

**Comparative analyses:
Public procurement in Serbia, Macedonia,
Bosna i Hercegovina and Montenegro
vs EU**



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Comparison:

4 areas in 4 countries vs EU standards:

- ❖ Thresholds
- ❖ Contracting authority/entity
- ❖ Review of public procurement
- ❖ Structures implementing public procurement functions.

Thresholds: EU requirements

- ❖ Directives 2004/17/EC and 2004/18/EC, as amended by the Commission Regulation (EU) No 1251/2011.
- ❖ in EURO.
- ❖ The thresholds differ depending on the sectors, they are applied to:
- ❖ Work contracts: 5 000 000 EURO
- ❖ All supplies and services contracts, all design contests: 400 000 EUR

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Thresholds: 4 countries

- **The thresholds in all of the selected countries are in accordance with the EU public procurement legislation.**
- We recommend to amend the provisions which put different threshold values for the international competitors in Bosnia and Herzegovina and to unify them with the primary thresholds applicable for the local competitors.

Contracting authority/entity: EU requirement

The Directive 2004/17/EC provides following definitions:

- ❖ "Contracting authorities"... State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law.
- ❖ "A body governed by public law"
- ❖ "A public undertaking"

Contracting entities in the utilities sector regulated by the Directive 2004/17/EC are legal persons:

Contracting authority/entity. 4 countries

- ❖ Serbian PPL meets the requirement of the EU public procurement rules.
- ❖ Montenegrin, Macedonian and Bosnian and Herzegovinian PPL are in accordance with the EU public procurement law, although they might not copy the structure of the EU public procurement directives.

Review process of the PP in EU is regulated by so called review directives:

- ❖ Council Directive 89/665/EHS,
- ❖ Council Directive 92/13/EHS,
- ❖ Council Directive 2007/66/EC.

for all decisions taken by the contracting authority in relation to contract award procedures falling within the scope of Directives 2004/17/EC and 2004/18/EC.

EU requirements on review processes concern three main issues:

- ❖ institutional setting for conducting review processes
- ❖ types of decisions and processes of the review
- ❖ the thresholds for compulsory review proceedings.

Institutional design of the review process:

- ❖ All of the compared countries adopted the review model 2, where the first instance review is done by quazi-judicial institution and appeal to the court is possible as well.
- ❖ To support the independence of the first instance institutions it is possible to recommend to Montenegro to move the powers to appoint the members of the State Commission from government to Parliament. However, this recommendation does not result from EU review process requirements.

Review decisions and processes :

- Ex ante review is regulated in all compared countries and several actions are allowed for the review bodies to taken: to annul, abolish contracts etc. The public procurement acts however define some exemptions from the rule and the real adherence to EU rules in this field can be judged rather by analyses of concrete decisions in this regards rather than by comparing legislation.

- ❖ EU Directives do not explicitly define institutional structure to conduct functions related to implementation of PP rules in EU member states.
- ❖ EU Directive 18/2004 (art. 81) stipulates:
Monitoring mechanism: In conformity with Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (1), Member States shall ensure implementation of this Directive by effective, available and transparent mechanisms. For this purpose they may, among other things, appoint or establish an independent body.

3 applied models in EU (OECD, 2007)

- ❖ Centralized model - e.g. in Bulgaria, Cyprus, Czech republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Romania, Slovakia
- ❖ Semi-centralized - applied in most of the “old” EU member states
- ❖ Decentralized model - e.g. in Finland and Portugal.

Public Procurement Office: 4 countries

- ❖ Selected countries formed administrative capacity that implements public procurement functions. All of them introduced dual-centralized model of institutional structure that implements public procurement functions. All of those structural models are formally in line with EU requirements.
- ❖ To what extent the real administrative capacity is developed to conduct public procurement functions cannot be concluded by legal comparative analyses.

Thank you

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