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Monitoring Report:

The
Principles
of Public
Administration

**NORTH
MACEDONIA**

May
2019

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The Principles of Public Administration

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|-------|--|
| AA | Agency of Administration |
| C&PPP | Law on Concessions and Public-Private Partnerships |
| ENER | National Electronic Registry of Legislation |
| ESPD | European Single Procurement Document |
| ESPP | Electronic System for Public Procurement |
| HR | Human resources |
| HRM | Human resource management |
| LAS | Law on Administrative Servants |
| LPCCI | Law on Prevention of Corruption and Conflict of Interest |
| LPSE | Law on Public Sector Employees |
| MISA | Ministry of Information Society and Administration |
| MoE | Ministry of the Economy |
| MoF | Ministry of Finance |
| PP | Public procurement |
| PPB | Public Procurement Bureau |
| PPC | Public Procurement Council |
| PPL | Law on Public Procurement |
| PPP | Public-private partnership |
| SCPC | State Commission for Prevention of Corruption |
| SME | Small and medium-sized enterprises |

INTRODUCTION

This 2019 SIGMA Monitoring Report focuses on the areas of civil service and public procurement. Comprehensive assessment of all areas of public administration reform (PAR) in 2017 showed that North Macedonia's progress in PAR has been impaired by the long-lasting political stalemate, and that both the civil service and public procurement areas needed to be improved by the new Government. This report, which follows up on the 2017 analysis and recommendations, first provides an overview of the state of play and main developments. It then presents a detailed analysis of three *Principles of Public Administration*¹ in each of the civil service and public procurement areas, measured against the indicators of the *Methodological Framework for the Principles of Public Administration*², and closes with key recommendations.

As SIGMA revised its *Methodological Framework* in 2016, indicator values are compared with the 2017 Monitoring Report³. Whenever possible, however, analytical data from 2015 or earlier are presented. Although this report is part of a regional series, no regional averages are presented for the 2019 indicator values because this round of assessments was designed to perform detailed evaluations on a limited number of areas only, rather than to carry out full comparative overviews⁴.

Civil service area assessment has been facilitated by enhanced data availability, but progress in this area is limited. The recruitment system regulated by the new legislation is now operational and ensures merit-based hiring. Unfortunately, the number of candidates is too low, which shows the lack of citizen trust in the system. The top managerial positions are still filled with discretionary appointments only and turnover during the assessed period was high, but the Government is working hard to create a law to enforce merit-based recruitment and dismissal for the top management positions. The disciplinary system offers weak guarantees for civil servants, and the State Commission for the Prevention of Corruption (SCPC) has been non-operational for an extended period, pending the appointment of new members. Furthermore, most of the public service is outside the scope of the SCPC and no other institution proactively promotes public servant integrity.

Significant progress has been made in the area of public procurement: the Parliament approved a new Law on Public Procurement (PPL) on 28 January 2019, and it entered into force on 1 April. The new PPL transposes the current EU public procurement directives and complies strongly with the *acquis*. Only a few issues are still problematic from the EU perspective, such as the 'negative list' of economic operators and a lack of equivalent provisions related to the 'self-cleaning' mechanism. Following the recommendations of previous SIGMA assessments, important decisions were taken to eliminate certain elements that negatively affected the efficiency of the public procurement system in the past: the Public Procurement Council has been abolished, e-auctions have become optional, and the contracting authorities are now free to choose quality related awarding criteria in accordance with their economic objectives.

SIGMA draws on multiple sources of evidence for its assessments and wishes to thank the Government for its collaboration in providing the necessary administrative data and documentation.

Focus areas for the 2019 Monitoring Report were selected jointly by the Organisation for Economic Cooperation and Development (OECD) and the European Commission (EC). The civil service and public procurement areas are considered particularly relevant to the country's European Integration pathway,

¹ OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

² OECD (2019), *Methodological Framework for the Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-May-2019.pdf>.

³ OECD (2017), *Monitoring Report: The former Yugoslav Republic of Macedonia*, OECD, Paris, <http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf>

⁴ Recent Monitoring Reports are available at <http://www.sigmaweb.org/publications/monitoring-reports.htm>

and are also an important aspect of policy dialogue relating to the European Reform Agenda and the EC's overall Enlargement perspective⁵. Although analytical findings and recommendations are addressed to the Government, they are also designed to contribute to this policy dialogue.

⁵ https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

A large teal folder graphic with a light blue tab on the left side. The text "Public Service and Human Resource Management" is centered on the folder.

Public Service and
Human Resource
Management

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: JULY 2017-MARCH 2019

1.1. State of play

The provisions on recruitment of the Law on Public Sector Employees (LPSE – 2014⁶) and the Law on Administrative Servants (LAS – 2014⁷) have only been fully used in practice in the last year, after a long administrative standstill in recruitment owing to elections in North Macedonia. The SIGMA assessment is based on this limited number of cases, so on a non-fully consolidated system.

The recruitment system for non-senior civil servants is formally based on merit. Unfortunately, the effectiveness of recruitment is jeopardised because of weak ownership by all involved actors: the Agency of Administration (AA), the recruiting body, and the Ministry of Information Society and Administration (MISA).

Senior civil service positions are under a highly discretionary system, based on political appointment and dismissal. MISA is working on a new law that will introduce merit and open competition in the recruitment and termination of top management positions.

The State Commission for the Prevention of Corruption (SCPC) was not functional for most of 2018, after the resignation of its President in March 2018. The new members have been appointed, and the SCPC is again functional as of February 2019.

1.2. Main developments

There were three minor amendments to the LAS in 2018: a technical one concerning the promotion system, and two amendments concerning job announcement requirements. The prerequisite of a psychological test was abolished, as it was a very simple PC-based test with little added value and its results were not being used to short-list candidates. More important, the knowledge of a foreign language is now directly tested with a PC-based test before the interview, so there is no longer a need for a costly certificate.

The LPSE has been amended in 2017, allowing those institutions, related to the integration process of North Macedonia in the EU, to update their annual staffing plan with more recruitment than permitted by their own act of systematisation. This exception is possible only if supported and justified by a functional analysis in institutions, whereas projects or obligations regarding the integration process requires additional recruitment⁸. This modification of the staffing plan needs to be approved by both MISA and the Ministry of Finance (MoF).

The last major development is the entrance into force of the new Law on Prevention of Corruption and Conflicts of Interest (LPCCI – 2019⁹), which merges two former laws¹⁰ and clarifies the role and composition of the State Commission on Prevention of Corruption (SCPC) itself.

⁶ Law on Public Sector Employees (LPSE), Official Gazette No. 27/2014.

⁷ Law on Administrative Servants, Official Gazette No. 27/2014.

⁸ Law amending the Law on Public Sector Employees, Official Gazette No. 198/2018.

⁹ Law on Prevention of Corruption and Conflict of Interest (LPCCI), Official Gazette No. 12/2019.

¹⁰ Law on Prevention of Conflict of Interest, 2009 and Law on Protection of Whistle-blowers, 2015.

2. ANALYSIS

Human resource management

This analysis covers three topics related to the public service:

- 1) Recruitment and termination
- 2) Senior managerial positions
- 3) Integrity and disciplinary regime

Those three topics correspond to Principles 3, 4, and 7 of the Public Service and Human Resource Management area of the Principles of Public Administration¹¹. It includes an analysis of the indicator(s) and sub-indicators used to assess the Principles, as well as an overall summary of the state of play. Short- and medium-term recommendations are presented at the end of the section. Data were provided for almost all of the indicators, as were files to analyse recruitment and disciplinary cases. This availability of information constitutes a clear improvement in comparison with the 2017 assessment.

Overall, the indicator values have slightly improved compared to the 2017 assessment¹². Out of the five indicators, two of them improved, one deteriorated and two remained stable:

- The merit-based termination of employment and demotion of civil servants increased from 2 to 3 points, thanks to the availability of data on the implementation of court decisions favourable to dismissed civil servants, while in 2017 no data were available and, therefore, no points were awarded.
- The integrity of public servants increased from 3 to 4 points, due to the improvement in the levels of bribery experienced and perceived.
- The merit-based recruitment and dismissal of senior civil servants decreased from 1 to 0 points. This happened because of the very low stability in senior civil servant positions during the assessment period (more than 80% of the top civil servants were dismissed in 2017, the year of the formation of the last government).
- The other two aggregated indicators, Meritocracy and effectiveness of recruitment of civil servants and Quality of disciplinary procedures for civil servants, remained stable.

The 2017 assessment's short-term recommendation to conduct communication campaigns promoting employment opportunities in the public sector and making citizens aware of its fairness guarantees in order to increase the number of candidates in public competitions was not followed, and the country still lacks a sufficient average number of (eligible) candidates per competition.

On the other hand, the Government followed the 2017 assessment's short-term recommendation to reform the selection practices for top managerial positions in the public sector in order to ensure merit is the only, or at least the main, criterion. MISA is finalising the draft of a new law on top managers that ensures merit in recruitment, evaluation, and termination of the top managerial positions in the public sector.

¹¹ OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

¹² OECD (2017), *Monitoring Report: the former Yugoslav Republic of Macedonia*, OECD, Paris, <http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf>.

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| Indicators | 0 | 1 | 2 | 3 | 4 | 5 |
|--|---|---|---|---|---|---|
| Meritocracy and effectiveness of recruitment of civil servants | | | | | ◆ | |
| Merit-based termination of employment and demotion of civil servants | | | □ | ◆ | | |
| Merit-based recruitment and dismissal of senior civil servants | ◆ | □ | | | | |
| Quality of disciplinary procedures for civil servants | | | ◆ | | | |
| Integrity of public servants | | | | □ | ◆ | |

Legend: □ 2017 indicator value ◆ 2019 indicator value

Analysis of Principles

Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.

The practical application of the LAS and the LPSE began in 2018; the new recruitment process started delivering its first results. The LAS and its by-laws are strong and offer a modern, professional, and merit-based recruitment process. The LAS was amended in 2018 to abolish a psychological test, which was of little use in recruitment. A second amendment adapted the requirement to know a foreign language. Formerly, a candidate had to obtain a language certificate at a relatively high cost, which was a source of discrimination for poorer candidates. It was replaced with a computer-based test before the interview¹³. The LAS still includes a very general requirement for candidates to be in “general good health”, which could lead to discrimination as the way to assess this is not described in the LAS or the by-laws. Lastly, the LAS does not contain any form of “positive discrimination” for candidates belonging to disadvantaged groups, except for “non-majority” communities.

The system lacks experience, as MISA and the AA have not had time to analyse the initial results and reflect upon their implementation. Relatively minor issues were found in the recruitment files that the five institutions¹⁴ selected (according to the methodology) for the assessment provided: one of the vacancies included a specific requirement not needed for the position, which could lead to favouritism in the selection process, and three other vacancies were open for a shorter period than the 10 days the methodology requires (down to only 3 days in two cases of recruitment in Customs¹⁵). Final merit selection was insured, in all cases, as the best candidate was appointed.

The system allows the recruiting institution to withdraw a vacancy any time during the recruitment process, before the interview, which is a clear weakness in the regulation. This possibility was used five times in 2018 (out of 298 competitions). It may be abused in various ways, including the possibility to favour a specific candidate who might have failed the first steps of the recruitment process.

Another concern is the intelligibility and predictability for the candidates of the positive discrimination system for non-majority communities. According to the methodology that MISA adopted, if the

¹³ Law on amending the Law on Administrative Servants, Official Gazette 11/2018, Art. 9, paragraph 4.

¹⁴ Ministry of Economy, Ministry of Labour and Social Policy, Public Revenue Office, Customs and the Cadastre Agency.

¹⁵ Out of the scope of the LAS, compliant with the regulations under its special legislation.

“BalancER” tool¹⁶ requires a vacancy to be filled by a specific community and the recruitment fails to deliver a candidate from the given community background in the shortlist, the recruitment process must start again. If the second attempt also fails, then the AA merges the two shortlists into a single list of shortlisted candidates. The recruiting institution has to pick the top-ranked candidate for this merged list, this time regardless of the candidate’s community background. Potential applicants find this positive discrimination system difficult to understand, and it could partly explain the low number of candidates.

During 2018, a total of 298 vacancies were opened to competition by the AA. 2 826 candidates, an average of only 9.5 per position, applied. With an unemployment rate of more than 20%¹⁷, this low number of applicants to stable jobs raises the suspicion of an extended lack of trust in the fairness of the selection processes that discourages potential candidates. On top of that, due to cumbersome and non-job related requirements, most of those applicants were considered as non-eligible: only 645 applicants, a 22.8%, were considered to fulfil all requirements and accepted to the competition. With an average of only two eligible candidates per vacancy, the capacity of the recruitment procedure to select high-quality staff is debatable. With this exceptionally low figure, it is surprising and a matter of concern that the AA managed to recruit someone for 65% of the vacancies (194 choices for 298 vacancies completed in 2018). Also worrisome is the lack of accountability on this issue: neither the AA, nor MISA, nor the recruiting institution¹⁸ takes responsibility for the scarce numbers of applicants and of eligible candidates and none of them questions the lack of effectiveness of the process. Unfortunately, we cannot provide a reliable comparison with the 2017 assessment, because of the recruitment freezing in 2016 due to the electoral period.

Concerning the retention rate of newly hired civil servants, no overall data is available, but in the sample institutions, a retention rate of 100% was observed.

Overall, in spite of the weaknesses described in the previous paragraphs, the value for the indicator on the meritocracy and effectiveness of recruitment of civil servants is 4.

¹⁶ Tool, developed by MISA and accepted by the Secretariat for the Implementation of the Ohrid Framework Agreement (SIOFA), to attribute a mandatory community origin to every vacancy in the Annual Staffing Plan of any given institution, according to its specific community unbalance.

¹⁷ State Statistical Office, December 2018 (http://www.stat.gov.mk/PrikaziSooptenie_en.aspx?rbtxt=98). This is the rate of the last quarter of 2018.

¹⁸ With the notable exception of Ministry of Foreign Affairs, which organised a media campaign for the recruitment of 27 functions in December 2018 and obtained no fewer than 819 applicants.

Meritocracy and effectiveness of recruitment of civil servants

This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job-seekers and performance of the public sector.

This indicator measures only external recruitment. The indicator on merit-based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.

Overall indicator value 0 1 2 3 **4** 5

| Sub-indicators | Points |
|--|--------------|
| Legal framework and organisation of recruitment | |
| 1. Adequacy of legislative framework for merit-based recruitment for civil service positions | 16/18 |
| 2. Application in practice of recruitment procedures for civil service positions | 15/18 |
| Performance of recruitment practices | |
| 3. Time required to hire a civil servant | 2/2 |
| 4. Average number of eligible candidates per vacancy | 0/4 |
| 5. Effectiveness of recruitment for civil service positions (%) | 1/4 |
| 6. Retention rate of newly hired civil servants (%) | 4/4 |
| Total¹⁹ | 38/50 |

The provisions concerning merit-based termination and demotion of civil servants are quite strong in the LPSE and the LAS. The two key weaknesses in the regulatory aspect, already mentioned in the 2017 SIGMA assessment, are:

- 1) The relative weakness of the provisions on dismissals owing to restructuring or downsizing operations, as no criteria are defined as safeguards against unfair dismissals, and
- 2) Dismissals due to inadequate performance are possible after only one performance assessment cycle.

Concerning the fairness of the termination and demotion practices, a matter of concern is the limited percentage of dismissal decisions that courts confirmed²⁰. There were 49 dismissal cases in 2018, and of those that were contested in the courts, 48% (8 out of 17) were decided in favour of the civil servant²¹. Most of those court rulings were implemented quickly, and the dismissed civil servants were reinstated in their former institutions. Given the limited access to the content of those files, however, further analysis is required to understand the reasons of the limited percentage of court-confirmed dismissal decisions²². The lack of training and support related to dismissal procedures does not help HR units to adequately tackle this issue.

¹⁹ Point conversion ranges: 0-7=0, 8-16=1, 17-25=2, 26-35=3, 36-43=4, 44-50=5.

²⁰ The Ministry of Justice (MoJ) provided manually gathered data concerning 2018 on dismissals of civil servants being judged in the Labour Court. There are no aggregated data on the identity of the appealing party in the MoJ statistics, so they had to manually search for those cases.

²¹ The courts reached decisions in 17 appellate cases in 2018 (5 of them pending for a final ruling). In eight cases the courts decided against the administration on dismissal cases.

²² A trade union representative expressed, during an interview linked with this assessment, that this could be the sign of an abusive recourse to dismissal by some local authorities.

Overall, the value for the indicator merit-based termination of employment and demotion of civil servants is 3.

| Merit-based termination of employment and demotion of civil servants | | | | | | |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which the legal framework and the HRM practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with termination of employment and demotion of senior civil servants. | | | | | | |
| Overall indicator value | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators | Points |
|--|--------------|
| Legal framework and organisation of dismissals and demotions | |
| 1. Objectivity of criteria for termination of employment in civil service legislation | 4/6 |
| 2. Objectivity of criteria for demotion of civil servants in the legislative framework | 2/2 |
| 3. Right to appeal dismissal and demotion decisions to the courts | 2/2 |
| Fairness and results of dismissal practices | |
| 4. Dismissal decisions confirmed by the courts (%) | 1/4 |
| 5. Implementation of court decisions favourable to dismissed civil servants (%) | 3/4 |
| Total²³ | 12/18 |

The recruitment process of civil servants, regulated by the new LAS and managed by the AA, is still relatively new to provide a conclusive judgement. The regulation is adequate, but the involved institutions do not proactively seek to improve the quality of the selected staff by working to increase the number of eligible candidates. While the regulatory aspects of merit-based termination and demotion of civil servants are quite strong, the actual implementation has shortcomings, as indicated by an excessive number of dismissal decisions not confirmed by the courts.

Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.

During the assessment period, there was very low stability in the top civil service positions: 84% of the senior civil servants active in January 2017 were dismissed before the end of the year. In 2018, another 29% of the senior civil servants were dismissed²⁴. By the end of 2018, only 17 senior civil servants active in January 2017 had retained their position. This high instability occurs because of the current discretionary appointment system and is consistent with the tradition of politically biased appointments.

Therefore, even with the same system as in 2016, the value of the sub-indicator “Stability in the senior civil service” dropped from 4 in the 2017 assessment to 0 in 2019. This is because, 2016 being an election year²⁵ marked by a standstill in recruitment and dismissals, only one dismissal was taken into account in the 2017 assessment.

On the regulatory side, nothing has changed since the 2017 assessment regarding senior managerial positions. Broadly speaking, we can distinguish two kinds of positions and situations:

²³ Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

²⁴ The sum of the two years totals more than 100% because new “recruitments” (political appointments) were made in 2017.

²⁵ Parliamentary elections were held on 11 December 2016.

a) Secretaries (state secretaries; secretary generals; municipal secretaries):

Those top positions with key managerial functions²⁶, found in ministries, government secretariats, municipalities and in some constitutional bodies and independent agencies²⁷. The selection for those positions follows a hybrid system, combining merit and political appointment. These positions are discretionally appointed by the political authority to which they are accountable. Only civil servants from the second highest category (B category, head administrative servants) of the same institution can be appointed to these positions. In practice, this means a discretionary choice, usually under political criteria, among existing senior civil servants, previously merit-selected to join the civil service. Termination is also discretionary with no possibility of appeal and, in any case their term of office expires along with the term of the appointing political authority. After termination, the individual is assigned to a position of equivalent level to the one he/she was occupying when appointed as secretary.

b) Heads of agencies and public bodies²⁸:

The heads and deputy heads of agencies and other public bodies in the national administration are usually discretionally appointed by the Government, in most cases after a public call to invite candidatures. Even with this open call, those positions have been traditionally considered as political positions. In certain cases, the coalition parties “distribute” between them the positions of head and deputy head. Therefore any new government has been replacing all or most of the individuals, as it has been the case during 2017 and 2018, after the new government took office²⁹.

The regulatory framework is fragmented. In most cases, the conditions and procedures for appointment are regulated by the law creating the public body. In a few cases, this is directly regulated by the Law on Organisation and Operation of State Administrative Bodies (LOOSAB)³⁰. In some agencies and public bodies, the head is appointed by the governing board (members appointed by the Government). The sector laws usually include some formal similar requirements to be appointed as head, but no real competitive procedure based on merit is foreseen.

According to the Law on Government and to its Rules of Procedure, a Commission for Appointments considers the candidates and makes a recommendation to the Government. No interviews or tests are conducted. The Commission is composed of seven ministers and is currently chaired by one of the deputy prime ministers and minister of Internal Affairs. The General Secretariat provides administrative support.

During 2018 the Commission has managed 97 appointments. In 80 cases, regulated by sector laws the process has included a public call. In the other 17 cases, for institutions directly regulated by the LOOSAB, the appointment has not been preceded by any open call. Whenever there is an open call, the number of applicants is limited: 10 or 20 in certain cases and a single applicant in others. When public call is not required, the minister proposes a candidate to the Commission and sometimes directly to the Government. The appointment decisions are never motivated.

The term of office of the heads of agencies and public bodies is usually linked to the term of office of its appointing authority. They can be discretionally dismissed with no possibility of appeal.

²⁶ According to LAS, “The Secretary...shall manage the administrative servants, give instructions to the head and other officials and employees in the institution, especially within the context of human resource management, and he/she shall also decide upon the rights, obligations and responsibilities of the administrative servants, in a manner and procedures laid down in this Law” (Art. 11).

²⁷ LAS, Art. 23.

²⁸ This assessment is assessment has not paid attention to the public enterprises, out of the Administration, but the situation regarding the appointment of its directors is quite similar.

²⁹ On May 31, 2017, the Parliament confirmed Zoran Zaev as the new Prime Minister.

³⁰ Law on Organisation and Operation of State Administrative Bodies (Official Gazette Nos. 58/2000, 44/2002, 82/2008, 167/2010 and 51/2011). Art. 47.2, “The operation of an independent state administrative body, an administrative organization and a body within the ministries shall be managed by a director appointed and dismissed by the Government, unless otherwise defined by law”.

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Those top managerial officials, secretaries and heads of agencies, are not subject to performance appraisals or to the disciplinary system.

In the framework of a declared political will of de-politicisation of the administration, the MISA has been working on a law to create a Top Management Service, ensuring the merit principle in its recruitment, appraisal, and dismissal procedures. The draft law is in its final stage of preparation.

The percentage of women in top and medium level senior position remains a positive element of the Macedonian civil service, as it was in the 2017 assessment. Overall, 37.8% of top and medium position holders are women. However, this positive overall statistic doesn't show that in the top 147 positions³¹ there are only 15 women. In medium levels³², the proportion is significantly better, with 225 women out of 487 positions.

Overall, the value for the indicator on merit-based recruitment and dismissal of senior civil servants is 0³³.

³¹ Group A positions: state secretaries and head(s) of agencies or other administrative bodies under the responsibility of the central government.

³² B1 positions: State advisors; and B2 positions: Heads of sector.

³³ There are no objective criteria for the termination of senior civil servants, as the decision is purely discretionary (SI=0). As the recruitment process is not an open competition and appointment is discretionary, there is no real ratio of eligible candidates for such positions (SI=0). Appeal against dismissal for secretaries is not possible; for heads of agencies, there have been a few appeals in the courts, but no statistics are available (SI=0).

Merit-based recruitment and dismissal of senior civil servants

This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal.

Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility of political influence in appointments to such positions.

Overall indicator value **0** 1 2 3 4 5

| Sub-indicators | Points |
|--|-------------------|
| Legal framework and organisation of recruitment and dismissal of senior civil servants | |
| 1. Appropriateness of scope for senior civil service in legislation | 2/3 |
| 2. Adequacy of legislative framework for merit-based recruitment for senior civil service positions | 2/15 |
| 3. Objectivity of criteria for termination of employment of senior civil servants in the legislative framework | 0/4 |
| 4. Legislative protection of rights of senior civil servants during demotion | 1/2 |
| Merit-based recruitment and termination of employment in senior civil service positions in practice | |
| 5. Application in practice of recruitment procedures for senior civil service | 0/9 |
| 6. Ratio of eligible candidates per senior-level vacancy | 0/4 |
| 7. Effectiveness of recruitment for senior civil service positions (%) | 0/4 |
| 8. Women in senior civil service positions (%) | 4/4 |
| 9. Stability in senior civil service positions | 0/4 |
| 10. Dismissal decisions confirmed by the courts (%) | 0/4 ³⁴ |
| 11. Implementation of final court decisions favourable to dismissed senior civil servants (%) | 0/4 ³⁵ |
| Total³⁶ | 9/57 |

The legislative framework is very weak, as recruitment and dismissal are discretionary for secretaries and heads of agencies. Instability in top managerial positions during the assessment period was very high: more than 80% of the top management positions were dismissed in 2017 (the last year a government was formed). Percentage of women in top and medium level senior position remains high.

³⁴ No data available; but not relevant as those positions are discretionally dismissed.

³⁵ *Idem.*

³⁶ Point conversion ranges: 0-10=0, 11-19=1, 20-28=2, 29-37=3, 38-46=4, 47-57=5.

Principle 7: Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

The regulatory framework has not evolved since the last assessment. The same key weaknesses identified in 2017 prevail:

- 1) The LAS and the Rulebook on Disciplinary Procedures and Offences do not explicitly mention the presumption of innocence and the impartial investigation of the facts, and
- 2) The time limit for initiating a procedure after an alleged wrongdoing is very short: only three months in normal cases and up to one year in the case of internal audit findings.

The AA is competent for administrative appeals against disciplinary decisions. During 2018, 143 appeals were resolved by the Second Instance Commission of the AA (42 for major violations and 101 for minor violations)³⁷. From the appeals regarding major violations, 22 were accepted and 20 were rejected. From the appeals regarding minor violations, 55 were accepted and 46 were rejected. In both cases, more than 50% of the appeals were resolved in favour of the appellant.

Regarding judicial appeals, of the 90 decisions³⁸ on disciplinary cases that the courts reached in 2018, only 23 confirmed the sanctions. As it was the case for dismissals, this low percentage (25.5% of confirmed decisions) raises questions, both about the weaknesses of the HR units and disciplinary commissions when documenting the cases and about possible situations of unfair use of the disciplinary procedures. In any case, the continued lack of training and support on these issues to the HR units does not improve the situation.

According to the data provided concerning its inspections related to the civil service in 2018, the State Administrative Inspectorate focused mainly on disciplinary sanctions and problems in the implementation of the LAS and the LPSE provisions on recruitment and mobility procedures.

Overall, the value for the indicator on the quality of disciplinary procedures for civil servants is 2.

³⁷ The Commission of the Administration for Decision-making on Appeals and Objections of the Administrative Servants in the Second Instance is the organ dealing with complaints and appeals of civil servants concerning disciplinary sanctions. This Commission is a part of the Agency of Administration.

³⁸ There are no aggregated data on the nature of the appealing party in the statistics of the MoJ, which had to manually search for those cases.

| Quality of disciplinary procedures for civil servants | | | | | | |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases. | | | | | | |
| Overall indicator value | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators | Points |
|--|-------------------|
| Legal framework and organisation of disciplinary system | |
| 1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures | 4/4 |
| 2. Compliance between disciplinary procedures and essential procedural principles | 0/6 ³⁹ |
| 3. Time limits for the administration to initiate disciplinary action or/and punish misbehaviour | 1/2 |
| 4. Legislative safeguards for suspension of civil servants from duty | 2/2 |
| Performance of the disciplinary procedures | |
| 5. Disciplinary decisions confirmed by the courts (%) | 0/4 |
| Total⁴⁰ | 7/18 |

After the resignation of its President in March 2018, the State Commission for the Prevention of Corruption (SCPC) was unable to play its role for most of 2018. It has been operational again only since February 2019. The Law on Prevention of Corruption and Conflicts of Interest (January 2019) merges the two former laws⁴¹ on the subject. This law also reinforces the structure and role of the SCPC, while adding safeguards to prevent the corruption of the Commission’s members themselves. The new Law is more complete than the two former legal texts and offers reasonable legislative safeguards against corruption of elected authorities, senior officials, civil servants and public sector employees in general.

The Action Plan of the country’s PAR Strategy 2018-2022 and the SCPC plan “State Program for Prevention of Corruption and Prevention of Conflicts of Interest 2016-2019” are well-balanced strategic documents, containing reasonable actions with an identified budget, timing, and responsibilities. Unfortunately, the 2018 progress report of the State Programme was not available for this assessment, but not much effective activity happened during the SCPC’s interim period. An independent review of the PAR Strategy also points out the relative lack of effectiveness of the measures for promoting integrity, preventing corruption and ensuring discipline in the public service, with a low score of 33% on this particular item’s aggregated indicator⁴².

In 2018, the repressive effectiveness of the SCPC was scarce: no cases of secondary employment, post-employment, gifts and benefits abuses, lack of disclosure of assets, or whistle-blowing were handled, and the SCPC was not informed of any such proceedings taking place in other institutions. The only cases⁴³ of conflicts of interest reported to the SCPC were handled by MISA as disciplinary procedures. This leads to the conclusion that the SCPC has not been the main actor promoting and assessing the integrity of the civil servants. The SCPC focuses mainly on elected and appointed officials. It can

³⁹ Based on the eight procedural principles that should be explicitly mentioned in the regulation: when two of them are missing, the value drops to 0 (no explicit mention of the respect of the presumption of innocence and of the impartial investigation of the facts).

⁴⁰ Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

⁴¹ Law on Prevention of Conflict of Interest, 2009, and Law on Protection of Whistle-blowers, 2015.

⁴² National PAR Monitor 2017/2018 – Macedonia, WeBER and European Policy Institute, December 2018, pp. 66-67.

⁴³ Ten cases in 2018.

investigate a breach of integrity of a civil servant or other public employee, if it is informed of such a situation, but this is not its core duty.

According to the PAR Strategy, the MISA should play a role in promoting integrity amongst civil servants, alongside the SCPC. The actions foreseen for MISA were not undertaken and the ministry has not resources devoted to this issue.

Meanwhile, the perceived level of bribery by businesses experienced variations, from 25% in 2016 to 31% in 2018⁴⁴ and to 22% in 2019⁴⁵, the second worse score of the Balkan region. By contrast, the bribery experienced by citizens shows the best score of the region, having dropped from 6% in 2016 to 4% in 2018⁴⁶ and to 3% in 2019⁴⁷.

Overall, the value for the indicator integrity of public servants is 4.

| Integrity of public servants | | | | | |
|---|---|---|---|---|---|
| This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service. | | | | | |
| The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures. | | | | | |
| Overall indicator value | 0 | 1 | 2 | 3 | 4 |

| Sub-indicators | Points |
|--|--------------|
| Legal framework and organisation of the public sector integrity | |
| 1. Completeness of the legal framework for public sector integrity | 5/5 |
| 2. Existence of a comprehensive public sector integrity policy and action plan | 4/4 |
| 3. Implementation of public sector integrity policy | 2/3 |
| Public sector integrity in practice and public perceptions | |
| 4. Use of investigations in practice | 0/4 |
| 5. Perceived level of bribery in the public sector by businesses (%) | 2/4 |
| 6. Bribery in the public sector experienced by citizens (%) | 3/4 |
| Total⁴⁸ | 16/24 |

The disciplinary process presents some regulatory weaknesses that could allow unfair use by the authorities on one side and a feeling of impunity from potential offenders on the other. The proper application of the disciplinary procedure is questionable, as the percentages of disciplinary sanctions confirmed by the AA and the courts are low. The new LPCCI is strong, and the policy documents and action plans in this area are solid. However, the practical results on the public service are weak, because the SCPC is not a key actor for the integrity of civil servants and the MISA is not performing in this area. Meanwhile, the public sector bribery that citizens experience is comparatively low, having continuously improved from 2016, while the level of bribery perceived by businesses is still high in comparison with other Balkan countries.

⁴⁴ Balkan Barometer – Business Opinion, 2018, p. 84.

⁴⁵ Balkan Barometer – Business Opinion, 2019, not yet published.

⁴⁶ Balkan Barometer – Public Opinion, 2018, p. 122.

⁴⁷ Balkan Barometer – Public Opinion, 2019, not yet published.

⁴⁸ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-24=5.

Key recommendations

Short-term (1-2 years)

- 1) A merit-based top management service system should be created, ensuring the independence of its governing body and the stability of top managers over political changes; the MISA should proactively manage its implementation phases.
- 2) To increase the number of eligible candidates to civil service positions, the AA and MISA should:
 - a. Eliminate cumbersome and non-job-related requirements.
 - b. Maximize the transparency of the selection processes.
 - c. Design an employer branding strategy and conduct public opinion campaigns to enhance citizens' trust in the fairness of the selection system.

Medium-term (3-5 years)

- 3) The core State ministries and bodies outside the scope of the LAS should be included in the Law or, at least, its own legislation should ensure respect for all key civil service principles and guarantees.
- 4) MISA should provide induction and on-the-job managerial training to the top managers selected through the new system.
- 5) MISA should provide training and support to the HR units and disciplinary commissions on how to conduct fair dismissal and disciplinary processes.
- 6) MISA and the SCPC should work together to conduct actions that promote integrity among civil servants.



PUBLIC FINANCIAL MANAGEMENT – PUBLIC PROCUREMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: JULY 2017 – MARCH 2019

1.1. State of play

The Parliament approved a new Law on Public Procurement (PPL)⁴⁹ on 28 January 2019; it will enter into force on 1 April. The new Law transposes the current EU public procurement directives: the 2014 Public Sector Directive⁵⁰ and the Utilities Directive⁵¹. The relevant by-laws are scheduled to be drafted within six months of the adoption of the PPL, in the first half of 2019. The new PPL does not cover procurement contracts in the fields of defence and security, which are to be subjects of a separate law⁵². The Law on Concessions and Public-Private Partnerships (C&PPP Law)⁵³ is not fully harmonised with the Concessions Directive⁵⁴, but it respects the general principles of public procurement.

There is no specific strategy for public procurement, except the PFM Reform Programme, which includes also high level objectives and activities for public procurement. The Public Procurement Bureau (PPB) continues to assist contracting authorities and economic operators through advisory and training activities. The need to strengthen its administrative capacity is greater now, in order to ensure the performance of all of its obligations in a proper and timely manner. The Public Procurement Council (PPC) was abolished at the end of 2017. There has been no progress in the field of concessions and PPPs, and the PPP Council is still not active.

The system benefits from an advanced Electronic System for Public Procurement (ESPP). E-auctions are no longer mandatory, and the lowest price is not the only criterion for awarding contracts. Contracting authorities have an obligation to publish on the ESPP not only the notices and tender documents, but also the public procurement annual plans and data about fulfilment of the contracts. The main challenge now is to develop adequate ESPP technical facilities to ensure implementation of all new legal provisions.

1.2. Main developments

In 2018 the PPB drafted the new PPL, which ensures a high level of compliance with 2014 Public Sector and Utilities Sector EU Directives. The new PPL, approved by the Parliament on 28 January 2019, represents a very high level of compliance with the *acquis*. Only a few issues are problematic from the EU perspective, such as the 'negative list' of economic operators and lack of equivalent provisions related to the 'self-cleaning' mechanism. The process of drafting the PPL in 2018 was very inclusive: all stakeholders had an opportunity to submit their comments and suggestions during public consultations. Expectations are high in the public procurement market regarding the by-laws/rule books that the PPB should prepare in the upcoming months. The legislative framework on concessions and PPPs remained unchanged, and no further steps have been made in the case of regulation of defence procurement. Important decisions have been adopted for eliminating certain elements that negatively affected the efficiency of the public procurement system in the past years: the PPC has been abolished, e-auctions became optional, and the contracting authorities are now free to choose quality-related awarding criteria in accordance with their economic objectives.

⁴⁹ Law on Public Procurement (PPL), Official Gazette No. 24/2019.

⁵⁰ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive No. 2004/18/EC.

⁵¹ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities in the water, energy, transport and postal services and repealing Directive 2004/17/EC.

⁵² Directive 2009/81/EC has not yet been transposed to the North Macedonia legal framework.

⁵³ Concessions and PPP Law, Official Gazette No. 6/2012 with subsequent amendments.

⁵⁴ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

2. ANALYSIS

Public procurement

This analysis covers the Principles 10, 11, and 13 for public procurement in the public financial management area. It includes an analysis of the indicator(s) and sub-indicators used to assess the Principle, and an overall summary of the state of play. Short- and medium-term recommendations are presented at the end of the section.

Progress has been made with regard to the legislative framework, in particular as result of the adoption of a new PPL. No significant changes can be noted in the case of administrative capacity and public procurement operations, whose indicators remain at a similar level to the previous ones.

| Indicators | 0 | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|---|
| Quality of legislative framework for public procurement and PPPs/concessions | | | | | ◆ | |
| Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently | | | | ◆ | | |
| Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations | | | ◆ | | | |

Legend: 2017 indicator value 2019 indicator value

Analysis of Principles

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the European Union acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields, and are duly enforced.

The new PPL was set to implement the 2014 EU Directives and – except for some minor deviations – it represents a high level of compliance with relevant EU legislation. The regulatory framework reflects the fundamental EU Treaty principles of transparency, equal treatment, and non-discrimination. The scope of the PPL is defined in accordance with the relevant provisions of the 2014/24 and 2014/25 Directives. No specific exclusions exceed what the Directives allow. The PPL covers the classic and utilities sectors, and regulates the award of contracts both above and below the EU thresholds.

All of the procedures provided for in the 2014 EU Directives are regulated in the national legislation, as are the techniques and instruments for electronic and aggregated procurement, including the most recent ones such as innovation partnership and electronic catalogues. The new PPL includes special provisions focusing on the prevention of corruption and conflicts of interest.

In accordance with the requirements of the 2014 Directive, the PPL fully regulates electronic communication and exchange of information between contracting authorities and economic operators. All communication and exchange of information, including submission of tenders and requests to participate, must be conducted through the ESPP. Procurement documents are to be available directly and electronically, through the ESPP, to any interested economic operators. Submission of tenders requires the use of advanced electronic signatures supported by a qualified digital certificate.

The PPL provides for all types of procurement-related notices required by the 2014 EU Directives. Transparency will increase owing to the new obligation imposed upon contracting authorities to publish the public procurement plans and a notice on the performance of the contract. The thresholds are

relatively low: in the public sector, the lowest amounts to EUR 1 000 for supplies and services, and EUR 5 000 for works. The fact that a given procurement reaches these thresholds does not mean, however, that the PPL must be applied to the full extent. The PPL provides for contracts valued between EUR 1 000 and EUR 10 000 for supplies and services, and between EUR 5 000 and EUR 20 000 for works, with the possibility of applying the ‘small value procurement procedure’. If the value of the contract does not exceed EUR 70 000 for services or supplies and EUR 500 000 for works, the contracting authorities may apply the ‘simplified open procedure’.

The new PPL removes some shortcomings of the previous legislation, repeatedly criticised in previous SIGMA reports, such as mandatory application of electronic auctions and use of the lowest price as the sole criteria for awarding the contracts; both of these are now optional for the contracting authorities. The PPL also provides for a reduced administrative burden related to the award of contracts. In fact, certain burdensome obligations of the contracting authorities, such as the obligation to seek PPC opinions, had already been removed in November 2017⁵⁵. Moreover, the PPL provides for the application of the ‘single document for proving the capacity’, which is similar to the European Single Procurement Document (ESPD).

Certain provisions clearly aim to encourage participation of small and medium enterprises (SMEs) in public procurement, such as mandatory justification when the contract is not divided into lots, capping the possibility to require a level of annual turnover at no more than double of the estimated value of the contract, and rights of subcontractors to ask for and receive direct payments.

Despite the past achievements, a few inconsistencies with *acquis* persist in the new PPL. One of the most important is the list of negative reference. As regards grounds for exclusion, the PPL provides for a number of situations where the contracting authority is obliged to exclude tenderers or candidates; these are similar to the grounds for exclusion provided in the Directives. Nevertheless, the automatic exclusion for a given time period from public procurement procedures as a consequence of a negative reference does not comply with the provisions of the Directive or the case law of the EU Court of Justice⁵⁶. Moreover, the PPL does not provide for the equivalent of provisions related to ‘self-cleaning’ of economic operators. Another automatic exclusion is provided in the PPL for persons who have participated in the preparation of the tender documentation: they are not allowed to be tenderers in the contract award procedure, without any possibility to prove that their involvement in preparing the procurement procedure does not distort competition⁵⁷.

No updates to secondary legislation and guidelines had been made by the time the new PPL was approved in January 2019. This could affect the capacity of contracting authorities, economic operators, and other stakeholders to prepare for the implementation of the new legislative framework. Further efforts are necessary as regards the adoption of specific implementing regulations. The relevant by-laws are scheduled to be drafted and adopted in the first half of 2019.

The provisions of the EU Defence Procurement Directive 2009/81/EC have not yet been transposed. An inter-ministerial Working Group has been created to draft a defence procurement law by the spring of 2019.

Concessions and PPPs are subject to a separate Law. The material scope of the C&PPP law covers a mixture of different types of concessions, including both concessions defined by European legislation and ‘concessions for goods of general interest’ (*e.g.* land). The general principles of transparency, equal treatment, and non-discrimination are well reflected in the national legislation. In particular, except for the case of concessions for goods of general interest, the provisions of the PPL that refer to the procedures for awarding works contracts and services contracts (including review and remedies procedures) must be applied to the procedures for awarding concessions/PPP contracts. However, the new Directive 2014/23/EU on concessions has yet not been transposed.

⁵⁵ Law No. 165/2017.

⁵⁶ *E.g.*, C - 465/11 Forposta SA.

⁵⁷ In accordance with Art. 41 of Directive 2014/24/EU and Art. 59 of Directive 2014/25/EU.

Overall, the value for the indicator on the quality of legislative framework for public procurement and PPPs/concessions is 4.

| Quality of legislative framework for public procurement and PPPs/concessions | | | | | | |
|--|---|---|---|---|---|---|
| This indicator measures the quality of the legislative framework for public procurement and public-private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of small and medium-sized enterprises (SMEs) in public procurement are assessed, as well as whether practical measures are taken to allow for proper implementation of the legislation. | | | | | | |
| The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof. | | | | | | |
| Overall indicator value | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators | Points |
|---|--------------|
| Compliance of public procurement legislation with the <i>acquis</i> above EU thresholds | |
| 1. Level of alignment of public procurement legislation with the EU Directives | 3/6 |
| 2. Scope of public procurement legislation | 5/6 |
| 3. Public procurement procedures | 4/4 |
| 4. Publication and transparency | 5/5 |
| 5. Choice of participants and award of contracts | 3/5 |
| 6. Availability of procedural options | 4/4 |
| Public procurement procedures below EU thresholds | |
| 7. Advertising of public procurement procedures | 3/3 |
| 8. Contract award procedures | 7/7 |
| Opportunities for participation of SMEs in public procurement | |
| 9. Opportunities for participation of SMEs in public procurement | 5/5 |
| Availability of measures for the practical application of the legislative framework | |
| 10. Availability of measures for the practical application of the legislative framework | 1/5 |
| Quality of legislation concerning PPPs/concessions | |
| 11. Coverage of legislation on PPPs/concessions | 2/2 |
| 12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions | 8/8 |
| Total⁵⁸ | 50/60 |

The legal framework for public procurement is broadly compliant with the 2014 EU Directives, in particular as a result of the new PPL approved by the Parliament in January 2019. Although a few inconsistencies persist, it provides a sound basis for ensuring transparency and increasing value for money in public procurement, both above and below the EU thresholds. The necessary by-laws are not finalised; there are plans for them to be adopted in the next six months, but this delay may affect the implementation of the new rules in the first stage. The legal framework for concessions and PPP ensures the observance of the general principles in public procurement, but no changes have been made in this field since 2012, so the 2014 Concessions Directive has not been transposed. There is no specific legislation for defence procurement.

⁵⁸ Point conversion ranges: 0-10=0, 11-20=1, 21-30=13, 31-40=3, 41-50=4, 51-60=5.

Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

The central body responsible for co-ordinating and monitoring the public procurement system is the PPB, which is organised as a legal entity within the Ministry of Finance (MoF).

The MoF is officially in charge of submitting to the Government proposals for changes in the legislation, but the PPB is the main actor involved in elaborating legislative drafts. The PPB is responsible for monitoring the application of the legislation, providing advisory and operational support for contracting authorities and economic operators – in writing or by telephone (a call centre is available every day from 13:30 to 15:30⁵⁹) – elaborating manuals and guidelines on the public procurement rules, organising and conducting training activities in the public procurement field, managing and developing the ESPP, preparing reports on public procurement procedures based on collected public procurement data, and co-operating with international institutions (including co-ordination with the EU).

The PPC – which was responsible for providing prior approval relating to technical specifications, selection criteria, and framework agreements – was dissolved in November 2017 owing to numerous concerns expressed by all parties and without tangible positive effects in stimulating competition and promoting value for money. In accordance with the new PPL⁶⁰, however, the PPB is now in charge of a new task: administrative/*ex ante* control to be performed before dispatching a decision on selection or cancellation of a procedure. Only selected procurement procedures shall be verified; in particular, those whose value exceeds EUR 500 000 (goods and services) and EUR 2 million (works), procedures flagged by the risk assessment system as ‘high-risk’, and other randomly selected procedures. The PPB shall also issue opinions on the application of the negotiated procedures without prior publication⁶¹.

The PPB’s main functions are divided between two departments, the Department for Normative Affairs, Education and International Co-operation and the Department for ESPP, Analysis and Information Technology. Currently, the PPB has 24 full-time employees, many of them having multiple tasks within their Department.

Over the past two years, the PPB has focused in particular on bringing the national legislation in line with 2014 EU Directives, which is a significant achievement. The new PPL was made public two times on the National Electronic Registry of Legislation (ENER)⁶²: the initial draft, and the second draft resulting from the initial round of consultations. All stakeholders had an opportunity to make their own comments/suggestions on the draft.

Despite this achievement, the PPB did not prepare a new comprehensive public procurement strategy covering the next period, and there are no corresponding action plans in this respect. However, the PFM Reform Programme includes few objectives and activities for public procurement in a general manner. A document named ‘*Draft Strategy for the development of electronic system for public procurement 2016-2020*’ can be found on the PPB website⁶³, but it is limited mainly to the development of e-auctions and has not been updated for the new requirements provided by the recent legislative changes. This shortcoming in strategic planning may affect the measures to be taken in implementing the new legal provisions.

A matter of serious concern is the current workload of the PPB staff, to whom new tasks will be added in the near future. The procurement community appreciates the PPB’s work, but the growing workload has already affected the quality of some services⁶⁴. The same employees dealing with policy issues, for

⁵⁹ Public Procurement Bureau (PPB) website <http://www.bjn.gov.mk/en/call-center/>.

⁶⁰ Arts. 172-179 of the PPL.

⁶¹ Art. 45 (1), indent 5, of the PPL.

⁶² National Electronic Registry of Legislation website: <https://ener.gov.mk/>.

⁶³ PPB website <http://www.bjn.gov.mk/category/strateshki-dokumenti/>.

⁶⁴ A few representatives of contracting authorities expressed dissatisfaction with some written PPB opinions during the interview held on 6 February 2019.

instance, also participate in training events and answer the questions of contracting authorities or economic operators. New tasks, such as administrative control, are provided in the 2019 PPL, and it is not clear whether this activity will benefit from proper staff. Moreover, the PPB will be fully involved, in the coming months, in various activities for preparing secondary legislation and guidelines, updating training curricula, and organising new training programmes, as well as ensuring the development of the ESPP. Currently, the PPB does not have sufficient resources to fulfil the performance of all of its obligations in a proper and timely manner⁶⁵.

The PPB monitors procurement by using the ESPP, which is also used for reporting purposes. An important advantage of the ESPP is the facilitation of gathering procurement data and compiling statistics, which enables the PPB to exercise its monitoring function properly. Information is freely available to the public as well, without specific registration. Information gathered through the ESPP covers the phases in procurement from the publication of the contract notice to the contract award. The previous PPL did not impose any obligation regarding publication of the public procurement Annual Plans; in 2018, about 10% of the contracting authorities did this voluntarily. According to the provisions of the new PPL, contracting authorities will be obliged to publish on the ESPP not only the notices and tender documents, but also the public procurement Annual Plans and data about performance of public contracts⁶⁶.

The PPB's website is comprehensive, user-friendly, and well-structured. It contains a wide range of information, including a full set of primary and secondary public procurement legislation, contract notices, standard tender forms and contract documents, and frequently asked questions. After the new PPL enters into force, information provided on the website should be updated in accordance with the new rules. Annual reports provide a detailed overview on implementation of public procurements and, in general, performance of the system of public procurements in North Macedonia, including analysis of the public procurement market. According to practices in place, the Government adopts annual reports, which the PPB then publishes on its website⁶⁷.

In the area of concessions and PPPs, no progress has been made on strengthening the administrative capacity of central institutions. A range of PPP-related tasks is allocated to the Ministry of Economy (MoE) under the C&PPP Law, including preparation of draft legislative proposals, the organisation of education and training, monitoring and analysis, and the provision of expert assistance and opinions⁶⁸. In practice, however, the number of activities concerning the development, support, and delivery of PPPs is very limited. Only four concession/PPP contracts were awarded in 2018⁶⁹. The PPP unit within the MoE is still operating without adequate staff⁷⁰. All the members of the PPP Council⁷¹ have been appointed recently, but the body has not shown any tangible activities.

Overall, the value for the indicator on the central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently is 3.

⁶⁵ According to the PPB estimation, the optimal number of staff should be 55; information confirmed in a SIGMA interview with PPB, 7 February 2019.

⁶⁶ Arts. 6, 75 (3) and 63 (9) of the PPL.

⁶⁷ The last published Report is for 2017: <http://www.bjn.gov.mk/category/godishni-izveshtai/>.

⁶⁸ Art. 14 of the C&PPP Law.

⁶⁹ Information confirmed in a SIGMA interview with the Ministry of the Economy (MoE), 5 February 2019.

⁷⁰ Only one person performs some formal tasks related to concessions/PPPs; information confirmed in a SIGMA interview with the MoE, 5 February 2019.

⁷¹ Art. 13 of the C&PPP Law established a 15-member PPP Council, comprising representatives of ministries, the General Secretariat, the Government, the PPB, the Association of the Units of Local Self-Government, and independent experts to promote PPPs, propose PPP projects, and make proposals for amendments to PPP regulations.

Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently

This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies are open and transparent.

Overall indicator value 0 1 2 **3** 4 5

| Sub-indicators | Points |
|---|--------------|
| Quality of the policy framework for public procurement | |
| 1. Quality of the strategy for development of public procurement and PPPs/concessions | 3/5 |
| 2. Quality of the operational action plan | 4/5 |
| 3. Implementation of the strategy and the action plan | 0/5 |
| 4. Monitoring of strategy implementation | 2/5 |
| Capability of central procurement institutions and their performance | |
| 5. Adequacy of the legal framework to ensure capable institutions | 8/10 |
| 6. Clarity in definition and distribution of central procurement functions in the legislation | 8/10 |
| 7. Performance of the institutions involved, their capacity and resources | 10/20 |
| Comprehensiveness and efficiency of systems for monitoring and reporting on public procurement | |
| 8. Presence and quality of monitoring and data collection | 8/10 |
| 9. Accessibility of public procurement data | 10/10 |
| Total⁷² | 53/80 |

The current institutional set-up for the management of the public procurement system provides a sound foundation and performs the basic tasks that it has been assigned, with the exception of concessions and PPPs. The PPB needs more human resources to strengthen its own capacity in order to cope with all the future challenges, which will require its full attention and commitment in the next period. There is no specific strategy for public procurement except the PFM Reform Programme, which includes high-level objectives and activities for public procurement. The procurement system benefits from an advanced ESPP, which facilitates the gathering of procurement data and the compilation of statistics.

⁷² Point conversion ranges: 0-12=0, 13-25=1, 26-39=2, 40-53=3, 54-67=4, 68-80=5.

Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

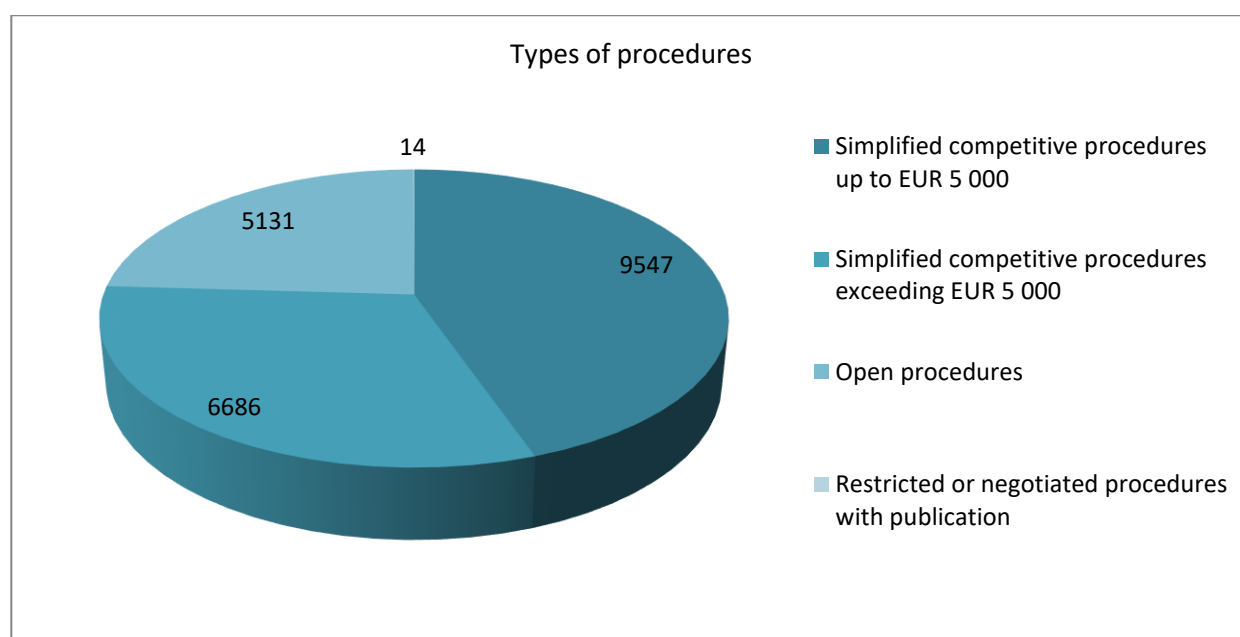
The value of public procurement organised in 2017 and 2018 was between EUR 625 million and EUR 700 million per year, representing about 7% of GDP. A total of 1 435 contracting authorities are registered in the ESPP, which organised 21 962 procurement procedures in 2018⁷³.

The former PPL did not require contracting authorities to make public annual procurement plans; nonetheless, around 10% of contracting authorities voluntarily published such documents on the ESPP. According to the provisions of the new PPL, contracting authorities will be obliged to publish their public procurement Annual Plans, but it remains unclear how they will observe this obligation in 2019, bearing in mind that the law will enter into force only in April. The applicable Rulebook on the Template, Contents and Method for Development of Annual Plans on Public Procurement focuses on the content of the public procurement plan. Deviations from the initial plan are often encountered in practice; in fact, the average realisation rate of procurement plans was less than 60%. It appears that the values of procurement provided in the Annual Plan are anticipated on the basis of planned revenue, instead of actual capacity of individual municipalities for revenue collection and execution⁷⁴.

The contracting authorities sometimes use preliminary market consultation, but the feedback from economic operators is not always satisfactory.

In 2018 contracting authorities initiated 21 406 competitive procedures with a value above the national thresholds⁷⁵, which represented 97.5% of the total number of procurement procedures. They most often use the simplified open procedure and the open procedure.

Figure 1. Negotiated procedure without prior publication of notice



Source: Public Procurement Office, Annual Reports

The share of negotiated procedures without prior publication of a notice remains low – slightly over 2.5% – and remains on a downward trend compared with previous years. Interestingly, the trend to decrease the share of non-competitive procedures continued in 2018, despite the abolishment of the PPC. In the

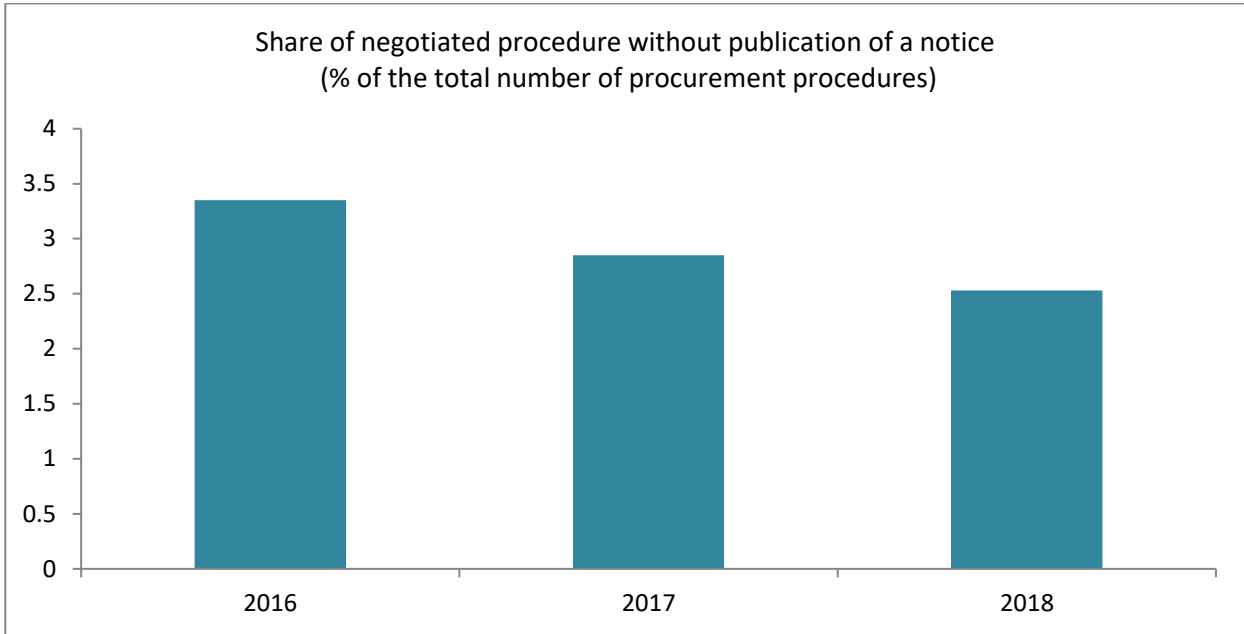
⁷³ Statistics provided by PPB (confirmed in the Electronic System for Public Procurement).

⁷⁴ Statistics provided in "Policy Brief – Planning of Public Procurements in Macedonia: Between the Needs and the Reality", Center for Civil Communications, December 2018.

⁷⁵ The former PPL applies to any contracts the total of which exceeds the equivalent of EUR 500 in MK denars.

past this decrease was attributed to the PPC, which issued approvals for such procedures. Apparently, the lack of the PPC and related approval procedures did not result in more frequent use of non-competitive procedures.

Figure 2. Negotiated procedure without prior publication of notice

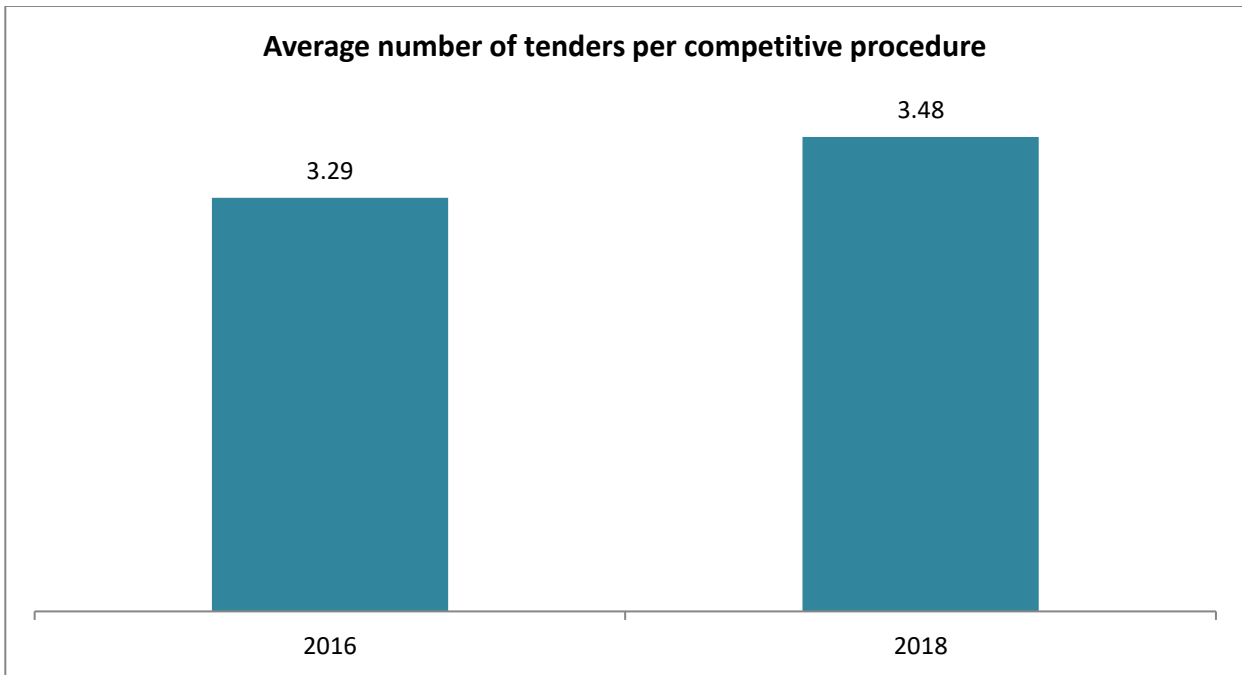


Source: Public Procurement Office, Annual Reports

The legal requirement to use the lowest-price award criterion in most circumstances (only few exceptions were allowed) was a major weakness of the country's public procurement system and its negative effect was fully felt in the market in 2018; for more than 99% of competitive procedures, contracting authorities awarded the contracts based on the lowest-price criterion only.

The average number of tenders submitted per competitive procedure in 2018 was 3.48, similar to the level of previous years.

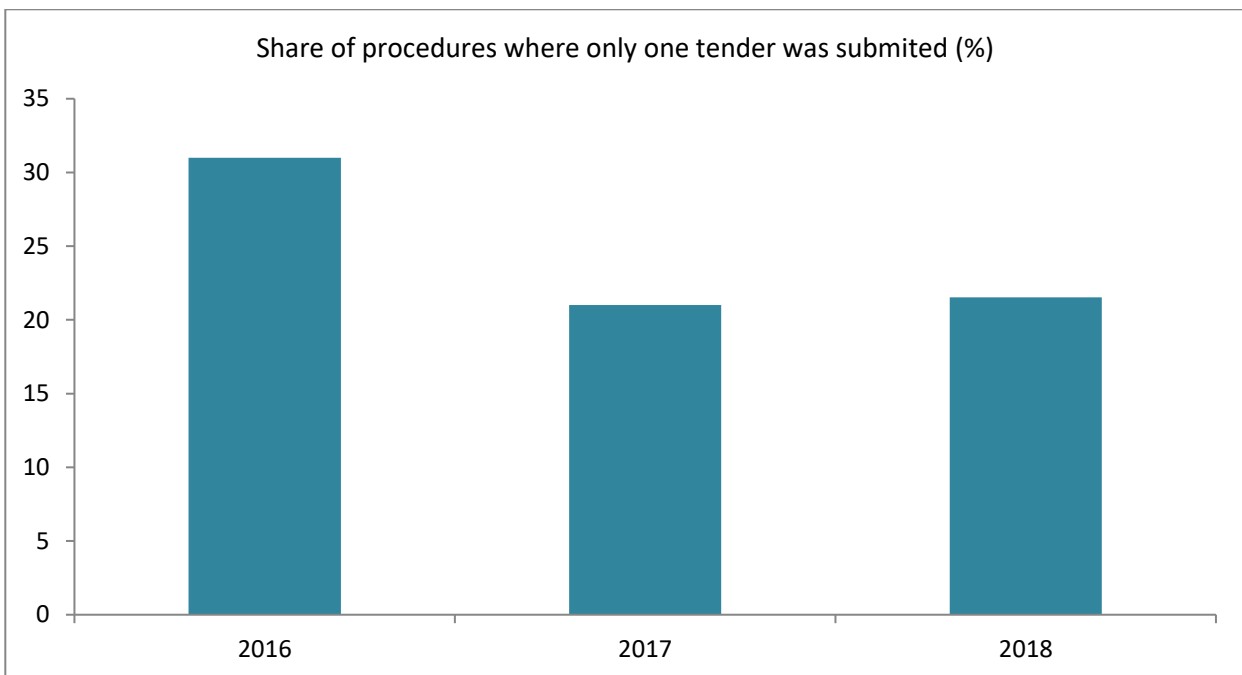
Figure 3. Average number of tenders



Source: Public Procurement Office, Annual Reports

In almost 22% of the cases, only one tender was received, which is still very high, and there are some improvements compared with 2016.

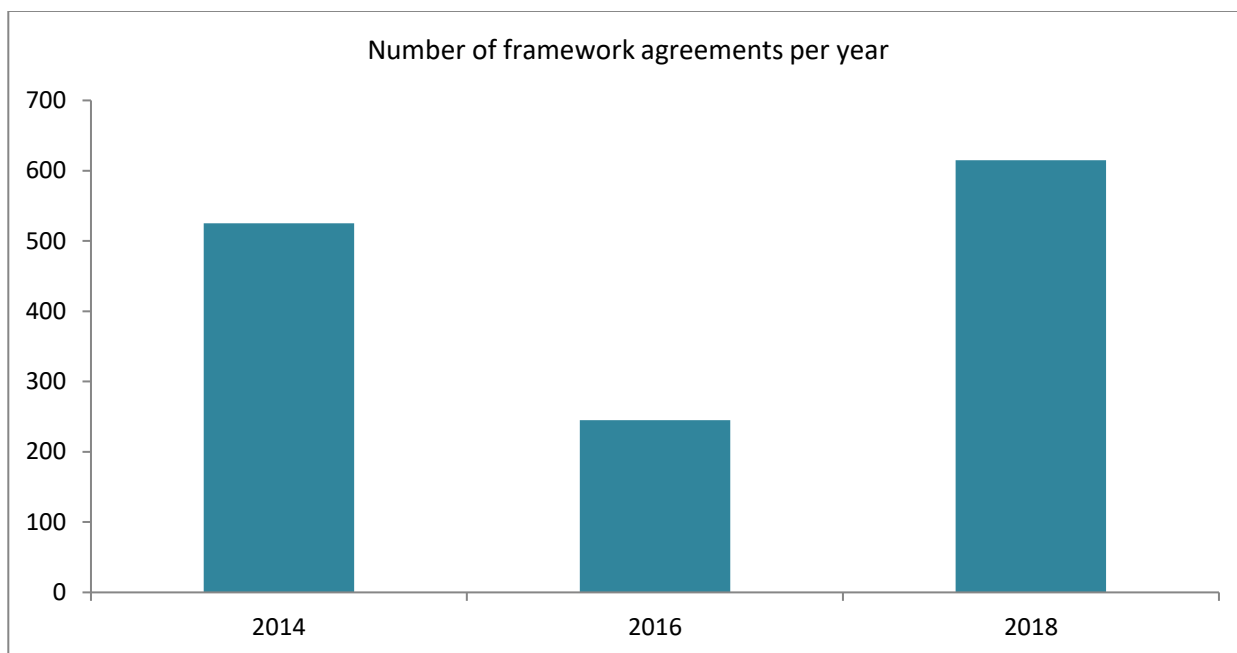
Figure 4. Procedures where only one tender was submitted



Source: Public Procurement Office, Annual Reports

The PPL provides for the establishment and use of framework agreements. In 2018, 615 framework agreements were concluded, for a total value of MDK 4.8 billion (approximately EUR 78 million). The share of 11% of the total contracts value reflects a growing trend of contracting authorities' interest in this instrument.

Figure 5. Number of framework agreements



Data for 2014 are also included for clearer analysis of the trends.

Source: Public Procurement Office, Annual Reports

National legislation stipulates that the Government may establish central purchasing bodies, but no such initiatives have been promoted, and there is no evidence of centralised procurement organised in 2018.

The comprehensive ESPP provides the basic framework for ensuring the transparency of procurement opportunities and the equal access of economic operators to public procurement. All procurement notices and tender documents must be published on the ESPP, including those for low-value contracts. Publication of contract notices and contract award notices is an automated process. The Department for the ESPP, Analysis and Information Technology provides technical support to contracting authorities and economic operators in case of difficulties. The ESPP facilitates the use of modern procurement techniques and methods for the award of contracts both above and below the relevant EU financial thresholds, such as e-submission, e-evaluation, and e-auctions. In accordance with the provisions of the former PPL, with very few exceptions all of the competitive procedures were conducted in 2018 by electronic means, at least in the phases of e-submission and e-auctions.

The new PPL includes provisions for dynamic purchasing systems and electronic catalogues, but currently the ESPP does not provide technical facilities for using such tools in practice.

The previous PPL did not address the issue of contract management, and there is no evidence of systematic *ex post* evaluation of the procurement process or of contract management; evaluation of concluded contracts; or a common, standard approach to reviewing and learning from problems that may arise during contract execution. Neither the PPB nor any other stakeholder provided guidance on this issue. Contract management is considered a weak segment of the procurement process, and poor implementation with cost overruns and execution delays appears to be common^{76, 77}.

The former PPL included some specific provisions aimed at ensuring the integrity of the procurement process and preventing conflicts of interest. The new PPL addressed this issue in a more detailed manner, enhancing the mechanisms related to detecting and combating cases of conflicts of interest, favouritism, and corruption.

⁷⁶ 2017 State Audit Office Report.

⁷⁷ "Policy Brief – Planning of Public Procurements in Macedonia: Between the Needs and the Reality", Center for Civil Communications, December. 2018.

The value for the indicator ‘Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations’ is 2.

| Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations | | | | | | |
|---|---|---|----------|---|---|---|
| This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded. | | | | | | |
| Overall indicator value | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators | Points |
|--|--------------|
| Planning and preparation of the public procurement procedure | |
| 1. Due attention is given to the planning process | 2/5 |
| 2. Presence and use of cost estimation methods and budgeting | 1/2 |
| 3. Perceived quality of tender documentation by contracting authorities and economic operators (%) | 2/4 |
| Competitiveness and transparency of conducted procedures | |
| 4. Perceived fairness of procedures by businesses (%) | 3/4 |
| 5. Contracts awarded by competitive procedures (%) | 5/5 |
| 6. Contracts awarded based on acquisition price only (%) | 0/5 |
| 7. Average number of tenders submitted per competitive procedure | 1/3 |
| 8. Contracts awarded when one tenderer submitted a tender (%) | 1/2 |
| Use of modern procurement methods | |
| 9. Adequacy of regulatory framework for and use of framework agreements | 4/5 |
| 10. Adequacy of regulatory and institutional framework and use of centralised purchasing | 0/5 |
| 11. Penetration of e-procurement within the procurement system | 5/5 |
| Contract management and performance monitoring | |
| 12. Presence of mechanisms requiring and enabling contract management | 2/6 |
| 13. Contracts amended after award (%) | 4/4 |
| 14. Use of <i>ex post</i> evaluation of the procurement process and of contract performance | 0/6 |
| Risk management for preserving the integrity of the public procurement system | |
| 15. Existence of basic integrity tools | 2/4 |
| Total⁷⁸ | 32/65 |

⁷⁸ Point conversion ranges: 0-12=0, 13-23=1, 24-34=2, 35-45=3, 46-56=4, 57-65=5.

The general picture shows that only a few changes have been made in terms of the manner in which procurement procedures were implemented in the course of 2017 and 2018. In particular, procurement planning and contract performance continue to be perceived as weaknesses of the public procurement system. The publication of all types of notices and tender documents electronically is mandatory, and the share of negotiated procedures without publication is low. There is a slight increase in the average number of tenders participating in competition and, despite some improvements, the number of procedures where only one tender was submitted remains high. Use of framework agreements is increasing, but centralised procurement remains at an insignificant level.

Key recommendations

Short-term (1-2 years)

- 1) The MoF and PPB should ensure that secondary legislation and complementary regulations are prepared and issued as soon as possible, preferably before the entry into force of the new PPL.
- 2) The Government should prepare a draft law on concessions/PPPs aligned with the Concessions Directive.
- 3) The MoF should prepare a draft law on defence procurement aligned with the Defence Directive.
- 4) The PPB should ensure appropriate and full public consultation, including the participation of representatives of economic operators and non-governmental organisations, in the public consultation process for the secondary legislation.
- 5) The PPB should prepare a new strategy to develop the public procurement system in 2019-2022, reflecting all aspects that are important for the policy framework in public procurement and PPPs/concessions in the coming period, and serving as a proper strategic framework to manage the challenges of the EU accession process.
- 6) The Government should ensure sufficient capacity of all institutions involved in public procurement and concessions at the central level, in particular the PPB and PPP units within the MoE.

Medium-term (3-5 years)

- 7) The PPB should improve the current guidelines or prepare new guidelines, with a view to presenting more practical examples, focused in particular on the planning process and *ex post* evaluation of contract performance, as well as life-cycle costing, green procurement, and social aspects of procurement.
- 8) The PPB should expand the e-procurement system so that technical facilities for the use of e-catalogues and dynamic purchasing systems are available to contracting authorities and economic operators.
- 9) With the assistance of line ministries and the business community, the PPB should develop and implement sector-specialised operational tools (for example for IT services and supplies, health supplies, road construction, or office supplies), including model tender documents, standard technical specifications, and methodologies for tender evaluation.
- 10) The MoF and PPB should analyse the possibilities to stimulate the use of centralised procurement and to establish central purchasing unit(s) with this purpose.

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