

PRELIMINARY ANALYSIS

*The Public Procurement Monitoring System of Montenegro*

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## ACRONYMS

AC	Administrative Court
AIA	Administration for Inspection Affairs
ASK	Agency for Corruption Prevention
CA	Contracting Authority
EC	European Commission
EU	European Union
KPI	Key Performance Indicator
MNE	Montenegro
MoF	Ministry of Finance
PPA	Public Procurement Administration
PPL	Public Procurement Law
SAI	State Audit Institution
SC	State Commission for the Control of Public Procurement
SME	Small and Medium Enterprise

## 1. INTRODUCTION

Montenegro is currently in the process of modernizing and restructuring its public procurement system, not only with a view to bringing its procurement system in line with international best practices and complete its accession requirements to enter the EU, but also to constructing more efficient and competitive public procurement, that will enable optimization of results.

In order to guarantee that significant improvements are built into the procurement system, the Government of Montenegro has taken several steps to tackle its shortcomings, namely by devising Strategies for the Development of the Procurement System along with Action Plans that establish specific measures and goals and respective timeframes for completion and tracking the implementation of such measures.

The assessments conducted by external entities to the Government of Montenegro have shown that such Strategies have been productive in addressing issues in the public procurement system of Montenegro and showcase a steady evolution towards better procurement practices.

In order to continue this action and to achieve its proposed goals in the *Strategy for the Development of the Public Procurement System of Montenegro for the period 2016-2020*, the World Bank has been called to provide assistance in devising a methodology that will address the following measures identified in the Strategy:

*(b) the **preparation of practical implementing and monitoring tools** (including administrative rules, instructions, manuals, and standard contract documents);*

*(c) the **strengthening of control mechanisms** which are necessary to ensure full knowledge and reliability of the system, including close monitoring and enhanced transparency of the execution phase of public contracts based on systematic risk assessments with prioritisation of controls in vulnerable sectors and procedures;*

*(d) **effective functioning of the remedies system**, including in the area of concessions, public private partnerships and defence procurement;*

*(e) **measures/ actions related to the prevention of and fight against corruption and conflict of interest in the area of public procurement at both central and local level.***

The present document is only concerned with the issue introduced by point (b) – to prepare a practical methodology for the monitoring function of the Public Procurement system.

The monitoring function will be assessed and improvements suggested according to three main areas for monitoring:

- Compliance
- Performance
- Integrity

The analyses introduced by this methodology will most definitely concentrate on performance compliance indicators. These will allow for a more quantitative-based approach to monitoring of the public procurement practices in Montenegro, introducing a less formal concept of monitoring, which is currently restricted to legal and regulatory compliance and emphasizes formal and administrative aspects of procurement. Analysing and improving the system of procurement is entirely dependent on data available and the analysis of the data for gathering business intelligence and increase productivity of all entities in the system.

To this end, guidelines and key performance indicators (KPIs) on how to improve the monitoring, auditing and reporting mechanisms will be introduced. This analysis will also include the benchmarking of the 2015 Annual Report by the PPA, where monitoring will be assessed in terms of compliance with proposed targets and changes verified up to this point.

Other issues and documents will be addressed and mentioned as they are intimately linked with the monitoring function, namely: data and information management mechanisms and tools; practices of performance assessment; streamlining of the attribution of the monitoring capacity and improvements in communication of results between the interested parties – from institutions to economic operators in the system.

To this end, direct consultation of the Public Procurement Agency of Montenegro and other entities in the system, as well as comprehensive desk research, were carried out with the aim of collecting information and documentation describing the institutional, legal and operational aspects of the national public procurement system.

This document is, thus, the result of combined efforts between the World Bank and the Government of Montenegro to build the monitoring capacity of the public procurement system of MNE and to use the resulting information to conduct optimized procurement and implement market consultations, which should be the cornerstone of any quantitative assessment of a public procurement system.

## **2. METHODOLOGY**

The documents listed below were consulted for the development of a monitoring strategy for Montenegro:

### **MNE Legislation and Strategy Paper**

- Law on Amendments to the Law on Public Procurement (“Official Gazette of Montenegro”, no. 57/14 and 28/15)
- Rulebook on Methodology of Risk Analysis in performing control over Public Procurement Procedures (Anti-Corruption Methodology) pursuant to article 15 paragraph 4 of the Public Procurement Law – Official Gazette of Montenegro, 42/11, 57/14 and 28/15
- Rulebook on Manner of Keeping and Content Records on Violation of Anti-Corruption rules, pursuant to article 15 paragraph 4 of the PPL - Official Gazette of Montenegro 42/11
- Rulebook on the records of Public Procurement Procedures, pursuant to article 117 of the Public Procurement Law - Official Gazette of Montenegro 42/11
- Strategy for Development of the Public Procurement System in Montenegro for the period 2016-2020;
- Strategy for Development of the Public Procurement System in Montenegro for the period 2011-2015;

- Report on Public Procurement in Montenegro for 2015;

#### EU enlargement

- European Commission (2016), Montenegro 2016 Report – 2016 Communication on EU enlargement Policy.

#### World Bank Group

- World Bank (2015), Promoting E-Government Procurement (E-GP) – Strategy and Role of World Bank in Europe and Central Asia (ECA) Countries;
- World Bank (2017), Benchmarking Public Procurement –Assessing Public Procurement Regulatory Systems in 180 Economies.

From a doctrinal point of view, the following references were vital to construct a monitoring model:

- SIGMA (2013), Procurement Brief 27 – Monitoring of Public Procurement

### **3. ANALYTICAL FRAMEWORK**

The legal and regulatory frameworks of Montenegro's Public procurement system are increasingly in line with international best practices and the EU acquis.

Though the political commitment to enhance the Public Procurement system is visible from the produced outputs of the Government (Strategies and Action Plans) and the implementation rate of measures destined to tackle shortcomings is positive, MNE acknowledges the need to take further action in certain areas of Procurement and has in the past years sought the support of external institutions to provide technical input on how to go about dealing with the issues still pervading its public procurement system.

The monitoring function is one such issue that needs urgent consideration and that calls for solid measures to be taken at all levels of the procurement system.

Among the main areas for action, the following should be mentioned:

- Development of information management systems for communicability of results;
- Increased Institutional communication and engagement of all parties in the system;
- Development of performance compliance assessments based on Business Intelligence acquired from market consultations;
- More Training opportunities for all entities in the system (including economic operators, namely SMEs);
- Streamlining of roles and responsibilities of institutions (e.g. increased collaboration between AIA and SAI on auditing and inspecting functions);
- Revision of the monitoring concept to encompass more substantial and procedural aspects and not only legal and regulatory considerations;

- Revision of the PPL with regards to Monitoring capacity and the definition of SC's status concerning the remedies system;
- Legal amendments to Administrative Law and Public Procurement Law to avoid conflict (as seen from the annulment rate of SC's decisions by the Administrative Court).

The Table below summarises the roles of the key stakeholders in the Public Procurement system, lists the most relevant issues to solve and prompts some suggestions for corrective measures to be considered.

<b>NAME</b>	<b>FUNCTION</b>	<b>ISSUES</b>	<b>SUGGESTIONS</b>
<b>PPA</b>	Reporting/ regulatory (regulation; standard bidding documents; Statistics and records; training; performance reports)	Insufficient capacity; Data collection is difficult.	Conduct performance assessments based on BI; Creation of online portal communicable to other institutional databases in the PP system for improvement of reporting and monitoring capacity.
<b>SAI</b>	Audit (In 5 sectors, namely Public Procurement)	Auditing focused on formal and administrative aspects	Less formal approach to auditing (not only focused on legal compliance, but more committed with substantive and procedural aspects)
<b>AIA</b>	Inspection control	Performance of the system is solely based on legal compliance	Revision of the inspectors' attributions in the PPL to encompass more performance analyses of the procedures.
<b>SC</b>	Review of challenges (In charge of the complaint review mechanism, through remedies system)	Insufficient capacity; Immediate suspension of procurement procedures	Revision of PPL section on remedies system; Increased staff capacity and sponsor training; Creating IT solution for a database on records of previous decisions will enable more coherent decision making and better communication of results to PPA
<b>Administrative Court</b>	Arbitration on challenges	Currently annulling many decisions of the SC on challenges	Harmonize the Administrative Law with the Public Procurement Law to avoid conflict and overlapping
<b>ASK</b>	Corruption prevention	Public Procurement perceived as one of the main areas most permeable to corruption	Increase capacity in monitoring irregular practices and provide training on public procurement so that ASK staff knows what kind of irregularities are most common in Public Procurement and how to address and report on them.

### 3.1 Legal acts

The Law on Amendments to the Law on Public Procurement ("Official Gazette of Montenegro", no. 57/14 and 28/15), is hereinafter referred to as the Public Procurement Law (PPL). The PPL is currently in the process of being reviewed so that it is compliant with the new EU public procurement regime as an important part of the EU *acquis* i.e. Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, and Directive 2014/23/EU on the award of concession contracts. All directives were due to be transposed into the national legal systems of EU countries by 18 April 2016. A detailed approach to legal aspects is entailed in a subsequent section- 4.1.

### 3.2 National Strategy Documents

Two strategy documents have been analysed with the purpose of better understanding the features of the state of play of the national public procurement system and the measures being considered to tackle current issues in the public procurement system.

Only the most recent reports were considered for analysis in this methodology with a view to assessing the national system of public procurement of Montenegro, because they provide more up-to-date insights on what still needs to be improved in the monitoring and inform on the most recent reforms.

This does not preclude the need to gather additional documents to cover further the activities undertaken within the fields of compliance monitoring, integrity and prevention of corruption, but to establish an opportune and realistic assessment, only the most recent reports introduce significant added-value to this end.

The strategies presented provide an important tool to assess the level of commitment with the goals introduced in those documents and the pace of the implementation process of the suggested measures through the action plans:

- Strategy for the Development of the Public Procurement System 2011 – 2015;
- Strategy for the Development of the Public Procurement System in Montenegro 2016 – 2020.

Both documents provide a detailed overview on identified shortcomings and put solutions forward. Action Plans attached to the strategy documents help trace implementation and help us assess the velocity of reforms undertaken since 2011.

With regards to the monitoring function, the following excerpts from the strategy currently under implementation (2016 – 2020) should be highlighted:

- It is recognised that *"Further efforts are required for harmonization of public procurement regulations with the EU acquis, as follows: (...) Monitoring of contracts; (...) Supervision and reporting on public procurement procedures";*
- *"It is necessary that MNE invests in better management of data in order to monitor the entire procurement cycle and to make the system easier to use."* This is, in our perspective, closely linked with the setup of an e-GP system;
- Some of the problems identified in public procurement may be caused by the inadequacy of laws and regulations other than the PPL. The strategy mentions the case of the *Law on Inspection Supervision (better monitoring of the award and implementation of contracts is required)*, the *Law*

*on the System of Internal Financial Controls in Public Sector (better internal audit within contracting authorities remains crucial for improving monitoring and verification of implementation of contracts);*

- Finally, it clearly states that “*Strengthening of monitoring of the public procurement system*” should be taken among the “*PPA 's priorities in the coming period*” (2016-2020).

This methodology is substantially aligned with the ongoing reform strategy and action plan (2016-2020), bearing in mind the public procurement requirements that need to be met by Montenegro in the scope of the accession plan to the EU

### **3.2.1 Annual Public Procurement Report (2015)**

The Annual Report on Public Procurement in Montenegro (2015)<sup>1</sup> compiled by the Public Procurement Administration (PPA) and published in May 2016 already offers a good overview of the national public procurement system, and it is already very much in line with what will probably be one of the main recommendations in this document, i.e. the need for improving the quantitative approach to public procurement system assessment and appraisal.

The following aspects of the Annual Report 2015 should be highlighted:

- Chapter 4: the report provides a good update on the implementation of the “Strategy for development of public procurement in Montenegro for the period 2011-2015” before addressing the implementation of the new strategy for the period 2016 – 2020. Annual reports are expected to keep this function of monitoring the implementation of the strategy;
- Chapter 7: a key area for development, also from a monitoring point of view, is the preparation of the transition towards a fully-fledged e-procurement<sup>2</sup> system. The relationship between procurement monitoring and e-procurement will be addressed in detail in the section 3.3 below, but it is of utmost importance to note that the e-GP theme is a standing priority in the PPA’s agenda and it is covered in both strategy documents and action plans (2011-15 and 2016-2020);
- Chapter 10: Statistical Report on Public Procurement. This chapter deserves a special mention as it was used as a central piece in the gap analysis and is being benchmarked against an “*ideal set of key performance indicators (KPIs)*.” These KPIs only represent the starting point for designing a list that is tailored to the specific country needs, in addition to the standard areas that every modern public procurement system is expected to be monitoring. The mere inclusion of such statistical information in the annual public procurement report denotes a very positive trend as far as the underlying political drive is concerned, and should be considered as a key starting point for the current project.

### **3.2.2 Montenegro 2016 Report on the EU enlargement process<sup>3</sup>**

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<sup>1</sup> The English version of the report published in the PPA’s website has been used.

<sup>2</sup> E-procurement is the expression mainly used in the European Union, namely by the 2014 Directives as “e-GP”, standing for “electronic government procurement” is more used by organisations like The World Bank.

<sup>3</sup> Commission Staff Working Document, Montenegro 2016 Report SWD (2016) 360 final, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy {COM(2016) 715 final },

The national system of public procurement is highly influenced by the EU *acquis*<sup>4</sup> due to the ongoing negotiations for the accession of Montenegro to the EU, which, combined with its recent membership to the WTO Agreement on Government Procurement (GPA),<sup>5</sup> constitutes an external positive pressure towards the acceleration of the ongoing public procurement reforms.

The assessment of the European Commission highlights a couple of areas that need improvement:

*“Montenegro is moderately prepared on public procurement, an area particularly vulnerable to corruption. Some progress was made thanks to the start of the implementation of a new 2016-2020 strategy on public procurement, which was one of the 2015 recommendations. No progress was made on legal alignment, where the area of concessions in particular remains at an early stage. More efforts are needed to strengthen implementation and enforcement capacity at all levels and prevent corruption during the procurement cycle. In the coming year Montenegro should in particular: → continue to strengthen the implementation and enforcement capacity of its public procurement system at all levels, including on **e-procurement, the monitoring of contracts and supervision and reporting on procurement procedures**; (...).”*

And adds the need for *“(...) **Better monitoring of contract awards and contract implementation is needed.** While the 2014 amendments to the procurement law gave the public inspection service more powers in this area and a third inspector was recruited in January 2016, the service’s capacity remains insufficient for its tasks. In addition, **better internal auditing within contracting authorities** remains crucial for improving monitoring and verifying contract implementation (see also chapter 32 — Financial control).”*

*“Montenegro urgently needs to invest in better data management to trace the complete procurement cycle and make the system more user-friendly. With this in mind, work is ongoing to develop a full e-procurement system. **The PPA’s capacity to promote and enforce public procurement rules and monitor the procurement market continues to improve. However, the PPA needs to invest more in assessing the performance of the procurement processes, including on the risk of irregularities and factors that reduce the competitiveness and efficiency of public procurement.** The current level of the PPA’s resources remains insufficient to address this task effectively.”*

Another important aspect to take into consideration is the direction that the new EU Directives (2014) have followed in terms of enhancing some monitoring mechanisms, both in terms of compliance of the national laws with the Directives and in terms of performance of national systems (e.g. by establishing clear reporting duties and offering Member States an increasing amount of statistical information). Therefore, it appears that the EU *acquis* provides the right setting for:

- a much more quantitative approach to public procurement matters;

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available at [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf)

<sup>4</sup> “The *acquis* is the body of common rights and obligations that is binding on all the EU member states. It is constantly evolving and comprises: the content, principles and political objectives of the Treaties; legislation adopted pursuant to the Treaties and the case law of the Court of Justice; declarations and resolutions adopted by the Union; instruments under the Common Foreign and Security Policy; international agreements concluded by the Union and those entered into by the member states among themselves within the sphere of the Union’s activities. Candidate countries have to accept the *acquis* before they can join the EU and make EU law part of their own national legislation. Adoption and implementation of the *acquis* are the basis of the accession negotiations.” Source: [https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en).

<sup>5</sup> Montenegro is a Member of the WTO GPA since July 15<sup>th</sup>, 2015.

- a positive shift from a strictly legal compliance-oriented approach to a more performance-driven monitoring system<sup>6</sup>.

#### 4. THE MONITORING FUNCTION OF THE PUBLIC PROCUREMENT SYSTEM

It is important to define what we conceive as the monitoring function and, primarily, set the very definition of monitoring. The latter should be defined according to the goals that one wishes to achieve, i.e., defining standards for action and targets or goals, which can be more or less demanding. Through the monitoring function, an assessment can be conducted on the progress to achieve such targets. Monitoring should be separated from the concepts of auditing or inspecting, as these stand for entirely different realities – monitoring does not entail surveillance, but rather a watchful accompaniment of a process. Auditing and inspecting, on the other hand, involve “methods and proceedings applied to detect and remedy infringements.”<sup>7</sup>

There is a pervading issue in the monitoring system of Montenegro that requires a thorough revision of what is here understood as the monitoring function. It becomes apparent that Montenegrin institutions undertake monitoring only in a partial manner.

In fact, it is not the monitoring structures alone that should be revised and solidified, but also, and primarily, the subject matter of the monitoring: the new EC directives introduce the potential for devising solutions with the aim of reducing the formalistic aspect that characterizes the concept and scope of monitoring activities of the public procurement system in Montenegro. In fact, auditing and monitoring functions are at times unsuccessful precisely because they regard the success of the procurement procedures based on legal-compliance alone. Several examples of this prevail in the institutional framework: the State Audit Institution (SAI) conducts its auditing functions according to compliance guidelines from a strictly legal perspective; simultaneously, inspection control conducted by the Administration of Inspection Affairs is more based on administrative and formal requirements, rather than on the subject of procurement, even considering that procedural errors are the most common irregularities. The status of the public procurement inspectors as defined in the PPL also determines their attributions (Article 148), which are much more of a formal nature and, as a result, the inspectors are not instructed to look for performance indicators of the procurement procedures.

This aspect is ever more notorious if we look at the remedies system being applied in Montenegro with regards to public procurement: “the State Commission’s decisions are normally final, but can be challenged before the Administrative Court as reported in the EC’s Montenegro 2016 Report. “The number of SC’s decisions being annulled by Administrative Court rulings remains significant (44% rejection rate), partially deriving from conflicts between public procurement and administrative procedure rules.”<sup>8</sup> This illustrates the prevalence of administrative and formal aspects over contextual aspects and subject matter of the procurement procedure, which can more easily be assessed by the competent authority in this field, the State Commission.

With this in mind, the Government of Montenegro should reassess the concept of monitoring and review its application by its key institutions competent on the matter, so as to entail a more performance-based assessment that will guarantee efficient decision-making and the application of the “value for money” principle.

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<sup>6</sup> This should not be put as “one or another” but we should rather stress the need to have better (and possibly fewer) laws and regulations that enable systems to reach better performance (e.g. better *value for money*).

<sup>7</sup> SIGMA (2013), *Procurement Brief 27 – Monitoring of Public Procurement*.

<sup>8</sup> European Commission (2016), Montenegro 2016 Report

## 4.1 Legal aspects

The first competence of the Public Procurement Administration in the list of Article 19 of the PPL is “1) to monitor implementation of the public procurement system.” It might be assumed that the legislator wanted this provision to refer mainly to performance monitoring, as opposed to more compliance-oriented activities. The very same article refers, under item 15), to the tasks related to “inspection control”, which requires some legal interpretation to be done in cooperation with PPA Experts in order to have a clearer idea about how roles and responsibilities regarding both performance and compliance monitoring are shared and whether they overlap, taking into consideration the key institutions dealing with these matters: the Public Procurement Administration (PPA), the State Audit Institution (SAI), the Administration for Inspection Affaires (AIA) and the Agency for Prevention of Corruption (ASK).

A proper legal interpretation of both relevant PPL provisions like those mentioned above and the specific bylaws of the concerned institutions will help better assess whether there is any urgent measure to suggest regarding the institutional framework.<sup>9</sup>

One important aspect taken from the PPL refers to the reporting obligations as they concern the information and data that are generated at a decentralised level but need to be collected and analysed at the central level.

Article 118 of the PPL provides that “A contracting authority shall, by 28 February of the current year at the latest, submit to the competent state authority the report on conducted public procurement procedures and on public contracts concluded in the previous year. The report referred to in paragraph 1 of this Article shall be submitted both in written and in electronic form. The competent state authority shall prepare an annual report on conducted public procurement procedures and on public contracts concluded in the previous year and submit it to the Government by 31 May of the current year at the latest.”

This provision already establishes the timeframe for reporting for both contracting authorities and the PPA. Nonetheless, the following enhancements could be considered in the framework of the ongoing PPL revision:

- An explicit mention to the scope (minimum contents) of the report that must be sent by contracting authorities could be outlined in connection with the adoption of a Rulebook on Public Procurement Monitoring (not yet in existence);
- The possibility for submissions to be made exclusively in an electronic format, instead of requesting both written and electronic submissions, which reduces the added value of the electronic option;
- The enhancement of the formulation of the second paragraph in order to broaden the scope and contents of the annual report, which is already reporting beyond “(...) on conducted public procurement procedures and on public contracts concluded in the previous year (...);”

The possibility of issuing an implementation act<sup>10</sup> fully dedicated to the monitoring function e.g. a Rulebook on Public Procurement Monitoring will be further developed and its suggested contents are further described in the final report.

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<sup>9</sup> In general, legal and institutional measures should be kept to the minimum necessary for the envisaged enhancement of monitoring system within the short time so it is recommended that each legislative amendment be proposed only in case its binding force (and correspondent enforcement mechanism including sanctioning the infringements) is considered highly needed to push the reform forward.

<sup>10</sup> See footnote 10 regarding the need to limit as much as possible the legislative to the minimum strictly needed. In many cases, there are improvements, which can be introduced without changing existing legal provisions.

## 4.2 Institutional aspects

Overall, there are various bodies in charge of different types of monitoring (e.g. AIA for compliance, PPA mostly for performance, and ASK for integrity) and the respective roles and responsibilities do not seem to overlap. The institutional setup seems adequate and there are no major bottlenecks in the monitoring function that could be attributed to the specific institutional architecture. In fact, there is a quite clear separation of roles and responsibilities. However, there is also a cross-cutting shortfall in terms of capacity - lack of staff and a need for more and better training regarding specific issues like monitoring and auditing.

However, the lack of capacity to better deploy internal audits within the contracting authorities (at a decentralised level) is pointed out as one of the major shortfalls of the system by the EC and given confirmation by the Procurement Strategy 2016-2020.

Thus, more than proposing the redesigning of the institutional framework within which the monitoring function is delivered, the consideration of several initiatives to be launched and some permanent standing cooperation mechanisms to be adopted among the key entities with regulatory and monitoring competences will be proposed in the final report. The following could already be mentioned on a tentative basis:

- Discussion and agreement on the adoption of a *Rulebook on Public Procurement Monitoring* aiming to describe in a systematic and concise manner the scope of monitoring (compliance, performance and integrity components), the roles and responsibilities of entities that perform monitoring activities, reporting lines, forms and standard templates to use, guidelines for the publication of monitoring related information, etc.;
- An interinstitutional agreement<sup>11</sup> on the measures to be taken in order to enhance the public procurement monitoring system of Montenegro, including a memorandum of understanding on general aspects of the reform of the monitoring function (principles, goals, objectives, expected benefits) to be announced in a joint event (co-hosted by the key public stakeholders delivering the monitoring function), in order to raise public awareness on the institutions' commitments regarding the enhancement of the system. The initial broad consensus between the key public bodies with responsibilities in this field can be considered a pre - requisite for mobilising allies and conveying the reform messages across remaining stakeholders (buyers, sellers, regulators, oversight and review bodies, civil society and NGOs, etc.);
- While respecting every entity's role – and even its own independence – the Annual Public Procurement Report issued by the PPA could benefit from covering all areas of public procurement monitoring so stakeholders can find all relevant information in one single report regarding the three components of monitoring – compliance, performance, and integrity, even if other relevant entities (e.g. SAI, AIA, SC) continue to publish their specific reports with a broader scope than public procurement. To achieve this goal in a consistent way, the agreement mentioned in the above paragraphs is needed so other monitoring entities can contribute with the specific information they have, which is necessary to calculate the respective KPIs to be later transmitted to the PPA.

## 4.3 Technological (e-GP)

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<sup>11</sup> Experiences in different countries shows that, due to lack of prior agreement on key concepts, areas to cover, KPIs to use (list, formulation and algorithms) and how to set the baselines and measure results, entities could not come up with a common message about the scope and the functioning of the system.

As mentioned above, the transition towards a fully-fledged e-GP system in Montenegro is relevant to the context of this project given that:

- As the public procurement systems grow in terms of complexity, volume and number of public contracts and contracting entities, the need for better information systems is also crucial;
- The enhancement of procurement monitoring is among the key benefits one can expect from e-GP systems as it is recognised in the Strategy 2016-2020: *“An e-procurement system would further extend the available monitoring capacity, allowing for a full traceability on the tenders from publication of contract notice until the contract implementation.”*

There are several practical aspects related to the interaction between both objectives – the enhancement of monitoring and the implementation of e-GP – that should be taken into account at the earliest possible stage, namely:

- The need to guarantee that the e-GP system is built in such a way that its recognised benefits in terms of monitoring are achieved e.g. the way public contracts related information is generated and circulated among the procurement community
- The workflows should facilitate data acquisition for both compliance and performance monitoring and comprise as many automated processes as possible so that procurement officers and policy makers can allocate more efforts to the analysis of the information.

## **5. GAP ANALYSIS**

Instead of undertaking a top-down approach through which all system players of the monitoring system would be mapped and enhancement measures to the respective institutional setup would be proposed, (an exercise that would be overlapping with the numerous existing reports and policy papers mentioned) and without discarding the possibility of proposing some institutional changes at a later stage, the gap analysis followed a different strategic direction, since:

- the existing monitoring system is analysed from a bottom-up perspective i.e., going through a certain benchmark - in this case the World Bank’s set of key performance indicators - and assessing the completeness and relevance of KPIs already in use against what it is considered to be more adequate to fulfil the needs of the country’s system (work to be performed together with PPA from now on);
- the system is assessed in a practical and quantitative manner, i.e. based on a concrete case and on real statistical data already made public (the Public Procurement Report, 2015);
- a pragmatic consideration in terms of reform strategy and tactics is taken into account in order to propose a way forward that is mainly focusing on improving the quality and effectiveness of what exists without going through a complex and long process of legislative change - this will keep the so-called *“reform fatigue”* at the lowest level possible;

In short, efforts will be made to find the way of enhancing the monitoring system with none or minimal changes to the institutional setup and legal framework.

### **5.1 The Public Procurement Annual Report 2015**

The statistical information and analysis provided in the Annual Report 2015 is quite promising, especially when looking forward and trying to identify ways for enhancing the existing monitoring system.

Although a “*positive dramatic improvement*” can only be achieved through the transition towards a fully-fledged e-GP system, the existing system should be enhanced and the appetite of some leading institutions should be leveraged so that they can perform better already in a mainly paper-based system.

In the coming weeks, particular attention will be paid to the whole organisational and procedural aspects that are behind the 2015 Report (which is the end result of a long and complex process of gathering, treating and analysing data) so that possible improvements can be suggested, especially concerning (i) the reporting and monitoring workflows (there are both electronic and paper based processes that needed to be mapped), (ii) the data acquisition plan and procedures and (ii) the quality assurance mechanisms.

Now it is important to explain why the “World Bank Strategy to promote e-GP in ECA Countries”<sup>12</sup> is being used as a standard against which the statistical information-related chapter of the Annual Report 2015 is benchmarked.

## **5.2 The World Bank strategy to promote the adoption of e-GP in ECA countries**

Why making reference and using this strategy document as the benchmark if the primary (or even the only) goal of the current project is to enhance the monitoring function and not to promote the adoption of e-GP?

The reason is that the World Bank’s strategy can be used either to promote the adoption of e-GP as the primary goal (in which case the monitoring aspects emerge as a sort of positive “side-effect” benefiting from the monitoring friendliness of many e-GP features, components and tools) or to do the reverse: giving the priority to the enhancement of monitoring while the e-GP project follows its own course, probably at a more lengthy pace.

The following excerpt could be highlighted in the context of this project:

*“Most recent experience has shown that the quantitative approach to reform of public procurement systems is often neglected. It is also recognized that collecting data from paper-based systems is cumbersome, and the data are very often unreliable or not readily available. The implementation of a procurement MIS<sup>13</sup> module (DW and BI)<sup>14</sup> as part of an E-GP system would provide the data analytics needed to facilitate a quantitative approach. A “(...) permanent quantitative measurement will: - Guarantee quality inputs to the monitoring function; - Enhance the comprehensiveness and relevance of information; - Make longer data series available and broaden the scope of analysis; - Promote the making of an independent analysis and recommendations with a view to enriching the strategic decision-making process. The advantage is that the more one spreads the electronic features and tools along the procurement life cycle, the easier it will be for more data and information to be collected and processed.”*

---

<sup>12</sup> This strategy document of the World Bank has been first presented at the workshop “E-Procurement Forum: Enhancing Public Spending” held in Vienna, Austria, on Dec 1-3, 2015 and is published at <http://www.worldbank.org/en/events/2015/10/20/e-procurement-forum-enhancing-public-spending#5>.

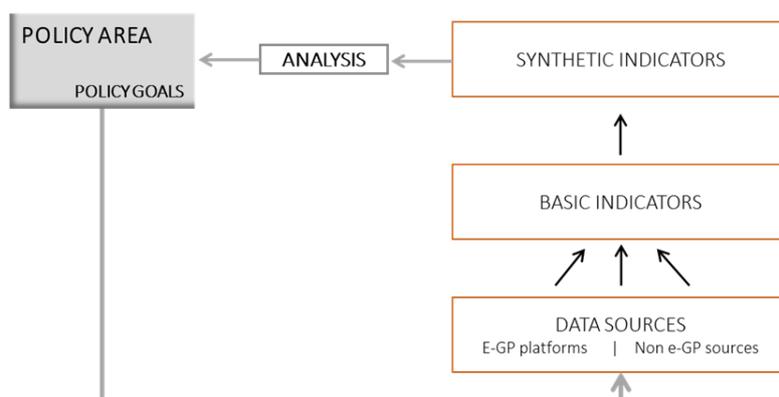
<sup>13</sup> Management information system

<sup>14</sup> Data Warehousing and Business intelligence



The above illustration depicts the logical sequence of monitoring tasks to be undertaken within a system composed by components and tools to be used primarily by the entities in charge of monitoring the public procurement system. Policy areas need to be identified and selected in a priority- ranked list so the KPIs proposed to be adopted and used are appropriate to measure the achievement of previously set policy goals.

*“The first task to be undertaken is to define the policy goals we want to measure in a quantitative, reliable and comparable manner. The enhancement in the way we evaluate systems will allow countries to review their own strategic plans. Over time, with a richer data set and a more accurate picture of reality, it will be easier to achieve organizational goals.”*



### 5.3 Benchmarking against the WB set of KPIs

Instead of making general considerations about the Public Procurement Annual Report 2015, its statistical chapter has been analysed in detail and benchmarked against the above-mentioned World Bank strategy, namely by taking its Annexes III-A and III-B as a standard. The [excel file below](#) highlights the result of the benchmarking purely based on desk research and needs to be discussed with PPA with regards to:

- Adding other KPIs that could respond to Montenegro specific monitoring needs (depending on the concrete set of policies to monitor);
- Identifying KPIs that need a specific formulation or algorithm for use in Montenegro;
- Reducing the list by skipping some KPIs e.g. because the underlying information is impossible or still too cumbersome to collect at the current juncture.

SYNTHETIC INDICATORS	ALGORITHMS	YES	NO
Value of contracts formed through e-GP (% of total Government Procurement)	Value of e-GP contracts		
	Total value of contracts		
Volume of contracts formed through e-GP (% of total number of contracts)	Number of e-GP contracts		
	Total number of contracts		
Value and volume of contracts with SMEs as contracting parties – awardees (% of total public procurement)	Value of contracts with SME as contracting parties		
	Total value of contracts		
	Number of contracts with SME as contracting parties		
	Total number of contracts		
Price Reduction / Price variation Savings Indicator	$S \equiv \left[ \frac{R - P}{R} \right] \times 100$		
	S – Percentage Savings R – the Buyer's Reserve Price P – the Awarding Price		
Efficiency Improvement indicator for Contracting Authorities			
Efficiency Improvement indicator for Economic Operators			



Benchmarking the  
2015 annual report #

As the production of the 2016 Report is now underway, the Management of PPA may want to consider the possibility of already testing some of the listed KPIs by using the data collected to that end. This could be interesting in cases where data is available, but is not yet being treated on a KPI-oriented perspective.

## 6. FROM POLICY TO MEASUREMENT AND MONITORING

### 6.1 A three dimension monitoring system

It is proposed that the enhancement of the monitoring system takes into due account, and strikes a balance, between three important perspectives that altogether contribute to deliver good quality public services in a sustainable manner:

- The performance perspective;
- The compliance perspective;
- The Integrity and anti-corruption perspective.

It should be stressed that Montenegro is already gathering and treating relevant statistical data in all of those areas. Nonetheless, the following improvements may be considered:

- Need for more exhaustiveness;
- Need for dematerialising the collection of information;
- Need to make use of business intelligence tools;
- Need to enhance quantitative measurement through the use of a comprehensive set of key performance indicators<sup>15</sup> (KPIs).

## 6.2 The quantitative approach to public procurement

The attempt to measure public procurement performance in quantitative terms and to provide decision makers, managers and practitioners with tools that enable a reliable and timely assessment of the economic impact of implemented policies and practices is in the agenda of international organisations, governments and academia. As the pressure from those who scrutinise the use of public money and resources grows, the trend to quantify as many aspects of public procurement as possible makes its route and is benefiting from the spread of e-procurement and information management systems. These are generally supporting procurement operations or somehow connected with their outputs (e.g. online publications). In the case of the monitoring function, the role of the quantitative approach is even more obvious since it derives from the project objective, its purpose and the expected results.

## 6.3 Key policy areas and performance indicators

The monitoring system, in order to be consistent and comprehensive, should be based on a decision about policy areas to cover and policy goals to measure. This important initial decision should be taken as the result of a consensus among the key entities that play a monitoring, controlling and oversight function in the public procurement system. Experience shows that the lack of such an initial consensus has the potential to undermine the credibility of the monitoring system<sup>16</sup>.



Data is collected in order to calculate the basic and synthetic indicators through the use of pre-defined algorithms. Ideally, this is done through a technological platform comprising the following key components:

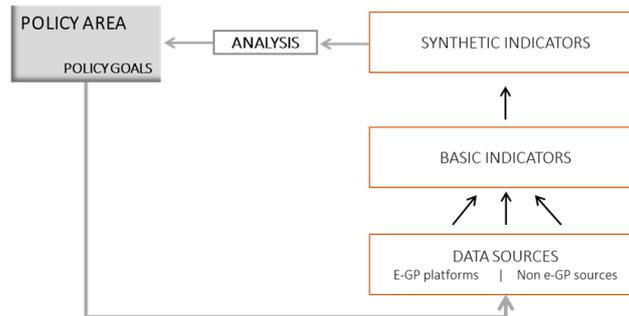
- A communication interface that allows the user (data provider) – in partners and contracting entities levels - to upload data;

<sup>15</sup> Expression used in its broadest sense so it comprises also compliance and integrity related aspects and not only “performance”.

<sup>16</sup> Example: the case where the entity in charge of monitoring savings does not agree upfront with the Audit Office on the concept to be used. Potentially it may happen that reported savings recognised as such by the monitoring entity are challenged (not accepted) in a concrete audit to the entity responsible for those “savings”. This may result in increasing criticism from the audited entity and lack of trust from stakeholders.

- A data warehousing facility, where data are archived;
- A software solution/application that enables business intelligence to be undertaken in view of facilitating the analysis.

The measurement of the policy goals achievement is made through a set of Basic Indicators, Synthetic Indicators and Algorithms.



### 6.3.1 e-Gov (comprising the e-GP project)

Although Montenegro is already in the process of preparing the adoption of a fully-fledged e-GP solution as an autonomous project, there are advantages of already including this component in the general monitoring system, namely:

- both *e-GP* and *non-e-GP* parts of the system will coexist for some time once e-GP is launched and starts to be used by contracting entities;
- the KPIs suggested below provide a simple overview of the progress of the country in terms of e-GP take-up;
- the publication of the respective results – showing a good progress and rhythm or the need to speed-up - will trigger a positive pressure from the stakeholders, who are supporting this important reform towards the modernisation of the system and
- will help the project leader<sup>17</sup> to forge the necessary alliances, both in the country and abroad, in view of promoting this reform.

SYNTHETIC INDICATORS	BASIC INDICATORS	Algorithms
Value of contracts formed through e-GP (% of total Government Procurement)	Value of contracts awarded through e-submission	1
	Value of goods, services and works contracts awarded through e-submission	2-4
	Value of contracts awarded by a CPB or through a centralised purchasing arrangement	5
Volume of contracts formed through e-GP (% of total number of contracts)	Number of contracts awarded through e-submission	6
	Number of goods, services and works contracts awarded through e-Submission	7-9
	Number of contracts awarded by a CPB or through a centralised purchasing arrangement	10

<sup>17</sup> The Public Procurement Administration.

### 6.3.2 Economic

As the first pillar of a sustainable<sup>18</sup> public procurement system, the economic efficiency cannot be neglected and the following have been considered as the key areas to cover (synthetic indicators):

- Participation of SMEs in the public procurement market (which is also in the agenda of the ongoing reforms in Montenegro);
- Price analysis in terms of variation, reduction, expected savings deriving from the procurement methods used and the award criteria;
- Efficiency of the public procurement organisations / contracting entities (demand side) in terms of delays and administrative costs;
- Efficiency of economic operators (supply side) and
- Level of competition (which decisively impacts prices)
- 

SYNTHETIC INDICATORS	BASIC INDICATORS	Algorithms
Value and volume of contracts with SMEs as contracting parties – awardees (% of total public procurement)	Number and value of contracts awarded to large companies	11-12
	Number and value of contracts awarded to SMEs	13-14
	Number and value of contracts awarded to large foreigner companies	15-16
	Number and value of contracts awarded to foreigner SME	17-18
	Number and value of framework agreements awarded to SMEs	19-20

Price Reduction / Price variation Savings Indicator	Average price variation indicator	21
	Average price reduction indicator	22
	Comparison with non E-GP awarded prices (a sample for showcasing)	23
	Average % of savings in open procedures	24
	Average % of savings in e-auctions	25
	Average % of savings in framework agreements	26
	Average % of reduction price at call-off stage	27
	% of contracts awarded on the basis of lowest price	28
	% of contracts awarded on the basis of most economically advantageous tender	29

Efficiency Improvement indicator for Contracting Authorities	Average length of pre-award stage (from contract notice to contract award notice)	30
	Average length of central purchasing procedure	31
	FTEs per type of procedure	32
	Average administrative cost per type of procedure	33

Efficiency Improvement indicator for Economic Operators	Average length of bid preparations	34
	Average cost per procedure	35
	Type of electronic authentication required	36
	Total cost for participating in public procurement procedures (by type of contract)	37

<sup>18</sup> In order to be sustainable, it should be economic, environment and socially efficient.

Competition	Average number of bidders per type of contract (goods, services, works)	38-40
	% of direct awards versus total number and value of public contracts	41-42
	% of contracts awarded to SMEs in number and value	43-44
	% of contracts divided into lots, in number and value	45-46
	% of contracts divided into geographical lots	47
	% of contracts divided into quantitative lots	48
	% of subcontracts in number and value per type of contract	49-54
	% of contracts awarded to consortia (grouping), number and value	55-56
	Average ratio between required economic and financial capacity (e.g. Annual turnover) AND estimated contract value	57
	% of abnormally low tenders	58

### 6.3.3 Environmental

The way public procurement is used as an instrument to promote horizontal policies like the environmental one is dependent on high-level political decisions. In the event that Montenegro decides to make use of public procurement to promote a national environmental policy, it is recommended that some concrete policy goals and targets be clearly indicated e.g. the percentage of public contracts awarded upon the use of environmental-related award criteria or based on the life-cycle costing to be achieved within a certain period of time.

The table below shows a few examples of environment related KPIs that could be used as a part of a broader policy to promote environmentally responsible public procurement.

% of environmentally responsible contracts (% of total public procurement)	Value and number of contracts which formation procedure has included environmental related features or characteristics as technical specifications (not subject to competition/evaluation)	59-60
	Value and number of contracts which formation procedure has included environmental related selection or award criteria	61-62
	Value and number of contracts awarded following a procedure containing life-cycle costing award criteria	63-64

### 6.3.4 Social

The same approach is valid regarding the third pillar of sustainable public procurement. Also in this case, it is necessary to set the policy goals and set the targets. The KPIs below illustrate possible ways of measuring this perspective.

% of socially responsible contracts (% of total public procurement)	Value and number of contracts which formation procedure has included social - related features or characteristics as technical specifications (not subject to competition/evaluation – “must have”)	65-66
	Value and number of contracts which formation procedure has included social related selection or award criteria – “to be evaluated/scored”	67-68

### 6.3.5 Governance and integrity

One of the most cited shortfalls of the Montenegrin public procurement system is the lengthy **review mechanisms and court rulings** relating to public procurement procedural decisions. The collection of concise, but timely and accurate, statistical information about this function is of strategic relevance because:

- It is critical to assess the quality<sup>19</sup> of both procedural and substantive laws on public procurement;
- It is fundamental to understand the expectations of key players in the system and to devise balanced solutions for the identified shortfalls.

Litigation indicator	% of contracts subject to non-judicial review	69
	% of contracts subject to court appeals	70
	Number of appeals per year	71
	Average value of contracts giving rise to dispute	72
	Average length of review procedures	73
	Average length of appeal procedures	74
	CA/EO winning rate (% of total) review	75-76
	CA/EO winning rate (% of total) court appeals	77-78

The **monitoring and auditing** activities should be, themselves, subject to a quantitative performance measurement. The following are examples of indicators that may be used to cover this function:

Monitoring and auditing	Value and number of ex-ante (before awarding decision) controlling procedures (% of total)	79-80
	Value and number of compliance audits	81-82
	Average length of audits (months)	83

As one of the overarching principles that should guide a public procurement system, **transparency** is at the core of policy makers' concerns. The simple act of measuring the concrete application of the principle stimulates the creation of a favourable attitude towards transparency and promotes ethical behaviour in public administration.

Transparency indicator	Number and value of tenders published on the web (% of total procurement)	84-85
	Public access to all tender stages information	86
	Quality of information per type of contract and stage of procedure provided and accessible to EOs and CAs (rank 1 to 5)	87

The "**Ease of access**" synthetic indicator is taken from the WB strategy document and may be used to cross check the outcome of the comprehensive set of KPIs that have been developed to measure the international public procurement related matters.

Ease of access	% of contracts reserved to national bidders	88-89
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As a part of the dialogue with stakeholders, it is suggested that an **annual survey** targeting the contracting entities (demand side) and the economic operators / business community (supply side) is administered,

<sup>19</sup> In the sense of serving the purpose of delivering cost-efficient and sustainable public services to the community.

with the aim of collecting, for instance, the five most positive and the five most negative aspects about the public procurement system as perceived by these stakeholders. This tool will certainly help decision makers to better understand and meet the expectations of the key actors in the public procurement market.

Attitudinal indicator demand side (CAs)	Five most positive aspects of the national public procurement system (survey)	90
	Five most negative aspects of the national public procurement system (survey)	91

Attitudinal indicator supply side (EOs)	Five most positive aspects of the national public procurement system (survey)	92
	Five most negative aspects of the national public procurement system (survey)	93

In 2016, the Agency for Prevention of Corruption ASK received a total of 56 **corruption-related complaints** and requests for “whistle-blower” protection, none of which were related to Public Procurement. This information calls for further in depth analysis in view of assessing whether there are in fact no public procurement related infringements or if the monitoring system in place is not prepared to detect them. It is rather unusual that no complaints and/or allegations of corruption cases and mismanagement of public tenders are registered so the inexistence of registered cases/ complaints of corruption does not mean that they don’t actually exist. This may owe to the fact that the problem may lie in the monitoring and reporting systems, which have been so far unable to detect and/or report such cases in a systematic manner.

The PPL (2015) includes very comprehensive reporting guidelines to be applied in the event of corruption cases. It also includes risk analysis reporting and other monitoring mechanisms that will allow for a correct assessment of the corruption issues and detect which areas are more prone to corruptive practices. However, the examples and results of the application of such methods are not available and thus, the efficiency of these reporting guidelines cannot be assessed. There is insufficient proof that the questionnaires are being carried out in the manner specified in the PPL, which does not allow us to infer whether these guidelines are sufficient to the reporting structures or perfectly adequate to the system.

There is also a need to better coordinate the responsible entities in the reporting system and create joint actions with ASK in the public procurement system, in order to increase its involvement and take the most out of its potentially beneficial contributions.

The following KPIs could be considered to be adopted in connection with the integrity plans so that the complete cycle of enforcement – from prevention to sanctioning – is covered:

Corruption - prevention and sanctioning	Number of entities with annual integrity plans	120
	Value of procurement covered by annual integrity plans	121
	Complaints related to corruption in public procurement	122
	Sanctions related to corruption in public procurement	123

A significant amount of work has to be developed in close cooperation with ASK in view of avoiding the proliferation of tools and instruments that increase the burden of the management of public entities but, because lacking the perspective of the full cycle of enforcement, do not add much value.

### 6.3.6 International Public Procurement (barriers to international trade)

Montenegro became a member of the World Trade Organisation’s Agreement on Government Procurement (GPA) on 15 July 2015, so the country is already committed to an international free trade agenda even before joining the European Union. This membership entails some obligations to collect and provide overall information about the public procurement system as well as some specific procurement statistics – see Article VI - Information on the Procurement System and Article XVI/4 - Transparency of Procurement Information - Collection and Reporting of Statistics.

In order to strictly (formally) fulfil their obligations as foreseen in the GPA, the kind of information Montenegro is already collecting, treating and publishing through the PPA’s Annual Reports may suffice.

Notwithstanding the above, the specific information (statistical data) required by the GPA is far from being enough to assess the openness of the national public procurement system to international economic operators. In fact, the mentioned GPA provisions require only the following information:

“ (...) (a) for Annex 1 procuring entities:

*(i) the number and total value, for all such entities, of all contracts covered by this Agreement;*

*(ii) the number and total value of all contracts covered by this Agreement awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and*

*(iii) the number and total value of all contracts covered by this Agreement awarded by each such entity under limited tendering;*

*(b) for Annex 2 and 3 procuring entities, the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex; and*

*(c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.”*

### Specific key performance indicators to measure international public procurement

The following are examples of indicators that can be used to measure the level of openness of a public procurement market to international trade

Value of Total and PP Markets for segment X in Montenegro and in EU	Total and PP Market of segment X in Montenegro versus EU's total supply seg. X in EU	94 - 95
	Total and PP Market of segment X in Montenegro (ME) versus EU's total supply seg. X in ME	96 - 97

## Purpose

Measure the weight of a market in Montenegro (Ind. 94 and 96 – total market; Ind. 95 and 97 – PP Market) for a certain category of goods, services or works (e.g. cars bought by the state) in relation to:

Ind. 94: EU total supply, for both private and public purchasers, in a given Economic Sector (Segment), e.g. total sales of cars from EU companies in EU.

Ind. 95: EU PP supply, for European public customers, in a given Economic Sector (Segment). This represents the weight of public purchases in the total EU concerned industry sales, e.g. total sales of cars from EU companies to EU public purchasers.

Ind. 96: EU total supply to Montenegro, for both private and public purchasers, in a given Economic Sector (Segment), e.g. total sales of cars from EU companies in Montenegro.

Ind. 97: EU PP supply to Country Z in a given Economic Sector (Segment). This represents the EU exports to the PP Segment Market concerned, e.g. total sales of cars from EU companies to Montenegrin public purchasers.

Ind. 94 and Ind. 96 compare the total market from EU and Montenegro for a segment

Ind. 95 and Ind. 97 compare only PP market for the same segment.

The interest of including both is to undertake a sensitivity analysis through which we will be able to assess if there are different contestability rates depending on whether it concerns public or private market. E.g. if Ind. 96 shows that EU car exports reach 17% of the total car market in Montenegro, and at the same time, Ind. 97 shows that only 2% of car public purchases in Montenegro comes from EU suppliers, it is very likely that there are many more active barriers in PP market than on its correspondent private market in Montenegro.

## Data Sources

National Statistical Institutes, Trade Associations and Chambers of Commerce, sector specific market research studies.

Public Procurement Market of segment X vs. Total Market of segment X	Total PP Market vs. Private Market	98
	Domestic PP vs. Private domestic	99
	External PP vs. External Private	100

## Purpose

Measure the relation between Public Procurement Market and Private Demand in the same country, for a certain category of Goods, Services and Works, e.g. cars bought by the state vs. cars bought by private.

This type of indicator will allow to undertake a sensitivity analysis through which we will be able to assess if barriers impact public and private markets differently – impact rate and evolution along a certain time series, e.g. a lower EU contestability in a PP market as compared to the correspondent private market may indicate the presence of PP related barriers to international trade as well as the evolution over time may indicate a liberalisation or a protectionist trend going on.

Ind. 98: this indicator relates the total value (local currency that can be converted in SDRs) of public purchases (PP Market) for a certain category of goods, services or works (e.g. cars bought by the state);

Ind. 99: the “domestic PP market” consists of the total value of public purchases where the supplier is a national economic operator selling goods, services or works produced in Montenegro.

Ind. 100: the “external PP market” consists of the total value of public purchases where the supplier is a foreign or national economic operator selling goods, services or works produced in out of Montenegro (direct and indirect imports).

#### Data Source

National Statistical Institutes, Trade Associations and Chambers of Commerce, sector specific market research studies.

Segments reserved to national bidders	Number and Value of Segments reserved to national bidders	101 - 102
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Impact of Barrier Bn on imports by procuring entities	Number and Value of Segments impacted by Bn	103 - 104
	Total Value of Segments impacted by Bn	105

Origin and Size of Foreign Awardees	Number and Value of Contracts Awarded to Foreign Companies	106 - 107
	Number and Value of Contracts Awarded to EU Companies	108 - 109
	Number and Value of Contracts Awarded to Large Companies	110 - 111
	Number and Value of Contracts Awarded to SMEs	112 - 113

#### Purpose

These indicators are meant to show, in a simple way, the economic impact of identified active barriers/measures, both in number and value, by segment and barrier, so as many indicators as identified barriers should be made available (Bn). Please refer to the OECD's Taxonomy of measures affecting Trade in Government Procurement Processes [TAD/TC/WP(2016)10/FINAL, 08 Feb 2017, OECD].

Ind. 101 and Ind. 102: provide, in a nutshell, the dimension of the protected segments of the PP market in the sense that the access to them by foreign companies is denied by law or made impossible in practice. It will show the percentage of segments that are “closed” to international markets, meaning that a barrier exists, since it is reserved to “National Bidders”.

Ind. 103 and Ind. 104: show the segments that are affected by a certain barrier in relation to the total segments affected by all the barriers (in number and value), in order to know which barrier impacts each segment more.

Ind. 105: represents the relative weight of one barrier in relation to all the others. This will show the “strength” or impact of each barrier, in order to understand which of them has more economic impact, e.g. sum of the segments impacted by barrier/measure M1 in relation to the sum of the segments affected by M1+M2+...+M9, giving me the percentage of M1’s impact when considering all the barriers.

#### Data Source

Any existing studies about barriers to international trade caused by public procurement rules and practices.

CPBs' role in international public procurement	Value of Contracts Awarded by CPBs in Montenegro	114
	Value of Contracts Awarded by CPBs to Foreign Companies	115
	Value of Contracts Awarded by CPBs to EU Companies	116

Direct Awarding in International Public Procurement	Value of Direct Awards in Montenegro	117
	Value of Contracts Directly Awarded to Foreign Companies	118
	Value of Contracts Directly Awarded to EU Companies	119

#### Purpose

This set of indicators is meant to provide a short characterization of awardees in terms of geographical origin and size. Indicators 114 to 116 aim to shortly quantify the value of centralised purchasing managed by a CPB and the value of contracts awarded to foreign (mainly EU) companies, which may denote the existence of barriers to international trade. This may be particularly relevant because of the large volumes of procurement handled by CPBs or through other joint procurement arrangements and schemes.

#### Data Source

National Statistical Institutes, Trade Associations and Chambers of Commerce, sector specific market research studies.

### 6.3.7 Health sector

Public Health care sector has been given a prominent place, together with Local Governments, in terms of sector-based public procurement monitoring. In fact, the Annual Public Procurement Report (2015), following a recommendation inserted in the Action Plan related to Chapter 23 – Judiciary and Fundamental Rights, dedicates one section (10.20) to the “Procurement contracts within the health institutions”. The information published in the Report refers to:

- Health public procurement value (15.22% of the total public procurement value);
- Types of contracts – goods, services, and works – in the sector by volume (euros);
- Number of procedures by type of procedure;
- Planned versus actual procurement by contracting entity and type of contract (goods, services, works)

In addition to the use of Forms A (for all public contracts other than those formed through “shopping method” and “Direct award”), B (“Shopping Method”) and C (“Direct award”), a 14 – question- survey (Template of questionnaire is published in Appendix 11 of the Annual Report 2015) was distributed to the 34 Public Health Institutions of Montenegro and answered by 22 of them (65%) in the preparation of the Annual Report 2015. This survey covered very generic public procurement related information about number and type of procedures conducted, number of review procedures and the time span for a decision to be taken by the State Commission and/or the Administrative Court, number of inspections (external audits), their outcome and sanctions applied and a couple of questions aimed at shortly profiling the

organisation of the public procurement function in the institution. A specific emphasis has been put in quantifying the number and volume of direct awards within the total public procurement volume and value which corresponds to the well-known concerns about transparency and competition raised by this procurement method.

The growth of the public health expenditure, coupled with its weight in terms of GDP, calls for a close monitoring which can be done by adding to other “general KPIs” some sector-specific details designed to capture the triggers of expenditure and efficiency factors.

A careful analysis of the questionnaire that has been used for the survey as well as the information published in the Annual Report 2015 – section 10.20 – allows for the following conclusions (assessment) that should be taken into account in order to enhance the monitoring of this specific field of public procurement:

- Not all general public procurement information (and indicators) is replicated / mirrored in a sector-specific analysis so that readers can compare the same kind of indicators across sectors or, in this case, between health and the overall system in order to answer questions regarding comparative length of procedures, most used procurement methods, savings rates, litigation rates, etc.
- No specific health procurement information is collected (e.g. price variance regarding international reference prices for pre-selected products, procurement planning and optimal use of individual contracts compared to multi-year and framework contracts, management of products expire dates and related supply chain factors determined by the procurement strategy and practice, supplier’s performance evaluation both in terms of quality and timely delivery, etc.).

### **What can be done?**

There are three areas to explore within the Health related public procurement that require a joint effort with the Health Administration in view of setting some specific KPIs:

- The acquisition of medicines. A good monitoring system of procurement in this area will enhance the ability to make better deals in the market and achieve considerable savings. It is important to profile the sector’s public procurement features in order to check if the procurement function is optimised (e.g. through central purchasing or joint procurement needed to leverage demand in a global market, contracting methods and techniques, framework agreements);
- The acquisition of healthcare services, in case there is some outsourcing in this area;
- Building and maintenance of infrastructure i.e. hospitals and health care centres and facilities. As for works in general, infrastructure building and maintenance entails a considerable public investment/expenditure, which calls for a close and permanent monitoring along the entire procurement cycle (from planning to contract implementation).

In order to monitor the above-mentioned areas, a combination of “general public procurement indicators” and “health-specific indicators” should be set up:

#### **6.3.8 Local Government**

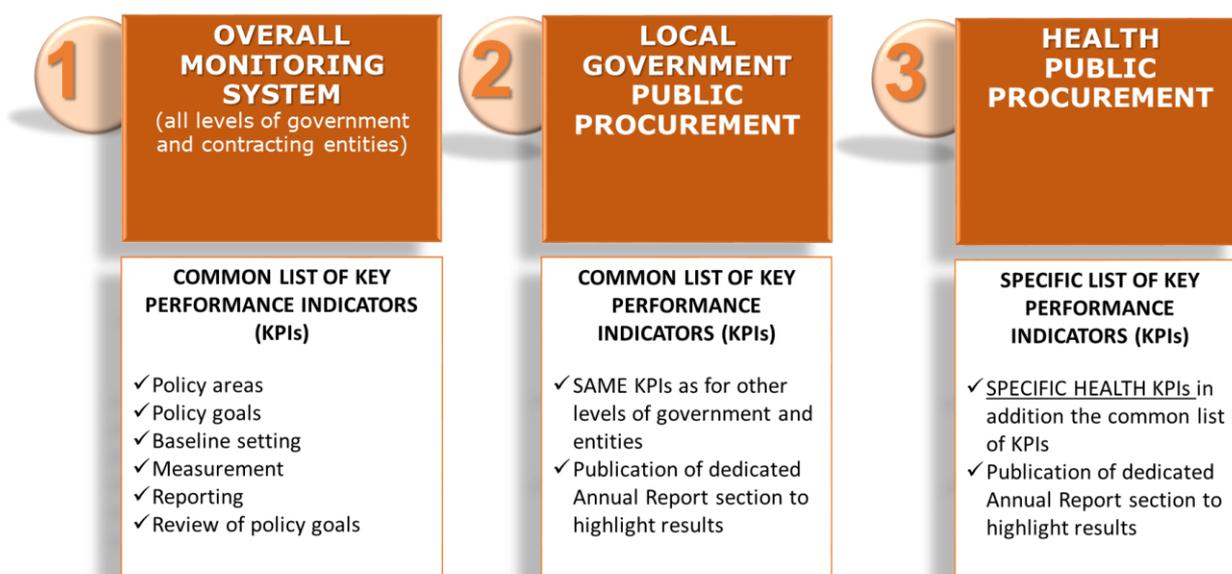
Local government is also an important area of public finance and procurement in the majority of countries and Montenegro is no exception. In fact, the case of Montenegro calls for particular attention regarding the way public procurement is managed and its impact on public expenditure.

Contrary to what happens in the health sector, local government specific monitoring does not require “sector-specific indicators”. A simple separate treatment of the same data, as was done for the other levels of government (central government and other entities<sup>20</sup>) is sufficient.

Thus, the combination of large spectrum indicators (to cover the whole public procurement system regardless of the sector of activity or the level of government and type of entity i.e. central and sub - central government and other bodies of public law like the state - owned enterprises) with sector-specific indicators and specific level of government or entity indicators could be graphically represented in section 5.3.9.

### 6.3.9 Combination of general monitoring with health and local government

Based on the common matrix of indicators, the monitoring system is flexible and can accommodate several specific dedicated “observatories” depending on what is considered more important to monitor at the level of policy areas and goals. For the time being three components is devised:



Many other approaches can be accommodated in order to better inform the policy -making and the public procurement management in the country. One example is the possibility of using the “international public procurement KPIs” to monitor specific sectors of the economy e.g. to select a sector to be specially monitored each year such as IT equipment, vehicles, furniture, medical equipment, etc.

## 7. THE WAY FORWARD

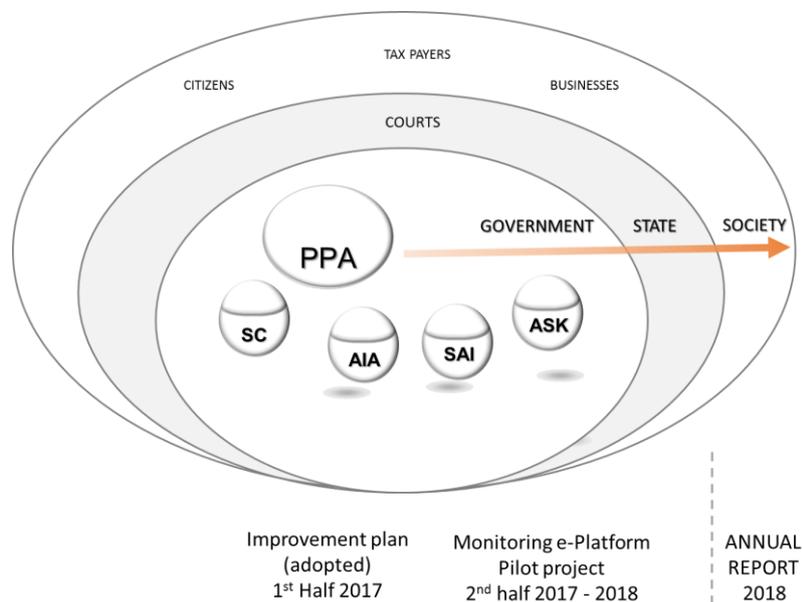
Improving the public procurement monitoring system of Montenegro entails the need for setting clear objectives shared by the key systems’ stakeholders so the **Monitoring System Improvement Plan** that has been compiled is meant to enable PPA to approach the key Partners in this reform process with a clear vision about the enhancement pursued.

<sup>20</sup> Corresponding to the concept used by WTO/GPA’s Appendix I (Annexes I, II and III).

A progressive involvement of key partners and stakeholders is envisaged, from the core restricted group of entities that play a specific role in the public procurement system (SC, AIA, SAI, ASK) led by PPA as the entity with the overall responsibility for monitoring to the contracting entities and the society at large.

The following could already be suggested to be considered by PPA as elements of such plan:

1. Forge an institutional agreement with SAI, AIA, SC, ASK about the key features and elements of the monitoring system:
  - a. Policy areas to cover
  - b. Policy goals to measure
  - c. Key Performance Indicators to use
  - d. Protocol regarding the collection and treatment of data
  - e. Protocol on publication of results



## 2. Setup of a Public Procurement e-Monitoring Platform

A tool for information management is indispensable for the feasibility of monitoring and reporting functions insofar as it would help increase the capacity of the entities involved and would allow to increase transparency and actors' accountability. The following benefits can be expected:

- Increased capacity of institutions by the use of intuitive and user-friendly tools that will keep the records on procedures and decisions;
- Less cumbersome method of collecting, aggregating and analysing data – resource allocation will be easier, tackling the issue of lack of capacity;
- Allow for best practices through knowledge exchange and capacity sharing;
- More transparent and easier access to information and data;
- Monitoring and reporting made easier through aggregation and centralisation of information;
- Inspection activities and auditing activities made easier;
- Increased ability to prescribe specific recommendations to each entity by the easy identification of default and irregularities in the macro scenario of the Public Procurement system More tailored reporting: besides continuing to produce the annual procurement report

(as already in place), aggregating the available information provided by the contracting entities, the ability to conduct tailored approaches and suggestions aimed at each of them individually will be a possibility, given the increased capacity to detect potential flaws of the system and to profile current practices of the CAs.

Such an e-Monitoring Platform would comprise:

- a. A communications interface that allows the user (data provider) – at partners and contracting entities levels - to upload data;
- b. A data warehousing facility where data are archived;
- c. A software solution/application that enables business intelligence.

