

REFORMS OF PUBLIC PROCUREMENT IN THE WESTERN BALKANS

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ABSTRACT. Public procurement is a relatively new field in the Western Balkans region. Seven countries are part of this region (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia), and all of them shared a common communist system in the past. Public Procurement in these countries has begun to appear only after their transition started in the nineties of the last century, and almost all of them had similarities during development and reforms in the field of public procurement. Given that the public procurement is a new field in this region, it would be very important to present a brief history of the establishment of public procurement systems in these countries, up-to-date developments in this area, and the reforms, since the establishment until December 2011.

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INTRODUCTION

Western Balkans lies in the southeastern part of Europe, and consists of seven countries: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia. All these countries include an area of 264.425 square km, with around 22.5 million inhabitants. The average density of population living in this countries is 85.05 residents per one square km. While Kosovo has the greatest density of population of 178.7 residents per square km, Montenegro has the lowest density of population of 45.3 residents per square km.¹ From the nineties of the past century with the beginning of the fall of communism, the development of public procurement has also started spreading in the countries in transition, including and Western Balkans. After going from planned centralistic economy to free market economy, and with the establishment of procurement regulations, in the case of completing procurement activities it was required that competition principles, equal treatment and transparency are taken into account, which allow spending public funds economically and with more responsibility.

During the last decade of the past century public procurement had marked an extraordinary development in almost entire world. Those bursting developments during that period were more accentuated in countries overcoming transition from planned economy to market economy; primarily since in these countries public procurement activities were completely absent. Public procurement is continuing to evolve both conceptually and organizationally. That evolution accelerated during the 1990s, as governments at all levels came under increasing pressures to “do more with less”.² It influenced on advancement of public procurement regulations at national and international level. All developing countries and countries in transitions are encouraged to adapt procurement regulation in accordance with international community or regional economic organizations. This has influenced in the raise of transparency and competition from foreign suppliers. An effective public procurement policy is fundamental to the success of the single market in achieving its objectives: to generate sustainable, long-term growth and create jobs, to foster the development of businesses capable of exploiting the opportunities generated by the single market and competitive in

global markets, and to provide taxpayers and users of public services with best value for money.³

In this paper are presented developments and reforms of public procurement system in seven Western Balkan countries, from their inception in the beginning of transition, until December 2011. Note that countries are listed on the alphabetical order.

1. ALBANIA

1.1. PUBLIC PROCUREMENT SYSTEM IN ALBANIA 1990-2011

In Albania, public procurement system did not exist before 1990. In the context of changes that occurred in Albania during 1990, start to appear the beginnings of the system of purchases outside the state sector, which preceded the introduction of public procurement. With the decision of the Council of Ministers of Albania No. 400, dated 17.11.1990 *"For the purchase and delivery of services outside the state sector"* it is allowed that state institutions and enterprises purchase goods, equipment and perform services for their needs in counter with payment. On 22.03.1993, the Council of Ministers of Albania issued decision No. 191 *"On the system of public purchases and purchase activities and services performed by enterprises and institutions that are financed from state budget"*, which provides detailed rules regarding the purchase of goods and service delivery. This decision provides for the first time the possibility of participation of foreign enterprises, and requires that bids are evaluated by the evaluation committee based on the lowest price. Neither of the two decisions mentioned above do not provide all manner of performance of construction works, and the award of contracts for work.

The term public procurement for the first time in Albania was introduced with the decision of the Council of Ministers of Albania No. 467 dated 17.08.1993 *"On the procurement procedures with state funds."* This decision in a more complete and detailed manner regulates procurement procedure, procurement time limits and rules for the formation of committees for the evaluation of bids. The importance of this decision has its value when it is taken into account

that this is the first normative act which provides for and regulates public procurement system in Albania.

Although the early beginnings of public procurement in Albania are introduced since 1990, the legal framework was not complete until 1995, when the Assembly of Albania on 26.07.1995 issued the first Law on "Public Procurement" No. 7971. This law was based on the procurement rules on United Nations International Trade Law "UNCITRAL",⁴ but there were some elements of the World Bank Procurement Rules and Government Procurement Agreement, which rules are used by most countries of Central and Eastern Europe during the transitional period. In order to complete the legal framework for necessary implementing of Public Procurement Law, the Council of Ministers prepared the secondary legislation - Instruction No. 01 "On Public Procurement", which entered into force on 1 January 1996.

In 2006, radical changes in public procurement system in Albania were made, by preparing a new law based on the EC procurement directives. In this regard, in the Albanian Parliament on 20 November 2006 Law No. 9643 was approved, "On Public Procurement", which entered into force on 1 January 2007, by completely abolishing the previous legislation in force on public procurement. The Council of Ministers of the Republic of Albania, based on its powers, on 10 January 2007, with the decision No. 01, adopted the "Public Procurement Rules" which consisted of standard tendering documents and different forms on public procurement.

Alignment of public procurement legislation with the EC Procurement Directives in the initial stages in Albania was partial. Partial compliance comes from the fact that based on the level of development of public procurement system in Albania, implementation of the several parts of the 2004 directives EC, did not consider it reasonable, for example, framework agreement and competitive dialogue, while on the other hand, the development of public procurement by electronic means was not foreseen, because the IT infrastructure was not sufficiently developed in Albania and there still was not a law on electronic signatures, reasons which made impossible the application of these provisions. Since the law No. 9643 of 2006, was partially in accordance with the EC

procurement directives, during years 2007-2008, a need for changes was presented. These changes have had as main goal the further approximation of legislation in those parts when it was not in accordance with EC directives. Any changes to the law on public procurement, is coupled in parallel with appropriate interventions in secondary legislation through decisions of the Council of Ministers.

The Assembly of Albania on 10 September 2007 approved the Law No. 9800, "*On some amendments and additions to Law No. 9643, On Public Procurement*". This law consists mainly in changing the conditions on the use of the procurement procedure without publication, by completely aligning section 33 of the Law on Public Procurement of Albania with Article 31 of the EC Procurement Directive No. 2004/18. In order to complete and further advance the legislative framework for public procurement, the Council of Ministers of Albania with Decision No. 659 of the date 3 October 2007, approved the "*Rules of public procurement by electronic means*". With this decision for the first time in the history of Albania's public functional and legal necessary requirements for conducting procurement procedures by electronic means were defined.

During December 2007 the Assembly of Albania, made some changes to the Law on Public Procurement. On 26.12.2007, through Law No. 9855, "*On some amendments to Law No. 9643, On Public Procurement*" new rules on the procurement of electricity and hydrocarbons were prepared. These changes also arranged the use of framework contracts. After the Assembly of Albania intervened in the public procurement law, then the Council of Ministers, through the Decision No. 135, dated 3 February 2008 and Decision No. 392 of the date 8 April 2008, drafted and adopted secondary legislation according to the requirements arising from the change of law.

During 2009, the Assembly of Albania again made some changes in the law on public procurement No. 9643. On 22.10.2009, through Law No. 10170, for some amendments to Law No. 9643, for public procurement, several amendments were made that further align public procurement legislation in Albania to the EC Procurement Directives No. 2004/17, 2004/18 and 2007/66. Significant changes in the law can be considered those concerning with establishing a new body that will deal with complaints in public procurement which

is called the Public Procurement Commission. This body is established by the Council of Ministers and consists of 5 members, of whom at least 3 should have law university degree. Other changes in this law are those related to public framework contracts, and those that deal with sectorial contracts for energy, water supply and transport services.

During 2010, the Assembly of Albania again made some changes in the legislation on public procurement. On 22.07.2010 through Law No.10309, some changes were made that largely relate to the clarification of the competences of the central procurement bodies. The powers of the Public Procurement Agency are removed in order to conduct investigations in public procurement, and are drifted to the Procurement Advocate.

Electronic procurement began to apply in Albania during 2008, based on provisions of the decision of the Council of Ministers of the Republic of Albania No. 659 of the date 3rd of October 2007, and by early 2009, Albania became one of the first countries in the world that had a mandatory electronic procurement system for all public procurement above the values of 3,000€. E-procurement application is considered as one of the greatest achievements since the beginning of the public procurement system in Albania.

The amendments and developments of 2009 and 2010 confirmed the progressive alignment of the PPL with the EC Directives. The incorporation within the scope of coverage of the PPL of entities operating in the utilities sectors, with a new chapter devoted to the procedures to be applied in these sectors has also brought the PPL largely into line with EC Directive 2004/17.⁵ Since 1995 until 2011, the Assembly of Albania has amended the law on public procurement nine times.

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Albania: The legislative framework on public procurement and concessions is not fully in line with the *acquis*. Efforts are required with regard to strengthening the institutional framework and clearly defining and delimiting the competencies of all public procurement institutions in order to avoid the overlapping of tasks and to remove the remaining loopholes in

the system. No comprehensive system of administrative monitoring and control of the application of public procurement rules and contracts have been introduced so far. Overall, preparations in the field of public procurement are moderately advanced.⁶

2. BOSNIA AND HERZEGOVINA

2.1. PUBLIC PROCUREMENT SYSTEM IN BOSNIA AND HERZEGOVINA 1998-2011

For the first time the field of public procurement in Bosnia and Herzegovina is regulated with the Decree on Procurement Procedures for Goods, Services and Works, which came into force on 18 August 1998, after publication in the Official Gazette of B&H No. 31/98. This document was based on the "UNCITRAL" Law of the year 1994. It can be ascertained that the first document on public procurement in B&H, was not sufficiently comprehensive for successful completion of the procurement procedures, and had some weaknesses such as:

- Procurement officers retained many competencies when awarding the contracts;
- Allowing that during the preparation of the technical specifications to specify the product name;
- Not clearly defining the manner of complaint review, and protecting the rights of dissatisfied bidders in the case of contract award;
- Flexibility in allowing the separation of the procurement requirements with the purpose of avoiding the use of transparent procedures;

Decree *per se* had no legal power, and somehow did not find an adequate enforcement at all levels of government in the territory of B&H. In May 2001, the Republic of Srpska approved a new law on procurement procedures for goods, services and works, which was prepared by the Ministry of Finance of the Republic of Srpska. This law was published in the Gazette of Republika Srpska No. 20/01, started to apply only in the territory of Republika Srpska, and was

based on the Decree on Procurement Procedures of the B&H Federation of 1998.

During 2001 and 2002, in the entire territory of the Federation of B&H began the preparation for designing a complete law on public procurement. This law which was finalized in 2004 established the first basis of a comprehensive public procurement system in B&H. Parliament of Bosnia and Herzegovina in the sessions on 23 and 27 September, 2004, adopted the Law on Public Procurement, which was published in the Official Gazette 49/04 on 2 November 2004. Under Article 57, provided that the law enters into force eight days after publication in the Official Gazette and therefore the first law on Public Procurement of Bosnia and Herzegovina entered into force on September 10, 2004. Entry into force on September 10 was mandatory only for joint institutions of Bosnia and Herzegovina at the state level. On the local level institutions under Article 56 of this law, within 60 days from the entry into force, the competent authorities of Brcko District shall remove from use the prior legislation on public procurement. This law presents common legislation and applies to all public procurement activities throughout the territory of the State of B&H, decentralizes public procurement system by shifting the responsibility to contracting authorities, requires emphasized transparency for the publication of notices for procurements above certain levels, and provides the way of reviewing complaints. The law on public procurement of 2004 is completed by a number of issued secondary legislations, such as: procurement regulations, procurement guidelines, standard bidding documents and the different forms. The law on public procurement of 2004 was based on the EC Procurement Directives, before 2004, but there were some discrepancies with these directives, as giving the priority to local companies when participating in the procurement processes.

According to the law on public procurement of 2004, in B&H, are established two independent institutions at the country level:

1. Public Procurement Agency, which responds to the B&H Council of ministers⁷,
2. Procurement Review Body, which responds to the B&H Assembly⁸

During 2005 and 2006 the B&H Assembly amended four times the law on public procurement of 2004, but all these were minor changes dealing only with the one matter of the law. According to articles 48.3 and 49.3, of the law on public procurement of B&H, it is provided that two central bodies are established within a period of three months. While the Public Procurement Agency was established, Procurement Review Body failed to be established in the foreseen deadline; therefore the Assembly of B&H during 2005 and 2006 amended four times the law on public procurement by extending the deadline for its establishment for additional three months until 31 March 2006.⁹

During 2006, the Assembly of B&H, also made some small amendments to the Law on Public Procurement of 2004, which was published in the Official Gazette of B&H No. 70/06 dated 04.09.2006. These changes are related to the case of concessions, and prohibiting the bidders to sign the procurement contracts, if they do not meet administrative requirements, professional, economic and technical criteria, for participation in the procurement activities. With the 2004 law, the bidder is required to fulfill these criteria in case of participating in the procurement processes.¹⁰ The Assembly of B&H on 29 January 2009, made an amendment in the law on public procurement of 2004, intervening only in raising the levels of procurement, and that could have been as a result of the inflation rate in B&H from 2004 until 2008.¹¹

During 2010, the Assembly of B&H, made a small intervention in public procurement law of 2004, which was approved on 30 July 2010, and that had to do with the issuance of final decision by the Procurement Review Body, and the possibility of filing the complaint on the decisions of the Procurement Review Body to the Court of B&H within 30 days from the date of receipt of the decision.¹²

From the period 1998 to 2011, there have been changes 9 times in the legislation on public procurement of B&H, but it can be ascertained that all these have been very minor with the exception of law on public procurement of 2004.

As regards to public procurement reform in B&H, it can be ascertained that the public procurement law of 2004, for the time has been among the laws which approximated the most to the EC

procurement directives, of all Western Balkan countries, but taking into account that for a long time until 2011 the necessary changes to public procurement law in B&H were not made, it can be concluded, that from all Western Balkan countries, public procurement legislation of B&H, is the least aligned with the EC procurement directives.

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Bosnia and Herzegovina: Overall, preparations in the field of public procurement remain at an early stage. A new Public Procurement Law fully incorporating the *acquis* remains to be adopted. Coordination and cooperation mechanisms between the relevant institutions require significant improvement, as do the operations of the PRB.¹³

3. CROATIA

3.1. PUBLIC PROCUREMENT SYSTEM IN CROATIA 1994–2011

Until after independence in 1991, the field of public procurement in Croatia was completely unknown. The first steps of public procurement in Croatia appeared with the Act on the Execution of the State Budget for 1994, which provides that all procurements that exceed the amount over 50,000 DEM are carried out through public tender. Although the Act does not describe the detailed rules on public procurement, but had to do with the Croatian State Budget, which required the expenditure of this budget to be done through public bidding. A significant advancement in the field of public procurement in Croatia is made by February 28, 1995, when the “Regulation on public procurement for goods, services, and award of contracts”, entered into force, which was based on the World Bank procurement rules. Two other regulations for public procurement in Croatia were published during the years 1996¹⁴ and 1997,¹⁵ but it can be inferred that they did not mark a significant advancement in any field of public procurement in comparison with that of 1995.

Major advancements in the field of public procurement in Croatia can be reported those in 1997. First law which has regulated the area of public procurement in a more comprehensive manner is adopted in

the Parliament of Croatia on 19 December 1997, "*Act on Procurement of Goods, Services and Award of Contracts*", and its implementation begins since 1998. This law as the laws of other countries in transition in Central and Southeast Europe was based on the "UNCITRAL" Model Law, in public procurement Guidelines of the World Bank and several procurement documents of GPA. This law has been in force for a period of four years, until late 2001, when the Republic of Croatia, prepared and promulgated a new law on Public Procurement, which was based on the EC Public Procurement Directives. Law was approved in the Parliament of Croatia on 14 December 2001, and entered into force on January 1, 2002. This law consists of 13 chapters and 80 articles.

According to this Law in Croatia two central public procurement institutions were established:

- Public Procurement Office, within the Government of Croatia, authorized for the supervision of implementation of the law on public procurement;
- Public Procurement Supervisory Commission, authorized for the review of the complaints in public procurement

With the establishment of these two central public procurement bodies, the institutional framework for implementing the Law on Public Procurement in Croatia was completed.

EC public procurement directives No. 17/2004 and 18/2004, also influenced the presenting of the need for amending the law on public procurement in Croatia. Croatian Parliament amended the previous Law on public procurement on 15 July 2005, and this law was promulgated in the Official Gazette No. 92/05, and entered into force on 1 October 2005. Almost all of the provisions of the EC public procurement directives of 2004 were incorporated in this law. Major changes in this law deal with: Transfer of right to use the negotiated procedure without publication, to contracting authorities without need for prior approval by Public Procurement Office, the removal of the right of the Government of Croatia to determine particular interest in public procurement, and adaptation of the procurement terminology with that of the EC.

During the years 2007 and 2008, two amendments to the Public Procurement Law in Croatia were made. On 3 October 2007, Parliament of Croatia approved some amendments which were published in the Official Gazette No. 110/07, and amendments of 2008 were approved by the Croatian Parliament 17 October 2008, and were published in the Official Gazette No. 125/08. Both these amendments regulated procurement procedures for supplies of goods, delivery of services and execution of works for all values, and were aimed to further align procurement legislation in Croatia with the relevant EC public procurement directives, and with advanced international practices in the field of public procurement. All these changes to public procurement legislation in Croatia in the continuum were conducted with the adoption of secondary legislation in accordance with changes made, as were: Regulation on publication of notices for public procurement, Regulation regarding the compilation of tender dossiers, and Regulation on the content and public procurement reports which were published in the Official Gazette of Croatia No. 04/09.

During 2010 in Croatia, a change was made in the legislation on public procurement. Croatian Parliament in the session on 5 February 2010 approved the *"Act on the State Commission for Supervision of Public Procurement Procedures,"* which was published in Official Gazette of Croatia No. 21/2010, and entered into force on 23 February 2010. This law regulates the powers and functioning of State Commission for Supervision of Public Procurement Procedures. According to this law The State Commission is an independent central body competent for reviewing the complaints in public procurement procedures, awarding concessions and choosing the private partner in the public private partnership projects.

During 2011, Croatian Parliament in the session of the date 15 July 2011 approved "Public Procurement Act", which was published in Official Gazette of Croatia No. 90/2011, and has entered into force on January 1, 2012. This law greatly advanced the public procurement system in Croatia and approximated apparently the public procurement system in Croatia with the requirements of the relevant EC public procurement Directives.

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Croatia: Overall, progress has continued in the field of public procurement. The alignment with the acquis is on track and nearing completion. Special attention should be paid to aligning the secondary legislation with the new Public Procurement Law, maintaining the co-ordination mechanisms, and enhancing the capacities of the institutions in the sector by means of the continuous training and professional development of their staff.¹⁶

4. KOSOVO

4.1. PUBLIC PROCUREMENT SYSTEM IN KOSOVO 1999-2011

Public Procurement in Kosovo began to appear immediately after the war in 1999. The first document which regulated the field of public procurement in Kosovo is Finance Administrative Instruction No. 2/1999 on Public Procurement, using the founts of the Kosovo Consolidated Budget, which started to apply from 15 December 1999. FAI No. 2/1999 has been based on the procurement rules of the World Bank and on the United Nations International Trade Law "UNCITRAL".¹⁷ Terminology used on public procurement in the Finance Administrative Instruction No. 2/1999 and procurement procedures are analogous to those of the procurement rules of the World Bank and UNCITRAL. According to FAI no. 2/1999 in Kosovo are established procurement institutions at both central and local level. At the central level are established two procurement bodies:

1. Public Procurement Regulatory Body, within the Ministry of Economy and Finance
2. Central Procurement Entity, within the Ministry of Public Services

Although on the occasion of issuance of the Finance Administrative Instruction No. 2/1999 it was intended that this instruction will cover the field of public procurement in Kosovo for a period of one year, this instruction has been in force for more than four years.

The first modern law on Public Procurement in Kosovo, No. 2003/17 is approved by Assembly of Kosovo on January 15, 2004 and entered into force on June 9, 2004.¹⁸ This law provides a more

comprehensive framework for public procurement in Kosovo compared with FAI No. 2/1999. The law is in accordance with the requirements of EU directives,¹⁹ but adapted to the conditions and circumstances of Kosovo. Law in a large extent enables the establishment of transparency while conducting the public procurement activities in Kosovo. In comparison with the prior instruction on Public Procurement, Law on Public Procurement in Kosovo brought major advances in the field of public procurement. The law establishes a more comprehensive system, based on sound procurement, and offers appropriate solutions regarding procurement procedures and really sets the higher standards than the EU directives on some important issues.²⁰ The Law on Public Procurement in Kosovo No. 2003/17 consists of 9 parts, 23 chapters and 121 articles:

According to the Law on Public Procurement No. 2003/17, in Kosovo are established two central bodies:

1. Public Procurement Regulatory Commission, which deals with monitoring of implementation of law on public procurement, review of complaints in procurement, preparation and promulgation of secondary legislation on public procurement and training of procurement officers.
2. Public Procurement Agency, whose task is approval of negotiated procedure without the publication of contract, shortening of tendering time limits, gathering of procurement planning, and based on this planning performing of centralized procurement for all contracting authorities of Kosovo

Although LPP has entered into force on June 9, 2004, its implementation in practice is followed by early difficulties. Establishment of two central public procurement bodies provided by law for the implementation of this law - PPRC and PPA - was made with a very large delay. While the PPRC began work with a delay of approximately eight months, on February 3, 2005, the PPA began work with an even greater delay of about 21 months - on March 8, 2006.²¹ In Kosovo, during this time are promulgated and issued several other laws that in some way have covered some parts that

were included in the LPP, and are created new institutions at the level of Kosovo that have covered several areas which were by then included in the Law on Public Procurement. While the two procurement directives of the European Commission, No.17/2004 and 18/2004, promulgated on January 31, 2004, have contributed to the amendment of the Law on Public Procurement No. 2003/17. Based on these changes is presented the need for commencement of the amendment to the Law on Public Procurement in Kosovo.

Assembly of Kosovo on February 8, 2007, approved amending of the Law on Public Procurement in Kosovo, known as Law No.02/L-99, whereas the promulgation by the SRSG has been made on June 6, 2007, and from this day has also entered into force. The amended Law on Public Procurement in Kosovo, No.02/L-99, has incorporated most of the provisions of two procurement directives of the European Commission, No.17/2004 and 18/2004, but not all those that are embodied in these two directives. The reasons why all provisions of these two directives are not incorporated is because Kosovo does not yet have a long tradition in the field of public procurement as other EU countries, and therefore it is thought that this would present difficulty in practical implementing of the law on public procurement, and while some requirements of the EC Procurement Directives, have been mandatory only to member states of the EU.²²

According to the Law on Public Procurement No. 02/L-99, Kosovo has only one procurement law, which covers the procurements for governmental institutions and for public companies. This law presents implementing difficulties in public companies and therefore it is required the issuance of a special law for public companies based on the EC Procurement Directive No. 17/2004.

According to the Law on Public Procurement of Kosovo No.02/L-99 in Kosovo are established three central procurement institutions:

- Public Procurement Regulatory Commission.- which responds to the Assembly of Kosovo and has regulative functions in public procurement;
- Procurement Review Body, - which responds to the Assembly of Kosovo and deals with the review of the complaints in the public procurement;

- Public Procurement Agency.- which responds to the Government of Kosovo and has executive functions in public procurement;

During 2010, the Assembly of Kosovo changed the law on public procurement, by rewriting it. This law, which entered into force on December 1, 2010, known as Law No. 03/L-241, consists of 11 parts, 24 chapters and 124 articles. At the end of law is presented Appendix 1, describing the 12 cases which are considered as fraud in procurement. With the Law on Public Procurement No.03/L-241 remain three central procurement institutions in Kosovo:

- Public Procurement Regulatory Commission
- Public Procurement Agency
- Procurement Review Body

Although this law was prepared as a new law, it can be concluded that it did not meet basic requirements arising from the EC Procurement Directives of 2004. In this affected large number of changes made to the Budget and Finance Committee when reviewing the final text prepared by the working group, and which was fully approved by the Assembly on the second reading of the Law on Public Procurement on September 30, 2010.²³ This law has been in force only 10 months until it was changed during 2011, and therefore the PPRC has not prepared at all secondary legislation to implement this law, but has instructed the contracting authorities that they can use secondary legislation according to the previous law on procurement No.02/L-099.²⁴ Since this law was not in compliance with EC Procurement Directives, there was a need to soon change it by rewriting it again as a new law. The new Law on Public Procurement No. 04/L-042, was approved by the Assembly of Kosovo on August 29, 2011, was published in the Official Gazette of Kosovo, No. 18 on September 19, 2011, and entered into force on October 05, 2011. Under this law in Kosovo remain two central procurement bodies: Public Procurement Regulatory Commission and Procurement Review Body, and whereas the Central Procurement Agency passes under the Ministry of Finance.

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Kosovo: Progress can be reported in the area of public procurement in Kosovo. A new version of the law was adopted in August 2011, which addresses most of the deficiencies of the previous law and significantly increases the compatibility with EU standards. It also reinforces the independence of procurement officers.²⁵

5. MACEDONIA

5.1 .PUBLIC PROCUREMENT SYSTEM IN MACEDONIA 1996–2011

The first document in the field of public procurement in Macedonia is “Regulation on Public Procurement”, which was approved by the Government of Macedonia on 22 November 1996, and is published in the Official Gazette of Macedonia No. 18/96. For implementation of this regulation it is provided that at the latest by 31 January 1997,²⁶ to form the Government Commission for Public Procurement. This regulation contains 77 articles and is based on the “UNCITRAL” Law, and the World Bank Procurement Rules, but there are also some similarities with the EC Procurement Rules, particularly regarding certain procurement terminologies. In this regulation there have been some minor amendments by the Government of Macedonia on 19.08.1997, which are published on the Official Gazette of Macedonia No. 37/97.

The first modern law on public procurement in Macedonia was adopted in the Macedonian Parliament on 4 June 1998, and is published in the Official Gazette No. 26/98. This law establishes a comprehensive database of public procurement system in Macedonia, and it is obligatory to apply by the central, local level, and public companies. The purpose of law is to promote transparency, enabling participation in procurement activities of all interested bidders both within, and outside Macedonia. This law was only partially in line with international standards and best practices in public procurement. During the years 2002 and 2003 there have been some minor amendments to the Law on Public Procurement in Macedonia, which are published in the Official Gazettes No. 21/2002 and No. 24/2003.

A new law on public procurement in Macedonia has been approved by the Parliament of Macedonia on 26 March 2004, and has published the Official Gazette No. 19/2004, and entered into force 4 April 2004. This law progresses even further the public procurement system in Macedonia by describing methods and procedures for conducting procurement activities, and at the same time establishes the legislative framework of public procurement system in Macedonia. Based on this law have been prepared and published 11 parts of secondary legislation on public procurement which still completes the public procurement legislation. It can be concluded that this law was not in full compliance with the requirements of the EC procurement directives and with best international practices for public procurement. These discrepancies had to do with some administrative barriers that hinder a genuine competition, then the body that dealt with complaints - Procurement Complaints Committee, was not sufficiently independent, as members of this institution were engaged with part time and the law did not foresee with any provision green procurement. The same law applies for the classical and utilities sectors. This law was slightly amended during 2005, and this amendment had to do with the possibility of introducing electronic procurement in Macedonia.

Since the introduction of the public procurement system in Macedonia, it can be concluded that the greatest advancements in this field were made during 2007, by preparing a completely new law on public procurement. This law was approved by Parliament of Macedonia on 6 November 2007,²⁷ is published in the Official Gazette No. 136/2007, and entered into force on 1 January 2008. This law consists of 12 chapters and 238 articles. In this law most of the requirements arising from the EC procurement directives of 2004 and 2007 were incorporated. This law envisages the establishment of the State Appeals Commission,²⁸ which replaces the Complaints Committee, and has a complete independence within the Assembly of Macedonia, which is in accordance with EC Directive No. 2007/66. Other advancements made with this law are: the inclusion of a separate chapter that regulates public procurement in utilities sector, then the inclusion of new procurement procedures such as competitive dialogue, framework agreements, centralized procurement and advancement of electronic procurement. Based on

this law the 14 secondary acts were formalized, enabling improvement of public procurement system in Macedonia, as well as facilitating the implementation of the law. In these secondary acts are included: standard tendering forms, contract notices and contract awards notices, operational guidelines, as well as some brochures for public procurement.

During 2008 a small amendment has been made in the law on public procurement of Macedonia.²⁹ This amendment is approved by the Parliament of Macedonia on 13.10.2008, is published in the Official Gazette 130/08, and entered into force on 23.10.2008. These changes were related to: Giving the competencies to Public Procurement Bureau for training and certification of procurement officers, increasing values of procurement levels, shortening the tendering time limits, as well as requirements by which the contracting authorities in Macedonia are obliged to implement e-procurement 100% from 1 January 2012.³⁰

During 2010 there some very minor changes in the law on public procurement in Macedonia were made, which were approved in the Parliament of Macedonia, on 15 July 2010,³¹ published in the Official Gazette No. 97/10 and entered into force on July 28, 2010. These amendments had to do mainly with budgetary issues that are related to public procurement and some harmonization of the Criminal Code of the Republic of Macedonia.

During 2011 there were two intrusions into law on public procurement in Macedonia. These changes were approved first time in the Macedonian Parliament on 1 April 2011³², published in the Official Gazette No. 53/11, a second time they were approved by the Parliament of Macedonia on 27 December 2011³³ and were published in the Official Gazette No.185/11. Even these changes may be considered minor, and mostly related to the definition of evaluation criteria with respect to the implementation of electronic auctions, as well as description of procedures for the procurement of diplomatic and consular missions of the Republic of Macedonia.

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Macedonia: Progress was made in the area of public procurement. Procurement procedures

have been made more transparent and enforcement was stepped up, but the administrative capacity of the contracting authorities is still weak. The legal environment for the enforcement of remedies was improved. The administrative capacity in the field of remedies and concessions remains weak. Overall, preparations in the area of public procurement are well advanced.³⁴

6. MONTENEGRO

6.1. PUBLIC PROCUREMENT SYSTEM IN MONTENEGRO 2001-2011

Public procurement in Montenegro for the first time begins to appear in 2001. Parliament of Montenegro on 8 August 2001 approved the first law on public procurement, which was published in the Official Gazette of Montenegro No. 40/2001³⁵. This law was based on the procurement rules of the World Bank and the Law "UNCITRAL", even with regard to procurement procedures as well as used terminology. The law regulates in detailed manner the application of procurement procedures, and determines which public institutions are financed from the state budget, and which institutions are required to implement the law. For implementation of this law is required to form the central body called the Commission for Public Procurement, which has the task of monitoring the implementation of the law. Immediately after the entry into force of the law, a number of secondary acts were prepared, including standard tendering documents and other forms, like those for opening and evaluation of bids. This law has led public procurement in Montenegro for a period of 5 years until 2006.

A completely new law and based on the EC Procurement Directives is prepared in Montenegro during 2006. This law was approved in the Assembly of Montenegro on 10 July 2006, has been published in the Official Gazette No. 46/06, dated July 21, 2006, and entered into force 8 days after the publication in the official gazette. This law is harmonized with Directive No. 2004/18, which deals with procurement in public sector, the EC Directives No. 89/665 and 92/13, which deals with the review of complaints. Directive No. 2004/17 is not incorporated at all in this law but the same provisions of the law are applied also for the utilities sector, as ones for classic

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sector, so this law does not foresee differences between classic and utility sector. According to this law two central public procurement bodies are established in Montenegro:

- Directorate for Public Procurement;
- Commission for Control of Public Procurement Procedure;

Directorate for Public Procurement is established within the Ministry of Finance and has started to function since 1 June 2007, with the following duties and responsibilities:

- Takes part in the preparation of the law, secondary legislation and other normative acts in the field of public procurement;
- Provides interpretation and advice in the field of public procurement for interested parties;
- Participates and cooperates in the training of officers involved in public procurement;
- Publishes in the web-site contract notices and contract award notices;
- Collects data from contracting authorities and keeps appropriate records;
- Submits the annual report on public procurement to the Government of Montenegro;
- Cooperates internationally with institutions and experts in the field of public procurement;

Public Procurement Commission, established in October of 2001, based on prior law on public procurement, continued working under the name Commission for Control of Public Procurement Procedure. This commission is an independent body, led by the President and two members appointed by the Government of Montenegro. Commission for Control of Public Procurement Procedure has the following competences and responsibilities:

- Reviews complaints of the tenderers and issues decisions on those complaints;

- Examines the regularity of the Law, proposes and undertakes measures to correct the irregularities, to ensure competitive behavior of bidders and transparency of public procurement;
- Sets the principles for uniform application of the law;

Law on public procurement in 2006, in Montenegro foresees the use of new procedures for public procurement, preparation of procurement planning preparation and its publication in the website in the beginning of the year, establishing the committee for opening and evaluation of bids, the rights of contracting authority to require additional explanations in abnormally low tenders, as well as cases in which the contracting authority can cancel the procurement activity. Based on this law, are also prepared 18 secondary acts on public procurement which are published in the Official Gazette of Montenegro No.71/06. In these secondary acts are included tender dossiers for goods, works and services, contract notice and contract award notice forms, forms for opening and evaluation of bids, and some regulations for public procurement.

During 2009-2010, public procurement institutions in Montenegro began preparations for drafting a new law on public procurement. This law was approved in the Assembly of Montenegro on July 29, 2011, is published on August 15, 2011 in the Official Gazette No. 42/11, while according to the latest article it is foreseen that the new law on public procurement in the Republic of Montenegro begins to apply from 1 January 2012.³⁶ The main purpose of preparing a new law on public procurement in Montenegro, was the regulation of public procurement system, and ensuring legality of spending in case of spending public funds, in accordance with clearly defined procedures and harmonization with EC standards and procedures. In the new law are incorporated requirements of directive No. 2004/17, the utilities sector, as well as the requirements of EC Directive No. 2007/66, in the field of legal treatment of complaints. The new law also requires that when carrying out procurement activities in Montenegro, the Common Procurement Vocabulary (CPV)³⁷ applies and provides the conditions and ways of developing electronic procurement.³⁸ This law consists of 9 chapters and 155 articles. Law even further advanced the public procurement system in Montenegro, and approximated the public procurement system in

Montenegro with the requirements of the relevant EC Directives on public procurement.

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Montenegro: Good progress can be reported in the area of public procurement, but further steps still need to be taken towards alignment with the *acquis* and adoption of the relevant implementing legislation. Administrative capacity has been strengthened and the transparency of the procedures has improved somewhat. Conditions to prevent and fight corruption in public procurement are being put in place. Yet, the overall institutional set-up for public procurement, with a high number of contracting authorities, raises concerns about the capacity fully to implement the legislation on procuring and tendering and to ensure proper monitoring of contracts.³⁹

7. SERBIA

7.1. PUBLIC PROCUREMENT SYSTEM IN SERBIA 2002–2011

The field of public procurement in Serbia, for the first time is regulated with law on public procurement of 2002 which was published in the Official Gazette No. 39/2002, and entered into force on 13 July 2002. The law consisted of 11 chapters, 152 articles and two groups of annexes. This law establishes the public procurement system in Serbia, and establishes the first basis of public procurement. For the preparation of this law is taken as a model “UNCITRAL” Law, the World Bank’s Guidelines for public procurement, the earlier EC Directives on public procurement and public procurement law of Slovenia. The law requires that in Serbia is established Office of Public Procurement,⁴⁰ as a separate institution for performing professional issues in the field of public procurement, in order to create conditions for economic, efficient and transparent use of public funds, by promoting competition and equal treatment to suppliers in procurement procedures. This office is required to commence work at the latest within one year of entry into force of this law, and until the establishment of this office its competencies will pursue Republican Directorate of Joint Affairs.⁴¹ A separate chapter of this law, is dedicated to the protection of the rights of bidders, which

power was given to the Commission for Protection of Bidders Rights,⁴² within the Office of Public Procurement. Commission for Protection of Bidders Rights consists of the president and four members who are proposed by the Minister of Finance and Economy, and are appointed by the Government of Serbia. In order to complete the legislation on public procurement in Serbia during the first quarter of 2003, some parts of secondary legislation are issued, consisting of public procurement regulations, forms for notice and award of contract, and standard forms of tender dossiers. Regarding the first law on public procurement of Serbia in 2002, it can be ascertained that in the greater part it meets public procurement international standards for that time, as far as the principles of procurement procedures, requirements for transparency, technical specifications, and contract award criteria are considered, and that it is quite close to the EC Procurement Directives No. 92/50, 93/36, 93/37 and 93/38.

During 2004, several amendments were made in the law on public procurement of Serbia, which are published in the Official Gazette No. 55/2004 and entered into force on 1 July 2004. These changes are mainly dealing with the Commission for the Protection of the Rights of Bidders, which is within the Office of Public Procurement, but with complete independence in decision making. Other changes have to do with increasing levels of procurement, based on the rate of inflation, strengthening the powers of the Public Procurement Office, eliminating the requirement for prior approval by the Public Procurement Office in cases where procuring entities implement the negotiated procedure without notice for emergency procurements. Some amendments which were included in the law of 2004, are not in accordance with EC Procurement Directives and inconsistent with principles of the Treaty of Rome. These criteria have to do with giving local bidders priority during evaluation of bids, in which case the evaluation committee is allowed to propose for the contract award local company if it has offered the highest price up to 20%, in comparison with foreign companies.⁴³ Setting these criteria is in a complete contradiction with Article 12 of the Treaty of Rome: Prohibition of discrimination based on nationality and Article 49 of this Treaty: Freedom to provide services.

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During 2005 the work to prepare the new draft - law on public procurement in Serbia began. Time for preparation of this draft - law was about two years until mid 2007. This draft law is approved by the Government of Serbia in January 2008, and sent to parliament for further procedures. Serbia's Parliament approved it on 22 December 2008; the law was published in the Official Gazette Nr.116/2008, and entered into force on 6 January 2009. The law is harmonized with EC Directive 2004/17 and 2004/18, and with procedures which apply to European Union countries in the field of public procurement.⁴⁴ The law contains 11 chapters, 127 articles and 2 annexes. As the biggest advancement in this law can be considered:

- Two central public procurement institutions were given more competencies and a bigger independence. The Republic Commission for the Protection of Rights in Public Procurement Procedures responds to the Assembly of Serbia, which is in compliance with EC procurement directive No. 2007/66, while the Public Procurement Office responds to the Government of Serbia;
- Introducing electronic procurement;
- Certification of procurement officers;
- Including a separate chapter which regulates the procurement procedures for the utilities sector;

But some of the provisions of this law, which are not in accordance with the EC procurement directives, can be considered:

- Priority is given to local companies for 20% compared to foreign companies,⁴⁵ during the evaluation of bids;
- Are introduced 14 cases in total,⁴⁶ in which may be exempted implementation of procurement law and which presents more situations than required by the EC public procurement directives;

EC Progress Report for 2011 gives the following assessment for the situation of the public procurement in Serbia: Serbia's legislation on public procurement is partially aligned with the EU *acquis*. A strategy

for upgrading the public procurement system in Serbia was adopted in September 2011. The administrative capacity of all key institutions forming part of the public procurement system, especially the Ministry of Finance, needs to be significantly strengthened. Decisions adopted by the Commission for Protection of Bidders' Rights have to be enforced effectively. Mechanisms need to be instituted for coordination between the main stakeholders, including anti-corruption, audit and judicial institutions, notably with a view to reducing corruption in public procurement. Overall, Serbia will have to make additional efforts to align with the EU *acquis* in the area of public procurement and to implement it effectively in the medium term.⁴⁷

CONCLUSION

This paper presents the developments and reforms of public procurement in Western Balkan countries, since the inception until December 2011. In the first phases of establishment of public procurement, almost all countries in transition, including Western Balkans, have had similar difficulties, and that would be little experience of procurement officers, as well as a market which is not developed enough for a genuine competition. All Western Balkan countries in the beginning of establishment of public procurement system were based in the "UNCITRAL" law and the World Bank procurement rules. Besides the advancement of the public procurement system and the completion of the legislation, these countries have adopted this legislation in accordance with the EC procurement directives. This is mainly because Balkan countries which aim to become members of the EU need to harmonize their legislation in general with that of the EU, and this is required also for the public procurement legislation.

NOTES

¹<http://www.tacitus.nu/historical-atlas>

²THAI V. Khi, *Advancing Public Procurement: Practices, Innovation*

and Knowledge Sharing PrAcademics Press Boca Raton,Florida, USA,page 1.

³ GREEN PAPER,PUBLIC PROCUREMENT IN THE EUROPEAN UNION:EXPLORING THE WAY FORWARD;Communication adopted by the Commission on 27th November 1996.

⁴The model of UNCITRAL Law is prepared primarily to assist States that wish to adapt or to improve the country's regulation on public procurement;Sue Arrowsmith;John Linareli;Don Wallace. Jr.:“Regulating Public Procurement”-National and International Perspectives 2000;page 88; Botues: KLUVER LAW INTERNATIONAL;The Hague-London-Boston.

⁵ OECD/SIGMA: Assessment Albania 201;page 23.

⁶ EUROPEAN COMMISSION:ALBANIA 2011 PROGRESS REPORT - COMMISSION STAFF WORKING PAPER; Brussels,12.10.2011-SEC(2011).

⁷ Law on Public Procurement in B&H(2004);Article 48; www.javnenabavke.ba.

⁸ Law on Public Procurement in B&H(2004);Article 49; www.javnenabavke.ba.

⁹ Law on Amendments to the Law on Public Procurement B&H; "Official Gazette B&H " No.19/05; No.52/05;“No. 8/06 and No.24/06.

¹⁰ Law on Public Procurement in B&H(2004);Article 23; www.javnenabavke.ba.

¹¹Law on Amendments to the Law on Public Procurement B&H; "Official Gazette B&H" No.12/09.

¹²Law on Amendments to the Law on Public Procurement B&H; "Official Gazette B&H" No.60/10,date 26.07.2010.

¹³ EUROPEAN COMMISSION: BOSNIA AND HERZEGOVINA 2011 PROGRESS REPORT- COMMISSION STAFF WORKING PAPER;Brussels,12.10.2011;SEC(2011).

¹⁴Regulation for procurement procedures for goods,services and works(29 March 1996)Official Gazette of Croatia,No.25/96.

¹⁵Regulation for procurement procedures for goods,services and works(28 March 1997)Official Gazette of Croatia,No.33/97.

¹⁶ EUROPEAN COMMISSION:CROATIA 2011 PROGRESS REPORT-COMMISSION STAFF WORKING PAPER; Brussels,12.10.2011;SEC(2011).

¹⁷Model of the UNICTRAL LAW has been primarily changed to assist countries that wish to adopt or improve the country's regulation on public procurement; Sue Arrowsmith;John Linareli;Don Wallace. Jr.:“Regulating Public Procurement”-National and International Perspectives(2000);page 88; Publisher:KLUVER LAW INTERNATIONAL;The Hague-London-Boston.

¹⁸ DULI, Ilaz (2008)“Public Procurement in Kosovo”Publisher: “University for Business and Technology”Prishtina,page 49.

¹⁹Declaration on compliance of the Law with the EU Procurement Directives.

²⁰ World Bank: Kosovo Operational Procurement Review;June 2004;Operational Policy and Services Unit Europe and Central Asia Region-page 9.

²¹ DULI, Ilaz(2008)“Public Procurement in Kosovo ”Publisher: “University for Business and Technology”Prishtina,page 83.

²² DULI, Ilaz(2008)“Public Procurement in Kosovo”Publisher: ”University for Business and Technology”Prishtina,page 84

²³Assembly of Kosovo;Minutes of the plenary meeting of the date 30.IX.2010;www.assembly-kosova.org

²⁴Notice for Contracting Authority;09.12.2010;<http://krpp.rks-gov.net>

²⁵ EUROPEAN COMMISSION: KOSOVO 2011 PROGRESS REPORT-COMMISSION STAFF WORKING PAPER; Brussels, 12.10.2011;SEC(2011).

²⁶ Regulation on Public procurement-22 November 1996;Official Gazette of Macedonia No.18/96;Article 6.

²⁷ Law on Public Procurement in Macedonia No.07-4748/1;<http://bjn.gov.mk>.

²⁸ Law on Public Procurement in Macedonia No.07-4748/1;Article 200;<http://bjn.gov.mk>.

²⁹ Law on Public Procurement in Macedonia No.07-4490/1;<http://bjn.gov.mk>.

³⁰ Law on Public Procurement in Macedonia No.07-4748/1;Article 24;<http://bjn.gov.mk>.

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- ³¹ Law on Public Procurement in Macedonia No.07-3210/1; <http://bjn.gov.mk>.
- ³² Law on Public Procurement in Macedonia No.07-1983/1; <http://bjn.gov.mk>.
- ³³ Law on Public Procurement in Macedonia No.07-5399/1;<http://bjn.gov.mk>.
- ³⁴ EUROPEAN COMMISSION: THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA 2011 PROGRESS REPORT-COMMISSION STAFF WORKING PAPER;Brussels, 12.10.2011;SEC(2011).
- ³⁵Law on Public Procurement in Montenegro, Number: 01-1014; www.mipa.cg.yu.
- ³⁶ Law on Public Procurement of Montenegro(2001),Article 155; www.djn.gov.me.
- ³⁷ Law on Public Procurement of Montenegro(2011), Article 41; www.djn.gov.me.
- ³⁸ Law on Public Procurement of Montenegro(2011), Chapter IV,Articles 114-116;www.djn.gov.me .
- ³⁹ EUROPEAN COMMISSION:MONTENEGRO 2011 PROGRESS REPORT-COMMISSION STAFF WORKING PAPER; Brussels, 12.10.2011-SEC(2011).
- ⁴⁰ Public Procurement Law in Serbia(2002);Official Gazete No.39/2002,Article 18.
- ⁴¹ Public Procurement Law in Serbia(2002;Official Gazete No.39/2002,Article 150.
- ⁴² Public Procurement Law in Serbia)(2002);Official Gazete No.39/2002,Chapter VIII;page 58.
- ⁴³ Public Procurement Law in Serbia(2004);Official Gazete No.55/2004, Article 55;<http://www.ujn.gov.rs>.
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- ⁴⁵ Public Procurement Law in Serbia,(2008);Official Gazette No.116/2008, Article 52;<http://www.ujn.gov.rs>.
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- ⁴⁷ EUROPEAN COMMISSION: ANALYTICAL REPORT - COMMISSION STAFF WORKING PAPER; Brussels,12.10.2011; SEC(2011).

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