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Report on mapping the current situation in public procurement and the key generators of corruption

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Appendix 1 - Mapping of Mandates of Specialized Institutions in Public Procurement

List of Acronyms

AEC - Agency for Electronic Communications

CA - Contracting Authorities

CPC - State Commission for Protection of Competition

ESPP - Electronic System for Public Procurement

FP - Financial Police

LPP - Law on Public Procurement

PPO - Public Prosecutor's Office

PPB - Public Procurement Bureau

SAO - State Audit Office

SCPC - State Commission for Prevention of Corruption

SCPPA - State Commission for Public Procurement Appeals

RNM - Republic of North Macedonia

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Introduction

This report has been produced within Component 3 in the project EU Support for Rule of Law. The scope of this component is to improve the prevention of corruption. Hence, this report only covers preventive measures and consequently mapping related to, for example, enforcement is not part of this report.

The value of public procurement in the Republic of North Macedonia (RNM) in 2022 is 68 billion denars, i.e. 1.1 billion euros. The share of public procurement in the state budget is 28%, and in the gross domestic product 8.5%. The country has a decentralized public procurement system and about 1,400 institutions at the national and local level participate in the process and each of them buys the necessary goods, services and works for themselves.

The reform of the legal framework for public procurement in the country began in 2017 with the drafting of the new Law on Public Procurement (LPP), which was finally adopted and whose application began in the first half of 2019. The aim of the new law was to bring it closer to the directives of the European Union on public procurement from 2014, but also to solve the many accumulated problems in the implementation of public procurement according to the previous legal framework, which was changed so often that in the end it did not even enable the realization of the basic principles in public procurement.

Five years since the implementation of the current Law, it can be concluded that the expected effects, in terms of preventing corruption and narrowing the space for reducing misuse, have not been realized. Key assessments of the state of public procurement in North Macedonia that are reflected in the last few reports of the European Commission are that the country is moderately prepared in the area of public procurement and the national authorities should implement more effective anti-corruption measures.

There are couple of strengths in public procurement that can be underlined: the legal framework on public procurement is broadly aligned with the EU acquis, public procurement is carried out through a single electronic system, Electronic System for Public Procurement (ESPP) used by all contracting authorities, there is a high level of transparency and availability of the public procurement data of ESPP and on the websites of the institutions and there is an established and functional system for certifying public procurement officers.

Among the key weaknesses of public procurement in the country are the lack of fast and efficient sanctioning of violations of LPP and corruption in public procurement, large differences in the institutional capacities of contracting authorities (CA) to implement public procurement in terms of the number and education of staff, as well as insufficient capacities

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of institutions to carry out their responsibilities for prevention, and/or detection and/or sanctioning of corruption in public procurement (State Commission for Prevention of Corruption (SCPC), State Commission for Protection of Competition (CPC), Financial Police (FP), public prosecution and judiciary).

Findings from Public Procurement Bureau (PPB) administrative controls (ex-dure) and from reports of State Audit Office (SAO) (ex-post) include serious indications of the existence of corruption. The official number of such cases, i.e. misdemeanour and criminal cases related to corruption in public procurements, initiated and processed by bodies such as SCPC and Public Prosecutor's Office (PPO) is extremely low, especially with respect to cases that have been processed before the court and have resulted in sanctions for relevant perpetrators. This is particularly important when compared to a high level of corruption in public spending, as reported in several relevant research studies conducted by renowned international organizations. Very often, many of these institutions announce the opening of cases into abuses and corruption, but shortly afterwards provide little if any information to the public about the further course of said cases, which eventually end up forgotten.

The purpose of this analysis is to map the state of public procurement in terms of corruption and based on the identified weaknesses, to initiate consultations with the relevant institutions in order to fully illuminate the risks of corruption and propose appropriate measures that should be taken in the direction of narrowing of the area for corruption. The analysis starts from the standpoint that the country should increase its efforts to prevent misuse and corruption throughout the entire public procurement cycle and ensure a more effective public procurement system, following the principles of transparency, equal treatment, free competition, and non-discrimination. Hence, the risks of corruption are presented in the three key phases: procurement planning, implementation of public procurement procedures and implementation of concluded public procurement contracts. The analysis is supplemented with proposed measures for discussions with the stakeholders, that is, with SCPC, SAO, CPC, the State Commission for Public Procurement Appeals (SCPPA) and PPB.

1. Corruption risks in the planning phase

Unrealistic assessment of the value of purchases as a basis for misuse of public money. The LPP refers to the need for market research (Article 39 paragraph 1 says: "The contracting authority estimates the value of the public procurement contract by calculating the total amount for the realization of the contract, excluding VAT, taking into account the market conditions..."). The Law does not go into details on how to do market research, but of course, it is necessary to have a trace of how the specific estimated value is determined. However, in

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practice, based on the statements given by the public procurement officials from the contracting authorities, when determining the estimated value of purchases, for most of the procurements, market research is not conducted as a way to understand market prices and market conditions for the specific object of purchase. The problem is also being detected by the procurement authorities in the country. At the beginning of 2023, the PPB published guidelines for market research for CA.[1] According to the recommendations of the PPB, market research in this regard is defined as the desk-based research method; method of questionnaires, surveys and interviews; method of collecting offers from economic operators and consultation with the market and method of market analysis through the electronic system for public procurement.

The unrealistic assessment of the value of the procurement is a risk of corruption because in conditions where the value of the procurement is determined to be unrealistically high, it is possible to conclude the contract with high prices that leave room for the "price" of the bribe. This risk is particularly emphasized if one considers that in public procurement procedures, in which the electronic auction (reduction of initially given prices) is planned, it is common for firms to submit unrealistically high prices, leaving room to reduce it if they face real competition. Hence, in the procedures in which only one offer is submitted, there is no possibility for the members of the public procurement commission to turn on the red light and perceive that the prices are higher than the market prices. However, even if the members of the public procurement commission notice that the offered prices are higher than the market prices, they cannot apply Article 114, paragraph 1, indent 4 of the LPP - "the bidders offered prices and conditions for the execution of the public procurement contract that are less favourable than the real ones on the market" if the bidder with those prices fits into the estimated value. This is also the position of the SCPPA.
Example: The Agency for Electronic Communications (AEC) in the procurement of air purifiers (procedure number 20268/2021) concluded an agreement according to which it would pay 15,143 denars or 246 euros for a purifier. In contrast to this high price, which was included in the highly estimated value of the tender that was also publicly announced, an air purifier with the same performance in terms of the surface area for purification (36 m2) and volume of purified air (300-350 m3/h) was also purchased for a much lower price. So, AD Elektrani na Severna Macedonia, in a public procurement procedure with number 12667/2021, bought the purifiers at a price of 8,024 denars, i.e. 130 euros, which is 71% lower than the price of AEC.

In general, as the given example indicates, this risk of corruption and abuse is made possible by the absence of an obligation of the contracting authorities to provide relevant and documented evidence on the manner in which the market research was conducted and how the estimated value was determined.

[1] https://www.bjn.gov.mk/wp-content/uploads/2023/05/Priracnik-Analiza-na-pazar_BJN_23.pdf

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The obligation to publish individual prices in public procurement contracts that are published on the ESPP, as a way to influence the legal spending of public money and to increase pressure on institutions to purchase procurement at real prices, did not give the desired effects. Data on the prices at which public procurement contracts are concluded are used very little by the media, and there is no knowledge that these data are also used by the relevant institutions to detect cases of corruption (PPB, SCPC, etc.)

Lack of adequate and thorough assessment of real needs, due to which purchases are poorly evaluated in terms of purposefulness and needs of the institution. In support of this finding, there are not only to the frequent purchases of products and services that are commented on by citizens either as a luxury or as extremely unnecessary but also there are frequent changes to public procurement plans and their low degree of realization. At the same time, the frequent changes to public procurement plans (adding, changing or deleting public procurement procedures) and the relatively small percentage of implementation in a large number of institutions point to the existence of subjective and corrupt influences on the selection of the procedures that will actually be implemented.

Given that there are over 1,400 contracting authorities in the country and the PPB has not yet prepared a consolidated % of average implementation of procurement plans, the results of the two first in line institutions of both central and local executive government (The Government and City of Skopje) can serve as examples. In 2022, the Government changed the Annual Procurement Plan 3 times changing 21% of the Plan, and then implemented only 44% of the changed plan. The City of Skopje changed the Annual Procurement Plan 6 times changing 33% of the original Plan, and then implemented only 42% of the changed plan. The ESPP offers the possibility to analyse each contracting authority, individually. Hence, the existence of corruption in public procurement should not only be sought in the process of implementing public procurement procedures, but also in the selected procurement items because in many cases, their unjustifiability both in terms of the object and in the scope can expose misuse and corruption.

In order to reduce these risks of corruption, the current Law on Public Procurement stipulates (Article 77 paragraph 3) that the decision on public procurement should contain an explanation of the need for the procurement. But in practice, this obligation is not respected and hence it has not become a mechanism through which the procurement of inappropriate goods, services or things, or objects of procurement with inappropriate characteristics and in an inappropriate volume, will be prevented.
Example: A state-owned enterprise that has reported losses in its operations for 7 years in a row, in a difficult economic period and for the state in view of the post-covid crisis and the energy crisis, buys an expensive passenger vehicle in April 2021. We are talking about Railways of the Republic of North Macedonia Transport AD, which in 2021 had net losses of 277,856,063

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denars, i.e. 4.5 million euros, but this does not prevent them in the same year in public procurement procedure number 05437/2021 from acquiring passenger vehicle Ford Mondeo Titanium 2.0kw TDI in the amount of 30,515 euros.

Lately, two cases have been opened in the country for criminal prosecution on this basis. The first one is for the mayor of the Municipality of Struga, on the initiative of the SCPC, and refers to the suspicion of abuse of official position during the purchase of four cars with a total value of 114,000 euros, including the luxury "Audi A6" (Link to the announcement on the initiative of the SCPC). The second one refers to the court case of the former Secretary General of the Government for the procurement of software that will enable automatic punishment for car speed, without the Government as a supplier to make an assessment of the real needs of the competent institution for traffic regulation - the Ministry of Internal Affairs. (Link to the announcement in the media.) These two cases are a good example of locating the responsibility of the holders of public offices, that is, the abuse of official duty by purchasing goods or services that instead of the public interest maintain the personal interest of an elected or appointed person.

Most of the institutions do not have internal policies for public procurements (procedure for implementation of public procurements and internal act for ensuring integrity in public procurements). Lack of internal acts for ensuring integrity in public procurement leads to institutions not taking clear measures in the direction of legal, independent, impartial, ethical, responsible, and transparent use of public resources. In this context, it is necessary to emphasize that the contracting authorities that carry out public procurements do not have the practice of preparing a risk assessment and accordingly taking measures to reduce corruption. Although they had the obligation to regularly assess the risks of corruption and accordingly to take measures to overcome the risks that threaten the integrity of the institution, in practice this kind of behaviour is rare. The effects of the introduction of an integrity system in the institutions under the mentorship of the SCPC remain to be seen.

2. Corruption risks in the phase of procedure implementation

Implementation of the procedures for concluding contracts (standard and framework) without precisely determined quantities. Tenders that consist of several items (parts), and in which the quantity of individual items that are the subject of procurement is not determined, very often lead to misuse by submitting unrealistically high and unrealistically low prices for individual items, so that an average level of competitiveness of the supply can be achieved. At the same time, the bidder who is favoured, after a prior agreement with the contracting authority, submits lower prices for the items from the tender that will be used in small quantities, and significantly higher prices for the items that will be used in larger

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quantities. Although it is considered that the Law on Public Procurement is not being acted upon in cases where the planned quantities of the procurement items are not published, in practice this is a frequent occurrence.
Example: The implementation of public procurement without determining quantities can also be found in larger contracting authorities such as ministries - Procurement of office supplies and toners for office work for the needs of the Ministry of Education and Science, procedure number 023222038/.

The given example indicates non-determination of quantities in a classic contract, although this type of risk is present especially in framework contracts, where the contracting authorities do not indicate even the orientation quantities.

In addition, in cases where it is a question of framework contracts and the procedure provides for the re-collection of bids, another type of misuse occurs. Namely, in an agreement reached between the bidders, during the re-collection of prices, precisely those bidders who gave lower prices for the individual items do not submit an offer, but the bidders who gave a higher price for the individual items do. This is made possible by the absence of a legal obligation for bidders to submit an offer during the re-collection of bids.

The State Audit Office often points to the misuse of contracting authorities in the tender execution phase to buy products/services with higher offered prices and to avoid those under-priced. This is easy possible because the CA do not state the quantities of products/services in the technical specifications of the tenders.

Discrimination of bidders and limitation of competition through the defined technical and other characteristics of the subject of procurement. This type of corruption is made possible for the most part as a result of too much freedom in drafting tender documents (technical specification and tender documentation). Contracting authorities do not conduct market research to identify market trends in terms of the characteristics of the procurement object and the number and capacities of the business sector, then there is no practice to elaborate on the selected characteristics and eligibility criteria in the tender file. In addition, the person or the persons who prepare the tender documents do not sign declarations of non-existence of conflict of interests, and nobody takes care not to entrust this obligation to only one person and to limit his membership in the commission for public procurement, etc.

One of the key parameters that indicates that the tender documents are prepared in a discriminatory manner is competition. The RNM has had a low level of competition in tenders for years. In 2022, according to data from the PPB, the average number of offers per tender is 3, which is below 3.31 offers, which is below the new in 2021, when it was 3.31, or 2020, when it was 3.58.

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Risks of discrimination is indicated by data that in a significant part of the tenders only one offer is submitted. According to the analyses that have been done in the country in the past few years, the share of tenders in which only one offer is submitted ranges from 19-32%. In 2022 every third public procurement contract was awarded in procedure marked by participation of only one company. It is a matter of 9,305 contracts in total value of 26 billion MKD (427 million EUR). Absence of competition leads to increased risk for tender procedures not to obtain the best value for the money spent.

Tender documents are prepared based on previous experiences and in a narrow circle of consultations that do not allow economic operators equal access to the public procurement market. Transparent communication between the contracting authority and economic operators and their associations is not the practice, especially through more frequent technical dialogue and organization of clarification meetings. This finding is supported by the fact that in 2022, 22,901 procedures for public procurement were announced, and only 165 previous checks on the market were carried out, that is, only for 0.71% of the procedures. An additional problem is that even these conducted technical dialogues are often inadequately implemented and initiated only to observe the form and not the substance of the dialogue.

Limiting competition by setting inappropriate conditions for the participation of bidders (criteria for determining the capability of bidders). The practice shows a high level of subjectivity in terms of defining the bidders' eligibility criteria. It is necessary for the Chambers of Commerce together with the representatives of small and micro enterprises to open this issue and through guidelines that would be received from them to see how to limit this subjectivity.

What is additionally problematic is that the absence of control allows one and the same company with the same number of employees, machinery, equipment, and other conditions at its disposal, to use them at the same time to prove its ability, i.e. to make them available to several contracting authorities.

Excessive powers of public procurement commissions against the lack of expertise among members and frequent practice, especially in smaller contracting authorities, to establish only one public procurement commission increase the risks of corruption in public procurement. The Law on Public Procurement does not provide for any prerequisites for membership in public procurement commissions, nor does it provide for any measures to increase the knowledge of these members. In practice, there is no knowledge that the institutions take measures for greater education and building the capacities of the members of the commissions, so that they can be easily involved and even manipulated in certain procedures by the colleagues who took certain actions to "fix the tender".

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At the same time, in the contracting authorities where the commission for public procurement is constantly in the same composition or is in the same composition for the same objects of public procurement, there is a risk of developing a clientelistic relationship and creating illegal influences and actions.

Subjectivity in the rejection of offers enabled by the Law on Public Procurement leads to corruption and the conclusion of the contract with the pre-favoured economic operator. The data from the monitoring of public procurements in the country showed that the public procurement commissions in almost every second tender reject the offers of the companies As unacceptable, which raises the doubt whether this behaviour is intended to reduce competition and discourage bidders from participating in the tenders. Examples have been recorded in which even PPB and SCPPA have a different attitude regarding the admissibility of the submitted documentation. Thus, PPB through administrative control assesses that the Ministry of Internal Affairs unjustifiably excluded a bidder because there was no need to sign the Statement saying that in the last 5 years there was no final court verdict for a committed crime with an electronic signature of an authorized person from the holder of the bid. On the other hand, the SCPPA and the Ministry of Internal Affairs, referring to the Rulebook on the manner of using the ESPP, assessed that all documents drawn up by bidders should be signed with an electronic signature.

The application of Article 109 paragraph 2 is particularly problematic, because there is a very subjective approach to the provision according to which the institutions, before proceeding to the evaluation of the offers, should check the completeness and validity of the documentation for determining the capability of the bidder and when checking the completeness and the validity of the documentation, the commission may ask the bidders to clarify or supplement the documents, if there are no significant deviations from the requested documentation. At the same time, the commissions must not create an advantage in favour of a certain economic operator by using the requested clarifications or additions.
Examples: Two examples speak for the extremes to which this legal article is applied. First, in the procedure for public procurement of printing services under number 11458/2021 conducted by Macedonian Academy of Science and Art (MANU), one economic operator was excluded because the economic operator's declaration of non-conviction was older than 6 months from the deadline for submission of retroactive bids. It is a statement whose update could be requested by the bidder. On the other hand, there is the example with procurement number 05577/2022 for the printing of pedagogical documentation and records and other professional literature of the contracting authority Bureau for Education Development, for which two complaints were submitted to the State Commission for Public Procurement Appeals. To prove technical and professional ability, bidders were required to own a transport vehicle. The selected bidder submitted proof that he owns 3 vehicles, but all of them had

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expired traffic permits, but despite that, the company (ARBERIA-DESIGN) was chosen as the most favourable. Following a complaint submitted by Kiro Dandaro, the SCPPA requested that the decision be revoked, and a new evaluation be conducted. Based on a newly submitted complaint from Kiro Dandaro, it can be seen that during a re-decision in accordance with Article 109 paragraph 2, Arberia was asked to submit evidence for the registration of the transport vehicle, and they submitted for one of the vehicles a new traffic permit with a date older than the opening and the Arberia offer was accepted and re-elected. The appellant's bid did not go through because the financial bid was not filled out correctly, which according to the LPP cannot be changed or supplemented.

These two examples speak about the subjectivity in the actions of the institutions, which in the future should be overcome, otherwise it will be misused in the direction of discriminating against the "undesirable" and favouring the "desired" bidders.

Subjective approach in checking the certificates that the bidders are required to submit. According to the complaints submitted by the economic operators to the SCPPA, in a series of procedures it can be seen that the contracting authorities contested the submitted certificates, in the sense that the issuer denied their authenticity. This situation raises several questions. First, do the contracting authorities have the obligation to check all the certificates submitted by the bidders, and if the answer is affirmative, then this process should be regulated or formalized by a law or a by-law. Practice shows that the institutions have a different approach, some check the certificates, others do not (this is also confirmed by the case opened by the SCPC "90 elevator maintenance tenders obtained with a false certificate"). The second question that needs to be answered, that is, that needs to be regulated when it comes to certificates, is how the institutions should act in cases where the submitted certificates are not authentic, that is, they are fake (case in procedure of the Ministry of Internal Affairs 05143/2021 where the commission states that the serial number of the ISO 22000 certificate of one of the bidders does not exist and that the certificate was not issued by the Laboratory that was indicated (information obtained from a complaint from the PPB to the SCPPA for an administrative control)). The question is what did the Ministry of Internal Affairs do about this, did it report the bidder? As an example of this problem and the risk of corruption, we can point to the case opened by the SCPC for an elevator maintenance company that used false ISO standards (it is unclear whether it was the fault of the bidder, or he was also a victim of the company issuing the standard).

Misuse through the electronic auction. The institutions do not give up the electronic auction, despite all the warnings that it encourages collusion between companies and corruption. During 2022, the electronic auction was foreseen in as many as 73% of the tenders. At the same time, almost half of the tenders in which the e-auction was planned, it was not actually held. The high use of the e-auction unequivocally indicates that the contracting authorities do not respect the recommendations given by the competent institutions and the civil sector

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to reduce the use of the e-auction in order to avoid the negative effects and manipulations that it encourages.

The distortions created by the high use of e-auction can be grouped into two groups. The first refers to the consequences that occur in tenders where competition is absent, and the second – in tenders where there is competition, but it leads to collusion between companies or an unrealistic lowering of prices. Analyses show that in every third tender conducted in the country in the past few years, the e-auction, although planned, was not carried out because only one bid was received or only one bid was acceptable. Considering that in the tenders with a planned e-auction the bidders, as a rule, deliver much higher prices at the beginning, the suspicion is justified that in most of these tenders the contracts are concluded at prices that are higher than the real ones.

Example: PE Streets and Roads entered into a contract for public procurement in 2022 (procedure number 06705/2022) for the procurement of Euro Bitumen 50/70 at a price of 48,287 denars (785 euros) for 1 ton, against the Public Enterprise for the Maintenance and Protection of main and regional roads - Skopje c.o. (procedure number 02801/2022) which concluded a contract for the purchase of the same product at a price that is 61% higher and amounts to 77,544 denars (1,260 euros) for 1 ton. In the procedure of PE Streets and Roads, no e-auction was planned, and 4 bidders participated, and at the Public Enterprise for Maintenance and Protection of Main and Regional Roads, an e-auction was planned, but it was not implemented because only one bidder was submitted. The contract of PE Streets and Roads has a total value of 29,500,000 denars (almost 480 thousand euros), and of PE Public Enterprise for maintenance and protection of highway and regional roads 554,600,000 denars (9 million euros).

Example: In the procurement of an interactive board through tender procedures carried out by schools in 2021, it turns out that the same supplier, Davka Shtip, sold them with a price difference of 28%. At the same time, one board was sold to the elementary Mustafa Kemal Ataturk v. Plasnica (procedure number 16667/2021) at a price of 31,129 denars, and 4 boards were sold to elementary school Liria v. Buzalkovo Veles (procedure number 20429/2021) at a price of 39,894 denars. The difference is not in the performance of the boards, they are identical, but in the competition. The more expensive boards were purchased in a procedure in which one bidder called and the e-auction was not conducted, and the cheaper board was purchased in a procedure with two bidders and the e-auction was conducted.

Example: In the procurement of industrial salt for road maintenance in winter conditions, the Municipality of Bitola (procedure number 20375/2021) bought 448 tons of salt at a price of MKD 3,052 per ton, while the Public Enterprise for the Maintenance and Protection of Main and Regional Roads - Skopje c.o. (procedure number 02354/2020) bought 59,555 tons at a price of up to MKD 7,132 per ton. In both tenders, the lowest price was used as a selection criterion and an e-auction was planned. Two bidders participated in the Bitola Municipality procedure, and one bid was submitted in the PE procedure. This huge difference points not

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only to the weaknesses arising from the e-auction, but also to the poor determination of the estimated value.

The second group of distortions refers to tenders where there is competition that results in collusion between firms or unrealistic lowering of prices. The collusion of the companies is manifested by the non-participation of the bidders in the auction, by a symbolic reduction of the offers or, on the other hand, by greater price reductions in order to fit the offer into the estimated value of the tender. Regarding the lowering of the offered prices to an unrealistically low level, the problems arise in that later the low prices translate into poor quality, and at the same time, the low prices can act as a disincentive for future participation of the bidders who do not work with products and low-quality services.

As early as December 2021, the PPB sent an electronic message to all participants in public procurement (contracting authorities and economic operators) which states: *"According to the analyses and observations from practice in the area of the use of electronic auctions, certain corrupt and manipulative practices have been noticed that indicate a pre-arranged winner. Although contracting authorities have insisted on the abolition of mandatory auctions and have seen the negative effects, they continue to use e-auctions very often. Experience shows that in cases where bidders do not have the opportunity to correct the price after the public opening, they make detailed and realistic calculations of the price they offer in their initially submitted bid. Recommendation: Using the lowest price selection criterion, but without an e-auction, in order to limit the possibility of correcting the initial offered price (if there is no competition, the price is not reduced, if there is competition, there is a risk that the two bidders will agree on whether and how much they will reduce the price, while in the case of greater competition, in many cases practice shows the illogical reduction of prices and partial realization of the contract, i.e. realization of the items where the price is not greatly reduced, and non-delivery of the items for which the price during the auction has been reduced far below the market price in order to win the tender, the contract according to the technical specification has not been fully implemented)."*

Collusive tendering between the bidders for the division of the market and/or prices. The participants in the public procurement market in the country are constantly the same, the number of new companies that are involved in public procurement procedures is very small. This consistency of the same firms receiving public procurement contracts, supplemented by the frequent use of electronic auctions, whose weaknesses have already been elaborated, creates fertile ground for collusion between firms.
Example: The procurement of petroleum products takes place in a divided market between the largest distributors, Makpetrol and Pucko Petrol. This situation is reflected in the fact that these companies usually do not compete with each other. As a consequence of the agreement

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in a large number of procedures, the prices of petroleum products are the highest retail prices determined by the Regulatory Commission for Energy, that is, without a penny discount. Example: AD City Shopping Centre, in the procurement and installation of a panoramic elevator (procedure number 02280/2019) with an estimated value of MKD 5,000,000, received 3 offers with the following prices: MKD 4,980,000; 5,067,600 denars and 5,800,000 denars. The selection criterion was the lowest price, and an e-auction was planned. All bidders were invited to the e-auction. During the e-auction, the bidder with the initial lowest price gave an additional reduction of 2,000 denars (0.04%), that is, he lowered the offer from 4,980,000 denars to 4,978,000 denars. The bidder who initially offered 5,067,600 denars during the e-auction reduced the offer to 4,979,000 denars. The third bidder did not participate in the e-auction. The two companies that participated in the e-auction gave only one reduction each and the contract was concluded with the company that made an offer of 4,978,000 denars, which is only 1,000 denars more than the second bidder. It is puzzling how the second bidder immediately gave up on further price cuts when the difference was so small.

At the same time, the negotiation refers to the division of the market, as well as price negotiation. The CPC, as a competent institution, is completely passive in the discovery of these practices and has no knowledge of any measures that have been taken in the past few years in the direction of sanctioning such illegal behaviour.

Cancellation of tenders as a way to prevent the awarding of a contract to a firm that is not the institution's favourite. The risks of corruption can be recognized in the data that in the country in the past five years 24% to 33% of the procedures were subject to annulment. This extremely high share of annulled procedures certainly casts doubt on the subjectivity in making these decisions. In 2022, as many as 70% of cancellation decisions were made on the grounds that no offer was submitted or no acceptable offer. This situation indicates that the desired competition in the tenders is missing, and the reasons should certainly be sought in the way the procedures are implemented and disincentivize potential bidders.

On the other hand, tender cancellation due to lack of bidders might also be a consequence of corruption (economic operators are not interested in wasting time and money due to mistrust in the system). The problem with cancellations is particularly noticeable in some institutions. For example, in 2022, the Ministry of Internal Affairs conducted a total of 196 tenders and cancelled (completely or in part of the tender) as many as 180 procedures. More specifically, 102 tenders (52%) were completely annulled, and in 78 tenders, parts of the tender were annulled.

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3. Corruption risks in the implementation of contracts

Corruption risks through inadequate implementation of contracts. It is about misuse that refers to the contract not being implemented in accordance with the tender documentation and the concluded contract, then paying higher prices than agreed, accepting lower quantities or quality of the procurement object, tolerating a delay in connection with the delivery of the procurement object, concluding annexes to the contracts in continuity for the same procurement objects and with the same procurement holders, not publishing the amendments/annexes to the public procurement contract and the absence of a report on the realization of contracts to cover up omissions and misuse.

Research shows that a large number of institutions do not appoint a person or persons, depending on the size and volume of the procurement, who would be in charge of monitoring the implementation of the contracts. This is illustrated by an example from one of the last audit reports conducted by the SAO, carried out in the Ministry of Internal Affairs, where it is stated that in October 2020 a framework agreement was concluded for the purchase of Eurodiesel BS16 in a total value of 94.4 million denars (1.5 million euros). According to the agreement, the price for one litre of Eurodiesel BS is determined in accordance with the current Decision on determining the highest prices of individual petroleum products by the Regulatory Commission for Energy of the RNM, reduced by a discount of 17.73% and the excise tax from which the Ministry is exempt. With the inspection of the implementation of the agreement, the audit concluded that for the quantities delivered according to the agreement, the economic operator did not calculate and approve an additional discount in the total amount of 1.6 million denars (about 27 thousand euros).

Corruption fuelled by irregularity in the payment of overdue debts. One of the significant weaknesses in the implementation of the contracts refers to irregularities in the payment of due obligations by giving preference to some companies over others. This problem is fuelled by knowledge about late payments of due invoices for completed purchases. According to the data available on the ESPP in 2022, 28,313 public procurement contracts were concluded, and as of June 2023, notifications were submitted to the ESPP for only about 10,000 contracts concluded in 2022, i.e. for 35% of the contracts. Apart from the low level of accountability, a serious problem is that in over 2,000 of these contracts, that is, in every fourth contract, the obligations to the suppliers have not been paid. Hence, suspicions are justified that bribery or trade in influence occurs as a way to "stimulate" the faster payment of obligations. On the other hand, in the business sector, it is commented that in some cases delaying the payment of overdue invoices is a way to disincentivize unwanted companies for further participation in public procurement. 39% of the companies participating in public procurement report late payment to be their main problem. According to their responses given in the latest survey in March 2023, companies receive payments seven months after contract performance.

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Institutions that face this problem the most are the public health institutions and public enterprises, according to their annual reports.

4. Weaknesses in established mechanisms to prevent corruption

Administrative controls did not produce the expected effects and are still not a mechanism for detecting illegal behaviour and misuse.

Further, PPB cannot become an ex-ante investigation unit. It is very unlikely that they can incorporate substance and other risks of corruption elaborated in this document.

Lastly, if the system has been so far totally inefficient to spot corruption (which is the case in most countries), why the suggestion of expanding a practice that so far has proven to be mostly useless? On average, only 1% of public procurement procedures are subject to administrative control. Apart from the small coverage, its predictability is also problematic. The administrative controls carried out by the PPB in 2022 are mainly in accordance with Article 172 paragraph 3, i.e. in public procurement procedures whose estimated value is over 500,000 euros for the procurement of goods or services and over 2 million euros for the procurement of items. More specifically, according to Article 172 paragraph 3,268 tender procedures were controlled, and only 2 tenders were subject to control according to Article 172 paragraph 4, that is, based on an assessment of risks of violating the provisions of the Law and by random selection. Instead of increasing the number of employees in the administrative control department in 2022, their number was reduced from 5 to 4 employees.

The predictability of these controls allows the contracting authorities to prepare for the administrative control and of course to focus on removing those weaknesses in the procedure that are already known to be highlighted by the administrative control. Namely, the controls are limited only to the formal aspect of procurement, not to their substance and other risks of corruption elaborated in this document.

The fact that the PPB in the past few years, i.e. since the beginning of this type of control, has not submitted any criminal report to the competent authority, or delivered a notification to the Public Prosecutor's Office of the RNM about certain findings, speaks of the ineffectiveness of the control.

In order to feel the real effects of administrative control in the direction of reducing misuse and corruption, the PPB, in accordance with the Law on Public Procurement, should expand the scope of control and tenders based on risk assessment or random sampling. Considering that the Bureau does not have the competences and authority to assess whether certain irregularities are the result of an inadvertent error or an intention to favour certain

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companies, it is necessary to promptly inform the competent public prosecutions about the relevant findings of the administrative control.

Firms' trust in the SCPPA is low, which adversely affects the prevention of corrupt contracts. At the same time, SCPPA in certain situations shows inconsistency in its actions, and even differences in positions with the PPB have been observed. According to the survey of the opinion of companies participating in public procurement conducted in February 2022 by the Centre for Civil Communications, only 6% of the companies stated that they always (1%) or often (5%) complain to the SCPPA after Public Procurement in cases where they are not satisfied with the way the contracting authorities acted in the tenders in which they participated. A dominant 94% of the surveyed companies say that they never (67%) or rarely (27%) submit a complaint to the Commission. Two of the most common reasons why companies rarely or never file a complaint are the lack of trust in the SCPPA and the amount of the fee for conducting the complaint procedure that companies have to pay. A high 46% of the surveyed companies state that they do not complain because they do not trust the competent commission (last year this percentage was 47%). In second place as the reason why they do not complain about the tenders is the amount of compensation, which is a problem for 21% of the companies (last year it was 26%). The fear of revanchism from the contracting authority against which the complaint is filed is in third place with 15% (it was 15% last year as well).

Until now, the SCPPA has not undertaken any activities in the direction of raising the confidence of the business sector in their objectivity, which of course results in the submission of a small number of complaints. The participants in the public procurements also criticize the inconsistency in the actions of the SCPPA and its different positions in relation to certain issues.

Absence of cooperation of the competent institutions to detect the corruption of specific items of procurement. The practice does not lead to the conclusion that the SCPC, PPB and SAO have developed an efficient system of cooperation when it comes to specific tender procedures. This is imposed as necessary in the direction of building strong institutions that show that they have the capacity to detect and demand the sanctioning of corruption. In addition, there is passiveness of institutions such as the Ministry of Internal Affairs and the FP in the direction of detecting corruption in public procurement.

As estimated by CSOs in the country, for the time being, it appears that detection of corruption is the most successful aspect, credited mainly to civil society organizations and the media, as well as some independent bodies such as SAO and SCPC. As for the latter, among the 22 audit reports which SAO has submitted in 2022 to the public prosecution for further processing based on the auditor's assessment that misdemeanour or criminal offence has been committed, 6 reports noted irregularities in public procurement procedures and contract performance. In 2022, SCPC was presented with 33 complaints concerning suspicion

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for abuse of public procurement, and it has formed 2 cases in ex-officio capacity. Of these, the Commission motioned criminal charges in three cases. There is no information available about the prosecutorial outcome for these initiatives.

The public prosecution against organized crime and corruption with the PPO is responsible to act in cases of abuse of public procurements and abuse of official duty and authorization in public procurement. In its 2022 annual report it underlined unwavering intensity of reports and proceedings taken pursuant to paragraph 5 of the article on abuse of official duty and authorization and relating to abuses in public procurements. Nevertheless, this impression is not shared by the public. In the meantime, under the pressure of continuous requests by the European Union, a coordination body on public procurement is formed among competent institutions. Just as efforts were made to find ways for key institutions fighting corruption in public procurement to corporate and coordinate their work, primarily in respect to measures that should be taken upon reports of public procurement irregularities and abuse, the fight against corruption in public procurement suffered a major blowback, which further contributes to already present impunity for public procurement abuses.

Notably, in September 2023 and under fast-tracked procedure, the Parliament adopted amendments to the Criminal Code that revoked the above-referenced provision stipulating an imprisonment sanction in duration of at least five years for public officials who have committed abuse of their official duty and authorization when implementing public procurements. Accordingly, this change triggered lower statute of limitations for these criminal offences. The results of such action were made known immediately afterwards. In particular, in period from adoption of these amendments to present, the media often report on court proceedings or investigations being terminated due to statute of limitation for criminal prosecution. It is believed that changes made to the Criminal Code would affect two dozen court cases, majority of which concern public procurement abuse.

5. Proposed measures for discussion with stakeholders

In the direction of an appropriate and thorough assessment of the needs, a series of activities should be undertaken that will enable the institutions to realistically and objectively determine the needs from the point of view of the matters that are given to them in their competence, but also from the point of view of the available personnel and technical capacities. In addition, to this end, it is necessary to determine the expediency of those purchases. Obligations to be foreseen: all organizational units in a contracting authority should be included in the process of determining their procurement needs for the coming year; organizational units that have procurement proposals are obliged to write clear and detailed justifications for the need for the procurements they propose to enter into the public

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procurement plan; the organizational unit for public procurement should coordinate this process of drafting the proposal list of necessary procurements and the organizational unit for public procurement should develop a model for writing the justifications that would contain all the necessary elements that would clearly indicate why the public procurement is needed. In relation to what has been said, the objectivity in determining procurement needs should be evaluated by answering questions about the need for procurement and what the final effect of the procurement will be, whether there are other ways to satisfy the need, or the only option is public procurement, the required quantities, quality and the estimated value of the procurement. Procurement need assessment, i.e. whether they are real and meet the institution's needs, should be the responsibility of each institution individually. The examples given above (the mayor of the Municipality of Struga, Mr. Merko and the former Secretary General of the Government, Mr. Rashkovski) speak of the necessity of this type of measures to reduce abuses.

Market research/analysis should be mandatory, and the documentation of the conducted research should be part of the public procurement file. Market research should provide information on potential bidders, the intensity of competition (number of companies and their size), the presence of collusion risk between bidders, price conditions and market trends, etc. Research according to the size of the tender should include different types of market research which are clearly stated and explained in the "Public Procurement Market Research and Analysis Manual".

At the level of organizational units, market analysis can rest on desk research, but at the level of the institution, transparent, inclusive and regular consultations with suppliers and business associations should be initiated to present the objectives of public procurement and to receive feedback from the business sector regarding current conditions and new market trends. The analysis of the market can be complemented by the analysis of the data available on the ESPP.

The public procurement plan should be harmonized with other relevant documents (budget, work plan, capital investment plan, programs, etc.). Only in this way will the prerequisites for a high percentage of the realization of the public procurement plan be created. In order to increase the percentage of implementation of the public procurement plan, the institutions should determine the level of implementation, the breach of which will be considered as a risk to the integrity.

In relation to public procurement commissions, **institutions should apply the principle of employee rotation as members of public procurement commissions.** At the same time, the commissions should include officials from the organizational units that initiated the public procurement, as well as persons from other organizational units, but who have expertise and

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relevant knowledge in relation to the subject of the procurement and of course have the necessary knowledge for the evaluation of the offers and other actions that need to be taken.

To introduce mandatory education of the members of public procurement commissions. In this way, it can be prevented to misuse their lack of knowledge and at the same time, the institutional capacities of the contracting authorities for the legal and efficient implementation of public procurements will grow. In this way, it will be possible to further strengthen the institutional capacities of the institutions, no matter of the current legal obligation of professional certified procurement officers to be part of the public procurement commission in procedures over 130,000 euros for goods and services and over 5,000,000 euros for works (Article 80 of the Public Procurement Law).

In the preparation of the tender documentation (including the technical specification), the principle of four eyes should be observed and there should be at least two people who will be involved in the process. The persons who prepare the tender documentation should not be members of the public procurement commission.

To introduce and intensify in a transparent manner communication between contracting authorities and economic operators and their associations, especially through more frequent technical dialogue and organization of clarification meetings. Institutions should practice technical dialogue more often, which with the new Law on Public Procurement is an optional way of consulting with economic operators. This form of communication between the contracting authority and potential bidders should be applied during the preparation of procurements of greater value, but above all for planned procurements, regardless of their value, for which the contracting authority does not know the situation and the market participants or whose procurement object is complex, i.e. for which the contracting authority does not have sufficient expertise to describe. Clarification meetings should be arranged as an optional form of communication between the contracting authority and potential bidders after publication of the announcement, and until the deadline for asking questions. At such meetings, the contracting authority should invite all interested economic operators to clarify the procedure and the subject of procurement while the announcement is still open. The minutes with the questions and answers from the clarification meeting should be publicly published so that there is no discrimination between the economic operators who participated in the meeting and those who did not. By conducting a technical dialogue, the contracting authority will better understand the market conditions, that is, the specifics of the goods, services and items offered (prices, conditions, specifications...). By holding clarification meetings, potential bidders will better understand the needs of the contracting authorities and the conditions for participation in the procedures.

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In order to stimulate competition, the institutions should provide **the bidders with the right to clarify or supplement the documents from their bids. Consideration should be given to whether this will be defined by law or bylaw.** At the same time, the rule should be respected not to request additions or corrections only to the financial and technical offer (except for the correction of arithmetic errors), the institutions should show flexibility in terms of additions to the documentation in the direction of encouraging competition.

In order to prevent misuse and enable **timely and appropriate management of the conflict of interest**, it is necessary to expand the range of officials who sign declarations of the non-existence of conflict of interest, as well as their signing when appropriate. In terms of expanding the scope, in addition to the members of the public procurement commissions and the responsible person, the statements should be signed by all others involved in the process of implementing the public procurement procedure, such as those who prepare the tender documentation (including the technical specification), as well as those who should monitor the implementation of the public procurement contracts. If the institutions use the services of external experts or consulting firms at any stage of the public procurement process, they should also have the obligation to sign a declaration of non-existence of conflict of interests and confidentiality of data. Moreover, the public procurement file should clearly state in which part of the procedure the external person or company participated and what insight into the data was available to them. Regarding the act of signing the statements, it should be done after seeing who the bidders are for the specific tender, and not at the beginning of the procedure.

To abolish the electronic auction. Practice shows that the possibility to optionally use e-auction leads again to the dominance of e-auction. There are no effects either from the **recommendations given** by the PPB, according to which the e-auction should be limited only to products of known and standardized quality and for which there is real competition on the market. Hence a relevant question for discussion is whether the cancellation of the e-auction should be sought.

To avoid the easy and frequent annulment of procedures, it is necessary to **give detailed reasons for those annulments to see if the annulment is justified**. Among the legal grounds for annulment of the public procurement procedure are the following two grounds: 1) according to the assessment of the contracting authority that the tender documentation contains important omissions or deficiencies and 2) due to unforeseen and objective circumstances, the needs of the contracting authority have changed. Considering that of all the legal bases for annulment of the procedure, in these two, especially in the first one, there is a dose of subjectivity and room for manipulation in the sense of avoiding making a decision by which the selected bidder is not the one who was favoured, it is necessary to provide detailed arguments and explanations supported by evidence in the decision and in the

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notification for annulment of the procedure. Each institution should determine a level of cancellations above which it should take measures for an in-depth review of the situation and for overcoming the ascertained problems and risks. Since the national average of annulled proceedings is high, it should not be taken as a reference value.

Institutions should have a **formalized system for the monitoring of the implementation of contracts**. This means that for each concluded contract, one or more persons should be appointed, depending on the size and complexity of the contract, who are obliged to monitor the implementation of the contract; the person should communicate in writing with the holder of the purchase and take care of the realization of the purchase according to the contract; the realization of the contract should also be monitored from the aspect of maintaining the agreed quality and characteristics of the subject of procurement, observing the deadlines for delivery, i.e. realization, as well as the dynamics of payment; the person in charge of monitoring the implementation of the contract must initiate measures to sanction the supplier (of course in accordance with the contract) in cases where he does not comply with the agreed and the process of monitoring the implementation of the contracts, followed by signed/initialized dispatches, receipts, entries and other documentation should allow adequate insight to the internal and external control.

To apply internal policies (procedure for public procurement and internal act for ensuring integrity during the implementation of public procurement). Through these policies, the following goals should be achieved, which is to focus efforts not only on the formal implementation of public procurement procedures, but also on all significant aspects of the process, from the planning of procurement to the realization of public procurement contracts, to eliminate the risks of corruption and to remove doubts about the possibility of the occurrence and development of corruption and the conflict of interests, thereby ensuring the trust of citizens in the process, to specify the actions in all situations in which, in accordance with the Law on Public Procurement, discretionary action is enabled in public procurements, as well as in situations that are not specified in detail by the Law, and to enable public procurements to contribute to better operation of the institution and meeting of the citizens' needs more successfully.

To ensure the inclusion of the internal audit in monitoring the public procurement system, detecting anomalies and indicating the measures that should be taken to increase not only the economy, efficiency, but also the integrity of public procurement. Internal audits, currently avoid public procurement and other working processes that are vulnerable to corruption.

Introducing the obligation of the institutions to **assess the risks of corruption in public procurement** and taking measures accordingly. The current risk assessment in institutions, as

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part of internal controls, barely includes risks of corruption in public procurement and those rare examples are only generic and do not reflect the real risks in the institution. Same goes for the envisioned measures.

In this way, the institutions will have to demonstrate the activities they undertake in the direction of preventing corruption. For this purpose, it is necessary to conduct internal periodic and consistent analysis and evaluations of the results of public procurements, which will cover all segments and phases in the public procurement process, starting from procurement planning to the full implementation of the contracts, including external controls. The analysis should point out all the problems and be a good basis for defining measures that will be taken in the future in order to improve the process of implementation of public procurements, reduce the risks of misuse and corruption and increase integrity.

Develop a risk-based selection of tenders (or to use the already developed system of red flags**) subject to PPB ex-dure administrative controls and timely informed the public prosecution office on suspicious cases**. The PPB in accordance with the Law on Public Procurement, should extend the scope of control to tenders based on risk assessment and on random samples. For the relevant findings from the administrative control, a practice should be introduced for timely informing the competent public prosecutor's offices.

SCPPA should publish opinions regarding the most important issues in the field of public procurement in order to improve the process of implementation of the Law and reduce misuse.

To make an analysis of the situation in order to define the limitations that prevent the CPC from being active in sanctioning collusion between the companies. The Chambers of Commerce should be actively involved in this process.

Taking measures to increase the capacities of the SCPC for opening cases of corruption in public procurement and, for this purpose, intensifying cooperation with institutions such as PPB, SCPPA and SAO.

Consultations is suggested to be conducted with the following institutions:

- The State Commission for Prevention of Corruption
- Public Procurement Bureau
- State Commission for Public Procurement Appeals
- State Audit Office
- Commission for Protection of Competition
- The Deputy Prime Minister for Good Governance Policies (or equivalent body)

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Appendix 1

Mapping of Mandates of Specialized Institutions in Public Procurement

INSTITUTION	MANDATES	COMMENTS
Public Procurement Bureau (PPB)	1.Monitors and analyses the implementation of the Law on Public Procurement and other public procurement regulations, the functioning of the public procurement system and initiates changes to improve the public procurement system (Article 45, Law on Public Procurement)	Based on the procurement data that PPB is receiving from the Electronic System for Public Procurement and established Red Flags (as a part of the World Bank project), PPB is publishing Red Flags Reports to track the risks in public procurement and to point to the possible corruptive practices. These indications should serve further for administrative controls of PPB, for cases in SCPC and for audits of the State Audit Office. Out of 36 indicators, PPB established 24 tools/lists of red flags.
	2. Performs administrative control of public procurement (Article 45, Law on Public Procurement)	In 2022, a total of 270 tender procedures were subject of administrative control performed by the Bureau of Public Procurements, which is indicative of a mild increase compared to 2021 and small coverage of such controls accounting for only 1.18% of all tender procedures. Instead of increasing human resources at the department on administrative control, in 2022 their number was reduced from 5 to 4 employees.
	3. Immediately informs the contracting authorities and, if necessary, the competent authorities about the detected irregularities from the notifications received (Article 45, Law on Public Procurement)	For the first time ever, in 2022 the Bureau of Public Procurements presented the State Commission for Prevention of Corruption (SCPC) with two cases on possible abuse of legal provisions governing public procurements.

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The State Commission for Public Procurement Appeals (SCPPA)	1. Settlement of complaints in public procurement procedures (Article 130, Public Procurement Law)	A negative trend in 2022 is observed in respect to appeals lodged by companies before the State Commission on Public Procurement Appeals. Namely, while the number of tender procedures organized in 2022 is slightly higher compared to the previous year (by 0.4%), the number of appeals has decreased by high 34%. At the same time, the share of appeals in the total number of announced procurement notices has dropped to 3.3% and is the lowest share observed in the last four years. The share of appeals approved by the State Commission has decreased in parallel to the decreased number of appeals lodged. Only 40% of all appeals were approved, which is the lowest approval level in the last six years. Dominant 87% of companies surveyed do not lodge appeals against tender procedures. Only 13% of companies reported they always (7%) or often (6%) lodge appeals before the State Commission on Public Procurement Appeals in cases where they are not satisfied with the actions of contracting authorities in tender procedures in which they have participated. The remaining 87% of companies indicated they never (54%) or rarely (34%) lodge appeals before the State Commission.
	2. Settlement of complaints in procedures for awarding contracts for concessions and public-private partnership and other matters in accordance with the Law on Public Enterprises (Article 130, Public Procurement Law)	
	3. Decides on the legality of actions and omissions to take actions, as well as on decisions as individual legal acts adopted in the procedures from paragraph (1) of this article, as well as on other matters in accordance with the law (Article 130, Public Procurement Law).	

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The State Commission for Protection of Competition (CPC)	1.Prohibited agreements, decisions, and concerted practices All agreements concluded between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the distortion of competition shall be prohibited, and in particular, those which: 1) directly or indirectly fix purchase or selling prices or any other trading conditions; 2) limit or control production, markets, technical development or investments; 3) share markets or sources of supply; 4) apply dissimilar conditions to equivalent or similar transactions with other trading parties, thereby placing them at a competitive disadvantage; 5) make the conclusion of agreements subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such agreements. (Article 7, Law on the Protection of Competition)	Participation in prohibited agreements in accordance with the Law on the Protection of Competition is a serious offense for which the Commission for Protection of Competition imposes a fine in the amount of up to 10% of the value of the total annual income in the last business year, for which the company or the association of enterprises has submitted an annual account.
	2."Agreements and decisions" shall mean legal acts that regulate issues related to the terms under which business activities are performed and whose object or effect is distortion of competition. This relates also to individual provisions of agreements or decisions which can be explicit or tacit; -“Cartels” are agreements and decisions and/or concerted practices between two or more undertakings aimed at coordinating their competitive behaviour on the market and/or influencing the relevant parameters of competition, especially through fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing	High 54% of companies admit they have engaged in previous arrangements for tender participation, which is prohibited, but has never been sanctioned. This issue falls within the realm of the Commission for Protection of Competition which, for years now, has not issued sanctions against any company for illegal arrangements to participate in public procurement procedures. It seems that nobody is interested in reporting such arrangements given that the burden of proof for such suspicions falls on the party reporting them, which makes the entire procedure impossible to be completed. However, serious suspicion about prior arrangements between companies are almost an everyday occurrence, not only in monitoring reports on public procurement developed by civil society

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	of markets, bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other undertakings-competitors to the cartel participants; - "Concerted practices" shall mean coordination of the conduct between two or more undertakings which, without having reached an agreement, have knowingly substituted practical cooperation for the risks of competition. A concerted practices may result from direct or indirect contacts among the undertakings whose intention or effect is, either to influence the conduct on the relevant market or to disclose intended future behaviour to competitors. (Article 5, Law on the Protection of Competition)	organizations, but also by contracting authorities that implement public procurements.

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