



BALKAN TENDER WATQH

COMPARATIVE EVALUATION REPORT ON PUBLIC PROCUREMENT SYSTEMS IN BOSNIA AND HERZEGOVINA, NORTH MACEDONIA, MONTENEGRO, KOSOVO AND SERBIA:

*STATE OF AFFAIRS PRESENTED THROUGH QUANTITATIVE
INDICATORS AND THE RESULTS OF APPLICATION OF
THE BENCHMARKING TOOL ON CONCRETE PUBLIC
PROCUREMENT CASES*

November 2021



“This Report was produced with the financial support of the European Union. Its contents are the sole responsibility of Balkan Tender Watch coalition (BTW) and do not necessarily reflect the views of the European Union.”

Table of Contents

CORRUPTION IN THE PUBLIC PROCUREMENT REMAINS ONE OF THE BIGGEST PROBLEMS IN THE WESTERN BALKAN COUNTRIES... 3

VALUE OF PUBLIC PROCUREMENT..... 6

 ANNUAL PUBLIC PROCUREMENT VALUES..... 7

 VALUE OF PUBLIC PROCUREMENT COMPARED TO GDP AND BUDGETARY EXPENDITURES..... 10

 VALUE OF PUBLIC PROCUREMENTS IN TERMS OF THE TYPE OF PROCUREMENT 14

 VALUE OF PUBLIC PROCUREMENT IN TERMS OF THE CHOICE OF THE PROCUREMENT PROCEDURE 18

 INTENSITY OF COMPETITION..... 22

RESULTS OF APPLICATION OF THE BENCHMARKING TOOL ON CONCRETE PUBLIC PROCUREMENT CASES..... 25

ADDENDUM1 - APPLIED BENCHMARKING TOOL METHODOLOGY..... 28

 LEGAL AND INSTITUTIONAL ANTI-CORRUPTION FRAMEWORK IN PP..... 28

 Overview of national legal frameworks regarding anti-corruption measures..... 28

 Transparency..... 28

 Monitoring of PP..... 29

 Anti-Corruption measures in PP 29

 PP system performance 30

 IMPLEMENTATION OF PUBLIC PROCUREMENT CYCLE 31

 Pre-tendering phase 31

 Tendering phase 32

 Post-tendering phase..... 36

 EVALUATION OF SYSTEM'S RESPONSIVENESS ON CORRUPTION IN PP 37

 Mapping AC system in PP 37

 AC PP system responsiveness 37

CORRUPTION IN THE PUBLIC PROCUREMENT REMAINS ONE OF THE BIGGEST PROBLEMS IN THE WESTERN BALKAN COUNTRIES...

Corruption and public procurement go hand-in-hand in the Western Balkan countries (hereinafter: WB countries) ever since the introduction of public procurement as a method of procurement of goods, works and services by the governments in the region. This symbiosis takes enormous toll on public finances as the resources spill over to private pockets rather than to serve public interest. Corruption is illegal and secretive activity; thus, all calculations of its value need to be taken with caution. It is especially so because of the widespread impunity for corruption in public procurement throughout the region. Just a quick look at the findings of supreme audit institutions in the region or monitoring reports of the Balkan Tender Watch coalition for the last few years clearly demonstrate how deeply rooted is corruption and in what various forms it appears. It is estimated that about **25%** of funds allocated for public procurement on average is spent illegally as a result of corruption or mismanagement.

The general public, however, has very little or no knowledge about the level of corruption and mechanisms utilized to achieve private gains from public funds. In our earlier annual reports on corruption in public procurement (2012-2016) we identified dominant corruption enabling practices and indicators of corruption. Corrupt practices evolved in the WB countries over the years and today it is not as easy to spot corrupt procurement as it used to be. We moved from simple relying on secretive negotiating procedure in public procurement (e.g. making over **50%** of procurement in Bosnia and Herzegovina and over **30%** in Serbia in 2012) to more sophisticated methods such as technical specifications tailored for certain bidders and biased criteria for bid selection. Probably the champions among the corruption methods, identified through hundreds of analyzed cases of public procurement by organizations publishing this report, are the procurement of services related to public relations and other consulting services that are leaving no traceable track behind them as well as bilateral and multilateral agreements between the countries through which countries exclude application of public procurement rules and procedures and often other important mechanisms, such as free access to information, etc.

Media freedom is the issue tightly connected to this problem. Mainstream media fail to inform public about the scale of the problem. Somewhat unpleasant formulations in the EU Country Reports for WB countries claiming that corruption remains a concern in public procurement and no or little progress has been made in tackling corruption remain overshadowed by political issues. Populist political elites successfully steer the EU agenda in the domain of burning political issues (territorial disputes, security threats, identity issues) leaving the substantial reforms out of the public focus. Tightening space for free

media, especially mainstream media, further diminishes the opportunities of public deliberations on serious political and economic issues such as corruption in public procurement. Investigative journalists and their outlets are under continuous pressure by the political and economic circles, “administrative harassment” measures, or controlled media to deter journalists’ interest in misuse of public funds. Threats and slander campaigns are used to stigmatize investigative journalists whenever they manage to break the silence and reach the audience which exceeds the number of their Twitter followers.

Other stakeholders remain silent on high levels of corruption. Trade unions, professional associations in public enterprises and other public entities should be at the forefront of the anticorruption movement being the first to suffer from the misuse of funds. The same stands for the users’ associations, such as patients’ associations, schoolchildren parents’ associations, youth associations etc. It would be expected that these actors formulate demands for stronger participation in the decision-making process related to public procurement and require more accountability from decision makers. Trade unions fail to build their case around the good government in public enterprises where the corrupt public procurement practices are most often present. These entities also spend the largest portion of funds in WB countries. Simple increase of the share of employees in governing boards of public enterprises to 50% would strengthen the position of labor in public sector and significantly contribute to lowering the level of corruption in the sector as employees are proven to be more interested in sound management of the enterprises they work in, than the outsider members of boards.

Business sector in the WB countries is oddly silent about the high levels of corruption in public procurement. Even though corruption is among leading problems identified in the reports published by business associations in the region, especially those dominated by foreign investors, there are virtually no practical moves made by these actors to mitigate the problem. The sector does not even provide financial or technical assistance to civil society organizations which openly address corruption in public procurement thus promoting the interests of the business too. It seems that the business sector has in a way accommodated to high levels of corruption in public procurement and found their way to navigate through the system. An extremely low level of competition in public procurement in the region clearly tells the story about prevalent corruption in public procurement. Bidders, who should be the main and most effective monitoring “mechanism” within public procurement cycle do not use their right to file the complaint even when they know that certain tender is rigged because they are afraid that it will affect their business in the future and that they will not win any tender because of that. *“It is more profitable to remain silent in these situations”* is the most common answer that you can get when you ask them regarding this issue. We can illustrate this claim with worrying data that almost 70% of public procurement have been conducted with only one bid in the period 2017-2020 in Serbia. Based on conducted monitoring we can claim that situation was not changed during the 2021 although we don’t have official data yet.

This clearly exemplifies the attitude towards the public procurement and nonexistent trust in mechanisms prescribed and established by WB countries legislations.

The reforms of the public procurement are focused on legislation and its alignment with the EU Directives. Governments are obsessed with the formal side of the reform, drawing attention far away from the implementation of the rules and its poor effects. Even though the legislation regulating public procurement in the Western Balkans is pretty much in line with the EU Directives it needs to be further aligned. It seems that the regional governments intentionally avoid full harmonization in order to leave further space for formalist intervention and more harmonization every time the issue of corrupt and ineffective public procurement systems is opened by the EU institutions or national stakeholders. Even though the legislation seems to be the least controversial part of the public procurement systems in the observed countries, the governments regularly tend to adhere to the minimum EU standards in the area of public procurement or fight against corruption which are on paper sometimes below the standards already prescribed in the region.

Institutional framework related to public procurement and fight against corruption remains ineffective. Structures mandated to deal with these issues have grown progressively over the years in the region with no effects on the levels of corruption in public procurement. It is the result of a formalistic approach, but also of misunderstanding of the term institution building by the regional governments. It seems that political elites in the WB countries understood institution building literally as producing new institutions with new competences, rather than strengthening established institutions and respecting their unique role and independence. Created institutions often lack capacities – personnel, financial and technical, to act and produce results. Even the efficient institutions remain ineffective in their strivings as they remain in silos with limited or no interoperability among institutions in charge. Flourishing institutions therefore result in the effects opposite to proclaimed intents, leaving fight against corruption in limbo. They remain as a kind of monuments to ineffective anti-corruption work in the region.

It is not the diagnosis part that bothers anti-corruption community in the region. For almost two decades the problems have been identified and the corrupt practices and their promoters are well known. It is the way to go from there that bothers scarce anti-corruption activists in the region. The region is overwhelmed with strategies to curb corruption including the corruption in public procurement, but the roadmap is not clear at all. Such high levels of corruption cannot be cured in a piece meal fashion – they require a comprehensive approach covering financing of political parties, budgetary policies, taxes, subsidies, public-private partnerships. In all these areas the nexus of politics and economy takes its toll. The stakes are enormous and overcome the investment in fight against corruption by several thousand times. Such battle is lost even before it began.

In such circumstances the Balkan Tender Watch coalition of civil society organizations gathered around the idea of narrowing the space for corruption in public procurement through:

- **identifying spots in the public procurement cycle which are vulnerable to corruption;**
- **exposing corrupt practices in the observed public procurement cases;**
- **proposing and advocating for policy solutions which would contribute to decrease of corruption in public procurement in the Western Balkans.**

Civil society joined their forces in order to overcome some of the deficiencies of the civil society engagement in fight against corruption such as lack of capacities and difficulties to reach their audiences. Alongside investigative journalists these organizations remain the only source of information for the public.

VALUE OF PUBLIC PROCUREMENT

The analysis of public procurement system, besides analysis of the legal and institutional framework and legislation in this field which Balkan Tender Watch coalition conducted in the past, and that will also be conducted in the following years of our work, also requires an analysis of the basic quantitative indicators of the functioning of the system and the impact of public procurement on the economic and social system. The GDP and the taxpayer's money are redistributed through public expenditures including public procurement. This means that a quantitative analysis of the functioning of a public procurement system is important and necessary because public procurement procedure and money disbursed for public purchases i.e., their regularity and legality determine the quality of public goods and services. They therefore determine the level of social welfare and the living standard.

In order to better understand public procurement systems in the Western Balkans region, we have compared basic statistical information pertaining to public procurement in Bosnia and Herzegovina, North Macedonia, Montenegro, Kosovo and Serbia. The data pertain to period from 2015 to 2020.

Following values are expressed in foreign currency i.e. Euro and in percentages and include statistical information which pertains to:

- **total annual public procurement value**, in absolute terms as well as in proportion to the gross domestic product (GDP) and budgetary expenditures;
- public procurement **value according to the type of public procurement**, as well as percentage of public procurement value according to the type of procurement;
- public procurement **value in terms of the choice of the procedure** and public procurement value structure in terms of the applied procedure, taking into account types of procedure with the greatest absolute and relative prominence among conducted procedures in selected countries;

- data which reflect **intensity of competition in the field of public procurement, namely an average number of bids per awarded contract;**

ANNUAL PUBLIC PROCUREMENT VALUES

The tables and charts¹ (1-3) are the total annual value of public procurement in five Western Balkan countries, namely, Bosnia and Herzegovina, North Macedonia, Montenegro, Kosovo and Serbia. The data on the total annual public procurement value in North Macedonia are shown as values which include value-added tax (VAT). Public Procurement Bureau collecting and keeping the data on public procurement conducted in North Macedonia since 2009 ceased to calculate public procurement values excluding the value-added tax, with an explanation that only the data including the VAT are relevant because they show the real expenditure paid by institutions.

In six consecutive years (2015-2020) of our monitoring, we have observed the total annual value of public procurement in all countries. There is a substantial difference among annual public procurement values in Bosnia and Herzegovina and Serbia on the one hand, and public procurement values in North Macedonia, Montenegro, and Kosovo, which is certainly the consequence of size of states and the volume of their respective public sectors.

As we can see from the following data, Covid-19 crisis, introduced state of emergencies, etc. strongly affected on decrease of the amounts that are being distributed through public procurement. On the contrary, all observed countries, besides Bosnia and Herzegovina, in 2019 have increase of total annual public procurement value. In 2020 we have quite different situation with decrease of values in all countries except North Macedonia. In some of observed the countries, like Kosovo and Serbia, we have dramatic decrease of more than 250 and 500 million Euros in 2020 compared to 2019.

Average value, for the period of six years, that observed countries spent through public procurement were as follows:

1. Bosnia and Herzegovina: 1.256.632.810 EUR;
2. North Macedonia: 819.546.938 EUR;
3. Montenegro: 500.335.905 EUR;
4. Kosovo: 533.089.762 EUR;
5. Serbia: 3.140.318.046 EUR.

As we can see, on the average Serbia is spending through the public procurement more than all other countries combined.

¹ Hereinafter in all charts we will use abbreviation N. Macedonia when we refer to the Republic of North Macedonia.

**Chart 1 - Total annual public procurement value per country
(in Euros)**

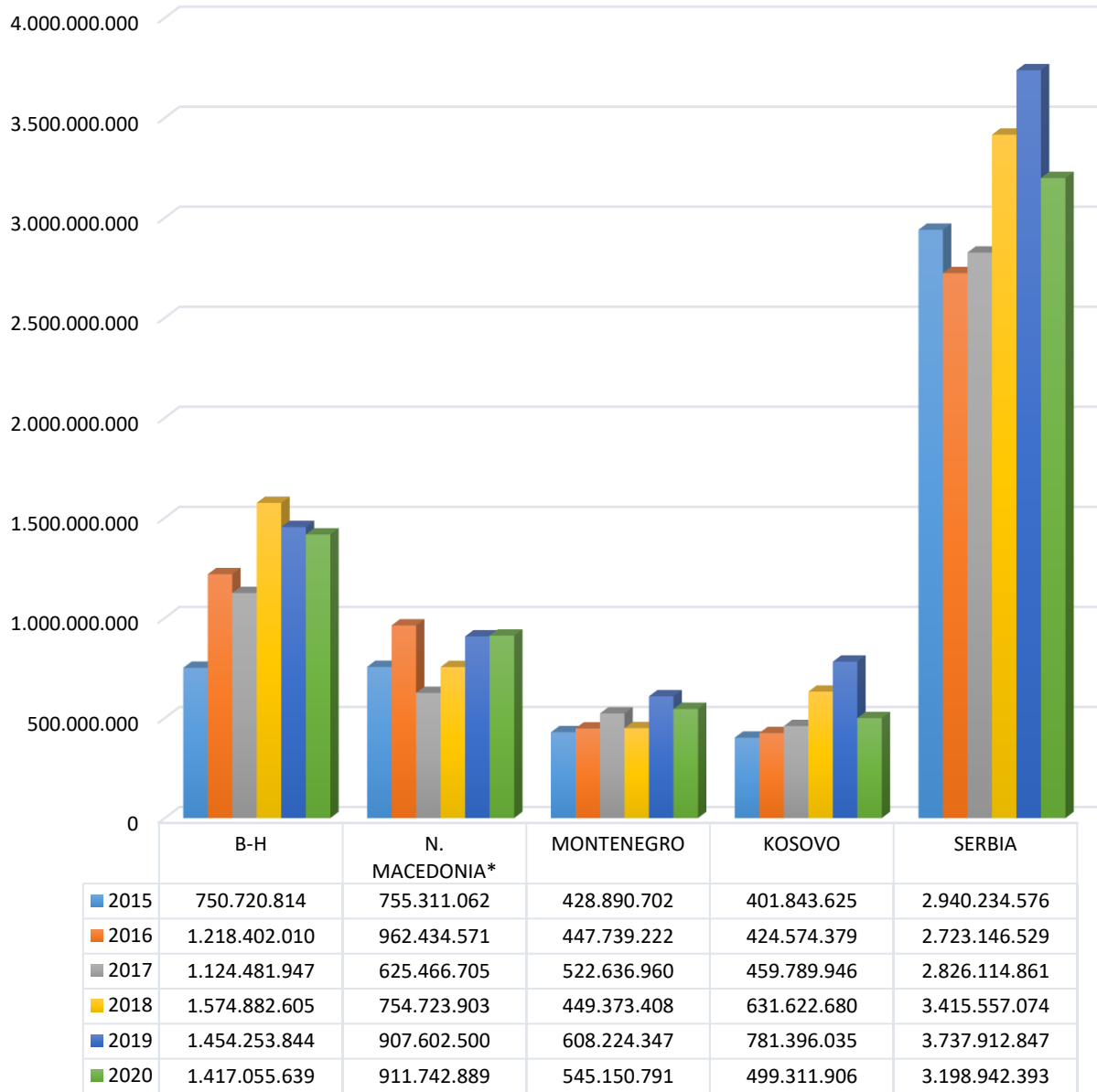


Chart 2- Total annual public procurement value per country (in Euros)

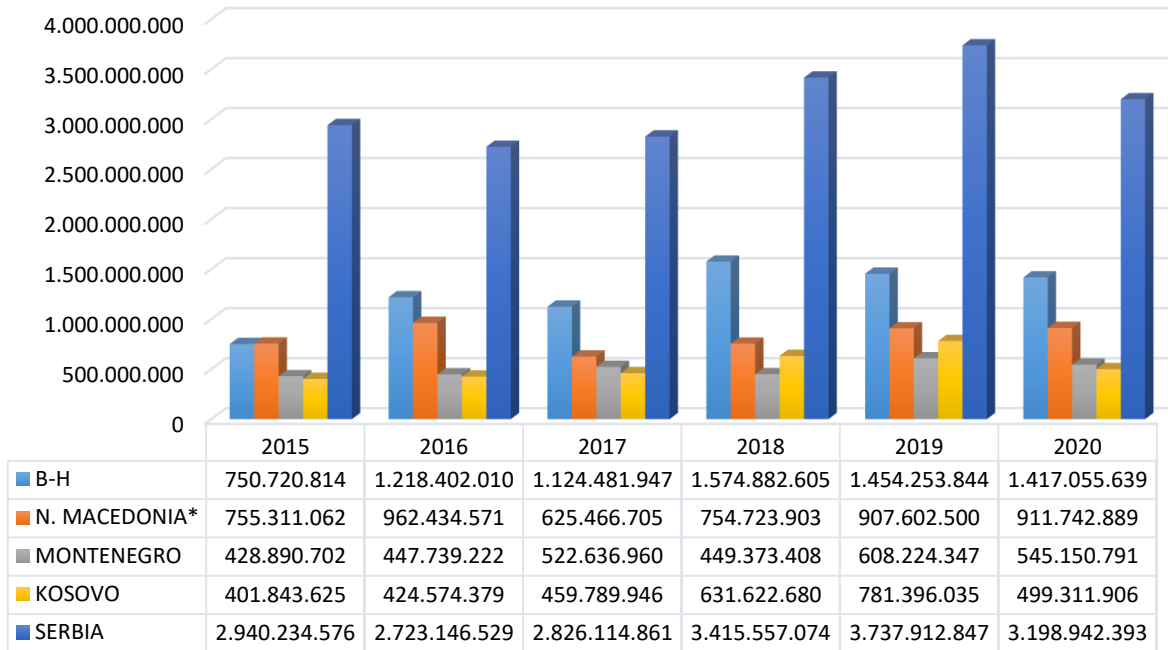
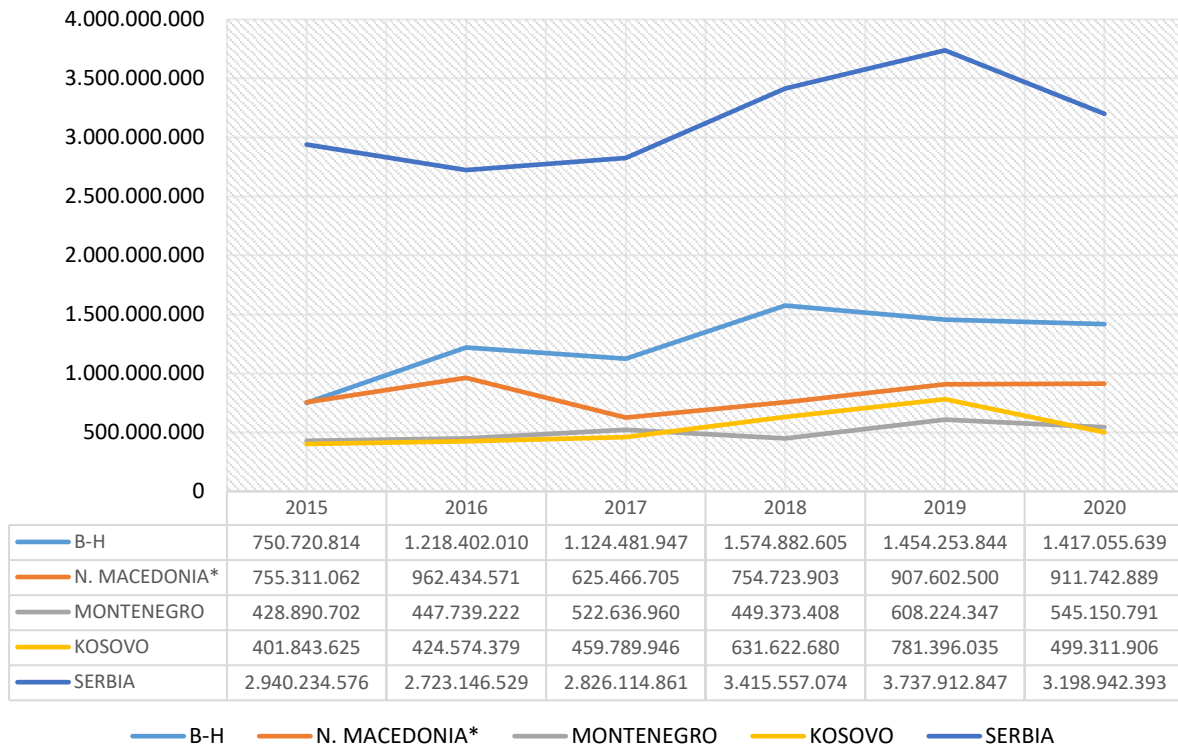


Chart 3 - Trends in Total annual public procurement value per country



*With the value-added tax (VAT)

VALUE OF PUBLIC PROCUREMENT COMPARED TO GDP AND BUDGETARY EXPENDITURES

The absolute value of annually procured goods, works and services may not be a sufficiently good indicator for an analysis that attempts to determine the prominence of this type of public outlay in terms of its value. The proportion of the value of procurements to the total value of budgetary expenditures or the gross domestic product might be more telling about the extent of state involvement in economic transactions. Moreover, comparing these data with similar ones in other countries, primarily those in one's geo-economic neighborhood and on a similar level of development, provides a better insight into whether public procurement expenditures are excessive and whether there is room for savings.

The following six charts show the share of total annual values of public procurement in the gross domestic product, public expenditures, and trends of these values in countries covered by the research. While in the share of public procurement in GDP in 2019 we had increase in all countries except Bosnia and Herzegovina, in 2020 figures clearly show us that we do not have common trend in the whole region. Namely, in 2020 we had further decrease in Bosnia and Herzegovina and significant decrease in Kosovo and Serbia compared to 2019, while this share remained the same in North Macedonia and increased in Montenegro. The greatest share of GDP is still redistributed through public procurement in Montenegro, where in 2020 we had record value since we are conducting our analysis – **13.06%**. That was the highest recorded share of public procurement in GDP in 2020, followed by Bosnia and Herzegovina and North Macedonia with around **8%**, Kosovo **7.5%** and the lowest in Serbia – **6.88%**. The average in 2019 was **9.52%** of GDP, which means that in three observed countries, except Montenegro and Kosovo, values of the share of public procurement in the GDP were recorded below-average. In 2020, average was lower – **9.15%** and all countries except Montenegro were below-average value.

As it was already mentioned significant decrease was recorded in Kosovo and Serbia, while in Montenegro we had big increase. Based on available data, Serbia is “in the last place” with “only” **6.88%**. Analyzed annually, the highest share of public procurement in GDP is found in Montenegro for all six observed years – in 2015 **11.89%**, in 2016 **11.77%**, in 2017 **12.33%**, in 2018 **9.8%**, in 2019 **12.39%** and **13.06%** in 2020. Value recorded in Serbia in 2020 is the lowest for this country since we are conducting our research. Region average for the past six years is around **8,7%** which means that, based on the available data we have only one country that is above that average – Montenegro.

Trends related to annual share of public procurement value in the GPD is presented in Chart 6.

Chart 4 - Annual share of public procurement value in the GDP (in %)

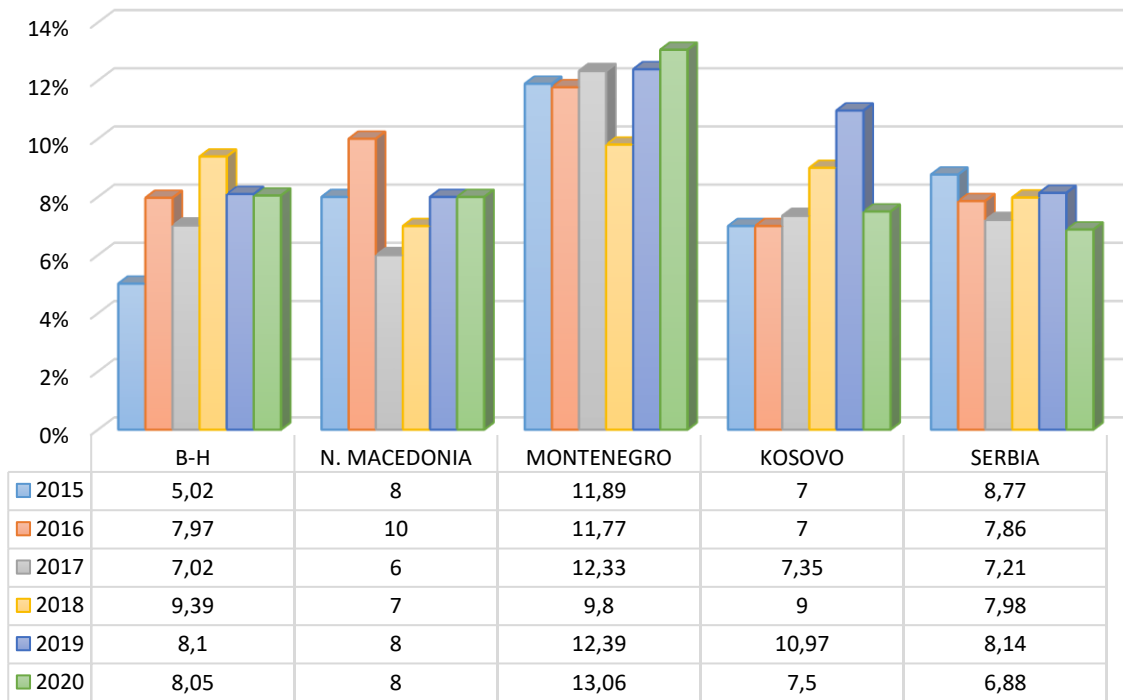
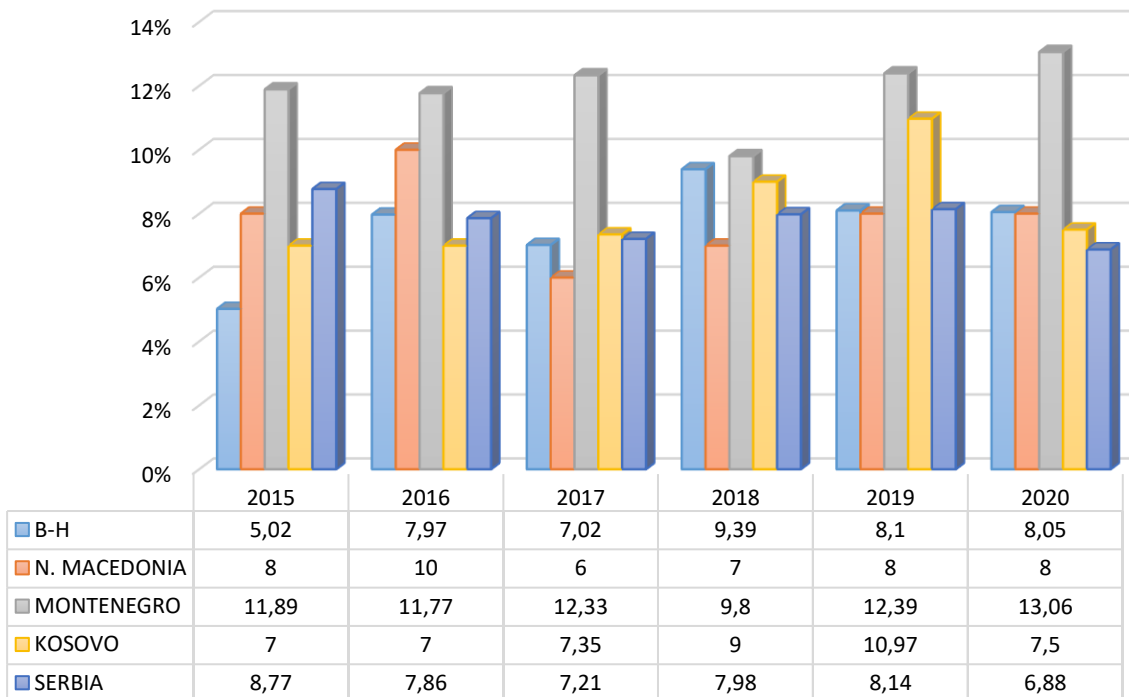
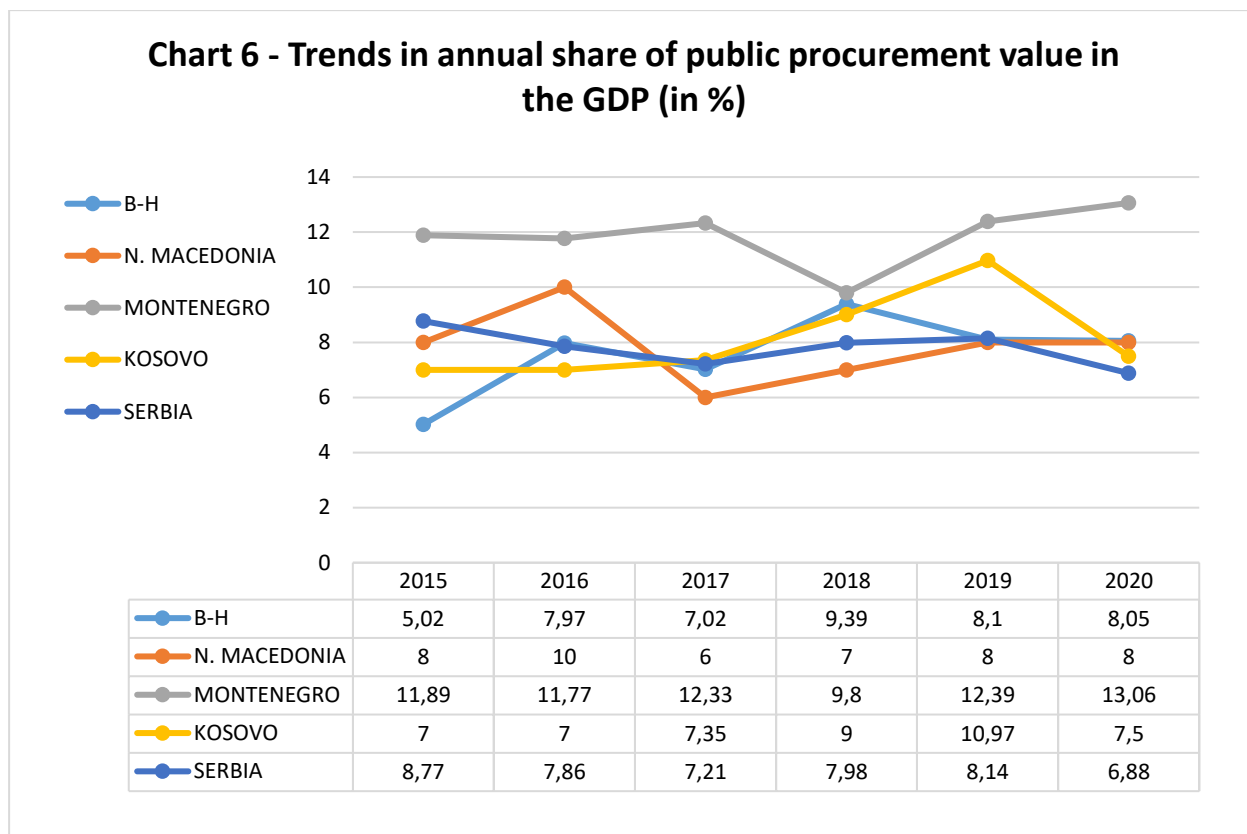


Chart 5 - Annual share of public procurement value in the GDP (in %)





When the share of public procurement values in total budgetary expenditures is concerned, the average recorded in 2019 was **27.51%** and it was much higher than in 2020 - **23,25%**. For the purpose of comparison, it was **25,65%** in 2018 and slightly lower - **25.34%** in 2017. Below-average values in 2020 were recorded in all countries except Montenegro, while in 2019 only Kosovo and Serbia were above average. The greatest share of public procurement in the overall budget expenditures in 2020 was found in Montenegro, namely as much as **30.4%**. In 2019 this share was highest in Serbia – **34.9%** (13 percentage points more than in 2020). The difference between the lowest recorded share in 2019 in Bosnia and Herzegovina and the highest share in Serbia was more than **14** percentage points. In 2020 this difference was around 12 percentage points between Montenegro and Bosnia and Herzegovina. When we look back at 2018 and 2017 this difference was **16.2** and **16** percentage points. The data demonstrate that in 2020 we had a decrease of the share of public procurement in total budgetary expenditures in all countries except Montenegro. Bosnia and Herzegovina, Kosovo and Serbia recorded decline in both share of public procurement in total budgetary expenditures, as well as in the annual share of public procurement value in the GDP. Montenegro has experienced growth in both observed values while North Macedonia recorded decline in share of public procurement in the total budgetary expenditures while value related to GDP remained same. Average for six years for all observed WB countries is **25.7%**

Chart 7 - Annual share of public procurement value in the budgetary expenditures (in %)

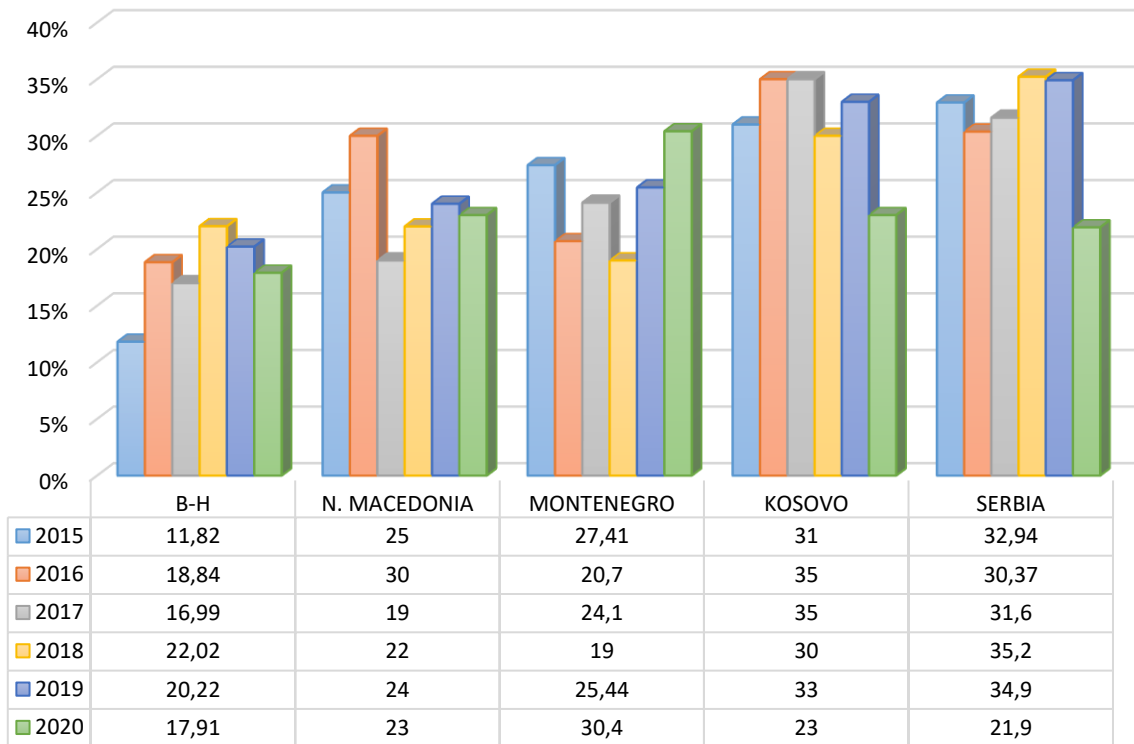


Chart 8 - Annual share of public procurement value in the budgetary expenditures (in %)

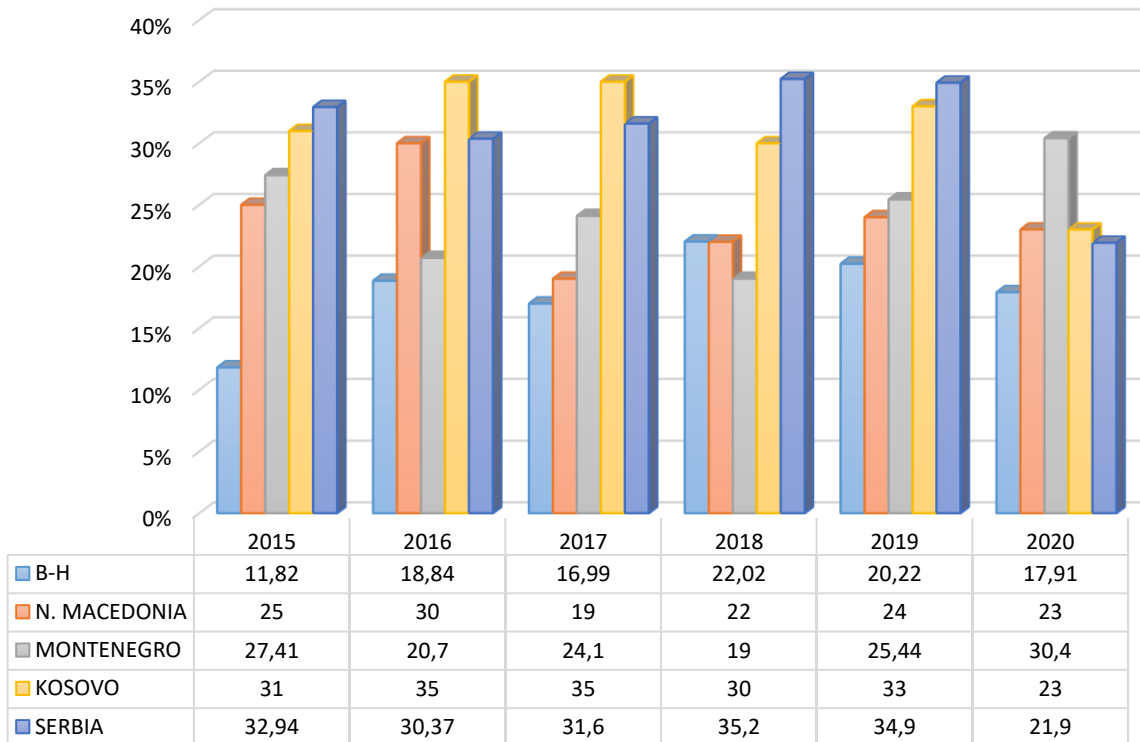
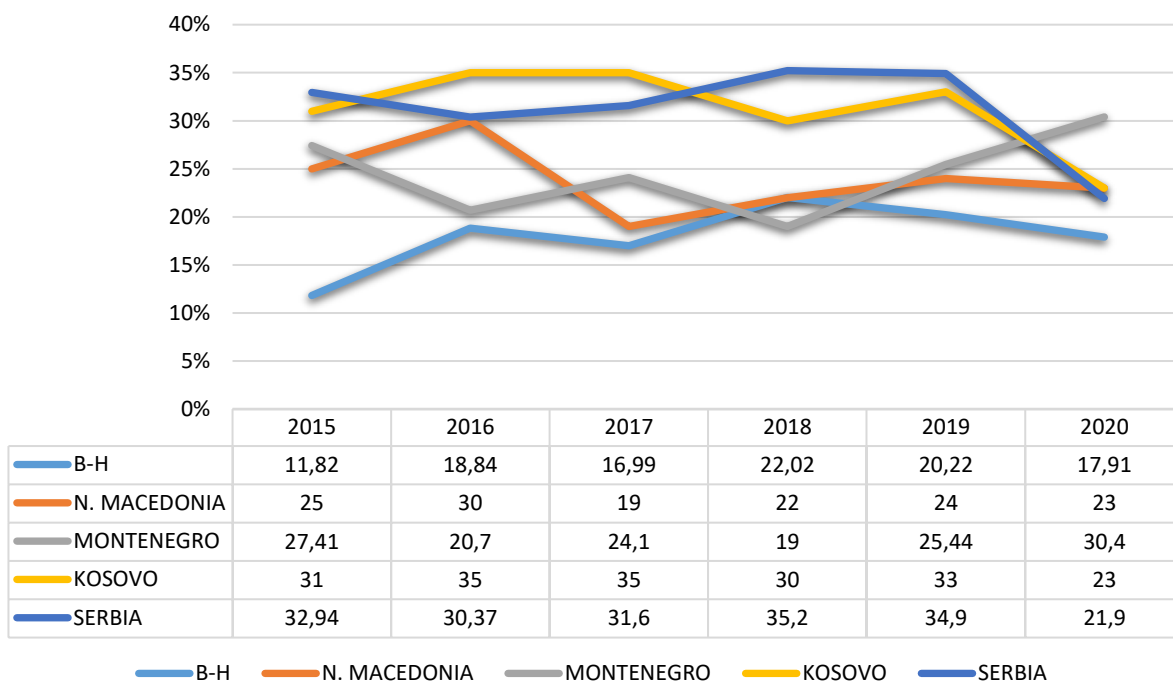


Chart 9 - Trends in annual share of public procurement value in the budgetary expenditures (in %)



Thus, in 2020 on average approximately **one-fourth** of budgetary expenditures are spent on public procurement and around **8.7%** of the gross domestic product is redistributed through state purchases. These figures are quite like those from the previous years, and with these values they clearly show limited possibilities to achieve development goals and strengthen the economy through public procurement.

VALUE OF PUBLIC PROCUREMENTS IN TERMS OF THE TYPE OF PROCUREMENT

A comparison of data on public procurement values in terms of the type of procurement reveals that in all countries covered by the research, the procurement of goods prevails. In average almost **48%** of total funds disbursed for public procurement in 2020 in five WB countries were disbursed for the procurement of goods. The allocations for goods were highest in North Macedonia with almost **58.89%** of total value and lowest in Bosnia and Herzegovina – **39.7%**. In 2019 average was around **43.5%** and highest allocations for goods were highest in Serbia with **53.61%** and lowest in Kosovo – **30.15%**

Average share of public procurement contracts related to services in 2020 was around **20.5%**. Allocations for services were highest in Montenegro (**28.42%**) and lowest in Kosovo – **14.25%**. Average share related to public procurement of services in 2019 was slightly lower – **20%** while highest value was recorded in North Macedonia (around **27%**) and lowest again in Kosovo – **14.25%**.

COMPARATIVE EVALUATION REPORT ON PUBLIC PROCUREMENT SYSTEMS

Average share of public procurement contracts related to works was around **31.6%** in 2020 and more than **36%** in 2019. They were highest in Kosovo in both consecutive years - more than **56%** in 2019 and above **42%** in 2020) and lowest in North Macedonia - **23.31%** in 2019 and **20.37%** in 2020.

In Bosnia and Herzegovina, the value structure of public procurement in terms of the types of procured items were the most balanced during all six observed years.

2020	GOODS Average - 47.9 %		SERVICES Average – 20.5%		WORKS Average – 31.6	
	Below average	Above average	Below average	Above average	Below average	Above average
<i>Bosnia and Herzegovina</i>	×			×		×
<i>North Macedonia</i>		×	×		×	
<i>Montenegro</i>		×	×			×
<i>Kosovo</i>	×		×			×
<i>Serbia</i>		×		×	×	

2019	GOODS Average – 43.5 %		SERVICES Average – 20%		WORKS Average – 36.4%	
	Below average	Above average	Below average	Above average	Below average	Above average
<i>Bosnia and Herzegovina</i>		×		×	×	
<i>North Macedonia</i>		×		×	×	
<i>Montenegro</i>	×		×			×
<i>Kosovo</i>	×		×			×
<i>Serbia</i>		×		×	×	

Chart 10 - Public procurement value according to the subject of public procurement contract

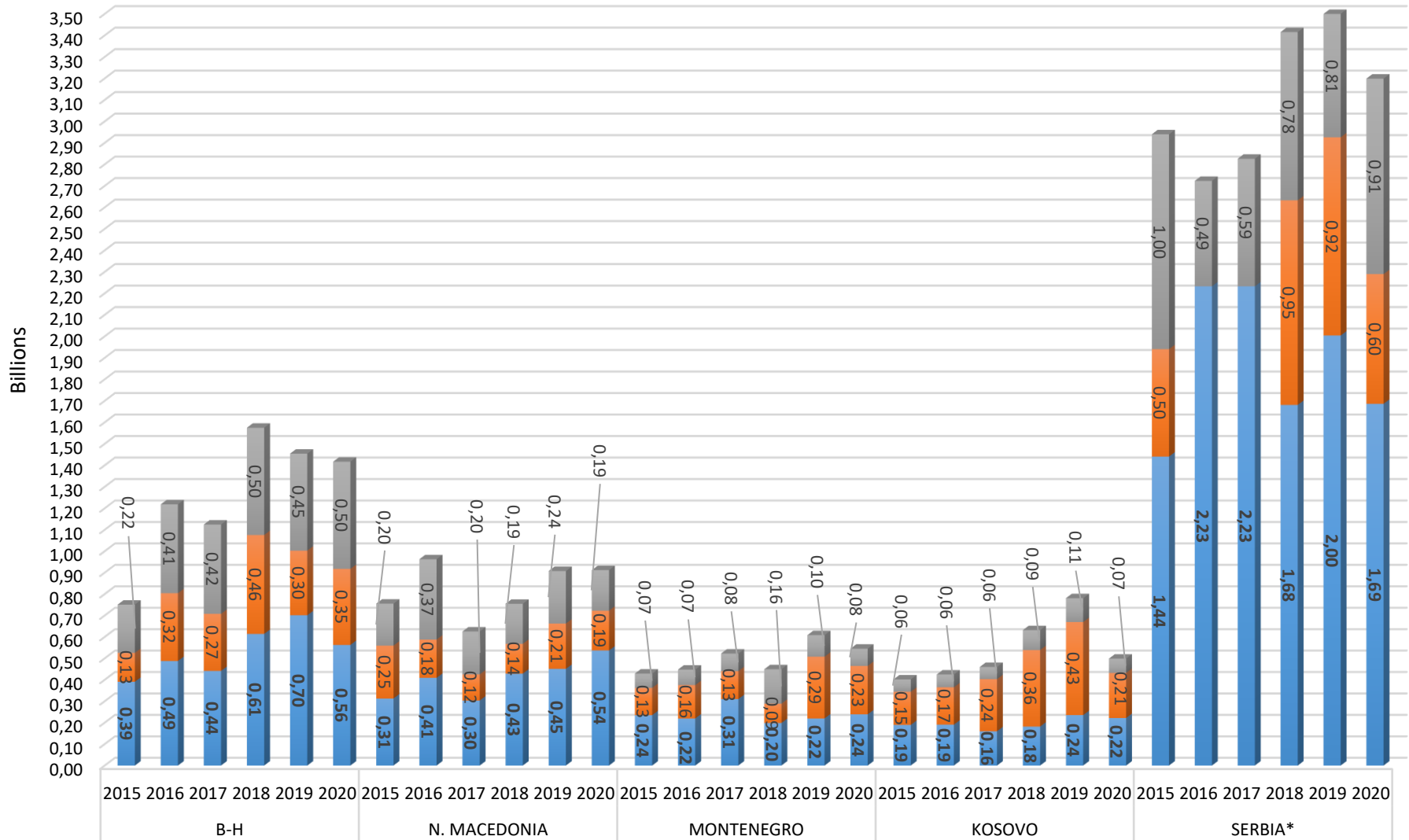
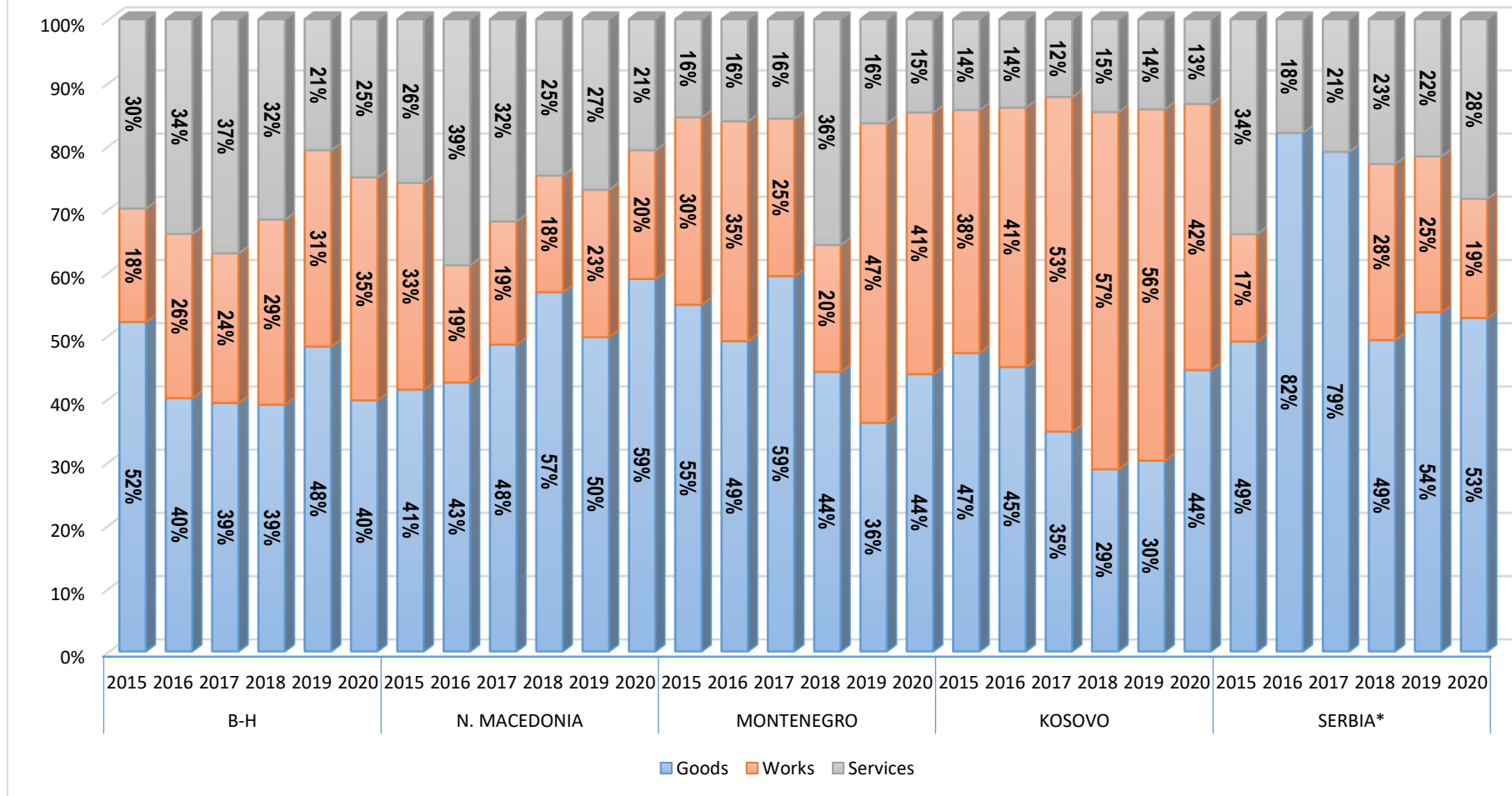


Chart 11 - Value structure of public procurement according to the subject of public procurement contract (in %)



*Serbia - Values and percentages data for goods and services are shown consolidated for 2016 and 2017.

VALUE OF PUBLIC PROCUREMENT IN TERMS OF THE CHOICE OF THE PROCUREMENT PROCEDURE

The type of the applied public procurement procedure is the greatest indicator of transparency of the procedure and possibilities for abuse. The open procedure is recommended as the default procedure for conducting public procurement - precisely because of the highest level of transparency of the procedure. This rule applies to all five countries covered by the research. In addition to the open procedure, each individual national system also applies other procedures as the negotiated procedure with or without publication of a procurement notice and several other standard and specific types of procedures.

Simultaneously, the three procedures are applied in all countries covered by the research and have the greatest absolute and relative prominence in terms of the ratio between the public procurement value and the choice of the procurement procedure.

The data on the value of items procured using the negotiated procedures in all observed countries are lumped together and encompass the negotiated procedures with and without publication of a procurement notice.

Chart 12 - The value of public procurement according to the type of conducted procedure

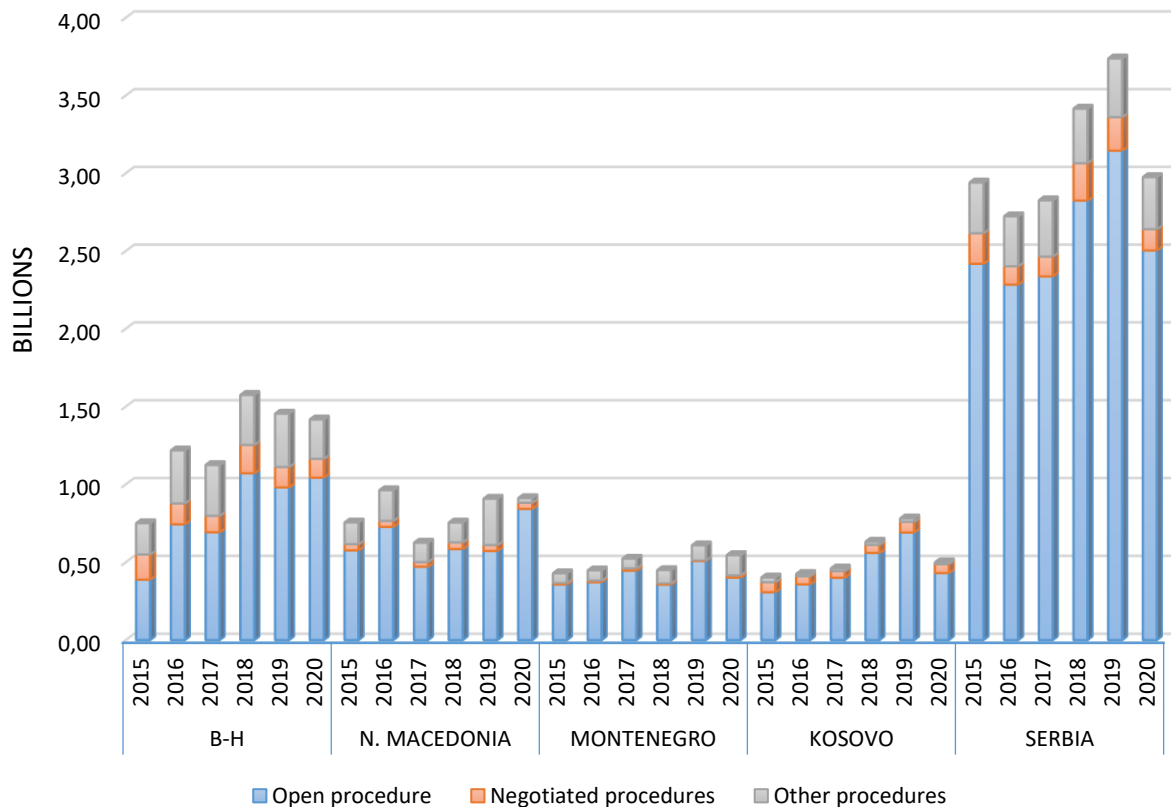
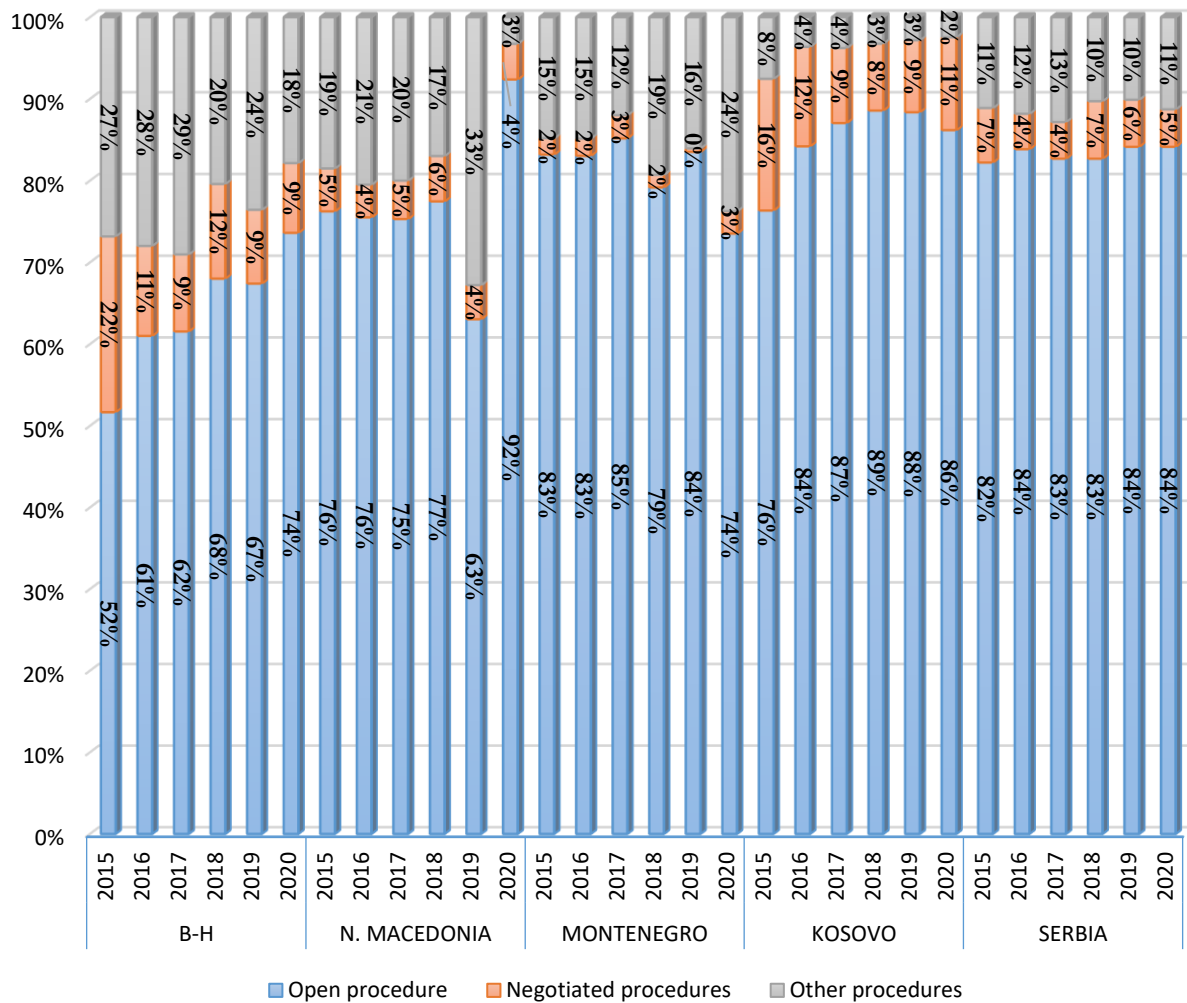


Chart 13 - The value structure of public procurement according to the type of conducted procedure in %



The open procedure prevailed among procedures applied to conduct public procurement in all five selected countries in all six years. The value structure of public procurement shows that in last three years of our monitoring, the share of the open procedure in Kosovo and Serbia was over **83%** and as much as **89%** in Kosovo in 2018. Record share was recorded in North Macedonia where **92%** of public procurement were conducted by conducting open procedure, while in both Montenegro and Serbia it was indeed very high and equaled around **80%** on average. Back in 2015 in Bosnia and Herzegovina the share of the open procedure was around **51.5%**, which was the lowest share of this procedure among other observed countries, but a significant progress of 22 percentage points has been made in period 2015-2020, but current value is still more than **8%** below the average for 2020 which was around **82%**. In 2020, above mentioned Bosnia and Herzegovina was below average as well as Montenegro who recorded serious decline of 10% point compared to 2019 and had the worst result in the last six years –

73.52%. All other countries were above the average in 2020. In 2019 the average was around **77%**. Bosnia and Herzegovina and North Macedonia had below-average results. However, it should be noted that North Macedonia in 2019 had the worst results in the last six years – **63%**, more than 14 percentage points below-average for 2019.

Chart 14 - The value of items procured conducting an open procedure

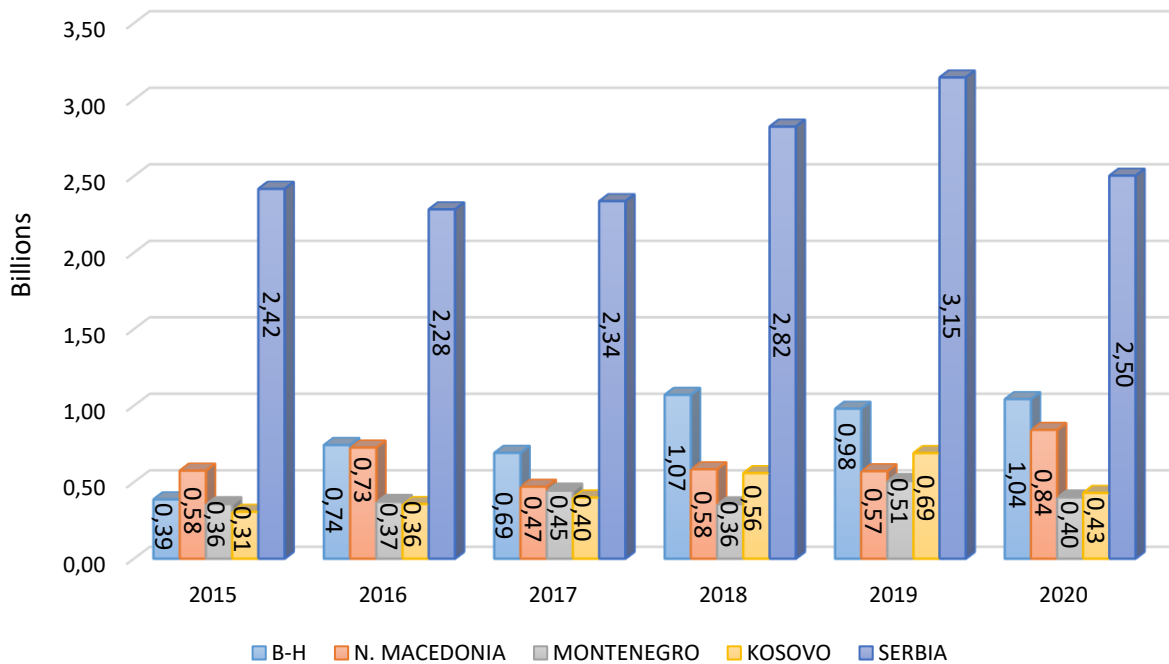
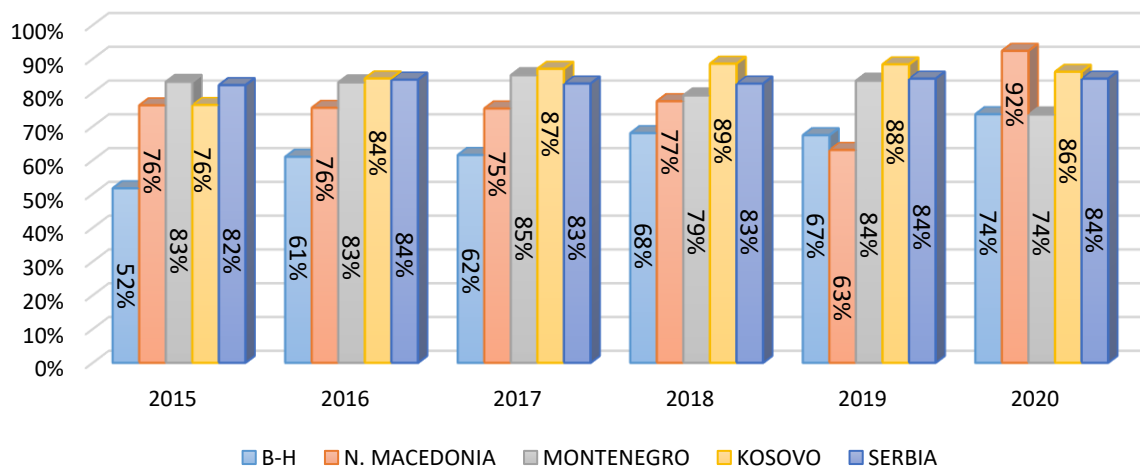


Chart 15 - The share of the value of items procured conducting an open procedure in the total value of items procured



The negotiated procedures are classified as the procedures “with” and the procedures “without” prior publication, the negotiated procedure with prior publication having the higher level of transparency. Average share of the negotiated procedures in 2020 was **6.3%**. Bosnia and Herzegovina and Kosovo were above average. All countries, except Kosovo were still under **10%** which is very good indicator that public procurement processes are conducted in transparent manner. Kosovo was on **11.38%** and it is necessary to stop further increase in the following years bearing in mind that in the past this country successfully maintained this percentage below **10%**. The share of the negotiated procedures in the total value of public procurement in Montenegro is very low, around **2.7%**. Average share of the negotiated procedures during all six observed years in North Macedonia and Serbia is around **5%**. If the level of transparency in the field of public procurement were to be measured on the basis of the value structure of supplies, works and services publicly procured using the recommended public procurement procedure, then the conclusion could be drawn that the highest level of transparency and observance of rules regarding the choice of the open procedure as the basic public procurement procedure was achieved in all countries except Kosovo and Bosnia and Herzegovina.

In 2019 average share of negotiated procedures was around **5.6%** and only Montenegro and North Macedonia were above average. In 2019 we had recorded record low share of negotiated procedures since we are conducting monitoring, in Montenegro – **0.43%**.

Average share of negotiated procedures in the past six years was around **7%** for the observed WB countries. Bosnia and Herzegovina and Kosovo are above this six-year average while other countries are below.

As it was mentioned in one of our previous reports², Bosnia and Herzegovina made significant progress in the past six years and the share of the open procedure increased (from **51.67%** in 2015 to **73.61%** in 2020) and even more important the share of the negotiated procedures decreased significantly – from **21.5%** in 2015 to **8.53%** in 2020, but the public procurement system can still be said to be comparatively less transparent.

Average share of all other procedures in the value structure in 2020 is around **11%** and around **17%** in 2019. Average share of all other procedures in the value structure in the past six years was around **15%**.

² <http://balkantenderwatch.eu/en/uploaded/Comparative/Comparative%202018%20FINAL%20ENG.pdf>

INTENSITY OF COMPETITION

The public procurement systems which apply less transparent types of procedures, such as those without issuing the call for competition, are characterized by expectedly lower intensity of competition among bidders, precisely due to the low level of information and impossibility of bidders to submit their bids. The intensity of competition is best graded in terms of an average number of bids per tender i.e., the awarded contract and the percent of contracts awarded to the single bidder. The competition intensity is an important indicator because a higher level of competitiveness leads to lower prices i.e., higher quality of procured items, as well as to lower and more purposeful public spending on procurement. The following charts show the data on the average number of bids per tender in Bosnia and Herzegovina, North Macedonia, Montenegro, Kosovo and Serbia. In all observed countries, except North Macedonia the data indicate that there was a decrease of competitive intensity over the past six years of our monitoring. In Serbia the average number of bids per tender in first three years remained almost unchanged. Average number of bids per tender in 2020 was **3**. North Macedonia and Kosovo were above average, all other countries were below-average (Bosnia and Herzegovina was almost 1 below average). Kosovo had by far the best result with **4.8** bids per tender in 2020 but it is still decrease for 1 compared to 2015 where there were almost 6 bids per tender (**5.8**). Kosovo had more than twice more bids compared to Bosnia and Herzegovina and Montenegro.

In 2019 average number of bids per tender was **2.8** and we had same situation, only North Macedonia and Kosovo were above average.

Chart 16 - Average number of bids per tender

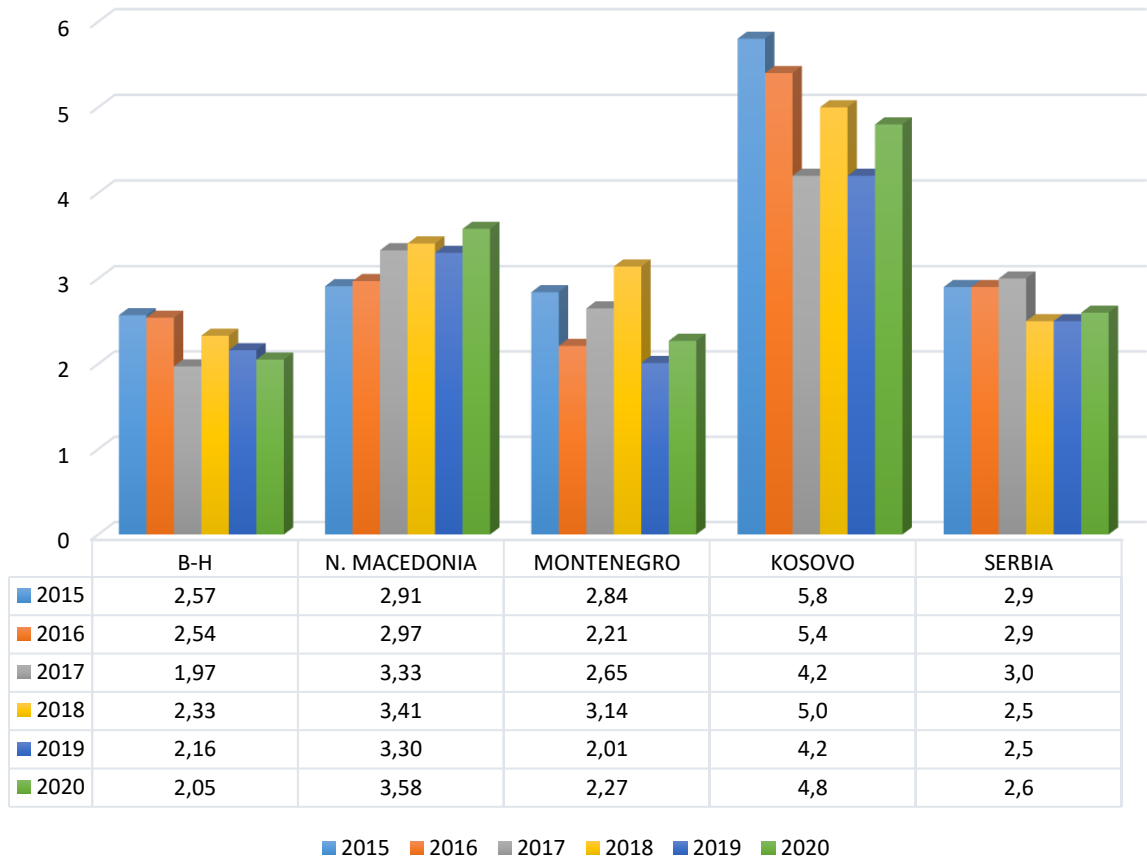


Chart 17 - Average number of bids per tender

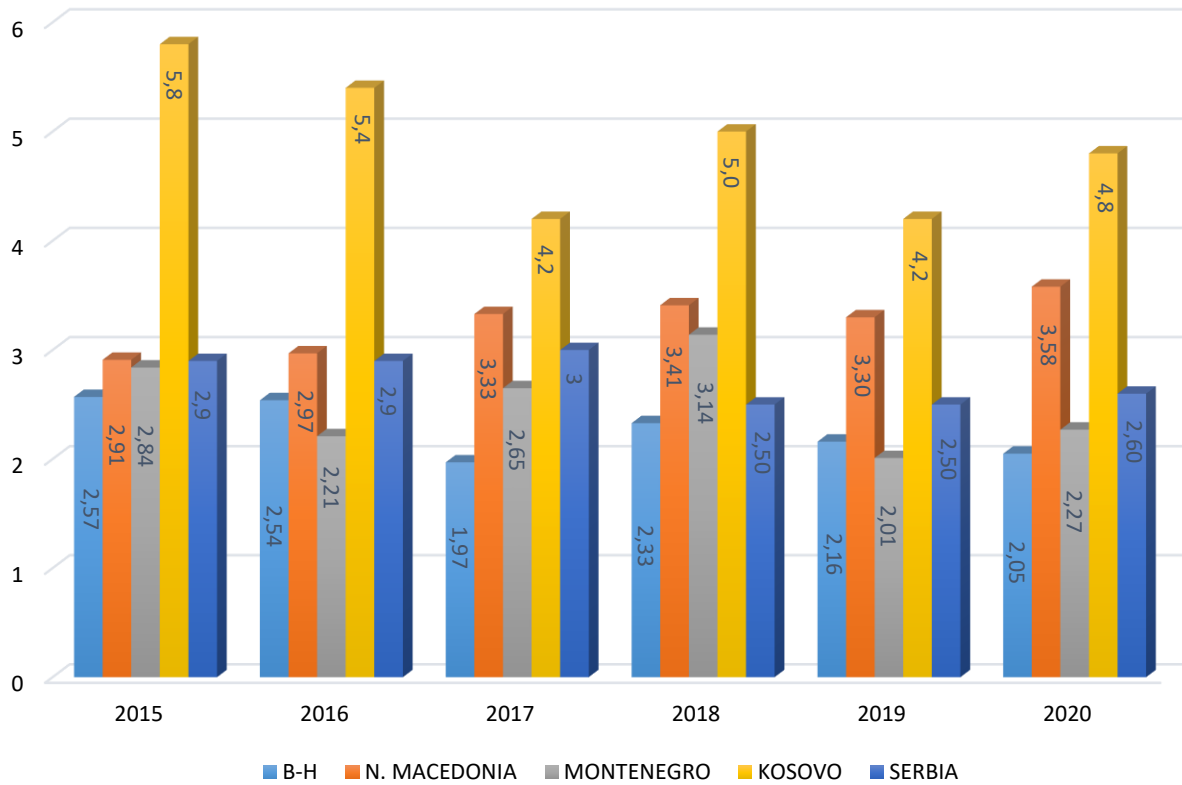
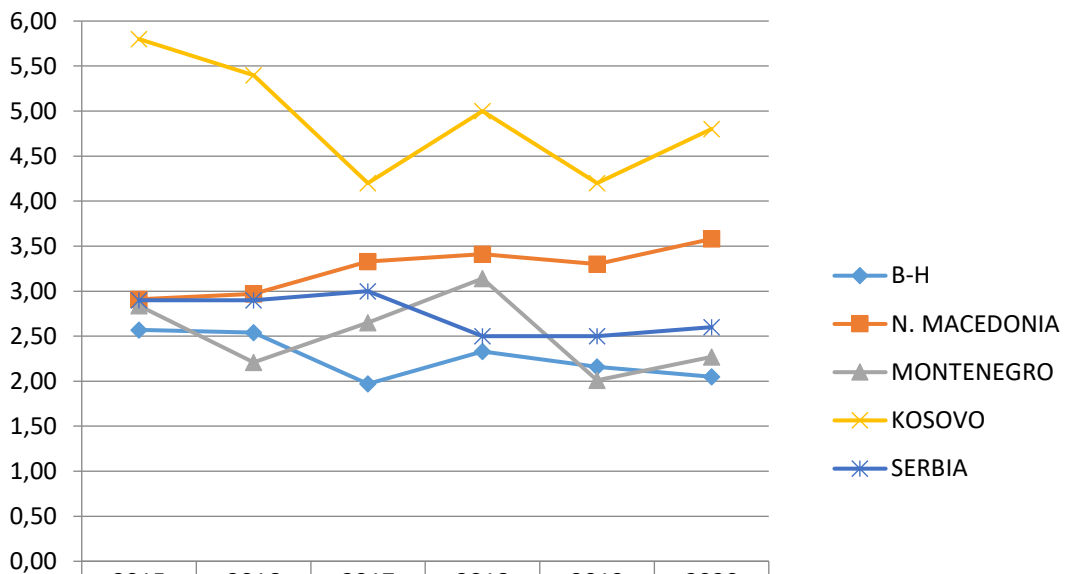


Chart 18 - Trends in average number of bids per tender



	2015	2016	2017	2018	2019	2020
B-H	2,57	2,54	1,97	2,33	2,16	2,05
N. MACEDONIA	2,91	2,97	3,33	3,41	3,30	3,58
MONTENEGRO	2,84	2,21	2,65	3,14	2,01	2,27
KOSOVO	5,8	5,4	4,2	5,0	4,2	4,8
SERBIA	2,9	2,9	3	2,50	2,50	2,60

RESULTS OF APPLICATION OF THE BENCHMARKING TOOL ON CONCRETE PUBLIC PROCUREMENT CASES

Balkan Tender Watch coalition developed unique methodology for detection of corruption vulnerable spots within the public procurement systems – **Benchmarking tool**.

The first segment of our tool measures the basic elements of the systems and their preparedness to identify, process and sanction corruption in public procurement. This segment is focused on national legislations (harmonization with the EU rules and main anti-corruption principles and mechanisms) and performance of systems in general (results on the level of a system based upon official statistics).

The second segment of the tool is focused on public procurement cycle and draw data from monitoring of specific public procurement cases. The tool enables us to collect standardized data on main features of the monitored cases important for the assessment of the vulnerability to corruption.

The third segment of the tool is focused on measuring responsiveness of institutions in charge of integrity and combating corruption in public procurement cases. This approach enables us to measure the effectiveness of anti-corruption mechanisms (procedures and institutions) based on their interventions in relation to potentially or proven corrupt practices already detected by the system (no matter whether they have been reported by CSOs, bidders or other state or local institutions). It is based on “chains of responsibility” established by the laws but proven to be rarely effective in practice

We applied our tool for the first time in 2019 on selected sample of concrete conducted public procurement cases. In this Report we are presenting results from 2020 and 2021. In application of the Benchmarking tool, we focus on analysis of the second segment - implementation part of our methodology, where we monitored public procurement cycle as a whole, from the very beginning – planning of the concrete public procurement, all the way to its end – execution of the concrete public procurement contract.

The following results confirm our claims that corruption in public procurement has new, more sophisticated “suit”. They clearly show that adherence to the procedure itself, increased transparency during the procedure, use of open procedure in most of the cases, etc. unfortunately does not guaranty anything. Even the best law, even if it is completely in line with the EU requirements, cannot overcome all harmful and corruptive behaviors that people can think of. The problems are hidden deeply in the third segment – in unresponsiveness of institutions in charge of integrity and combating corruption in public procurement cases which leads to almost guaranteed impunity for those responsible for breaking and disobeying the law. In addition, in most of the countries we are still facing significant lack of transparency in the “final” phase of public procurement cycle – contract execution. Often, we do not have any of the documents available and published. Additional problem, that was already mentioned are bilateral

international agreements through which countries exclude application of public procurement laws and procedures. In addition, these agreements are never made publicly available and remain far from the public eye and very prone to corrupt practices.

Chart 19 - Results of application of the Benchmarking tool (in %)

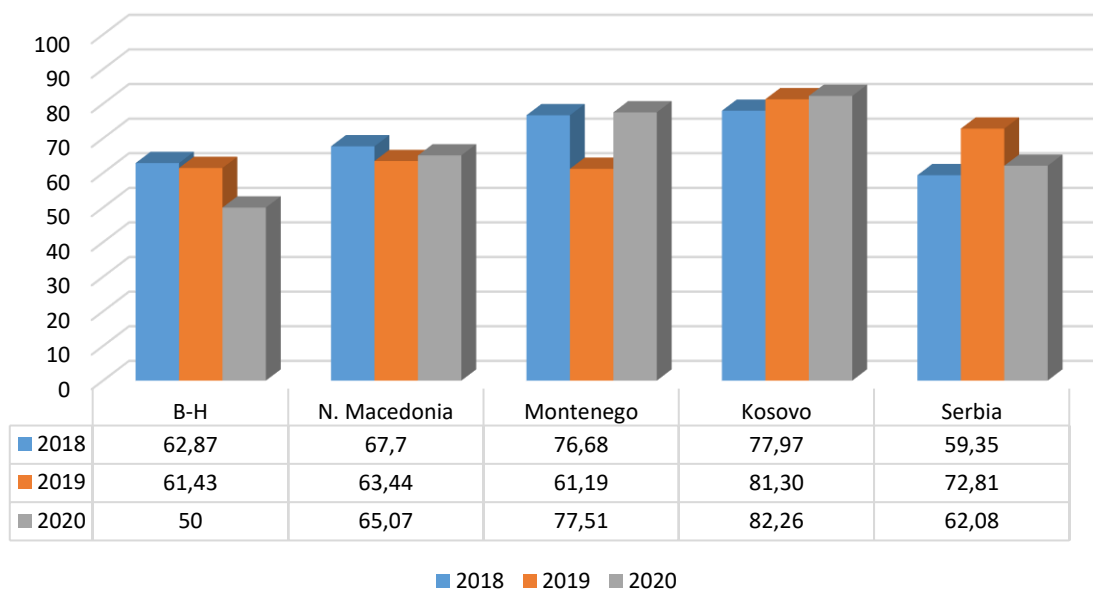
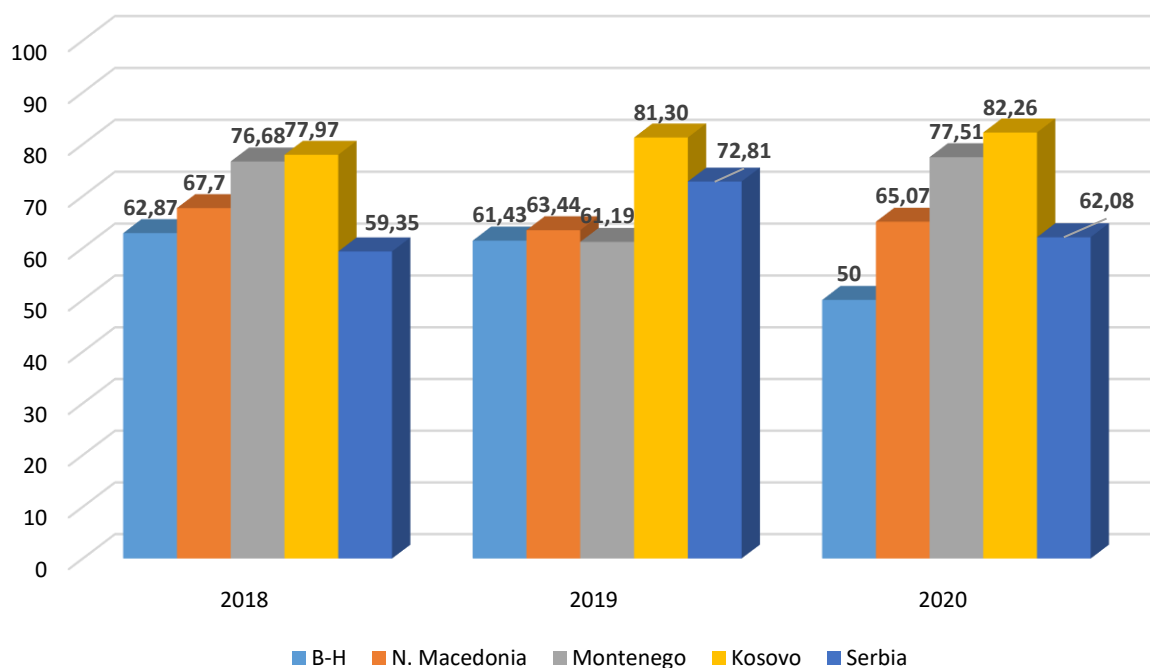
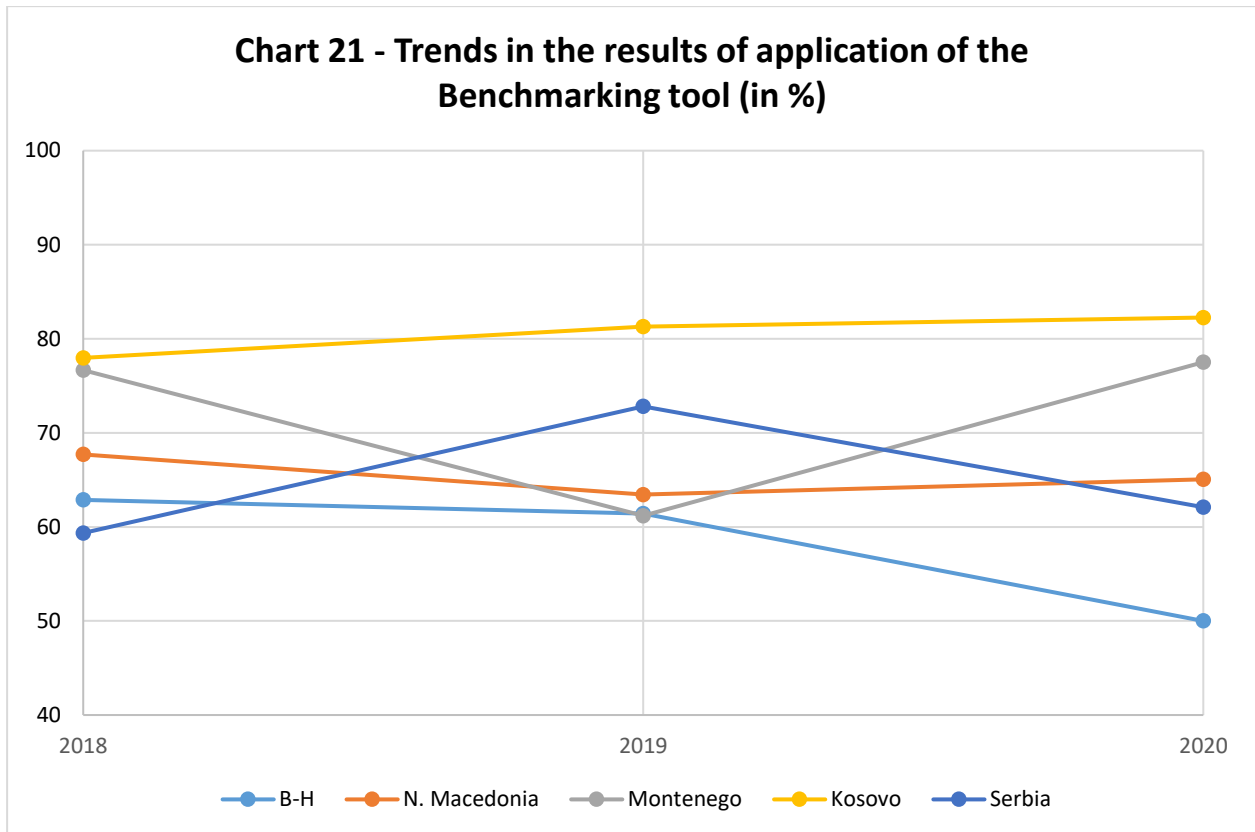


Chart 20 - Results of application of the Benchmarking tool (in %)





Based on these results, our work in the future will be dedicated to compilation of concrete recommendations for improvement of narrowly defined areas within the public procurement cycle we found particularly problematic and vulnerable to corruption. In addition, we will prepare Final Comparative Evaluation Report in 2022 which will encompass results of our monitoring from the very beginning. By doing this we will unequivocally show in the best possible manner that mere legislative changes, changes in the institutional framework, further harmonization with *Acquis Communautaire* is simply not enough to make concrete changes on the ground. Without fundamental changes, especially in the actions of the competent institutions the desired change and improvement of the public procurement systems in the Western Balkans countries is not possible.

ADDENDUM1 - APPLIED BENCHMARKING TOOL METHODOLOGY

LEGAL AND INSTITUTIONAL ANTI-CORRUPTION FRAMEWORK IN PP

Overview of national legal frameworks regarding anti-corruption measures

1. Are there envisaged AC principles in legislation?

Note: this refers to general principles

Scoring: Yes, in PP legislation = 2 points

Yes, in general legislation = 1 point

No = 0 point

2. Are there envisaged AC rules in legislation?

Note: this refers to concrete mechanisms

Scoring: Yes, in PP legislation = 2 points

Yes, in general legislation = 1 point

No = 0 point

Transparency

3. Are the exemptions from the law prescribed in accordance with EU directives (from the aspects of CA and object of the procurement)?

Note: [DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#) and [DIRECTIVE 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC](#)

Scoring: Yes, in complete accordance or more = 2

Yes, to some extent = 1

No = 0

4. Is all tender documentation available online and can be obtained for free?

Note: Should not be considered as for free if there is registration fee to use PP portal (where TD can be obtained)

Scoring: Yes, both = 2

Yes, only one = 1

No = 0

5. Are procurement plans available online?

Scoring: Yes, on one place = 2

Yes, on various institutions websites = 1

No = 0

6. Are bid opening sessions public?

Scoring: Yes = 2

No = 0

7. Are bid evaluation commissions sessions open?

Scoring: Yes, both to public and bidders = 2

Yes, only to bidders = 1

COMPARATIVE EVALUATION REPORT ON PUBLIC PROCUREMENT SYSTEMS

No = 0

8. Are evaluation of the bids/scoring lists available?

Scoring: Yes, available online = 2

Yes, available upon request = 1

No = 0

9. Are contracts and possible annexes published online?

Scoring: Yes, both = 2

Yes, only contracts = 1

No = 0

10. Are tender execution reports available online?

Scoring: Yes, per tender = 2

Yes, periodically = 1 (monthly, quarterly, annually, etc.)

No = 0

11. Are the decisions of appealed bodies available online?

Scoring: Yes = 2

No = 0

12. Are the reports (annual/quarter/etc.) of PP authorities and complaint bodies available online?

Scoring: Yes, both = 2

Yes, only one = 1

No = 0

Monitoring of PP

13. Is there envisaged obligation for CA to establish contract implementation monitoring mechanism (timeframe, initial price, and quality/quantity)?

Scoring: Yes = 2

No = 0

14. Are there regulatory institutions obliged to conduct monitoring and oversight of public procurement (namely ex ante & ex post control)?

Note: Ex-ante in before awarding the contract

Scoring: Yes, both ex-ante and ex-post = 2

Yes, only one = 1

No = 0

15. Are there legal provisions enabling CSOs, the media and anonymous parties to initialize monitoring mechanisms?

Scoring: Yes = 2

No = 0

Anti-Corruption measures in PP

16. Are there independent bodies in charge of monitoring of implementation of AC rules in PP procedures?

Scoring: Yes = 2

No= 0

17. Are whistleblowers envisaged as an anti-corruption mechanism in PP?

Scoring: Yes = 2

No = 0

18. Are internal auditors prescribed as anti-corruption mechanism in PP?

Scoring: Yes = 2

No = 0

19. Are procurement officers obliged to submit asset declaration?

Scoring: Yes = 2

No = 0

20. Is PP abuse recognized as a separate criminal deed by criminal code?

Scoring: Yes = 2

No = 0

21. Is there an obligation for CA to conduct PP corruption risk assessment (i.e. integrity plan)?

Scoring: Yes = 2

No = 0

22. Is market research related to PP envisaged as obligatory?

Scoring: Yes = 2

No = 0

23. Is there a prescribed deadline for completion of review procedure?

Scoring: Yes = 2

No = 0

24. Fee of appeal/request for protection for the average tender?

*Note: Cost should be calculated as % from the average tender value in the country for reference year (example: if the average tender is EUR 20.000 and the costs/fee is EUR 400 the percentage would be $400/20000*100=2\%$)*

Scoring: Under or equal to the 5 countries average % = 2

Above the 5 countries average % = 0

25. Is there a control mechanism to check contract annexes?

Scoring: Yes = 2

No = 0

26. Prescribed amount of annexes in percentages;

Scoring: Above or equal to the 5 countries average % = 2

Under the 5 countries average = 0

PP system performance

27. Average number of bidders per tender;

Scoring: Above or equal to the 5 countries average % = 2

Under the 5 countries average = 0

28. Share of tenders with only one bid;

Scoring: Under or equal to the 5 countries average % = 2

COMPARATIVE EVALUATION REPORT ON PUBLIC PROCUREMENT SYSTEMS

Above the 5 countries average % = 0

29. Share of negotiated procedures (both with or without tender notice);

Scoring: Under or equal to the 5 countries average % = 2

Above the 5 countries average % = 0

30. Share of annulled cases;

Scoring: Under or equal to the 5 countries average % = 2

Above the 5 countries average % = 0

31. Share of appealed procedures versus total;

Scoring: Above or equal to the 5 countries average % = 2

Under the 5 countries average = 0

32. Share of admitted appeals versus total number of appeals;

Scoring: Under or equal to the 5 countries average % = 2

Above the 5 countries average % = 0

33. Share of Top 10 companies that were awarded the highest value in PP annually (reference year);

Scoring: Under or equal to the 5 countries average % = 2

Above the 5 countries average % = 0

IMPLEMENTATION OF PUBLIC PROCUREMENT CYCLE

Note: these questions should be answered based on obtained documents for PP cases and the related CA

Pre-tendering phase

1. Does the procurer possess a public procurement plan?

Scoring: Yes = 2

No = 0

2. Is the public procurement plan published in all envisaged outlets (envisaged by the law)?

Scoring: Yes = 2

Yes, in some = 1

No or not envisaged by the law = 0

3. Is the public procurement plan available online?

Scoring: Yes = 2

No = 0

4. Does the public procurement plan contain all following elements:

- a) Ordinal number of the procurement;
- b) Subject-matter of the procurement;
- c) Amount of envisaged funds;
- d) Information about budget allocation i.e. financial payment plan;
- e) Estimated procurement value annually and totally;
- f) Type of procurement procedure;
- g) Framework date of initiating the procedure;
- h) Framework date of contract award;
- i) Framework date of contract performance.

COMPARATIVE EVALUATION REPORT ON PUBLIC PROCUREMENT SYSTEMS

Scoring: Yes, 7-9 elements = 2

Yes, 4-6 elements = 1

Yes, 1-3, elements = 0

5. **Does the public procurement plan specify the reasons and the rationale of the procurement?**

Scoring: Yes = 2

No = 0

6. **Does the public procurement plan specify the manner in which the procurer has determined the estimated value of public procurement?**

Scoring: Yes = 2

No = 0

7. **Are modifications to the public procurement plan (if there is any) visible in relation to the initial public procurement plan?**

Scoring: Yes = 2

No = 0

8. **Was there an explanation provided for modification of the public procurement plan?**

Scoring: Yes, specific = 2

Yes, general only = 1

No explanation = 0

Tendering phase

9. **Is concrete public procurement envisaged by the public procurement plan?**

Scoring: Yes = 2

No = 0

10. **Is it possible to determine a clear link between the planned procurement and the concretely procured supplies, services or works?**

Scoring: Yes = 2

No = 0

11. **Is the procurement conducted in the time frame in which it was supposed to be under the public procurement plan?**

Scoring: Yes = 2

No = 0

12. **Is the following information of PP procedure values available (if "yes" enter values)?**

The envisaged value in PP plan _____

The estimated value stated in the decision to initiate the procurement _____

The contracted value _____

The paid value _____

Scoring: Yes, all 4 values = 2

Yes, 1-3 values = 1

No value at all = 0

13. **Do the quantities/volume of supplies, services or works envisaged in TD and in the contract match?**

Scoring: Yes = 2

COMPARATIVE EVALUATION REPORT ON PUBLIC PROCUREMENT SYSTEMS

No = 0

14. Was the planned procedure applied?

Scoring: Yes = 2

No = 0

15. Does the decision to initiate the procedure contain all following elements:

- a) Subject-matter of public procurement, title and the Common Procurement Vocabulary (CPV) code;
- b) Type of procedure;
- c) Estimated value of procurement;
- d) Selection criterion;
- e) Framework dates for conducting individual phases of the procurement procedure;
- f) Information about budgetary allocation i.e. financial plan.

Scoring: 5 or more element = 2

0 to 4 elements = 0

16. Has the bid evaluation commission been established?

Scoring: Yes = 2

No = 0

17. Does the decision on establishing the commission contain following elements:

Note: if the appointment of the commission is included in the decision to initiate the PP procedure than that decision is considered as a decision for establishing the commission.

- a) the subject-matter of public procurement,
- b) the public procurement number,
- c) appointment of members of the commission,
- d) the power and tasks of the commission,
- g) deadlines for performing tasks.

Scoring: 4 or more elements = 2

0 to 3 elements = 0

18. Have members of the commission filed statements concerning absence of the conflict of interest?

Scoring: Yes, after opening of the bids = 2,

Yes, before opening = 1

No = 0

19. Are there persons with expertise in the concrete field within commission?

Scoring: Yes = 2

No = 0

20. Has the procurement notice for the monitored procurement been published?

Scoring: Yes, on an additional place/s = 2

Yes, on all legally prescribed places = 1

No = 0

21. Are time limits for submission of bids/application reasonable?

Note: reasonable are those time limits that are longer than legally prescribed minimum

Scoring: Yes = 2

No = 0

22. Does the tender documentation/specification include discriminatory provisions?

Note: those are provisions that can be considered above the necessary level regarding the value and subject of monitored tender

- a) financial related conditions/requirements (such as: annual turnover, accumulated profit/loss, history of financial results, etc.);
- b) employees related requirements (total number, specific professions, experience, licences, etc.);
- c) past performance (years of previous operation, previous contracts, etc.);
- d) equipment, premises, etc.;
- e) licences, certificates, etc.

Scoring: No = 2

Yes, up to 3 = 1

Yes, 4-5 = 0

23. Does tender documentation contain all following elements?

- a) Instruction to bidders how to make a bid;
- b) Bid form;
- c) Conditions and instruction on the means of proof;
- d) Model contract;
- e) The type, technical features (specification), quality, quantity and description of supplies, works or services, manner of exercising control and providing quality assurance, the deadline for the contract performance, the place for the contract performance or delivery, possible additional services etc.;
- f) Technical documentation and plans;
- g) Form of structure of the bid price, with instruction how to fill it;
- h) Form of cost of preparation of the bid;
- i) Statement on independent bid.

Scoring: Yes, all 9 = 2

Less than 9 = 0

24. Is tender documentation published in accordance with the law?

Scoring: Yes = 2

No = 0

25. If there are guarantees required (on bid or on contract fulfilment), can they be considered appropriate (as instrument and the amount)?

Scoring: Yes = 2

No = 0

26. Have subsequent modifications to tender documentation been made?

Scoring: No = 2

Yes = 0

27. Was there a charge to be paid to obtain tender documents?

Scoring: No = 2

Yes = 0

28. If the criterion for contract award is most economically advantageous bid, are the sub-criteria considered appropriate?

Scoring: Yes = 2

No = 0

29. Is there a clear explanation of scoring the non-financial sub-criteria (quality, design, etc.)?

Scoring: Yes = 2

No = 0

30. Do the minutes of the opening of bids contain all legally envisaged information?

Scoring: Yes, all = 2

No = 0

31. Have minutes been signed by members of the commission and the representatives of bidders (if present)?

Scoring: Yes, by all = 2

Yes, only by all commission member = 1

No or some commission members = 0

32. Is there a report on expert assessment of bids/individual report of conducted procedure?

Scoring: Yes = 2

No = 0

33. What was the number of bids?

Note: all bids should be included both valid and rejected

Scoring: 3 or more bids = 2

2 bids = 1

0 and 1 bid = 0

34. The prices per unit of supplies, services or works of the winning bid (if possible to calculate)

Scoring: Below or equal 5 countries average = 2

Above the 5 countries average = 0

35. Was the deadline envisaged for bringing the award decision observed?

Scoring: Yes = 2

No = 0

36. Was the deadline envisaged for the signing of contract observed?

Scoring: Yes = 2

No = 0

37. What was the total duration of the procedure from issuing tender notice to signing the contract (in days)?

Scoring: Bellow or equal 5 countries average = 2

Above 5 countries average = 0

38. Has the procurer published contract notice and the contract?

Scoring: Yes, both = 2

Only 1 = 1

None = 0

Post-tendering phase

39. Has the contract delivery deadline been observed?

Scoring: Yes = 2

No = 0

40. Do the paid and the contract amount match?

Scoring: Yes = 2

No = 0

41. Have payment deadlines been met?

Scoring: Yes = 2

No = 0

42. Have applications for review/requests for the protection of rights/complaints been made against the monitored procedure (both during and following the procedure)?

Scoring: No = 2

Yes = 0

43. What was the outcome/consequences?

Scoring: Rejected = 2

Accepted = 0

44. Do data from a document confirming the receipt of procured goods, services and works match the data from the contract?

Scoring: Yes = 2

No = 0

45. If contract has been annexed do the annexes modify deadline, price or other important contract elements?

Note: "No" in the answer refers to contract without annexes as well

Scoring: No = 2

Yes = 0

46. Have these modifications been envisaged by tender documents or other regulations?

Scoring: Yes = 2

No = 0

47. Is there a concrete person in CA assigned to monitor the execution of the contract?

Yes = 2

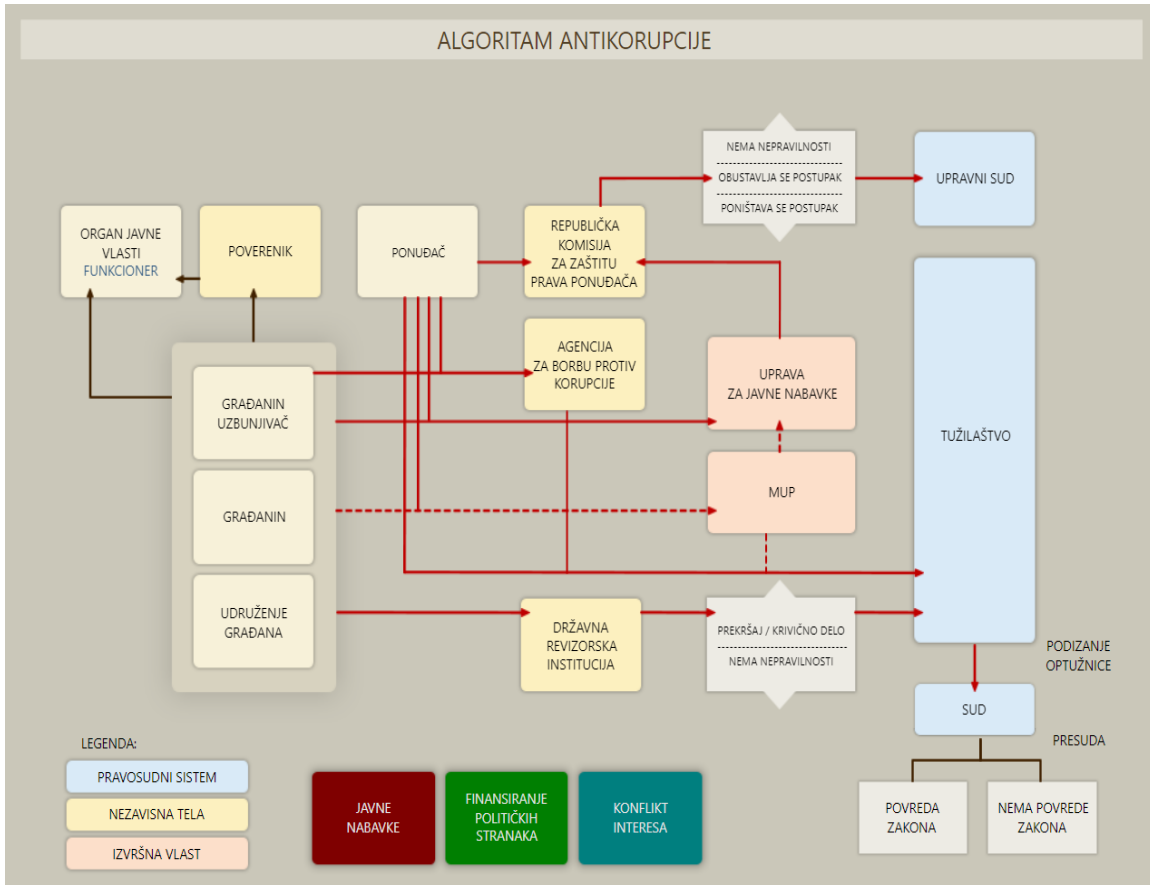
No = 0

EVALUATION OF SYSTEM'S RESPONSIVENESS ON CORRUPTION IN PP

Mapping AC system in PP

The mapping includes chart presentation of the institutional framework or pathway/roadmap of reporting and processing PP corruption cases.

Example



Note: You can see entire model for pathway/roadmap here - <http://cpes.org.rs/Algoritam/index.html>

AC PP system responsiveness

In addition, to check institutions and system responsiveness, the following questions should be asked:

- Number of total received reports for corruption in PP in the reference year;
- Number of self-initiated cases related to corruption in PP in the reference year;
- Current status of all these cases.

Indicative list of institutions: Anti-Corruption Agency; Public Procurement Authority; Procurement Review Body; State Audit Institution; Prosecutor's Office; Competition Authority; Administrative court; Finance Police; Other relevant institutions.