

**Report of the Secretariat to the Ministerial Council
on
Implementation of Article 6 “Purchasing by public
bodies” of the Energy Efficiency Directive
2012/27/EU**

10 October 2019

1. Background

Within the framework of Energy Community Acquis, each Contracting Party shall transpose into national legislation Directive 2012/27/EU on Energy Efficiency (EED) as incorporated and adapted by Ministerial Council Decision 2015/08/MC-EnC, before 15 October 2017. According to paragraph 8 of Article 24 “Review and Monitoring of implementation” of DIRECTIVE 2012/27/EU adapted by Ministerial Council “The Secretariat shall review the effectiveness of the implementation of Article 6 and shall submit a report to the Ministerial Council of the Energy Community. The report shall be accompanied, if appropriate, by proposals for further measures.”

In order to acquire the information, the Energy Community Secretariat prepared a questionnaire to be filled by Contracting Parties regarding the implementation of Article 6. In general, procurement for public bodies is undertaken by a national Procurement Agency and it has a cross-cutting nature. In order to properly implement Article 6, Contracting Parties may need to amend legislation and practices that impact other sectors than energy and other institutions.

2. Legal obligations under Article 6

Article 6 of the EED reads as follows:

1. *Contracting Parties shall ensure that central governments purchase only products, services and buildings with high energy-efficiency performance, insofar as that is consistent with cost effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, as referred to in Annex III.*

The obligation set out in the first subparagraph shall apply to contracts for the purchase of products, services and buildings by public bodies in so far as such contracts have a value equal to or greater than the thresholds laid in each Contracting Party’s national legislation. Each Contracting Party shall submit its national thresholds to the Energy Community Secretariat, by 15 October 2017.

The obligation referred to in paragraph 1 shall apply to the contracts of the armed forces only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces.

2. *Contracting Parties shall encourage public bodies, including at regional and local levels, with due regard to their respective competences and administrative set-up, to follow the exemplary role of their central governments to purchase only products, services and buildings with high energy-efficiency performance. Contracting Parties shall encourage public bodies, when tendering service contracts with significant energy content, to assess the possibility of concluding long-term energy performance contracts that provide long-term energy savings.*
3. *Without prejudice to paragraph 1, when purchasing a product package covered as a whole by a delegated act adopted under Directive 2010/30/EU, as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC, Contracting Parties may require that the aggregate energy efficiency shall take priority over the energy efficiency of individual products within that package, by purchasing the product package that complies with the criterion of belonging to the highest energy efficiency class.*

3. The Questionnaire

In April 2019, the Secretariat sent out to all Contracting Parties the questionnaire presented in Table 1 to gather data with regards to the state of transposition and implementation of Article 6 of the EED.

The information required was divided in 5 main areas according to their respective national legal system.

Table 1

National set-up	Information Requested
Primary Law on Energy Efficiency	Does the National EE Law fully transpose the Article 6 of EED? If not, are there any drafts or timeline for implementation?
National Procurement Law	Does the National Procurement Law Transpose or take into consideration any requirements of Article 6 of EED? If not, are there any drafts or timeline for implementation?
Secondary legislation	Is there any secondary legislation approved in line with the Article 6 of EED or any criteria of energy efficiency in general? Please also include any reference towards the expected timeline of approval.
National Strategies and Action Plans	Do your National Strategies and Action Plans of Energy include measures or plans to adopt Article 6 in any way? Please include in your response also the expected timeline for implementation of the measure, as described in the Plan or Strategy.
Institutional Set Up	What is the body responsible for Public Procurement (including Article 6). Is the Energy Efficiency Agency or Ministry of Energy involved in any way in Green Public Procurement or otherwise give opinion regards procuring energy efficiently?
Other Initiatives	Are there any initiatives (local government/donor project etc.) that include energy efficient procurement and might provide for a basis on which National procurement can be based?

4. Information acquired through the questionnaire

The information was processed by the Secretariat and is presented below:

4.1 Overall transposition level

In general, most of the Contracting Parties have undertaken measures in order to implement Article 6 of the EED.

Almost all CPs have transposed Article 6 their national Laws on Energy Efficiency; however further steps are needed in order to fully implement it.

In most countries, the national procurement authorities will be responsible for preparing rulebooks, or approving regulations for procurement goods or services that are requested by a line ministry.

The implementation of Article 6 of the EED is included in some of the Contracting Parties in their own planning and strategic documents as a way to further strengthen the basis for implementation.

Out of all Contracting Parties, Montenegro and Serbia are by far most advanced in terms of legal measures and implementation efforts towards full compliance with Article 6.

Transposition level in each Contracting Party is presented in Table 2.

Table 2

OVERALL LEVEL OF TRANSPOSITION				
National set-up	Information Requested	Fully	Partially	No Transposition
Primary Law on Energy Efficiency	Does the National EE Law fully transpose the Article 6 of EED? If not, are there any drafts or timeline for implementation?	Kosovo* North Macedonia Moldova Montenegro Serbia	Albania Georgia Bosnia and Herzegovina	Ukraine
National Procurement Law	Does the National Procurement Law Transpose or take into consideration any requirements of Article 6 of EED? If not, are there any drafts or timeline for implementation?	North Macedonia Montenegro Serbia	Moldova Ukraine	Albania Bosnia and Herzegovina Georgia Kosovo*
Secondary legislation	Is there any secondary legislation approved in line with the Article 6 of EED or any criteria of energy efficiency in general? Please also include any reference towards the expected timeline of approval.	Montenegro Serbia		Albania Bosnia and Herzegovina Georgia Kosovo* North Macedonia Moldova Ukraine
National Strategies and Action Plans	Do your National Strategies and Action Plans of Energy include measures or plans to adopt Article 6 in any way? Please include in your response also the expected timeline for implementation of the measure, as described in the Plan or Strategy.	Albania Bosnia and Herzegovina Georgia Montenegro North Macedonia Serbia Ukraine		Kosovo* Moldova

Institutional Set Up	Is the Energy Efficiency Agency or Ministry of Energy involved in any way in Green Public Procurement or otherwise give opinion regards procuring energy efficiently?		Bosnia and Herzegovina	Albania Kosovo* North Macedonia Georgia Moldova Montenegro Serbia Ukraine
Other Initiatives	Are there any initiatives (local government/donor project etc.) that include energy efficient procurement and might provide for a basis on which National procurement can be based?	Georgia Montenegro Serbia	Ukraine	Albania Kosovo* North Macedonia Moldova

- 1- Contracting Parties with the best implementation : Montenegro and Serbia
- 2- Contracting Parties with least implementation: Bosnia and Herzegovina (due to various jurisdictions), Kosovo*, and Moldova.

4.2 Implementation level in each Contracting Party

Based on the answers to the Questionnaire, a detailed implementation status in each Contracting Party is presented in Table 3

Table 3 - Question 1

Level of implementation of Article 6 of EED in national Energy Efficiency Law		
Country	Level of Transposition	Comments
Albania	Partial transposition	The Energy Efficiency Law is currently amended to include Article 6
Bosnia and Herzegovina	Partial Transposition	Federation of Bosnia and Herzegovina and Republika Srpska transposed it District Brcko not yet
Kosovo*	Fully transposed	
North Macedonia	Fully transposed	New Draft EED compliant Law was approved by the Cabinet of ministers in October 2019; Parliament adoption is pending.
Georgia	Partial transposition	National Energy Efficiency law is still in draft phase. Article 6 of EED will be transposed in such a way that the Procurement Public Body will elaborate the rules and guidelines for Energy Efficiency in Public Procurement.
Moldova	Fully transposed	
Montenegro	Fully transposed	
Serbia	Fully transposed	
Ukraine	Not Transposed	The Law on Energy Efficiency is not yet adopted by the Parliament

Table Nr.3 – Question 2

Does the National Procurement Law transpose or take into consideration any requirements of Article 6 of EED?		
Country	Answer	Comments
Albania	No	The National Procurement Law does not take into consideration any requirement regarding this article
Bosnia and Herzegovina	Yes	The Law on Public Procurement of Bosnia and Herzegovina (Official Gazette of BiH, 39/14) includes a provision on energy efficiency (Article 54 of the Law), but does not define any binding energy efficiency criteria.
Kosovo*	No	The National Procurement Law does not take into consideration any requirement regarding this article
North Macedonia	Yes	New Procurement Law approved 2019
Georgia	No	New draft law on Energy Efficiency, obliges State Procurement Agency to elaborate rules and guidelines on implementation of Energy Efficiency in the public procurement.
Moldova	Partially	Public procurement must respect the principles of environment protection and sustainable development.
Montenegro	Yes	The public procurement Law recognizes level of energy efficiency as possible requirements, or as possible sub-criteria under the criteria related to economically most advantageous offer.
Serbia	Yes	Procurement Law, Article 13, prescribes the obligation of including environmental and energy efficiency criteria in purchasing of goods, services and works.
Ukraine	Partially	On 19 September 2019, the Ukrainian Parliament passed a revised Public Procurement Law, aimed at making public procurement more efficient and aligning legislation with EU Directives 2014/24 and 2014/25.

The majority of Contracting Parties do not have any provisions in their national Procurement Law regarding Energy Efficiency or Article 6 of the EED. North Macedonia, Montenegro and Serbia make an exception with their requirements for energy efficiency. North Macedonia has only recently approved a new Procurement Law, while Montenegro fully recognizes energy efficiency as possible Sub-Criteria under the criteria related to the economically most advantageous offer. Meanwhile, Moldova has in place only some general wording about the criteria to respect the principles of environment protection and sustainable development.

Table 3 – Question 3

Is there any secondary legislation approved in line with the Article 6 of EED or any criteria of energy efficiency in general?		
Country	Answer	Comments
Albania	No	There is no secondary legislation to implement this provision
Bosnia and Herzegovina	No	It is necessary to amend the Law on Public Procurement of Bosnia and Herzegovina before making any changes in secondary legislation.
Kosovo*	No	The Ministry has appointed an official to draft the Administrative Instruction (AI) on Energy Efficiency Requirements for Purchasing Products, Services and Buildings by Central Government. The deadline to draft this AI is 30th of June 2019, and the deadline to be signed by the minister is last quarter of 2019.
North Macedonia	No	After obtaining a positive opinion from the Public Procurement Bureau, the Minister shall adopt a rulebook regulating the methodology for determining the level of energy efficiency and other requirements during the implementation of public procurement procedures for goods and services within 6 months of its adoption
Georgia	No	According to draft Energy Efficiency law, the Public Procurement Agency shall elaborate rules and guidelines on implementation of energy efficiency criteria in the public procurement
Moldova	No	The Law 139/2018 does not envisage the elaboration of any secondary legislation on green procurements. A specific Guidelines on sustainable procurements was drafted in 2017, in frame of EaP Green initiative, which shall be updated soon based on the new legal framework.
Montenegro	Yes	Rulebook on methodology for determining energy efficiency level in public procurement procedure ("Official Gazette of Montenegro", 09/16) was adopted in February 2016.
Serbia	Yes	Rulebook on Minimal Energy Efficiency Criteria For Purchasing Goods
Ukraine	No	Adoption of secondary legislation in line with Article 6 EED is envisaged by the draft law "On energy efficiency" – not adopted yet.

Apart from Montenegro and Serbia that have already approved rulebooks for the methodology of determining energy efficiency level in public procurement, no other country has any secondary legislation in force regarding the implementation of Article 6. Different approaches have been taken by the other countries. Kosovo* has already appointed an official to draft an Administrative Instruction that will be expected to be ready within 2019. North Macedonia will approve a Rulebook only after having an approval by the Public Procurement Bureau. In Georgia the responsible institution according to the Draft Energy Efficiency Law will be the Public Procurement Agency; this will be tasked with elaborating rules and guidelines. The

Moldovan Law on Energy Efficiency does not envisage the elaboration of any secondary legislation.

Overall most of the Contracting Parties are in the process of compiling or approving some form of regulation or rulebook on Energy Efficiency Procurement.

Table 3 – Question 4

Do your National Strategies and Action Plans of Energy include measures or plans to adopt Article 6 in any way?		
Country	Answer	Comments
Albania	Yes	In Albanian NEEAP it is mentioned that one of the measures that will be taken is the Green procurement.
Bosnia and Herzegovina	Yes	In both entities and State Action Plan
Kosovo	No	Administrative Instruction on Energy Efficiency requirements of Purchasing will be mentioned in the NEEAP 2019-2021
North Macedonia	Yes	Yes in new Energy Development Strategy till 2040
Georgia	Yes	Georgia's draft NEEAP has measures on Public Procurement, in particular „Purchasing by public bodies“;
Moldova	No	To be included in the new NEEAP 2019-2021
Montenegro	Yes	Measure P1 in the NEEAP in force will also be continued in the new NEEAP.
Serbia	Yes	On the 3 rd NEEAP, and on the Strategy for Public Procurement.
Ukraine	Yes	According to the Action Plan on the Implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, The European Atomic Energy Community and their Member States, on the other (measure #710), the energy efficiency criterion shall be included to the public procurement system by 31 October 2019.

In general, most Contracting Parties already include in their NEEAPs measures of public procurements with energy efficiency criteria. Kosovo* and Moldova will include such plans in their forthcoming NEEAPs while Montenegro will also carry it forward to the next one. North Macedonia has recently approved the Energy Development strategy and has included provisions of Public Procurement with energy efficiency criteria.

Overall the NEEAP remains the most common method of inclusion of Article 6 related requirements in plans or strategies.

Table 3 – Question 5

What is the body responsible for Public Procurement (including Article 6)? Is the Energy Efficiency Agency or Ministry of Energy involved in any way in Green Public Procurement?		
Country	Answer	Comments
Albania	Public Procurement Agency	For measures of EE in the Public Sector it can also be the Ministry of Energy

Bosnia and Herzegovina	N/A	Has not replied to this question
Kosovo*	Ministry of Economic Development	Can propose amendments to the Law on Public Procurement, but the Ministry of Finance is the main body to adopt these amendments and to amend the Procurement Law
North Macedonia	Bureau for Public Procurements	The Agency, upon receiving a positive opinion from the Public Procurement Bureau, within 9 months prepares and publishes on its website an instruction in accordance with this Article and the Rulebook referred to in paragraph (5) of this Article, which prescribes rules for the minimum technical criteria and other parameters that should be observed by the contracting authorities when conducting public procurements in Macedonia and publish it on its website.
Georgia	Legal Entity of Public Law (LEPL) Public Procurement Agency	
Moldova	The Public Procurement Agency	
Montenegro	Ministry of Finance (Public Procurement Directorate)	
Serbia	Public Procurement Administration	
Ukraine	Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine; the Ministry of Economic Development and Trade of Ukraine, State Agency on Energy Efficiency and Energy Saving of Ukraine.	There is a new Government in office from August 2019 and the institutions' responsibilities may change.

Most Contracting Parties have a National Public Procurement Agency/Bureau that is responsible for managing procurement of public spending.

Table 3 – Question 6

Are there any initiatives (local government/donor project etc.) that include energy efficient procurement and might provide for a basis on which National procurement can be based?		
Country	Answer	Comments
Albania	No	UNDP implements Green Procurement for its own needs. Tirana municipality offers a 50% contribution to

		buildings undertaking a building envelope renovation with thermal insulation.
Bosnia and Herzegovina	N/A	Has not replied to this question
Kosovo*	No	Consultancy firm will be hired
North Macedonia	No	Only projects that represents buildings renovations with energy efficiency impact
Georgia	Yes	EU4environment Project will focus on Support for the elaboration and implementation of green public procurement policies
Moldova	No	EU4environment assistance expected.
Montenegro	Yes	2015 TA from Regional energy efficiency programme, for Rulebook on criteria in public procurement
Serbia	Yes	IPA Project" Technical Assistance to the Ministry in Charge for Energy and Relevant Public Entities, NEEAP and RES Directive" will include cost-benefit analyses for products and/or services that could be added to the list of products/services for which minimal EE criteria could be set as obligatory.
Ukraine	Yes	EBRD Ukraine FINTECC has completed a project in 2016 which included energy efficient procurement component.

5. Conclusions and recommendations

After evaluating the implementation of Article 6 of the EED the Secretariat has drawn the conclusion that Article 6, although transposed properly in the large majority of national Energy Efficiency laws, is not properly implemented in the most Contracting Parties.

The reason for this is that the public procurement is done in most Contracting Parties by an independent, national authority that is less informed about energy efficiency and hence is not developing or using any clear criteria in this respect.

These national bodies will require clear guidelines or rulebooks and training to be able to use energy efficiency criteria in public procurement.

The national Procurement Laws need to be amended in most cases regarding energy efficiency criteria. Since in almost all Contracting Parties there is a responsible national authority for public procurement, and this body is regulated by a national law, including provisions in compliance with Article 6 will provide the base for all public procurement nationwide.

Since this article is rather complicated to implement, donors assistance may be needed to provide support for the implementation either in legal drafting or, in more technical aspects like efficiency criteria or consumption thresholds for various items to be procured.