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ANNEX I: ANSWERS FROM THE CPs77

0.II. Abbreviations and acronyms

BiH	Bosnia and Herzegovina
CD	Classic PP Directive 2014/24/EU
CoD	Concession Directive 2014/23/EU
CPs	Contracting Parties
DCFTA	Deep and Comprehensive Free Trade Agreement
ECT	Energy Community Treaty
ECS	Energy Community Secretariat
EnC	Energy Community
EU	European Union
FBiH	Federation of BiH, one of the two Entities of BiH
PD	Project Director
PP	Public Procurement
Remedies Directives	Directive 89/665/EC and Directive 92/13/EEC as amended with 2007/66/EC
RS	Republika Srpska, one of the two Entities of BiH
SMEs	Small and Medium sized Enterprises
SAA	Stabilisation and Association Agreements
UD	Utilities Directive 2014/25/EU
WTO GPA	The World Trade Organisation Government Procurement Agreement

1. Executive Summary

This document is the First Assessment Report of the Project “Study in extending the Energy Community Treaty to include the rules on public procurement” being implemented by Rokas Law Firm, Bird & Bird and Planet S.A. This First Assessment Report follows the format of the Technical Proposal, submitted by the above consortium and updates the detailed work plan, after the kick-off meeting of the project, on 26/4/2016.

The information on the scope and the course of this report is presented in Chapter 2 and includes information on the meetings conducted with the CPs’ authorities as well as the methodologies used.

In Chapter 3 we briefly presented the current general and energy specific PP regulations, undertaken international obligations and activities planned or undertaken for further amendments of the regulation.

In Chapter 4 we presented the EU legislation on the selected energy PP issues. The selected issues particularly include: 1) authorities obliged to apply the PP rules; 2) the application of the PP rules in some specific procurements relevant for the energy market (own consumption of core contracting authorities; for selection of PSO provider or procuring of energy for the PSO; TSOs procurement of ancillary services; RES support scheme; construction of new production facilities) construction of interconnectors and extension to the grid) 3) application of the general rules; 4) main exclusions and thresholds; 5) types of procurement procedures available and prescribed deadlines for submission of the offers; 6) applicable techniques and instruments; 7) application of the exclusion of the in-house contracts; 8) applicable selection criteria and possibility to exclude participant for abnormally low tenders; grounds for amendments of a PP agreement; 9) monitoring of the PP procedures and the applicable remedies.

In Chapter 5 we presented the respective answers for each CP with comments or explanation when necessary; in Chapter 6 we identified diverging provisions and our comments; while in Chapter 7 we presented general conclusions and recommendations.

2. Introduction

The scope of the present 1st Assessment Report, outlined in the framework of the “Study on extending the Energy Community Treaty to include the rules on public procurement Energy Community” is to consolidate the findings of the 1st task of this project.

This 1st task involves the analysis of the currently applied legislation in the CPs and includes the following sub-tasks:

- a) Analysis of current PP legislation in the CPs;
- b) Rules and practices applied for procurement of network energy (electricity and gas);

- c) Overview of the applicable rules in each CP in comparison with the EU applicable rules and the new EU legislation; and
- d) Identification of diverging provisions for rules on PP.

In the first two sub-tasks an analysis describes the current status of public procurement rules and procedures in the CPs of the EnC both in general (sub-task a) as well as in relation to procurement of network energy in particular (sub-task b). The analysis focuses on presenting an overall picture of the situation in the EnC CPs, while a grouping of the findings in relation to the CPs sharing a legal framework with identical or similar characteristics, documents/explains the current situation and tendencies in the EnC.

As regards to sub-tasks (c) and (d), the analysis focuses on each particular CP and, further, on the level of compliance (in a wider sense) of the rules applicable in each CP with the respective rules included in the relevant EU Directives, both the currently applicable ones as well as the new ones which have recently come into effect. The findings are mostly presented in the form of tables illustrating in a demonstrative way the divergences of the national provisions in each CP in respect to the provisions of the EU directives, accompanied with general conclusions and remarks.

The structure of the present report follows the above mentioned subtasks of the analysis of the currently applicable legislation in the CPs.

The methodology is based on the scrutiny of the currently applicable national legislation and regulations. Additionally, experiences from local experts and meetings with CPs are used after being thoroughly examined/studied.

During the execution of the task the following meetings with the CSs have taken place:

CP	First meeting	Second meeting	Comments
Albania	26.05.2016		No documents received
Bosnia and Herzegovina	11.05.2016	Telephone and email communication	No documents received
FYRoM	10.05.2016	Telephone communication	No documents received
Moldova	08.07.2016		No documents received
Montenegro	30.05.2016	Scheduling a new meeting	No documents received; Currently we are scheduling a meeting with the State PP Committee
Kosovo*	27.05.2016	Telephone communication	No documents received

CP	First meeting	Second meeting	Comments
Serbia	10.06.2016	Telephone communication	We received several decisions of the CP authority
Ukraine	28.07.2016		Meeting was held with Ms. Ms. Tetyana Lisovska, Head of the International Division of the Public Procurement Regulation Department

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

3. Current PP legislation in the Contracting Parties

3.1. Albania

The Albanian Parliament has enacted Law No.9643/2006 “On Public Procurement”, as amended several times until 2014, with the aim to harmonise the legislation with the respective EU rules. The last amendments of the 2006 law were done by the law 182/2014. The Decision of Council of Ministers 914/2014, “On public procurement rules” as amended, provides more detailed rules on public procurement based upon the PPL. With the Decision of Council of Minister 918/2014 the legislator introduced the procedure of Performing Public Procurement Electronically on conducting the bidding procedures for concessions and public/private partnerships electronically and additional clarifications to the guidelines on small-value procurement (DCM No.918/2014). There are other regulations on PP including: the Instructions No. 6/2015 of Public Procurement Agency dated 27.01.2015, “On the usage of the Framework Agreement”, as amended with the Instructions No.7 dated 19.03.2015; Decisions issued by the Energy Regulatory Entity No. 30/23-03-2011 the “Procedure of Purchasing Energy by KESH from domestic and foreign traders” (hereinafter Decision of ERE No. 30/2011), the Decision No. 100, dated 22.12.2006 “On the Approval of Rules of Exchanging Electric Energy”. (hereinafter the Decision of ERE No. 100/2006), and the Decision No. 42, dated 25.05.2009 “On the Approval of Rules and Standard Procedures Electric Energy Procurement by OSSH SHA”(hereinafter Decision of ERE No. 42/2009.

There is no energy procurement specific legislation, although the new law on Energy 43/2015, enacted in order to harmonise the Albanian legislation with the EU third energy package, regulates certain issues relevant to the PP in this sector.

The Stabilisation and Association Agreement (SAA) signed with Albania on 1 April 2009. In June 2014, Albania was awarded candidate status by the EU. Moreover, Albania has been granted an observer status to the WTO Agreement on Government Procurement (GPA) on 2 October 2001 and is already negotiating accession.

We do not have relevant information regarding the planned regulatory activity.

3.2. Bosnia and Herzegovina

Bosnia and Herzegovina (BiH or the State) consists of two Entities: Federation of BiH (FBiH) and Republika Srpska (RS) and the District Brcko with its own jurisdiction in some matters, including energy. There is a BiH (the State Level) Law on Public Procurement (Official Gazette 39/14) which regulates procedures of public procurement. The regulations include: Decision of the Council of Ministers of BiH passed on 08.12.2014 on Compulsory Application of Preferential Treatment of Domestic Supplier (which provides for gradual reduction of the percentage of preferences for domestic supplier, so that in 2020 there would be no such preferences); Rulebook on the Operations of the Office for Appeals as of 28.03.2013; Rulebook on the Monitoring of the PP Procedures (OJ 48/08 and 50/10); Rulebook on Joint Procurement and Establishment of Central Procurement Body (OJ 55/15); Rulebook with the List of Contracting Bodies which are Obligated to Apply the Law on PP (OJ 21/15) which includes the fields of electricity and gas; Rulebook on Direct Agreement (OG BiH 90/14), Rulebook on Bid Security and Performance Security (OG BiH 90/14), Rulebook on the Establishment of Procurement Commission (OG BiH 103/14), Rulebook on the Award of Contracts for Services Referred to in Annex II Part B of the Public Procurement Law (OG BiH 104/14), Rulebook on Training of Certified Trainers (OG BiH 62/15), Rulebook on the Award of Contracts in the Fields of Defense and Security (OG BiH 60/15), Decision on Application of Common Procurement Vocabulary – CPV (OG BiH 54/15), Instructions for the Preparation of Model Tender Documents and Bids (OG BiH 90/14 and 20/15), Instructions for Establishing and Managing the Qualification System (OG BiH 96/14), Instructions on the Publication of the Basic Contract Elements and Amendments (OG BiH 56/15), Instruction on Conditions and Manner of publication and Submission of Reports in the Public Procurement Information System "e-Procurement" (OG BiH 90/14 and 53/15), Instruction on the Conditions and the Manner in which Sectoral Contracting Authority Awards Contracts to Connected Enterprise, Business Partner or Sectoral Contracting Authority that is a Part of a Business Partnership (OG BiH 97/14).

There is no PP legislation specific for the energy sector although chapter IV of the PP Law refers, among others, to energy. Also the energy laws are relevant for certain issues. BiH has the following energy laws: BiH Law on Transmission and the TSO (OJ 07/02 and 13/03); RS Law on Electricity (OJ 08/08, 34/09, 92/09, 1/11); RS RES Law (OJ 39/13, 108/13, 2/14), RS Law on Gas (OJ 86/07, 121/12), FBiH Law on Electricity (66/13) and FBiH RES Law (70/13).

The Stabilisation and Association Agreement (SAA) has been ratified and entered into force on 1 June 2015.

There is not any official legislative process regarding the amendment on Public Procurement Law. Currently the adoption of secondary legislation regarding public procurement is still in process.

3.3. FYR of Macedonia

The main legal act for public procurement is the Law on Public Procurement of 2007, which has been amended several times until today (OJ 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014, 130/2014, 180/2014, 78/2015, 192/2015 and 27/2016). Other relevant legal acts are the Rulebook on How to Use the Electronic Public Procurement System, which was adopted in 2014, and the Rulebook on the Form and Content of Notices for Award of Contract for Public Procurement, which was adopted in 2007 and amended several times in 2008 (OJ 36/08, 37/08 and 134/08).

In the public procurement system of the Former Yugoslav Republic of Macedonia, except for the general regulations which are stipulated by the Law on Public Procurement, there are some articles in the Energy Law (OJ 92/2014) which provide for public procurement in the energy sector. There are no other special rules and decisions relating to public procurement in the energy sector.

The Stabilisation and Association Council between EU and FYR of Macedonia entered into force in 2004. At the same time the country applied for EU membership (March 2004). The Commission issued a favourable opinion in November 2005, and the Council decided in December 2005 to grant the country candidate status. In October 2009, the Commission recommended that accession negotiations be opened. Moreover, FYR of Macedonia has been granted an observer status to the WTO Agreement on Government Procurement (GPA) on 27 June 2013 and it is currently undergoing preparations for submitting application in GPA, while the membership is expected to be realized in the medium term.

The Plans for new amendments to the Law on Public Procurement are in correlation with urgent reform priorities of the CP. In the medium term, it is planned for harmonization of the law with the new European directives.

3.4. Kosovo*

The main legal act regulating public procurement in Kosovo, including energy entities, is the Law on Public Procurement No 04/L-042 of 31.08.2011 (the PP Law). As part of the implementation of the Law a number of secondary legislative acts were adopted, which regulate specific aspects of procurement procedures, govern the conduct of the regulatory bodies, and define various policies and provide guidelines. Interpretation of the Law is provided in several administrative instructions. Moreover, Public Procurement Regulatory Commission (PPRC) issued a significant number of secondary legislation to enable implementation of aforementioned law, including A01 Regulation on Public Procurement on 01.02.2012 and the Operational Guidelines for Public Procurement of January 2012. Public Procurement Regulatory Commission (PPRC) also addresses standard documents that regulate the carrying public procurement activities. Further, the Law no. 03/L-185 on the «Energy Regulator» regulates the procurement procedure of new generation capacities in energy sector.

In this regard, Kosovo* does not have separate PP legislation for energy issues, as they are mostly regulated in the general PP law while some issues relevant for the PP procurement are regulated by the Energy law

Compliance of Kosovo* with the SAA is part of its National Programme for Implementation of the Stabilisation and Accession Agreement (SAA), issued on March 2016. The SAA between the EU and Kosovo* entered into force on 1 April 2016.

Kosovo* intends to harmonise its legislation with the following EU Directives in 2016: a) Directive 2007/66/EC on legal remedies, and the two PP Directives b) the Classic PP Directive 2014/24/EC and the Utilities PP Directive 2014/25/EC.

3.5. Moldova

The Law on State Purchases (Law No.131 adopted on 3.07.2015) was published on 31.07.2015 and became effective on 1.05.2016 (the PP Law). According to the preamble of the PP Law, it was adopted to transpose EU Directive 2004/18/EC, partially Directive 2014/24/EC, and Directive 89/665/EEC (the «Remedies» Directive as amended by Directive 2007/66/EC). Thus, PP Law does not contain provisions harmonized with the Utilities Directive and the new Classic Directive. PP Law stipulates that it applies, with some exceptions, to public procurement contracts, to various forms of private and public-private partnerships and concession contracts for public works. It repeals the existing Law on public procurement no. 96-XVI dated 13 April 2007. The new law establishes more detailed provisions for information regarding bidders, as well as sets out a list of specific requirements regarding tender announcements and tender-related documents. Secondary legislation for the implementation of this law is under development.

PP Law on State Purchases provides for certain exceptions. According to Article 4(1) of the Law, it does not apply to procurement contracts awarded to the bodies carrying out activity in the fields of energy, water resources, transport and postal services, which fall under the respective area of activity and are regulated by the normative acts governing the procedure of contract awards in the field of energy, water resources, transport and postal services. For example, certain relevant provisions may be found in the Law on Electric Energy (Law No. 124 adopted on 23.12.2009, and subsequently amended) and in the Rules of Electric Energy Market (adopted by the National Energy Regulatory Agency (ANRE) on 9.10.2015, Resolution No.212). However, legally it is unclear what applies to PP in the energy field if not regulated by the Energy Law or other energy regulation. Such issues should be clarified so that until the Utilities PP Law is enacted, the provisions of the PP Law apply also in the energy sector, if not otherwise regulated by the Energy or other sectoral law. New laws on Electric Energy and on Natural Gas were adopted 27.05.2016 and published on 08.07.2016 in the OJ 107/2016 and 108/2016 respectively (New Law on Electricity and New Law on Gas).

Moldova has ratified the Accession Agreement on Deep and Comprehensive Free Trade Area («DCEFTA») by submitting its instrument of accession adopted on 22.10.2014 and published on 31.10.2014. Further, Moldova has ratified the WTO's Agreement on Government Procurement (GPA) by submitting its instrument of accession to the WTO Secretariat, which was published on 24 June 2016. This is expected to lead to some further amendments in national legislation.

Moreover, the following amendments are expected in the future: passing of the Utilities Procurement Law until 2019 and issuing of the secondary legislation for the implementation of the 2015 PP Law.

3.6. Montenegro

Public procurements in the Republic of Montenegro are regulated by the Public Procurement Law (OJ 42/2011, 57/2014 and 28/2015) (the PP Law). There are a number of Regulations regulating Public Procurement in Montenegro, including: the Rulebook on the Work of the State Committee for the Control of PP Procedures (OJ 16/2012); Rulebook on the Content and Method of Implementation of Public Procurements in Electronic Form (OJ 61/2011), Rulebook on the Methodology of Determining of Sub-criteria for the Selection of the Best Offer in a PP Procedure (24/2015 and 29/2015); Rulebook on the Forms for the Procedures of PP (OJ 23/2015 and 31/2015); and Decree on Determination of Amounts and Time Limits in the Application of PP (OJ 45/2001 and 25/2003).

Articles 108-113 regulate the public process for the energy sector. Montenegro's Law on Concessions (OJ 8/2009), enacted in 2009, regulates that concession for the use of water courses and for planning, construction, maintenance as well as for the use of objects which are initial for the production, transmission and distribution of electric energy, heat energy or natural gas is compulsory. Further relevant issues regarding the energy sector are regulated in the Law on Energy (OJ 5/2016).

The Stabilisation and Association Agreement (SAA) between EU and Montenegro was signed on 15 October 2007. In December 2011, the Council launched the accession process with a view to opening negotiations in June 2012. The accession negotiations with Montenegro started on 29 June 2012. Montenegro acceded to the WTO Agreement on Government Procurement (GPA) on 15 July 2015.

A new law on PP which should be in compliance with the EU legislation is expected to be adopted in 2017.

3.7. Serbia

The main legal instruments regulating public procurement in the Republic of Serbia are the Law on Public Procurement (OJ 124/2012, 14/2015 and 68/2015) (the PP Law) and relevant regulations, in particular: four Governmental Decrees; two Governmental Decision; seven Rulebooks issued by the Directorate of Public Procurement; and two Rulebooks issued by the Ministry of Finance and Economy. The above mentioned regulations include the Decision on Determination of the List of Contracting Authorities in Compliance with the Law on Public Procurement (OJ 97/2015); Decision on Determination of the List of Contracting Authorities which the Procurement is Performed by the Centralised Purchasing Body (OJ 12/2015); Rulebook on the Form and Content of a Request for Issuing of an Opinion on the Application of a Negotiated Procedure (OJ 29/2013 and 83/2013); Rulebook on the Form of PP and Method of Publication of a Plan of PP on the Portal of PP (OJ83/2015); Rulebook on Civil Supervisor (OJ 29/2013) The Civil Supervisor

represents any association or individual who monitors the public procurement procedure in cases in which the Contracting Authority conducts public procurement with estimated value exceeding RSD 1 billion; Rulebook on the Manner of Evidencing Domestic Origin of Goods (OJ 33/2013); Rulebook on Program of Education and Certification of PP Officials (OJ 77/2014 and 83/2015); Rulebook on Content of Decision on Performing of PP by Several Authorities (OJ 83/2015); and the Decree on Subject, Conditions, Planning of Centralised PP (OJ 93/2015) which regulates the procedures applicable to the purchase of goods (including energy) for their own consumption.

There are no specific laws and regulations regulating public procurement in the energy sector. Terms and conditions for certain entities listed in the Law (which include energy entities) acting in the capacity of Contracting Authority are set forth in Articles 2, 117, 119 and 122 – 126 of the PP Law. Although the Energy Law (OJ 145/2014) does not regulate PP issues, it is applicable to certain issues directly or indirectly related to the procurement in the energy sector.

Serbia is obliged to harmonize its regulations with directives and other acts of the European Union, all in accordance with the Development Strategy of Public Procurement in Serbia for the period between years 2014 and 2018 (OJ 122/2014) (Strategy) and the Action Plan for the Implementation of the Strategy.

In accordance with the information obtained from the Public Procurement Office, the amendments to the PP Law are expected at the end of 2017.

3.8. Ukraine

The main legal act regulating public procurement is Law no. 922-VIII on Public Procurement (the PP Law) that was adopted on 25 December 2015, and is in force since 19 February 2016. It applies to entities operating in the energy sector (such as energy producers, transportation, distribution, supply, storage etc) as from 1 April 2016. Law No. 922-VIII does not apply to procurement of energy and fuel resources for electricity production; goods and services at the day-ahead market, balancing market and ancillary services market; electric energy sold and purchased at the electricity market by the guaranteed buyer, market operator, system operator, the party responsible for balancing of the balancing group, including the balancing group of electricity producers awarded with «green» tariffs; services provided by the system operator, settlement administrator, commercial accounting administrator, guaranteed buyer and market operator etc. Some other relevant laws and regulations include: Law of Ukraine No. 3659-XII of 26 November 1993 on Antimonopoly Committee of Ukraine, effective of 21 December 1993, with further amendments. The Antimonopoly Committee of Ukraine is an independent authority to which any public procurement related complaints shall be addressed; Resolution of the Cabinet of Ministers of Ukraine No. 603 of 4 July 2012 on Particularities of Execution of Framework Agreements, effective of 13 July 2012; and Order of the Ministry of Economic Development and Trade of Ukraine No. 504 of 24 April 2012 on Particularities of the Conclusion of Framework Agreements, effective of 6 August 2012, with further amendments.

There is no separate legislation regulating public procurement in the energy sector in particular, although some PP relevant rules may be found in the Energy laws and regulations.

Ukraine is a party to the EU-Ukraine Association Agreement which was concluded between the European Union and the European Atomic Energy Community and their Member States of the one part, and Ukraine, of the other part, including the Deep and Comprehensive Free Trade Area (DCFTA). Starting from 18 May 2016, Ukraine is also a party to the World Trade Organisation: Government Procurement Agreement (GPA) that was ratified by the Law of Ukraine no. 1029-VIII of 16 March 2016, which is effective as of 7 April 2016.

In accordance with Article 152 of the EU-Ukraine Association Agreement, the Cabinet of Ministers of Ukraine approved the Strategy for the Public Procurement System Reform («Roadmap») by means of its Order no. 175-r of 24 February 2016, which envisages five stages of the Public Procurement reform (until 31 December 2022). One of the main tasks of the approved Roadmap is the fulfilment of Ukraine's obligations under the GPA. In this regard, the above mentioned adoption of the PP Law No.922-VIII is one of the first steps to bring Ukrainian legislation in line with the European acquis aiming at the implementation of the provisions of Directive 2014/24/EU and Directive 2014/25/EU. At the moment, the following bills are registered in the Parliament: i) the draft law no. 4549, registered on 29 April 2016, amending the Law of Ukraine on Introducing New Investment Opportunities, Ensuring Rights and Lawful Interests of Business Entities for Carrying Out the Large-Scale Energy Renovation; ii) the draft law no. 4674, registered on 16 May 2016, amending the Law of Ukraine on Public Procurement (Concerning Restriction of Participation in Procurement of Participants with the Offshore Status); iii) the draft law no. 4535, registered on 27 April 2016, amending Article 11 of the Law of Ukraine on Public Procurement Concerning Restrictions for Entering a Competitive Bidding Committee; iv) the draft law No. 4738, registered on 31 May 2016, on Amending the Law of Ukraine on Public Procurement and Other Laws of Ukraine Concerning Monitoring of Procurement. Further, according to the PP Law, specific laws shall be adopted to provide peculiarities for public procurement of the following goods, works and services (only energy related goods/works/services are listed below): non-radiation-exposed fuel elements of nuclear reactors; crude oil and oil products; and ESCO services.

4. Presentation of the CPs and the EU Procurement Directives applicable in the Energy Sector (Electricity and Gas)

4.1. Do public procurement rules apply to contracting entities (contracting authorities, public undertakings and entities operating on the basis of special or exclusive rights), as defined in the Utility Directive?

- **EU**

The Classic PP Directive regulates the PP rules for the acquisition, by means of a public contract, of works, supplies or services by contracting authorities, when the value exceeds certain thresholds. The UD regulates the PP rules when the works,

supplies or services intended for specific activities (including the provision or operation of fixed networks intended to provide services to public in connection with production, transport or distribution of electricity or gas and the supply of electricity or gas to such networks) are acquired by contracting entities (public authorities, public undertakings and entities operating on the basis of special or exclusive rights) when the value exceeds certain thresholds. Apart from these thresholds, there are some other exemptions to the application of the PP rules, some of which are mentioned below.

- **Albania**

Yes. Even though they apply to contracting entities in a different way, still they have the same impact. Pursuant to the Article 3 paragraphs Law No. 9643/2006, CP' s PP legislation applies to the constitutional institutions (derive their authority from the constitution), the other central independent institutions, and the local government units; Contracting Entity means: i) any entity (having legal personality) established to realize a general (uneconomical or trade) interest, which is financed/administered by the state, the regional/local authorities, or by other public entities, or which have an administrative/managerial/supervisory board, whose members are appointed by the state, the regional/local authorities or by other public entities; ii) any organization established by one or several of such authorities/public entities; iii) any contracting authority, as provided by the paragraph 14, when such authority performs any of the activities provided by the Article 58.1 of the present law; iv) the public enterprises, in case the contract is awarded for the purposes of the activities provided by Article 58.1. v) Any other entity, which is not explicitly mentioned above, when performing one of the activities provided by Article 58/1 of this law or combination of such activities, based on special or exclusive rights, granted by any competent authority.

- **Bosnia and Herzegovina**

According to Public Procurement Law, Contracting authority in the context of this Law shall be:

- contracting authority referred to in Article 4 of this Law conducting a public procurement procedure for supplies, services, and/or works;
- sectoral contracting authority referred to in Article 5 of this Law performing activities in the area of water supply or energy or transport or postal services, and conducting a public procurement procedure for supplies, services, and/or works. 5 of the Public Procurement Law defines Sectoral Contracting Authorities, as entities performing activities in the area of water supply or energy or transport or postal services, and conducting a public procurement procedure for supplies, services, and/or works.

Contracting authorities are further defined in Articles 4 and 5 of the PPL, and are in line with Directive 2014/25/EC. The PPL does not use the term “bodies governed by public law”. Instead it stipulates “legal persons established for a specific purpose with the objective of meeting the needs of general interest, not having an industrial or commercial character and meeting at least one of the following conditions:

- 1) financed, for the most part, from public funds, or

- 2) subject to management supervision by the contracting authorities defined in items a) and b) of this paragraph, or
- 3) having an assembly, managerial or supervisory board, more than half of whose members are appointed or elected representatives of contracting authorities referred to in items a) and b) of this paragraph.

This is fully in compliance with the explanation of the term “bodies governed by public law”, in Article 3 paragraph 4 of the Utilities Directive.

- **FYR of Macedonia**

The Law on Public procurement, article 4, regulates the terms “Contracting Entities”, Public Undertakings and special exclusive rights are defined and understood as in the PP directives. As regard to Contracting authorities, the law does not use the term bodies managed by public law, but defines them in a more descriptive manner. However, the practical result is the same, thus it may be confirmed that the public procurement rules apply to contracting entities as defined in the Utility Directive.

- **Kosovo***

Definitions in the PP law are in compliance with the Directives. The PP Law provides for the definition of a contracting authority that includes public authorities, public service operators, public undertakings or/and private companies on the basis of a special or exclusive right or undertakings carrying out a procurement activity on behalf of or for the benefit of a public authority, public service operator or public undertaking. By public authorities are meant either i) central, regional, municipal or local executive authority or ii) bodies governed by public law and iii) associations of one or more. Moreover, the definition of public undertaking is in exact compliance with the Directive, as well as the special or exclusive rights. All these definitions incorporate the main characteristics of the contracting entity, without though providing the respective definition.

- **Moldova**

Definitions in the Public Procurement Law are not in full compliance with the PP Directives. It should be clarified that the Public procurement Law was adopted to transpose EU Directive 2004/18/EC, partially Directive 2014/24/EC, and Directive 89/665/EEC. Thus, relevant provisions of the Utilities Directive (including the 2014 UD) were not transposed in the Law on Public Procurement. A specific law transposing this Directive is expected to be adopted by 2019.

Pursuant to the article 12 of the current PP Law, Purchasing Entities are the public authorities within the meaning of the Moldovan legislation (the public authorities according to Moldovan Constitution include the State, the ministries, the local public administration etc) including legal entities under the public law, associations of such authorities or persons. The legal entities under the public law are defined in the same way as in the Directive. In this regard, the meaning of the purchasing entity, as presented in the PP Law is considered in compliance with the main characteristics of a contracting authority. The special or exclusive right are regulated by article 12 para 4 of the PP Law which provides that Purchasing Entities are considered any other

legal entities with an obligation to perform public procurements (by a Government decision) when they operate at the markets in which the competition is excluded on the force of a regulation or an administrative ruling or due to the existence of a monopoly. This definition is similar to the UD definition and may have the same practical meaning. The terms as well as the main characteristics of a contracting entity and a public undertaking are not used in the PP law. In any case, it should be highlighted that the PP law does not apply to procurement contracts awarded to the bodies carrying out activity in the fields of energy, which fall under the respective area of activity and are regulated by the normative acts governing the procedure of contract awards in the field of energy

- **Montenegro**

Definitions in the PP Law are in compliance with the Directives. The only difference is that the law does not define that it is a body governed by public law and requires that it is supervised by the entity which orders the procurement (PP authority), which has the same legal effect

In addition, article 108 of the PP Law provides that the entities listed above and entities which perform certain activities including energy network activities as regulated in the Utilities Directive, and entities which perform these activities and over which the above entities exercise directly or indirectly dominant influence as well as entities which perform these activities on the basis of special or exclusive rights should apply the procedure regulated by the PP Law.

- **Serbia**

Definition of public authority (article 2 of the PP Law) is in compliance with the Directives. The only difference is that the law does not define that it is a body governed by public law and requires that it is supervised by the entity which orders the procurement (PP authority), which has the same legal effect. The list of the public authorities is published in the respective Government Decree (OJ 97/15). Article 117 defines contracting entity in compliance with Utilities directive, with divergence described above regarding the contracting authority.

Contracting authorities and public undertakings are obliged to submit annual procurement plan to the Public Procurement Office and State Audit Institution through which they monitor whether the entities defined by PP Law conducts the public procurement procedure in accordance with the PP Law. In accordance with the information obtained from the Public Procurement Office, they have not issued any formal decisions regarding the status of contracting authority, but they have provided, upon posed questions, in the particular case, the answers whether the contracting authority represents the contracting authority defined in the line with the PP Law or not.

- **Ukraine**

The definitions provided in Ukrainian PP Law are considered in compliance with Article 3 and 4 of the Utility Directive. The Article 1 of the Public Procurement (PP)

Law provides, inter alia, a single definition of the contracting entities ('zamovnyky' in Ukrainian), which itself includes the core of definition of a contracting authority (as described in subparagraph 9), as well as the definition of the so-called activities in certain areas of economic activity (subparagraph 4) (including in the energy sector), the main characteristics of entities operating on the basis of special or exclusive right and there is also a similar provision to the one described for a public undertaking. There are no separate definitions for «a contracting entity» and «a contracting authority» in the PP Law.

4.2. Do public procurement rules apply in the following situations?

a) When contracting authorities purchase, except energy undertakings, electricity or gas for their own consumption;

- **EU**

Yes in general, unless the specific situation falls under the rules excluding the application of the PP rules as articles regulating the Special relations and under the condition that such procurement exceeds the above the prescribed thresholds.

The exclusion of Special relations is regulated by articles 28-31 of the Utilities Directive and 12 of the Classic Directive. These articles provide that in case where contracting authorities purchase electricity or gas for their own consumption from a public undertaking or an entity operating on the basis of special or exclusive rights in accordance with the Utilities Directive, the application of the PP rules would be excluded if the following conditions are fulfilled.

According to article 12 of the Classic Directive, the PP rules shall not apply to procurements from legal persons governed by private or public law, if all the following conditions have been fulfilled:

- a) a contracting authority exercises a control over such legal person as of its own department;
- b) more than 80% activities of the controlled legal entity are carried out in the performance of tasks entrusted to it by the controlling contracting authority; and
- c) there is no direct private capital participation in the controlled legal person or there is private capital if required by national legislation or the EU Treaty but it does not exert a decisive influence. The same rule may apply in case of joint control with other contracting authorities when all the above conditions are cumulatively fulfilled.

- **Albania**

No the PP rules do not apply in these situations and the electricity is procured from the OShEE.

- **Bosnia and Herzegovina**

It has been explicitly regulated by the PP law, article 10.1 d) that procurement of water, electricity, gas, heat and other services will be excluded from the PP law until the respective markets are liberalised and opened for competition. It has been confirmed to us that the Contracting Authorities, such as Ministries do not include electricity in their procurement auctions.

Through examination of Procurement Notices in the information system “e-Procurement”, we can see that some contracting authorities do apply Public Procurement Law while purchasing electricity. However, the electricity market opened for competition only recently, and it is still in the beginning of its development. We expect a much wider application of PPL in this field in the following years.

- **FYR of Macedonia**

The Contracting Authorities are obliged to apply the PP rules when procuring electricity for their own consumption and they perform this in practice. There are no specific provision regarding the own consumption but the general rules (article 121 and 125 of the PP Law).

- **Kosovo***

Contracting Authorities purchase electricity and/or gas for their own consumption based on direct arrangements with energy companie(s). Given the fact that the public energy supplier is a PSO and with due regard to the interpretation of the PPRC interpretation of Art.9.4 of the PP Law, public authorities shall not use the PP rules for purchasing electricity/gas for their own needs. Instead, they enter into direct arrangement with the sole public supplier based on their rules of internal organization.

- **Moldova**

No, according to the article 4 of the PP Law because the PP law does not apply to energy, while the Energy does not provide for such obligation.

- **Montenegro**

No, this issue is not explicitly regulated in the regulation. In practice the contracting authorities are buying electricity from EPCG without PP procedures.

- **Serbia**

Yes. There is a general obligation (Article 2) of contracting authorities to apply public procurement rules when procuring electricity and gas for their own consumption. Article 49 of the Law on Public Procurement stipulates that the Administration for Joint Services of the Republic Bodies is the body for centralized public procurement for the needs of government bodies and organizations, including judicial authorities. Further in accordance with the Regulation on the Subject, Conditions, Manner of Planning Centralized Public Procurement and

Implementation of the Public Procurement by the Administration for Joint Services of Republic Bodies as a Body for Centralized Procurement (Official Gazette of the Republic of Serbia no. 93/2015) the centralized public procurement procedure shall be performed for the procurement of electricity for own consumption. In practice these rules are fully applied, it can be confirmed by review of the Procurement Portal on Internet on which numerous electricity PP procedures are continuously announced.

- **Ukraine**

Yes, in case that a procurement of natural gas and electricity exceeds the threshold of UAH 1 million (approximately €36.000). If the threshold is below the above mentioned one, procurement shall be carried out in accordance with the general principles of public procurement. The PP Law does not regulate purchase of electricity or gas for consumption by contracting authorities, and so the general threshold for public procurement of electricity or gas by contracting is applicable. In practice negotiated procedure are often applied, while open procedures are applied when there are several providers. .

b) Selection of the public service obligation ("PSO") provider or the purchase of electricity or gas in order to provide the PSO (if there is no public procurement procedure¹ for the selection of the PSO provider);

- **EU**

Article 3 of the Directive 2009/72/EC on electricity and the Directive 2009/73/EC on gas provides the imposition of a PSO on the EU level. More precisely, Article 3 provides that the MS may impose on undertakings operating in the electricity/gas sector a PSO which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. In addition, MS shall ensure universal services, the right to be supplied with electricity of specified quality within territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices, so MS may appoint a supplier of last resort.

The providers of the PSO and of the last resort, fall under the definition of entities which operate on the basis of special or exclusive rights granted by a competent authority of a MS (article 41 b) of the UD). This means that when these entities procure electricity or gas in order to fulfil the PSO or the universal service obligation, they should apply the UD PP rules.

However, if the special or exclusive rights have been granted to these entities in a procurement procedure, these entities will not be obliged to apply the PP rules for the procurement of electricity or gas.

In other words, the MS may choose to have a public procurement procedure for the selection of the PSO provider, which is often the case in practice. In this procedure

¹ Cf. Case C-280/00, *Altmark Trans and Regierungspräsidium Magdeburg*, EU:C:2003:415, paragraph 95.

one of criteria for choosing among the applicants is the price at which they offer to provide the PSO or universal service obligation. Thus there is no need to burden them further with additional public procurement procedures, having also in mind that it is their interest to acquire electricity or gas at the lowest possible price in order to respect the undertaken obligation.

However, in case that a PSO provider is appointed without any PP procedure, e.g. where a vertically integrated energy entity is appointed as a PSO provider, this entity would have to apply the UD procedure in order to procure with electricity or gas.

- **Albania**

The public procurement rules do not apply in this case, the specific provision on the energy sector is applicable, specifically Law No.43/2015 On the Electric Energy Sector & the Decision of Council of Ministers No.449, dated 15 June 2016 On the terms and procedures to be attended by the Albanian Energy Authority (ERE) on choosing the Last Supplier Resort (LSR). According to such provision, a specific procedure (auction) is applied. Specifically, ERE chooses the LSR, after a public notification, in case: i) of insolvency or bankruptcy of the previous supplier; b) the license of the previous supplier has been revoked or suspended; c) it is impossible for the client to find a supplier within the market.

The election criteria are determined on the relevant ERE's decision, after 15 days of the announcement of such decision the interested suppliers may apply by submitting the following documents: i) extract issued from the commercial registry (NRC); ii) copy of the relevant license; iii) a description of the technical, organizational, professional and financial situation of the interested supplier; iv) any documents stating the weekly sell-purchase transactions; v) a certificate issued from the tax administration on the fulfillment of the fiscal and insurances obligation; vi) a certificate issued by the judicial authorities stating that the interested supplier has not been convicted by virtue of a final decision; vii) a certificate issued by the prosecutors authorities stating that the interested supplier is not subject of any criminal investigation, released by the prosecution; viii) detailed information on its supply experience, the supplied clients and when shall be available the last resort supply.

- **Bosnia and Herzegovina**

The PP Law and the energy laws do not explicitly require the application of the PP either for the selection or for the purchase of electricity or gas. In practice the current vertically integrated companies have long term agreements with the state for the provision of electricity. As the energy market, both electricity and gas, is in the process of liberalisation, it may be expected that such requirement would be posed, upon the expiry of the existing agreements.

- **FYR of Macedonia**

According to article 8 paragraph 5 from the Energy Law the supplier of tariff customers shall also be the supplier of last resort. The Energy Producer with Public Services Obligation (ELEM) is obliged to provide the energy for the tariff customers

and for the customers who decide to be supplied from the supplier of last resort. The tariffs are determined by the Energy Regulatory Commission.

The PSO companies for gas are not elected according to the rules from the PP procedure. The three gas distribution and supply companies have the license for performing activities which includes the tariff supply and is not issued on the basis of a PP procedure.

- **Kosovo***

In Kosovo the PSO providers are appointed directly by ERO (Energy Regulatory Office), for both electricity and gas sector, whereas the latter only theoretically as no gas sector is existent for the time being in Kosovo. Consequently, the public procurement rules do not apply.

- **Moldova**

- a) Electricity: According to Article 18(3) of the Electricity Law, a holder of a supply license shall perform PSO. Obligations of public servicing are established by the Agency or another competent authority by means of resolutions, decisions, licensing or special provisions and such shall be transparent, non discriminatory and clearly defined. The supplier of last resort is appointed to provide, for a period of maximum ninety (90) days, electricity at a tariff set by ANRE in case the customer lost its supplier under certain conditions. The category of vulnerable customers is defined in the draft Law of electricity. Upon its adoption, vulnerable customers shall be entitled to receive compensation for the cost incurred with electricity consumption in accordance with the programme adopted by the Government. The existing programme to support the socially vulnerable families defined in a governmental Decree should be extended to address vulnerability in relation to electricity consumption. Appropriate support from the State budget needs to be further targeted to protect vulnerable customers outside the electricity tariffs. Thus our conclusion is that the PP rules still do not apply, although there are certain regulatory steps in this direction. The new Electricity Law provides for the same regulation.
- b) Gas: According to the New Natural Gas Law (Law No.108 adopted on 27.05.2016, and published on 08.07.2016)., the category of vulnerable customers is defined and article 84 stipulates that socially vulnerable customers shall be protected according to social protection policy. A supplier may use support schemes with respect to socially vulnerable customers if this is necessary to avoid interruption of gas supply. The article 89 stipulates that certain categories of customers shall be entitled to receive gas from suppliers that are under PSO obligation and the latter supply gas to final consumers under certain quality parameters. These parameters shall be regulated by transparent and non-discriminated prices according to terms in conformity with the new Law and Regulation on Natural Gas Supply. According to Article 90 of the Law, final consumers that do not have a supplier shall have the right for gas supply during certain period of time from a supplier that is under public service obligation to ensure supply of last resort.

- **Montenegro**

The selection of the PSO is regulated by Law on Energy (article 200) which provides that the supplier of last resort and the supplier of vulnerable consumers are determined by a Government decision upon performing of the respective public procurement for the period of 3 years. The tender is organised by the Ministry. Selection of the best offer is based on the following criteria: offered price for the first year and methodology for calculation of the price for the following, security of supply, financial and technical capacity of the offerer, availability of energy sources, as well as other criteria determined by the GoM. According to article 251 of the Law on Energy the first PP procedure regulated in Article 200 will be organised within 12 months from enacted of the Energy Law (i.e. by the end of 2016). Until that the current supplier (i.e. EPCG) will continue providing of these services.

Although there is no gas production, transmission or supply in Montenegro, the Energy law provides that the above articles (will) apply to gas as well.

- **Serbia**

In accordance with the provisions of Article 193 of the Energy Law, the Government shall designate the last resort supplier on the basis of the conducted public tender procedure, conducted by the Ministry of Mining and Energy of Serbia. These PP procedures are organised in practice. We have reviewed decision for 2013 when the PSO was provided by EPS Supply. In 2016, the PP procedure was not successful, thus EPS Supply was, in accordance with law, provided a temporary procurement for duration of six (6) months.

In accordance with Article 303 of the Energy Law, the Government shall designate the supplier to perform the supply of last resort of gas on the basis of the conducted public tender procedure. We have confirmed that the PP procedure has been organised for the period between 2013 and 2016 (the selected entity is Serbia Gas).

- **Ukraine**

Public procurement rules are not applicable in this case, since: i) for the gas sector, the PSO provider is being selected by the tender committee according to the procedure established by the Resolution of the Cabinet of Ministers of Ukraine No. 809 of 30 September 2015. The tender committee includes several contracting authorities. There are no references to the public procurement rules. ii) On electricity, current legislation does not refer to the PSO or to the supplier of last resort. According to the most recent draft law on electricity market No. 4493 registered in the parliament on 21 April 2016, the PSO shall be imposed by the Government. The supplier of last resort shall be selected by the NEURC according to the procedure yet to be approved by the Government (most probably after the enactment of the draft law on electricity market).

As regards purchase of electricity or gas in order to provide the PSO, according to paragraph 4 of Article 2 of the PP Law, the latter does not apply to procurement of

goods, works and services if their prices (tariffs) are established by state collegial authorities (like NEURC), or by other authorities, or according to procedures approved by such authorities, including the case in which these prices (tariffs) are determined during auctions.

c) Granting of the support scheme for renewable energy (to meet the 2020 targets and to comply with State Aid Guidelines 2014-2020²);

• **EU**

The Guidelines provide that:

- (i) from 1 January 2016 all new aid schemes and measures may be granted as a premium in addition to the market price, while the generators sell their electricity directly on the market, beneficiaries are subject to balancing responsibilities unless no liquid intra-day market exists and measures are put in place to ensure that generators have no incentive to generate electricity under negative prices (see § 124 b).
- (ii) from 1 January 2017 the aid (premium) to new electricity capacity from RES should be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria (see § 126), unless a MS demonstrates that:
 - a) only one or a very limited number of projects or sites could be eligible; or
 - b) a competitive bidding process would lead to higher support level (for example to avoid strategic building); or
 - c) a competitive bidding process would result in low project realisation rates (avoid underbidding). The bidding process may be limited to certain technologies.

The Guidelines provide for certain exceptions related to the capacity of the RES producers in which cases the above obligations would not apply.

The Guidelines are “soft law” and thus not directly legally binding for the MSs; however they have legal effects through a) decision of the EU Courts and b) the application of the general principles of legitimate expectations and legal certainty. However, an analysis of the justification of this State aid (e.g. Feed in Tariffs), may lead to a conclusion that although it is justified for accomplishing the RES 2020 targets, in case that the amount of aid is determined without the application of the PP rules, it is excessive and thus it may further lead to the issuance of a Commission’s decision ordering the recovery of the exceeding part of the aid.

The MSs regulate the PP procedures in separate pieces of legislation regulating the RES support schemes not only and directly by the application of the general PP laws.

² Articles 124 – 130 of the Commission Guidelines on State aid for environmental protection and energy 2014-2020, (OJEU C[2014] 200/1).

Thus for instance, in Greece there is a draft law, to be enacted soon, which regulates that the new RES State aid will be awarded through competitive auction procedures which will be organised by the Regulatory Authority for Energy. A public procurement procedure and the general principles of the PP rules would apply in relation to issues not directly regulated by the above RES law/s.

- **Albania**

LPP does not apply for granting of the support scheme for renewable energy.

- **Bosnia and Herzegovina**

Feed-in-Tariffs are applicable thus no PP procedure is conducted.

- **FYR of Macedonia**

Granting of the support scheme for renewable energy is carried out in accordance with Decree on preferential tariffs for electricity (Official Gazette of the RM 56/2013). In the Degree is determined what conditions a facility should fulfill for obtaining feed-in tariff for sale of electricity, what are the feed-in tariffs for produced electricity and what are the quotas for production capacity.

- **Kosovo***

The PP Law does not apply to the granting of the support scheme for renewable energy as the latter is subject to regulation by the ERO Rule on the Support Scheme, issued on 23.12.2014. The ERO Rule on the Support Scheme provides for Feed-In Tariffs, applicable for the electricity generated by the generating units admitted to the Support Scheme. The generating operator admitted to the Support Scheme is obliged to sell the electricity generated from RES to the Public Supplier, licensed by ERO on the basis of a Power Purchase Agreement, stipulated by the RES generator and the Public Supplier. Auctions are not foreseen in the Rule on the Support Scheme.

- **Moldova**

No, support scheme provided under the New RES Law (adopted on 26.02.2016, will be in force after 25.03.2017). The article 5 stipulates that promotion of RES by use of support schemes is one of the principles of the State policy and the Government is responsible to establish support schemes for the implementation of the State Policy in RES. The RES support schemes are developed by the central authority that submits the same for approval by the Government. Article 34 provides for the following support schemes: (a) fixed price established at the auction for the qualified producer, and (b) fixed tariff established for qualified producer in conformity with the law.

- **Montenegro**

The new Law on Energy provides in Article 23 that the supporting measures for the RES and CHP production include: compulsory purchase of electricity, supporting prices for the electricity, duration of the PPA, exemption from the balancing services obligation, priority for dispatching and other measures in accordance with law. The supporting price is determined by a regulation of the Government. Paragraph 7 of Article 23 provides that these supporting measures are granted in a competitive procedure of collection of offers based on clear, transparent and non discriminatory criteria, except in case of production of electricity with capacity of up to 1 MW. It is our understanding that this procedure is not applicable yet. From the text of the law, it is not clear if they would include the electricity price as well. This should be clarified with the Respective Government decision.

- **Serbia**

No, Articles 70-77 of the Energy Law regulate the status of privileged electricity producers, temporary status of privileged electricity producers, and status of an electricity producer from renewable energy sources. In accordance with Article 8 of the Regulation on the Manner of Calculation and Allocation of Funds Collected in accordance with the Incentive Fees for Privileged Producer of Electricity (Official Gazette of the Republic of Serbia no. 8/2013) the burden of the funds collection shall bear final costumers. Further, the National Action Plan for Using Renewable Energy Sources represents the document which determines the aims of using renewable energy sources until 2020, and how to achieve them. The Section 4.3 of the National Plan for Using Renewable Energy Sources stipulates that the public procurement rules shall not applied for granting of the support scheme for renewable energy.

- **Ukraine**

No. The support scheme for renewable energy in Ukraine includes feed-in tariffs (so called «green» tariffs) as well as tax and import duty exemptions. The feed-in tariffs are established by the National Energy and Utilities Regulatory Commission for each installation generating electricity from RES individually. Consequently, public procurement rules do not apply to granting of the support schemes for RES.

d) TSOs when obtaining balancing and ancillary services (including capacity mechanisms auctions, interpretability services);

- **EU**

Yes. The Utilities Directive would apply for TSOs when obtaining balancing and ancillary services.

- **Albania**

TSO ensures for the system balancing services, according to the rules approved by ERE (Article 100/1 of the Law No. 43/2015 & Chapter VII of ERE Decision No.68/2008). A) For the Balancing services, the applications and offers are directly submitted by the producers, the traders of interconnections and suppliers, after which TSO will accept the application/request in order to keep the system in balance and to ensure for reserves (ERE Decision No.68/2008, Paragraph VII.3.4). B) For the

Ancillary services, each year, based on information obtained from market players, TSO shall prepare a list of producing units for obtaining ancillary services, which is approved by ERE. TSO will contract or make any arrangement, by purchasing or obtaining ancillary services from the most economic resources available. (ERE Decision No.68/2008, paragraphs VIII.2.4-6).

- **Bosnia and Herzegovina**

The Independent System Operator procures balancing and ancillary services through auctions in accordance with the PP laws. The Procurement Plan for 2016, published on the TSOs web page provides for the procurement of electricity for balancing services in 2016.

BiH Gas doo, BiH Gas TSO applies the PP procedures for purchasing of services. We have reviewed the PP plan for 2015. However this does not apply to the ancillary services as all gas is purchased from one provider.

- **FYR of Macedonia**

No, the methodology and prices are regulated by the Energy Regulatory Commission (article 4.1.22 of the Energy law) and the TSO is not obliged and in practice not performing auctions in order to procure these services. This applies both for electricity and gas.

- **Kosovo***

Pursuant to the Market Rules, approved by ERO in December 2013, it is the TSO that proposes and procures ancillary services (see Article 13 of the Market Rules), whereas tendering documents for procurement of such services are approved by ERO in April 2015. The Market Rules regulate that the balancing process is initiated by the TSO as well. For purchasing balancing and ancillary services the PP rules apply. Procurement of ancillary services is done based on special provisions approved by ERO by Decision V_731_2015, issued on 10 April 2015. This decision was taken pursuant to Art.14 and 25 of the Law on Energy, Art.13 of the Market Rules, based on the Grid Code and the proposal of KOSTT. It provides for the apposite tender instruction, assessment criteria and tender documents.

- **Moldova**

It is not provided in laws and not applied in practice: a) for electricity the article 30(7) of the Law on Electric Energy and article 10 (5) of the New Electricity Law stipulate that according to the terms established by the Rules of Electric Energy Market operator of transmission network and system shall ensure balance in transmission of electric network. The parties responsible for the balancing shall conclude contracts for purchase of balancing electric energy; b) for gas the article 39 of the New Gas Law stipulates that system operator has dispatching functions to manage volumes of natural gas and to ensure balance in the natural gas system. The rules used by the operator for such purposes shall be objective, transparent and non-discriminatory.

The terms and tariffs shall be established in non-discriminatory ways by the operator and shall be approved by the Agency.

- **Montenegro**

According to Article 58.5.3 of the Energy law the prices for ancillary services are proposed by the TSO in accordance with the methodology regulated by the Regulatory Agency pursuant to the article 43.1.2 of the Energy Law. The Methodology determines the prices, deadlines and conditions for provision of ancillary and balancing services. According to article 132 of the Energy Law, TSO and DSO are obliged to secure availability of ancillary and balancing services on the principle of minimal expenses. Energy entities and end consumers which may provide these services are obliged to offer these services in a transparent procedure while the operators should select offers in a transparent procedure and conclude the respective agreements.

As Montenegro does not have gas production, transmission or supply, the law provides some general rules on the gas balancing and ancillary services. In regard to procurement of these services the law provides in article 146 that the future TSO Code will regulate the procedure for obtaining of these services and the respective costs.

- **Serbia**

Yes, the transmission system operator Elektromreže Srbije (hereinafter “EMS”) but not the owner of the grid. Having in mind Articles 109,110 and 137 of the Energy Law EMS is obliged to provide balancing services in accordance with transparent, non-discriminatory and market principles that will ensure appropriate support to system users in balancing their delivery and takeover of electricity. EMS may neither purchase nor sell electricity, except for the purpose of the provision of system services, system balancing, ensuring safe system operation and compensation of losses in the transmission system. Further, having in mind the provisions of Articles 117, 119 and 122 of the Public Procurement Law, EMS is obliged to perform the public procurement procedure in order to obtain the balancing and ancillary services.

According to article 296 of the Energy law the Gas TSO procures gas for balancing and security of operations from the market participants, by using the gas from storage and from line-pack, in transparent, non discriminatory and market oriented manner.

- **Ukraine**

According to paragraph 4 of Article 2 of the PP Law, the latter does not apply to procurement of goods and services at balancing market and ancillary services market as well as electric energy sold and purchased at the electricity market by the guaranteed buyer, market operator, system operator, the party responsible for balancing of the balancing group, including the balancing group of electricity producers awarded with «green» tariffs.

There is no explicit reference for the procurement of gas for the balancing and ancillary services. It provides only that procurement of these services should be in accordance with general terms and market conditions. In case of emergency the PP procurement rules for these services are subsidised to the direct concluding of short contracts.

e) Construction of new production facilities and

- **EU**

Yes. The Classic or the Concession Directive would apply in respect of constructing new production facilities. Note that here we do not consider the situation when the new production facility is private project within the meaning that it is not project of public interest and/or with participation of the public finances. Thus when the State provide concession for such project or when it is financed by the State, public procurement rules should apply.

- **Albania**

It is applicable Law No. 125/2013 “On Concessions and Public Private Partnership” (Article 4).

- **Bosnia and Herzegovina**

Yes (both for electricity and gas), according to Article 6 /1/v) of the Concession Law (RS) and Articles 6/1/12) of the Concession Law (FBiH).

More precisely, according to article 3 and 6.1.2 of the FBiH Concession law concessions are issued for HPP, use of water, use or minerals for production of energy, construction of pipelines for natural gas and storage of natural gas. According to Article 23 and 24 concessions are granted to concessionaires upon conducting of a tender procedure.

There are similar provisions in the RS Concession law (Article 6) which include more energy objects: particularly use of water, construction of energy objects above 250 kW, construction of pipelines for oil and gas, constructing of warehouses for gas, are subject to concession. Main procedure for granting of concession is tender (articles 14-25), exceptionally, under conditions prescribed by law, negotiation procedure may apply.

The Law on PP would apply in case such construction is financed by the State (see Annex I, point 21, 24, 31).

- **FYR of Macedonia**

Yes, PP rules apply to the construction of new facilities. Article 49 paragraph 4 regulates that the conditions for construction of the concerned energy facility shall be determined by the concession agreement. The Law on Concessions and Public Private Partnership in the Article 4 Definitions is stated the Public Procurement Law shall accordingly apply to this Law, unless otherwise determined by this Law.

- **Kosovo***

The PP law does not apply in construction of new production facilities or new generation capacities in general. This is regulated by the Law no. 03/L-185. According to the Law no.03/L-185 on ERO (Article 38 thereof), the construction of new generation capacities, incl. of interconnectors is subject to ERO authorization, except where the law specifically permits the use of tendering procedure. ERO has already issued a Rule on Authorization procedure for Construction of New Generation Capacities in November 2014, wherein the conditions for authorization and the procedure thereof are set.

Article 39 of the this Law authorizes the Government to launch a tendering procedure for the construction of new generation capacities if ERO issues a written determination stating that an authorization procedure has not resulted in either: i) the building of sufficient electricity generation capacity to ensure security of supply or to meet environmental targets or ii) adequate energy efficiency or demand-side management measures being provided. Such tendering procedure shall be conducted by the Public Private Partnerships Inter-Ministerial Steering Committee (PPP-ISC) pursuant to the PPP Law regulation, wherein ERO shall be an ex officio member. If at the time the Government authorizes a tendering procedure as described above, the Republic of Kosovo controls an electricity generation, transmission, distribution or supply company, the tendering procedure shall be conducted by ERO, which may delegate the management of the tendering process to another authority established to ensure independent decision making in the process.

- **Moldova**

The Article 33 of the Law on Electric Energy and article 21 of the new Electricity law stipulate that the Government approves construction of power stations with capacities over 20 MWtts. The procedures shall be transparent and available to the public and shall be established in the regulation draft by the central industry body of public administration and approved by the Government. Pursuant to the article 34 of the Law , there may be an auction in case the steps provided by Article 33 were not sufficient or in case the management procedures were not effective to ensure electric energy supply. Auction procedures shall be based on objective, transparent, non-discriminatory criteria and organization of auction shall be established in the regulation approved by the Government. An auction shall be organized by the Government or by the central industry body of public administration in energy.

- **Montenegro**

Yes, according to Article 6 and 20 of the Concession Law. It applies to both electricity and gas.

- **Serbia**

Yes, according to Articles 117 and 119 of the Public Procurement Law, the public procurement rules shall be applied for the construction and management of facilities

and networks in order to provide services to customers in connection with the production, transportation, transmission or distribution of electricity and gas.

The public procurement shall apply to construction of new production facilities if the facility is owned by contracting authority and if perform activity of public interest, is 50% financed and controlled by contracting authority, and has management appointed by contracting authority all in accordance with Article 2 of the PP Act. Further, pursuant to the Article 15 of the Energy Law electricity generation is not activity of public interest, however generation of thermal energy is. In the Republic of Serbia all public generation facilities are owned by Public Service Provider (EPS). Given that EPS meets the requirements and is considered as Public Undertaking, and that public thermal generation facilities were owned by EPS (100% ownership and 100% control) and performed activities of public interest such facilities were considered as Public Undertakings and PP Act provisions applied. With regard to electricity recent change in Serbian energy regulation introduced electricity generation as free market activity and thus for the electricity generation facilities the question was more complex. However, in July 2015 EPS merged and assumed all state owned electricity and thermal generation facilities and now all facilities are just organizational part of the EPS (branches) and now the PP rules shall apply to all publicly owned generation facilities.

- **Ukraine**

According to the Concessions Law, concessions may be granted for construction of facilities for purposes of electricity production facilities and supply of natural gas (no production).

The concessions shall be awarded upon the results of a competitive procedure performed according to the Concessions Law and other normative acts (no specification). There are no explicit references to the PP law/rules.

f) Construction of interconnections or extension of the grid.

- **EU**

Yes. The Utilities Directive would apply in respect of constructing interconnections or extending the grid.

- **Albania**

The Law No. 125/2013 “On Concessions and Public Private Partnership” (Article 4) is applicable.

- **Bosnia and Herzegovina**

Yes (both for electricity and gas), according to Article 6 /1/v) of the Concession Law (RS) and Articles 6/1/12) of the Concession Law (FBiH).

More precisely, according to article 3 and 6.1.2 of the FBiH Concession law concessions are issued for HPP, use of water, use or minerals for production of

energy, construction of pipelines for natural gas and storage of natural gas. According to Article 23 and 24 concessions are granted to concessionaires upon conducting of a tender procedure.

There are similar provisions in the RS Concession law (Article 6) which include more energy objects: particularly use of water, construction of energy objects above 250 kW, construction of pipelines for oil and gas, constructing of warehouses for gas, are subject to concession. Main procedure for granting of concession is tender (articles 14-25), exceptionally, under conditions prescribed by law, negotiation procedure may apply.

The Law on PP would apply in case such construction is financed by the State (see Annex I, point 21, 24, 31).

- **FYR of Macedonia**

The construction of new systems for distribution of electrical energy, of new networks for transmission of natural gas and of new facilities for transport of crude oil and oil derivatives shall be carried out by legal entities, on the basis of an authorization. On a proposal of the Ministry, the Government of FYR of Macedonia shall adopt a decision on authorization for construction of the new systems, networks or facilities. (Energy Law - Article 61). The procedure for awarding a concession shall be prepared, organized and implemented by a commission established by the Minister. On a proposal of the Minister, the Government of FYR of Macedonia shall give consent to the tender documentation (Energy Law - Article 62 paragraph 6). Also the Law on Concession in regards to concession to the goods of public interest and PPP (article 15) provides that the PP Law will apply to these agreements, and further regulates types of PP procedures.

- **Kosovo***

The construction, including the extension of interconnections and of the grid are regulated by the Law no.03/L-085 on ERO and the apposite secondary legislation issued by ERO (the Rule on Authorization procedure for Construction of New Generation Capacities) Art.39 of this Law authorizes the Government to launch a tendering procedure for the construction of new generation capacities if ERO issues a written determination stating that an authorization procedure has not resulted in either: i) the building of sufficient electricity generation capacity to ensure security of supply or to meet environmental targets or ii) adequate energy efficiency or demand-side management measures being provided.

More precisely Article 39 of the Law on ERO foresees a derogation from the obligation to subject the construction to the authorization procedure, as per above. It gives to the Government the authority to launch a tendering procedure for the construction of new generation capacities if ERO issues a written determination stating that the authorization procedure as per Art.38 has not resulted in either:

i) The building of sufficient electricity generation capacity to ensure security of supply or to meet environmental targets; or

ii) In adequate energy efficiency or demand-side management measures being provided.

In that case the tendering procedure at stake is conducted by the PPP Inter-Ministerial Steering Committee, as envisaged by the PPP Law and according to the rules set out by the latter, wherein ERO shall be a member. Nevertheless, if at the time the Government authorizes such tendering procedure the Rep. of Kosovo controls an electricity generation, transmission, distribution or supply company (as the case is in fact), the tendering procedure shall be conducted by ERO instead, according to the pertinent provisions of the PPP Law. However, the two steps procedure for construction of new generation capacities (as per above) does not seem to be strict in terms of exhausting the first step in order to qualify for the second one, as Art.2, paragraph 5 of the Rule on Authorization Procedure for Construction of New Generation Capacities, provides for a derogation from the obligation to obtain authorization, in case new generation capacity “is to be tendered or constructed as a result of implementing a tendering procedure”, different from the derogation envisaged in instances falling within Art.39 of the Law on ERO. As a result, it can be concluded that the Public Procurement rules apply in case construction of new generation facilities is envisaged by the relevant contracting authorities.

Such tendering procedure shall be conducted by the Public Private Partnerships Inter-Ministerial Steering Committee (PPP-ISC) pursuant to the PPP Law regulation, wherein ERO shall be an ex officio member. If at the time the Government authorizes a tendering procedure as described above, the Republic of Kosovo controls an electricity generation, transmission, distribution or supply company, the tendering procedure shall be conducted by ERO, which may delegate the management of the tendering process to another authority established to ensure independent decision making in the process.

- **Moldova**

The law does not provide for the obligation to apply the PP rules for procuring of works regarding the extension of the grid. Article 19 of the new Law on Electric Energy only provides that construction, use, maintenance and increase of capacity of electric stations and connection of stations to transmission or distribution networks shall be done in conformity with the law, the Law on Authorization to Perform Construction Works, and Regulation on Connection.

- **Montenegro**

Yes, according to Article 6 and 20 of the Concession Law. It applies to both electricity and gas.

- **Serbia**

The public procurement shall apply to construction of new production facilities if the facility is owned by contracting authority and if perform activity of public interest, is 50% financed and controlled by contracting authority, and has management appointed by contracting authority all in accordance with Article 2 of the PP Act. Further, pursuant to the Article 15 of the Energy Law following activities related to the

gas and electricity infrastructure remained activities of public interest: (i) electricity transmission and electricity transmission system management; (ii) electricity distribution and electricity distribution system management; (iii) natural gas transport and natural gas transport system management; (iv) natural gas storage and natural gas storage facility management; (v) natural gas distribution and natural gas distribution system management; (vi) public natural gas supply. In 2014 all TSO and DSOs acquired the full ownership over energy grids in Serbia. Further TSO meets all requirement and is considered as Public Undertaking and thus the PP rules shall apply in regard to construction and reconstruction of the transmission lines. DSOs in Serbia are subsidiaries owned by EPS (100% ownership and 100% control) owned by EPS (100% ownership and 100% control) and perform activities of public interest and PP Act provisions are applicable.

- **Ukraine**

According to the Concessions Law, concessions may be granted for construction of facilities for purposes of electricity transmission and for distribution and supply of natural gas (no production).

The concessions shall be awarded upon the results of a **competitive procedure performed according to the Concessions Law** and other normative acts (no specification). There are no explicit references to the PP law/rules.

4.3. Are there general principles (transparency, equal treatment, free competition and non-discrimination) applicable to all public procurements (regardless to value or subject matter)?

- **EU**

Article 18 of the Classic Directive entitled "Principles of procurement" explicitly provides for the principles of equal treatment of economic operators, non-discrimination, transparency and proportionality of contracting authorities' actions, as well as the prohibition of artificial narrowing of competition and intentional exclusion of public procurement from the scope of the Classic Directive without any reference to the value or subject matter of the public procurement.

- **Albania**

In March 2015, the "Cross-cutting strategy for prevention of corruption 2015–2020" was adopted. In relation to transparency in the activity of state institutions, the strategy states that, in the field of procurement, the monitoring process of procurement procedures shall continue, and better control is necessary to avoid potential violations, including cases of conflicts of interest.

Finally, according to Article 2 of Law No. 9643/2006, the award of public contracts is governed by non-discrimination and equality of treatment of actual and potential tenderers, the transparency of procurement procedures and proportionality of requirements and obligations imposed to actual and potential tenderers.

- **Bosnia and Herzegovina**

The contracting authority shall be under obligation to act transparently, to treat candidates/bidders equally and without discrimination in public procurement procedures, in a manner that will ensure just and active competition, with the aim of ensuring the most efficient spending of public funds, taking into account the subject matter of procurement and its purpose (Article 3 Law on Public Procurement).

General principles are also mandatorily applied and respected in the legal protection procedure. Procurement Review Body of BiH is responsible for the protection of the general principles in public procurement procedures, on appeal.

BiH must gradually reduce the advantage given to domestic bidders (15% for contracts awarded in year 2015 and 2016, 10% for contracts awarded in year 2017 and 2018, 5% for contracts awarded in 2019). In 2020 the domestic preferential treatment will not be applicable.

- **FYR of Macedonia**

Based on the Law on Public Procurement article 2 it should be in particular ensure: competition among economic operators, equal treatment and non-discrimination of economic operators, transparency and integrity in the process of awarding public procurement contracts, and rational and efficient utilization of the funds in the procedures for awarding public procurement contracts.

- **Kosovo***

The PP Law imposes on contracting authorities an obligation to treat economic operators equally and without discrimination, while also demanding transparency and proportionality on behalf of contracting authorities while conducting procurement activities according to Article 7 of the PP Law. Contracting authorities are specifically forbidden to conduct any aspect of a procurement activity in a manner that reduces or eliminates competition among economic operators or that discriminates against or in favour of one or more economic operators.

- **Moldova**

Yes, according to the article 6 of the Public Procurement law. The principles regulating the public procurement procedure shall be based on the following principles: (a) effective use of state funds and minimizing risks of purchasing bodies; (b) transparency of public procurement; (c) ensuring competition and fighting of unfair competition in the field of public procurement; (d) protection of environment and promotion of sustainable development by means of public procurement; (e) maintenance of public order, morals and public safety, protection of health, protection of human life, flora and fauna; (f) liberalization and development of international trade; (g) free circulation of goods, freedom of provision of services; (h) equal treatment, impartial and non-discrimination approach to all participants and business operators; (i) proportionality; (j) mutual recognition; (k) responsibility of public procurement procedures.

- **Montenegro**

Yes, Articles 5-8 of the PP Law provide for the following general principles: of Efficiency and Cost-Effectiveness; Principle of Ensuring Competition; Principle of Transparency in Public Procurement Procedure; and Principle of Equality of Bidders.

- **Serbia**

Yes, Articles 9-13 of the PP Law provide for the following general principles: of Efficiency and Cost-Effectiveness; Principle of Ensuring Competition; Principle of Transparency in Public Procurement Procedure; and Principle of Equality of Bidders. According to Article 76 Paragraph 4 of the Law on Ratification of the Agreement on Stabilization and Association Agreement between the European Communities and their Member states, with One Side and Serbia on the Other Side (which come into force on 01 September 2013), Serbia will gradually reduce the advantage given to domestic bidders within 5 years after the ratification of this Agreement (until 2018), as well in accordance with the Strategy.

The Republic Commission for Protection of Rights in the Public Procurement Procedures (hereinafter “Republic Commission”) is an independent institution of Serbia providing protection of rights in public procurement procedures. Republic commission issued numerous decisions where claimant’s request for the protection of rights was adopted because general principles from Articles 9-13 of the PP Law were not applied in the public procurement procedure.

- **Ukraine**

Yes, there are general principles applicable to all public procurements regardless to their value or subject matter. More precisely, the Article 3 of the PP Law provides for the following principles for public procurement: i) fair competition among participants, ii) maximum economy and efficiency, iii) openness and transparency at every stage of procurement, iv) non-discrimination of participants, v) unbiased and impartial assessment of tender proposals, vi) prevention of corrupt actions and practices.

Further, according to the preamble of the PP Law, its main objective is ensuring the efficient and transparent public procurement, the establishment of the competitive environment in public procurement, the prevention of corruption as well as the development of fair competition.

Moreover, the paragraph 4 of Article 22 of the PP Law declares that the tender documents shall not contain requirements which may narrow the competition and discriminate the participants. The PP Law regulates as well that there would be no unnecessary restrictions of economic operators from other CPs and MSs by its Article 5, which provides for equal conditions for participation in public procurement of domestic and foreign economic operators of any type of ownership or from of incorporation.

4.4. What are the main exclusions and thresholds?

- **EU**

- (i) Pursuant to Article 4 of the Classic Directive, the latter shall not apply to the procurement of public works, supplies and services with a value net of value-added tax (VAT) below the following thresholds:
 - a) €5 186 000 for public works contracts;
 - b) €134 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities;
 - c) €207 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.
- (ii) Pursuant to Article 15 of the Utilities Directive, the latter shall not apply to the procurement of public works, supplies and services with a value net of value-added tax (VAT) below the following thresholds:
 - a) €414 000 for supply and service contracts as well as for design contests;
 - b) €5 186 000 for work contracts;
 - c) €1 000 000 for service contracts for social and other specific services.
- (iii) According to Articles 7 of the Classic Directive, the latter does not apply to public contracts and design contests which are awarded or organised by contracting authorities exercising one or more of the activities referred to in Articles 8 to 14 of the Utility Directive and are awarded for the pursuit of those activities;
- (iv) Article 9 of the Classic Directive and 20 of the Utilities Directive public contracts awarded and design contests organised pursuant to international rules (international treaties or rules of an international organisation)
- (v) Article 11 of the Classic Directive and 22 of the Utilities Directive, public service contracts awarded by a contracting authority/association of contracting authorities to another contracting authority/association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU;
- (vi) Article 12 of the Classic Directive and 28-31 regarding the public contracts within the public sector in case of the Classic Directive or Special relations (between contracting authorities, to an affiliated undertaking or to a joint venture with participation of a contracting entity) in case of the Utilities Directive;
- (vii) Procurement involving defence or security aspects (Article 15-17 of the Classic Directive and 24-27 of the Utilities Directive)
- (viii) Article 18 of the Utilities Directive, contracts awarded for purpose of resale of lease to third parties;
- (ix) Article 19 of the Utilities Directive, contracts awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of a such an activity in a third country;
- (x) Article 23 of the Utilities Directive, contracts awarded by certain contracting entities for the supply of energy or of fuels for the production of energy; and

(xi) Article 34-35 of the Utilities Directive, contracts directly exposed to competition.

- **Albania**

a) Thresholds

Thresholds provided by CPs PP Law are lower than those provided at Utility Directive. According to the article 8 of Decision of Council of Ministers, the applicable thresholds, including therein sectorial contracts, are as per the following:

A) High monetary limit:

-1,200,000,000 AL (€8.745.679,155) for public works contracts.

-200,000,000 AL (€1.456.619,10) for public contracts for goods and services.

B) Low monetary limit:

-12,000,000 AL (€87.410,494) ALL for public works contracts;

-8,000,000 AL (€58.250,95) ALL for public services contracts and goods.

b) Other exclusions

According to Article 4 of PP Law the only applicable exceptions are according to secret contracts and contracts requiring special security measures, as well as specific exclusions as for example the acquisition or rental, by whatever financial means, of immovable property or concerning rights thereon. Furthermore, the international organisation provisions shall prevail in cases of conflict with the local rules. Finally, the PPL shall not apply to service contracts awarded on the basis of an exclusive right.

- **Bosnia and Herzegovina**

a) Thresholds (Article 14)

Thresholds provided by PP Law are lower than those provided at Utility Directive. According to the Public Procurement Law, the applicable thresholds, including therein sectorial contracts, are as per the following:

Direct agreement can be applied if the procurement of supplies, services and works does not exceed 6.000,00 KM (€ 3.000,00) in one year, per procurement subject.

When the value of procurement is below KM 50,000.00 (€25.546,59) in case of supplies and services, or KM 80,000.00 (€40.903, 35) in case of works, the contracting authority may apply one of the procedures defined in the Law, except for direct agreement, and shall have to meet the requirements regulated for each specific procedure.

Application of open or restricted procedure, or negotiated procedure with or without publication of notice, or design contest or competitive dialogue shall be obligatory when the value of procurement for supplies and services amounts to or exceeds:

- A) KM 250,000.00 (€127.822,97) for following contracting authorities a) Every institution in Bosnia and Herzegovina, the Entities, Brčko District of Bosnia and Herzegovina, at the cantonal, city, or municipal level (hereinafter: institution at State, entity, or local level);b) Association established by one or more institutions or legal persons defined in items a) and b) of this paragraph.
- B) KM 400,000.00 (€204.516, 75) for following contracting authorities
a) legal persons established for a specific purpose with the objective of meeting the needs of general interest, not having an industrial or commercial character and meeting at least one of the following conditions: financed, for the most part, from public funds, or
are subject to management supervision by the contracting authorities defined in items a) and b) of this paragraph, or having an assembly, managerial or supervisory board, more than half of whose members are appointed or elected representatives of contracting authorities referred in the Law
- C) KM 800,000.00 (€409.033,50) for sectoral contracting authorities.
(3) When the value of procurement, in case of works, amounts to or exceeds KM 9,000,000.00 (€460.162,69) the contracting authority shall be under obligation to apply open or restricted procedure, or negotiated procedure with or without publication of notice, or design contest, or competitive dialogue.

a) Other exclusions (Article 10 and 86)

Article 10 provides for the following exemptions from the applications of the PPL: public procurement contract declared as state secret by laws in BiH, public procurement contract the execution of which must be accompanied by special security measures in accordance with laws in BiH, contract awarded in accordance with an international agreement according to which special procedure applies in terms of international, loan, or donor arrangements, or a public procurement contract concluded on the basis of special rules defined by an international agreement between BiH and one or several other countries for projects that will be jointly executed or used by contracting parties, or based on international agreements on troop stationing concluded by BiH, public procurement contract for natural and legal monopolies, that may include procurement of water, electricity, gas, heating, and other services, until the relevant market is opened for competition, contract on acquisition or rental of existing buildings, other real estate, land or rights resulting from them, by whatever financial means, , contract having as subject matter a service referred to in Annex II Part C of PPL (employment contracts, contracts for financial services connected with the issues, purchase, sale, assignment of transfer of securities or other financial instruments, and central bank services, contracts for arbitration and conciliation services, contracts for the acquisition, development, production or co-production of programs for radio and television broadcasting time, contracts for research and development services, except for those research and development services the benefit from which is used solely for the needs of the contracting authority and which are fully paid for by the contracting authority), concession contracts and public-private partnership contracts.

Article 86, which applies only to sectoral contracting authorities, excludes: public supplies or services contracts for further sale or lease to third parties, under the condition that the sectoral contracting authority does not hold a special or exclusive right to sale or lease of subject matter of such contracts, and that other operators can freely sell or lease under equal conditions as the sectoral contracting authority or sectoral contracting authorities, and contract concluded by sectoral contracting authority for the purposes that do not include the performance of activities defined in Articles 78 through 84 of PPL, for contracts awarded to a connected enterprise, business partner or sectoral contracting authority that is a part of a business partnership.

- **FYR of Macedonia**

- a) Thresholds (article 90 of the PP law)

PP procedure does not apply to

- exceeds Euro 130.000 in MKD counter value excluding VAT, for goods and service and Euro 4.000.000 in MKD counter value for works regarding the contracting authorities referred to the state bodies, the local self-government units and the City of Skopje; the legal entities established for a specific purpose for meeting the needs of public interest and the associations established by one or several contracting authorities.
- exceeds Euro 200.000 in MKD counter value excluding VAT, for goods and services and Euro 4.000.000 in MKD counter value for works regarding the contracting authorities referred to the public enterprises, the joint stock companies and the limited liability companies where the contracting authorities have dominant direct or indirect influence through ownership, and any legal entity which have exclusive right.

- b) Other exclusions

Based on The Law on Public procurement articles 7-11 regulate the following exclusions: acquisition or rental of real estate; contracts between contracting authorities (and their subsidiaries and joint ventures by several contracting authorities); conducted in accordance with special international organisation or international agreements rules.

- **Kosovo***

- a) Thresholds

Thresholds provided by LPP are lower than those provided at Utility Directive. According to Art.19 of public procurement Law provides for the applicable thresholds in classifying i) large value contracts, ii) medium value contracts, iii) low value contracts and iv) minimal value contracts, as specified below:

- i) Large value supply and service contracts are those estimated €125.000 or higher, whereas large value work contracts are those estimated 500,000 EUR or higher;
- ii) Medium value supply and services contracts are those estimated €10.000 - €125.000, while medium value work contracts comprise those estimated €10.000 to €500.000 EUR;
- iii) Low value contracts are those estimated €1.000 to €10.000; whereas
- iv) Minimal value contracts are those estimated less than €1.000

b) Other exceptions

Moreover, the procurement activities initiated by Socially Owned Enterprises are excluded according to the paragraph 7 of Art.3. Finally, there is also another exclusion regarding the contracts that are organized pursuant to international rules, which are imposed by an entered international agreement according to Art. 3.5 of LPP

• **Moldova**

a) Thresholds

According to the Art.2 of the PP Law, the thresholds are lower than the Directives: a) for Goods and Services: MDL 2300000 that is approx.€103.130; b) For Works MDL 90000000 that is approx.€ 4.035.875.

b) Other exceptions

Based on The Law on Public procurement article 4 regulates, among others, the following exclusions:(a) public procurement contracts awarded by purchasing bodies acting in the field of energy, water resources, transport and postal services, which fall under the respective area of activity and are regulated by the normative acts governing the procedure of contract awards in the field of energy, water resources, transport and postal services; (b) public procurement contracts that are considered secret according to the law, if the performance of such contracts shall be subject to special security measures stipulated by the law;(c) public procurement contracts awarded by one purchasing body to another purchasing body or to association of purchasing bodies on the basis of exclusive right that they have on the basis of the law;(d) public procurement contracts subject matter of which is purchase of goods for the purposes of re-sale;(e) public procurement contracts, regulated by various procedural provisions and awarded:- on the basis of international agreement concluded by the Republic of Moldova and one or more states with respect to goods or works that are necessary for a joint implementation of works by the participating states, or services necessary for joint implementation of project by participating states;- on the basis of international agreement on presence of military troops and on obligations of Moldova or third country;- on the basis of special procedure of international organization;(f) public procurement contracts as a result of which purchasing bodies may operate public communication networks or may render to the public one or several electric communication services.

- **Montenegro**

a) Thresholds (Articles 3 and 21)

The public procurement procedure shall be determined according to the estimated value of the public procurement which is classified into the following value scales:

- I Value scale – in cases when the estimated value of the public procurement is up to €5.000 the contracting authority shall perform the direct agreement;
- II Value scale – in cases when the estimated value of the public procurement exceeds €5.000 up to €25.000 for procurement of goods or services, or when the estimated contract value exceeds €5.000 up to €50.000 for procurement of works, the contracting authority shall perform the shopping method;
- III Value scale - in cases where the estimated value of the public procurement exceeds €25.000 for procurement of goods or services, or where the estimated contract value exceeds €50.000 for procurement of works, the contracting authority shall perform some of the procedures listed below: 1) open procedure; 2) restricted procedure; 3) negotiated procedure with prior publication of a contract notice; 4) negotiated procedure without prior publication of a contract notice; 5) framework agreement; 6) consulting services; and 7) contest;

b) Other exclusions include: reselling of electricity; purchase of energy or of fuels for the production of energy procured by a contracting entity; acquisition or rental of real estate; contracts between contracting authorities (and their subsidiaries and joint ventures by several contracting authorities); conducted in accordance with special international organisation or international agreements rules; services provided by business organizations or legal entities performing activities of public interest, in accordance with the Law; state of emergency; Confidential procurement. The PP law does not apply to the procedures of granting concessions and privatizations of companies.

- **Serbia**

a) Thresholds (Articles 39 and 124a)

- PP up to (app) €4.170,00 per procurement or a total estimated value of the annual procurement up to exceed (app) €4.170,00, no need to apply the PP rules;
- PP from €4.170,00 to € (app) €41.700,00 per procurement or the total annual value, a separate simpler procedure for the procurement of small value shall apply; and
- PP in the field of water, energy, transport and postal services (procurement value lower than (app) €83.400,00 per procurement or annual value, no need to apply the respective PP rules.

b) Other exclusions

The other exclusions are: resale and lease contracts; energy activities in third countries; international law agreements or organization rules apply to procurement;

service contract awarded to a contracting authority (exclusive right regulated by law); contracts awarded by contracting entities active in the energy sector for the supply of energy or of fuels for production of energy (which is not entirely applied article 122.1.2 of the PP law); in the fields of defense and security; contracts between contracting authorities (and their subsidiaries) and activities directly exposed to competition on markets to which access is not restricted.

- **Ukraine**

a) Thresholds:

According to the PP Law, and more precisely the paragraph 1 of Article 2, the following thresholds apply to the energy sector related PPs: i) UAH 1 million (approximately €36.000) or more for goods and services; ii) UAH 5 million (approximately €180.000) or more for works.

b) Main Exclusions:

The main exclusions applicable to public procurement rules in the PP Law in Ukraine refer, among others, to: i) resale contracts, under condition that the contracting entity does not enjoy a monopoly (dominant) position at the market of such goods and that other participants in the market may freely sell such goods under the same conditions as the contracting entity, regulated by subparagraph 3 of paragraph 4 of Article 2 of the PP Law; ii) international law agreements or organisation rules that apply to procurement regulated by paragraph 3 of Article 2 and Article 6 of the PP Law; iii) acquisition or rental of real estate regulated by paragraph 3 of Article 2 of the PP Law; iv) contracts with contracting entities and their affiliates regulated by subparagraph 1 of paragraph 4 of Article 2 of the PP Law; v) the PP Law does not apply to procurement of goods, works and services if their prices (tariffs) are established by state collegial authorities (like NEURC), other authorities in accordance with their powers, or established according to procedures approved by such authorities, including in case these prices (tariffs) are determined during auctions (according to the subparagraph 5 of paragraph 4 of Article 2 of the PP Law).

4.5. What types of procurement procedures are available and what are the prescribed time limits?

- **EU**

Articles 26-32 of the Classic Directive and 43-50 of the Utilities Directive provide for the application of:

- 2.) **An open procedure.** Both Directives: the minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent, which may be shortened to 15 days under certain conditions, and reduced by five days in case tenders may be submitted by electronic means. In case of publication of prior information notice the time may be shortened to 15 days.
- 3.) **A restricted procedure.** Classic Directive: The minimum time limit for the receipt of requests to participate/tenders shall be 30 days (in cases of

substantiated urgency, at least 15 days for receipt of tenders and 10 days and for receipt of requests to participate), which may be shortened to 10 days under certain conditions where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, and may be reduced by five days in case tenders may be submitted by electronic means. Utilities Directive provides that the time limit of 30 days shall in no event be reduced to less than 15 days.

- 4.) **A competitive procedure with negotiation (Classic Directive).** The minimum time limit for the receipt of requests to participate/initial tenders shall be 30 days. **Negotiated procedure with prior call for competition (Utilities Directive)** the minimum time limit for the receipt of requests shall be fixed at no less than 30 days from the notice or when a periodic indicative notice is used not less than 15 days.
- 5.) **A competitive dialogue.** Classic Directive: the minimum time limit for the receipt of requests to participate shall be 30 days. Utilities Directive: the minimum time limit for the receipt of requests shall be fixed at no less than 30 days from the notice or when a periodic indicative notice is used not less than 15 days.
- 6.) **An innovation partnership.** Classic Directive: The minimum time limit for the receipt of requests to participate shall be 30 days. Utilities Directive: the minimum time limit for the receipt of requests shall be fixed at no less than 30 days and shall in any event not be less than 15 days.
- 7.) **A negotiated procedure without prior publication** of a call for competition (Classic Directive). **A negotiated procedure without prior call for competition (Utilities Directive).** This procedure may be used for public service contracts, where the contract concerned follows a design contest as well as for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract. In the latter case, this procedure may be used only during the three years following the conclusion of the original contract. Further on in certain specific cases such as for supplies quoted and purchased on a commodity market, for the reasons of extreme urgency, when works, supplies or services can be supplied only by a particular economic operator.

- **Albania**

There types of procurement procedures and their prescribed time limits are described in the Article 29 and 43 of Law 9643/2006 accordingly :

- a) The open procedure: i) not less than 50 (fifty) calendar days with higher value the thresholds; and ii) at least 30 (thirty) calendar days with value between the higher and lower thresholds;
- b) The restricted procedure: The restricted procedure 20 (twenty) calendar days;
- c) The negotiated procedure with or without prior publication of a contract notice: 20 (twenty) calendar days;
- d) The request for proposals: 20 (twenty) calendar days;

- e) The design competition: 20 (twenty) calendar days and f) The consultancy services 15 (fifteen) calendar days.

In the case of procurement procedures under the minimum threshold, the prescribed time limit is 10 (ten) calendar days. When notifications are drafted and published electronically: i) the time limits for delivering the bids for the open procedures may be reduced to 7 (seven) calendar days and ii) the time limits for submitting the bids for the other procedures may be reduced to 5 (five) calendar days.

- **Bosnia and Herzegovina**

There are the following PP procedures in BiH which are also provided in the UD:

- a) Open Procedure (art 25)
- b) Restricted Procedure (art 26)
- c) Negotiated Procedure with Publication of Procurement Notice (art 27)
- d) Competitive Dialogue (29)
- e) Negotiated Procedure without Publication of Procurement Notice (art 28)

BiH has some additional procedures not regulated by the UD for the small value (Article 87)

- Competitive requests (88) (the value is up to app. €25.000 goods and services and €40.000 for works)
- Direct conclusion of agreement (89) (the value is up to app. €3.000)

Articles 40-42 provide for the minimum deadlines for submission of the offers. They depend on the thresholds and range from, Thus for bigger amounts (listed in 5.4 under B and C above) the deadline for submission of the offer is 45 days for the open procedure and 35 days in the Restricted Procedure; while the deadline for receiving of the applications for participation in the procedure is 30 days in the Restricted procedure, Negotiated Procedure with Publication of Procurement Notice and Competitive Dialogue. For the lower amounts (the amounts between those from 5.4 A and B/C) the deadline for submission of the offer is 20 days for the open procedure and 15 days in the Restricted Procedure; while the deadline for receiving of the applications for participation in the procedure is 15 days in the Restricted procedure, Negotiated Procedure with Publication of Procurement Notice and Competitive Dialogue. These deadlines may be reduced for 5 days in case that tender documents and information are provided by electronic means. In case of publication of the prior notice the above deadlines may be reduced the deadline for submission of the offer from 45 days in case of open procedure and 35 days in case of restricted procedure to 25 days and the deadline for submission of the offer for domestic thresholds from 20 days in case of open procedure and 15 days in case of restricted procedure to 13.

- **FYR of Macedonia**

The following procedures apply in FYR of Macedonia:

- a) **Open procedure** - The deadline for submission of the tenders must not be shorter than 45 days as of the day of publication on ESPP if the estimated value of the public procurement contract, excluding VAT, exceeds: 130.000 Euro in MKD counter value for goods and service and Euro 4.000.000 in MKD counter value for works regarding the contracting authorities referred to in Article 4 paragraph (1) points a), b) and c) of this Law, or 200.000 Euro in MKD counter value for goods and services and Euro 4.000.000 in MKD counter value for works regarding the contracting authorities. As an exception, the contracting authority may shorten the deadline for submission of the tenders up to 36 days at the most, provided that a prior indicative notice has been published.
- b) **Restricted procedure** - The deadline for submission of the requests for participation must not be shorter than 30 days as of the day of publication on ESPP, if the estimated value of the public procurement contract, excluding VAT, exceeds: 130.000 Euro in MKD counter value for goods and services and Euro 4.000.000 in MKD counter value for works regarding the contracting authorities or 200.000 Euro in MKD counter value for goods and services and Euro 4.000.000 in MKD counter value for works regarding the contracting authorities. As an exception, due to reasons of urgency requiring implementation of the contract within shorter time periods, the contracting authority may accelerate the procedure by shortening the deadline for 15 days at the most. If the estimated value of the public procurement contract is above the amount of 130.000 euro in MKD counter value and Euro 200.000 euro in MKD counter value, the deadline for submission of the tenders of the restricted procedure must not be shorter than 40 days. As an exception, the contracting authority may shorten the deadline for submission of the tenders up to 36 days at the most, provided that a prior indicative notice has been published.
- c) **Competitive dialogue** –. The deadline for submission of the requests for participation must not be shorter than 15 days.
- d) **Negotiated procedure with prior publication of a contract notice** - The deadline for submission of the requests to participate must not be shorter than 12 days.
- e) **Negotiated procedure without prior publication of a contract notice**
- f) **Simplified competitive procedure** – The deadline for submitting tenders in case of a simplified competitive procedure must not be shorter than five days.
- g) **Design contest** as a separate procedure with the award of prizes, or as a part of the procedure for awarding a public procurement contract for services. The final deadline for submission of the plans or the projects must not be shorter than 35 days.

- **Kosovo***

Except the well known typical procurement procedures, Arts.32-38 of the Law (in Part II Chapter II) provide for procedures of v) price quotation, vi) minimal value contracts and vii) design contest.

Taking into consideration the complexity of the contract and the time required for the preparation of tenders, the LPP sets minimum obligatory time limits depending on the type of procurement procedure chosen by contracting authorities, as well as on the estimated value of the contract to be awarded. Time limits shall be calculated on the date of publication of the contract notice or on the date when all invitations to submit a tender or quotation are sent.

The normal time limits for receipt of tenders when using the open procedure for i) large value contracts is 40 days after publication of contract notice, ii) for medium value contracts 20 days, iii) for low value contracts 5 days and for iv) minimal value contracts 1 day.

When using the restricted procedure the applicable time limits for receipt of requests for participation and receipt of tender are the following: i) for large value contracts 20 days regarding the receipt of participation requests and 40 days for receipt of tenders, whereas for ii) medium value contracts there are shorter time limits, i.e. 15 days for receipt of participation requests and 20 days for receipt of tenders. The same time limits for receipt of participation and tenders requests apply when using the negotiated procedure after publication of contract notice.

While in case of a large value contract to be awarded, subject to an indicative notice, the time limit for receipt of tenders when using the open procedure is reduced to 24 days. When the restricted procedure is applied the time limit for receipt of participation requests is 20 days, whereas that of receipt of tenders is 24 days.

Moreover, Article 46 of the LPP provides for accelerated time limits when special circumstances exist, which tender compliance with the normal time limits is impracticable. In this instance when the open procedure is chosen the following time limits for receipt of tenders apply: i) for large value contracts 15 days and ii) for medium value ones 10 days. Finally, If either the restricted procedure or the negotiated procedure after publication of contract notice are qualified, the time limits are reduced to i) 15 days for receipt of participation requests and ii) 10 days for receipt of tenders.

- **Moldova**

The Article 44 paragraph 1 of the PP Law provides the following procedures for awarding public procurement contracts:

- a) Open tender; deadlines for tender's submission (article 45 PP law) 20 days, in some cases 52 and 36 , depending on different exceptions.
- b) Restricted tender; (article 49 PP law); deadlines for tender's submission, 20 days, in some cases 37 when it refers to threshold above the one of article 2 para 3 and 10 days in case of electronic form .
- c) Competitive dialogue(article 42 PP law); deadlines for tender's submission 20 days, in some cases 37 above the threshold of article 2 para 3 .
- d) Negotiated procedure with and without prior publication of announcement for participation (call); deadlines for tender's submission, deadlines for tender's

submission 20 days, in some cases 37 above the threshold of article 2 para 3, not less than 15 days in certain emergencies, in case of electronic form it is 5 days (43 PP law)

- e) Request for price offers; deadlines for tender's submission is twenty (20) days.
- f) Contest of project proposals (solutions); deadlines for tender's submission is twenty (20) days.
- g) Purchases in case of planning of construction of social housing; deadlines for tender's submission is twenty (20) days.

The Law stipulates that main procedures include open tender and restricted tender, while the others may be used under certain conditions provided by the law.

- **Montenegro**

There are following types of procedures: open procedure; restricted procedure; negotiated procedure with prior publication of a contract notice; negotiated procedure without prior publication of a contract notice; contest; shopping method (the minimum time for submission of the offers in this procedure is 12 days from the publications of the procurement note) and direct agreement. Direct agreement is allowed for very small value of up to €5.000 while shopping is up to €25.000 for goods and services and up to €50.000 for works (Article 21)

Note that the selection of a type of a procedure depends on the value of the procurement, as described above under 5.4. The Law provides that the deadline determined in the announcement of PP should be adequate (Article 89). It further regulates that the deadline for submission of an offer in the open procedure should not be less than 37 days while in the case of emergency it may be 22 days (article 90). Deadline for a prequalification in a restricted procedure may not be less than 37 days from publication on the PP portal, 22 days from documents for the second phase has been delivered to the qualified participants (article 91). In negotiated procedure without prior notice may not be less than 22 days from publication of the notice (article 91).

- **Serbia**

The following procedures apply in Serbia:

- a) Open procedure; deadlines for tender's submission 30 days for the Small Value Procedure, and 35 days above the threshold for the Small Value Procedure; in case a prior notice is published not less than 35 days and not more than 12 months before the publication of the tender, the deadlines are 15 and 20 days respectively;
- b) Restricted procedure; deadlines for tender's submission may not be below 20 days the call was sent;
- c) Negotiated procedure with prior call for competition; deadlines for tender's submission may not be below 20 days the call was sent;

- d) Competitive dialogue; deadlines are the same as for the tender submissions, as described above;
- e) Negotiated procedure without prior call for competition

Apart of above mentioned (articles 95-97), Public Procurement Law provides the other types of procedures such as Qualification Procedure (Article 96 and deadline 8 days) and the Low-Value Procedure (article 95, deadlines described under a)).

In accordance with the PP Law, the Public Procurement Office monitors the above listed procedures through the enacted public procurement plan. Also, the Public Procurement Office examines the fulfillment of requirements for conducting negotiated procedure without prior call for competition and competitive dialogue (Article 136). In accordance with Article 36 of the PP Law the contracting authority shall, prior to initiating negotiated procedure without prior call for competition, request opinion of the Public Procurement Office on the adequacy of applying the negotiated procedure.

In accordance with the information obtained from the Public Procurement Office, Article 136 Paragraph 1 Item 5 contains the mistake that has to be deleted. Namely, the Public Procurement Office does not examine the fulfillment of requirements for conducting competitive dialog, only examines the fulfillment of requirements for conducting the negotiated procedure without prior call for competition.

- **Ukraine**

The following procedures apply in Ukraine:

a) an open procedure; The open procedure is detailed in Articles 20-32 of the PP Law. The minimum time limit for the receipt of tenders is fifteen (15) days from the date of publication of the contract notice at the web-portal. In case the value of the procurement exceeds the equivalent of EUR 133 thousand for goods and services or EUR 5150 thousand for works (such notices shall also be published in English), the minimum time limit for the receipt of tenders shall be thirty (30) days from the date of publication of the contract notice at the web-portal.

b) a competitive dialogue; According to the Public Procurement System Reform, during 1 January - 31 December 2019 the Ukrainian PP legislation shall be brought in compliance with the provisions of Directive 2014/24/EU and Directive 2014/25/EU on the competitive dialogue.

Currently, the procedure of the competitive dialogue is detailed in Articles 33-34 of the PP Law. At the first stage of the procedure the minimum time limit for the receipt of tenders is thirty (30) days after the announcement of the competitive dialogue has been published at the web-portal. At the second stage of the procedure the minimum time limit for the receipt of final tenders is fifteen (15) days from the date the invitation to participate in the second stage of the competitive dialogue has been received.

c) a negotiated procedure (without prior call for competition). In the PP Law it is called «a negotiated procedure» without any specification as regards prior publication of the call for competition. However, based on its definition «a

negotiated procedure of procurement is the procedure used by the contracting entity as an exception, and according to which the contracting entity concludes the procurement contract with an economic operator upon negotiations with one or several economic operators», it seems similar to the negotiated procedure without prior call.

Currently, the negotiated procedure is detailed in Article 35 of the PP Law. The contracting entity may apply this type of procurement procedure only in exceptional cases. The procurement contract may be concluded with the selected tenderer within ten (10) days (five (5) days in case of urgency in order to deal with the consequences of emergencies; in case of procurement for the purchase of oil, crude oil products, electricity, postal and telecommunication services etc.) after publication of the announcement of the negotiated procedure at the web-portal.

Further, the Ukraine plans to harmonise its legislation with the EU 2014 directives in the period from 1 January 2017 - 31 December 2018. In this regard in plans to introduce the restricted procedure, the competitive procedure with negotiations and the negotiated procedure without prior call for competition.

4.6. What techniques and instruments are available (framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, centralized purchasing activities/bodies)

- **EU**

The techniques and instruments for electronic and aggregated procurement are detailed in Articles 33-39 of the Classic Directive and include:

- framework agreements;
- dynamic purchasing systems;
- electronic auctions;
- electronic catalogues;
- centralised purchasing activities and central purchasing bodies;
- occasional joint procurement; and
- procurement involving contracting authorities from different Member States.

- **Albania**

The LPP provides for the following technics and instruments: electronic auctions and dynamic purchasing systems (article 37 of the PP Law).

- **Bosnia and Herzegovina**

The electronic information system “e-Procurement” has been upgraded with the electronic auction module. The Rulebook on Electronic Auction has just been adopted by the Council of Ministers of BiH and the application will start 8 days after

the publication in Official Gazette of BiH. Electronic Auction and Dynamic Purchasing System are provided in Article 123 of PPL.

Joint procurement and central purchasing body are regulated in Article 4 of the PPL as well as the Rulebook on Joint Procurement and Establishment of Central Procurement Body (OG BiH 55/15). Joint procurement is used by contracting authorities.

- **FYR of Macedonia**

According to the Public Procurement Law the following techniques and instruments are available:

- Framework Agreements – from article 115 till 120 and
- Electronic auctions – from article 121 till 128.
- The dynamic purchasing systems, electronic catalogues and centralized purchasing activities/bodies are not available.

- **Kosovo***

The LPP provides for the following techniques and instruments:

- (i) Framework agreements (largely regulated by Art.38 of the LPP);
- (ii) Dynamic purchasing system and electronic auctions (defined each in Art.4.1.18 and Art.4.1.10 of the LPP) are instruments envisaged within the electronic procurement method foreseen by Art.129 of the LPP, further specified by Art.32 of the A01 Regulation on Public Procurement, issued by PPRC in 2012;
- (iii) Centralised procurement activities envisaged by Art.21 A of the LPP, conducted by the Government and the relevant Ministries on behalf of Agencies under their purview, where the latter have less than 50 employees. While for Agencies accountable to the Assembly of Kosovo* having less than 50 employees, it is the Central Procurement Agency (CPA) which conducts centralised procurements. Furthermore, CPA is also entitled to conduct procurement activities upon assignment from the Ministry of Finance but also on behalf contracting authorities upon the latter's request (see Art.95 and the following LPP).
- (iv) Occasional joint procurement is conducted in turn by the CPA upon authorization from the Ministry of Finances, subject to specific rules regarding this instrument.

The LPP provides furthermore for a flexible procedure for procurements conducted by Public Service Operators in awarding contracts in support of public service activities, incl. procurement of electricity (see Title V, Art.82-85 of the LPP). Such procedure is furthermore detailed by the A01 Regulation and A02 Operational Guidelines and constitutes an option at given public service operator's disposal. It allows for procurement without publishing of a contract notice in case an indicative notice is used, as well as enables avoidance of a selection phase when a qualification system is in place.

- **Moldova**

The Article 44 paragraph 3 The Law on Public Procurement stipulates that purchasing body may use special means/tools only in cases directly provided by the Law. Such special tools are framework agreement (Art 58 of the public Procurement Law), dynamic purchasing system (Art 59 of the public Procurement Law) and electronic auctions (Art 60 of the public Procurement Law). Electronic catalogues, centralized purchasing activities and occasional joint procurement are **not** available in public procurement system of Moldova.

- **Montenegro**

Only the framework agreement is regulated (Articles 26 and 26a of the Law on PP) and the qualification system (article 113 of the Law on PP) which provides of the possibility that interested parties request to be qualified and approved for participation in future tenders thus enabling.

- **Serbia**

Only Electronic catalogues are not available. Framework agreements (Article 40), Dynamic purchasing systems (Article 41), Electronic auctions (Articles 42-46), Centralized purchasing activities (Articles 48-50) and Occasional joint procurement (Article 50) are available.

- **Ukraine**

The techniques and instruments available in the PP Law of Ukraine are :i) the framework agreements. According to Article 13 of the PP Law, a framework agreement shall be concluded between one or several contracting entities with one or several economic operators (provided that there are at least three participants), for the maximum of four years. The selection and competitive selection of the participants to the framework agreement shall be carried out by means of electronic auction. The contracting entity may be a party to one or several framework agreements and is required to publish a notice on the concluded framework agreements no later than seven (7) days since their conclusion; ii) electronic auctions. Procurement by means of electronic auctions is regulated by Article 29 of the PP Law; iii) centralised purchasing activities by means of framework agreements (paragraphs 21 and 36 of Article 1 of the PP Law). The PP Law does not provide the details of this instrument/technique. The particularities of establishment and operation of centralized purchasing organizations shall be established by the Cabinet of Ministers of Ukraine; ; iii) centralised purchasing activities by means of framework agreements (paragraphs 21 and 36 of Article 1 of the PP Law). The PP Law does not provide the details of this instrument/technique. The particularities of establishment and operation of centralized purchasing organizations shall be established by the Cabinet of Ministers of Ukraine.

Dynamic purchasing systems, electronic catalogues and occasional joint procurement are not available in Ukrainian public procurement system.

4.7. What rules apply to contracts between contracting authorities or entities and their affiliated entities?

- **EU**

A public contract awarded by a contracting authority to a legal person and governed by private or public law falls within the scope of the EU Directives in case:

- the contracting authority (on its own or jointly with other contracting authorities) exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

Besides, a contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- the implementation of that cooperation is governed solely by considerations relating to the public interest; and
- the participating contracting authorities perform on the open market less than 20 % of the activities concerned by the cooperation.

- **Albania**

Pursuant to the article 9 of Law 9643/2006, the Law on public procurements does not apply to contracts entered into by a contracting authority with other contracting authority or joined contracting authorities, operating under an exclusive right. (*Article 9 of Law 9643/2006*)

- **Bosnia and Herzegovina**

A Sectoral Purchasing Entity, as defined in article 5 of the PP law and explained under 5.1 herein, which performs the regulated activities is exempted from the application of the PP law for contracts awarded to a connected enterprise, business partner or a sectoral Purchasing Entity which is an integral part of a business partnership (Article 86.2 of the PP Law). Conditions and method of procuring from these authorities are regulated in a regulation issued by the Council of Ministers Instructions Regarding Conditions and Methods Applied by Sectoral Contracting Authorities Procuring from Affiliated Entity, Business Partner or Sectoral Entity which is a part of Business Partnership (OJ 97/14). The rules are in accordance with the UD.

- **FYR of Macedonia**

According to articles 10 and 10a of the Public Procurement law the law shall not apply to the award of public procurement contracts of services to another contracting authority or legal entities established by one or more contracting authorities, provided that they have exclusive right published in an official gazette to provide such services.

It shall also not apply to the award of a contract to a legal entity by a contracting authority if:

- the legal entity has been established for the purpose of performing an activity within the scope of competences of that contracting authority,
- the legal entity has generated more than 80% of the total turnover in the previous business year for the needs of the contracting authority,
- the subject matter of the contract is directly connected to the performance of the activity referred to in line 1 of this Article,
- the contracting entity is the sole founder of that legal entity,
- the contracting authority supervises the legal entity, and
- the legal entity applies this Law accordingly to the procurement of goods, services and works necessary for execution of the contract.

- **Kosovo***

According to the opinion of the Kosovo* Public Procurement Regulatory Commission (PPRC) regarding the application of the LPP to contracts between contracting authorities (public authorities) or their affiliated entities, the latter is deemed not to apply.

Pursuant to Art.9 paragraph 4 of the LPP in sanctioning the determination of needs and available funds for planning procurements, requires from a contracting authority, in case the latter is a public authority, to “take reasonable measures to ensure that objects meeting [its] needs are not available from another public authority”.

This article, albeit not providing for further specification of the procedure to be followed in such cases, according to the PPRC, provides for the so called “in house exemption”. The procedure to be followed in case such works/services could be provided by another public authority is subject to other rules not the LPP ones.

- **Moldova**

PP procedure does not apply to the following contracts (article 4(j) of the PP law): public procurement contracts awarded by one purchasing body to another purchasing body or to association of purchasing bodies on the basis of exclusive right that they have on the basis of the law.

- **Montenegro**

PP procedure does not apply to the following contracts (article 111 of the PP law): Contracts awarded by contracting authorities to an affiliated undertaking; Contracts awarded by joint venture established exclusively by several contracting authorities for the purpose of carrying out activities within the meaning of Article 109 of this Law to a business organisation related to one of such contracting authorities; Contracts awarded by joint venture established exclusively by several contracting authorities for the purpose of carrying out activities within the meaning of Article 109 of this Law, to one of these contracting authorities; contracts awarded by contracting authorities to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out a relevant activity over a period of at least three years and that the instrument (the contract) setting up the joint venture stipulates that the contracting authorities, which form such joint venture, will be part thereof for at least three years.

The affiliated undertaking shall be any business organization the annual accounts of which are consolidated with those of the contracting authority in accordance with regulations governing accountancy and auditing, or, any business organization over which the contracting authority may exercise, directly or indirectly, a dominant influence, or which, in common with the contracting authority, is subject to the dominant influence of another business organization by virtue of ownership, financial participation or the rules.

The provisions of the PP Law shall apply (111.2) to the following: service, supplies or work contracts provided that at least 80% of the average turnover of the affiliated undertaking with respect to services, supplies or works for the preceding three years derives from the provision of such services, supplies or work to business organizations with which it is affiliated.

- **Serbia**

Article 7a Paragraph 1 Items 1 and 2 of the Public Procurement Law stipulates that the provisions of this law shall not be applied to the agreements which the contracting authority concludes with another legal entity if contracting authority exercises control over it and which is working for the contracting authority with more than 80% of its activity in Serbia;

Article 7a Paragraph 6 of the Public Procurement Law stipulates that the provisions of this law shall not be applied to the agreements concluded between two or more contracting authorities if the agreements establish or define cooperation between contracting authorities in order to achieve public service in the public interest while less than 20% of these activities are performed on the open market.

In accordance with Article 122 of the Public Procurement Law, the provisions of this law shall not apply when contracting authority performs procurement from related entities, or when an entity founded by contracting authorities exclusively for performing activities in energy, performs procurements from entities related to one of contracting authorities, provided that at least 80% of average revenue of the related entity in the last three years originates from persons which it is related to.

- **Ukraine**

In Ukraine and according to the PP Law there are no provisions for the contracts between contracting authorities i.e. a). between a contracting authority (or jointly several of them) and a person over which it exercise control and which is working for the contracting authority (more than 80% of its works or b) in case of a cooperation agreement between two contracting authorities within their authorities and for achieving public service in the public interest while less of 20% of these activities are performed on the open market.

Further, the contracts between a contracting entity (or a joint venture of contracting entities formed for providing energy activity) and an affiliate of such entity are exempted from the PP obligation rules, although the PP Law does not provide for the specifics stipulated by Article 29 of the Directive 2014/25/EU.

Pursuant to subparagraph 1 of paragraph 4 of Article 2, the PP Law shall not apply to public procurement of goods, works and services supplied, performed or provided for purposes of energy activities of contracting entities by their affiliated enterprises. An affiliated enterprise is defined by the PP Law as a department of the contracting entity, the assets and transactions of which are stated at the consolidated balance sheet of the contracting entity; or an economic operator over which the contracting entity may exercise a control, or economic operator which together with the contracting entity is subject to the control of another economic operator.

4.8. What are the applicable contract award criteria? Is it possible to reject a participant for abnormally low tenders?

- **EU**

- a) According to Article 67 of the Classic Directive and 82 of the Utilities Directive, contracting authorities shall base the award of public contracts on the most economically advantageous tender, which shall be identified on the basis of the price or cost, using a cost effectiveness approach, such as life-cycle costing, and may include best price-quality ration which shall be assessed on the basis of criteria, including quantitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question;
- b) According to article 69 of the Classic Directive and 84 of the Utilities Directive, abnormally low tenders may be rejected by contracting authorities in the following cases:
- the evidence provided by the tenderer is not satisfactorily to account for the low level of price or costs proposed;
 - a tender does not comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions;
 - a tender is abnormally low because the tenderer has obtained State aid, provided that the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU.

- **Albania**

Pursuant to the article 55 of Law 9643/2006, the award criteria, consist on the election of: a) the tender which meets the requirements of the object of procurement with the lowest price; or b) the most economically advantageous tender, which are different from the object of the contract to be procured, consisting on the quality, price, technical abilities, aesthetic/functional/environmental characteristics, operating costs, economic efficiency, after-sales service and technical assistance, the delivery date and the execution period, provided that such criteria are objective and non-discriminatory. According to Article 56 of Law 9643/2006, when the contracting authority finds that one or more bids for contracts of goods, works or services are abnormally low, that, before continuing with the process of evaluation of bids, asks the relevant economic operator to submit written and within 3 working days of explanations for specific elements of the offer, for a) the economics of the construction method, manufacturing process or services provided; b) the technical solutions provided and/or any extraordinary favorable condition, that tender for the execution of works, supply of goods or services. It does not result a possibility to reject a participant for abnormally low tenders, by virtue PPL and public act.

- **Bosnia and Herzegovina**

There are two possible criteria; a) the most economically advantageous offer and b) the lowest price (article 64 of the PP law). The most economically advantageous criteria may include: quality, price, technical characteristics, functional and ecological characteristics, operative expenses, efficiency, post sale service and technical assistance, delivery time or execution time, with the obligation that tender documents provide for precise instructions for each of the criteria components and methodology for their assessment or other criteria.

In article 66, the Law defines that when the contracting authority assesses that the price offered is abnormally low, it shall request a written explanation from the bidder on the offered price. If the bidder fails to provide a satisfactory explanation it may reject the offer. A satisfactory explanation may refer in particular: 1.austerity measures in construction method, technical solutions or production process; 2.exceptionally favourable conditions available to bidder for execution of the contract; 3.originality of the goods, works or services offered by the bidder; 4.compliance with the rules referring to protection upon employment and working conditions, applied at the place of performance of works, provision of services or delivery of goods; 5.possibility that the bidder receives state aid (subsidies).

- **FYR of Macedonia**

Based on the Law on Public Procurement article 160 a criterion for awarding a public procurement contract shall be the lowest price, As an exception a criterion for awarding a public procurement contract may be the economically most favorable tender in the cases of procuring consultancy and other services of intellectual nature, with regard to the procedures for awarding a contract for public private partnership.

Based on the Law on Public Procurement article 163, If a particular tender contains an unusual low price which is significantly lower than the real market price which makes it suspicious that the contract is to be fulfilled, the contracting authority shall require from the tenderer, in writing and before rejecting the tender, details about the tender that it considers relevant, and it shall check the proofs that have been submitted as justification for the prices in the tender.

- **Kosovo***

Abnormally low tenders are regulated by Art.61 of the LPP and by the respective provisions of the enacted secondary legislation (A01 Regulation and A02 Operational Guidelines). A contracting authority may use only criteria that are directly relevant to the subject matter of the contract. Such criteria may concern for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance

Art.61 of the LPP sanctions that, in the instance of submission of objectively considered abnormally low tenders the contracting authority sends a written request to offeror/participant apply:

- i) a detailed breakdown of the constituent elements thereof; and
- ii) explanations regarding the economics of the manufacturing process, of the services provided and/or of the construction method; as well as
- iii) any technical solutions offered or chosen; and
- iv) any exceptionally favourable conditions available to the tenderer for supplying products, providing services, executing the works project and/or performing the construction activities being procured; including
- v) the originality of the supplies, services, work or works proposed.

Aforementioned information shall be considered by the contracting authority and in the event the latter deems the basis of submitted tender as satisfactory in the light of given explanations, it treats the tender in the same manner as any other tender. Otherwise, the contracting authority shall reject the abnormally low tender at stake and give notice to the PPRC of such rejection within 2 days. The PPRC is entitled to issue specific sub-normative acts regulating in detail abnormally low prices.

- **Moldova**

Pursuant to Article 26 of the PP Law, the criteria for awarding public procurement contracts are limited to the following: a) The most economically advantageous offer; or b) The lowest price. The most economically advantageous offer may include the following sub-criteria: price, terms of delivery, payment terms, quality, design, functional and technical possibilities, costs of maintenance, technical assistance and other elements.

Further, according to the article 65 para.3)e) if the tender is abnormally low, it is not accepted by the purchasing entity. The Article 66 of the PP Law provides for offers

with abnormally low price. An offer with abnormally low price is considered an offer to sell the goods, works or rendering services at the price significantly lower as compared to other offers. In case of public procurement an offer with abnormally low price is an offer with a price less than 85% as calculated by the purchasing body. The purchasing body shall provide a possibility for a business operator to justify abnormally low price.

- **Montenegro**

According to article 93 one of the two following criteria may be chosen by the contracting entity: 1. the lowest price and the most economically advantageous tender. The most economically advantageous tender is, depending on the subject matter, based upon the following sub-criteria, in particular: 1.the lowest price offered; 2.delivery period or period of completion of services or works; 3.quality; 4.current maintenance costs; 5.cost effectiveness; 6.technical and technological advantages; 7.program and degree of environmental protection, or energy efficiency; 8.after-sale service and technical assistance; 9.warranty period, the type and quality of warranties and guaranteed value; 10.obligations concerning spare parts; 11.post-warranty maintenance; and 12.aesthetic and functional characteristics.

Article 85 of the Law on PP provides that " If the most favourable bid price is at least 30% lower than the average offered price of all acceptable bids, contracting authority shall request an explanation from the bidders. The explanation referred to in paragraph 1 of this Article may refer to, in particular: 1.austerity measures in construction method, technical solutions or production process; 2.exceptionally favourable conditions available to bidder for execution of the contract; 3.originality of the goods, works or services offered by the bidder; 4.compliance with the rules referring to protection upon employment and working conditions, applied at the place of performance of works, provision of services or delivery of goods; 5.possibility that the bidder receives state aid (subsidies). The bidder shall provide the explanation referred to in paragraph 1 of this Article within a time limit no longer than eight days as of the day of submitting the request. The contracting authority shall, upon receiving the explanation, check the relevant integral elements of the bid that could be relevant to the bid price referred to in paragraph 1 of this Article, and if it establishes that these elements are not justified, the bid shall be rejected.

- **Serbia**

The Public Procurement Law stipulates that the award criteria are economically most advantageous tender or lowest price offered (Article 85 of the Public Procurement Law). The contracting entity may choose which of these criteria shall be used in particular matter, but in the most cases the economically advantageous criteria is used.

Further Article 37 of the Public Procurement Law prescribes that the Decision on awarding agreement in competitive dialogue shall be enacted by applying criterion of the economically most advantageous bid.

Article 92 of the Public Procurement Law provides that the contracting authority may refuse the tenders due to its abnormally low prices (the abnormally low price is offered price which substantially deviates from comparable market price thus raising doubts in feasibility of implementing public procurement pursuant to the offered conditions). If the contracting authority assesses that a tender offers contain abnormally low price, it shall demand the bidder to supply detailed explanation of all constituent elements of the tender it considers relevant, in particular those concerning the economy of the construction method, the production, or the selected technical solutions, that pertain to exceptionally favourable circumstances for implementing contract available to the bidder, or to the originality of products, services or works proposed by the bidder. The contracting authority shall set a reasonable deadline for bidder's response. After receiving requested explanation, contracting authority shall verify relevant constituent elements of such tender. Contracting authority shall in particular verify the fulfilment of bidder's or candidate's obligations arising from the applicable legislation on safety at work, employment and working conditions, protection of environment and protection of intellectual rights, and may demand adequate evidence from the bidder.

- **Ukraine**

Regarding the award criteria in Ukraine, paragraph 1 of Article 28 of the PP Law provides for the following: i) the price (most economically advantageous tender) for procurement of goods, works and services produced, executed and provided without separate specifications (engineering design), when there is a permanent market for them and ii) a combination of the price and other criteria for procurement of difficult or specific nature (including consulting services, scientific research, experiments and developments etc.), e.g. payment conditions, time for performance, warranty maintenance, operating costs, technology transfer and training of administrative, scientific and operating personnel.

Moreover, there are no specific provisions in the PP Law regarding abnormally low tenders, nor or previous legislation in Ukraine. It should be also noted that according to the Public Procurement System Reform, during 1 January 2017 - 31 December 2018, the Ukrainian PP legislation shall be brought in compliance with the provisions of Directive 2014/24/EU and 2014/25/EU, including as regards the award criteria and low tenders in particular.

4.9. What are the grounds for modification of a PP agreement?

- EU

Pursuant to Article 72 of the Classic Directive and article 89 of the Utilities Directive, the concluded PP agreements may be amended in the following cases:

- b) The modifications have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement.

- c) Additional works, services or supplies by the original contractor have become necessary and were not included in the initial procurement (when it is not possible to change a contractor for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and such a change would cause significant inconvenience or substantial duplication of costs for the contracting authority).
- d) The need for modification has been brought about by circumstances which a diligent contracting authority could not foresee, the modification does not alter the overall nature of the contract and any increase in price is not higher than 50 % of the value of the original PP agreement. Where several successive modifications are made, that limitation shall apply to the value of each modification.
- e) A new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of either:
 - i) an unequivocal review clause or option in conformity with point (a);
 - ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or
 - iii) in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors where this possibility is provided for under national legislation pursuant to Article 71.
- f) The modifications, irrespective of their value, are not substantial.

- **Albania**

Pursuant to the Article 14.6 of Decision of Council of Ministers No. 914/2014, the contract may be modified in case it is approved a new law, regulation, directive, order, or other enforceable act, in as much, such acts have impact to the fulfillment of the obligations by the contractor.

- **Bosnia and Herzegovina**

At the award of procurement contract, the price stated in the most successful bid, as well as the conditions defined in bidding documentation, may not be changed. Exceptionally, if a provision is provided in the bidding documentation on price changeability with objectively defined rules on price changeability, such a provision shall be entered in public procurement contract. Article 72/5 Law on Public Procurement

- **FYR of Macedonia**

According to our legislation there no grounds for amendments of a PP agreement, considering that the criteria for awarding the PP agreement cannot be changed or modified.

- **Kosovo***

Pursuant to the Art.55.21 and the following of the Operational Guidelines of PP provide for the possibility of modification/ amendment of awarded contract. Contract amendment refers to a modification in the terms and conditions of an awarded contract, whereas amendment of the original terms and conditions thereof should be prepared by the relevant procurement department.

Intended amendment(s) should not be issued to the economic operator without prior approval from the respective Chief Administrative Officer and commitment of the full amount of funding of the amended contract price. An amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract, whereas no contract amendment shall increase the total contract price by more than 10% of the original contract price.

- **Moldova**

According to the articles 70 and 72 of the Public Procurement Law, there is no possibility of modifying the PP agreement. More precisely, the article 70 of the Law provides that the public procurement contract is concluded according to public procurement procedures. The bidders are informed about the terms of contract at the time the offers are requested. It is prohibited to modify any element of successful bid at the time of contract conclusion. Further, the article 72 of the PP Law prohibits the division or extension of public procurement. It is prohibited to assign or to modify any element of concluded contract if this may affect amendment of the offer that was selected or increase of price.

- **Montenegro**

Modification of agreements is not regulated by the PP law. Thus the provisions of other general legal acts would apply.

- **Serbia**

After the conclusion of public procurement agreement, contracting authority may, without conducting a new public procurement procedure, increase the scope of public procurement, provided that the value of the agreement may be increased to a maximum 5% of the total value of the originally concluded agreement, whereby the total value of the agreement increase cannot be higher than (app) € 41,700.00 (low-value public procurement – see Article 39 Paragraph 1 of the Public Procurement Law) and (app) € 83,400.00 for the contracting entity in the field of the water management, energy, transport and postal services (see Article 124a of the Public Procurement Law), provided that this option is clearly and precisely stated in the tender documents and in the procurement agreement.

After conclusion of public procurement agreement, contracting authority may allow change in the price or other essential contractual elements for objective reasons which must be clearly and precisely stated in the tender documents and in the procurement agreement or prescribed by the special regulation. Change of price is

not considered to be harmonization of price with pre-defined parameters which have been clearly pre-defined in the tender documents and in the procurement agreement.

Also, the procurement subject cannot be changed.

In accordance with Article 115 of the PP Law, the Contracting authority shall publish its decision regarding amendments of PP agreement on the Public Procurement Portal and deliver report to the Public Procurement Office and the State Audit Institution within three days from the day of making the decision. Having in mind the mentioned provision, the Public Procurement Office and the State Audit Institution monitor the grounds for amendments of a PP agreement.

- **Ukraine**

According to paragraph 4 of Article 36 of the PP Law, essential terms of the contract shall not be modified after signing, except for cases of: i) reduction of volumes of procurement, with due account of actual expenses of the contracting entity; ii) up to 10% change in price for a unit of goods, when such price changes at the market, given that such a change will not result in the increase of the contracted amount; iii) increase of quality of the procured goods/works/services, given that this will not result in increase of the contracted amount; iv) extension of the contract duration and fulfillment of obligations to transfer goods, perform works, provide services in case of documented external circumstances causing such an extension, including force majeure, delayed financing of contracting entity's expenses, given that this will not result in increase of the contracted amount; v) agreed reduction of the price (with no changes in the quantity (volume) and quality of goods, works and services); vi) proportionate change of the price due to change of rates of taxes and levies; vii) changes in the consumer price index rate, currency exchange rate, exchange quotation, Platts indices, regulated prices (tariffs) and standards used in the procurement contract, in case the price change procedure is stipulated by the contract; viii) amendments due to extension of the duration of the contract for the period sufficient to carry out the procurement at the beginning of the following year, for the amount not exceeding 20% of the amount contracted in the previous year, provided that expenses for such a purpose have been approved according to the established procedure.

4.10. What are the available remedies?

- **EU**

The available remedies, in accordance with the Remedies Directives are as follows:

- imposing interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;
- setting aside or ensuring the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial

specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;

- awarding damages to persons harmed by an infringement; and
- considering contract ineffective by a review of independent body independent of the contracting authority in case of certain gave infringements such as if a contract was awarded without prior publication of a contract notice in the OJ of the EU when it is required; National laws may provide ex nunc or ex tunc consequences of such cancellation.

- **Albania**

The PP procedures are monitored by the PP Agency, supervised by the Prime Minister which is a legal entity. Its responsibilities include: verifies the application of PP procedures in compliance with the legal requirements, controls the awarding procedures of the central purchasing body every 6 months, penalizes or proposes disciplinary measures to the individuals in contracting authorities, carries out the administrative review of complaints.

Pursuant to the article 43 of Law No.125/2013: “Any economic operator who has or had an interest in a bidding procedure and when is damaged or put in risk from the decision of the contracting authority in breach with law, may appeal it in front of the Public Procurement Commission (PPC).” In case of complaints concerning the documents of the bidding procedures, the economic operators may submit an appeal within 10 days from the public notification of the contract on the official website of the Public Procurement Agency (PPA). In the case of complaints concerning the final decision (assessment/classification), the economic operators may submit an appeal after 10 days from the notification. A written copy of the complaint shall be obligatory communicated to the contracting authority. Upon receipt of the written complaint, the contracting authority shall suspend the bidding procedure until the decision is issued by PPC. PPC responds in written form within 10 days from the filing of the complaint. When any information is needed to be taken by the contracting authority, PPC respond in writing not later than 20 days.

According to the article 43 of Law 125/2013 (as amended by the law No. 77.2015 of 16.07.2015), “after exercising the procedure of administrative review in front of the Public Procurement Commission (PPC), the applicant may ask for judicial protection.” The commencement of judicial proceedings does not automatically suspend the bidding procedures, the conclusion of the contract or execution of the obligations between the parties

- **Bosnia and Herzegovina**

PP processes are monitored by an independent administrative organization which has legal personality, the Public Procurement Agency of BiH (in charge for drafting of regulation, providing education and training for accredited trainers and public procurement officers, publishing information regarding trainings, and preparing manuals and other accompanying materials for professional development in the field of public procurement in compliance with the implementing regulation, monitoring the

work of accredited trainers and keeping records on accredited trainers in the field of public procurements and public procurement officers, establishing the system of monitoring of procedures that are implemented by contracting authorities for procurement of supplies, services, and works, collecting information, collecting records on all PP in the BiH and performing analysis and publishing information in relation with public procurement procedures and awarded public procurement contracts, providing technical advice to the contracting authorities and deliver advisory opinions to contracting authorities and bidders in relation to regular application of PPL and implementing regulations, developing and establishing electronic information systems in the area of public procurement in BiH, initiating, supporting, and creating preconditions for the development of practice of electronic procurements and communications in the field of public procurement).

Procurement Review Body of BiH is an independent, autonomous institution with a status of a legal person, in charged for the PP procedures appeals.

Director of the Agency is selected and appointed by the BiH Council of Ministers. Members of the PRB are elected by the BiH Parliament Assembly. Competences of both institutions are stipulated in Articles 91-93 of the PPL.

Remedies are provided in Articles 94-116 of the PP Law. They provide the two instance administrative procedure remedy i.e. appeal to the PRB through the contracting authority, within the time limits and in the manner stipulated by PPL. The Law contains numerous procedural rules (including parties to the procedure, delivery of documents abroad, legal capacity, prohibition to conclude contracts, manner of filling appeals, procedure of the contracting authority upon appeal, time limits for filing appeals to the contracting authority, presentation of evidence in the procedure upon appeal, fundamental breaches of the law, competences of the PRB, contents of the appeal, procedure for the irregular appeal, filing an appeal to the PRB, the administrative fee, actions of the PRB upon appeals, suspension effect of the appeal, decisions on appeal, joining procedures, decision making by the PRB, disqualification on grounds of conflict of interest, administrative dispute, infringement provisions etc). An appeal may be launched by an economic operator which has or has had an interest to conclude a procurement agreement and which evidences it probable that in the concrete case of procurement damage was or could have been caused by the activity of the contracting authority which breached the PPL or the respective by-laws.

Against a decision issued in the appeal procedure, contracting authority and parties to the procedure may initiate an administrative dispute before the Court of Bosnia and Herzegovina, within 30 days from the day of the receipt of the decision

It is a two instance remedy system with possible injunction measure and extraordinary remedies

- **FYR of Macedonia**

The activities related to the development of public procurement system, as well as the provision of rationality, efficiency and transparency in the implementation of the public procurements are carried out by the Public Procurement Bureau (article 12-

14a of the PP law). It is a body of the state administration in the Ministry of Finance. The Public Procurement Bureau is monitoring the whole PP procedure.

There is procedure upon submitted an Appeal in front of State Appeals Commission on Public Procurements. Signing of the PP agreement is automatically suspended when the appeal is lodged until the State Commission decision becomes final. An agreement concluded after the appeal would be null and void (article 217 of the PP law).

An administrative dispute can be initiated before a court competent for administrative disputes against the decision of the State Commission. Provisional measures may be requested before a competent court.

- **Kosovo***

The Public Procurement Regulatory Commission (PPRC) performs the monitoring of the implementation of the PP procedures.

Pursuant to Article 108A of the LPP, any interested party which considers his/her rights, as envisaged by the LPP, to have been violated by a decision of a contracting authority (CA) during implementation of a procurement activity and who is damaged or might be damaged by an alleged violation related thereto, should first submit a request for review to that contracting authority. Such request for review obliges concerned CA to automatically suspend the ongoing procurement activity relative to the alleged violation.

Depending on the subject matter of the request for review the following time-limits shall be observed by interested parties for submission thereto:

- (i) If the alleged violation relates to the contract notice or the tender documents, the request for review shall be submitted within 5 days prior to the deadline for submission of bids;
- (ii) If the alleged violation relates to the decision to award a contract or design contest, the request for review shall be submitted within 5 days after the date of notification of the contract award notice or the design contest results are sent to complainant; and
- (iii) If the alleged violation relates to the decision to terminate the procurement procedure, the request for review shall be submitted within 5 days from the date the procurement activity was formally terminated through a termination notice.

The CA is then obliged to examine submitted request and take a decision thereto within 3 business days from the date of lodging thereof or, where applicable, from the date of receipt of additional information and documents. Said deadline may be exceptionally extended to another 3 days period in justified specific cases and complainant shall be informed thereof.

Against any decision taken by the CA responsive to a submitted request for review, any interested party may lodge complaint with the Procurement Review Body (PRB) within 10 days after issuance thereof. The PRB has in any case the authority to

continue on its own behalf and discretion the review of any allegation(s) arising directly or indirectly from a withdrawn complaint lodged therewith.

Filing of the relevant complaint suspends automatically the procurement procedure, however if so required by given contracting authority and after taking into account any potential consequence of the suspension, the President of the PRB may issue an order to remove such automatic suspension. The PRB is furthermore obliged by the law to issue a final decision on the subject matter of filed complaint within 15 days: i) from the moment of receiving from given contracting authority the notice of complaint and all the relevant documents relative to challenged procurement activity and ii) from the moment of receiving from concerned parties additional information/documents as required by the PRB. In exceptional circumstances, where the subject matter is complex, the PRB may extend aforementioned deadline to a maximum of an additional 20 days.

In case complainant maintains that a final decision or determination of a review panel or the PRB is contrary to the facts or the LPP, complainant may request the Basic Court to review such decision within 30 days from the publication of the relevant decision of the PRB. The right to challenge any given decision of the Basic Court regarding the subject matter stays open to complainant also in second and third court instance (i.e. to seek redress with the Court of Appeals and at last instance with the Supreme Court).

- **Moldova**

The PP Law, among others, transposes EU Directive No 66/2007/CE (Remedies Directive) which provides for rules aiming at transparent and effective procedures by seeking redress where bidders consider contracts have been unfairly awarded. Specifically, it establishes the Dispute Resolution Agency, an administrative authority subordinated to Ministry of Finance according to Article 1 (3) of the Law, which is responsible for the resolution of complaints arising in the course of public procurement. The PP is monitored by the Public Procurement Agency which is also subordinated to the Ministry of Finance.

The Dispute Resolution Agency decides on the suspension of the procedure within three days at the initiative of the Agency or at the request of an interested person. Since the Law on Public Procurement has entered into force by 1 of May 2016, there are no indicative decisions from which we could extract specific comments regarding the procedure. In any case, a contracting authority is not entitled to conclude a public procurement contract if an appeal is filed during the procedure. If it signs the contract in breach of this rule the Public Procurement Agency cannot register the contract until the Dispute Resolution Agency issues a final decision on the appeal.

Any business entity may contest/appeal an administrative decision of the purchasing entity if lawful rights of a business entity were infringed in the course of public procurement. The Law on Public Procurement stipulates that a business entity shall have the right to file an application with the Dispute Resolution Agency requesting cancellation of administrative act and/or recognition of a disputed right or lawful

interest within the term of five (5) or ten (10) days considering respective provisions of the Law on Public Procurement.

The PP Law stipulates that decision of the Dispute Resolution Agency may be appealed in the respective judicial instance, that competent judicial authority resolves disputes in relation to performance, invalidity, annulment, cancellation of public procurement contracts and that in certain cases in order to prevent damages the respective judicial authority may decide on suspension of performance of public procurement contract at the request of interested person. Also, an interested person may request compensation for damages in case of wrongful decision according to the rules of civil legislation. The law expressly sets the cases in which the court may ascertain the nullity of a public procurement contract if the procurement procedure was carried out in violation of the law. Under exceptional circumstances, the law entitles the court to maintain the validity of a public procurement contract concluded in breach of the procedure, provided that certain alternative sanctions are applied, including: a) Limit the effects of the contract by reducing the period of its execution; and / or b) Imposing on the contracting authority a penalty of between 2% and 15% of the contract value.

- **Montenegro**

PP processes are monitored by the State PP Committee (established and staffed by the Government (article 138) and though the Inspection monitoring (article 147 and 148), but also through several instruments such as prior approval of the procurement, register of all procurements and reporting to the relevant authorities.

Remedies are provided in Articles 122-136 of the PP Law. They provide the second instance administrative procedure remedy i.e. appeal to the State Committee for the Control of PP procedures. An appeal may be lodged against: 1) tender documents 2) decision on the selection of the most favourable bid; 3) decision on the suspension of the public procurement procedure; 4) decision on the annulment of the public procurement procedure, in the second and third case particularly on : 1) procedure of receipt of bids; 2) procedure of public opening of bids and the content and manner of despatch of the minutes of public opening of bids; 3) procedure of review, assessment, comparison and evaluation of bids; 4) lawfulness of the decision on the selection of the most favourable bid 5) lawfulness of the decision on the suspension of the public procurement procedure; The appeal may contest: 1) content of the tender documents; 2) manner of publication or delivery of tender documents; 3) amendments and clarification of tender documents; 4) failure in providing clarification of tender documents.

By initiation of the appeal, as a rule the procedure is suspended (article 124). Exceptionally the procedure may be continued by a decision of the State PP Committee.

Against a decision issued in the appeal procedure, a party may initiate the administrative court procedure before the authorised court. It is two instance procedures with possible injunction measure and extraordinary remedies.

- **Serbia**

The monitoring of the PP procedures is performed by an independent state authority, registered as legal entity, the Republic Commission for Public Procurement. It is an independent authority whose management is voted and elected by the Parliament after conducting public tender (article 140). Its authorisations include: decides on the appeal, decides on the suspension of the procurement, monitors and secures the implementation of its decisions, decides on penalties, declares PP agreements null and void, conducts penalties procedures in the first instance.

The PP Law prescribes a legal remedy (i.e. a request for protection of rights) that could be submitted before the contracting authority and the Republic Commission for Public Procurement within 10 days as the date of publication of the decision. The Republic Commission has to decide upon request for the protection of rights by resolution within 20 days from the day of receiving proper request for the protection of rights along with complete documentation, which may be exceptionally prolonged for additional 15 days. From the available data, in practice, from the moment of filing initial request for the protection of rights, the Republic Commission needs about three months to issue resolution. Pursuant to the Article 150, the request for the protection of rights shall postpone all activities of contracting authority in public procurement procedure, including issuing of any kind of the decisions and signing of the Agreement until decision is made upon filed request for the protection of rights, except in case of negotiated procedure referred to in Article 36, Paragraph 1, item 3) of this Law, or where the Republic Commission for Public Procurement upon proposal of contracting authority decides otherwise.

Against the decision of the Republic Commission for Public Procurement one may submit a claim before the Administrative Court within a period of 30 days as of the date of the receipt of the relevant decision by the complainant. Provisional measures may be requested before the court at any time.

- **Ukraine**

Monitoring of public procurement in Ukraine is performed by the State Financial Inspection of Ukraine and its agencies. The Antimonopoly Committee of Ukraine (ACU) is responsible for handling claims.

Pursuant to the Ukrainian legislation, the available remedies are: a) lodging a complaint in front of the ACU; b) referring the dispute to court. An independent authority to which one shall address a complaint concerning the procurement procedure is the Antimonopoly Committee of Ukraine (ACU), established according to the Law of Ukraine no. 3659-XII of 26 November 1993 on the Anti-monopoly Committee of Ukraine, effective of 21 December 1993 (with further amendments). It is controlled by the President of Ukraine and accountable to the Parliament (the reports are submitted to the Parliament on an annual basis). The Head of the ACU is appointed and dismissed by the President upon the approval of the Parliament.

The Article 18 of the PP Law is dedicated to the procedure for contesting of the procurement procedure. Depending on the stage at which the violation occurred, the

following time limits apply: no later than four (4) days before the submission deadline for tenders, during five (5) days since publication of a protocol on consideration of tenders and during 10 days since publication of a proposal to conclude a contract (but prior its conclusion). The ACU has fifteen (15) business days to consider the submitted complaint. The ACU shall decide on admissibility of the complaint and submit its decision in the EPS during three (3) business days since submission (and registration) of the complaint in the EPS. Provided that the complaint is admitted for consideration, the EPS suspends the procurement procedure automatically and the respondent is barred from making any decisions or taking any actions regarding the procurement (including the conclusion of the procurement contract) unless they are intended to eliminate violations mentioned in the complaint. Upon consideration of the complaint, the ACU may obligate the violator: to cancel its decisions in part or in full, provide necessary documents, clarifications, eliminate any discriminating conditions, to bring its tender documentation in compliance with the law and even cancel the procurement in case the violation(s) cannot be remedied.

Complaints concerning the concluded procurement contracts and appeals against the decisions of the ACU shall be referred to the court (in the latter case, during thirty (30) days since publication of the ACU decision in the EPS. There are a lot of decisions (over 1400 for 2016 alone) regarding complaints in front of ACU. The complaints arising from the PP procedure may also be referred to court at any stage, although it is a long-lasting and more effortful procedure, thus, usually the affected persons refer their claims to the ACU, and the judicial proceedings are used as a last resort,. In some cases, the complaints have been rejected due to non-provision of sufficient confirmation of violation of complainant's rights and interests. In others, the complaints were satisfied and contracting entities were required to amend the procurement documentation or cancel the procurement procedure. As regards interference in the procurement procedure, according to the PP Law, in case the submitted complaint is admitted by the ACU for consideration, the procurement procedure is automatically suspended until the ACU issues a decision. And upon consideration of the complaint, the ACU may obligate the violator: to cancel its decisions in part or in full, provide necessary documents, clarifications, eliminate any discriminating conditions, to bring its tender documentation in compliance with the law and even cancel the procurement in case the violation(s) cannot be remedied. In the Unified State Register of Court Decisions there are many rulings concerning state/public procurement but they concern mostly the issue of contesting the results of the bidding procedure and/or actions of the contracting authorities or the ACU. Further, since the Public procurement law came into force recently, decisions related to current public procurement procedure are not available. Nevertheless, there are plenty of court decisions based on the previous system. The majority of the complaints focuses on contestation of the bidding procedure. In this regard, in many cases the claims have been dismissed as the Court found the provided evidence non-sufficient to prove the alleged violations. In other cases the Court upheld the claims and cancelled the bidding procedure, while the defendant was required to reimburse the court fees paid by the plaintiff.. Nevertheless, there is a number of court rulings where the law suit was satisfied, i.e. the procurement procedure was cancelled and the defendant was required to reimburse the court fees paid by the plaintiff. As regards the grounds of the law suit, the plaintiff claimed that the announcement of the state procurement did not meet certain requirements set out in

the Law; the tender documentation was not approved by the documented decision of the tender committee; conditions set out in the procurement contract differed from the conditions set out in the tender documentation; the conditions set out in the tender documentation resulted in biased and prejudiced assessment of tenders etc.

According to the Strategy for the Public Procurement System Reform, the Ukrainian legislation shall be brought in compliance with the requirements of Directive 89/665/EEC and Directive 92/13/EEC as well as Directive 2014/24/EU and 2014/25/EU in 2017-2022.

5. Identification of diverging provisions for rules on PP in the Contracting Parties

Question 1: Do public procurement rules apply to contracting entities (contracting authorities, public undertakings and entities operating on the basis of special or exclusive rights), as defined in the Utility Directive?		
Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Albania	Definitions in the respective legislation and regulation are substantially in compliance with the UD
	Bosnia and Herzegovina	
	FYRoM	
	Montenegro	
	Serbia	
	Kosovo*	
	Ukraine	
Partial compliance	Moldova	The PP Law does not apply to the energy sector and there are no other PP law which would apply. Definitions of the entity with exclusive rights should be harmonised.
No compliance		

Question 2.a: Do public procurement rules apply when contracting authorities purchase electricity or gas for their own needs (as consumers)?		
Level of compliance with the EU Directives	CPS	Comments
Full Compliance	FYRoM	General rules on PP apply and the contracting authorities fully apply it in

	Serbia	practice.
Partial compliance	Ukraine	General rules should apply but in practice it is not regularly applied (often it is negotiated procedure)
	Bosnia and Herzegovina	Although the law explicitly does not require the application of the PP rules, it is evidenced that some authorities started to apply them in practice.
No compliance	Montenegro	Contracting authorities are not obliged and do not apply these rules in practice.
	Moldova	
	Albania	
	Kosovo*	

Question 2 b: Do public procurement rules apply to the selection of the PSO provider or purchase of electricity or gas in order to provide the PSO (if there is no PP for the selection of the PSO provider)?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Montenegro	Not applied in practice yet, the first PP procedure will be organised within 12 months from the enactment of the Energy Law (i.e. by the end of 2016)
	Serbia	Procedures are organised both for electricity and gas in accordance with law.
Partial compliance	Albania	PP rules are partially in compliance.. The Albanian Energy Authority (ERE) chooses the Last Supplier Resort (LSR) according to a specific provision that allows auction after a public notification.
No compliance	Kosovo**	No competitive procedure for the selection of the provider nor for the procurement of energy
	Bosnia and Herzegovina	
	Moldova	

	FYRoM	
	Ukraine	

Question 2.c: Do public procurement rules apply to the granting of the support scheme for renewable energy (to meet the 2020 targets and to comply with State Aid Guidelines 2014-2020)?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance		
Partial compliance		
No compliance	All CPs	

Question 2.d: Do public procurement rules apply to TSOs when obtaining balancing and ancillary services

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Serbia	For gas the law only states that it is a transparent procedure while for electricity the PP procedures clearly apply.
	Albania	Offers are collected from the market participants in order to select the best offer.
	Kosovo*	
Partial compliance	Montenegro	The law regulates only that it should be a transparent procedure; Need to be more precisely regulated
	Moldova	The law provides only that the rules used by the operator for such purposes shall be objective, transparent and non-discriminatory. The terms and tariffs shall be

		established in non-discriminatory ways by the operator and shall be approved by the Agency
	Bosnia and Herzegovina	Applicable for electricity not for gas
No compliance	FYRoM	They are neither obliged by the law nor apply in practice
	Ukraine	The application of the PP rules is excluded by law for these procedures.

Question 2.e: Do public procurement rules apply to the construction of new production facilities?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Bosnia and Herzegovina	<p>The concession law should apply to the production plants using hydro or some other resources also in projects of public interest, particularly if there are no sufficient applicants or there are several of them.</p> <p>Application of the Concession Law will be further elaborated as part of the Task 4;</p> <p>In case of Kosovo* there is no Concession Law but the PP law applies in all cases of procurement of new facility by public / in public interest.</p>
	Montenegro	
	FYRoM	
	Serbia	
	Ukraine	
	Kosovo*	
Partial compliance	Albania	Clear application to the energy sector in case of public interest for the project is missing.
	Moldova	It seems that the rule does not apply to the energy sector until the new Utilities PP law is passed; however it is the matter of interpretation of the current provisions of the law. Auctions would apply if there are no interested party for a plant which the CP intends to construct. Clear application to the energy sector would be preferable.
		Auctions would apply if there are no

		interested party for a plant which the CP intends to construct and general if there is public interest for such construction. It seems however such application is optional.
No compliance		

Question 2.f: Do public procurement rules apply to the construction of interconnections or extension of the grid?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Bosnia and Herzegovina	<p>The concession law should apply to the production plants using hydro or some other resources also in projects of public interest, particularly if there are no sufficient applicants or there are several of them.</p> <p>Application of the Concession Law will be further elaborated as part of the Task 4;</p> <p>In case of Kosovo* there is no Concession Law but the PP law applies in all cases of procurement of new facility by public / in public interest.</p>
	Montenegro	
	Serbia	
	FYRoM	
	Ukraine	
	Albania	
	Kosovo*	
Partial compliance		
No compliance	Moldova	There is no application of the PP rules

Question 3: Are there general principles (transparency, equal treatment, free competition and non-discrimination) applicable to all public procurements (regardless to value or subject matter)?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	All CPs	
Partial compliance		

No compliance		

Question 4: What are the main exclusions and including thresholds?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Montenegro, Serbia, Ukraine, Albania, Bosnia and Herzegovina, Moldova	<ul style="list-style-type: none"> - lower thresholds - less exceptions than in the UD - additional exceptions with minor effect
	FYRoM	<ul style="list-style-type: none"> - the same thresholds - only a few exceptions in accordance with UD
	Kosovo*	<ul style="list-style-type: none"> - except socially owned enterprises
Partial compliance		
No compliance		

Question 5: What types of procurement procedures are available and what are the prescribed time limits?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Bosnia and Herzegovina	To consider introducing Innovation Partnership (art. 49 of the UD)
Partial compliance	Albania	Advise to increase some of than deadlines from 20 to 30 and to introduce possibility for the periodic indicative notice and electronic procurement in order to reduce the deadlines for the submission of offers; also to consider introducing the rest of the UT types of the procedures.
	Montenegro	Advise to increase some of than

		deadlines from 12 and 22 to 30 and to introduce possibility for the periodic indicative notice and electronic procurement in order to reduce the deadlines for the submission of offers; also to consider introducing the rest of the UT types of the procedures.
	Moldova	The deadlines should be increased for the high value provided in the Directives. Additional types introduced in accordance with the UD.
	FYRoM	In the negotiated and simplified competitive generally the procedures should be increased to 15 days when the high value procedures (above the EU thresholds) should be increased to the UD minimums. to introduce possibility for the periodic indicative notice and electronic procurement in order to reduce the deadlines for the submission of offers
	Serbia	The deadlines should be harmonised with the UD. Any deadline below 15 days should be increased. Deadlines may be reduced in case of electronic procurement.
	Ukraine	There is no restricted procedure and Innovation Partnership; No deadlines for negotiated procedures causing breach of the transparency principle and inconsistency of the application by different authorities and lack of predictability;
No compliance	Kosovo*	The deadlines should be significantly increased in both for low and high value; there should be no deadlines of 5 and 1 days; to introduce possibility for the periodic indicative notice and electronic procurement in order to reduce the deadlines for the submission of offers; further diversification of procedures in compliance with the UD.

Question 6: What techniques and instruments are available (framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, centralized purchasing activities/bodies)?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Serbia	

	Bosnia and Herzegovina	Only electronic catalogues are not available
Partial compliance	FYRoM, Kosovo* and Moldova	They provide for several instruments, advise to develop more instruments
	Albania, Montenegro and Ukraine	Provide only for two instruments each

Question 7: What rules apply to contracts between contracting authorities or entities and their affiliated entities?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Serbia, Montenegro and FYRoM	Note that Moldova does not make exception for such procurement
Partial compliance	Ukraine	There is still no full compliance
No compliance	Albania, Bosnia and Herzegovina, Moldova and Kosovo*	The exemption from the procurement rules is too broad. The exception should be considered only as an exception when there is full control over such entity and when 80% of the services are provided by it.

Question 8: What are the applicable award criteria? Is it possible to exclude a participant for abnormally low tenders?

Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Albania, Bosnia and Herzegovina, Moldova, Kosovo*, Montenegro and Serbia	The award sub-criteria in Moldova should include environmental and social criteria.
Partial compliance	FYRoM	The most economically advantageous offer is regulated to be an exception, not a rule
	Ukraine	Does not contain provisions on the abnormally low offers
No compliance		

Question 9: What are the grounds for amendments of a PP agreement?

Level of compliance with the EU Directives	CPS	Comments

Full Compliance	Albania, Bosnia and Herzegovina, FYRoM, Kosovo*, Moldova, Serbia	Minor and justified modifications are allowed exceptionally
Partial compliance	Ukraine	Significant number of permitted and regulated reasons for the amendments.
No compliance	Montenegro	Modification of the agreement is not regulated or prohibited, leaving the space for different interpretation or even modification of agreements unrestrictedly

Question 10: What are the available remedies?		
Level of compliance with the EU Directives	CPS	Comments
Full Compliance	Albania, Bosnia and Herzegovina, Montenegro, Serbia	Independent appeal body, automatic suspension of the procedure, pre-judicial procedure and judicial procedure
Partial compliance	FYRoM	No independent monitoring (the PP Bureau is part of the Ministry)
	Kosovo* and Ukraine	Deadlines for the submission of the appeal and for deciding are too short for complex matters.
	Moldova	The appeal body (pre-judicial review) is subordinated to the Ministry.
No compliance		

6. Concluding remarks

We have performed an extensive but focused study of the PP procurement rules in general and in particular in the network energy market. Our conclusion regarding the general application of the PP rules is that there is an understanding in the CPs about the importance of the PP for functioning of the market and for obtaining quality services and goods for good price. We deduced that developing of this field is in progress.

In regard to the network energy market there is no broad understanding of the significance of the PP rules for the functioning of the market and the potentials for their implementation. This is understandable given the small size of the energy markets of most of the CPs and the dominance of the vertically integrated energy companies. In regard to gas, the markets are even less developed, while some CPs do not have any gas production, transmission, distribution or supply, for now.

All CPs, except Moldova, have included the UD definition of contracting entities in their legislation, which the first and necessary step for their implementation of the PP rules. Some CPs produce lists of energy entities which are obliged to apply the PP procurements. This is a good practice for the implementation as it clarifies any doubts of civil servants or other persons in charge for their implementation. However, it should be clear that, according to the EU law, the mere fact that one entity is not in the list does not mean that it is not obliged to comply with the law. The lists are not inclusive. Moldova plans to enact the PP Utilities law in a couple of years. However, currently it is not clear whether the Utilities entities should apply the PP procedures on the basis of the current law due to an unclear provision excluding the utilities sector.

It is a good practice that some CPs have already ensured that their state administrations purchase electricity for their own consumption by the application of the PP rules. The same should apply for the PSO obligation in regard to which some CPs have understood the need for competition and are making steps in implementation. The situation with the TSOs procuring ancillary services and construction works related to the grid is less clear in some CPs. None of the CPs has introduced FiP support scheme and auctions for determination of the premium. Construction of new facilities, when procured, would in most CPs, be in accordance with the PP rules.

We have particularly looked into the exclusions and thresholds, in order to understand whether these regulations may be used for distortion of competition. In most CPs the situation is satisfactory: low thresholds and limited exclusions. Deadlines for the submission of the offers are important if they are short, as they may limit participation in the PP procedures. Our general conclusion is that in a lot of CPs these deadlines should be prolonged for the values above the UD thresholds. It would be advisable to use the periodic indicative notice and electronic submission of offers, in accordance with the UD, to reduce the deadlines.

All CPs, except Serbia, should significantly increase the techniques and instruments available for the PP procedures as they may better assist the purpose of the procurement than any reduction of deadlines for submission of the offers. It seems that the purpose of limitation of the in-house procurement exclusions to a minimum is not always understood properly. This is an issue which should be carefully reviewed by the CPs.

Rules on the use of the economically advantageous offer criteria should be further developed in some CPs to allow criteria related to environment protection and social issues. Amendments of the already awarded tender should be restricted to a minimum. This issue should not be left unregulated as there is a risk of diverse interpretation in practice.

Finally, monitoring and remedies are some of the crucial PP issues. We have particularly estimated the following: whether the monitoring authority is independent or is part of the Government establishment; whether the initiation of the appeal procedure triggers the suspension of the PP procedure, whether there are both pre-judicial and judicial procedures; and what the deadlines for submission of the appeals are.

ANNEX I: ANSWERS FROM THE CPs