COMPARATIVE ANALYSIS OF PUBLIC PROCUREMENT LEGISLATIONS IN THE EURASIAN REGION

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of Freedom of Information

COMPARATIVE ANALYSIS OF PUBLIC PROCUREMENT LEGISLATIONS IN THE EURASIAN REGION

This document was prepared by the Institute for Development of Freedom of information (IDFI) within the framework of the project – Transparent Public Procurement Rating. The project is implemented by IDFI in partnership with a network of organizations and procurement specialists from more than 30 countries.

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INTRODUCTION

Since its launch in 2016, the Transparent Public Procurement Rating has been evaluating public procurement legislations in an increasing number of countries. The project uses a custom methodology to identify key shortcomings as well as best practices in each country, with the ultimate goal of facilitating positive reform through advocacy and experience sharing.

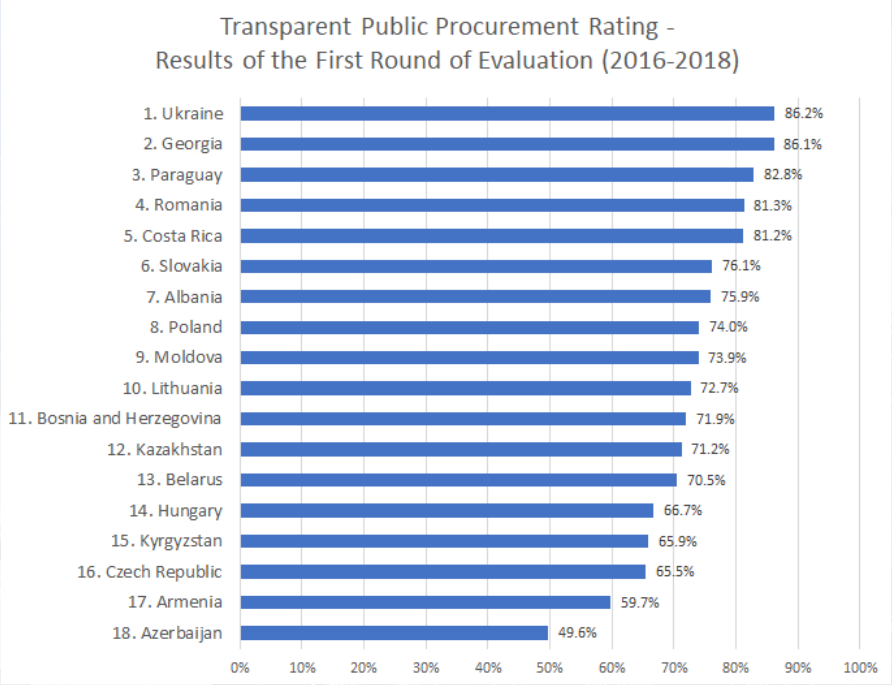
As of December 2018, end of the first round of evaluation (2016-2018), the TPPR ranking includes 18 countries, 16 of which are located in the Eurasian region - a geographic area from Central Europe to Central Asia. This region perfectly encompasses the variety of forms public procurement systems can take. Some countries of the region have a decentralized electronic public procurement system, others have centralized or mixed systems. Some countries have completely electronic procurement procedures, whereas others still use paper-based procurement or try to use both mediums.

The evaluated countries have different realities and environments, which affect their public procurement systems. For instance Albania, Moldova, Georgia, Bosnia and Herzegovina and Ukraine are moving towards the European Union (EU) and have an obligation to adopt its procurement rules and practices. Armenia, Kazakhstan, Kyrgyzstan and Belarus are a part of another union, the Eurasian Economic Union (EEU), with its own procurement regulations and shared practices. The Visegrad 4, Lithuania and Romania are members of the EU.

Therefore, the Eurasian region accommodates different procurement systems, procedures and visions on how to manage and develop public procurement. However, despite these significant differences, many of the 16 countries nevertheless share the same problems.

The purpose of this comparative study is to show parallel trends and shared characteristics of public procurement systems in countries of the Eurasian Region. First, the study will describe the PPLs of each country and present individual evaluation results. Then, it will discuss the common flaws of these PPLs. Finally, the study will focus on existing best practices in evaluated public procurement systems.

Results of the First Round of Evaluation (2016-2018)



METHODOLOGY

As of December 2018, end of the first round of evaluation, the TPPR ranking includes 18 countries. However, the comparative analysis was conducted on 16 countries in the Eurasia region, which have been grouped into 4 regions: Central Europe, Eastern Europe, South Caucasus, and Central Asia. The 2 remaining countries, Costa Rica and Paraguay, will be included in subsequent editions of this document.

In addition, as an important disclaimer, the results of two countries, Armenia and Moldova, included in this analysis are no longer relevant, since both countries conducted an extensive public procurement reform following their evaluation but before the end of the first round of evaluation (2016-2018). The updated results of these countries will be available in 2019.

COUNTRY PROFILES

CENTRAL EUROPE

Czech Republic

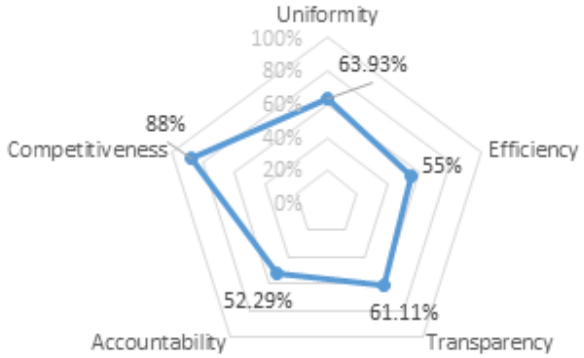
Public Procurement in Czech republic is regulated by the Act. No. 134/2016 on public procurement, which besides the conventional procurement procedures, incorporates concessions.

Czech Republic does not have a separate agency for public procurement management, however, the function is performed by the Ministry for Local Development, which is responsible for making legislation on public procurement (primary and secondary legislation) and operation of information system about public procurement. Ministry also monitors public procurement market and publishes annual reports about public procurement performance.

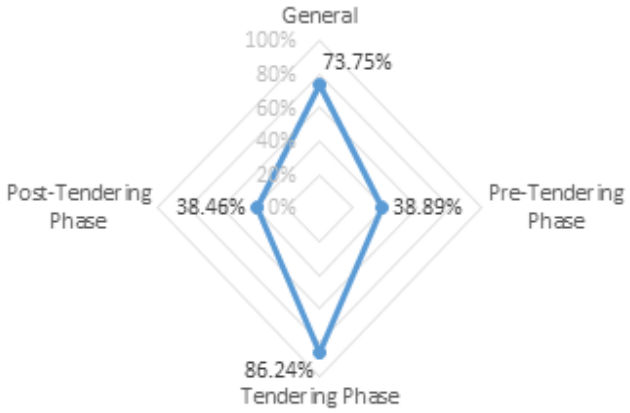
Czech Republic has a public procurement portal - https://nen.nipez.cz/, where contract notices and results of competition are published. All relevant documents about tender procedure and contract are published on the portal - tender documentation, questions from bidders, report on evaluation of bids, signed contract, interim and final price of the contract, etc. Nevertheless, electronic procurement is not primary method of conducting public procurement.

Czech Republic holds 15th position in the TPPR ranking, the least from Visegrad 4. The law lacks essential safeguards in almost every value. Besides the fact that procurement procedures are not 100% electronic, annual procurement plans are not published. Additionally, there's a lack of clarity on the procedures, set-up and functions of the tender commission. Access to information is restricted in many instances and data is not available in machine-readable format. No safeguards for publicity of contract performance information further reduces the position of Czech Republic in the TPPR Ranking.

Czech Republic Results by Value



Czech Republic Results by Procurement Process



Hungary

After joining the European Union (EU), Hungary began remaking its procurement system to reflect EU procurement rules, creating a more harmonized system of public procurement. The new public procurement law was adopted in 2015 and it entered into force on November 1st of the same year.

The primary legal text regulating the sphere is the Act CXLIII of 2015 on Public Procurement (PPL), which defines national rules on public procurement procedures and concessions as well as implements the EU Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. In addition to the main legislative act, the PPL is supplemented by several governmental and ministerial decrees, the aims of which are to regulate matters like centralized procurement, order of publication and standard forms. Particularity of the PPL of Hungary is that it has multiple exemptions for simplified procedures below EU thresholds. For instance, procurement of groceries, sport and cultural services are exempt from the PPL in case it is below the EU threshold.

Hungary has two bodies responsible for management and coordination of the public procurement system, the Procurement Management Office (PMO) and the autonomous Public Procurement Authority (KH). The PMO has primary responsibility for drafting legislation related to public procurement, but at the same time, it provides support and guidance to contracting authorities so that they comply with the law. The KH acts more as an analytical resource center of the public procurement system. It publishes operational and statistical information via annual reports, as well as the official Public Procurement Bulletin and the central register of award procedures. Based on its analytical products, it also issues non-binding guidance documents, organizes trainings and seminars for practitioners.

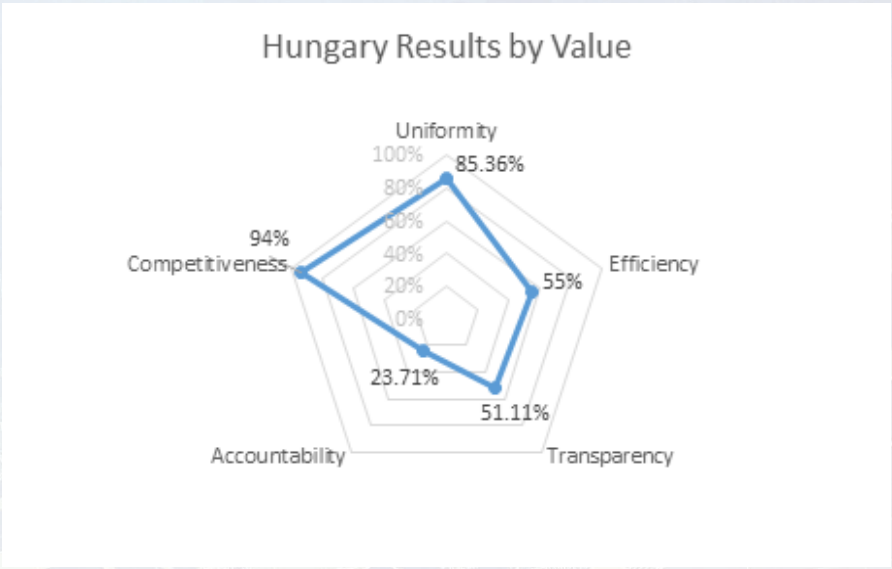
Hungary has a single public procurement portal - https://www.kozbeszerzes.hu/english/, which at the same time is the website of the KH (PP authority). It serves mostly as a database for procurement information, as portal does not yet offer e-submission services. E-notification, as in posting information on the procurement possibilities, via the KH's online portal is mandatory, but E-submission is wholly voluntary in Hungary Electronic procurement (implying that procedures of bid submission, bidding, communication, etc. by electronic means) is not mandatory in Hungary according to art. 41 of

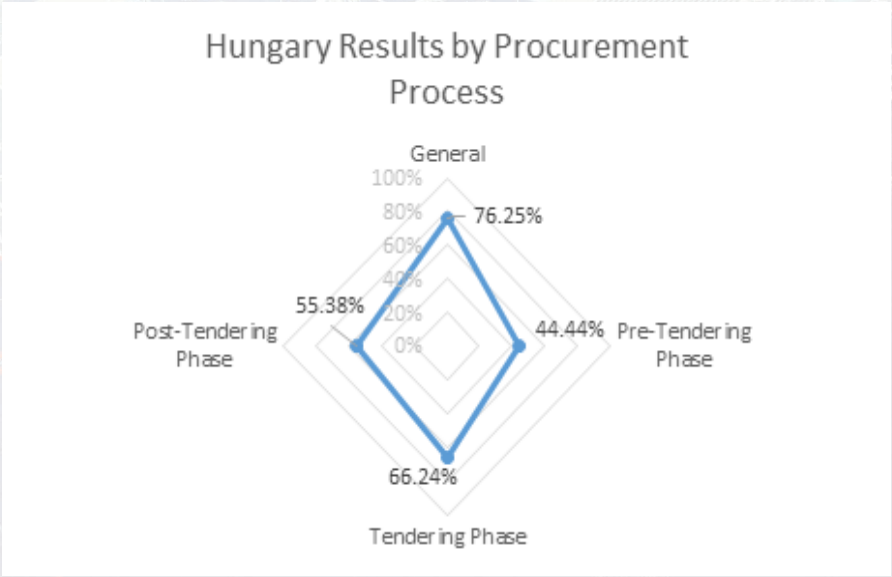
the PPL. therefore paper-based procurement is still a possibility in Hungary.

Currently, Hungary holds 13th position in the ranking. Hungary's PPL scores relatively high in competitiveness (94%), meaning that the law ensures equal treatment to potential tender candidates (no domestic preferences based on nationality or status, procedures that give a minimum of 10 days to competitors to prepare and submit the bid, exhaustive content of the notice of intended procurement, proportionate time-frames for informing tender participants about all types of decisions, etc.)

A definite area of weakness for Hungary is accountability and transparency. Hungary has slack rules that do not ensure justification of using non-competitive procedures or single source procurement, weak audit clauses for procurement below the EU threshold, no systemic means of consulting with the private or the CSO sector on procurement issues. Hungary's biggest flaw relates to availability of data in open formats, but other than that, access to important documents such as complaint texts, tender participant applications and information on subcontractors are not available to the public.

The weakest area in terms of the procurement process is the pre-tendering phase for Hungary. The PPL does not spell out the content of the annual procurement plans, and despite the KH's opinion on the content, procuring entities can write up the plans according to their own will. Those plans and information in it is not available in machine-readable format. There is no article in the legislation, which ensures that procurement can be initiated only after sufficient funds are secured, as mentioned previously, justification for using non-competitive procedures is not mandatory.


Hungary Results by Value
Uniformity
85.36%
Efficiency
55%
Transparency
51.11%
Accountability
23.71%
Competitiveness
94%
100%
80%
60%
40%
20%
0%


Hungary Results by Procurement Process
General
76.25%
Pre-Tendering Phase
44.44%
Tendering Phase
66.24%
Post-Tendering Phase
55.38%
100%
80%
60%
40%
20%
0%

Poland

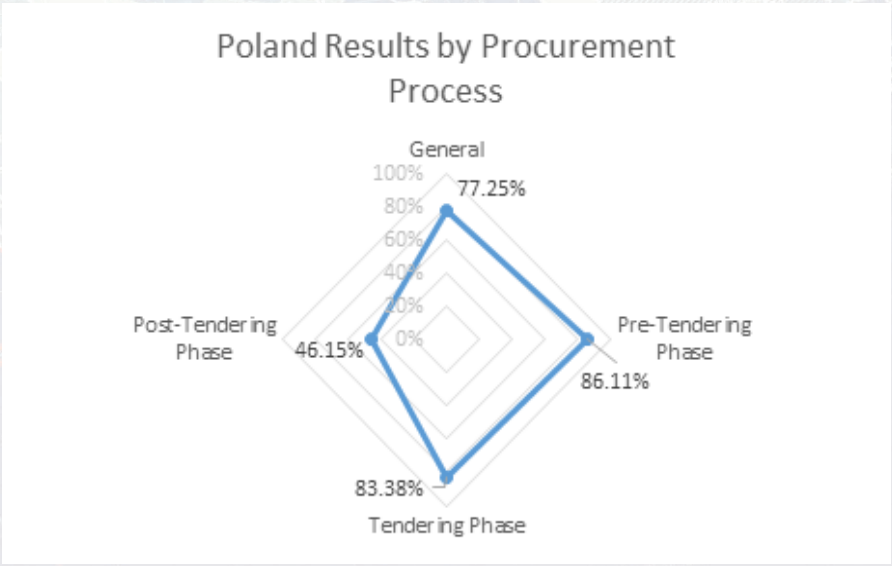
Similar to other EU member countries, Polish procurement legislative framework consists of European Union (EU) law and relevant Polish legislation. Other than standard directives of the EU, the European Commission's standard form for the European Single Procurement Document applies directly in Poland. The primary legal document regulating public procurement in Poland is the Act of 29 January 2004 on Public Procurement, complemented by secondary legislation regulating various technical aspects of public procurement.

The PPL regulates all types of public procurement, including sectors such as defense and utilities. There are two separate acts regulating private-public partnerships (PPPs), and work and services concessions. There are also a few examples of specific legislation that regulate procurement in very narrow areas, such as construction of energy plants.

Article 152 of the PPL ensures the existence of an independent authority for managing public contracts and procedures – the Public Procurement Office. Poland has a single portal for conducting procurement procedures by electronic means and storing information - https://bzp.uzp.gov.pl/Default.aspx. Procurement in Poland is primarily electronic (preference determined by law) and paper-based procurement is also available.

Currently, Poland holds the 9th position in the Ranking. Among the countries Poland scores relatively well in accountability (5th position), meaning that articles ensuring accountability in procurement procedures are part of the PPL. The weakest area for Poland is transparency in terms of value, mostly due to lack of machine-readable data and the post-tendering phase. Most pressingly, Poland lacks articles regulating access to contract performance information (performance reports, acts of delivery and acceptance, payment receipts, quality control procedures and reports).


Poland Results by Value
Uniformity
81.79%
Efficiency
77.50%
Transparency
61.11%
Accountability
73.71%
Competitiveness
80%
100%
80%
60%
40%
20%
0%


Poland Results by Procurement Process
General
77.25%
Pre-Tendering Phase
86.11%
Tendering Phase
83.38%
Post-Tendering Phase
46.15%
100%
80%
60%
40%
20%
0%

Slovakia

Slovakia was one of the first Central European countries to adopt an act regulating public procurement, corresponding to the requirements of the EU Directives. Drastic overhaul of the law occurred in 2010, with the adoption of Act No. 546/2010, which came into force in 2011. The new law was meant to increase transparency and remedies by making online publication of most contracts mandatory, obliging contracting authorities to notify unsuccessful bidders of the winning bid and permitting parties to appeal not only the process, but the results of procurement procedure. The latest version of the law is effective of 2015, which regulates the award of supply contracts, works contracts, service contracts, design contests, award of concessions for construction works, award of service concessions.

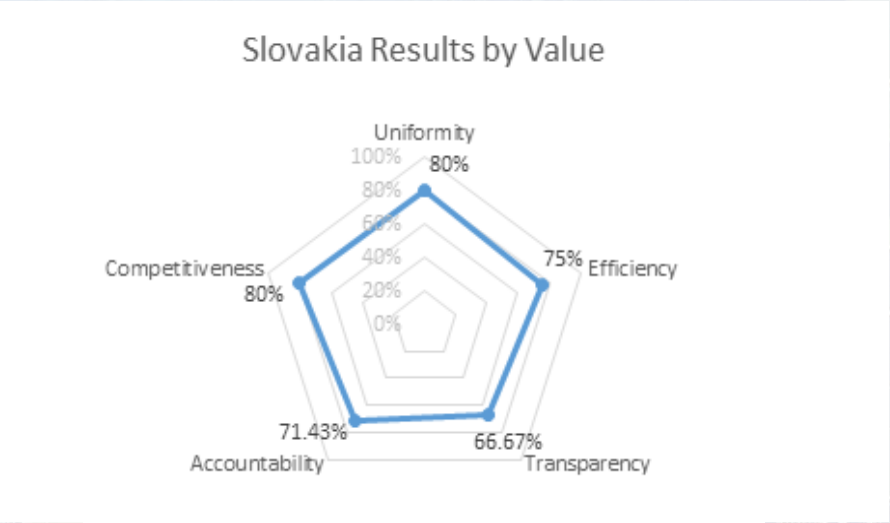
Unlike other Visegrad countries, Slovakia is characterized by its relatively centralized procurement system. For example, for all supplies, services and works above EUR 1,000 that are widely available on the market, contracting authorities are required to use the Ministry of Internal Affairs' dynamic purchasing system, the Electronic Contracting System (EKS). Groceries in Slovakia are treated as a separate class of supplies and the threshold for the use of simplified procedures is higher than for other supplies - 40,000 EUR.

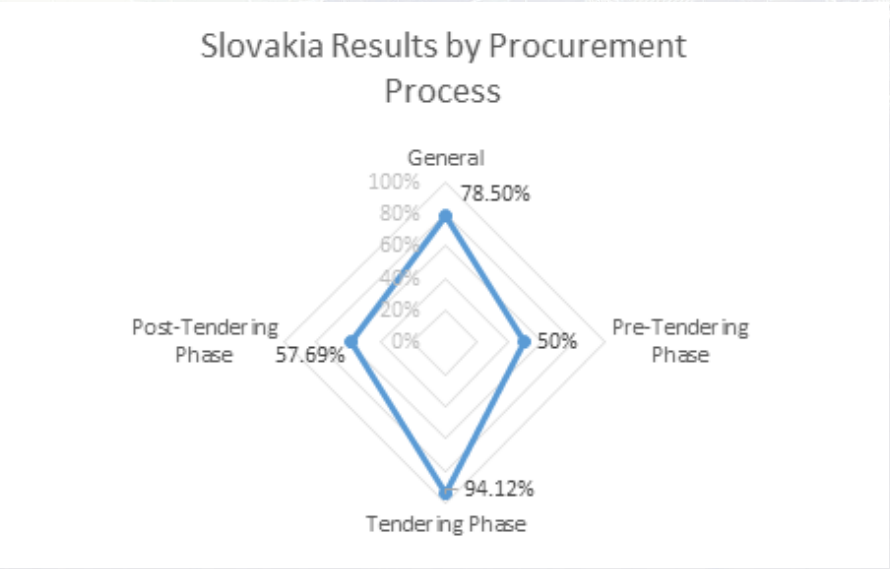
Public Procurement Office is the sole authority in charge of public procurement – training, law enforcement (dispute resolution, sanctions), data management. Despite procurement being centralized in many ways, the medium is not. In other words, there is no single centralized procurement system, however procurement information is stored in a single portal after the procedures are over.

Nevertheless, a single website for common (typical) purchases exists - www.eks.sk, and a single website for all above-threshold documentation is in place. Otherwise, procurement is conducted individually through entity portals, email or on paper. Therefore, tenders are partially electronic as part of the information is submitted electronically and part on paper.

Among the Visegrad countries, Slovakia has the most scores and is 6th among all countries of the TPPR Network. Despite the fact that contract information is in a single place, machine-readability and access to certain types of information is still limited - texts of complaints, contract

amendments, quality inspection reports, payment receipts. Additionally, a substantial flaw of the legislation is that there is no single portal for all procedures and that electronic procedures are not mandatory by default.





Belarus

Prior to the adoption of the current legislation, public procurement in Belarus had been regulated by the Presidential Decree on "Public Procurement in the Republic of Belarus" and the Resolution of the Council of Ministers of the Republic of Belarus "On Some Issues on Implementation of Public Procurement", both adopted in 2008.

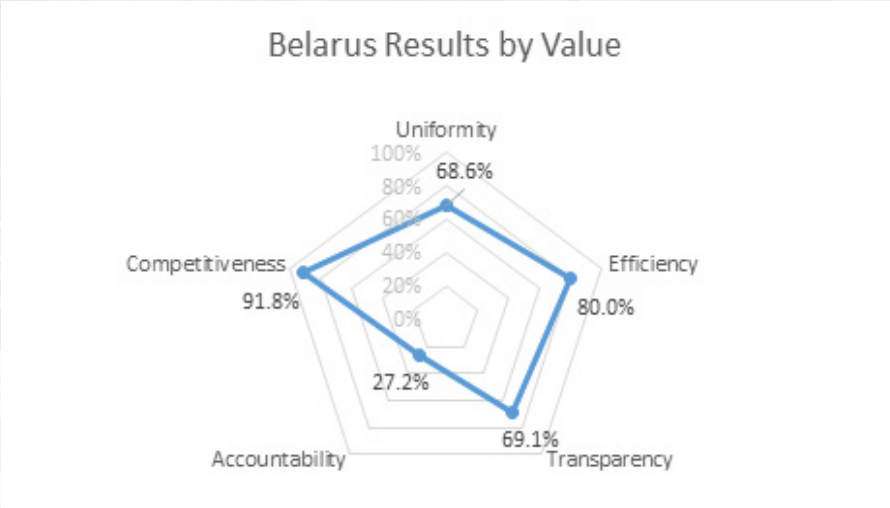
The new PPL of Belarus was adopted in 2012 and entered into force on January 1, 2013, which serves as the basis of the current system. The PPL and sub-legal acts are aimed at bringing the national legislation in line with the international obligations of the Republic of Belarus, namely the "Agreement on Public (municipal) Procurement" signed in Moscow in December 2010 within the Customs Union of Belarus, Russia and Kazakhstan. The current PPL almost repeats the provisions of the Moscow Agreement, with the exception of an additional procurement procedure - closed tender, which is applied in cases when the information on public procurement contains state secrets.

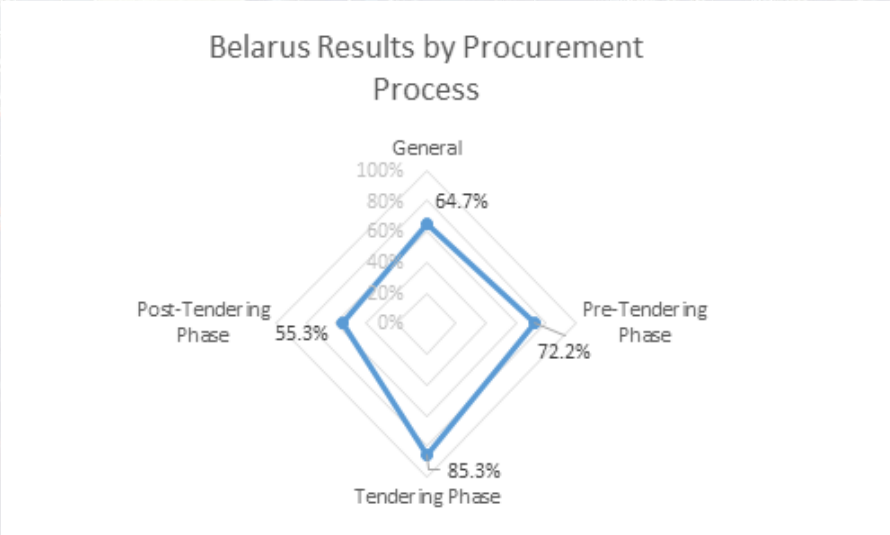
The Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus (MART) is responsible for development of public procurement policies and monitoring of public procurement activities. A single point of access for tender related information exists - www.icetrade.

The PPL specifies that the main type of public procurement procedure in Belarus is an open competition. Although the PPL provides for the publication in electronic form of all the most important documents accompanying the bidding, the competition itself is not electronic at the same time. This is because the preparation of tender documents, as well as the procedure for opening and reviewing tender proposals is conducted internally and using paper carriers. Thus, the official site fulfills the function of the electronic bulletin board and the place of publication of official documents, while not being a full-fledged trading platform.

Belarus is 12th in the ranking, predominantly due to lack of points in values such as accountability and transparency. PPL does not regulate the set-up of the tender commission, complaints can be launched only by tender

participants and such possibility is not given to the general public, important sectors of the economy are exempt from the law and justification for using non-competitive procedure is not published. Most information on contract performance is not published making post-tendering phase the weakest area in terms of the process.





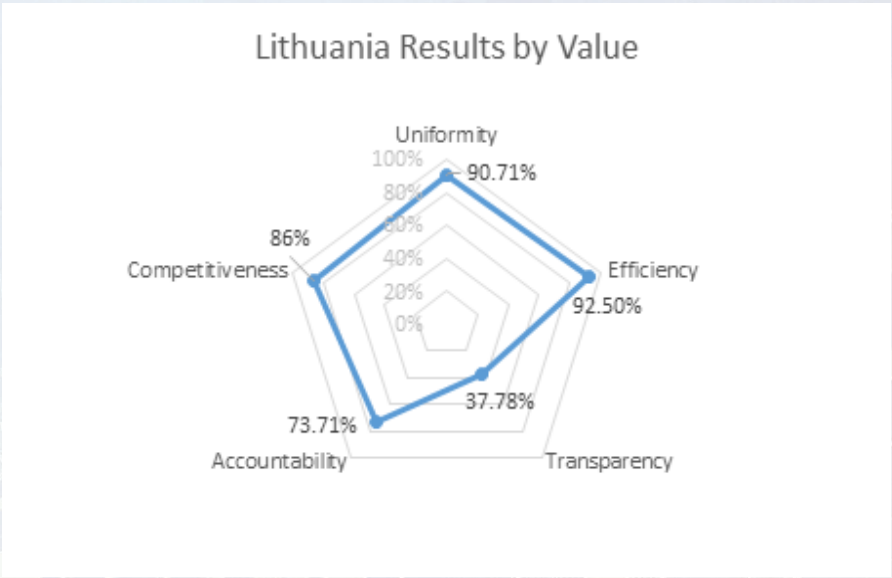
Lithuania

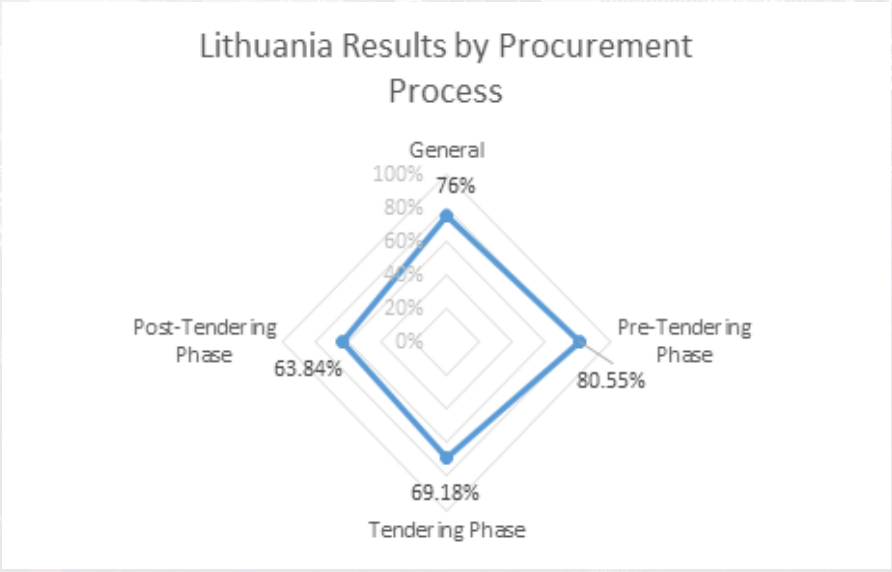
Procurement activities in Lithuania are regulated with the Law on Public Procurement and its sub-legal acts. The Law came into force on 13 August 1996, and was subsequently amended in order to meet the requirements of the EU Directives on public procurement. The latest consolidated version was adopted in 2012. As a member of the EU, PPL of Lithuania complies with the standards and procedures of the EU Directives.

Public Procurement Office is an institution operating under the Ministry of Economy, which coordinates the procurement activities, ensures compliance of contracting authorities with the requirements of the PPL and supports appropriate planning of procurement and performance of public contracts.

A single portal for hosting public procurement procedures and information is at place - cvpp.eviesiejipirkimai.lt. Electronic means is the primary method of conducting public procurement.

Lithuania holds 10th position in the TPPR Ranking. Strong sides of the PPL is the guarantees it has for electronic procedures, however, it the procedures are not 100% electronic and paper-based procurement is still an option. The weakest area of the PPL is transparency, as the PPL does not ensure publicity of texts of complaints, texts of decisions of dispute settlement, tender candidate applications and bids and contract performance information.


Lithuania Results by Value
Uniformity
90.71%
Efficiency
92.50%
Transparency
37.78%
Accountability
73.71%
Competitiveness
86%
100%
80%
60%
40%
20%
0%


Lithuania Results by Procurement Process
General
76%
Pre-Tendering Phase
80.55%
Tendering Phase
69.18%
Post-Tendering Phase
63.84%
100%
80%
60%
40%
20%
0%

Moldova

Disclaimer: As of December 2018, the results presented below are no longer relevant due to extensive amendments received by the Moldovan public procurement law after its evaluation was completed in December 2016. The updated results will be included in the subsequent edition of this document, following the second round of evaluation to be conducted in early 2019.

Since its independence, the Republic of Moldova has developed its own public procurement system, which has gone through several major stages of transformation. With each new development stage, the system is more closely adjusted to European standards.

Before the new version of the PPL, procurement thresholds, extension of minimum deadlines for bid submission and standstill periods were inefficient. Procurement was completely paper-based and the PPL did not cover all public entities.

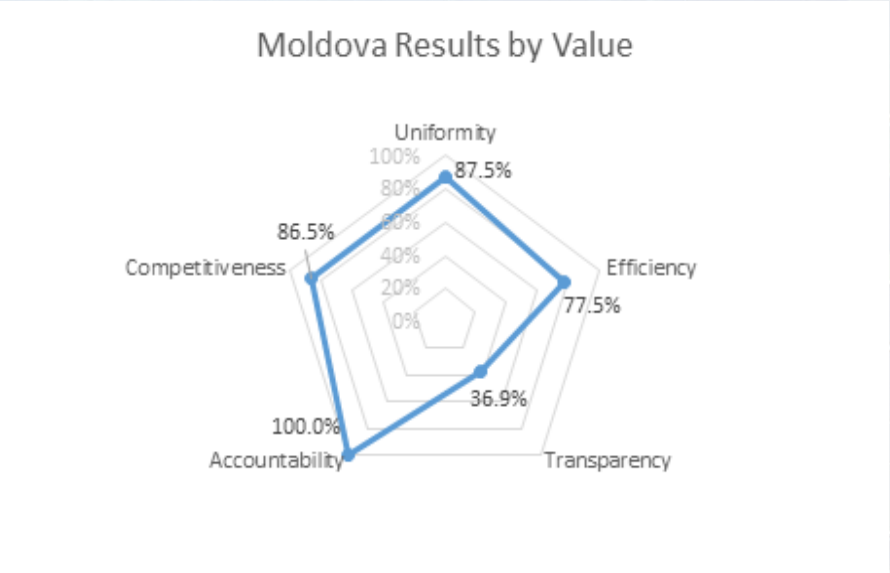
The latest wave of reforms in 2016, which followed the signing of the Association Agreement (AA) between the European Union (EU) and the Republic of Moldova in 2014, imposed gradual alignment of national legal framework to EU Acquis on public procurement and implementation of institutional reforms. Concurrently, in 2015, the Republic of Moldova signed the World Trade Organization (WTO) Agreement on Government Procurement (GPA) that envisaged a list of engagements related to public procurement.

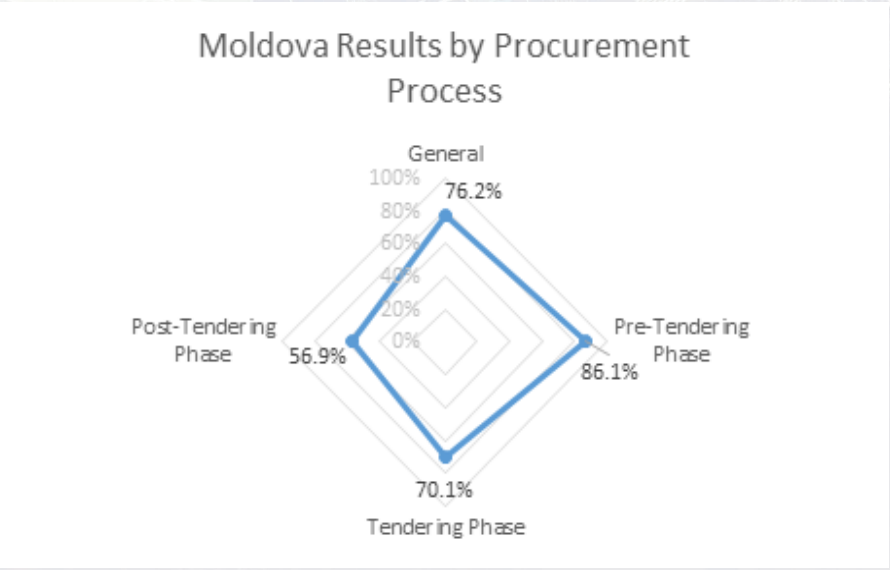
Currently, PPL covers procurement of goods, works and services by all public entities or entities governed by public law. Also, the Law stipulates a rather clear and reasonable list of exceptions (including state-owned companies), as well as an exhaustive enumeration of procurement procedures. Overall, there are seven general procurement procedures like open or closed tenders, and three special procurement procedures like framework-agreements.

The Ministry of Finance is responsible for development of public procurement policies, while the Public Procurement Agency (PPA), which is under authority of the Ministry of Finance, mostly performs monitoring and instructive functions.

The new PPL stipulates the possibility for potential suppliers to submit offers either in paper or in electronic form, if this is mentioned in the procurement notice. With the new legislation on the way and a completely modern (open-

data) based electronic public procurement system (M-tender), Moldova will soon turn to 100% e-procurement.





Romania

As Romania is a member of the European Union (EU), its public procurement legislation (PPL) reflects the values, principles and procedures provided by EU Directives. Besides the primary and secondary public procurement legislation, there are additional special rules for several sectors: Defence procurement; Transportation; and Procurement with European Funds.

A separate entity for coordinating procurement procedures and managing the public procurement system exists - National Agency for Public Procurement.

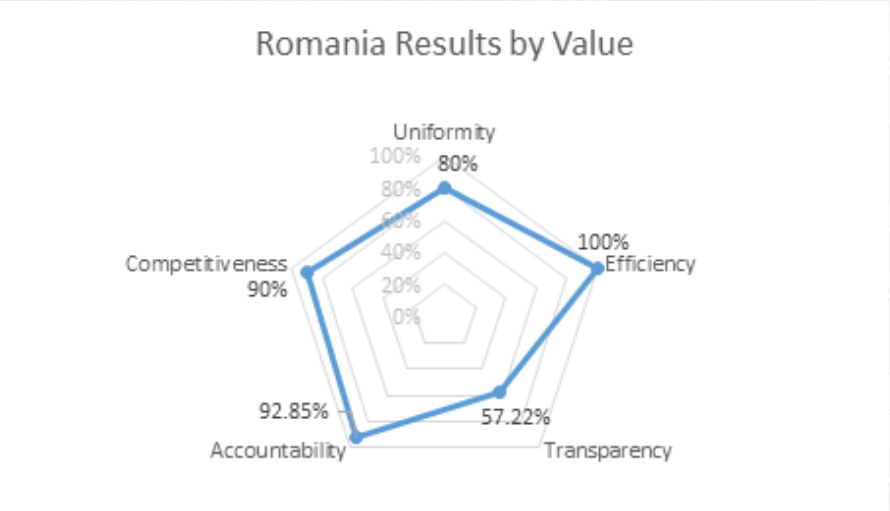
The law defines a single portal, where procurement procedures are to be handled and information stored - https://sicap-prod.e-licitatie.ro/pub/participants. This is a relatively new public procurement portal, which fits contemporary standards of public procurement transparency, such as – availability of machine-readable information, possibility to download data existing on the portal. The portal has interesting features as well, for instance, the register of portal users is open and can be extracted, filtered according to town, county, status and type (contracting authority/supplier).

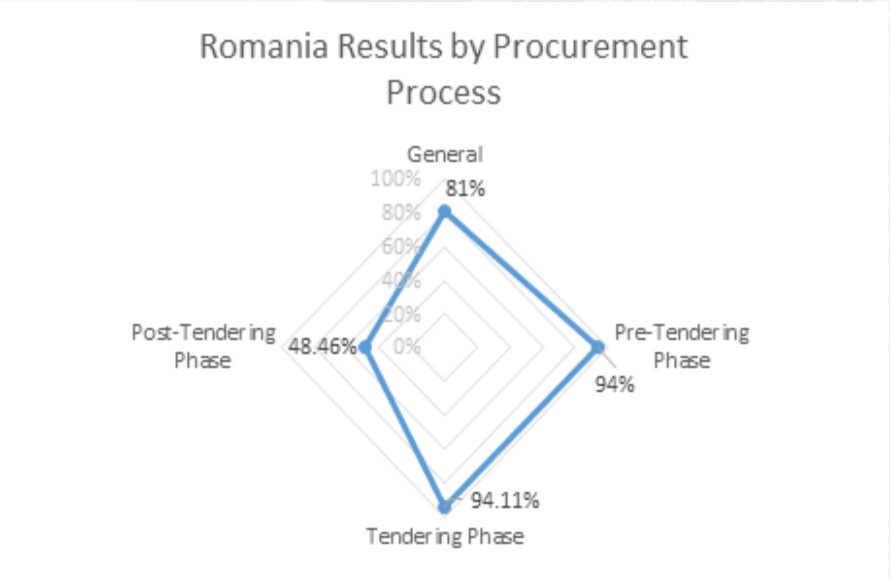
Even though the official portal is the one mentioned above, certain information is still stored on the old public procurement portal - https://www.e-licitatie.ro/Public/Common/Content.aspx?f=PublicHomePage. Additionally, there is a separate portal for media related procurement with EU funds - http://publicitatepublica.ro/index.php, certain agricultural products, services and works https://achizitii.afir.info.

Romania ranks high on the TPPR rating, 4th position, implying that the legislation and its set-up potentially provide for the public procurement system to be efficient, based on principles of accountability and competitiveness. PPL and sub-legal acts ensure that the planning and announcement of tenders is transparent and efficient, it provides legal ground for fair treatment during tendering phase and possibility for legal remedies (dispute settlement procedures are available), part of information is available in machine-readable format.

Nevertheless, Romania has flaws when it comes to transparency in the post-tendering phase. Most of the information about this phase is absent from

the legal framework, hence, information on contract performance, scans of contracts (full), contract amendments, acts of delivery and acceptance (full scans or parts of information) are not available on the public procurement portal.





Ukraine

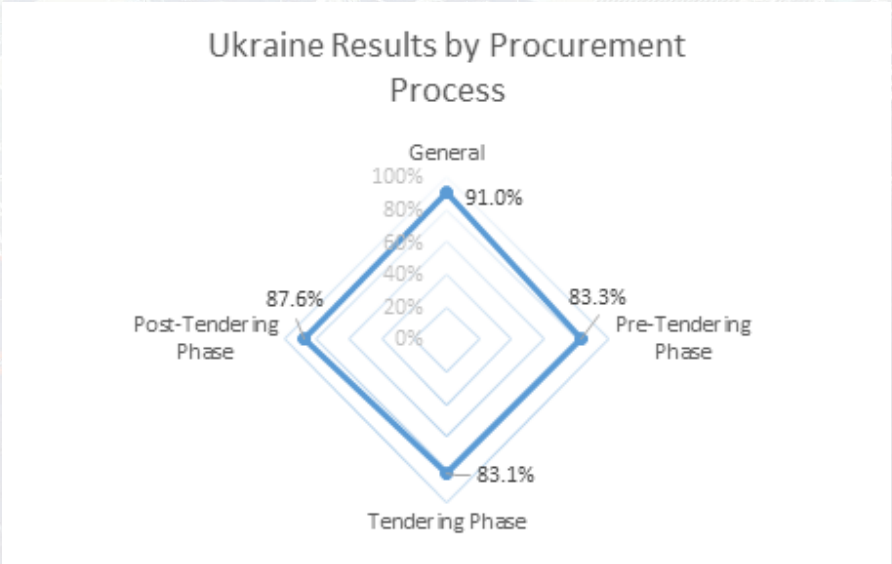
Public procurement regulation in Ukraine has evolved from the first Government regulation in 1993 to the most recent PPL of 2016. Frequent change of PPL and its sub-legal acts was common practice to better serve the interests of certain political and elite groups. There were multiple exemptions from the law, 43 in total. Procurement was paper-based and definition of procuring entities was incompatible with the international standards (EU, WTO GPA, UNCITRAL).

After the EuroMaidan Revolution in 2013, Ukraine changed its public procurement system completely. A new electronic system (Prozorro) was created and a new PPL came into force. Currently, the system ensures electronic means for all procurement procedures/operations and secures free public access to practically all procurement information.

A new definition of procuring entities was introduced, which is similar to the definition used in EU Directives. A single point of access to tenders and procurement related information exists - https://prozorro.gov.ua/en. The law ensures that all procedures are electronic. The Ministry of Economic Development and Trade (MEDT) (www.me.gov.ua) is the State regulator in public procurement, performing also consultative and monitoring roles.

Ukraine is number one in the TPPR Ranking. The highlight of the Prozorro system is that it is based on open data format and what is called the Application Programming Interface (API), allowing instant connectivity with the procurement database.


Ukraine Results by Value
Uniformity
92.5%
Efficiency
80.0%
Transparency
88.3%
Accountability
70.1%
Competitiveness
94.7%
100%
80%
60%
40%
20%
0%


Ukraine Results by Procurement Process
General
91.0%
Pre-Tendering Phase
83.3%
Tendering Phase
83.1%
Post-Tendering Phase
87.6%
100%
80%
60%
40%
20%
0%

Albania

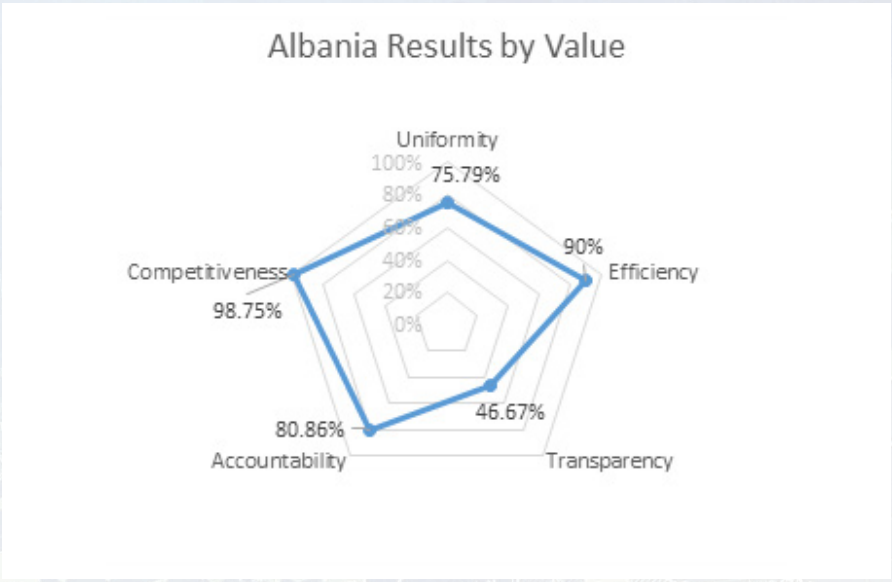
Since 1995, public procurement system in Albania has passed through several phases of change and development. The reforms undertaken in public procurement by Albania derived from its obligations related to its integration process with the EU. The main legislative framework, Law no. 9643 On Public Procurement, was adopted in 2006.

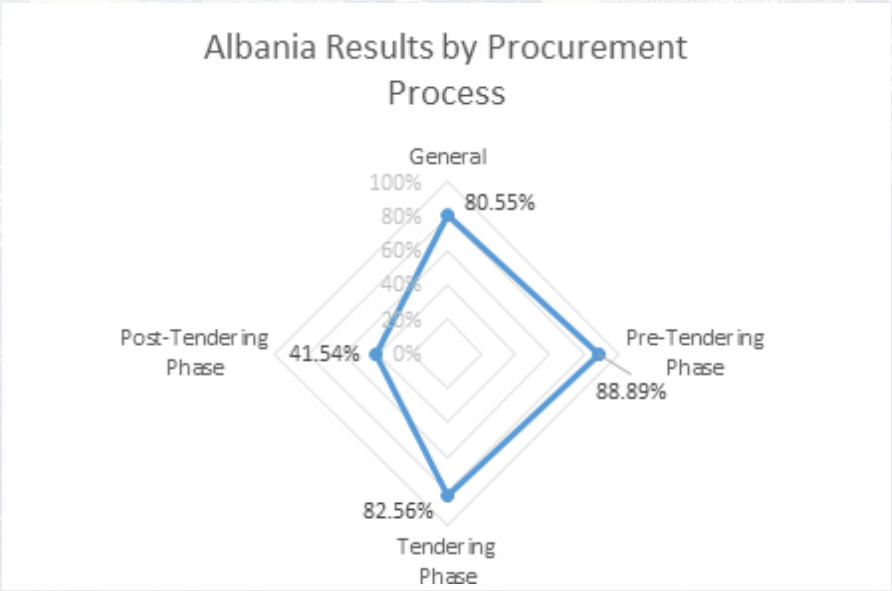
In the framework of measures towards increasing transparency and fighting against corruption, the Public Procurement Agency – in collaboration with the component 'Reform in Public Procurement', of the Millennium Challenge Threshold Agreement Programme for Albania – has set up an electronic procurement system.

The Portal - www.app.gov.al offers the possibility of preparing and administering all tender-related documents, eliminating unnecessary paperwork and providing secure data flow throughout the entire process. Transactions, starting from the download of documents till the moment of bidding by electronic means, may be done free of charge via the electronic system. Albanian PPL allows both electronic and paper-based procedures, with economic operators having the right to choose the medium.

A separate entity responsible for overall management and monitoring of the public procurement system exists - Public Procurement Agency. The Agency is a central body, a public legal person, reporting to the Prime Minister.

Albania is 7th in the TPPR Ranking. Strong areas of the PPL are the guarantees, which it provides in terms of competitiveness and efficiency. For example, the PPL does not allow any preferences for domestic economic operators treating foreign companies equally, procedures can be launched and managed electronically, making the process more transparent and efficient. Dispute settlement procedures are in place for tender participants at any given point of the procurement process. Nevertheless, improvements can be made in transparency, specifically in post-tendering phase. Information on contract amendments, contract performance and payments are not available at all; access to machine-readable data on procurement remains problematic.


Albania Results by Value
Uniformity
75.79%
Efficiency
90%
Transparency
46.67%
Accountability
80.86%
Competitiveness
98.75%
100%
80%
60%
40%
20%
0%


Albania Results by Procurement Process
General
80.55%
Pre-Tendering Phase
88.89%
Tendering Phase
82.56%
Post-Tendering Phase
41.54%
100%
80%
60%
40%
20%
0%

Bosnia and Herzegovina

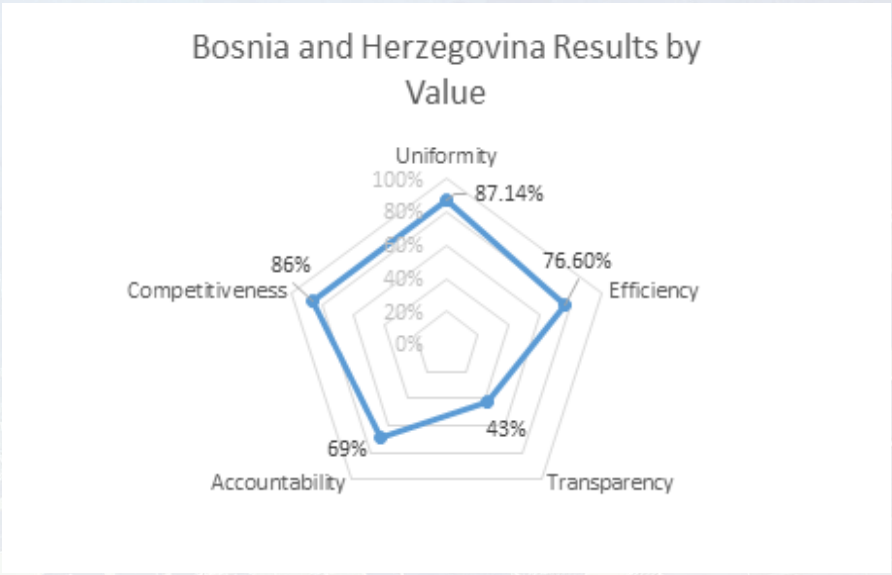
The current PPL in Bosnia and Herzegovina (BiH) was adopted in May 2014 and entered into force in November 2014. This legal framework was prepared in accordance with EU Directives.

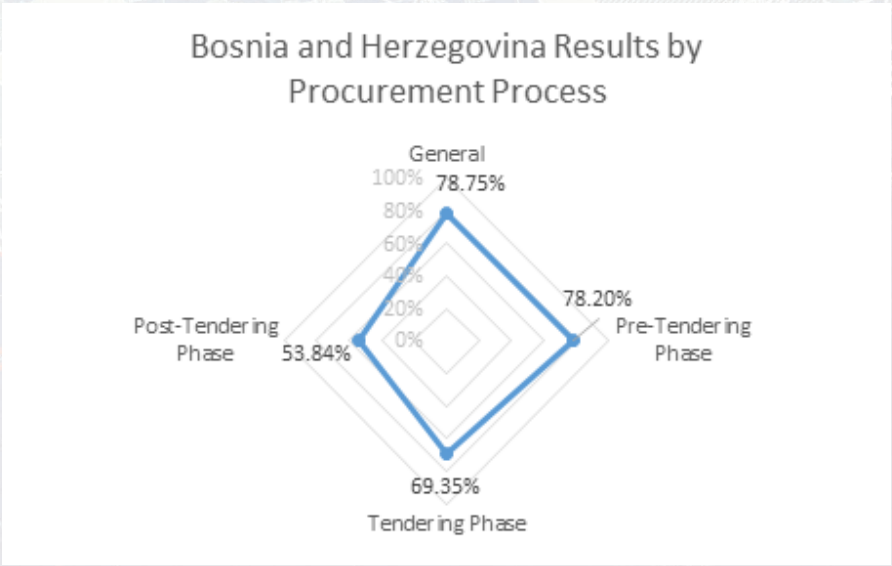
The new PPL takes into account a whole variety of legal acts that are closely related to the public procurement system. The new law is based on EU directives, its core principles and is an attempt to harmonize the legislations to the maximum extent possible with that of the EU.

BiH has its own independent Public Procurement Agency and a Public Review Body. Procedures are electronic and information on public procurement is generally available on the official public procurement portal - https://www.ejn.gov.ba/.

BiH had a transitional period for conducting procurement by electronic means and through the years the obligations to conduct procedures electronically varied. The contracting authorities were obliged to publish the tender documentation in the "E-Procurement" system for at least: - 30% of public procurement procedures for which the procurement notice was published in 2016, - 60% of public procurement procedures for which the procurement notice was published in 2017. From 2018 though, contracting authorities are obligated to publish tender documentation on the portal for all public procurement procedures. Nevertheless, public procurement is not 100% electronic, paper medium is still accepted, therefore the PPL allows for a dual system of public procurement – electronic and paper-based.

Currently, BiH holds 11th position in the TPPR ranking with improvement to legal framework necessary in areas such as transparency, efficiency and competitiveness. Post-tendering phase is the weakest link in the legislative framework, with much of the information on procurement implementation is not guaranteed to be public by law.


Bosnia and Herzegovina Results by Value
Uniformity
87.14%
76.60%
Efficiency
43%
Transparency
69%
Accountability
86%
Competitiveness
100%
80%
60%
40%
20%
0%


Bosnia and Herzegovina Results by Procurement Process
General
78.75%
78.20%
Pre-Tendering Phase
69.35%
Tendering Phase
53.84%
Post-Tendering Phase
100%
80%
60%
40%
20%
0%

CAUCASUS

Armenia

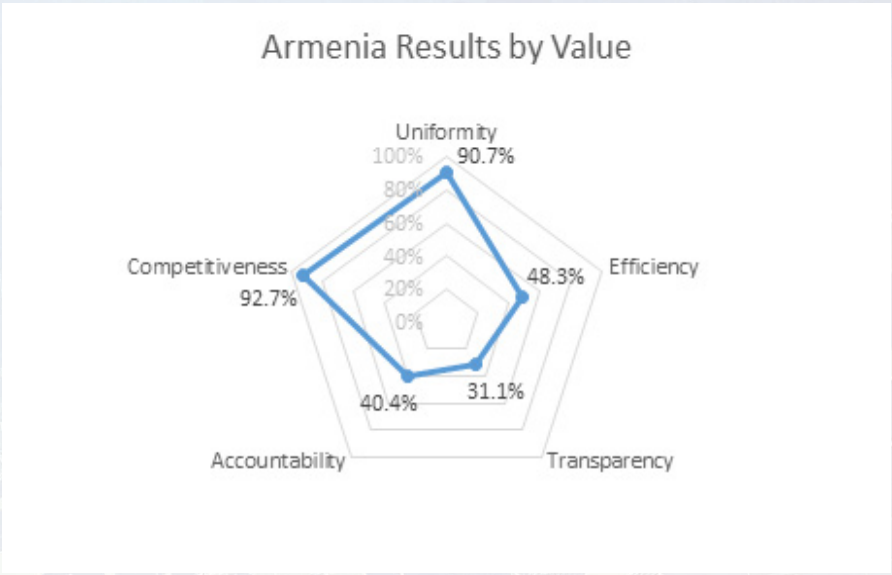
Disclaimer: As of December 2018, the results presented below are no longer relevant due to extensive amendments received by the Armenian public procurement law after its evaluation was completed in December 2016. The updated results will be included in the subsequent edition of this document, following the second round of evaluation to be conducted in early 2019.

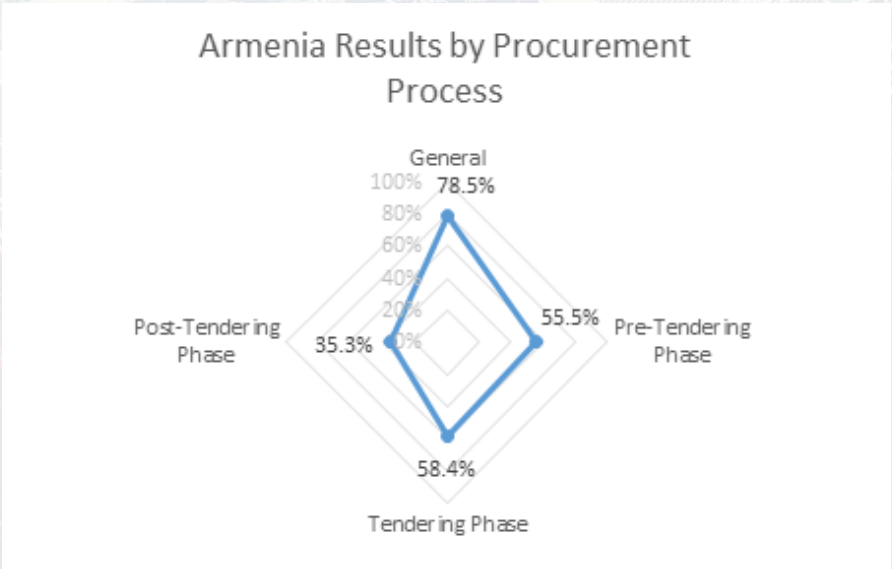
Until April 25, 2017, the procurement system in Armenia was regulated by the Republic of Armenia Law on Procurement adopted on December 22, 2010. It was only in 2016 that Armenia started working on the new PPL, which was adopted in January 2017.

Armenia has a mixed procurement system - the Law provides opportunities to conduct procurement both electronically and on paper. The official e-platform for public procurement is http://gnumner.am/am/home.html, where all tenders announcements, tender related documents and other relevant information within the scope of the PPL can be found.

Up until 2016, the Ministry of Finance was the body responsible for policy-making in the sphere of public procurement, whereas the coordination and monitoring functions was ensured by the Center for Procurement Support (SNCO), accountable to the government of Armenia. The new PPL abolished the SNCO, and the Ministry of Finance remains the only authorized body to deal with coordination and policy-making functions in public procurement.

There are four procurement procedures: Electronic auction, Contest (tender), Request for quotations, Single-source procurement. A contest can be open or closed. A closed contest can be targeted or regular. Contest is the preferable procurement method. Only in cases stipulated in the law can other methods of procurement be used.


Armenia Results by Value
Uniformity
90.7%
Efficiency
48.3%
Transparency
31.1%
Accountability
40.4%
Competitiveness
92.7%
100%
80%
60%
40%
20%
0%


Armenia Results by Procurement Process
General
78.5%
Pre-Tendering Phase
55.5%
Tendering Phase
58.4%
Post-Tendering Phase
35.3%
100%
80%
60%
40%
20%
0%

Azerbaijan

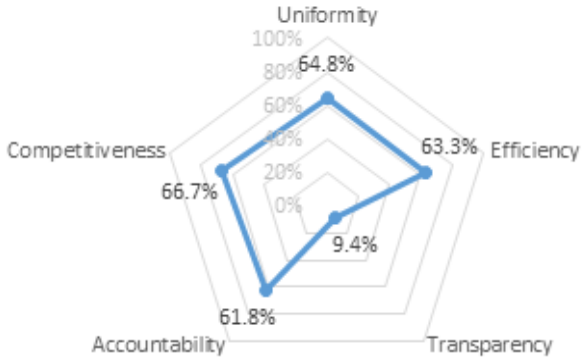
Azerbaijan had a tumultuous experience with public procurement legislation. The PPL was adopted in 1999, but reforms halted after 2004-2005. Azerbaijan has a fully functioning PPL, with its sub-legal acts, however, certain essential elements of the law are absent. For instance, while the circumstances or premises justifying the use of direct procurement are included in the PPL, no sub-legal act spells out the specific rules for conducting direct procurement.f

Anti-monopoly and Consumer Protection Service is the body responsible for coordination of public procurement activities. A single point of access for some tender related information exists - www.tender.gov.az. The website has evolved over time to include some general information about the tenders, procurement plans, Q&A section, etc. However, the website serves as a platform for only a small amount of tender related information

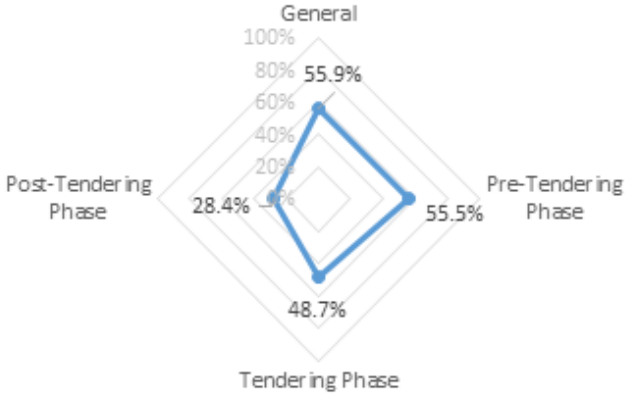
Azerbaijan still relies on traditional paper-based procurement methods. Although the idea of e-procurement has been on the government's agenda since at least 2007.

Azerbaijan holds the last position in the ranking, lacking essential elements in the law which ensure transparency, accountability and efficiency. Limited information is available to the public and mostly in the paper medium. Essential safeguards for fair treatment are missing and no independent review mechanism exists.

Azerbaijan Results by Value



Azerbaijan Results by Procurement Process



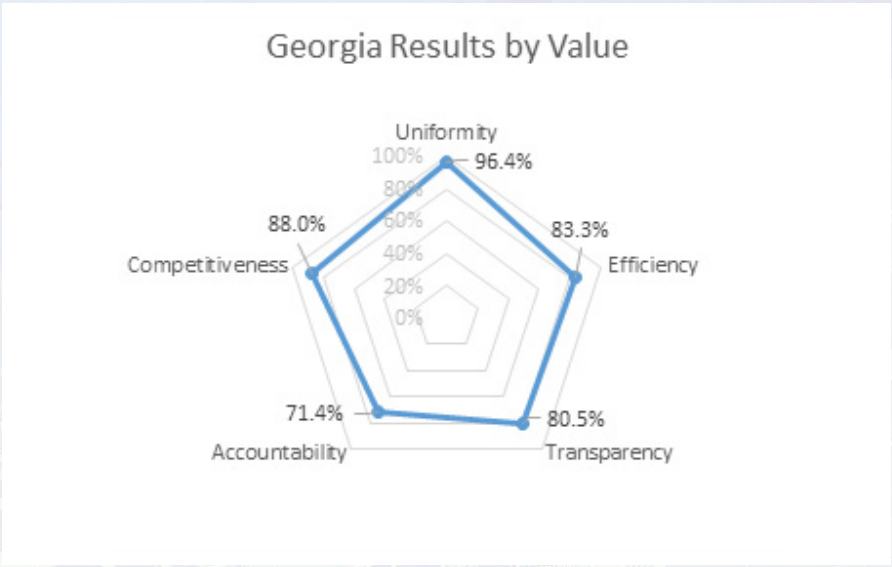
Georgia

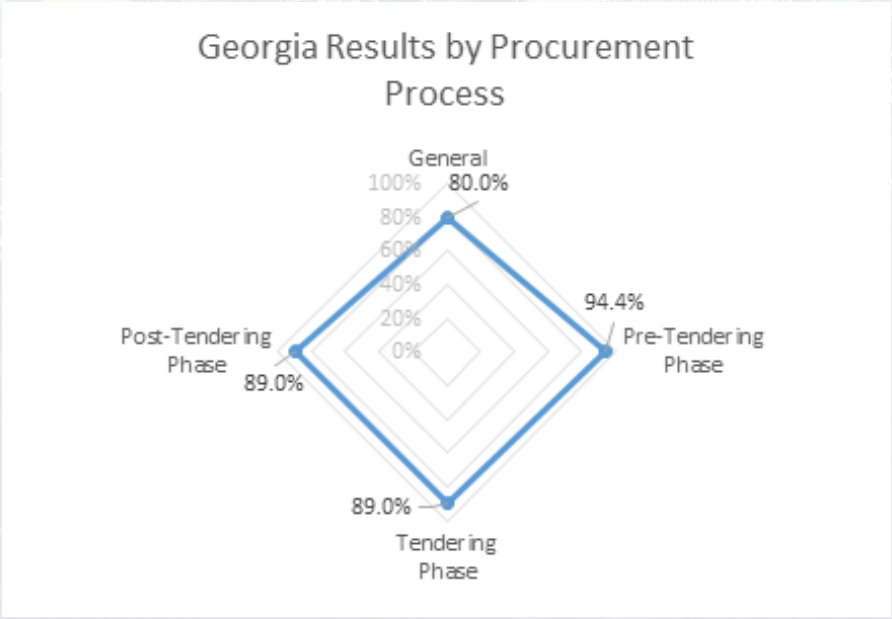
The process of reformation of the PPL of Georgia began in 2009 and continues today, as Georgia progresses towards the EU. Over the years, substantial changes were made to the PPL and secondary legislation. Before the reforms, procurement was paper-based, and many mechanisms, such as the Dispute Settlement Board (DRB) or white/black lists, did not exist.

PPL was amended several times to determine the rights and obligations of the State Procurement Agency (SPA), main body for regulating and coordinating the procurement processes, introduce the system of black and white listing of companies, regulate all procurement activities, introduce dispute settlement procedures and expand the number of procurement procedures.

The State Procurement Agency (SPA) is the major body responsible for coordination, monitoring and managing the public procurement system, while at the same time acting as a central purchaser for certain products and services. There is a single point of access to tenders and tender related information - www.spa.ge. all procedures are electronic, with paper-based procurement completely rooted out of the PPL.

Georgia holds 2nd position in the Ranking, falling only after Ukraine, due to machine-readability issues of certain types of data. It is notable that the Georgian system ensures a centralized access to practically all information in the procurement cycle, with the exception of subcontracting. Among highlights of the PPL, complaint mechanism, as well as possibility for any member of the public to launch a dispute, can be pointed out.


Georgia Results by Value
Uniformity
96.4%
Efficiency
83.3%
Transparency
80.5%
Accountability
71.4%
Competitiveness
88.0%
100%
80%
60%
40%
20%
0%


Georgia Results by Procurement Process
General
80.0%
Pre-Tendering Phase
94.4%
Tendering Phase
89.0%
Post-Tendering Phase
89.0%
100%
80%
60%
40%
20%
0%

CENTRAL ASIA

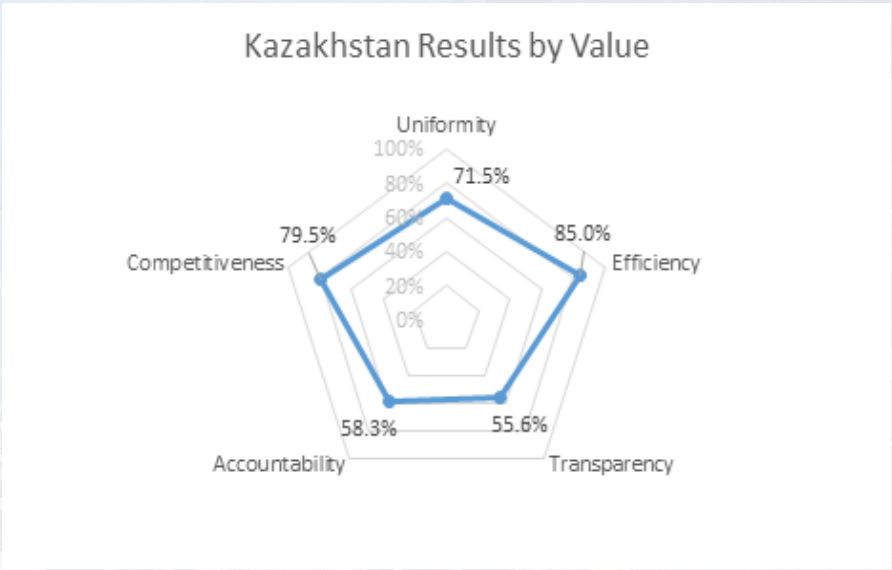
Kazakhstan

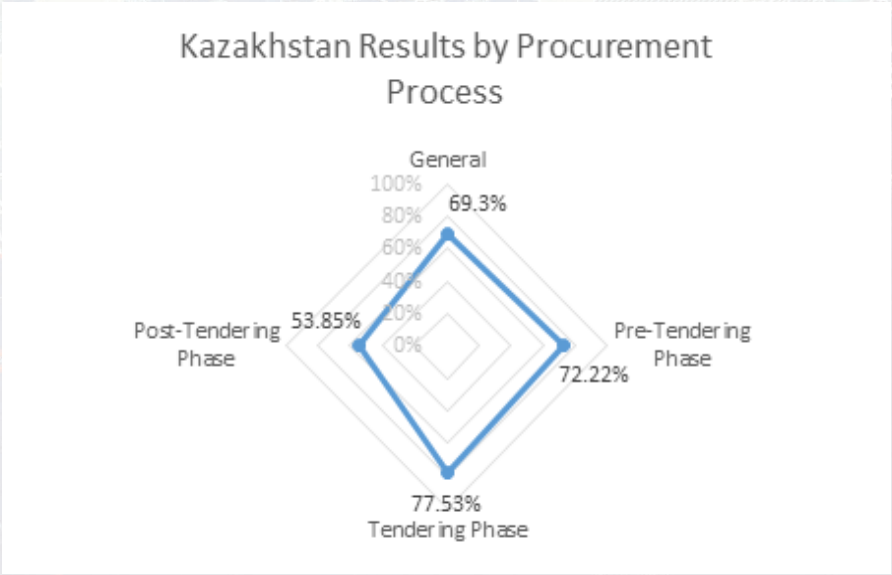
Public procurement in Kazakhstan is regulated by the 2015 Law on State Procurement. the PPL applies to ministries, state agencies, and companies and enterprises in which the state holds more than 50% of the shares. Kazakhstan has gone through various stages of reforms in terms of public procurement, with the latest stage coinciding with the country's accession to the Eurasian Economic Union (EEU). As Kazakhstan is part of the EEU, the PPL of the country complies with the standards of the Union, however, the PPL and the public procurement system of Kazakhstan is also adopting international standards of openness, transparency and accountability. Specifically, Kazakhstan is moving towards adopting the Open Contracting Data Standard (OCDS) in public procurement and is making strides to join the Open Government Partnership (OGP).

In 2014 the PPL was amended to allow economic operators from member countries of the EEU to participate in public procurement tenders on equal terms with domestic suppliers, as an attempt to increase levels of competition in the country.

The procurement system in Kazakhstan is decentralized with different government agencies and companies managing specific procurement projects. The functions of law-making, monitoring and coordination are divided within two state entities. The Ministry of Finance of Kazakhstan develops procurement policies and the Committee for Public Procurement is responsible for enforcing the laws and regulations on public procurement, as well as gathering statistical information on public procurement.

Kazakhstan has a single portal for hosting public procurement information, which is run by the state-owned company E-commerce Center. All procedures are 100% electronic and paper-based procurement is not possible for competitive procedures. The new portal - goszakup.gov.kz offers detailed information (most of it in JSON format) on the procedures from planning to execution, even though the PPL is not entirely clear about transparency of certain pieces of information or their format.


Kazakhstan Results by Value
Uniformity
100%
80%
60%
40%
20%
0%
71.5%
85.0%
Efficiency
55.6%
Transparency
58.3%
Accountability
79.5%
Competitiveness


Kazakhstan Results by Procurement Process
General
100%
80%
60%
40%
20%
0%
69.3%
Pre-Tendering Phase
72.22%
77.53%
Tendering Phase
53.85%
Post-Tendering Phase

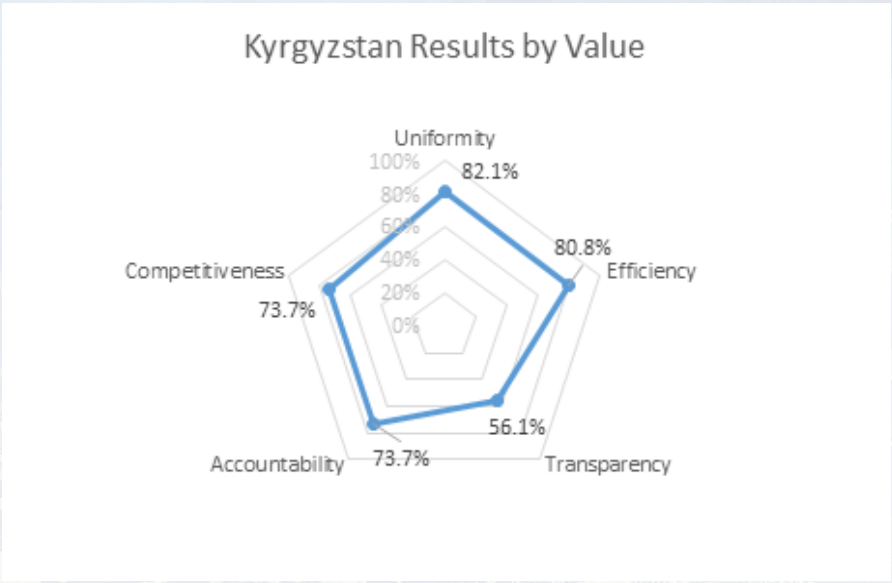
Kyrgyzstan

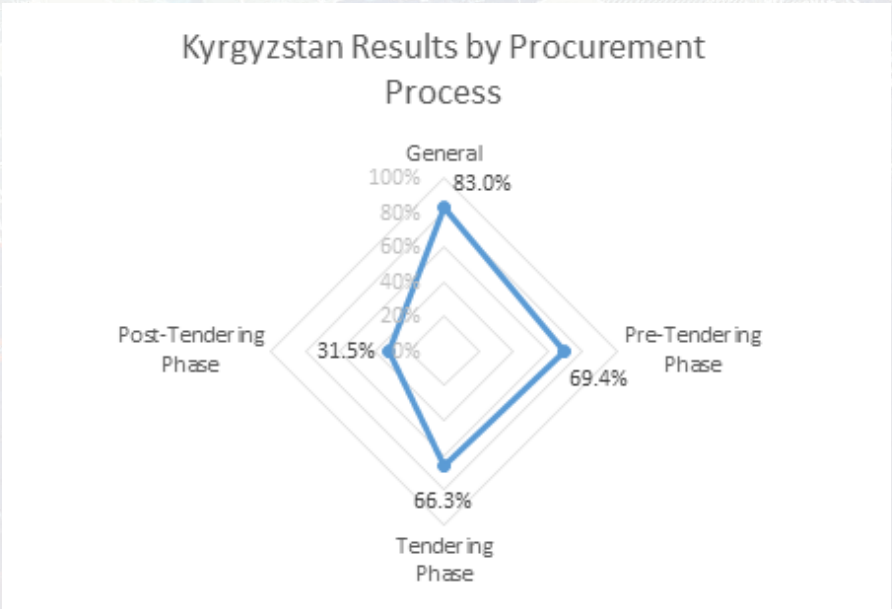
Over the past four years, the public procurement system of Kyrgyzstan has taken steps towards reform, both in legal and technical sense. A new Law on Public Procurement was adopted and is being implemented throughout the country. Based on this law, which is in line with international best practice (the UNCITRAL model law), and with support from the Asian Development Bank, Kyrgyzstan now has a functioning electronic public procurement system.

In Kyrgyzstan a department of Ministry of Finance is responsible for management and coordination of the public procurement system. A central portal for public procurement exists - www.zakupki.gov.kg. Even though the country is moving towards 100% electronic procurement, the PPL does not provide a clear preference to electronic procedures. Despite the fact that information on procurement is posted on the website, procedurally speaking electronic and paper-based procurement have an equal weight in the law. Information on paper-based procurement is uploaded on the web-site post-completion.

Kyrgyzstan is 14th in the ranking, mostly due to low points in values such as transparency, accountability and competitiveness. The highlight of the PPL is the guarantees it provides in terms of machine-readability of certain types of information, such as notices of procurement and data points of the tender documentation. Nevertheless, most information is not available in machine-readable data and publicity of post-tendering phase information is not guaranteed by the PPL.

The PPL provides for domestic preferences - when purchasing goods that are produced in the Kyrgyz Republic by domestic suppliers the procuring entity may grant privileges for the proposed price of up to 20 percent when assessing the bids. The Kyrgyz public procurement system does not use CPV codes rendering classification of types of procurement difficult. The PPL also includes multiple exemptions for the use of direct procurement.


Kyrgyzstan Results by Value
Uniformity
82.1%
Efficiency
80.8%
Transparency
56.1%
Accountability
73.7%
Competitiveness
73.7%
100%
80%
60%
40%
20%
0%


Kyrgyzstan Results by Procurement Process
General
83.0%
Pre-Tendering Phase
69.4%
Tendering Phase
66.3%
Post-Tendering Phase
31.5%
100%
80%
60%
40%
20%

COMMON PROBLEMS

The study found that the most pressing problems in public procurement are shared by target countries, despite the fact that their public procurement legislations and systems have significant differences. This points to the need to analyze these similarities in order to possibly identify common ways of solving these problems.

1. Electronic vs. Paper-Based Procurement

There is a significant difference in levels of transparency and use of e-tender as a default procedure between countries that have e-procurement systems, compared to ones that do not. Good examples of e-procurement in the region are Ukraine, Georgia and Kazakhstan as public procurement is completely electronic. Part of the countries, like Lithuania, Albania, Romania, Slovakia and Kyrgyzstan have a dual system, where procuring entities have the option to choose between fully electronic or paper-based procurement.

Georgia, Kazakhstan and Ukraine have e-platforms that ensure high levels of transparency of procurement activities. Information on tenders, direct procurement contracts, procuring authorities and suppliers, bids, contract performance and payments are readily available on the e-platforms. One important issue with Kazakhstan is that, the PPL of the country and its transparency guarantees do not fully correspond with the existing e-procurement system and the levels of transparency it provides.

Ukraine is even one step ahead in terms of transparency, as the procurement database is stored in open data format. An Application Programming Interface (API) is in place that makes it possible to connect with the public procurement database, export information and use it accordingly. Due to the API, Ukraine also has an analytical BI module of Prozorro - bi.prozorro.org, which serves as a practical tool to analyze procurement information graphically.

The situation in the rest of the countries is different and less optimistic. In Hungary and Czech Republic, public procurement portals are used as

information storage platforms, with most of the procurement not conducted online. Belarus is another example of such an approach. Although the PPL provides for the publication of all of the most important documents accompanying the bidding in electronic form, the process itself is not electronic. This is due to the fact that the preparation of tender documents, as well as the procedure for opening and reviewing tender proposals is conducted internally and by using paper medium. In contrast, Azerbaijan still relies on traditional paper-based procurement methods.

2. Coverage and Exemptions

Exemptions from the PPL are problematic for all countries. Georgia has a long list of exemptions from the coverage of the law. This issue has been raised by different international organizations such as the OECD and its Anti-Corruption Network (OECD-ACN).[1] For example, public procurement which is done through financial resources allocated from the contingency funds of the President of Georgia, the Government of Georgia and the Tbilisi City Hall are listed as exemptions. Ukraine has 18 exemptions from the PPL. It had even more before the reforms, which created the new law and the Prozorro system. Belarus has a complex situation, as the construction sector (one of the largest sectors of public procurement) is completely exempt from the scope of the PPL. In Czech Republic, so called small scale public contracts are problematic in this sense. The threshold for such contracts is 2 mil. Czk (80.000 EUR) for supplies and services / 6 mil. Czk for construction works (240.000 EUR). Under these thresholds contracting authorities do not have to award contracts according the PPL. Poland has a similar approach as contracts and contests with a value below EUR 30 000 are not covered by the PPL.

Some countries have preferential schemes, which could potentially harm competition. For example, in Kyrgyzstan, when purchasing goods that are produced in the Kyrgyz Republic by domestic suppliers, the procuring entity may grant privileges for the proposed price of up to 20% when assessing bids. In Azerbaijan, the PPL has contradictory articles. Article 8 of the PPL guarantees nondiscrimination on the basis of nationality. However, article 36(9) states that local goods, if they satisfy the terms and conditions of the tender, shall be granted a preferential correction at 20% compared to

imported goods. Moreover, centralized procurement of food products also provides favorable conditions for local suppliers. BiH has a system by which domestic bids enjoy a preference of 15% for contracts awarded in 2015 and 2016, 10% for contracts awarded in 2017 and 2018, 5% for contracts awarded in 2019.

3. Post-Tendering Phase

Post-tendering, or the contract performance stage of the public procurement process, is problematic in almost every country, proving to be the weakest link in the Eurasian Region. Most issues arise in case of Azerbaijan, Kyrgyzstan, Albania and Romania as no information on contracts, contract amendments, contract performance (milestone reports), payments and their proof is available or accessible in any format. In Belarus, Poland, Lithuania and Czech Republic, there is no access to contract performance info and payment information. In Kazakhstan, the public procurement portal does provide exhaustive information on contract performance (with the exception of quality reports), but the PPL currently does not include sufficient transparency articles for post-tendering (contract performance) phase.

Availability of contract performance information is crucially important for public monitoring of procurement activities. Without this information it is impossible to ascertain whether a certain contract was performed, how much was actually paid for the service performed and whether changes occurred to the contract's price or dates, as well as content.

4. Accountability and Integrity

Accountability and integrity are two of the main values in public procurement. In this regard, several countries face severe issues. For Belarus and Azerbaijan, lack of explicit incorporation of provisions concerning the conflict of interest, corruption and fraud in the legislation leave leeway for corrupt practices in public procurement. Additionally, no obligation in the legislation to consult with civil society or with the business community on the functioning of the public procurement system in Albania, Kazakhstan and the Visegrad 4 diminishes the level of accountability in public procurement and hinders healthy discussions on how to improve the system.

One of the most important drawbacks in terms of accountability in most countries of the assessment is that they do not provide the public with justification for why single source procurement was used. Single source procurement is a fertile ground for corruption and clientelism in public procurement. Therefore, maximum transparency is necessary to reduce the level of corruption when dealing with this procedure. Additionally, one common drawback of PPLs of Belarus, Czech Republic, Hungary and Slovakia is that there is no article, which ensures that procurement cannot be initiated before sources of funding are identified. Ukraine also has a temporary possibility to launch procurement without financial resources being secured, due to the current conflict in the South and East of the country.

5. Dispute Resolution Mechanism and Access to Information

Dispute settlement procedures are a crucial part of any public procurement system. Potential suppliers, as well as other interested parties, should be able to seek justice if they think that their rights have been violated or the PPL is not being abided by.

In this regard, the dispute settlement mechanisms vary dramatically across countries, and so do the issues related to them. For instance, Georgia has a Dispute Settlement Board (DRB) that deals with procurement disputes. The DRB comprises 3 representatives of the SPA and 3 representatives of CSOs (elected for a one year term by CSOs themselves). For disputes related to e-tenders and contests above the EU threshold, the Board is expanded to include the representatives of the Competition Agency, Chamber of Commerce, Business Ombudsman, and academia, one from each. The problem with the DRB is that it does not have an odd number of members and when the votes are split the chairperson of the SPA decides on the final verdict.

In Belarus, any person has the right to file a complaint with the authorized state body for public procurement, however, the dispute settlement commission does not involve representatives of civil society. Azerbaijan has the most severe conditions among the countries, as it does not have an independent review body with the authority to review complaints and grant remedies.

Complaint texts submitted by tender participants or the general public (where applicable) are not accessible to the public in Slovakia, Romania, Hungary, Czech Republic, whereas in Lithuania, dispute resolution texts are not available to the public.

6. Subcontractors

One of the areas where most countries share a problem is subcontracting. Ukraine, Slovakia, Romania, Poland, Lithuania, Kazakhstan and Albania have legal guarantees in PPL, which render the publication of information on subcontractors fully or partially mandatory. For the rest of the countries, publicity of information on subcontractors is not ensured by the law. Neither does information appear in any proactive way on the existing e-platforms of these countries. Subcontracting can be used as a loophole for corruption, a means of avoiding conflict of interest and other corrupt practices, therefore, this issue is a definite shared challenge for many of the target countries.

BEST PRACTICES

The evaluated countries also provide best practice examples in certain areas of public procurement. These practices may be related to the functions of e-platforms, the capacity of public procurement authorities to control single source procurement activities, or certain innovations in terms of transparency of procurement activities.

Ukraine - Prozorro

Ukraine's e-platform, Prozorro, is considered to be one of the most innovative and transparent e-platforms in the world. Prozorro is based on the OCDS, has an API, which ensures that all procurement related information and databases are machine-readable and free to reuse.

Once the platform was created with the help of international donors, its ownership was first transferred to Transparency International Ukraine and then, at the end of 2015, to the Ministry of Economic Development and Trade, which currently manages the central database and monitors the implementation of tenders through the system.

Additional useful analytical and monitoring tools of the system are - the BI module http://bi.prozorro.org/ and a new forum for issues/disputes - DoZorro http://dozorro.org/. The analytical module provides the possibility to graphically visualize and compare procurement statistics according to procuring authorities, municipalities and regions.

Georgia - Approving Direct Procurement

In 2015, Georgia introduced mandatory approval for direct procurement by procuring entities. The SPA created a special questionnaire to ensure that the questions are standardized and everyone has to provide the same type of information. The SPA makes a decision to grant the right to conduct direct procurement after it reviews the application. Additionally, any interested user of the e-platform can express their opinion about the plausibility of the request, after which the SPA has to deliberate on the comment and consider it while making its decision.

With the new approval system, in 2016, cases of direct procurement due to urgent necessity decreased by 61%, and overall, direct procurement contracts decreased by 35% in cases of most prominent grounds for direct procurement: Exclusive right (of a supplier on certain goods, works, or services); Urgent necessity; Prevention of deterioration (of the quality of a previously procured object); Holding of an event of state and public importance without hindrance and within limited time frames.

Armenia - Broadcasting of DRB Sessions

Armenia's PPL ensures the existence of a review body with the authority to review complaints and grant remedies. The DRB consists of up to 3 members, who are appointed for five years by the President upon nomination of the Prime Minister.

Even though the independence of the DRB can be questioned, the transparency of its sessions is undoubtedly high, as since 2015, sessions of the DRB are broadcast online and any interested person has access to the sessions' livestream.

Kazakhstan - Information on Subcontractors and Guarantees for Reducing Corruption in Subcontracts

Kazakhstan's PPL has a comprehensive approach towards reducing corrupt practices involving subcontractors, which is not common for the target countries of this study. There are couple of ways the PPL guarantees that subcontracting is not used improperly.

Firstly, the PPL ensures high level of transparency vis-à-vis the subcontractors. Art. 40 of the PPL ensures that description of goods, works, services to be performed by the subcontractor should be made public. Additionally, the main contractor should provide information on the persons/companies whom the potential supplier intends to attract as subcontractors (co-contractors) of works or services.

The sub-legal act regulating the execution of public procurement provides a template of information notice about the subcontractor, which is mandatory to be filled in. The notice provides adequate information on the subcontractors - name, identification number, type of product, service or work to be provided by the subcontractor, share of the subcontractor's duties indicated in value and percentage vis-à-vis the total value of the contract. Such level of transparency is absent from the majority of the target countries.

The subcontractor(s) must comply with the eligibility and technical criteria, which corresponds to the criteria demanded by the procurer, for the given procurement. Subsequently, such proof must be presented to the procuring entity, by the primary contractor. Additionally, the portion of the products, works or services ceded to the subcontractor must not exceed ⅔ of the total value of the procurement. Part of the countries reviewed by the study do not have a so-called limit or threshold for the value, which can be subcontracted, leading to bizzare cases when experience of one contractor is fully used by an inept or corrupt subcontractor(s) at the expense of the state budget. One additional safeguard of the PPL of Kazakhstan is that subcontractors cannot cede their portion of the duties to other subcontractors, reducing the risk of shell companies misusing the subcontracting possibilities for illegal purposes (art. 9 of the PPL of Kazakhstan).

The PPL also provides articles, which restrict the participation of subcontractors in specific cases, further reducing the risk of corrupt practices involving subcontractors. Part of the restrictions relate to the financial stance of the company or person involved, while others focus on the crimes committed by the company or their owners. For example, the potential supplier and/or subcontractor can be barred from participation in tender - 1. if they have unfulfilled obligations vis-à-vis the state budget and are included by the authorized authority in the Unified Register of Debtors; 2. if the activities of the potential supplier and/or subcontractor are suspended in accordance with the laws of the Republic of Kazakhstan or the laws of the state of the potential non-resident supplier; 3. if the potential supplier and/or subcontractor (including their executives, founders (shareholders)) are included in the list of organizations and individuals involved in the financing of terrorism and extremism, in the manner established by the legislation of the Republic of Kazakhstan; 4. if the potential supplier and / or his employee provided expert, consulting and (or) other services for the preparation of documentation for the ongoing procurement, participated as a general designer or sub-designer in the development of the documentation for the construction of the facility, which is the subject of ongoing public procurement.

For most countries targeted by this study, such safeguards only apply to the main contractor company, while subcontracting is completely or partially out of the sphere of regulation of the PPLs.

CONCLUSION

Studying the public procurement systems of sixteen countries in the Eurasian region reveals that despite considerable differences in their legislations and practice, some of the major problems and challenges are in fact shared. Some of these countries have moved on to fully electronic procurement with a single point of access, while others have remained paper-based or mixed. Some have a centralized system where an independent institution is responsible for managing the procurement of all other state entities, while others have a decentralized arrangement.

However, despite such core differences, almost all of these countries struggle with the same problems of unjustified exemptions from the legislation, corruption and conflict of interest, inefficient (i.e. paper-based, non-automated) procedures, weak follow up in contract execution, inaccessible dispute resolution procedures, and lack of free and easy public access to all procurement information.

Such commonality of problems suggests that more active cooperation between countries may help them tackle these challenges more easily by sharing best practices and learning from each other's mistakes. The Transparent Public Procurement Rating is actively working on facilitating this sharing process.

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