment of taxes, charges or social insurance or health insurance premiums, with the

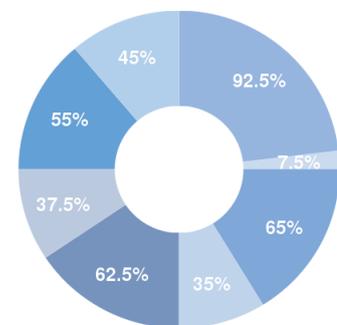
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

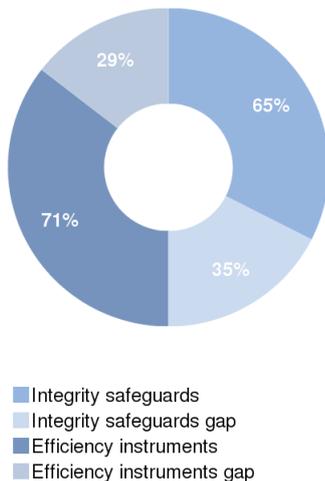
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue respectively.

exception of cases where they have been legally exempted, their outstanding payments have been deferred or divided into instalments or the execution of a decision of a competent authority has been stopped in its entirety;

d) their management has been validly sentenced for an offence committed in connection with a contract award procedure, an offence against the rights of people performing paid work, an offence against the environment, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for a treasury offence or an offence of participation in an organised crime group or in a union aimed at committing an offence or treasury offence;

e) in a registered partnership where a partner has been validly sentenced for an offence listed above;

f) in a professional partnership where a partner or member of the management board has been validly sentenced for an offence listed above;

g) in a limited partnership and limited joint-stock partnership where a general

partner has been validly sentenced for an offence listed above;

h) their management has been validly sentenced for an offence listed above;

i) a court has issued a decision prohibiting them from competing for contracts under the provisions concerning the liability of collective entities for tort under the liability to penalty.

PPL also establishes qualification criteria regarding: legal capacity to perform specific activities or actions, if an authorisation is required by the law; knowledge and experience; appropriate technical potential and personnel capable of fulfilling the terms of a contract; and economic and financial standing.

To show compliance with eligibility rules and prequalification requirements specified in tender documents the tenderers may be obliged to demonstrate appropriate evidence, such as certificates.

The procurement procedures

PPL provides for various types of procedures: a) open tender; b) restricted tender; c) negotiated procedure with publication; d) competitive dialogue; e) negotiated procedure without publication; f) direct contracting; g) request-for-quotations procedure; and h) electronic auction.

The PP regulations incorporate a clear test as to the choice between tendering and negotiated procedures.

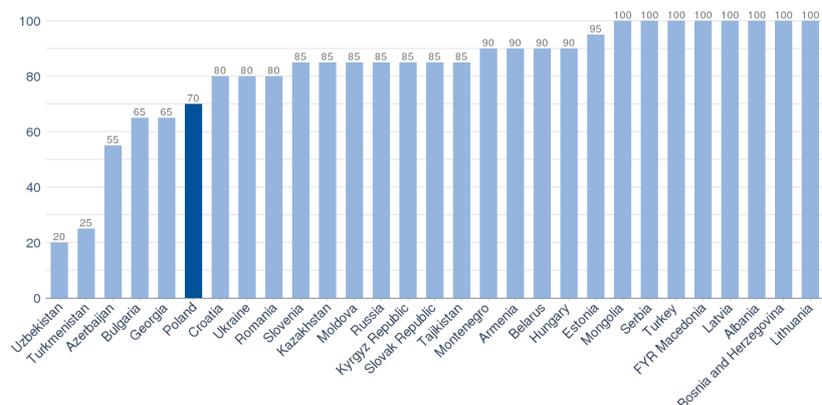
Open tender and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

For contracts with a value not exceeding 125,000 Euros for goods or services and 4,845,000 Euros for works, contracting entities may award contracts by a request for quotation or an electronic auction.

The procurement time and cost effectiveness

PPL does not require the public procurement to be completed in a reasonable time and does not provide for formalities to be kept simple. PPL provisions do not allow for an accurate estimation of the length of a procurement process. PPL provides minimum tender deadlines, and specific tender validity periods. It also includes an obligation to open tenders on the day of submission. However, there are no specific deadlines for the contracting entity regarding the time allowed for tender evaluation. The law allows for the

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Poland

signing of a contract after the expiry of the tender validity period.

PPL requires the mandatory aggregation of lots. The value of the contract shall be determined on the basis of the total estimated remuneration of the tenderer, determined by the contracting entity with due diligence. The regulation does not provide for contract valuation methods taking into account all-life costs of the purchase or works. The provisions provide for the alignment of the value and scope of the contract to the formality of the procedure. PPL establishes cascaded thresholds.

Some elements of the process are computerised and conducted electronically, such as publication of contract notices and tender documents in open tenders. Electronic communication is not mandatory and a certified electronic signature is required.

PPL does not state that the costs of tender participation should be kept low. PPL stipulates only that the contracting entity may charge a non-refundable fee for a copy of tender documents, although it should not exceed the cost of printing and delivery. In addition to that fee, the contracting entity may also require the tenderer to submit, together with the offer, a refundable tender security. For small value contracts tender security may not be applied.

The contracting entity defines the amount of the tender security; however, it cannot be more than 3% of the contract value.

Review and remedies

PPL provides for a remedies system and establishes an independent review body, the National Appeals Chamber, deciding on remedies in the public procurements.

There are certain exemptions from the general right of the tenderer to appeal. If the value of a contract award procedure is less than the amount of EU PP Directive

thresholds, the tenderer may not file a complaint about:

- a) choice of the negotiated procedure without publication, direct contracting and request for quotations;
- b) the prequalification terms and method;
- c) exclusion of the tenderer from the contract award procedure;
- d) rejection of tender.

The parties of the PP remedies procedure may file an appeal against the Chamber's decision with the commercial court.

Public contract management

PPL does not require mandatory planning of public procurement. The contracting entity may prepare a procurement plan and publish a prior contract notice, but this is not mandatory.

PPL regulates PP contract modification but does not request that contracting entities provide contract management of the public contract, nor does it provide for procurement staff to have adequate contract management skills .

Assessment overview

Strengths

In the 2010 assessment the Polish PPL did not demonstrate any specific strengths; PPL received the highest marks for compliance with proportionality and uniformity benchmarks.

PPL provides for the alignment of the value and scope of the contract to the formality of the procedure, and establishes cascaded thresholds to prevent the procurement process from becoming too bureaucratic. PPL regulates government procurement on national and local levels, and provides separate rules for the utilities sector and public law institutions.

PPL scores for enforcement compliance are at a medium level of compliance and the regulation of independent remedies procedures is comprehensive.

Weaknesses

Polish PPL has no major weaknesses, scored below 50% compliance rate. Marks for efficiency and economy of the PP process are relatively low, due to infrequent regulation of the pre-tendering and post-tendering PP phases.

There is no requirement for a detailed and unbiased assessment of the contracting authority's needs before a procurement is initiated. In certain aspects PPL is outdated: electronic communication is limited and PPL does not require procurement monitoring and administration to be computerised.

Opportunities

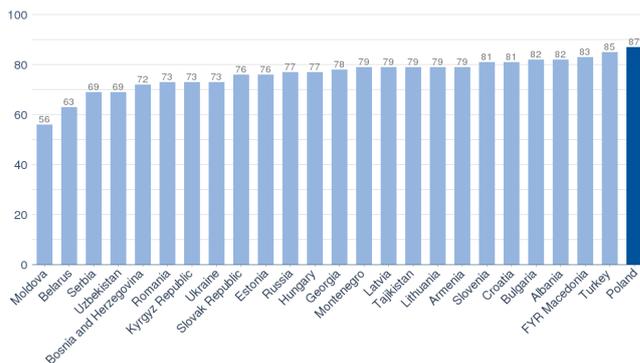
PP policy features in Poland are balanced, but at medium compliance with international best practice.

Regulatory risks

PPL could improve by adopting some procurement efficiency and economy measures and increasing the accountability of contracting entities (the assessment revealed a significant regulatory gap in adopting integrity safeguards (29%) and procurement efficiency measures (35%). PPL does not provide for project oriented procurement management. There is insufficient regulation of the pre-tendering phase, as PPL does not require mandatory planning or assessment of the contracting entities' needs before the PP procedure is initiated. PPL does not specify a code of ethics for PP officers nor does it require procurement staff to have adequate contract management capabilities. In general, regular procurement capacity building is not mandatory, which is a major concern because PPL changes frequently in Poland.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

PPL is comprehensive, but of medium compliance with international best practice. The local practice assessment revealed that PPL is significantly supplemented by the contracting entities' internal procurement rules. Internal PP rules organise the procurement process and clearly allocate roles and responsibilities. Usually all internal PP rules are published on the contracting entity's website or otherwise disclosed. Regular updates of the internal PP rules are made once a year or more frequently, as necessary. It is considered good practice to organise regular training sessions for all internal PP process stakeholders.

Chart 7 presents surprisingly high scores for the general quality of local PP practice in Poland (average compliance rate above 85%).

Regulatory institutions

Compliance with PPL is monitored by a dedicated public regulatory authority, as well as a dedicated and independent remedies body. Chart 8 illustrates how the Polish PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

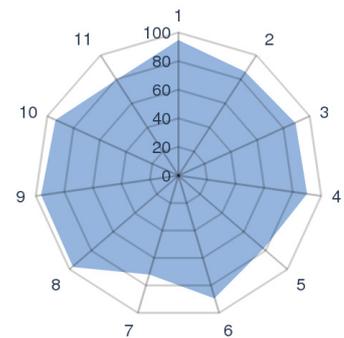
Review of local practice revealed that contracting entities employ a mandatory test to ensure that the scope and subject of public procurement is economically justified as well as providing for coordination of technical and financial procurement planning. Procurement plans are prepared every fiscal year using international or internal computerised standards. For most contracting entities it is mandatory to complete the procurement plan before a PP process is initiated. In addition, internal PP monitoring and auditing arrangements are usually in place.

Internal guidelines on drafting tender documents and standard forms of contract notices and reports are well established. Since it is not prohibited by PPL, standard international contract forms for all types of procurement are frequently used. For most contracting entities standard tender documents are mandatory. However, standard national contract forms are neither mandatory nor available in Poland.

Eligibility rules

In practice, eligibility rules are respected. Typical qualification criteria include experience and past performance on

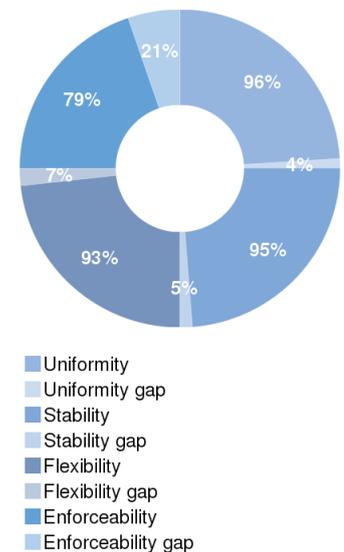
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

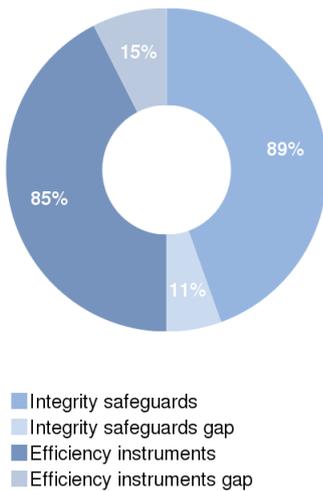
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Poland

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. In contrast, false declarations and final judgments in respect of serious crimes or other serious offences are grounds for exclusion from the PP procedure.

Tenders are evaluated on the basis of the criteria specified in the tender

The procurement procedures

PPL recommends tenders as the default procedure and, in practice, open tender is the procedure typically used for procurement of goods, works and services. Restricted tender or negotiated procedures are seldom used for specific or complex contracts, with the exception of the utilities sector.

The procurement time and cost effectiveness

Local practitioners declared that it takes from 60 to 150 days to sign a goods contract valued at 250,000 Euros and a public procurement works contract valued at 500,000 Euros. In practice, sufficient time is allowed to prepare tenders. Though the PPL does not provide strict deadlines for tender evaluation, most contracting entities complete it within the original tender validity period. Contracts are usually completed on schedule.

All tender documents for open tenders are published electronically and are available free of charge in Poland.

Review and remedies

An administrative review of complaints related to PP procedures is conducted, but local practitioners reported that complaints are rarely heard in an impartial or independent manner.

The review process is not efficient and it takes from 30 to 45 days to obtain a decision. Most local contracting entities declared that the review process does not fit the business context. The Agency is

perceived to be unpredictable. The remedy procedures are neither effective nor straightforward. They are also discriminatory. The cost of the review procedure is not considered bearable for the private sector.

The Agency is generally perceived to be corrupt. Participants have access to all review proceedings; however, these proceedings rarely take place in public. Review proceedings are not recorded but the remedies bodies have access to nearly all the procurement reports.

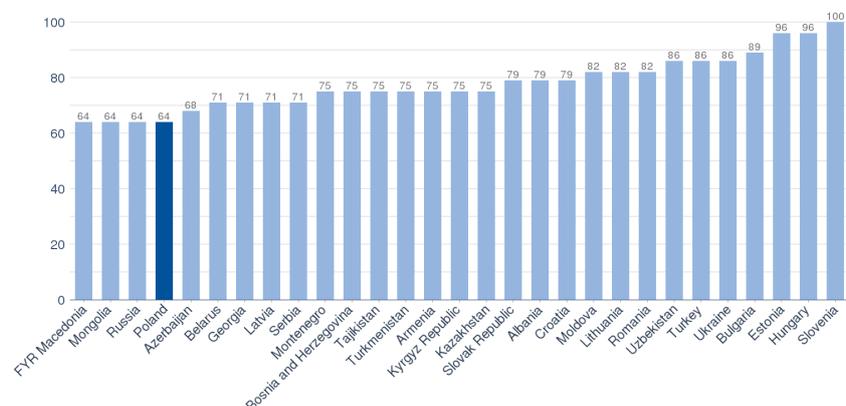
Public contract management

PP complaints are heard by an independent remedies body.

Remedies procedures are considered to be straightforward, but are not always speedy, effective and non-discriminatory. The remedies body is not perceived to be corrupt.

In most cases the speed of the remedies procedure is reasonable. It usually takes up to 30 days to obtain a decision. However, the procedure is considered too expensive and not bearable by most tenderers.

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

The review hearings are conducted publicly and all procurement records are disclosed to the remedies body. The review procedure and hearings are recorded.

Public contract management

In practice, contract administration is mandatory for most public contracts. Any modifications or waivers of the terms and conditions of a contract are subject to a review and internal approval procedure. Contracts are administered in a fair and equitable manner. However, not all contracting entities have manual or computerised procurement and contract monitoring systems in place. The practice also lacks periodic PP reporting or auditing standards.

Contracts are generally completed on schedule and within the originally approved contract price. The reason for the cancellation of a contract has to be specified.

Assessment overview

Strengths

Polish legislation received the highest score for compliance (above 90%) with accountability, uniformity, stability and flexibility benchmarks. Local PP practice is perceived to be transparent and well managed. Contracting entities sufficiently regulate the internal procurement process and internal decision making. There are appropriate procedures in place to monitor delivery of contracts and contract payments are monitored.

The PP framework is comprehensive and conducive to a competitive environment.

Weaknesses

Review of local practice revealed that there are no elements of practice scored below 50% in Poland. However, economy of the process could be improved. There

is no tenderer qualification scheme operated at a national level to speed up the pre-qualification of tenders.

The tender documents are seldom available in a language customarily used in international trade.

The review (monitoring) process is not perceived to be efficient and does not fit the context. It may take up to 5 months to obtain a review decision.

The cost of the remedies procedure is not bearable for contracting entities and the remedies body is perceived to be unpredictable, bureaucratic and may demonstrate little market awareness.

Opportunities

Polish contracting entities, despite the inadequate legal framework, are focused on achieving good “value for money”. The main contributory factors are structural procurement planning, effective competition and careful public contract monitoring and management.

The remedies body is not perceived to be corrupt.

Regulatory risks

PPL is lacking in modern PP features, and as far as PPL flexibility allows, internal procurement rules are used to make up for inadequacies. However, if the main PP regulatory process is left to contracting entities, they may be tempted to adopt practices hostile to international trade.

III. Conclusions

In quality of legal PP framework Poland scored medium compliance (69% compliance rate) among all of the EBRD countries of operation.

The Polish institutional framework is sound in principle and uniform; however, it is a bit bureaucratic, unstable and not flexible enough. It is also lacking in terms

of enforcement (a substantial regulatory gap of 45% has been observed).

PP policy making is reasonably responsive to local market challenges; several, but not all, recommended integrity safeguards and efficiency instruments were incorporated in PPL. Regulatory gaps of no more than 12% were identified in those fields.

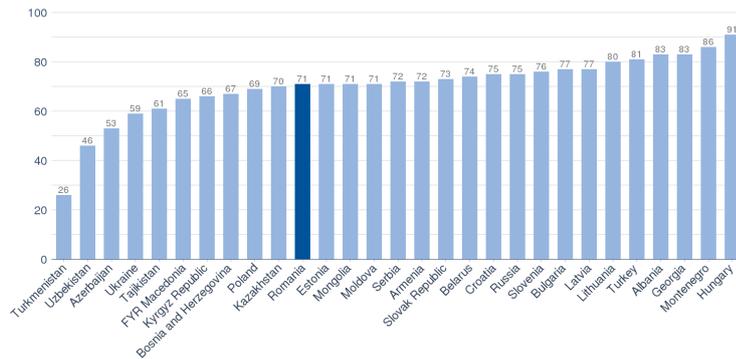
The quality of Polish PP practice scored higher. Based on the local practice survey, Polish PP practice scored 88% compliance rate (high compliance), significantly higher than in the assessment of quality of legislation (medium compliance). Some implementation gaps were identified and the general conclusion is that there is a substantial gap in institutional capacities (an implementation gap of 21% has been recorded).

Finally, local PP practice in Poland scored 22% compliance rate in the PP sustainability survey; significantly lower than the scores of other EU Member States in the EBRD region.

Romania

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Romania is regulated by Government Emergency Ordinance (GEO) 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts, approved by Law 337/2006, amended and supplemented by Law 128/2007 and (GEO) 94/2007, (PPL). In the EBRD 2010 assessment Romanian PPL scored medium to high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Romania a number of authorities are responsible for public procurement functions, they include:

- The National Authority for Regulation and Monitoring of Public Procurement (NA-MARP);
- The Ministry of Finance;
- The National Council for Solving PP Complaints (NCSC); and
- The Ministry of Communication.

Their core functions include monitoring

and enforcement of PPL as well as initiating and amending legislation related to public procurement, but those functions are not clearly delineated.

Chart 3 illustrates the results of the review of the Romanian institutional framework.

Scope of regulation

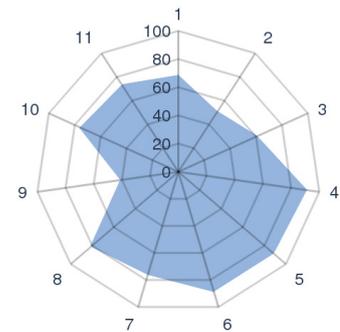
PPL covers government and utilities procurement as well as public works and services concessions; additional separate legislation on concessions was adopted in 2010.

PPL provides for a decentralised procurement function as well as a Central Purchasing Body. The government may conduct any public procurement in the framework of a centralised procedure. Local government authorities are entitled to implement a public procurement process in the framework of a centralised procedure as well.

Eligibility rules

In Romania grounds for exclusion have been established which include, among others: bankruptcy, professional misconduct, failure to fulfil public obligations relating to payment of taxes and pen-

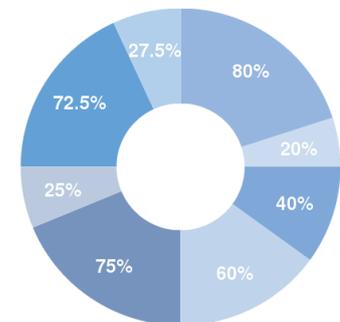
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

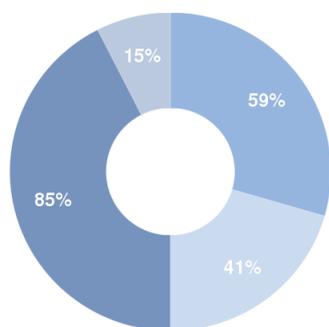
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

sion contributions, and submitting false information.

In addition to the general PP eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities. Tenderers may be requested to demonstrate: legal capacity, technical capacity, economic and financial standing and professional qualifications.

PPL enumerates all the certificates that may be required from the tenderer by the contracting entity to prove his compliance with the qualification criteria set out in the contract notice.

The procurement procedures

PPL provides both tendering and negotiation procedures including:

- a) open tender;
- b) restricted tender;
- c) negotiated procedure;
- d) competitive dialogue;
- e) request for quotations (for small value contracts only (40,000 Euros for goods

- and services, 250,000 Euros for works));
- f) direct contracting;
- g) design contest.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. Open tender and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

In Romania, the contracting entity may decide whether the PP process shall be conducted traditionally or via the central e-Procurement platform. Conducting procurements electronically is not mandatory.

The procurement time and cost effectiveness

PPL does not allow for an accurate estimation of the length of the process for PP goods and works contracts of a significant value; however, there are several specific deadlines established by law, both for tenderers and contracting entities (deadlines for submitting tenders are generally compliant with EU PP Directives). In addition, PPL does not specify that tenders should be opened promptly after the tender submission deadline. There are

also no general rules on the length of the tender validity period: contracting entities establish the tender validity period in the tender documents.

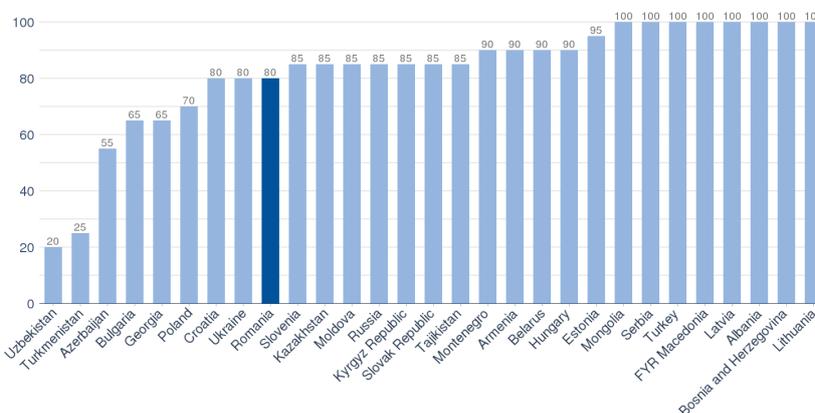
PPL requires mandatory aggregation of lots but does not provide for contract valuation methods taking into account all-life costs of the purchase or works. However, this method can be introduced by the contracting entity.

PPL does not provide for aligning the value and scope of the contract with the formality of the procedure. PPL provides thresholds but these are not aligned with the formality of the procedure. There is also a lack of distinction between short and long term contracts.

PPL stipulates indirectly that the costs of tender participation should be kept low. If a tender security is requested, the contracting entities are obliged to specify the details in the contract notice. PPL does not provide for a maximum amount of tender security, but requires setting the amount of the tender security proportionately to the contract value.

PPL does not contain a direct provision requiring the contract terms and conditions to be fair and balanced or reflecting best available business practice.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Romania

In Romania, the contracting entity decides on the languages used in the procedure and on the currency of the tender and contract.

Review and remedies

PPL provides for an independent remedies mechanism. In addition, public procurements and public contracts are regularly audited by the national audit bodies.

The tenderer whose rights or legitimate interests have been harmed by an act of the contracting entity infringing PPL is entitled to contest that act either by administrative or jurisdictional means. A complaint may be submitted for review by the National Council for Solving Complaints.

The review decision of the National Council is final unless appealed to the court.

Public contract management

Romanian PPL requires mandatory planning of public procurement. PPL also requests that contracting entities provide for public contract management.

Assessment overview

Strengths

PPL in Romania clearly promotes competition and efficiency in public procurement and scored very high compliance in these areas (average 80% compliance rate). Romanian PP policy has focused on adopting efficiency instruments and providing significant enforcement instruments. It is less comprehensive when it comes to accountability, transparency, and integrity safeguards.

PPL provides for a quite complicated public procurement enforcement mechanism and remedies system. There is no single point of contact regarding public procurements and, despite several authorities being responsible for public procurement functions, substantial regulatory gaps were identified (20% -60%).

Weaknesses

PPL is based on sound principles and has no major weaknesses (scored below 50% compliance rate) except for its lack of stability.

In addition, marks for transparency and integrity indicators are surprisingly low compared to other EU Member States in the EBRD region. This is due to inadequate adoption of the recommended integrity safeguards. In spite of the availability of the e-Procurement platform for all contracting entities, electronic communication is not mandatory. Furthermore, PPL does not require procurement monitoring and administration to be computerised.

Opportunities

PPL provides for modern and quite uniform and comprehensive regulation, in accordance with EU PP Directives. However, PPL does not sufficiently regulate all phases of the PP process: specifically, regulation of the pre-tendering phase is lacking.

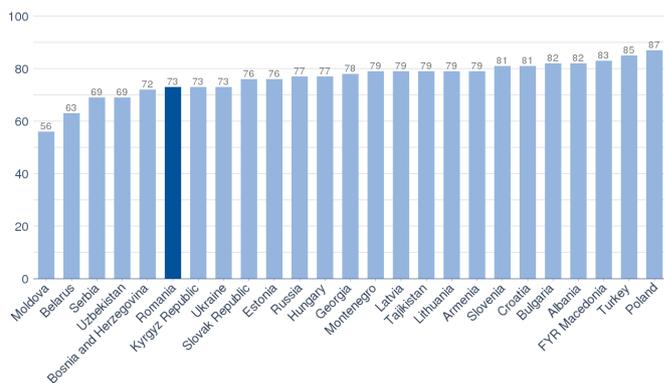
Regulatory risks

Romanian PPL should improve in terms of the contracting entities' transparency and accountability. This can be achieved by adopting the specific integrity safeguards recommended by international PP standards or making e-Procurement mandatory for all procurements above EU thresholds.

In addition, the national PP regulatory framework could be simplified. Its current allocation of roles and responsibilities may be unclear for local stakeholders as well as international tenderers.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Local PP practitioners reported that PPL is generally considered clear but not comprehensive. Some contracting entities have established internal procurement rules to supplement eventual regulatory gaps. Internal PP rules are usually disclosed to the public and are updated every year. Roles in the PP process are clearly allocated in most cases. Some contracting entities organise regular training for all their internal PP stakeholders.

Chart 7 presents the scores for the general quality of local PP practice in Romania (average compliance rate above 65%).

Regulatory institutions

Compliance with PPL is monitored by several public authorities, as well as a dedicated remedies body. However, enforcement has been reported to be rather ineffective (33% implementation gap has been identified in the assessment). Chart 8 illustrates how the Romanian institutional framework has been evaluated by local contracting entities and practitioners.

The survey of local practice confirmed that PPL covers both government and utilities procurements. Exceptions and exclusions are in principle compliant with EU PP Directives.

Scope of regulation

The survey of local practice confirmed that PPL covers both government and utilities procurements. Exceptions and exclusions are, in principle, compliant with EU PP Directives.

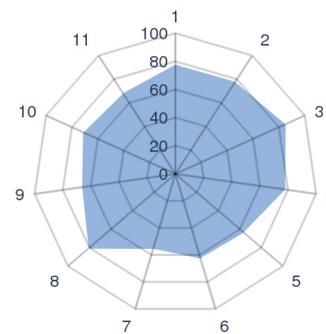
The procurement procedures

Tenders are typically used though negotiated procedures can be used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain their choice of procurement method.

The procurement time and cost effectiveness

In Romania it usually takes about 30 days to sign a public procurement goods contract of the value of 250,000 Euros and about 45 days to sign a public procurement works contract of the value of 500,000 Euros.

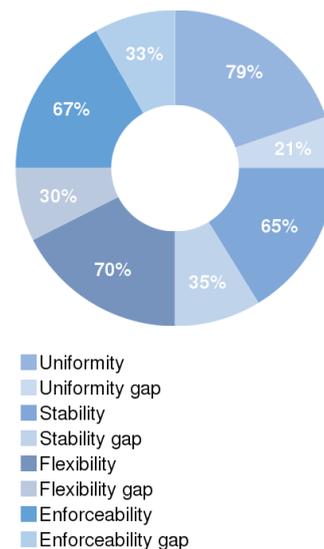
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

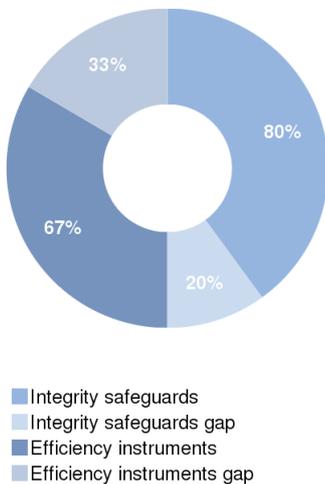
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Romania

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Common opinion is that sufficient time is allocated to prepare and submit tenders. In the majority of cases PP processes are not delayed: the evaluation of tenders is completed within the original tender validity period.

Review and remedies

In Romania PP complaints are heard by a dedicated administrative body. It takes up to 45 days to obtain a review decision and the cost of the remedies proceedings is bearable. Local practitioners consider the remedies proceedings to be complex, ineffective, and discriminatory. The remedies body is perceived to be neither predictable nor impartial.

All procurement reports are disclosed to the remedies body and, in principle, tenderers may explain their position during the remedies proceedings. The remedies proceedings are not public but are duly recorded.

Public contract management

In principle, it is mandatory to complete a procurement plan before a public procurement process is started; however, technical, financial and procurement planning is not well coordinated. Internal public procurement monitoring and auditing arrangements have been established; however, no detailed information has been provided by local practitioners. Modifications or waivers of the terms and conditions of a contract are, in principle, subject to a review and approval procedure.

Guidelines concerning drafting of tender documents are available as well as standard forms of contract notices and procurement reports. Standard international contract forms can be used by Romanian contracting entities for all types of contracts, without any restrictions.

Contract administration in Romania is, in principle, mandatory for public contracts. In spite of this, public contracts are not completed on schedule nor are they completed within the originally approved contract price. Not all contracting entities have internal policies regarding compensation in cases where a public contract

has been cancelled; however, if a public contract has been cancelled, the contracting entity is required to specify a reason for the cancellation.

Assessment overview

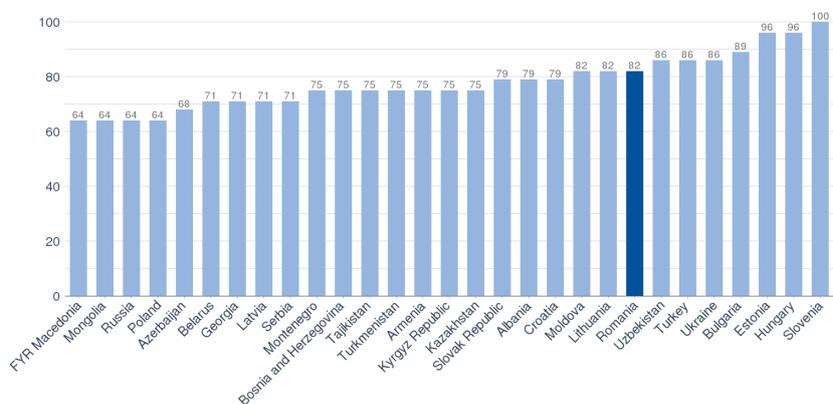
Strengths

Local procurement practice in Romania received medium to high scores (average 71% compliance rate). Local PP practice is perceived to be competitive and local contracting entities are trying to achieve good value for money. Contracting entities supplement PPL with internal procurement rules and local PP practice achieved high compliance in some quality indicators, including transparency, competition, and uniformity (above 80% compliance rate). In practice tenders are opened in public promptly after the expiry of the submission deadline at the time and place stipulated in the tender documents and evaluation of tenders is completed without delay by the contracting entities.

Weaknesses

Review of local PP practice revealed that there are no elements of practice scored below 50% in Romania. However, several

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

implementation gaps were identified regarding implementation of integrity safeguards (20% gap) and efficiency instruments (33% gap) in local PP practice. In general, local contracting entities are better in increasing transparency than efficiency of public procurements. Also, institutional PP capacities could be improved, as the PP practice survey revealed implementation gaps between 21% and 35% on institutional capacity indicators, as well as low marks for the remedies body practice.

Weaknesses

Review of local PP practice revealed that there are no elements of practice scored below 50% in Romania. However, several implementation gaps were identified regarding implementation of integrity safeguards (20% gap) and efficiency instruments (33% gap) in local PP practice. In general, local contracting entities are better at increasing transparency than efficiency of public procurements. Also, institutional PP capacities could be improved, as the PP practice survey revealed implementation gaps between 21% and 35% on institutional capacity indicators, as well as low marks for the remedies body's practice.

Opportunities

Public procurement regulation in Romania is focused on the tendering phase which is considered the most important part of the PP process and there are only partial (or internal) rules regulating the pre-tendering and post-tendering phases. It is a very positive indication that the Romanian e-Procurement platform enables the publication of contract notices, real time recording of procurement decisions and provides free and easy access to the public. If adopted as mandatory, this would significantly increase the quality of local PP practice: in particular, the transparency of the PP process.

Risks

The quality of local PP practice is distinctly lower than expected; significant implementation gaps were exposed in the assessment. Procurement capacity is insufficient and not all contracting entities have introduced internal rules regarding the pre-tendering and post-tendering phases of the PP process, not regulated by PPL. There is still limited use of e-Procurement and electronic communication.

III. Conclusions

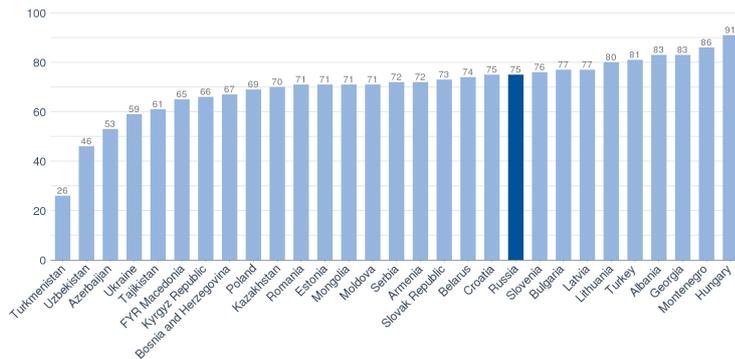
In the 2010 assessment Romania achieved medium compliance with the benchmark in the quality of its PP legal framework (71% compliance rate). National PP policy making is reasonably responsive to local market challenges and several (but not all those recommended by international standards) integrity safeguards and efficiency instruments have been adopted. However, significant regulatory gaps were identified in the assessment in several key indicators. In addition, Romanian PPL is not stable. Frequent amendments to PPL and complex enforcement mechanisms have resulted in the general perception that PP laws and practice are unpredictable.

In the assessment of local practice Romania scored 72% compliance rate; this indicates a medium level of compliance. Several implementation problems were again identified. A general conclusion is that local PP practice is more balanced than the legislation but there are still substantial gaps in the implementation of laws and institutional framework capacities.

Finally, local PP practice in Romania scored 38% compliance rate in the PP sustainability survey. These marks are similar to the scores of other EU Member States in the EBRD region.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement law in Russia is regulated by Federal Law N 94-ФЗ On Procurement of Goods, Works and Services for State and Municipal Needs, adopted on July 5th 2005 (PPL). In the EBRD 2010 Assessment PPL scored medium to high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Russia different central authorities are responsible for public procurement (PP) functions, including:

- The Ministry of Economical Development;
- The Ministry of Finance;
- The Federal Anti-monopoly Service (FAS);
- The Federal Bureau of Defence Procurement.

Their core functions include monitoring and enforcement of PPL as well as initiating and amending legislation related to public procurement but those functions are not clearly delineated. Chart 3

illustrates the results of the review of the Russian PP institutional framework.

Scope of regulation

PPL covers national and local government procurement. PPL creates special rules for the procurement of utilities, although there are no specific procurement rules for utilities sector procurements. PPL lists all national and local public law institutions which are obliged to adhere to PPL regulations. Concessions are regulated by a separate body of law, and PPL clearly distinguishes between PP contracts and concessions.

PPL provides for a decentralised procurement function; however, central purchasing bodies can be established at the discretion of the central government.

Eligibility rules

PPL lists two categories of qualification criteria which the tenderer is obliged to meet in order to participate in a PP procedure.

Mandatory criteria include:

- requirements established in accordance with the laws of the Russian Federation for entities engaged in supplying goods, works and services that are the subject of a tender;

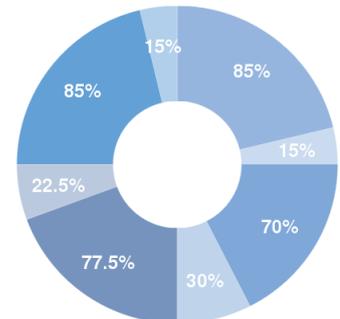
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

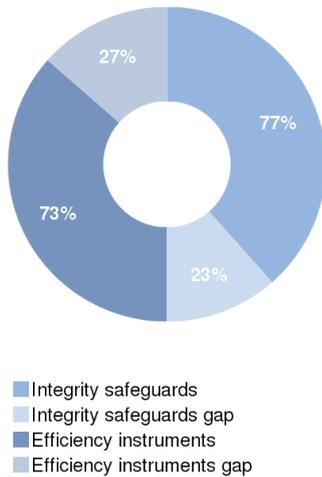
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

b) a sound business record: tenderers against whom a winding up procedure has been started or whose bankruptcy has been declared, whose activities have been suspended, and who are in debt or did not fulfil their obligations to pay taxes, social or health insurance are excluded.

Optional criteria include:

- a) possession of tenderers' exclusive rights to intellectual property, if in connection with the execution of a state or municipal contract, the tenderer acquires the rights to intellectual property;
- b) the tenderer is not blacklisted.

PPL introduces special qualification criteria for tenders for construction works, renovations or general refurbishment where the total cost exceeds fifty million rubles (50,000,000 RU).

In the procurement of works, goods and services for the purposes of defence and state security, the contracting authority may require proof of production capacity, production equipment, financial and human resources necessary for the production of goods, works and services that are the subject of the tender.

The procurement procedures

Russian PPL provides for the following PP procedures:

- a) Open tender,
- b) Open contest – signing a state or municipal contract for development of literary or artistic work, performance, rent or screening of a national film,
- c) Auction,
- d) Open electronic auction,
- e) Request for quotations,
 - a) Request for quotation in humanitarian assistance or liquidation as a consequence of a natural or technological emergency,
 - b) Direct contracting;
 - c) Placing orders for energy supply for state or municipal needs.

Open tender is the default procedure.

PPL assigns different tender procedures for the procurement of specific goods and services, but it does not provide for negotiated procedures. The only negotiated procedure is direct contracting. PPL also provides for e-Procurement.

The procurement time and cost effectiveness

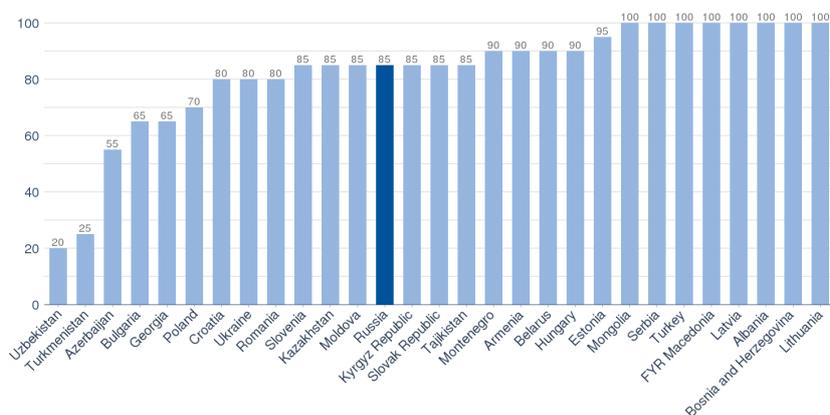
PPL does not differentiate between low value and high value contracts, except where the request for quotation procedure can be applied, or short and long

term public contracts. PPL enables e-Procurement; however, it does not require any specific proportion of PP procedures to be conducted via an e-Procurement platform. PPL stipulates that procurement procedures should be kept simple and accomplished in a reasonable time. Tender security may be requested by a contracting entity but must not exceed 5% of the maximum contract amount. Aggregation of lots is not mandatory, but when applied, it must not restrict fair competition. PPL does not establish cascaded maximum tender validity periods and does not provide special requirements covering confidentiality of information in public contracts. PPL provides clear language and currency rules and decisions on modes of communication, including mandatory use of electronic communication.

Review and remedies

PPL does not provide for a dedicated PP review or remedies system. Every tenderer whose rights or legitimate interests have been violated by actions or failure to take action by the contracting authority, has the right to appeal to a commercial court at every phase of the PP procedure.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Russia

Public contract management

PPL requires mandatory procurement planning, and relevant quality characteristics or performance requirements to be incorporated in the technical specifications. PPL includes a clear test as to when the contracting entity should seek a contract performance security and limits its maximum amount. There is no obligation to conduct a detailed and unbiased assessment of the contracting authority's needs. Furthermore, PPL does not require the contracting entities to obtain budgetary authorisations for contract payments falling due beyond the current financial year. PPL does not provide for mandatory contract management or for procurement officers to have adequate capabilities.

Opportunities

Since 2009 PP procedures have been conducted electronically in Russia. Development and implementation of e-Procurement solutions, available to all contracting entities and covering different types of public contracts, is a very positive feature of the Russian PP legal framework.

Regulatory risks

Until the end of 2010 PPL allowed for preferences for domestic tenderers. Transparency and integrity safeguards are well regulated in the Russian framework, yet the assessment revealed some regulatory gaps in both PP policies and institutional framework, 20% on average.

Assessment overview

Strengths

In the 2010 assessment the Russian PP framework displayed no major strengths: it did not score over 90% in any of the benchmark indicators. However, PPL scored 85% compliance rate in integrity, uniformity, and enforceability indicators.

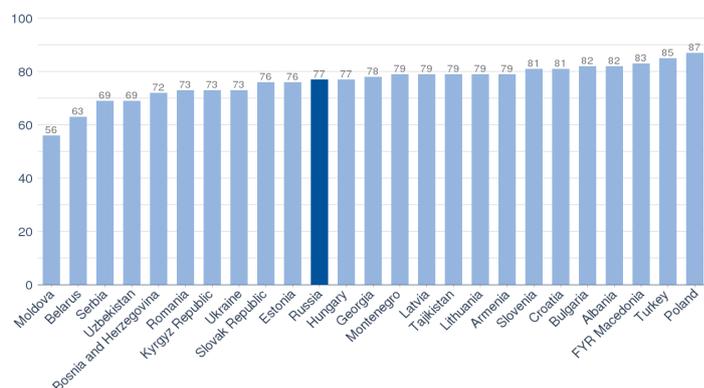
Russian legislation provides for most of the basic features of the PP regulatory framework; however, some PP efficiency instruments, recommended by international PP standards, have not been adopted. The Institutional framework is complicated, and an independent dedicated review and remedies function has not been provided for. PPL authorises the use of arbitration for disputes relating to public contracts.

Weaknesses

The Russian PP framework has no major weaknesses, scored below 50% compliance, but scored relatively low in the economy and efficiency indicators (67.5% compliance rate).

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The 2010 assessment confirmed that local contracting entities in Russia regulate the internal PP decision making process and regularly update their internal PP policies. Internal procurement regulations and procurement decisions are disclosed to the public and roles in PP process are clearly allocated. Chart 7 presents the scores for the general quality of local PP practice in Russia, as recorded by the 2010 assessment (average 74 % compliance rate).

Regulatory institutions

The compliance of PP procedures is monitored and audited by the general administration; there are no independent or dedicated regulatory and review bodies. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

PPL covers central and local government procurement. Based on the survey, we were not able to establish whether the utilities procurement is fully covered by the PP laws.

Eligibility rules

The tender must be submitted by a tenderer who complies with the conditions for participation in the process, established by the contracting entity. Typically qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. Affiliates of the contracting entity are not eligible to tender, unless it can be demonstrated that there is no significant degree of common ownership, influence, or control between the contracting entity and the affiliates.

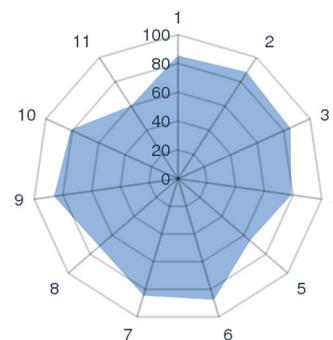
The procurement procedures

Tenders, recommended as default procedures, are commonly used. It is not necessary for the contracting entity to explain the choice of procurement method, except for direct contracting, as no other negotiated procedures are available.

The procurement time and cost effectiveness

There is no mandatory assessment of all relevant procurement risks but there is a mandatory test to ensure that the scope

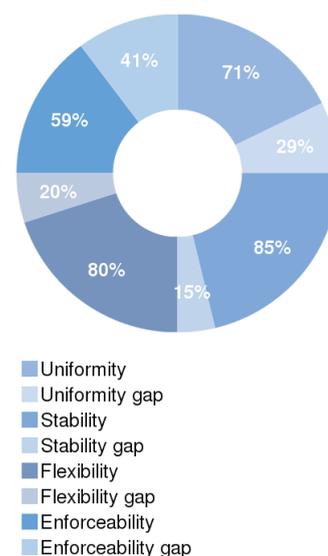
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Russia

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

and subject of public procurement is economically justified. In practice, there are monitoring and auditing arrangements in place, internal guidelines on how to draft the tendering documents, standard forms of contract notices, procurement reports, and tender securities. In practice, internal procurement rules do not allow the use of standard international contract forms. It takes about 60 days to sign a public works contract of the value of 500,000 Euros or a public goods contract of the value of 250,000 Euros. Local practitioners assert that there is sufficient time allowed to prepare and submit tenders. Tender documents are not available free of charge. Tender evaluation is normally completed within the original tender validity period. However, contracts are not generally completed on schedule.

Review and remedies

It takes 15 days to obtain a review decision. Review authorities are perceived

as unpredictable and the procedure is complex, but the speed is reasonable. Remedies are not perceived to be corrupt or discriminatory but they are not effective. The cost of proceedings is bearable. Review decisions are given in writing and accompanied by a statement describing what the decision is based on.

Public contract management

In practice contract administration is mandatory for public contracts; therefore contracting entities have introduced manual or computerised procurement and/or contract monitoring systems. Any modifications or waivers of the terms and conditions of a contract are, in principle, subject to a review and approval procedure. There are also appropriate procedures to monitor delivery of goods and services and to verify quantity, quality and timeliness. Usually there are internal policies regarding contract cancellation and compensation in such cases. The reason for the cancellation of the public contract has to be specified.

Assessment overview

Strengths

There are no elements of practice in Russia which scored a very high compliance

rate; however, local PP practice scored medium to high compliance in integrity and efficiency indicators.

Weaknesses

There is no element of local PP practice in Russia which scored below 50% compliance rate. Yet local PP review and remedies practice received low marks from local practitioners and is generally perceived as complex, unpredictable and ineffective.

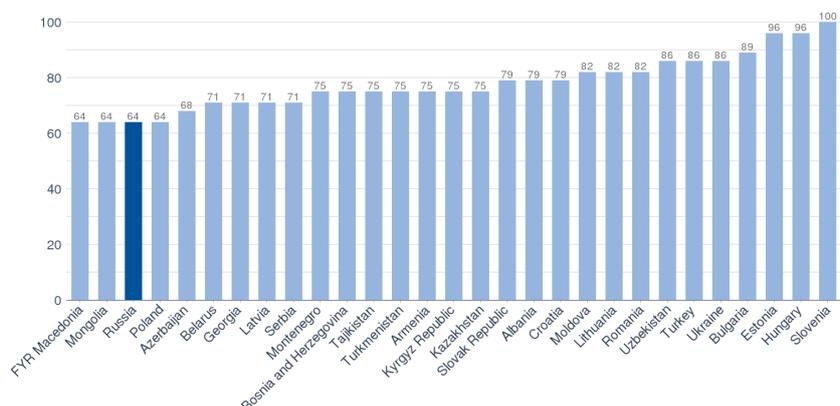
Opportunities

Under internal procurement rules, most of the PP process, including the pre-tendering and post-tendering phases, is adequately regulated.

Risks

Research revealed that in practice public contracts may not be completed within the originally approved contract price and on schedule. In addition, local lawyers reported that, in practice, supplier claims are not handled fairly under public contracts.

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

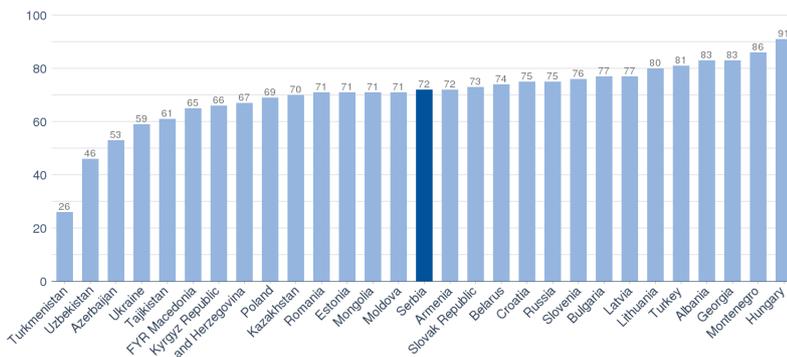
III. Conclusions

In the 2010 assessment Russia achieved medium compliance with the benchmark in quality of legal PP framework (73% compliance rate). National PP policy making is reasonably responsive to local market challenges and several integrity safeguards have been adopted in local PP legislation. However, not all efficiency instruments recommended by international standards have been incorporated. Some regulatory gaps were identified in several key benchmark indicators. In addition, Russian PPL is not stable; frequent amendments and complex enforcement mechanisms have resulted in the general perception that PP laws and practice are unpredictable.

In the assessment of local practice Russia scored medium to high compliance (average 79% compliance rate). A general conclusion is that the development of local PP capacity is progressing; however, some substantial gaps in the implementation of laws and institutional framework capacities were identified. Finally, local PP practice in Russia scored a 37% compliance rate in the PP sustainability survey.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Serbia is regulated by Public Procurement Law of 6th January 2009, Official Gazette of RS No. 116/08. (PPL). In the EBRD 2010 assessment, the Serbian PPL scored at the level of low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of public procurement (PP) laws are presented in Chart 2.

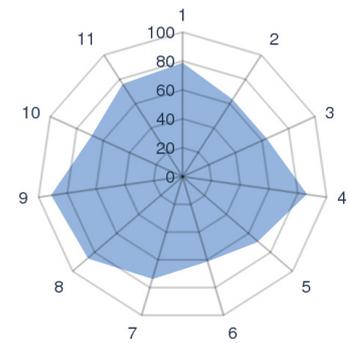
Regulatory institutions

The Ministry of Finance is the regulatory body for procurement functions in Serbia. The Public Procurement Office was established as a special organisation to work in the field of public procurement in order to ensure proper conditions for economic, efficient and transparent use of public funds in public procurement and to induce competition and equality of opportunity among tenderers. Regulations pertaining to the state administration also apply to the activity and organisation of the PP Office. The Public Procurement Office does not have regulatory powers. Its responsibilities include:

a) participation in drafting the regulations

- pertaining to public procurement;
- b) providing consulting services to procuring entities and tenderers;
- c) organising staff training for work in public procurement;
- d) cooperation with foreign institutions and experts in the field of public procurement;
- e) publication and distribution of relevant professional literature;
- f) preparation of standard tender documents and standard contracts for public procurement;
- g) collection of information on public procurement in other states;
- h) systematic collection of information from procuring entities and keeping records of data in the field of public procurement;
- i) preparation of and participation in determining the criteria for evaluating particular sorts of expenses incurred by beneficiaries of public funds;
- j) preparation of a common database for keeping records of tenderers and their creditworthiness, on the basis of concluded and effected public procurement contracts;
- k) monitoring the public procurement procedure;
- l) cooperation with other state bodies and organisations, compulsory social insurance organisations, as well as bodies of an autonomous territorial unit and local

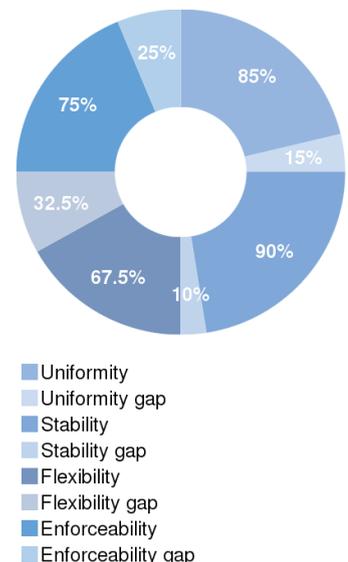
2. Quality of PP legal framework



1. Accountability
2. Integrity
3. Transparency
4. Competition
5. Economy of the process
6. Efficiency of public contract
7. Proportionality
8. Uniformity
9. Stability
10. Flexibility
11. Enforceability

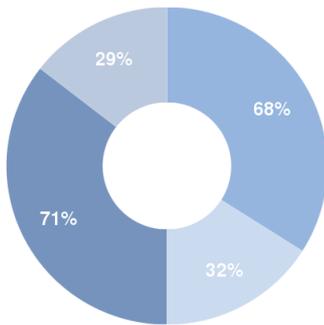
Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

government.

Chart 3 illustrates the results of the review of the Serbian institutional framework in the PP sector.

Scope of regulation

PPL covers national and local government procurement. There are specific procurement rules for public law institutions and the utilities sector.

PPL provides a decentralised procurement function. There is no Central Purchasing Body in Serbia.

Concessions are regulated by separate legislation, but PPL does not differentiate between public procurement contracts and procedures and concessions.

Eligibility rules

PPL establishes primary public procurement eligibility rules. A tenderer, a domestic or foreign legal or natural person may participate in a public tender, if that tenderer:

a) is registered for particular activities with the authorised body of the state in

his location;

b) has not been the subject of an enforced settlement; bankruptcy or liquidation proceedings have not been initiated and the tenderer has not been suspended from business activities by virtue of a court decision or some other enforceable decision;

c) has not been convicted of a criminal offence, commercial offence or an offence concerning his business activities by a decision having the force of res iudicata made by a judicial or administrative body over a period of five years prior to the publication of the contract notice, or if, over the same period of time, has not received an enforceable court or administrative order prohibiting him from carrying out the activity which is the subject of the public procurement;

d) has fulfilled obligations related to the payment of taxes due, contributions and other forms of public taxation in accordance with the legal provisions of the state in his location, or according to the legal provisions of the Republic of Montenegro if he is located in that country;

e) has a valid permit issued by the authorised body for carrying out the activity which is the subject of the public procurement, and such a permit is stipulated by a special regulation;

f) Possesses the necessary financial and economic standing;

g) Possesses sufficient technical capacities.

The contracting entity may impose additional conditions concerning the fulfilment of the tenderers' obligations towards his subcontractors and suppliers. PPL provides a distinction between general public procurement eligibility criteria, and qualification and technical requirements.

The procurement procedures

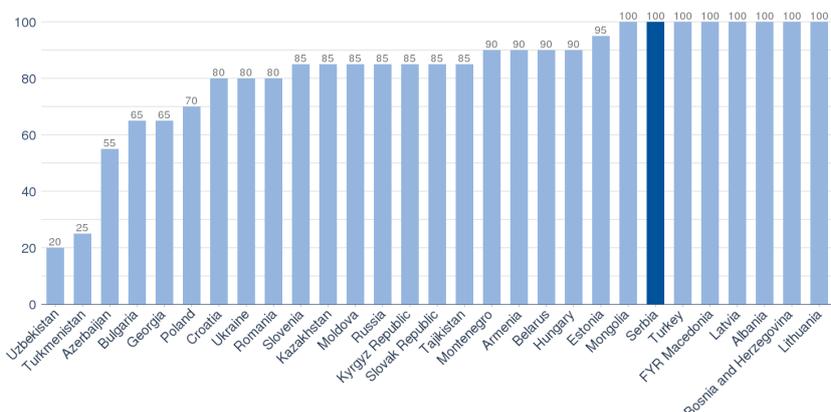
PPL provides both tendering and negotiation procedures including:

- a) open procedure;
- b) restricted procedure;
- c) negotiated procedure with prior notice;
- d) negotiated procedure without prior notice;
- e) design contest;
- f) low-value public procurement procedure.

When awarding public contracts, contracting authorities choose, as a rule, open or restricted procedure unless there are specific circumstances. According to the law public procurement contracts shall be awarded in an open tender, but they can also be awarded in a restricted tender or using a negotiated procedure.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. The negotiated procedure with prior notice is used:

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Serbia

- a) when all bids received by the contracting authority in an open procedure (or negotiated procedure) were incomplete or unacceptable;
- b) when it was not possible to assess the value of the procurement; and
- c) in the case of a public procurement carried out exclusively for the purpose of research, development and experiments.

There are basic provisions in PPL concerning electronic procurement. The details are set out in secondary legislation.

The procurement time and cost effectiveness

PPL provisions do not provide for an accurate estimation of the duration of a procurement process for goods and works contracts of a significant value. The law establishes several deadlines for contracting entities to comply with, such as the appropriate length of time to allow for tender preparation.

When a procurement is subdivided into separate lots and each one is the subject of a separate contract, the value of all the lots (over the period of one year) must be taken into account, (counting from the day of the contract for the first lot) when calculating the value of the procurement. The contracting entity shall not select a procurement valuation method that results in a lower estimated value so that a public invitation to tender can be avoided.

PPL does not require public procurement to be accomplished in a reasonable time; however, the requirement to treat contractors fairly applies. As a result, PPL does not provide directly for formalities to be kept simple.

An application to participate in a contract award procedure may be sent by letter, telegram, telex, facsimile or electronic mail; it may also be communicated by telephone. If the application has been sent by any means other than letter, it has to be confirmed in writing within the period of time allowed for the submission tenders.

PPL does not provide for the mandatory use of electronic communication.

PPL contains a general rule that the costs of tender participation should be kept low. The contracting entity should ensure that the public procurement procedure is conducted and the selection of a tenderer made within the time limits and in the manner prescribed by this Law, incurring as little cost as possible in effecting the public procurement.

PPL does not directly require the contract terms and conditions to be fair and balanced and reflect best available business practice.

The law contains clear requirements on the use of languages. A procuring entity shall prepare tender documents and conduct the procedure in the Serbian language. Tender documents for public procurement of goods and services exceeding 6,000,000 Yugoslav dinars or for work assignments exceeding 120,000,000 Yugoslav dinars shall be prepared by a procuring entity in a foreign language commonly used in international business as well as the Serbian language. A tenderer shall submit his tender in the language used in the tender documents, that is, in the language specified by a procuring entity in the tender documents.

PP also contains clear currency rules. The values in tender documents and tenders shall be stated in Yugoslav dinars. A procuring entity may demand the tenderer state the values in a foreign currency as well, in which case the values shall be converted into Yugoslav dinars using the medium exchange rate of the National Bank of Yugoslavia valid on the day of the opening of tenders.

Review and remedies

The remedies procedure consists of two phases: the first begins with a request to the contracting entity and the second with a request to the Commission for the Protection of Tenderers' Rights. The Com-

mission is an independent body, established in October 2010, whose members are elected by Parliament. No complaint may be lodged against the Commission's decision, nor may administrative proceedings be initiated against it. A claimant may claim compensation from a procuring entity before the authorised court.

Public contract management

PPL requires mandatory planning of public procurement. Contracting entities are required to obtain budgetary authorisation for contract payments falling due beyond the current financial year. The law provides for relevant quality standards and/or performance requirements to be incorporated in the technical specifications.

The law does not require appropriate budget or financing authorisation prior to publication of a contract notice. It does not include a clear test as to when the contracting entity should seek a contract performance guarantee. Performance guarantees are regulated by secondary legislation. The law allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

PPL does not request that contracting entities provide for contract management of the public contract directly nor provide for procurement staff to have adequate contract management capabilities. PPL does not require procurement monitoring and administration to be computerised.

Assessment overview

Strengths

Serbian legislation shows a medium to high compliance with the benchmarks. PPL is stable; however, the new law only came into force in 2009.

The law forbids changes in the procedure when a procedure has been launched. If contracting entity wants to change the

procedure, he has to start the procurement process all over again. Significant changes in the scope of a contract are also prohibited once the procurement process has been launched.

PPL contains specific provisions for the cancellation of a public contract. When a public contract is cancelled, the law requires the contracting entity to specify a reason for doing so.

Weaknesses

PP legislation exhibits no major weaknesses.

The body with regulatory powers for procurement functions is the Ministry of Finance, which is not an independent body. The Public Procurement Office does not have regulatory powers.

PPL provisions are not precise enough and do not allow for the accurate estimation of the duration of the procurement process for works and goods contracts of a significant value (e.g. equivalent to €500,000 or higher).

Opportunities

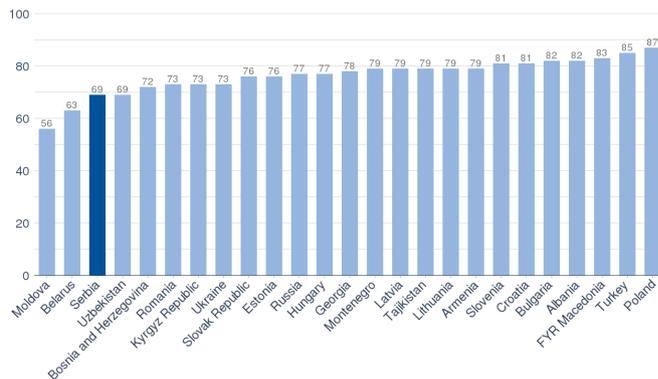
PPL establishes clear anti-corruption rules. PPL states that a contracting entity shall reject a tender if there is verifiable evidence that a tenderer has given or promised to a current or former employee of a procuring entity a gift in money or in a non-monetary form, or that the tenderer offered employment or any other benefit, an object or a service that may be expressed in terms of money, in an attempt to influence an action, decision-making or the further course of the public procurement procedure. The contracting entity shall inform, in writing, a tenderer who has offered a bribe (as detailed above), as well as the Public Procurement Office, that the tender in question has been rejected and the reasons for the rejection. In addition, the contracting entity must keep a record of such a rejection in the documentation pertaining to the procedure.

Regulatory risks

PPL does not forbid preferential treatment of domestic tenderers. The law allows the preferential treatment of Serbian tenderers under certain conditions. In applying the criterion of the most favourable tender in economic terms, and where there are foreign and domestic tenderers, the contracting entity must select the most favourable domestic bidder when the difference in the final sum of points assigned does not exceed 20 in the case of the foreign bidder. The same preference applies when applying the criterion of the most favourable tender in economic terms.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The Public Procurement framework is clear, comprehensive and conducive to a competitive procurement environment. In practice the internal procurement process and decision making regulations have not been regulated and, in addition, internal roles in the procurement process are not always clearly allocated. However, PP regulations mandate disclosure of the internal regulations and decisions.

There is also no training for internal stakeholders regarding their roles, rights and obligations in the public procurement process.

Chart 2 illustrates the general quality of practice.

Regulatory institutions

Compliance with PPL is not always monitored by the independent and dedicated public regulatory authority.

Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

The survey of local practice confirmed that procurement in the public and utilities sector is covered by PP regulation.

There is no mandatory test to ensure that the scope and subject of a public procurement is economically justified. However, procurement plans are prepared to regulate the procurement activities of each fiscal year. Technical, financial and procurement planning is generally coordinated. Moreover, it is mandatory to complete the procurement plan before a public procurement process has started.

A reasonable assessment of all relevant procurement risks is not mandatory for contracting entities. No internal PP monitoring and auditing arrangements take place.

In some cases, both local and internal guidelines outlining how to draft tendering documents and local and internal standard forms of procurement reports have been established. Moreover, standard forms of contract notices have been introduced. However, there are no standard local or internal forms for tender securities. PP regulations allow the use of standard international contract forms

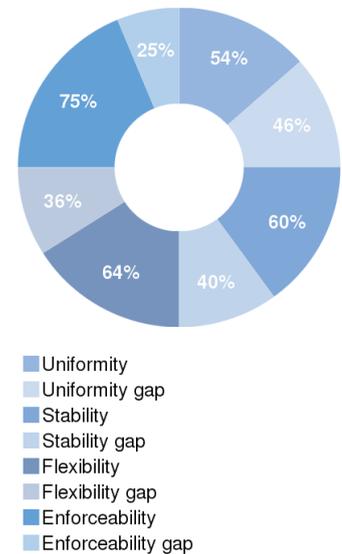
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

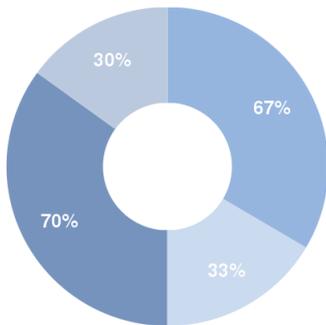
Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

9. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

for all types of procurement as a general rule. Standard tender documents for goods, works and services have not been established nor have standard national contract forms.

As a general rule, once the procurement process has been launched changes in the procedure are monitored and, in specific cases, changes in the contract are monitored after completing the procurement process.

Eligibility rules

Qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. False declarations and failure to pay taxes or other public duties are grounds for exclusion from the procurement procedure.

Tenders are evaluated on the basis of the criteria specified in the tender documents. Tenders submitted must be compliant with conditions for participation in the process.

The law does not forbid affiliates of the contracting entity from tendering.

The procurement procedures

The law recommends tenders as the default procedure; however, negotiated procedures are available for specific or complex contracts. PPL sets forth the circumstances in which procedures other than tenders can be used. The contracting entity must explain the choice of the procurement method.

The procurement time and cost effectiveness

Contracting entities are not always able to estimate how long it takes to sign a procurement contract; however, it generally takes from 60 to 75 days to sign a public procurement contract on goods to the value of 250,000 Euros or works contracts to the value of 500,000 Euros.

In some cases insufficient time is allowed to prepare tenders. Respondents claim

that PPL establishes unrealistically short periods for tender preparation (e.g. 22 to 60 days). However, tender evaluations are normally completed within the original tender validity period. Contracts, on the other hand, are rarely completed on time.

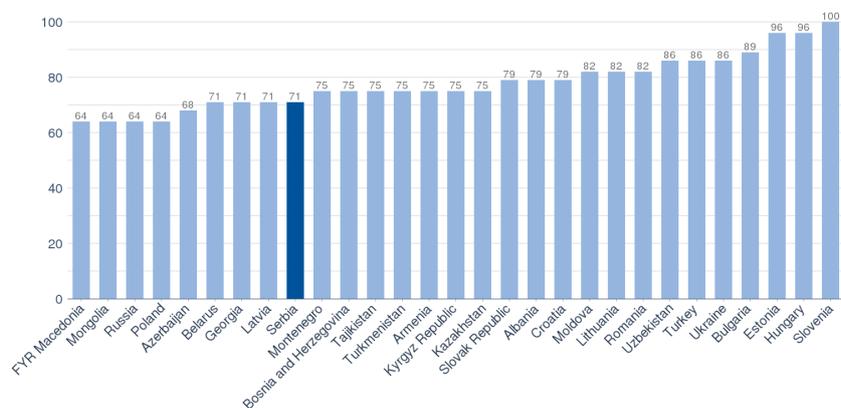
The survey revealed that the cost of the procurement procedure is low. The contracting entities claim that the fee required covers only the cost of the preparation of tender documents.

Review and remedies

In practice the remedies procedure is mainly straightforward and non-discriminatory; however, it is not always effective. The remedies procedure is not always completed in a reasonable period: it takes from 30 to 45 days to obtain a remedies decision. The cost of the procedure is perceived as unaffordable. However, the remedies bodies are not perceived to be corrupt.

Complaints are heard by a court or other impartial or independent review body with independent members in some, but not all, cases.

10. Quality of PP remedies in practice in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Serbia

Public contract management

Participants have access to almost all remedies proceedings. The remedies proceedings do not take place in public. All procurement documents are disclosed to the remedies bodies; however, not all decisions of the remedies body are published and easily accessible to the public. The remedies procedures are recorded.

PPL does not require contracting entities to provide contract management nor does it provide for procurement staff to have adequate contract management capabilities.

Contract administration is generally mandatory for public contracts. However, contracts are not always administered in a fair and equitable manner. It is difficult to say whether contracts are completed on schedule. Some contracting entities complete contracts on time; others do not. Manual or computerised procurement and contract monitoring systems have not been commonly introduced.

No internal rules or policy regulating contract cancellation have been introduced. Internal policies regarding compensation when a contract has been cancelled have not been established. However, in some cases the contracting entity is obliged to specify the reason for cancellation of the contract.

Assessment overview

Strengths

There is no indicator on which Serbian practice scores above 90% of the benchmark, although in Competition it reached 81.25%.

Competition provisions aim to promote fair competition and prevent discrimination in public procurement. Serbian public procurement practice is standardised

and transparent tender prequalification is available, but not mandatory. Qualification criteria stated in the tender documents is used to qualify tenderers. Tender evaluation aims to identify the most economically advantageous responsive tender. It is not possible to award the contract to a tenderer who does not meet the qualification criteria, even if the offer is the lowest evaluated cost.

It is necessary for a tender to respond to all requirements in the notices or tender documents. Tenders are generally evaluated on the basis of the criteria specified in the tender documents; however, sometimes contracting entities bring other circumstances to the attention of the contracting entities, although no details on this matter were provided.

Contracting entities commonly ask for clarification if a tender seems abnormally low. If the clarifications are unsatisfactory, then the contracting entity is entitled to reject the tender.

Weaknesses

There is no indicator where Serbian practice scored below 50%. However, the least effective indicator is Economy of the process (52.08%).

Updating knowledge of prevailing prices for goods, works and services by using market surveys is rarely used. Tender evaluations are often conducted by committees without the appropriate level of expertise. The committees are not established as permanent bodies. It can take 45 days to obtain a review decision which may be considered slow.

Opportunities

Remedies bodies are not perceived as corrupt or discriminatory. Participants have access to all remedies proceedings, but this applies only to tenderers who have submitted an appeal.

It is mandatory to complete a procurement plan before a public procurement process is started. In principle, planning is done in sufficient detail to produce a realistic project definition, achievable completion schedules, and accurate cost estimates.

Contract administration is generally mandatory for public contracts. Adequate contract administration records are maintained. Supplier and contractor claims are handled fairly based on a clear recognition of both parties' obligations under the contract. Appropriate procedures to monitor delivery of goods and services and to verify quantity, quality and timeliness have been established.

Risks

PPL does not forbid preferential treatment of domestic bids: it is allowed by PPL and used in practice. It negatively influences fair competition, economy and efficiency of the contract and causes a lower level of foreign participation.

In practice only local currency is allowed for payments made in Serbia. However, foreign currency may be allowed by the contracting entities in a tender advertisement. If allowed, the offered price may be expressed in foreign currency and, in this case, the exchange rate must be given.

The contracting entity may allow the use of a foreign language. In fact, the use of a foreign language is mandatory when procuring high value goods, services and works (above 3 million Euros). If a foreign language is used, it is usually English as this is the language customarily used in international trade.

Contracts are almost never completed within the originally approved contract price or on schedule. In addition, procurement evaluations/audits are rarely conducted. One respondent claimed they are never performed.

Communication by electronic means is, in principle, available, but it does not replace the mandatory use of written communication. The tenders, in practice, may not be submitted by electronic means: it is allowed by law, but never in practice. In addition, documentation confirming compliance with requirements cannot be submitted electronically; it has to be submitted in written form whether it has been sent electronically or not.

The Internal procurement process and decision making has not been regulated. There are no internal rules regulating cancellation of a contract nor on compensation when a public contract has been cancelled.

identified, especially in efficiency indicators, but also in its institutional framework assessment, where gaps of more than 40% were observed in uniformity and stability.

III. Conclusions

Serbia achieved a medium level of compliance in the quality of its legal PP framework assessment with a result of 72%.

The evaluation of the Serbian institutional framework revealed a substantial gap of 32.5% in flexibility indicators which could mean that the system is too bureaucratic and not flexible enough. A substantial gap was also observed in enforceability indicators. Serbia achieved the lowest position in the region with an enforceability gap of 25% in the 'law on the books' assessment and 35% for its law in practice assessment.

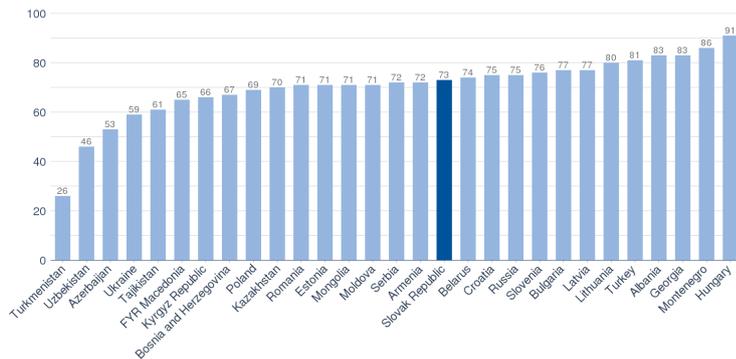
PP policy making is balanced; however gaps of 32% in integrity measures and 29% in efficiency instruments were identified in the assessment. In both areas there is room for activities aimed at improving the response of contracting entities to local market challenges.

In the assessment of local practice Serbia scored a 69% compliance rate (equating to medium compliance). This rate means that Serbia is in the lowest position for countries in the SEE and Turkey sub-region. Several implementation gaps were

Slovak Republic

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Slovak Republic is regulated by Public Procurement Act No 25/2006, with later amendments (PPL). In the EBRD 2010 assessment PPL scored at the level of medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of law are presented in Chart 2.

Regulatory institutions

In the Slovak Republic the Public Procurement Office (PPA), a central state administrative authority for public procurement has been established. The Head of the PPA is appointed by and reports to the government of the Slovak Republic and, upon request, to a committee of the National Council of the Slovak Republic as well.

The PPA's core functions are:

- a) development of a regulatory framework for the PP system;
- b) coordination and regulation of activities connected with procurement procedures in public institutions;
- c) monitoring the compliance of PP proce-

cedure with national law;
d) cooperation with contracting entities within the scope of PP, including training for procurement officers.

A review of complaints regarding PP procedures is conducted by the contracting entity in the first instance and, after that, may be lodged with the Public Procurement Office.

Chart 3 illustrates the results of the review of the Slovak PP institutional framework.

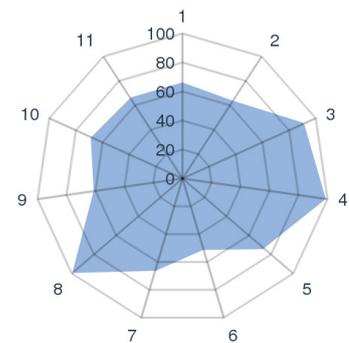
Scope of regulation

PPL covers national and local government procurement as well as specific procurement rules for public law institutions and the utilities sector.

Concessions are regulated by separate legislation; however, PPL covers the regulation of works concessions and provides for a clear distinction between public procurement contracts and procedures and concessions.

PPL provides decentralised functions; it also establishes a Central Purchasing Body.

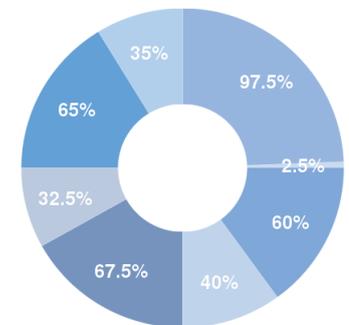
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

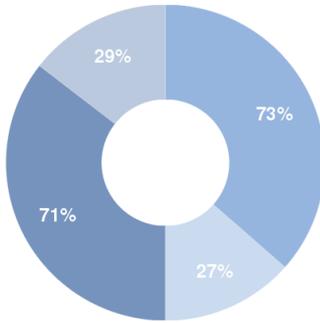
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

Eligibility rules

In the Slovak Republic PPL establishes primary PP eligibility rules. Tenderers willing to participate in the PP procedures are obliged to meet the following criteria:

- a) no tenderer (neither himself nor his statutory body or a member of his statutory body) shall have been lawfully convicted of corruption, damaging the financial interests of the European Union, gaining income from criminal activities, establishing, plotting with or supporting a criminal or terrorist group;
- b) no tenderer (neither himself nor his statutory body or a member of his statutory body) shall have been lawfully convicted of an offence concerning the professional conduct of business;
- c) a tenderer may not be subject to the proceedings of a declaration of bankruptcy, bankrupt or being wound up, nor have had a bankruptcy petition rejected due to a lack of estate;
- d) a tenderer may not have a history of arrears in the payment of contributions to health insurance, social insurance and contributions to the national pension scheme;

- e) a tenderer may not have a history of tax arrears;
- f) a tenderer must be authorised to deliver supplies, execute building works or provide services;
- g) a tenderer should not have been found guilty of any grave professional misconduct over the preceding three years. (Contracting entities should be able to provide proof of this.)

In addition, contracting entities are allowed to stipulate prequalification criteria in order to verify the tenderers' capacity to deliver a specific public contract; PPL makes a distinction between (a) general public procurement eligibility criteria and (b) qualification and technical requirements to be met by tenderers as defined by the contracting entity.

To comply with the requirements specified in the contract notice or tender documentation, the tenderers may be obliged to offer appropriate evidence, such as certificates.

The procurement procedures

PPL in Slovakia provides tendering and negotiation procedures and the provisions incorporate a clear test as to the choice between tendering and negotiated procedures.

The following public procurement procedures have been established:

- a) open procedure,
- b) restricted procedure,
- c) negotiated procedures, with or without notification,
- d) competitive dialogue.

Open tender is the default procurement method. PPL allows for the selection of tender type, or method, to be based on the specifics of the purchase and contract profile.

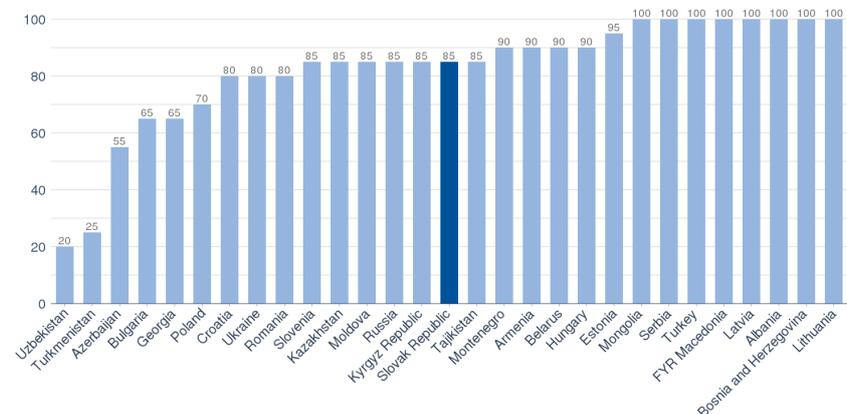
The contracting entity determines the means of communication in a manner which provides an opportunity to tender without restricting the opportunities of tenderers to participate in PP procedure.

The procurement time and cost effectiveness

PPL provisions generally allow for a reasonable estimate of the duration of the public procurement process for goods and works contracts of a significant value and requires PP to be accomplished in a reasonable time. Several specific deadlines have been established in order to achieve this objective.

PPL introduces mandatory aggregation of lots and provides contract valuation methods taking into account all-life costs of the

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Slovak Republic

purchase or works. Cascaded procurement thresholds have been established to prevent unnecessary bureaucracy.

There is no clear requirement to keep the process simple but formal requirements are proportional to the value of the public contract. PPL indirectly stipulates that the costs of tender participation should be kept low.

PPL does not provide for contract terms and conditions to be fair and balanced and reflect best available business practice.

Submission of documents and communication between contracting entities or contracting entities and tenderers may be conducted in writing, by post, fax, electronic means or by telephone or any combination of those, as decided by the contracting entity. Where electronic communication is used, certified electronic signatures are required.

PPL only indirectly stipulates that the costs of tender participation should be kept low.

Review and remedies

Tenderers whose rights or rightfully protected interests have been or may have been affected by the conduct of contracting entities may request a reconsideration of the decision of the contracting entity prior to the conclusion of a contract, framework agreement or design contest or request a review of the PP procedure by the PPA.

The PPA reviews complaints regarding PP procedures and decides on PP remedies. The PPA review decision is final unless appealed to the commercial court.

Public contract management

PPL does not require mandatory planning of PP. Nor does it require mandatory, detailed and unbiased assessment of the contracting authority's needs, appropriate

budgeting or financing authorisation prior to the publication of a contract notice or authorisations for contract payments falling due beyond the current financial year.

PPL does not include a clear test as to when the contracting entity should seek a contract performance guarantee. However, PPL provisions implicitly request that contracting entities provide contract management of the public contract and require that procurement staff have adequate contract management capabilities.

The PPA in the Slovak Republic runs special procurement officer certification programmes; only certified procurement officers can be employed by the contracting entities to conduct PP procedures.

Assessment overview

Strengths

PPL in the Slovak Republic is based on transparency and competition principles. PPL, as well as secondary and tertiary public procurement regulations, follows the requirements of EU PP Directives. Tenders are the default procedures; the contracting entity may apply other procedures only in situations where the law allows. PPL establishes the requirement for mandatory electronic publication of advance procurement and contract notices as well as an obligation to publish the contract award notice for every public contract finalised by the contracting entity. PP procedures are conducted *lege artis* and duly recorded; procurement records can be accessed by the public.

PPL provides uniform and sound regulation for government and utilities procurement.

Weaknesses

PPL is not comprehensive and several key elements of the pre-tendering and post-tendering phases of PP remain unregu-

lated. In addition, not all recommended efficiency instruments have been adopted; PPL scored below average in economy of the PP process and efficiency indicators. Accountability and integrity marks are also low. PPL is not flexible and scored low on the proportionality indicators. Finally, PPL does not sufficiently promote modern procurement techniques: there is no requirement to computerise PP monitoring and administration.

Opportunities

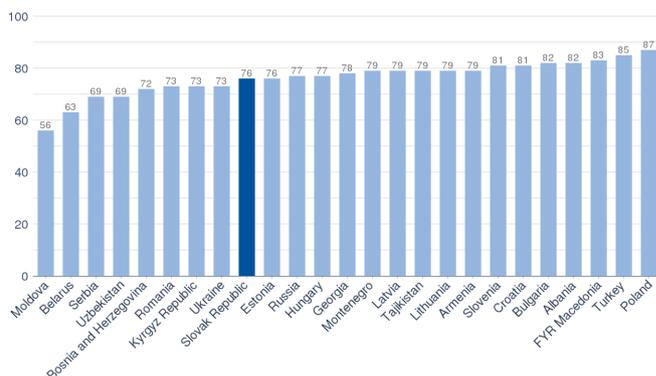
PPL promotes uniformity and introduces several transparency safeguards and competition instruments. The unique national prequalification system and certification of procurement officers positively influence stability and development of local procurement capacities.

Regulatory risks

Assessment of Slovak PP legislation revealed substantial regulatory gaps in PPL (above 25%); not all recommended integrity safeguards and efficiency instruments have been incorporated in Slovak PP laws. In addition, regulation of the institutional framework is insufficient; PPL has been found lacking in terms of stability and flexibility and scored low in the enforceability indicators.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Local Slovak PP practice scored at the level of medium compliance with international standards.

Local contracting entities reported that they have substantial internal procurement procedures and their procurement decision making process is mainly regulated by internal rules. Contracting entities disclose internal procurement rules and all procurement decisions. Internal roles in the procurement process are usually clearly allocated. PPL amendments as well as amendments to national and EU PP legislation are connected to the frequency of updates to the internal procurement process and decision making regulation.

Contracting entities do not provide regular training for their procurement officers because that training is organised by the PPA.

Chart 7 illustrates the general quality of practice.

Regulatory institutions

The compliance of PP procedures with the law is monitored by the PPA. In addition,

other monitoring and auditing procedures have been established. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

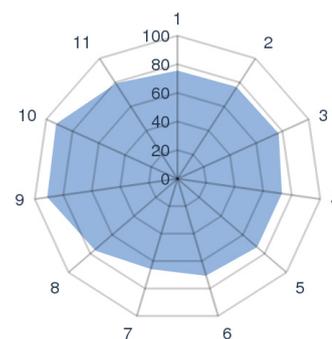
In practice, PPL covers both government and utilities public procurement. Exceptions and exclusions are compliant with EU PP Directives.

Eligibility rules

General eligibility rules are respected and, in practice, PP qualification criteria include experience, past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

In Slovak practice, affiliates of the contracting entity are not considered eligible to tender unless it can be demonstrated that there is no significant degree of common ownership, influence or control between the contracting entity and the affiliates.

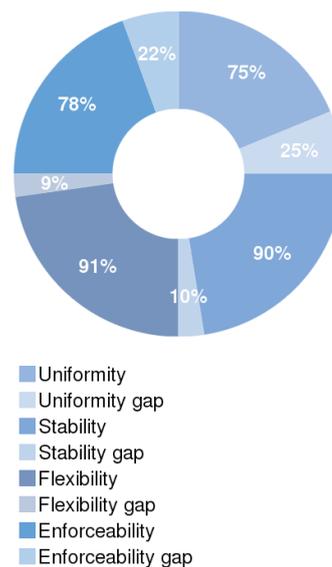
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Slovak Republic

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement procedures

Contracting entities adhere to default tender procedures. Negotiated procedures are seldom used for specific or complex contracts; however, there are some exceptions. The contracting entity is not necessarily obliged to explain the choice of procurement method.

The procurement time and cost effectiveness

In the Slovak Republic the PP procedure for a procurement contract for goods to the value of 250,000 Euros as well as a works procurement procedure to the value of 500,000 Euros lasts from 30 to 120 days approximately (starting from the beginning of the procedure and ending with the signing of the contract). According to local practitioners the time allowed to prepare and submit tenders is considered sufficient. Tender documents are seldom published electronically on the contracting entity's website but are usu-

ally available free of charge. There are no significant delays in procurement: tender evaluation is normally completed within the original tender validity period.

Review and remedies

The cost of the remedy procedure is considered to be bearable. Remedies are effective and the remedy procedure is straightforward and non-discriminatory. The PPA is not generally perceived to be corrupt, but this perception is not shared by all contracting entities. The speed of the remedies procedure is not always reasonable: it takes from 15 to 60 days to obtain a review decision.

Tenderers who want to complain about the procedure are able to present their position in the remedies proceedings. However, hearings are not always conducted and not all remedies proceedings take place in public. Procurement reports are fully disclosed and the remedies proceedings are duly recorded.

Public contract management

In general it is not mandatory to complete the procurement plan before a PP process is started. Nevertheless, planning is mandatory for some contracting entities in the case of high value contracts only. Internal roles in the procurement process are

clearly allocated. Internal PP monitoring and auditing arrangements are in place. Standard tender documents for goods, works and services are commonly used. Standard contract forms are available but are not suitable for all contracting entities. Standard PP notice forms, standard forms for procurement reports and tender securities are provided for. Internal guidelines outlining how to draft the tendering documents are in use. Contract management is not mandatory for all contracting entities: modifications or waivers of the terms and conditions of a contract are not subject to a review and approval procedure. Public contracts are generally administered in a fair and equitable manner. The majority of contracts are generally completed on schedule and within the budget.

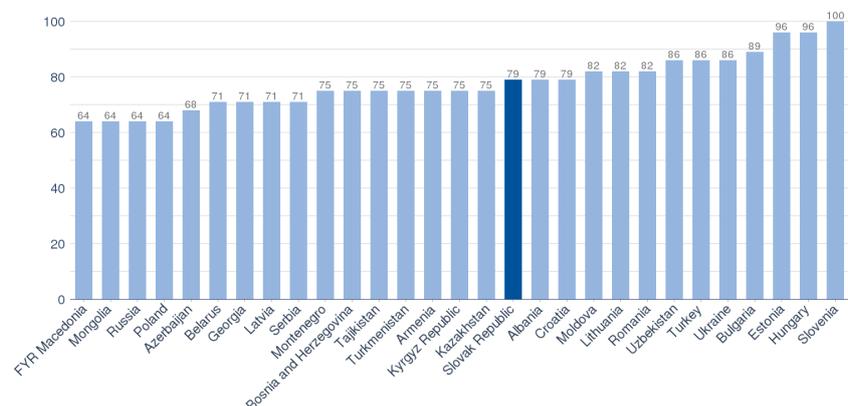
Internal rules on contract cancellation have been established; however, there are no policies regarding compensation in cases involving a cancellation. In most cases the contracting entity specifies the reason for the public contract cancellation.

Assessment overview

Strengths

In the assessment of PP practice in the EBRD region Slovak local practice scored

10. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

consistently at the level of medium compliance for all benchmark indicators; there is no area of exceptional performance in any element of the framework but an average 78% compliance rate has been achieved. Local practice is uniform due to the use of standard documents and forms. Standard international contract forms for all types of procurement can be used. In most cases contracting entities monitor changes in the PP procedure as well as changes in the public contract.

Weaknesses

Slovak PP practice scored lowest on the proportionality indicators, as the PP practice is somewhat conservative and bureaucratic. The test to ensure that the scope and subject of PP is economically justified is not always mandatory. Not all contracting entities consider explanation of the choice of procurement method mandatory.

Opportunities

In practice, the PP process is highly transparent and competitive. For high value contracts, PP planning is mandatory and the execution of the contract is monitored. The PP system works quite well and is considered stable. There is some room for improvement and modernisation; however, the fundamental principles have been established.

Risks

PP practice in the Slovak Republic is conservative. There is little consideration of the requirements of international trade: the tender documents are, in most cases, formulated only in the official language and the only currency allowed is the domestic currency. Electronic communication is not always available. Proposals and tenders cannot generally be submitted electronically.

III. Conclusions

The Slovak Republic scored 73% in the quality of its legal PP framework, achieving only a medium level of compliance (together with Poland and Estonia, while six other countries in the region achieved high or very high compliance).

The assessment of the Slovak institutional framework revealed substantial gaps accounting for more than 30% in stability (40%), flexibility (32%), and enforceability (35%) indicators. PPL does not guarantee the stability of the procurement process and flexibility of the procedures at the required level.

PP policy making is balanced: both integrity safeguards and efficiency instruments have been adopted in PPL at a medium level of compliance. Regulatory gaps of no more than 30% were identified in the assessment. In developing an improvement strategy, special attention should be paid to the accountability of the process (in terms of integrity safeguards) and efficiency of the public contract (in terms of efficiency instruments).

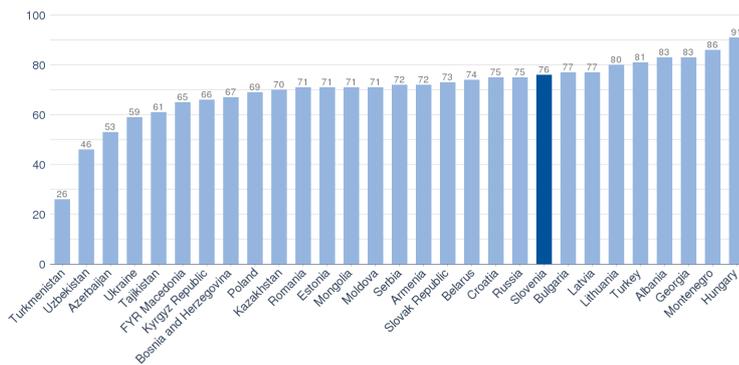
The Slovak Republic achieved a slightly higher result in the evaluation of local practice than the result of its 'law on the books' evaluation. The score achieved (77%) equates to high compliance with the benchmark indicators, however, it is close to the lower boundary of the range.

An assessment of practice reveals that Slovak contracting entities pay equal attention to almost all basic features of public procurement: there are no weaknesses in the legal framework with regard to efficiency or stability of the process (no implementation gap, local practice is better than required by the legislation), but there are low marks for integrity and efficiency indicators reveal shortcomings in local practice.

Slovenia

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Slovenia is regulated by the Public Procurement Act No: 411-07/06-10/1 EPA 1029-IV) and Public Procurement in the Water, Energy, Transport and Postal Services Act (ZJN-VETPS) No. 411-07/06-9/1 (EPA 1028-IV), adopted on November 23 2006 (PPL). In the EBRD 2010 assessment Slovenian PPL scored high to very high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Slovenia there is no independent regulatory authority for public procurement. A unit in the Ministry of Finance has been assigned regulatory functions in the field of procurement. The National Review Commission for Reviewing Public Procurement Award Procedures (National Review Commission), an independent review body created by Article 234 of the EEC Treaty, is responsible for monitoring compliance with PPL and resolves complaints regarding public procurements in Slovenia.

Chart 3 illustrates the results of the review of the Slovenian institutional framework.

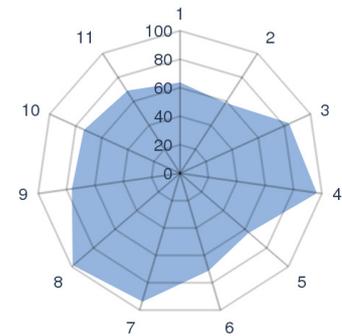
Scope of regulation

PPL covers national and local government procurement, as well as providing specific procurement rules for public law institutions and the utilities sector. Concessions are regulated by separate legislation. PPL clearly differentiates between public procurement contracts and procedures and concessions. PPL provides for a decentralised procurement function and establishes a Central Purchasing Body.

Eligibility rules

PPL establishes primary public procurement eligibility rules, compliant with EU PP Directives. PPL provides a distinction between general eligibility criteria and qualification and technical requirements. In addition, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities. Tenderers may be requested to demonstrate: professional activity, technical capacity, economic and financial standing and professional qualifications. PPL enumerates all the certificates that may be required from the tenderer by the

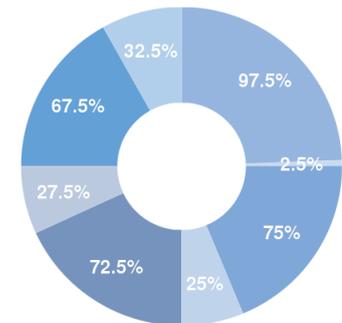
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

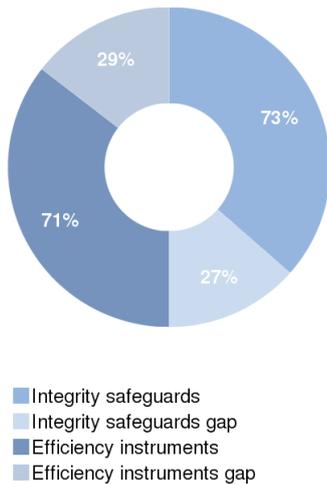
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

contracting entity to prove compliance with the qualification criteria set out in the contract notice.

The procurement procedures

The contracting entity in Slovenia shall award public contracts in accordance with one of the following procedures:

- Open tender;
- Restricted tender;
- Competitive dialogue;
- Negotiated procedure without prior publication of a contract notice;
- Negotiated procedure with prior publication of a contract notice;
- Tender collection procedure with prior publication of a contract notice;
- Tender collection procedure.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. Open tender and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

The procurement time and cost effectiveness

PPL does not allow for an accurate estimation of the length of the PP process for the procurement of public works and goods of significant value; however, several specific deadlines have been established to achieve this objective, both for tenderers and contracting entities, compliant, in principle, with EU PP Directives. PPL provides for a cascaded maximum tender validity period, but it is not mandatory to award the contract during the original tender validity period. PPL requires mandatory aggregation of lots. Where the proposed tender may result in contracts being awarded in the form of separate lots, account shall be taken of the estimated aggregate value of all such lots.

PPL does not directly provide for formalities to be kept simple but provides for cascaded thresholds in order to align the formality of the procedure with the value of the contract.

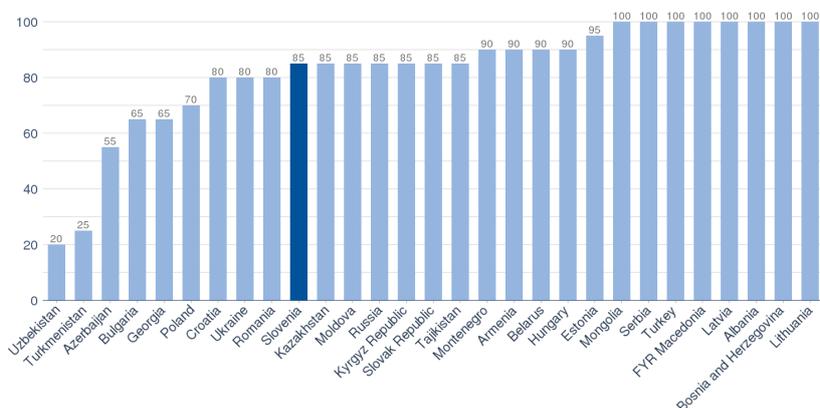
PPL does not include a clear test as to when the contracting entity should seek a tender security, and does not limit its maximum amount.

PPL does not stipulate directly that the costs of tender participation should be kept low; however, there are several specific provisions on the costs of download-

ing tender documents and submitting electronic documents. In addition, tender documents are free of charge. Certificates from national public records must be retrieved by the contracting entity and not by the tenderer. Certificates may be used in several public procurement procedures. PPL enables electronic or fax communication, subject to the agreement of the contracting entity.

PPL provides for contract valuation methods taking into account whole life costs of the purchase or works. In addition, whole life cycle costing methods are prescribed by the regulation on green public procurement for specific types of public contracts. PP procedures are carried out in the Slovenian language, but elements of the tender, especially technical specifications, may be submitted in a foreign language. Exceptionally, the contracting entity may prepare summaries of tender documents in a foreign language. If the contracting entity has decided to allow tenderers to submit part of the tender documents in one of the languages of the European Union or in any other foreign language, it shall specify which part of the tender may be in a foreign language as well as which foreign languages are acceptable. Equal treatment is provided for the Hungarian and Italian languages in the bilingual areas of Slovenia, under an agreement on the special rights of the Italian and Hungarian communities. PPL does not

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Slovenia

establish any rules on the use of currencies in public tenders or contracts.

Review and remedies

PPL provides for an independent dedicated PP remedies mechanism. The National Review Commission, an independent review body, resolves complaints related to public procurements. The decision of the National Review Commission is final, unless the tenderer appeals the decision to the court.

In addition, a tenderer whose legitimate interests have been harmed by an act of the contracting entity infringing PPL may appeal to the commercial court requesting cancellation of the public contract and compensation or damages.

Public contract management

In Slovenia public procurement planning is mandatory under public finance legislation for all state budget units and companies, owned by the state or municipalities. PPL indirectly requests that contracting entities provide for contract management of the public contract. However, PPL does not provide for procurement staff to have adequate contract management capabilities.

PPL does not include a clear test as to when the contracting entity should seek a contract performance security and does not limit its maximum amount.

Assessment overview

Strengths

PPL in Slovenia clearly promotes transparency, competition and uniformity in public procurement and scored very high compliance in these areas (average 90% compliance rate). PP policy has focused on ensuring fair competition but it is less comprehensive when it comes to adopting efficiency instruments and integrity safeguards. PPL provides for an enforcement mechanism and dedicated remedies system. PPL provides for modern, uniform

and comprehensive regulation, in accordance with EU PP Directives. In addition, the PP framework follows the principle of proportionality, distinguishing small and high value contracts as well as providing for different procurement procedures suitable for different contract types.

Weaknesses

Slovenian PPL is based on sound principles and has no major weaknesses, scored below 50% compliance rate. Marks for efficiency and economy of the PP process are relatively low, due to insufficient adoption of the procurement efficiency instruments in the regulation of pre-tendering and post-tendering phases, but this is common for all EU Member States in the EBRD region. In certain aspects PPL is not modern enough: e-Procurement has not been fully implemented; electronic communication is not mandatory and PPL does not require procurement monitoring and administration to be computerised.

Opportunities

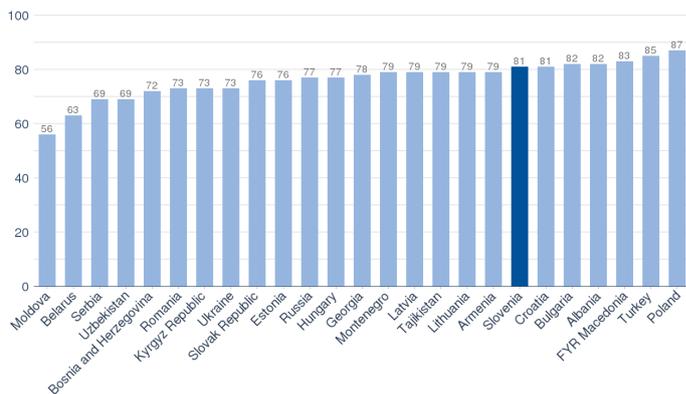
The adoption of the Public Sector Integrity Act in 2010, which introduces a code of conduct for all public sector staff and implements other anti-corruption safeguards, is a positive indication for the future. Because it includes public procurement officers, it will significantly improve the quality of the PP legal framework in terms of accountability and integrity indicators when implemented.

Regulatory risks

Slovenian PPL should improve in terms of the accountability of its contracting entities. This can be achieved by adopting specific efficiency instruments as recommended by international PP standards or expanding regulation of the pre-tendering and post-tendering phases of public procurement. In addition, the national PP regulatory framework could be strengthened: in the 2010 assessment, the framework scored relatively low marks for enforceability indicators.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The survey of local PP practice revealed that local practitioners consider PPL clear and comprehensive. Several contracting entities have adopted internal procurement rules and, in practice, internal roles in the procurement process are clearly allocated. Internal procurement rules are updated when necessary and, with some exceptions, regular training for procurement officers is provided. Chart 7 presents the scores for the general quality of local PP practice in Slovenia (average compliance rate 80%).

Regulatory institutions

Compliance with PPL is monitored by the Ministry of Finance as well as a dedicated and independent remedies body. Chart 8 illustrates how the Slovenian institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

The survey of local PP practice confirmed that PPL covers both government and utilities public procurement and exceptions and exclusions are, in principle, compliant with EU PP Directives.

Eligibility rules

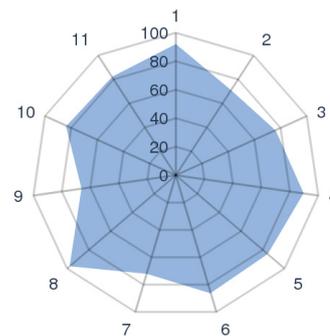
In practice, primary eligibility rules are generally respected. Typically, qualification criteria established by contracting entities include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

We were not able to verify whether affiliates of the contracting entity are eligible to tender.

The procurement procedures

It is mandatory in Slovenia to complete a procurement plan before a public procurement process is started. Moreover, technical, financial and procurement planning is coordinated. There is, however, no mandatory test to ensure that the scope and subject of public procurement is economically justified. Internal PP monitoring and auditing arrangements are in place. Local practitioners reported that changes in the PP process, once the procedure has been launched, are monitored, as well as all changes or modifications to the public contract.

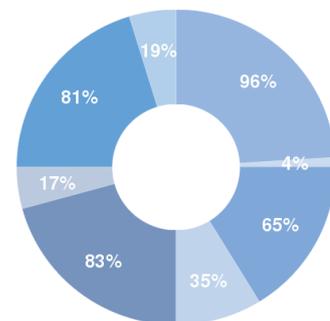
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

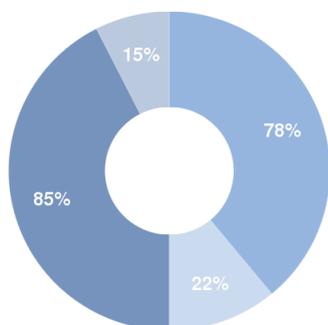
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Slovenia

9. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Guidelines on how to draft the tender documents are widely used as well as standard forms of contract notices and procurement reports.

Standard national contract forms have not been developed but PPL allows the contracting entities to utilise standard international contract forms for all types of procurement. There are no standard tender documents for goods, works or services.

In practice, it is not possible to estimate the length of the procurement procedure leading to the signing of a public procurement contact of significant value in Slovenia.

Contract notices are published electronically which provides a single point of access for potential tenderers. Tender documents are usually available free of charge; only in the case of a complex or high value contract is a small fee charged.

The evaluation of tenders is not prolonged and is normally completed within the original tender validity period.

The procurement time and cost effectiveness

It is mandatory in Slovenia to complete a procurement plan before a public procurement process is started. Moreover, technical, financial and procurement planning is coordinated. There is, however, no mandatory test to ensure that the scope and subject of public procurement is economically justified. Internal PP monitoring and auditing arrangements are in place. Local practitioners reported that changes in the PP process, once the procedure has been launched, are monitored, as well as all changes or modifications to the public contract.

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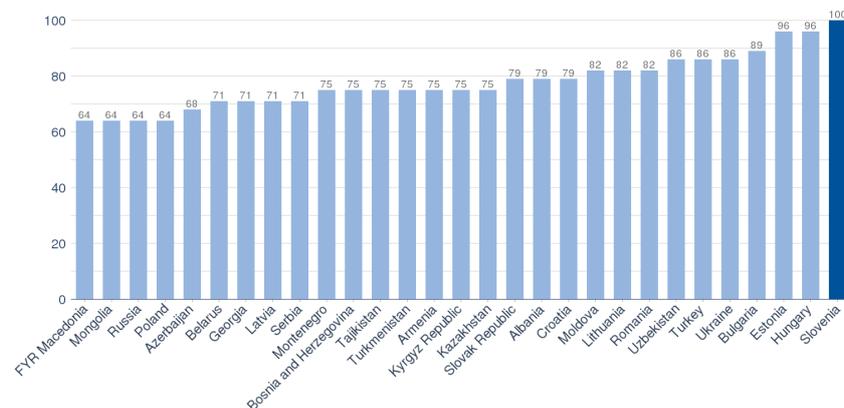
The evaluation of tenders is not prolonged and is normally completed within the original tender validity period.

Review and remedies

According to local practitioners, the speed of the remedy proceedings is reasonable: it takes about 20 days to obtain a review decision. The remedies proceedings are considered to be straightforward, non-discriminatory and effective and the remedies body is not perceived to be corrupt. However, in the opinion of local practitioners, the costs of the remedies proceedings are not affordable.

All procurement documents are disclosed to the remedies body. Complainants present their position in writing; no oral hearings are conducted. The remedies proceedings do not take place in public

10. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

but are duly recorded. All review decisions are published electronically and are available to the public.

Public contract management

Public contract administration is mandatory for most contracting entities in Slovenia. Contracts are generally administered in a fair and equitable manner, completed within the original budget and on schedule. In addition, procurement evaluations/audits are periodically conducted. In practice, there are no internal policies on public contract cancellation or mechanisms to award compensation when a public contract has been cancelled. However, the contracting entity is obliged to specify the reason for cancelling a public contract.

Assessment overview

Strengths

Local PP practice in Slovenia scored high (average 80% compliance rate). Local PP practice is perceived to be transparent, competitive and well managed. Local contracting entities supplement PPL significantly with internal procurement rules and policies. With these additional rules and policies, there are appropriate procedures in place to plan procurement, manage the PP process and monitor delivery of public contracts. In addition, the Slovenian PP remedies body received good marks from local practitioners. Because the review body is predictable and their decisions are published and easily accessible to the public, local PP practice has been positively influenced.

Weaknesses

A review of local practice revealed that in Slovenia there are no elements of PP practice scored below 50% compliance rate. However, in the survey of local practice some implementation gaps were identified, as the scores on stability and enforceability indicators are generally lower than the average score for the quality of local practice. There are no stand-

ard tender documents or contract forms available in Slovenia. In practice, regular training for their procurement officers is not organised by all contracting entities.

Opportunities

There are a number of positive features in local PP practice in Slovenia: local contracting entities are developing procurement capacity and have implemented internal procurement rules covering the pre-tendering and post-tendering PP phases; public contracts are generally well managed, completed within budget and on schedule; procurement evaluations and audits are conducted; and the remedies body's practice scored highest in the EBRD region.

Risks

Slovenian PP practice could further improve by implementing some PP efficiency instruments, as recommended by international PP standards. The length of the PP process is pretty unpredictable in Slovenia and e-Procurement solutions are hardly ever used, except at the discretion of the contracting entity.

In addition, remedies proceedings in Slovenia, despite very good marks for their quality, are perceived to be too expensive and do not take place in public. Furthermore, the complainants are not given a hearing before a review decision is issued.

III. Conclusions

In the 2010 assessment Slovenia scored high compliance in the quality of its legal PP framework (average 75% compliance rate). The Slovenian institutional framework is quite comprehensive but some regulatory gaps were identified, particularly in enforcement. Local PPL is uniform and rather flexible but not stable enough. PP policy making is reasonably responsive to local market challenges; several integrity safeguards and efficiency instruments

(yet not all recommended by international standards) have been adopted.

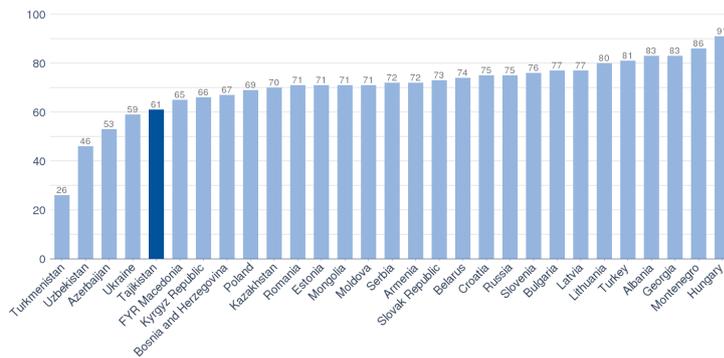
In the assessment of local PP practice Slovenia scored high compliance, with an average compliance rate of 81%. Furthermore, in the survey of local PP practice, the Slovenian PP remedies body scored highest in the EBRD region.

Local contracting entities in Slovenia are clearly increasing their procurement capacity; however, several implementation gaps were identified. The general conclusion is that there are substantial gaps in the implementation of efficiency instruments, but even bigger gaps in implementing transparency safeguards.

Unfortunately, in the PP sustainability survey Slovenian contracting entities not to provide any data.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Tajikistan is regulated by the Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services, adopted in March 2006 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Tajikistan, an Authority for Public Procurement (PPA) has been established as the central government authority responsible for national policy in the sphere of public procurement (PP) of goods, works and services.

The PPA's core functions are:

- a) developing PP legislation;
- b) coordinating the PP activities of local contracting entities;
- c) monitoring the compliance of contracting entities with PP legislation;
- d) resolving disputes regarding public procurements;
- e) developing standard PP tender documents;

f) advising on the application of PP legislation;

g) arranging for the training of public procurement specialists;

h) conducting PP procedures for goods, services and works of a value exceeding the minimal threshold on behalf of the contracting authorities.

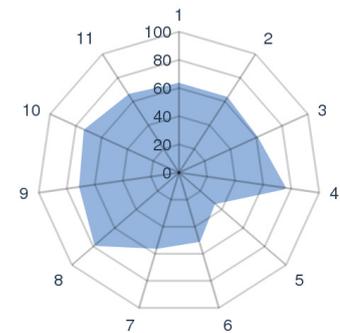
Chart 3 illustrates the results of the review of the Tajikistan institutional framework.

Scope of regulation

PPL covers national and local government procurement and does not contain any special procurement rules for public law institutions or utilities sector procurements. Concessions are regulated by a separate body of law, but PPL does not provide a clear differentiation between a public procurement contract and concessions.

PPL provides, in principle, for a decentralised procurement function (Qualified Contracting Authorities), as well as for a Central Purchasing Body (this function may be delivered by the PPA, based on a specific government decision).

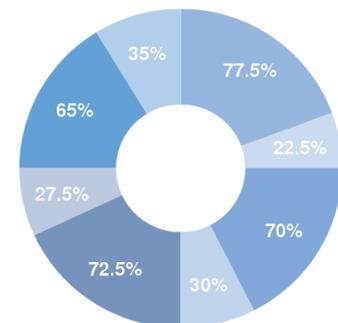
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

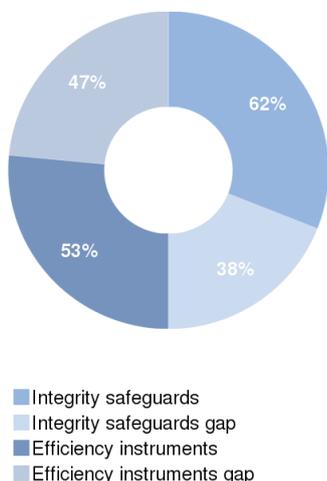
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

Eligibility rules

PPL doesn't provide a distinction between general public procurement eligibility criteria and technical requirements to be met by tenderers.

Contracting entities individually establish qualification requirements for specific tenders. The contracting entity is entitled to decide which tenderers are excluded from public tenders. These include tenderers who failed to fulfil their obligations on at least one public procurement contract in last two years (from the date of initiation of the procurement procedure), have been declared insolvent or are undergoing the insolvency process, or those who knowingly submitted false or inaccurate information regarding qualifications.

The procurement procedures

PPL provides for several PP procedures:

- Open tender;
- Restricted tender;
- Request for quotations;
- Direct contracting;

- Electronic procurement;
- Short-list method for procurement of consultancy services.

In addition, simplified procurement methods can be established by the PPA for small value contracts in rural communities.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows and for high value contracts in co-ordination with the PPA. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts.

Direct contracting may be conducted in the following cases:

- If the procurement is an additional order added to a public procurement contract, within six months of the date of concluding the contract, and does not exceed 15 percent of the amount of primary procurement contract, and maintains the same norms, parameters and standards;
- Signing of a contract while conducting research, experiments or preparation of a scientific opinion;
- If procured goods, works or services are available only from a particular supplier or the supplier possesses exclusive rights to them;

- At procurement for execution of creative works in the area of art or culture;
- In the case of an urgent need to procure works, goods or services due to circumstances which the contracting authority couldn't foresee.

PPL provides that electronic procurement may be introduced when the Government of the Republic of Tajikistan has decided to.

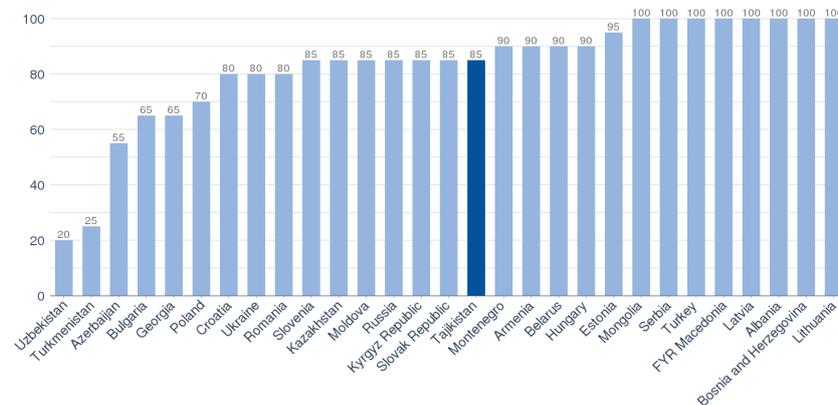
The procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process for works or goods contracts of a significant value. There is also no requirement for the procurement process to be accomplished in a reasonable time. Nor does PPL stipulate maximum tender validity periods.

PPL does not require mandatory aggregation of lots. There is no distinction between long and short term contracts.

PPL does not provide for tender participation costs to be kept low. PPL stipulates that the contracting authority may require a tender security to be submitted with the offer. The value of a tender security shall not exceed 3% of the contract value. PPL allows for communication other

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Tajikistan

than in written form (such as facsimile or electronic communication) as part of a public procurement procedure, although such communication shall be confirmed in writing.

PPL stipulates that PP procedures shall be conducted in the official language of Tajikistan. If necessary, a procedure may be conducted in Russian or English.

All offers are converted into one currency for tender evaluation and the exchange rate is recorded in the procurement report.

Review and remedies

PPL provides for administrative and judicial review of complaints regarding PP procedures, based on the 1994 UNCITRAL Model Law.

Any tenderer has the right to submit a complaint to the contracting entity while the PP procedure is still ongoing. The contracting entity shall review it within three days, and if necessary, in cooperation with the PPA, decide whether to suspend the PP procedure. If the contracting authority fails to issue the review decision within the prescribed time or the tenderer is not satisfied with the decision, he has the right to appeal to the PPA or, alternatively, to the commercial court.

The PPA may suspend the PP procedure for up to 10 days in order to reach a decision on the complaint. The review decision of the PPA is final, unless appealed to the commercial court.

Public contract management

PPL requires contracting authorities to prepare annual public procurement plans, but there is no requirement for these plans to be based on a detailed and unbiased assessment of the contracting entity's needs. The contracting entity needs to receive appropriate budget authorisation prior to the publication of a contract notice. There is no regula-

tion regarding budget authorisation for contract payments falling due beyond the current budget year. PPL does not require a contracting entity to provide for contract administration nor implement monitoring procedures. PPL does not require PP officers to have adequate contract management capabilities, but these skills are generally required from public officers.

Assessment overview

Strengths

a. Strengths

In the 2010 assessment the Tajikistan PP framework did not demonstrate any specific strengths; uniformity, with a score of 77% compliance, is the strongest point of the local framework.

PPL provides for basic features of the PP framework and embraces some instruments promoting competition and transparency. Some regulatory and review institutions have been established and the review and remedies procedures are based on sound principles. PPL allows a tenderer to seek compensation when a public contract has been cancelled.

Weaknesses

The Tajikistan PP legislation scored below 50% compliance on economy of the process and efficiency indicators. Substantial regulatory gaps were identified; just a few of the recommended integrity safeguards and efficiency instruments have been adopted by local PP legislation. In general, PPL is based on outdated 1990 standards.

Opportunities

Basic features of the local PP framework are sound but they are inadequate when evaluated against current international PP standards. There are several positive features in the regulation of the evaluation process and pre-tendering and post-tendering phases of procurement.

Regulatory risks

PPL provides for domestic preferences. Local tenderers may be granted preference in the amount of 20 percent when evaluating tenders for goods, as well as 10 percent when evaluating tenders for works, when other conditions remain equal. In addition, if domestic preferences are granted:

- a) works contracts shall be delivered using domestic resources (not less than 30 percent of domestic raw materials and construction materials for works),
- b) service contracts shall be delivered using not less than 70 percent domestic labour.

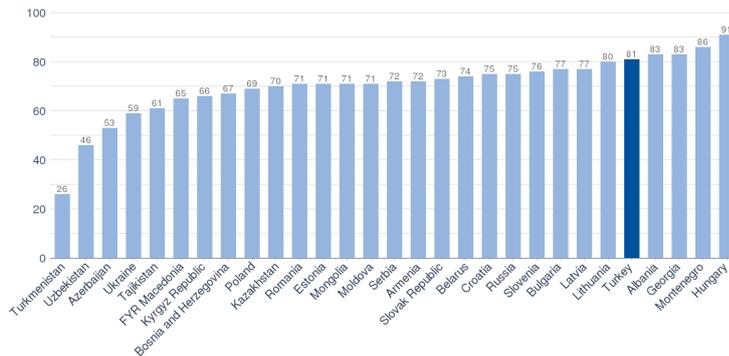
III. Conclusions

Tajikistan scored low to medium compliance in the quality of the legal PP framework (average 61% compliance rate). The PP legislation provides for basic regulatory features but is outdated and regulates PP processes inadequately. In addition, it does not incorporate integrity safeguards and efficiency instruments recommended by current international PP standards. Due to domestic preferences, the PP sector in Tajikistan is generally closed to international trade.

During the course of the 2010 assessment many attempts were made to interview local contracting entities. In spite of these attempts, it was impossible to obtain any feedback from any local contracting entity in Tajikistan. Data on the implementation of sustainable public procurement policies is not available either.

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The public procurement in Turkey is governed by the Public Procurement Law Act No: 4734, published in the Official Journal No: 22.01.2002/24648 ('PPL'). Since 2002 PPL has been amended several times. The most significant and extensive amendment was adopted in October 2008. In the EBRD 2010 assessment PPL scored high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

Public procurement regulatory role in Turkey is divided between the Ministry of Finance and the dedicated authority, the Public Procurement Agency (PPA).

The Ministry of Finance is exclusively responsible for PP policy-making. Under umbrella of the Ministry of Finance, the PPA is organizationally and financially independent. PPA comprises of the Presidency and its office and Public Procurement Board.

The main duties of the PPA include:

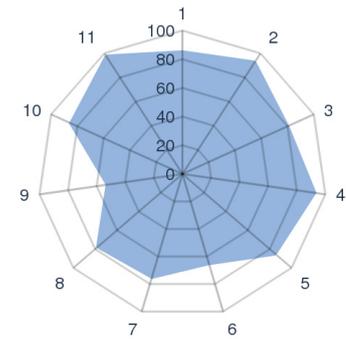
- evaluation of complaints submitted by the dissatisfied party regarding conducting procurement procedure in the unlawful manner;
- implementation of all the PP related legislation;
- drafting standard tender documents and contract terms and conditions;
- providing training on procurement regulation;
- maintaining records of the blacklisted tenderers;
- publishing the Public Procurement Bulletin and developing eProcurement system.

Scope of regulation

The PPL covers procurement on both government and local level. Moreover, there are specific procurement rules for public law institutions. Nevertheless, PPL does not introduce specific procurement rules for the utilities sector.

Concessions are regulated in separate legislation. Unfortunately, PPL does not provide enough distinction between the public procurement contract and procedures and concessions. Finally it has to be stated that PPL provides a decentralised procurement function; no Central Purchasing Body is established.

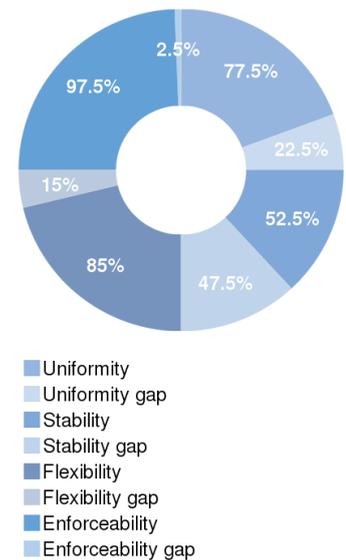
2. Quality of PP legal framework



- Accountability
- Integrity
- Transparency
- Competition
- Economy of the process
- Efficiency of public contract
- Proportionality
- Uniformity
- Stability
- Flexibility
- Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

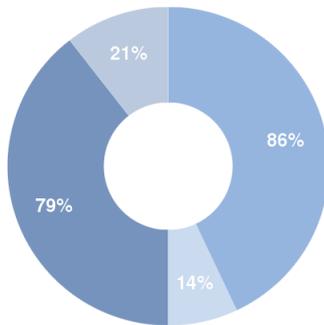
3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

Turkey

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

Eligibility rules

PPL in Turkey establishes primary public procurement eligibility rules. Grounds for exclusion are: bankruptcy, liquidation procedure; lack of fulfilment of obligations regarding payment of taxes or social insurance; submission of false data; suspension of business activity resulting from professional misconduct and conviction by a final judgement for certain crimes. Furthermore, PPL enumerates circumstances and persons or entities that cannot directly or indirectly or as a sub-contractor, either on their own account or on behalf of others, participate in the procurement procedure.

PPL allows the contracting entities to establish individual qualification criteria and assess and verify whether tenderer is competent, reliable and capable to deliver the contract.

Pre-qualification criteria may include economic and financial standing as well as professional and technical capacities. Tenderers participating in the procure-

ment may be required to submit relevant documents, certificates and licences, proving their compliance with the requirements.

The procurement procedures

PPL provides both tendering and negotiated procedures:

- a) open tender;
- b) restricted tender;
- c) negotiated procedure.;
- d) direct contracting;
- e) design contest.

PPL provides for a clear test as to the choice between tendering and negotiation procedures. Tenders are default procedure.

The procurement time and cost effectiveness

PPL allows accurately estimate the length of the procurement process for goods and works of a significant value (e.g., equivalent of 500.000 euros or higher). PPL establishes several specific deadlines in order to finalise the procurement procedure in a reasonable time. Thus, it takes minimum 48 days to sign the contract in open tender and 23 days in restricted tender. PPL requires to keep formalities simple and provides for aligning value and

scope of the contract with a formality of the procurement process. PPL requires mandatory aggregation of lots. PPL also provides for contract valuation methods taking into account all-life costs of the purchase or works, when possible.

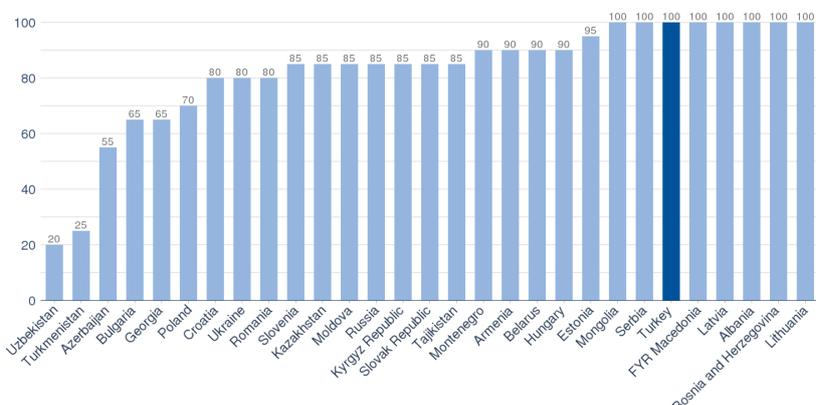
The estimated budget is published in tender or pre-qualification notices, and the contracting entities are obliged to provide reasons if the budget is questioned.

The PPL establishes cascaded thresholds as follows:

- a) Three hundred billion Turkish Liras for procurement of goods and services by government entities (350 billion 31 million Turkish Liras = around 163 000 euro);
- b) Five hundred billion Turkish Liras for procurement of goods and services by other public contracting entities (583 billion 385 million Turkish Liras = around 269 936 euro)
- c) and finally eleven trillion Turkish Liras for the works contracts by any of contracting entities covered by the PPL (12 trillion 834 billion 470 million Turkish Liras = around 6 000 000 euro).

PPL does not contain requirements on the use of specific methods of communication. There is no mandatory use of electronic communication. Neither does it include information concerning obligation of written confirmation of electronic or fax

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

communications. However, it is worth to mention that both tender notice and tender results are published electronically.

PPL does not require to keep the costs of tender participation low. However, it determines a clear test as to when the contracting entity should seek a tender security. Tender security may amount to 3 % of the tender price. As far as the contract performance security is concerned it is calculated as 6 % as the contract value. Finally, PPL does not specify clear currency rules. The currency has to be determined in tender documents based on the characteristics of the procurement.

Review and remedies

PPL provides for an administrative review mechanism. Complaints related to public procurement are reviewed by the PPA. In addition, the PPA decisions can be appealed to the court.

PPL provides that a tenderer who claims to suffer a loss of rights or damage or who is likely to suffer loss or damage resulting from an alleged breach of law by the contracting entity, is entitled to request review by submitting a written complaint. Firstly, a written complaint can be submitted to the contracting entity. There is a standstill period - the contracting entity cannot sign the contract unless the contracting officer certifies that urgency and public interest considerations require the tender proceedings to continue.

The contracting entity is obliged to issue a reasoned decision, within thirty days from submission of the complaint.

If no decision is taken within the specified period or the tenderer is dissatisfied with the decision of the contracting entity, a further complaint will be reviewed by the PPA. The decisions of PPA are final unless they are appealed to the court.

Public contract management

PPL includes a general clause regarding

mandatory planning of public procurement. For long-term projects, exceeding one budget year, it is compulsory that a financial program is established to ensure that financing is available when required. PPL requires appropriate budget authorisation prior to publication of a contract notice.

On the other hand, PPL remains silent on public contract extensions and amendments.

Assessment overview

Strengths

PPL in Turkey clearly promotes integrity and competition in public procurement and scored very high compliance in these areas (92,5 % compliance rate). The PP policy focused on adopting integrity safeguards and providing significant enforcement instruments.

PPL requires the procurement processes to be conducted by procurement officers, whose duties are clearly separated from the decision making process and supply management. There are very high technical and professional requirements for all PPA board members. PPA is required to ensure that adequate formal training programs exist for entry and higher-level procurement staff. In addition, PPA is obliged to accredit training resources in the country to complement government/donor-administered programs (university).

PPL also provides for a dedicated public procurement enforcement mechanisms and review system. Moreover, PPL stipulates that, if applicable, the PP remedies should be simple, quick and inexpensive.

Weaknesses

PPL in Turkey is based on sound principles and it is evident that all efforts are made to ensure transparency of the process and combat corruption. Also, at the same time

framework embraces most of efficiency instruments and if not for some lack of flexibility would be marked as very modern. The only major weakness proves a preferential treatment of domestic tenderers. In addition, domestic tenderers who participate in the tender by forming joint ventures with foreign companies cannot enjoy the domestic preference privileges.

Opportunities

In the future all public procurement in Turkey will be conducted on the e-Procurement platform. In 2010 PPA introduced a pilot e-Procurement platform for purchases in the pharmaceutical sector. This is a major policy development, as only a few countries in the EBRD region successfully implemented any eProcurement solutions.

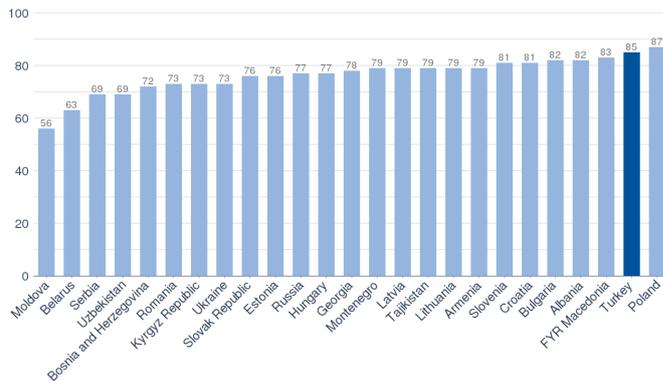
Regulatory risks

Turkish PPL is in principle in high compliance with the international standards with the exception of:

- a) lack of specific procurement rules for the utilities sector;
- b) preferential treatment of domestic tenderers and /or products;
- c) lack of independence of the PP remedies body (the review proceedings are conducted by the regulatory authority.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

The local practice assessment revealed that the Turkish PPL is of high compliance with international best practice, but it is not sufficiently comprehensive. The pre-tendering and post-tendering phases are hardly regulated. In practice, the PPL is supplemented by internal procurement rules of contracting entities. Both national and internal procurement rules are fully disclosed to the public; usually are published at the contracting entity website or otherwise disclosed. Local practitioners consider the PPL is allocating roles and responsibilities in the PP process sufficiently. Most of contracting entities organise regular training sessions for their internal PP process stakeholders. Chart 7 presents surprisingly high scores for the general quality of local PP practice in Turkey (average compliance rate above 85%).

Regulatory institutions

Compliance with PPL is monitored by a dedicated regulatory authority. There are no independent remedies body in Turkey. Chart 8 illustrates how the Turkish PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

The local PP practice survey confirmed that in Turkey both government and state-owned companies procurement is covered by PPL and exceptions and exclusions are in principle compliant with EU PP Directives. However, the utilities sector procurements are not regulated.

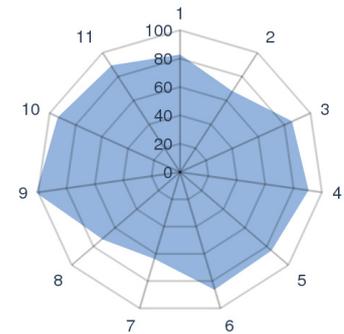
Eligibility rules

In practice, PP eligibility rules are generally respected. Submitting false declarations is grounds for exclusion from the procurement procedure. Typical qualification criteria cover professional and business capacities. In practice, with some exceptions, the contracting entities allow their its affiliates to be eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control amongst the contracting entity and the affiliates.

The procurement procedures

are seldom used for specific or complex contracts; however, there are some exceptions. The contracting entity is not necessarily obliged to explain the choice of procurement method.

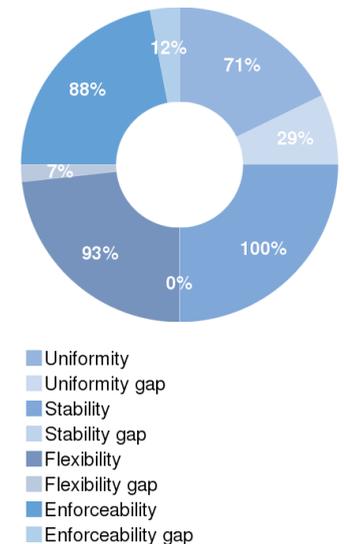
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaires, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

PPL did not introduce sufficient mechanisms of procurement planning; however, the contracting entities establish such plans and complete the procurement plan before a public procurement process is started. Neither is needs assessment mandatory. Yet, local contracting entities introduced assessment of all relevant procurement risks as obligatory. Therefore technical, financial and procurement planning is in principle coordinated during the procurement procedure.

All changes in the procedure process once the procedure has been launched are monitored. The practice assessment reveals that extensions and amendments to the public contract are also monitored, even if modifications or waiver of the terms and conditions of a contract are not subject to special review or approval procedure.

Standard tender documents, contract forms and procurement records are well provided for. The contracting entities are also allowed to use international standard contract forms for all types of procurement.

According to local practitioners there are no substantial delays in procurement and it is possible to estimate the length of the procurement procedure to sign a public contract of any value.

Usually sufficient time is allowed to prepare and submit tenders and tender evaluations are normally completed within the original tender validity period. With some exceptions, public contracts are generally completed on time.

Review and remedies

The review process, conducted by the PPA is timely and it takes about 30 days to obtain the review decision. Local practitioners believe that review proceedings are efficient and fit to context. As there is no independent remedies body in Turkey, local practitioners observed that the PPA is not always predictable and can be discriminatory for private sector. The remedies procedures are straightforward, speedy, inexpensive, and effective; the PPA is not perceived corrupt.

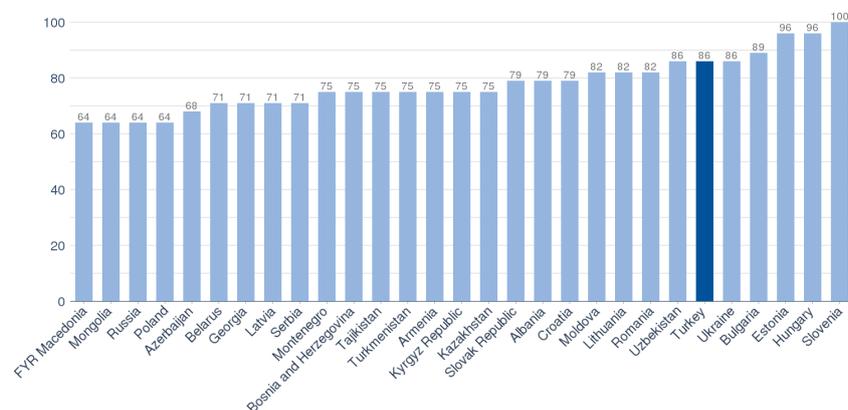
All procurement records are disclosed to the PPA and tenderers are enabled to explain their position. Yet there are no hearings and the review proceedings are not taking place in public. In most cases review decisions are published and easily accessible to the public, by electronic means.

Public contract management

In practice contract administration is mandatory for public contracts. Generally, contracts are fairly administered and completed within the budget and on schedule. With some exceptions, most of contracting entities implemented manual or computerised procurement and contract monitoring systems.

Also, there are internal rules regulating contract cancellation. The contracting entities obliged to specify the reason for public contract cancellation and adopted policies regarding compensation in case a public contract is cancelled.

10. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Turkey

Assessment overview

a. Strengths

Local PP practice is mostly compliant with the international standards and scored well above average in the 2010 assessment. It received the highest score for compliance (above 80%) with competition, transparency, uniformity, stability and flexibility benchmarks. Local PP practice is perceived to be well managed. Contracting entities sufficiently regulate internal procurement process and internal decision making. There are appropriate procedures in place to monitor delivery of contracts; contract payments are monitored as well.

cases the contracting entity specifies the reason for the public contract cancellation.

Weaknesses

There is no element of practice where local PP practice in Turkey scored below 50%. Yet it scored significantly lower in integrity, stability and proportionality benchmarks which suggest that regardless recent improvements the PP practice is not regular in Turkey yet. Domestic preferences and instability does not improve the picture.

Opportunities

What are evident, local contracting entities are focused on achieving the best value for money and in order to achieve so adopt internal procurement rules regulating pre-tendering and post-tendering procurement phases.

It's also an improvement that the PPA, the regulatory and review body is not perceived corrupt.

Risks

PPL provides for uniform and modern framework, if not comprehensive. Regardless some implementation gaps were identified in practice. Firstly, local PP practice is not uniform yet. Secondly, there is still both regulatory and implementation gap in integrity safeguards, followed by even bigger implementation gap in efficiency instruments. True, these deficiencies will be easily removed, if the eProcurement project would embrace all types of public contracts in Turkey.

In addition, as emphasized by local practitioners, lack of independence of the remedies body is a considerable shortcoming of the otherwise modern Turkish PP system.

increasing their procurement capacity and learning new purchasing techniques (eProcurement). Still, implementation of laws could be improved as in the survey of local PP practice a 29% gap in uniformity indicators has been identified.

Finally, local PP practice in Turkey scored a 55% compliance rate in the PP sustainability survey. These marks however, standing for medium compliance, are higher than the scores of other countries in the EBRD region.

III. Conclusions

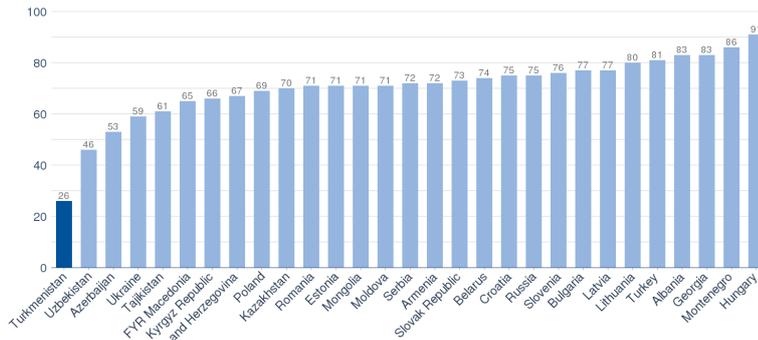
In the 2010 assessment Turkey scored 'high compliance' in quality of the legal PP framework (average 81% compliance rate). The Turkish institutional framework is comprehensive and well-managed (minimal regulatory gaps and no implementation gaps in the PP enforcement were identified). Turkish regulation of PP remedies achieved highest in the EBRD region (average 92% compliance rate) and is also doing well in practice (average 85% compliance rate). Local PPL is very uniform, but not entirely stable, as several amendments have been adopted within the last three years. PP policy making is reasonably responsive to local market challenges; several integrity safeguards were incorporated and some efficiency instruments, recommended by international PP standards, were also adopted (20% regulatory gap has been identified in the assessment).

In the assessment of local PP practice Turkey scored 'high compliance', with an average compliance rate of 86%. Local contracting entities in Turkey are clearly

Turkmenistan

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Turkmenistan is regulated by the Law of Turkmenistan on Public Procurement from March 5th, 2002. In the EBRD 2010 assessment Turkmenistan had the lowest score in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of law are presented in Chart 2.

Regulatory institutions

In Turkmenistan there is no independent regulatory body for PP functions. The Ministry of the Economy is responsible for organising public tenders and the dedicated permanent unit, the Tender Committee.

The Ministry of the Economy's core PP related functions are:

- the organisation of committee meetings;
- the preparation of tender documents for tender notices;
- the publication of tender notices and the delivery of invitations;
- supervising the Tender Committee and reviewing complaints arising from Tender Committee decisions.

The Tender Committee is responsible for all operational activities directly related to tendering, including:

- collecting documents for prequalification, if required, and reviewing them;
- approval of tender documents;
- distribution of tender documents and managing changes in them;
- ensuring the compliance of tender documents with the requirements of the contracting entity;
- providing assistance to the tenderers regarding tender documents and their clarification;
- collection, storage and evaluation of submitted tenders;
- overseeing compliance with tender procedure and contract award;
- issuing of the tender decision and submitting it for approval.

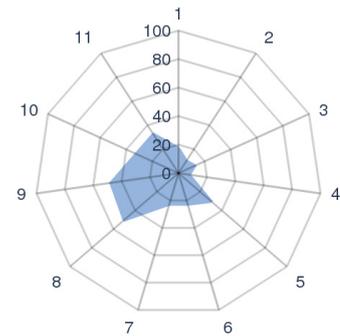
Although the Ministry of the Economy has overall control of the Tender Committee, the committee determines its own rules of work independently.

Chart 3 illustrates the results of the review of the Turkmenistan institutional framework.

Scope of regulation

PPL covers both national and local government procurement. PPL does not provide

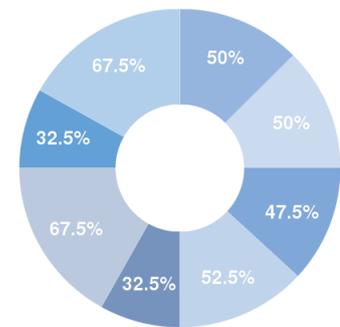
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework

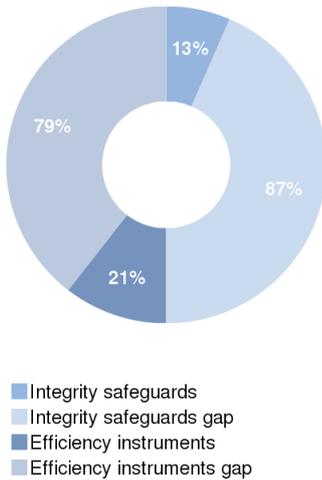


- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

Turkmenistan

4. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

any specific rules for procurement within the utilities sector or public law institutions; state owned entities follow general PP rules in their tenders. The public procurement function in Turkmenistan is fully centralised and PPL applies to all public contracts with enterprises and organisations not owned by the state, with an estimated value that exceeds 30,000,000 TMM (1,530 Euros).

Eligibility rules

PPL establishes grounds for exclusion, which include, inter alia:

- bankruptcy,
- a tenderer in a state of liquidation or reorganisation, or
- presentation of false information.

In Turkmenistan, enterprises and other entities not owned by the state are eligible to tender for a public contract, if they satisfy the following conditions:

- They have submitted their tender within the stipulated dead-line;
- They have declared that their capacities are sufficient to comply with tender

requirements;

- They have successfully completed the prequalification procedure (if applicable);
- They have paid the participation fee for the evaluation of tenders.

The procurement procedures

Turkmenistan PPL provides for various types of procurement procedures:

- Open tender;
- Closed tender;
- Primary tender;
- Recurrent tender.

PPL does not provide for negotiated procedures; however, after the contract has been awarded, the tenderer and contracting entity may negotiate the contract terms and conditions further.

Choice of procedure is discretionary; the Ministry of the Economy, as the body responsible for the organisation of tenders, decides on which tendering method should be applied for a specific contract. There is no test to clarify which procedure will be followed.

There is no provision in PPL for any form of e-Procurement.

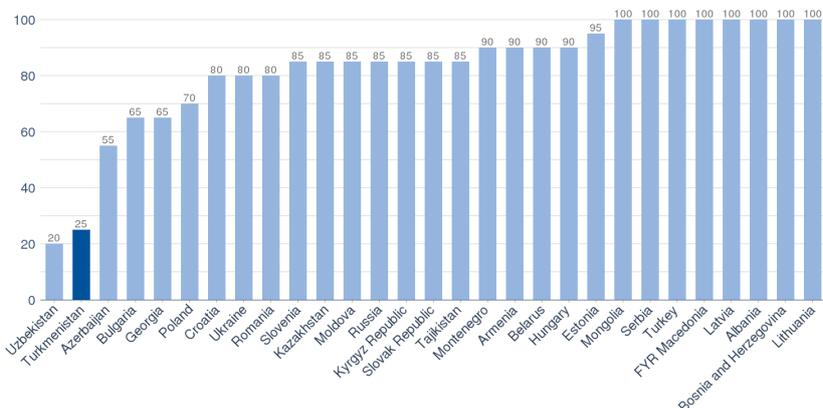
The procurement time and cost effectiveness

PPL does not allow for an accurate estimation of the length of the public procurement process for the procurement of works and goods of a significant value. There is no requirement to finalise the PP process in a reasonable time; however, three main deadlines have been established:

- Time limits for submitting tenders: tenderers have a minimum of one week from the publication of the contract notice.
- Time limits for evaluation of tenders: there is a one month maximum limit for the evaluation of tenders (from the deadline for submitting tenders).
- Time limits for submission of documents for approval by the successful tenderer: there is a three day limit for the submission of the tender evaluation record with tender results to the contracting entity for approval.

Due to the centralised system, procedures are kept simple but most procurement decisions are at the discretion of the Ministry of the Economy. There is no delegation of authority to contracting entities. There are no cascaded thresholds, nor a distinction between short and long term contracts. There is also no mandatory aggregation of lots nor any requirement for

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

contract terms and conditions to be fair and balanced reflecting the best available business practice. PPL does not regulate ceiling thresholds for the cost of participation in a PP procedure; a participation fee is also discretionary.

Review and remedies

In Turkmenistan, PPL does not provide for a dedicated review or remedies system. However, the Ministry of the Economy of Turkmenistan reviews complaints regarding Tender Committee decisions. No specific administrative review procedure is provided; review decisions are as discretionary as the PP process itself.

Public contract management

Turkmenistan PPL does not provide any provisions regarding public contract management.

Assessment overview

Strengths

In the 2010 assessment the Turkmenistan PP legal framework did not demonstrate any strengths. The only good marks are for uniformity indicators, with a 50% compliance rating, perhaps an obvious outcome for a country with a fully centralised but unaccountable PP system.

Weaknesses

Turkmenistan's institutional PP framework scored very low in all benchmark indicators. The lowest marks were for integrity and transparency safeguards (10% and 12.5% compliance rate) and competition indicators (7.5%). PPL does not offer a transparent process or ensure fair competition.

Opportunities

In spite of all the deficiencies uncovered by the assessment, efficiency instruments are better regulated in PPL than integrity safeguards. The assessment revealed

an 87% gap in adopting anti-corruption safeguards and a 79% gap in adopting efficiency measures.

Regulatory risks

PPL provides only rudimentary regulation; in the 2010 assessment all key PP regulatory features were scored as high risk areas. In addition, it was not possible to conduct an interview with a contracting entity or obtain any data on the conduct of PP procedures in practice. Local legal advisers we approached reported that in the case of contractual disputes regarding a public contract, the case would be handled by a court, but refused to comment on key fairness indicators or provide an opinion about whether the administration and courts are perceived as corrupt.

The quality of Turkmenistan PP regulation scored, on average, a 26% compliance rate and stands for the lowest result in the EBRD region. In the assessment methodology the result of 25% compliance rate shows that local regulation does not, in general, provide any of the recommended PP features.

III. Conclusions

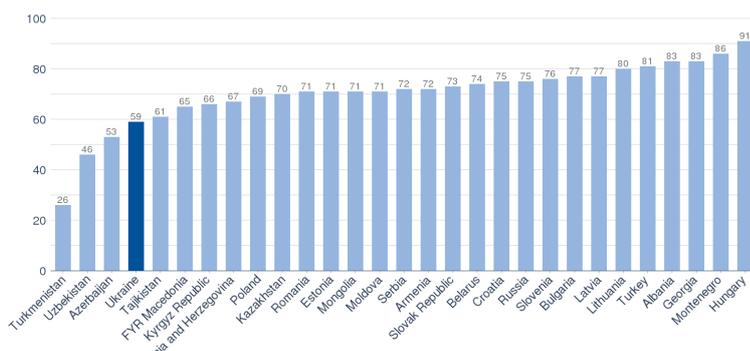
Turkmenistan scored low compliance in the assessment of legal PP framework (26% compliance rate), receiving lowest marks in the EBRD region.

The analysis of local institutional framework revealed substantial gaps from 50% to 67% in all key indicators. In addition, almost none of the integrity safeguards and efficiency instruments recommended by international PP standards were adopted in national PP legislation.

In Turkmenistan, although we approached several public entities, we were unable to persuade any contracting authority to answer the questionnaire regarding local PP practice.

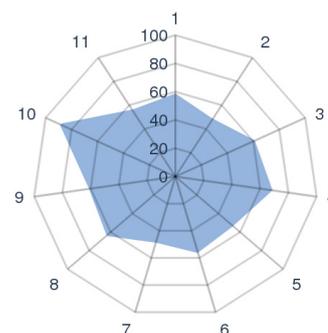
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

Legal framework

Public procurement in Ukraine is regulated by Public Procurement Law, adopted on 1 June 2010, with later amendments (PPL). In the EBRD 2010 assessment PPL scored medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

Ukraine has a complex system of regulatory bodies responsible for public procurement (PP) function, including the Ministry of Economy of Ukraine, the State Treasury, the Antimonopoly Committee of Ukraine and the State Statistics Committee of Ukraine.

The core functions of Ministry of the Economy of Ukraine in the field of public procurement include:

- a) development of PP legislation and policies,
- b) monitoring of public procurements;
- c) providing a record of procurement plans and public contracts;
- d) submitting quarterly reports on the status of PP in the country;

- e) research and dissemination of international best practice in procurement;
- f) development and maintenance of a central web-portal;
- g) development and approval of a standard procurement documents.

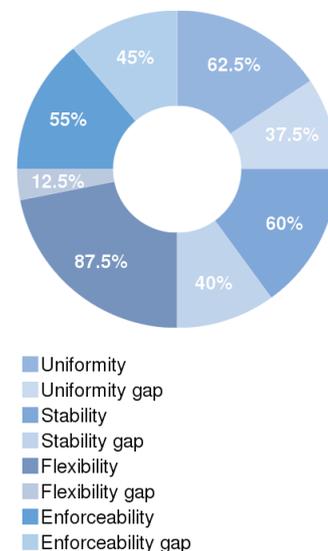
The State Treasury is authorized to verify compliance of the concluded purchase agreement with the report in scope of results of the PP procedure and the annual PP plan of the contracting entity. In addition, the State Treasury monitors key stages of PP procedures, including registration of the PP procedure, contract notice publication and legality of the procedure.

The Antimonopoly Committee of Ukraine has been appointed in 2010 to review complaints regarding public procurements and decides on PP remedies.

Scope of regulation

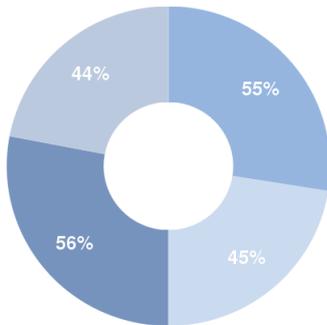
PPL covers national and local government public procurement and includes specific provisions for public law institutions. Procurement of the utilities sector is not regulated. PPL provides for a decentralized procurement function, however central purchasing bodies can be established at the discretion of the central government.

3. PP institutional framework



Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law "on the books" and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

Eligibility rules

PPL in Ukraine introduces primary eligibility rules, enumerating circumstances which create grounds for exclusion from prequalification procedure, these are inter alia: tenderers, against whom the contracting authority has confirmed information, that they offered or agreed to offer any kind of compensation to a public officer of contracting authority or any other public officer in order to take actions in their favour; tenderer or his representative sentenced for committing crime on mercenary motives in public procurement procedures in the past, and whose conviction has not been removed or redeemed in accordance with the law; tenderer sentenced for bribery in public procurement procedure in the past; tenderers participating in secret agreement; tenderer who is affiliated with other tenderers participating in PP procedure; tenderer who did not provide the contracting authority with appropriate documents determining his eligibility to sign a public contract; insolvent tenderer or the one against whom liquidation procedure was

started; tenderer who is in debt with payment of taxes and other public payments

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities.

PPL does not only establish primary eligibility rules, but also introduces qualification criteria.

The qualification requirements in Ukraine include:

- a) availability of equipment and logistics;
- b) suitability to pursue professional activity (right to pursue the relevant professional activity; possessing appropriate knowledge and experience in similar contacts);
- c) economic and financial standing.

PPL enumerates all certificates that may be required from the tenderer by the contracting entity to prove his compliance with the qualification criteria set out in the contract notice.

The procurement procedures

PPL provides the following procedures for awarding goods, works and service contracts:

- a) open tender;
- b) two-stage tender;
- c) request for quotations;
- d) direct contracting.

Open tender is the default procedure and may include a prequalification of tenderers. The contracting entity may apply other procedures only in situations where the law allows. The only negotiated procedure is direct contracting, which can be used in clearly specified circumstances. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts.

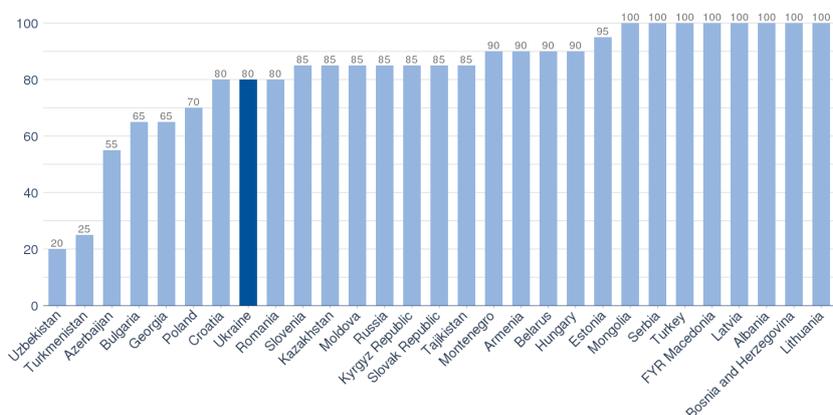
PPL remains silent regarding e-Procurement procedures.

The procurement time and cost effectiveness

PPL in principle allows to estimate duration of public procurement process for works, goods and services of significant value. There is regulation on the maximum tender validity period, yet PP process should be accomplished in a reasonable time, within 90 days from the date of opening of the tenders.

PPL does not stipulate directly that costs of PP procedures should be kept low. Tender documents are not available free of charge and the procedure is kept very formal. PPL entitles the contracting entity to request tender security, which maximum amount might not exceed the limit of 1% of total amount of the contract value for works and 5% for goods and services.

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Ukraine

PPL does not require the contract terms and conditions to be fair and balanced, and to reflect best available business practice.

Aggregation of lots is mandatory; purchase may not be divided into parts in order to avoid the open tender procedure or application of PPL.

PPL stipulates that the communication should be exercised in writing, if a different method is used all information should be confirmed in a written form.

Contract notices are obligatorily published electronically on the PP website of the Ministry of the Economy. PP procedures are conducted in official language and contracting entities are free to decide in which currency tenders are going to be evaluated. The contracting authority is obliged to prepare tender documents additionally in English, when the value of the contract is equal or exceeding respectively 200.000 Euros for goods, 300.000 Euros for services and 500.000 euro for works.

Review and remedies

PPL provides for an administrative review mechanism and establishes the Antimonopoly Committee of Ukraine as a review body.

A complaint can be filed by the person whose legitimate interest or rights have been violated by the decision, act or omission of the contracting entity. A complaint can be filled with the contracting entity or submitted directly to the review body. The review decision of the contracting authority can be appealed to the review body. The review decision of the Antimonopoly Committee of Ukraine is final, unless appealed to the Kiev District Administrative Court.

Public contract management

PPL requires the contracting entity to prepare public procurement plans annually; but there is no obligation for unbiased assessment of contracting authority's needs. Appropriate budget authorization is required prior to initiating PP procedure;

however, there is no need for budgetary authorisations for contract payments falling due beyond the current budget year. PPL does not require the contracting entities to provide for public contract management, nor does it require the procurement officers to have adequate management capabilities.

Assessment overview

Strengths

In the 2010 assessment the Ukrainian PP framework did not demonstrate any specific strengths; flexibility, with a score of 90% compliance, is the strongest point of the local PP framework.

PPL provides for basic features of the PP regulatory framework and introduces sufficient instruction and standard documents to produce satisfactory tender documents and procurement reports.

PPL provides for an administrative review mechanism; however the enforcement framework is rather complicated. PPL is not modern; however prequalification documents and tenders may be submitted electronically at the discretion of the contracting entity.

Weaknesses

The Ukrainian PP framework showed some deficiencies, especially in the economy and enforceability indicators (55% compliance rate). Substantial gaps were identified in adopting integrity safeguards and efficiency instruments, recommended by international PP standards (average 35%). PPL does not match a contract type with tender selection processes or require contract terms and conditions to reflect the best available business practice, nor regulated pre-tendering and post-tendering phases of procurement. Electronic communication is limited and unavailable in practice.

Opportunities

PPL scored well in the competition indicators as several instruments aiming to ensure a fair competition in the PP process were adopted. Also, some anticorruption safeguards were incorporated;

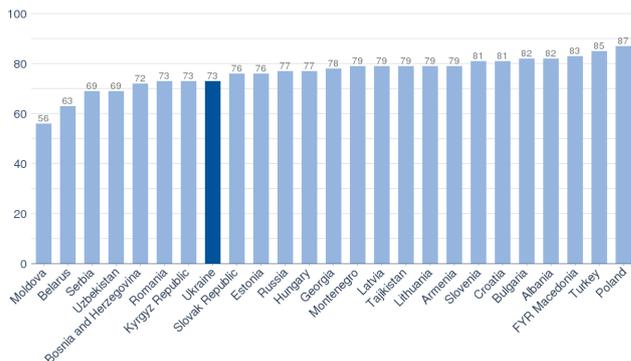
the tenderer or its representative, sentenced for bribery or attempt of bribery in the past or in current procedure, is excluded from the procurement procedure.

Regulatory risks

Ukrainian PPL achieved lowest marks in the PP efficiency indicators. The 2010 assessment revealed that accountability of contracting entities and integrity of the PP process is still not sufficiently regulated. In addition, PPL does not address the distinction between the nature and the scope of the procurement contract and the type of procurement method to be applied. This may lead to unnecessary formality and bureaucracy of PP procedures.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Local practitioners reported in the survey of PP practice that PP legal framework is neither clear nor comprehensive. Some contracting entities establish internal procurement rules filling the gaps in the primary legislation. Internal PP policies and procurement decisions are not disclosed to the public; however internal roles are reported to be clearly allocated and a regular training for procurement officers is usually provided.

An assessment of the general quality of practice has been presented on chart 7.

Regulatory institutions

Compliance of PP procedures is monitored and audited by general administration. There are no independent or dedicated regulatory body; still an administrative review body has been established.

Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

In principle PPL covers central and local government procurement. Based on the survey results, we were not able to establish whether the utilities procurement is fully covered by the PP laws in practice.

Eligibility rules

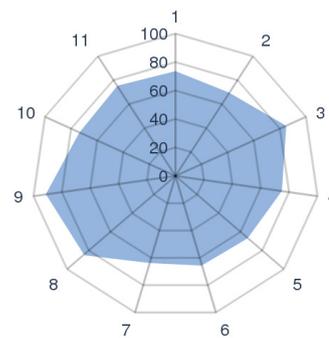
Typically qualification criteria include experience, past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

In practice, affiliates of the contracting entity are generally eligible to tender.

The procurement procedures

Tenders are typically used, as recommended by the PPL. Negotiated procedures are not available for specific or complex contracts. In most cases it is necessary for the contracting entity to explain their choice of procurement method.

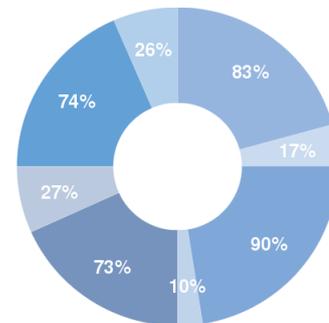
7. Quality of PP practice



Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. Institutional framework of PP practice



Legend for Chart 8:
 ■ Uniformity
 ■ Uniformity gap
 ■ Stability
 ■ Stability gap
 ■ Flexibility
 ■ Flexibility gap
 ■ Enforceability
 ■ Enforceability gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

Ukraine

9. Adequacy of policy-making



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

Duration of the PP procedures in Ukraine vary.

In practice, tender documents are never available free of charge. Sufficient time is provided to prepare and submit tenders and tender evaluation is generally completed without major delays.

Moreover, modifications or waivers of the terms and conditions of a contract are, in principle, subject to a review and approval procedure.

A wide range of standard tender documentation is commonly used and internal guidelines how to draft the tendering documents are available. Contracting entities rarely allow use of international standard contract forms for all types of procurement.

It has to be emphasized that standard

tender documents are generally mandatory. Consequently, standard tender documents for goods, works and services exist. Also it is quite common practice for the majority of contracting entities to establish national standard mandatory contract forms.

Review and remedies

The legal framework established a comprehensive dispute resolution system in Ukraine. Complaints are heard by an impartial and independent review body.- Antimonopoly Committee of Ukraine. However, in practice remedies procedures are not always deemed to be straightforward, effective or non-discriminatory. This is confirmed by the standing that in some aspects remedies bodies are perceived corrupt.

Speed of the remedies procedure is considered to be reasonable. However, in practice it takes from 30 to more than 45 days to obtain a remedies decision. Moreover, cost of the remedies procedure is not always bearable.

Participants have access to all remedies proceedings which take place in public. All procurement documents are disclosed to the remedies body and remedies procedures are recorded.

Public contract management

Rules on termination of contract cancellation is a vital element of contract management system. Ukraine does not set forth any rules or policy on public contract cancellation. Neither does it establish rules regarding compensation in case of such cancellation. Yet, in the above circumstances in case of a cancellation of a public contract, the contracting entity should specify a reason for doing so.

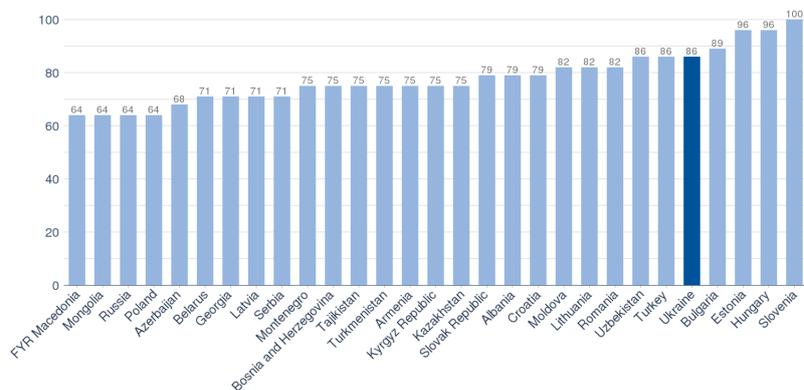
The practice indicates that contract management system lacks certain elements. Firstly, contracts are not always administered in a fair and equitable manner. In practice the contracting entities also fail to monitor payments of the suppliers and contractors. On the other hand appropriate administration record is maintained and procurement evaluation and audit is conducted. What is more, contracts are generally completed on schedule and within original contract price.

Assessment overview

Strengths

In the 2010 assessment the Ukrainian local PP practice did not demonstrate any

10. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

specific strengths; stability with a score of 90% compliance rate, is the strongest point of the local practice.

Local contracting entities generally adopted internal PP rules on how to draft tender documents and organise the PP process. There are also standard forms of contract notices and standard forms for procurement reports available. Local practitioners reported that despite mandatory legal requirements contracting entities monitor changes in the PP procedures and amendments and extensions to the public contracts.

Weaknesses

There are no elements of practice scored below 50% compliance rate in Ukraine. Local practice was scored lowest in the proportionality indicators, as is very bureaucratic and does not distinguish between high and small value contracts and the test to ensure that scope and subject of public procurement is economically justified is not always mandatory.

Opportunities

Pre-tendering and post-tendering phases are not always clearly regulated by the contracting entities. However, basic regulations necessary to prepare and carry out public procurement procedure are in place. For some contracting entities contract administration for public contracts is mandatory and well regulated by internal procedures.

Regulatory risks

The local PP framework is not perceived clear, nor comprehensive.

The procurement decision making process is not aligned to general investment decision making. The technical, financial and procurement planning is not always coordinated. In addition, it is not always mandatory to obtain budgetary authorization for contract payments falling due beyond the current financial year.

In practice, sufficient time is allowed for tenders to be prepared and submitted. It is generally not allowed to submit tenders and qualification documentation confirming compliance with requirements, in electronic form.

The cost of the remedies procedure is not perceived bearable. The remedies body is not always perceived predictable and impartial, whereas remedies are not always non-discriminatory and effective.

III. Conclusions

Ukraine achieved low to medium compliance with international PP standards (average 59% compliance rate) in quality of legal PP framework. The assessment of Ukrainian institutional framework revealed substantial gaps accounting for more than 37% in uniformity, 40% in stability and 45% in enforceability indicators.

Integrity safeguards and efficiency instruments have been adopted in PPL at the level of low compliance with international PP standards, as the assessment revealed regulatory gaps of more than 40% in these indicators.

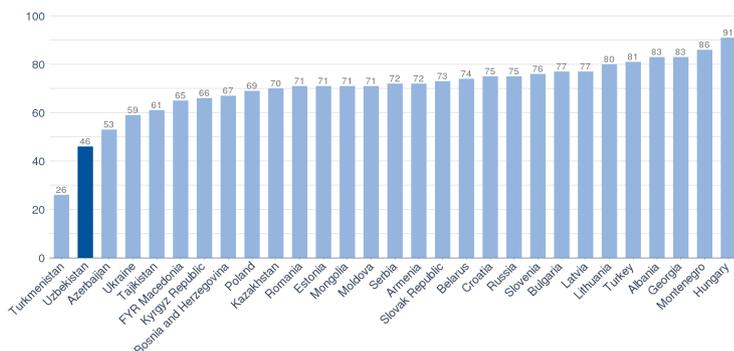
In the survey Ukrainian procurement practice scored medium compliance, with average 73% compliance rate. Local practitioners reported that in practice contracting entities apply higher standards than required by the current legislation, and try to ensure better value for money. Low marks for economy and efficiency indicators call for substantial procurement capacity building, especially in the infrastructure procurement.

The 2010 survey of local procurement practice looked at the level of implementation of sustainable procurement policies and it revealed 22% compliance with the sustainability benchmark .

Uzbekistan

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations



Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Public procurement in Uzbekistan is regulated by the Resolution of Cabinet of Ministers No. 456, enacted on November 21st 2000 (PPL). In the EBRD 2010 assessment PPL scored low compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Uzbekistan there is no dedicated and independent regulatory body for public procurement (PP) functions. The “Uzbektenderconsulting” agency, established by secondary legislation, does not possess full regulatory powers; however, it performs some PP functions, such as:

- developing standard tender documents for goods, works and services;
- providing prequalification of potential suppliers of goods, works and services;
- conducting direct contracting;
- providing information on the conditions regarding tendering procedures;
- providing details of foreign practice in tendering;
- providing consulting services for con-

tracting entities. Chart 3 illustrates the results of the review of the Uzbekistan PP institutional framework.

Scope of regulation

Regulation of PP in Uzbekistan is inadequate. PP is regulated mainly by secondary legislation and there is no clear hierarchy of regulatory PP acts. PPL covers government procurement; however, it does not provide special provisions for public law institution procurement and procurement in the utilities sector. Concessions are regulated by a separate legal act.

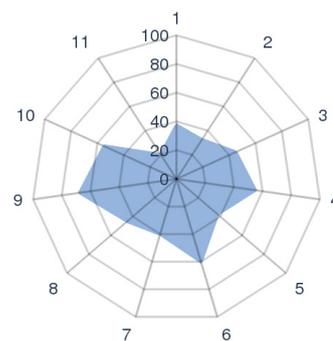
PPL provides for a decentralised procurement function, but the “Uzbektenderconsulting” agency has been authorised to act as a Central Purchasing Body for Uzbekistan and conducts all major public procurements.

Eligibility rules

Tenderers, both domestic and international, are excluded from participating in public tenders, if they:

- are undergoing restructuring, liquidation or bankruptcy;
- did not submit, within the prescribed period, all the necessary documents for prequalification;

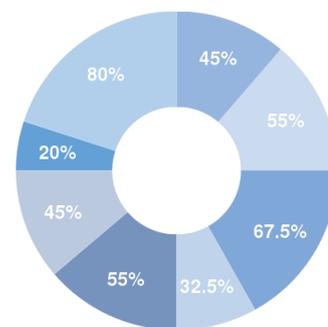
2. Quality of PP legal framework



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

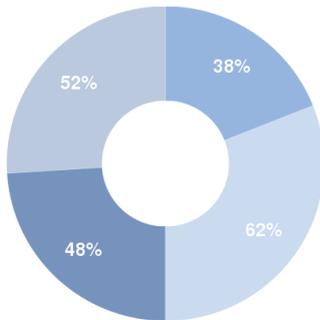
3. PP institutional framework



- Uniformity
- Uniformity gap
- Stability
- Stability gap
- Flexibility
- Flexibility gap
- Enforceability
- Enforceability gap

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue colour respectively.

4. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light blue colour respectively.

- c) improperly fulfilled commitments on previous contracts;
- d) were established less than 6 months prior to the announcement of the tender;
- e) are engaged in a dispute before a court or are pursuing arbitration with the contracting entity;
- f) do not meet the requirements of the tender commission on commercial and financial performance.

In addition to the general eligibility criteria, specific qualification criteria for tenderers may be established by contracting entities.

The procurement procedures

PPL provides for direct contracting and tendering procurement procedures including:

- a) Open tender,
- b) Restricted tender, and
- c) Two-stage tender.

Open tender is the default procedure. The contracting entity may apply other tendering procedures only in situations

where the law allows. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts. PPL does not allow tenders to be conducted electronically.

The procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process for works or goods contracts of significant value. There is also no requirement for the procurement process to be accomplished within a reasonable time; however, the tender evaluation period shall not exceed three months. There is no general requirement that the cost of participation in the procedure should be kept low. PPL stipulates only that the contracting entity may charge a non-refundable fee for tender participation. In addition to the participation fee, the contracting entity may also require the tenderer to submit, together with the offer, a refundable tender security of 1 to 5% of the total estimated contract value. That tender security shall be returned to those tenderers whose offers have not been chosen, within 11 business days following publication of the contract award notice. For small value contracts tender security may not be applied.

PPL does not specify methods of valuation and mandatory aggregation of lots. It only requires the contracting entity to engage qualified specialists to prepare tender documents.

There are also no direct provisions regarding communication. PPL states that the contracting entity may send invitations to tender by mail, registered mail or fax. PPL provides clear rules concerning currency: all local tenders are carried out in the national currency.

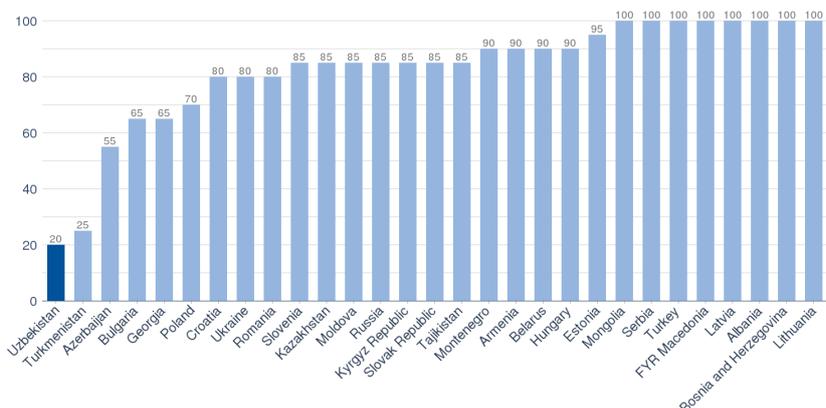
Review and remedies

PPL does not provide for a dedicated PP review or remedies system. All PP related disputes may be referred to the court (Civil Code of Republic of Uzbekistan, Article 460).

Public contract management

In principle, there is no requirement for mandatory public procurement planning or an unbiased assessment of the contracting authorities' needs. The PP procedure can be initiated if funding has been appropriately secured. (e.g. the financial authorities or managers of budget funds have signed a loan agreement with foreign creditors under the guarantee of the government's notification of the provision of foreign grants, etc.) There is no require-

5. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Uzbekistan

ment to obtain budgetary authorisation for contract payments falling due beyond the current financial year.

The contracting authority may require a contract performance security up to 10% of the total value of the contract. The security may be submitted in the form of a bank guarantee, or a cash deposit on the account of the contracting entity.

PPL provides for the monitoring of contract performance in order to complete the contract on schedule.

Regulatory risks

PPL allows for domestic preferences not only for domestic entrepreneurs, but also for products of domestic origin. Domestic preferences may be applied to any type of procurement contract up to 20% price preference. There are several areas in current PPL that can be identified as significant regulatory risks.

Assessment overview

Strengths

In the 2010 assessment the Uzbekistan PP framework did not demonstrate any specific strengths; stability, with a score of 67% compliance rate, is the strongest point in the local framework.

Weaknesses

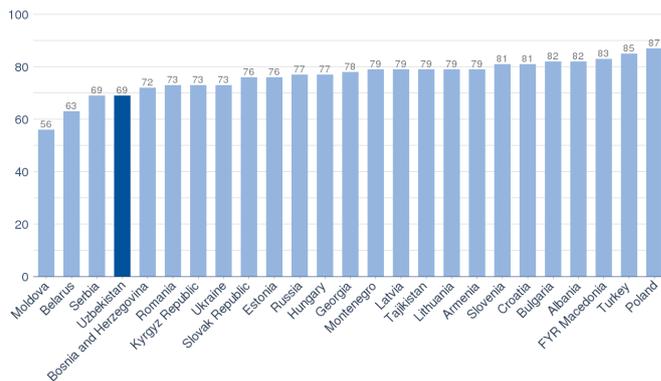
The Uzbekistan PP framework scored below 50% compliance on several key quality indicators, including transparency, competition, and economy of the process indicators. Substantial regulatory gaps were identified in the 2010 assessment but few of the recommended integrity safeguards and efficiency instruments have been adopted. In general, PPL is based on outdated 1990 standards.

Opportunities

Despite several weaknesses, PPL sets high standards for its evaluation panel and expert advice in conducting tenders. PPL also provides for the mandatory monitoring of public contracts until their full completion.

II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation



Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on rules for an Efficient Public Procurement Process. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework

Uzbekistan public procurement is fully centralised and, consequently, well monitored. Local PP practice is of low to medium compliance with international standards, as substantial internal procurement rules were adopted by the Central Purchasing Body, setting standards for all procurements in Uzbekistan. Regular training for procurement staff is provided under the “Uzbektenderconsulting” agency’s guidance. Chart 7 presents the scores for the general quality of local PP practice in Uzbekistan.

Regulatory institutions

The compliance of PP procedures is monitored by dedicated units in the Ministry of Finance. Chart 8 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

PPL covers government procurement. In principle, exceptions and exclusions are compliant with 1994 UNCITRAL Model Law.

Eligibility rules

Affiliates of the contracting entity are eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

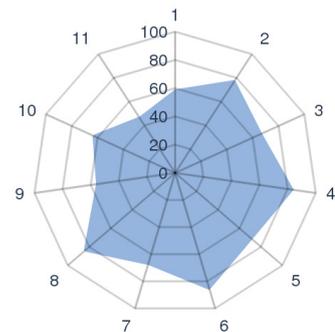
Typically, qualification criteria set up by the contracting entity include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract are grounds for exclusion.

The procurement procedures

The Law recommends tenders as a default procedure for contracts with a value of more than 100,000 US dollars and tenders are most commonly used. Negotiated procedures, other than direct contracting, are available for specific or complex contracts (Resolution of the Cabinet of Ministers on measures to improve the organisation of tenders, 15, 16, 17).

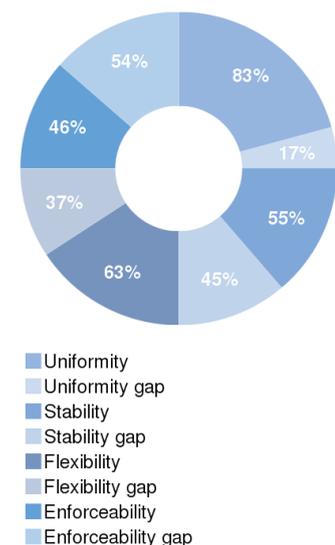
7. Quality of PP practice



1. Accountability 2. Integrity 3. Transparency 4. Competition 5. Economy of the process 6. Efficiency of public contract 7. Proportionality 8. Uniformity 9. Stability 10. Flexibility 11. Enforceability

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice in the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

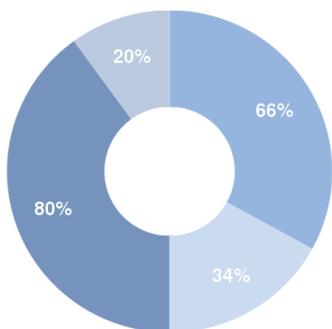
8. Institutional framework of PP practice



Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles on for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour, respectively.

Uzbekistan

9. Adequacy of policy-making



- Integrity safeguards
- Integrity safeguards gap
- Efficiency instruments
- Efficiency instruments gap

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light blue colour respectively.

The procurement time and cost effectiveness

Standard tender documents for goods, works and services are mandatory. Standard forms of contract notices and procurement reports are commonly used. With some exceptions, PPL regulation allows the use of standard international contract forms for all types of pro-curement.

Tender documents are not available free of charge. Sufficient time is provided to prepare and submit tenders. Evaluation of tenders is completed within the original tender validity period in most cases. Contracts are generally completed on schedule.

Modifications or waivers of the terms and conditions of a public contract are subject to a review and approval procedure.

Review and remedies

There are no dedicated PP review or remedies systems in Uzbekistan. All PP related complaints and disputes are decided by the courts. In the local PP survey this judicial PP review received rather good marks from local practitioners. Unfortunately no data was available from international tenderers.

Public contract management

The public contract monitoring system is well developed and fully centralised in Uzbekistan. There are appropriate procedures in place to monitor the delivery of goods and services to verify quantity, quality and timeliness. There are also manual or computerised procurement and contract monitoring systems. Finally, procurement audits are conducted.

Assessment overview

Strengths

There is no element of practice in Uzbekistan which scored high compliance (above 90%); however, local PP practice scored well on the efficiency indicators due to the centrally implemented comprehensive contract management procedures.

Weaknesses

Local PP practice scored low on the enforceability, accountability, and stability indicators (slightly above 50% compliance rate).

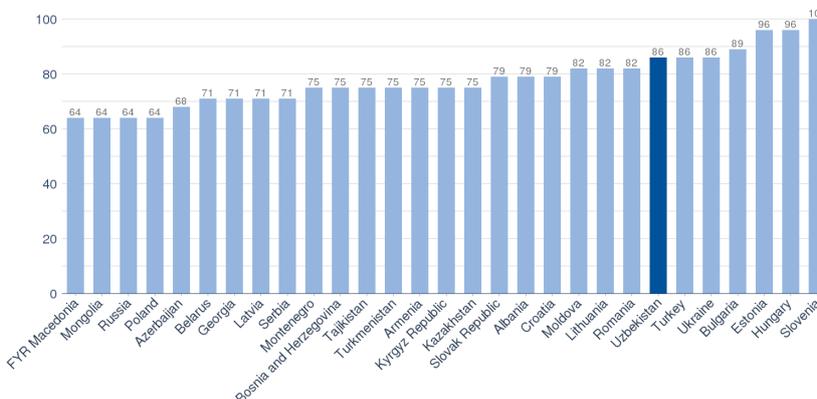
Opportunities

Local practitioners reported that efficiency in PP is strongly promoted in practice. Centrally administered procedures may be discretionary but information on procurement opportunities is publicly available. Contract notices are published electronically which domestic tenderers find makes them easily accessible.

Risks

Local PP practice in Uzbekistan is mainly outdated: it achieves a low to medium level of compliance with current international PP standards. Several implementation gaps were identified in the assessment, as only a few recommended integrity safeguards and efficiency instruments are implemented in practice.

10. Quality of PP remedies system in EBRD countries



Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

III. Conclusion

Uzbekistan scored low compliance in the quality of the legal PP framework (average 49% compliance rate). PP legislation is outdated and regulates PP processes insufficiently. The Uzbekistan institutional framework is rudimentary and, in general, several substantial regulatory gaps were identified. Specifically, Uzbekistan PPL does not provide for an independent PP review and remedies system. PPL has not adopted the integrity safeguards and efficiency instruments recommended by current international PP standards.

In the assessment of local PP practice, Uzbekistan practice scored low to medium compliance with the benchmark (average 69% compliance). These good marks are mainly due to the implementation of efficiency instruments, including public contract management and the well-managed Central Purchasing Body.

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