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PUBLIC ADMINISTRATION REFORM

ASSESSMENT

OF

SERBIA

APRIL 2014

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ASSESSMENT OVERVIEW AND RATIONALE

In June 2013 the Council of the European Union (EU) decided to open accession negotiations with Serbia. The European Commission (EC) started the screening of the *acquis communautaire* in September, and the first inter-governmental conference on Serbia's accession was held on 21 January 2014. Also, in September 2013, the Stabilisation and Association Agreement entered into force. Overall, the Government has been actively pursuing the EU integration agenda, and these efforts are expected to continue with the incoming Government following the parliamentary elections of 16 March 2014.

In its annual Progress Report published on 16 October 2013, the EC stated that during this new phase, Serbia would need to pay particular attention to the key areas of the rule of law, including the reform of the judiciary, the fight against corruption, and public administration reform (PAR).

Following discussions with the EC, SIGMA gave priority in its 2014 assessment of Serbia to areas of PAR and in particular those areas where actual reform was being implemented or planned. This report covers the period from April 2013 to March 2014.

Each assessment area is presented in a separate thematic report, which includes a brief description of the state of play and recent developments. This overall assessment is followed by a more detailed analysis with conclusions.

SIGMA's 2014 assessment of Serbia focused on:

- LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT – This assessment concentrated on the General Administrative Law and Organisation of Public Administration, in particular on the legal and practical arrangements for the functioning of public administration bodies. On the subject of Public Service and Human Resources Management, this assessment focused on the framework and institutional arrangements for establishing a transparent and accountable civil service structure, including a merit-based recruitment and promotion system.
- PUBLIC PROCUREMENT – This assessment covered Legal Assistance and Institution Building, PPPs and Concessions, and Policy Advice and Strategic Framework Development.

SIGMA, working in co-ordination with the EC's Directorate-General for Enlargement (DG ELARG), has developed a draft set of principles of public administration, designed to define key requirements for good public governance and to serve as a basis for measuring progress over the years. The 2014 assessments were used to pilot these draft principles. The assessment of Serbia has not followed this approach in all aspects (Public Procurement), but it has used the framework as a basis for the analysis.

The principles of public administration are due to be released in November 2014.

LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT

SERBIA

APRIL 2014

1. State of Play and Main Developments since the Last Assessment

1.1. State of Play

Serbia has a civil service system formally compatible with EU principles, but with a very restricted scope that excludes many employees exercising key state functions. The Public Administration Reform (PAR) Strategy envisages extending the civil service to local government.

A horizontal legal framework on the organisation of the overall state administration is in place. In practice, however, this framework is quite ineffective due to its limited scope and a lack of guidance on the kind of organisation that should carry out each function. The state administration has grown on an *ad hoc* basis, resulting in a rather extended, deconcentrated and non-systematic landscape. A policy for the organisation of public administration has not been developed and no institution has assumed this task.

The internal organisation of ministries is harmonised, but units are created and abolished without any functional or workload analysis. Most public bodies work within weak and unstructured political and managerial accountability frameworks. Very often, the legislation does not adequately define the relationships between agencies and parent institutions, and does not clearly distinguish who is in charge of policy making.

In the civil service, recruitment is regulated according to the merit principle, but there is room for discretion, especially with regard to senior positions. The performance appraisal does not fulfil its objectives. The salary system applied to civil servants is transparent and based on a simple job classification system.

The PAR Strategy shows an awareness of the situation, but the institutional set-up to steer the reform is inadequate. It lacks visible leadership due to fragmentation of responsibilities and weak co-ordination between the Ministry of Justice and Public Administration (MJPA), the Ministry of Finance (MoF) and the Human Resources Management Service (HRMS). Each of these institutions has a limited view and no instruments are in place to promote the development of a common overview and to ensure the coherence of their actions. Civil service policies are weakly promoted and enforced as the HRMS is not intended to act as an instrument of the MJPA.

1.2. Main Developments since the Last Assessment[1]

- The new Public Administration Reform Council was established on 25 June 2013[2], with extended influence over the entire public administration, replacing the previous State Administration Council. The Council adopted Rules of Procedure and appointed a Working Group on the Register of Public Administration Bodies to serve as a base for further measures.
- In October 2013, the Government mandated the compilation of a list of entities that are wholly or partly funded from the national, sub-national, or local budgets. The General Secretariat, ministries and special organisations were required to prepare lists of entities from within their remits, whilst the MJPA together with the MoF were tasked with compiling the list.
- In December 2013, the MoF established a register of all public sector employees, with a view to controlling staffing and salaries in the public sector.

[1] March 2012.

[2] Government Decision on Establishing the Public Administration Reform Council. Members: the Prime Minister as President of the Council, the Minister of Justice and Public Administration as Vice-President, the Minister of Finance, the Minister without portfolio responsible for European Affairs, the Secretary General of the Government, and the Director of the Secretariat for Legislation. *Official Gazette of the Republic of Serbia*, nos. 55/2013 and 91/2013.

- The Government adopted a new "Serbia Civil Service Professional Education Strategy 2013-2015"[3].
- On 24 January 2014 the Government adopted the new PAR Strategy and ordered the preparation of the Action Plan 2014-2016. The draft Action Plan for Implementing the PAR Strategy, which is still being prepared, includes the creation of an official permanent register of public entities.

[3] According to the National Plan for the Adoption of the *Acquis* (2013-2016); the adoption date is not provided.

GENERAL ADMINISTRATIVE LAW AND ORGANISATION OF PUBLIC ADMINISTRATION

2. Analysis

The Policy Framework

1: There is a defined policy for the organisation of national public administration.

To date, the policies on the organisation and functioning of the public administration in Serbia have been rather ambiguous. Some years ago, under the influence of the 2004 PAR Strategy, various pieces of legislation were adopted in this area. However, the limited scope of this legislation, its multiple exceptions, weaknesses in implementation and lack of political leadership have resulted in a wide proliferation of agencies and bodies of various kinds. The criteria for this increase in the number of bodies are lacking in clarity. Today the Serbian public administration is large and complex, and it reveals significant inefficiencies and accountability gaps.

The uncontrolled growth of agencies and other autonomous bodies and the increased number of employees have resulted in a wage bill that is more than 28% of public expenditure and more than 12% of GDP, according to MoF data[4]. The Government is aware of the need to rationalise and harmonise the public administration in order to reduce public expenditure and enhance performance.

The newly adopted PAR Strategy identifies major initiatives for reform of the organisation and functioning of the public administration and proposes the restructuring of bodies and agencies performing public tasks. The functional definition of public administration in the Strategy, replacing the organisational one, is an initial but very encouraging step forward. The Public Administration Reform Council, chaired by the Prime Minister since October 2013, has enhanced the political drive for reform. Nevertheless, the Strategy does not fully clarify the arrangements for inter-institutional relations and co-ordination between the key actors of PAR. In addition, regular cross-ministerial co-operation is very formalised and limited to procedures set by the Rules of Procedure of the Government and the Law on State Administration (LSA)[5].

According to some horizontal laws (see Table 1), the basic organisational forms of the state administration are heterogeneous but clear. Considering the status of organisational types and their relation to the Government, a gradation of autonomy can be observed, ranging from bodies within ministries to independent regulatory authorities. Regarding legal personality, ministerial bodies and special organisations do not in principle have legal personality, but the LSA indicates – without giving any criteria – that legal personality can be acquired for special organisations, if provided by law. This issue is regulated on a case-by-case basis for special organisations, most of which are defined as entities with legal personality by the Law on Ministries or by sector laws.

[4] These figures could be compared to an average of 24% of public expenditure and 11% of GDP in the Eurozone (with very robust public services), according to OECD data 2004-2008.

[5] Article 64 of the LSA, "Establishment and work of joint bodies and project groups shall be prescribed in detail by the regulation of the Government".

Figure 1. The scope of horizontal laws according to type of public administration form

	"State administration[6]"					
	Ministry	**Body within ministry**	**Special organisation**	**Government service/office**	**Public agency**	**Independent regulatory authority**
Quantity[7]	18	30	17	18+5	15	25
Legal personality	No	No, unless given by law	Yes, if prescribed by sector law	No	Yes	Yes
Law on Ministries	Yes	Yes[8]	Yes	No, Law on Government[9]	No	No
Law on State Administration	Yes	Yes	Yes	No; Law on Government	No; Law on Public Agencies (LPA) or special law	No, sector laws and sometimes LPA
Law on Civil Servants	Yes; some important exceptions	Yes; some important exceptions	Yes	Yes	No, sector laws and labour law	No, sector laws and labour law
Law on Budget System; revenues	Yes; state budget	Yes; state budget	Yes; state budget	Yes; state budget	Yes and LPA; state and own-source fees	Yes and sector laws; usually own-source revenues
Law on General Administrative Procedures	Yes and sector laws	Yes and sector laws	Yes and sector laws	Only limited	Yes and sector laws	Yes and sector laws

Source: SIGMA elaboration based on data provided by the MJPA.

However, this horizontal legislation is very often subject to amendments, such as the Law on Ministries, amended in 2012 and 2013 (and nine times since 2001), weakening the stability and coherency of the legal framework.

According to the Law on Public Agencies (LPA), an agency should only be established if it can then carry out a specific public administration task more efficiently and if this task does not need constant political scrutiny[10]. However, very often the legal status of a body is defined without regard to the organisational form that is most appropriate to the tasks that the body is to carry out. There is no systematic framework for establishing such agencies. Horizontal laws apply fully to some agencies and partially to others. According to the information gathered during the assessment mission, most agencies are not subject to the LPA and to other horizontal laws but are regulated through their own individual laws on a case-by-case basis. The criteria for the creation, merger or abolition of public bodies are very vague, overlapping and hence difficult to interpret[11]. Structuring and restructuring are initiated and concluded without any *ex ante* or *ex post* functional analysis.

[6] "State administration shall consist of ministries, administrative authorities within the ministries and special organisations", LSA, Article 1.

[7] The quantities indicated represent a combination of data, according to MJPA and other sources, December 2013.

[8] The establishment of bodies within ministries is governed not only under the Law on Ministries, but also under specific pieces of legislation each of which regulates a particular area of public administration.

[9] The establishment of Government services is regulated under the Law on the Government, which stipulates that the Government may establish services tasked with advisory support or technical activities and envisage their organisation and remit. Government services are regulated by legislation governing the organisation, operations, funding, and employment in public administration, except where otherwise provided for under a specific regulation.

[10] Article 2 of the Law on Public Agencies.

[11] See articles 29, 33-34 of the Law on State Administration, article 31 of the Law on Government, article 2 of the Law on Public Agencies. Compare, for instance, criteria for establishing a government service and those for establishing a secretariat as a type of special organisation.

Serbia has suffered from a strong "agencification" process, resulting in a proliferation of agencies, so that "agencies" numbered 92 in 2013, according to data provided during this assessment. According to a 2013 USAID report, the total number of national agencies and public bodies in Serbia was 107, including 25 independent regulatory authorities[12]. In addition, the extent to which public agencies perform public administration tasks more efficiently is open to question as, in a vast majority of cases, there are no performance indicators to measure the efficiency of specific public agencies.

No policy for the organisation of public administration has been defined. The horizontal legal framework is ineffective because of its limited scope and lack of criteria. In practice, the public administration has grown on an ad hoc basis, configuring a rather non-systemic landscape. The new PAR Strategy reflects awareness of the situation but lacks the necessary institutional structures to steer the process.

The Regulatory and Management Framework

2: The independence of regulatory agencies, appeal boards and other relevant public bodies is guaranteed.

Regulatory and other independent bodies are considered in Serbia as holders of delegated public powers. About 25 of these organisations exist, such as the Commission for Protection of Competition, the Securities Commission, and the Republic Agency for Electronic Communications[13].

No horizontal law regulates those independent bodies. Most of them have their own legal personality, but not all of them[14]. They are usually not subject to the Law on Public Agencies, and they are not accountable to the Government. Parliament supervises the work of these independent regulatory bodies through the review of the annual reports that they are required to submit.

Independent regulatory bodies function pursuant to sector laws, which also stipulate their accountability, internal organisation, financing, performance and relations with those they regulate. Those laws formally guarantee their independence, stipulating that they are legally and functionally independent. In some of their regulations, however, inconsistencies regarding their independence can be detected. For instance, the Agency for Electronic Communications "shall be functionally and financially independent of other State authorities", but the "Ministry…shall supervise…the Agency in performing the entrusted tasks…"[15]. Another example is the Agency for Postal Services, which operates in accordance with the provisions of the Law on Public Agencies but is actually an independent regulatory body with a governing council appointed by the National Assembly.

Their financial autonomy is quite automatic, since many of these bodies gather the majority or all of their financing from fees. This financial autonomy has been partially challenged recently by the MoF in order to decrease public expenditure[16]. As an across-the-board measure, based on an objective financial situation, it should not be considered as a threat to the independence of regulatory authorities. Their managerial autonomy is also enhanced in the human resources (HR) area, as their employees are usually not considered as civil servants and are therefore outside the scope of control of the MJPA and the

[12] USAID (2013), *Agencies in Serbia, Analysis and Recommendation for Reform*. This figure comprises bodies within ministries (31 administrations, inspectorates, directorates and bodies within ministries with various names), Government services and advisory bodies (19 identified), special organisations (17 secretariats, bureaus, and other special organisations with various names), public agencies (15) and independent regulatory bodies (25).

[13] This assessment does not take into account the bodies established by the Constitution, such as the Constitutional Court, the Supreme Audit Institution (SAI) or the Ombudsman.

[14] The Commission for Information of Public Importance and Personal Data Protection and the Commission for the Examination of Responsibility for Violation of Human Rights do not have legal personality (bodies not covered by this assessment).

[15] Statute of the Republic Agency for Electronic Communications, Article 10.

[16] The Government adopted several measures in 2013, mainly the freezing of wages and recruitment and the limitation on the maximum number of employees in the administration to 28122 employees, with temporary employees not to exceed 10% of total full-time employees.

HRMS. The governing board usually appoints chief executives, following an open competition (self-managed by the same body) between candidates who fulfil a minimum number of professional criteria.

According to the above-mentioned USAID report, "it has been evident that independent regulatory bodies face different problems in their day-to-day operations such as: lack of financial and human resources, lack of space, political pressures, lateness of the constitution of these bodies compared to the deadlines set up in the laws, etc.".

The independence of agencies is relatively guaranteed. Most regulatory agencies have legal guarantees with regard to policy autonomy, decisions that are not politically influenced, and availability of financial resources.

3: The professionalisation of bureaucracy is clearly demarcated by stating what levels and positions are under merit and what others are under political criteria, both in ministries and national public bodies.

The professionalisation of senior civil servants by merit recruitment is protected in the state administration, mainly by the LSA, the Law on Civil Servants (LCS) and the Decree on Procedures for Internal and Public Competitions for Filling of Posts in State Organs. This is not the case in the broader public administration, where some positions outside the civil service are appointed on a discretionary basis.

The law stipulates mandatory recruitment by internal or public competition for senior civil service positions and establishes special professional requirements that potential candidates have to meet in order to apply for these positions.

The LSA establishes a formally clear distinction between political posts and senior civil service posts in ministries, bodies within ministries, and special organisations. The LCS regulates specific requirements and procedures, such as level of education, years of experience, special examinations or other criteria to be met in order to occupy such posts. Moreover, a special procedure is in place concerning the positions of the highest officials, for which the High Civil Service Council supervises selection[17].

The current situation in practice, according to HRMS data, is that only one third of the incumbent senior civil servants were selected through an open competition. In addition, according to the data provided by the 13 ministries that responded to a questionnaire for the purposes of this assessment, 65 of the highest officials were newly appointed following the arrival of the current minister (15 in the Ministry of Agriculture alone).

The professionalisation of senior civil servants within the state administration is clearly demarcated in the horizontal legislation. Exceptions and transitional arrangements nevertheless undermine these general rules and, in practice, most senior positions have been filled through discretionary appointments. A high turnover in top positions therefore occurs following a change of government.

Institutional set-up

4: The internal structure of ministries and public bodies is coherent and adequately harmonised.

The internal structure of state administration authorities (ministries, their bodies and special organisations) as well as Government services/offices is regulated by the Order on Principles of Internal Organisation and Staffing of Ministries, Special Organisations and Government Services. This regulation establishes clear criteria with regard to internal structures. First, by setting principles; second, by defining common units (office/cabinet of the minister and secretariat of the ministry) and by grading these units - departments are considered "basic" units, sections, divisions and groups are considered "core" units, and secretariats and offices of ministers are "special" units; and third, by setting the minimum number of employees in a unit (e.g. a group can be established if at least three civil servants

[17] Articles 164-169 of the Law on (State) Civil Servants.

are employed in it). However, the Order allows any other possibility "if another regulation regularises the internal organisation of an Authority in a different fashion"[18]. Each ministry or body drafts its own internal organisation, which is to be approved by the Government, taking into account the opinions of the MJPA, MoF and HRMS[19]. In practice, most ministries have a minister's office and a secretariat. The latter oversees the personnel unit, finance and audit units, administrative operations unit, and general affairs office.

The frequent Government reshufflings often lead to modifications of the structures of ministries and result in short-lived ministerial systematisations (in 2013, four times in the MoF[20] and twice in most other ministries). These changes create disruptions, weakening the effectiveness and efficiency of the state administration.

Organisational charts as well as detailed information on internal organisation are usually available on the official websites of ministries and organisations, facilitating citizens' understanding of the administration.

Formal regulations set criteria and harmonise the internal organisation of ministries. The creation and abolition of units are not based on functional and workload analyses. All ministries have units performing main horizontal functions.

5: There are institutional arrangements to ensure the delivery of national public services across all parts of the territory.

The state administration has a territorial network of administrative districts, established by the Law on State Administration and the Order on Administrative Districts[21]. These districts are defined as "the territorial centre of State administration that encompasses the district territorial units of all State administration bodies established for the territory of the district"[22]. They can manage multiple activities, such as issuing individual administrative acts of first instance and resolving appeals against administrative decisions of delegated holders of public authority. They also include several inspection branches in the territory.

The head of the administrative district is accountable both to the minister in charge of Public Administration and to the Government, and co-ordinates interministerial work within the district. Secretariats are established within administrative districts. They usually consist of 5-20 employees.

Despite the existence of the administrative districts, many ministries and bodies organise their territorial units differently, sometimes at municipal level or by creating their own territorial units comprising several administrative districts[23]. This practice is allowed by the LSA. In addition, 11 Regional Development Agencies perform tasks to enhance territorial development[24] in the so-called statistical

[18] Article 2 of the Order.

[19] These opinions are not binding, but a failure to comply with them needs to be justified.

[20] With changes of certain directorates in the Ministry.

[21] Official Gazette, number 15/06.

[22] Lazarević, M. (2008), "What evolutions in the State territorial representative's profession?", Presentation to 1st European Observatory of State Territorial Action.

[23] For instance, the Ministry of External and Internal Trade and Telecommunications have 24 territorial units. The Ministry of Health has 15 territorial units, five units of Health Inspection and additional sanitary oversight units, but it is not clear why certain districts have been amalgamated. The Plants Protection Administration within the Ministry of Agriculture has four territorial units of Phytosanitary Inspection, while the Forest Administration within the same ministry also has four units, but covering different territories.

[24] Vojvodina Region – three regional development agencies; Belgrade Region – one regional development agency; Šumadija and Western Serbia Region – four regional development agencies; Southern and Eastern Serbia Region – three regional development agencies.

regions of the country[25]. The final result is a rather incoherent set of territorial units, which does not help to improve territorial co-ordination and create synergies.

To co-ordinate the public activities of public bodies at the territorial level, administrative district councils have been established, composed of the heads of administrative districts as well as the mayors of towns and presidents of municipalities within the administrative district.

Many towns and municipalities deliver national public services, which have been delegated by the national Government through sectoral laws. The PAR Strategy emphasises that "more than 70% of all administrative procedures are carried out at the level of the autonomous province and local self-government". However, according to the interviews held, state and local administrations work in isolation from each other, as the culture and practices of common action are lacking.

State administration has a common territorial network of administrative districts, but many ministries rely on their own specific network of territorial units.

Accountability and Delivery

6: Accountability of autonomous and semiautonomous public bodies is promoted.

The accountability of public bodies is not systematically ensured. First, some public bodies do not behave in an accountable manner in relation to their parent ministry, apart from complying with their legal obligation to submit an annual work plan and an annual report. Despite the theoretical role of parent ministries as steering bodies, line ministries have limited capacity to define and evaluate the performance targets of agencies, given the specialised areas of the agencies' work and the technical expertise and know-how involved. The LPA strictly prohibits the Government from "guiding" the work of public agencies or "harmonising" their work[26]. According to the new PAR Strategy, "…the public agency is independent in its work. The Government has no power to manage the activities of a public agency, or align it with the activities of public administration bodies".

Second, the management boards of agencies do not adequately fulfil a steering and monitoring role. According to the above-mentioned USAID report, "…this institution has shown several shortcomings in practice. Their role in the execution of factual control over directors, level of independence of management boards' members from political influences, and great number of management boards' members that complicate control over the directors, may be questioned."

Third, many public bodies are formally accountable to the Prime Minister instead of the minister with responsibility for their area. This anomaly creates a strong dysfunctional structure, with public policies sometimes defined in parallel to the normal ministerial structure.

Finally, accountability in Serbia is usually understood only in terms of hierarchical reporting in accordance with legal requirements as opposed to the acceptance of responsibility for delivering services as efficiently and effectively as possible. In addition, the lack of transparency with regard to performance militates against the wider political and social accountability of many public bodies.

The accountability of most public bodies is very weak and non-systematic. The legal framework does not adequately define the relationships between public bodies and parent institutions and does not clearly indicate which body is in charge of policy-making. A number of public bodies set policies and deliver services without adequate political and managerial accountability.

[25] Regulation on Nomenclature of Statistical Territorial Units ("Official Gazette of RS", No. 109/09 and 45/10), adopted to synchronize the existing statistical division of the country with the Nomenclature of Territorial Units for Statistics of the European Union, mentioned in Municipalities and Regions of the Republic Of Serbia, Statistical Office, 2011.

[26] Article 4 of the LPA, "A public agency shall be independent in its functioning. The Government may not direct the functioning of a public agency or try to make it conform to the functioning of state administration authorities".

7: There is a commitment to the delivery of citizen-centric public services.

Improving the quality of public administration services and the business environment has been among the objectives of PAR in the past, and this is still the case for the new PAR Strategy, but only at a declaratory level. No further measures and tools (TQM[27], CAF[28], EFQM[29], ISO[30] standards, citizens' charters, satisfaction surveys, etc.) or measurable indicators are mentioned other than in specific areas, such as e-government or regulatory quality. No identifiable central unit is in charge of setting user-oriented policies and tools.

Some individual bodies, such as the Tax Administration, take the orientation towards users into account, especially by introducing e-government projects and developing business-oriented operations. The Serbian Business Registers Agency's initiative to gather all business-related registries in a single location constitutes a step forward towards the creation of a one-stop shop for businesses[31].

With regard to removing red tape and enhancing regulatory quality, most of the analyses of the Chamber of Commerce, Foreign Investors Council (FIC) or NALED (National Alliance for Local Economic Development)[32] indicate partial and slow progress.

The notions of quality management and user orientation in the public administration are still underdeveloped at both strategic and operational levels. Some progress has been made in the development of e-government. There is neither a central policy nor a central unit to enhance citizen-oriented public services and to disseminate quality management tools. However, there have been some isolated examples of progress towards more business and citizen-oriented services.

[27] Total Quality Management (TQM).

[28] Common Assessment Framework (CAF).

[29] European Foundation for Quality Management (EFQM).

[30] International Organization for Standardization (ISO).

[31] http://www.apr.gov.rs/eng/Home.aspx

[32] See the FIC *White Book* (2013) or the NALED *Grey Book* (2013/2014), analysing the regulatory framework and suggesting red tape removal for businesses.

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

2. Analysis

Human Resource Management policy and strategy

1: Policy and managerial documents establish core values for professional civil service, which are aligned with European administrative law principles and civil service core values.

The most recent policy documents mentioning the civil service and its values are the Public Administration Reform (PAR) Strategy approved in January 2014, the Strategy on Professional Development of Civil Servants 2013-2015, adopted in 2013, and the document on National Priorities for International Assistance in the Republic of Serbia for the period 2014-2017. These policy documents are implicitly in agreement with the European administrative law principles of reliability, predictability, openness, transparency, accountability, efficiency and effectiveness[33]. They also mention explicitly some civil service core values, especially the principle of ensuring that recruitment and promotion are based on merit.

Moreover, the PAR Strategy has an objective of establishing the transparent and equitable civil service salary system as a role model for salary systems in other parts of the public employment system.

The latest policy documents embrace civil service core values, emphasising in particular merit-based recruitment.

2: Vision and policy options to develop and sustain the professional CS are defined in the relevant policy document and its action plan, and they are disseminated within the public administration.

The relevant documents establish policies for the further development of a professional civil service. Of those documents, the PAR Strategy focuses the most intensively on the civil service. Adopted by the Government on 24 January 2014, the Strategy takes into account substantial changes in the environment. It offers a critical assessment of some key aspects, highlighted by international assessments. The document criticises the volume of public employment, which represents 10.8 % of the population. It acknowledges that the various measures aimed at curtailing the size of the civil service in 2009 and public employment in 2011 have not worked properly. Critical reference is also made to the politicisation of the state administration and to the disparity of its salary systems, many of which are not as transparent and equitable as the civil service salary system.

The PAR Strategy was prepared by a group of representatives of ministries and government services led by the MJPA, which demonstrates an integrated approach. The Strategy deepens and expands the notion of a professional civil service. The document promotes the exclusion of politicisation when filling vacancies, especially at the senior civil service level. It also aims to extend professionalisation and a transparent civil service salary system to local government employees. The Strategy does not set specific goals to be achieved and focuses instead on policy instruments to be implemented.

Finally, as the PAR Strategy Action Plan has not been completed, it is not possible to assess whether clear and coherent measures are in place to support the implementation of those values. Furthermore, at the time of this assessment, one month after approval of the Strategy, no signs of dissemination of the Strategy were visible.

[33] OECD (1999), European Principles for Public Administration (SIGMA Papers, no. 27). http://dx.doi.org/10.1787/5kml60zwdr7h-en

The recently adopted PAR Strategy sets out a vision for extending the civil service model to local public employment, including merit-based recruitment and promotion, professional development, and a fair salary system. The PAR Strategy is critical of the present system, but it does not analyse the nature and dimensions of the problems and does not set clear goals. The PAR Action Plan is not yet ready.

3: Primary and secondary CS legislation establish the legal status of civil servants and scope of CS, ensuring that a uniform system is in place.

Primary legislation on the civil service is in place through several articles of the Constitution[34], Law on State Administration (2005), Law on Civil Service (2005)[35], and Law on Salaries of Civil Servants and Ancillary Employees (2007)[36].

The scope of the Law on Civil Service (LCS) and related by-laws is very limited, as it applies to 26 480 civil servants, representing only 3.4% of the 781 000 public sector employees. Many employees in certain state authorities (such as the Ministry of Interior, with more than 47 000 public employees) or local government authorities (with 160 000 employees) perform similar functions as civil servants, but their legislation is not based on civil service principles. As a result, many employees exercising key state functions do not have civil service status.

Civil service legislation allows a degree of discretion in the recruitment of senior civil servants in particular. For example, it is possible to appoint acting civil servants and to then keep them permanently in senior civil service positions. Several amendments[37] of the legislation in 2007, 2008 and 2009 have tried, without success, to close these gaps[38]. Finally, civil service legislation suffers from continuous amendments, which weaken the stability and predictability that should be provided by a legal system.

Primary and secondary legislation establishes the legal status and scope of the civil service, ensuring a generally appropriate and uniform system, but only covering 3.4% of public employees. Civil service status does not apply to many public employees exercising key state functions.

Civil service and HRM institutional set-up

4: Political responsibility for the professional CS is clearly established.

The MJPA is politically responsible for the civil service and is in charge of policy design in the area of state administration. It drafts the legislation related to public administration and civil service. The ministry also drafted the PAR Strategy, which entails a leading role in monitoring and evaluating the implementation of the Strategy. Finally, the regulation of LCS implementation is the responsibility of the Administrative Inspectorate, which reports to the MJPA.

The authority of the MJPA to monitor civil service policy and the PAR Strategy is nevertheless restricted. Implementation of the PAR Strategy and of civil service-related laws falls under the responsibility of individual authorities and the Human Resource Management Service (HRMS), which reports to the General Secretariat of the Government and not to the MJPA. Clearly established responsibilities of the MJPA for policy design and evaluation may therefore be jeopardised by inadequate monitoring. The MJPA has no instruments to directly monitor human resources management at the state authority level, and it is obliged to elicit the collaboration of the HRMS[39].

[34] Articles 6, 53, 60 and 136.

[35] Official Gazette, No. 79/05.

[36] "Official Gazette" No. 62/2006, 63/2006 – correction and 115/2006 - correction.

[37] *Official Gazette,* nos. 67/2007, 116/2008 and 104/2009 respectively (from SIGMA 2010, 2011).

[38] At the time of this assessment, the MJPA was considering a draft amendment that, among other aspects, introduces limitations to the period of time that an acting civil servant can occupy a senior civil service position.

[39] Pursuant to the HRMS Establishment Decree, HRMS reports to the Government, through the Secretariat General. Pursuant to the Law on State Administration, HRMS is obliged to cooperate with the MJPA and, upon the Ministry's request, submits data.

In practice the political responsibility of the MJPA is shared with the MoF. The MoF, legitimated by the crisis in public finances, increasingly initiates measures on public employment and therefore on the civil service. These measures are related to staffing, recruitment, promotion and salaries. For instance, the MoF has limited the new recruitment of those who have left the administration to 20%, restricted promotion to 20% of the staff in each authority, and reduced by 20-25% the highest salaries in the civil service. These measures have been launched across-the-board, applying the same cuts to all state authorities, without intending to be adjusted to the particular situation of each institution.

Trade unions do not play a very important role in civil service policy design. There is no formal obligation to consult with trade unions concerning measures affecting civil servants. However, in accordance with the LCS, the Government and the trade unions concluded in 2008 a special collective agreement[40] with regard to rights and obligations of civil servants that are not legally regulated.

Political responsibility for the civil service is assigned to the MJPA. The MoF is taking a leadership role and assumes responsibility for some civil service areas concerning public expenditure, such as recruitment, promotion and salaries. In addition, the HRMS is not accountable to the MJPA, thereby depriving the Ministry of the effective use of the only body that could play a role as the central human resources (HR) unit in the present institutional set-up.

5: A central co-ordination unit, sufficiently empowered and capable to lead, support and monitor the implementation of the values, policy, laws and homogeneous managerial standards of the CS is in place.

Personnel management is, in practice, in the hands of HR managers in the various state authorities, configuring a highly decentralised system. They are supported by the HRMS, which acts as a central unit responsible for implementation of the legislation and standards of the civil service. This body has competencies in advertising vacancies for internal competition, supporting and monitoring competition procedures at the ´executorial´ level[41], preparing the Annual Human Resources Plan for the Government, keeping track of the implementation of HR plans of state administrative authorities, maintaining the Civil Service Registry, preparing and delivering training programmes, and assisting the High Civil Service Council (HCSC) and the Government's Appeals Commission.

As the state administrative system is so decentralised, with each state authority managing its employees and without a visible political authority supervising it[42], the co-ordination provided by the HRMS is very limited. This co-ordination comprises various activities: publication of handbooks and guidelines to better implement the LCS and several by-laws as well as bilateral contacts with HR managers in public bodies. The authority of the HRMS is restricted, especially since the 2009 amendments to the LCS, which reassigned the responsibility for advertising external vacancies to individual institutions and transferred the direct accountability of the HRMS to the General Secretariat of the Government rather than the Prime Minister. These measures have reduced the authority of the HRMS to steer the system and have turned it into an isolated institution offering support to HR units. According to the interviews held during this assessment, the HRMS is in contact with these units by phone, but no regular meetings of all HR managers in civil service institutions are held.

The HRMS has 39 staff members in three areas: Selection and Professional Development (14 staff), Job Analysis, HR Planning and Registry (10), and Support to the Government Appeals Board, HCSC and legal and financial affairs (13). The HRMS is in charge of the Civil Service Registry, but its data is not used to manage the system[43]. In October 2013, the MoF created another registry covering all public employment, which is being used to take decisions on personnel expenditures. There is a discrepancy

[40] "Special Collective Agreement for State Authorities", *Official Gazette*, no. 95/2008.

[41] This level comprises all civil servants' positions other than the senior civil service.

[42] The General Secretariat of the Government does not exercise real political management of the HRMS, and in fact the GSG website does not even mention the HRMS as a body supervised by the Secretary General.

[43] According to HRMS, the responsibility for entering and using the data, under the Law on Civil Servants, rests with the bodies.

between the two registries because the Civil Service Registry does not include temporary (contracted) workers occupying civil service positions[44].

At present the MJPA acts mainly as a law drafter and does not play the role of a central HR unit for the civil service. The ministry aims to take over the training delivery function now exercised by the HRMS. It is unlikely that such an expansion of functions alone would overcome the MJPA's weaknesses, and it would further blur the co-ordination role of the HRMS and its identity as the Serbian civil service's central HR unit.

The HRMS is mainly a support body to the highly autonomous state authorities, but in practice it acts partially as the central HR unit due to the limited action of the MJPA. However, although management standards are conveyed to state authorities, the HRMS has no authority to enforce them effectively. The HRMS maintains the Civil Service Registry but does not effectively use it to manage the system, and a new registry is helping the MoF to control headcount and salaries and to play a central role in the public employment arena.

6: All administrative bodies have HRM units with sufficient capacity to manage the workforce placed under their administrative supervision in accordance with the standards established by the CS-CCU.

As each ministry or body carries out most HRM activities, a highly deconcentrated model is configured. In most ministries and in some state bodies[45] a unit is devoted exclusively to HR, while in others some staff devoted to HR are integrated into another unit[46]. The tasks of these units and HR professionals are mainly compliance-oriented, and their background does not help them to build up a strategic HR management perspective[47].

The overall capacity of HR units to perform their tasks is variable. In some cases it is adequate but in others it is limited. For the whole civil service there is an average of one HR staff per 103 civil servants[48], which is in line with the ratio of 1:100 that is usually considered as an adequate benchmark[49]. However, this ratio is based on the Civil Service Registry which is approximately 9 500 lower than the MoF register, and it masks considerable variations, with some ministries lagging far behind the average[50]. The existence of the HR unit and its size do not necessarily depend on the size of the body[51].

The capacity of most HR units and professionals is quantitatively adequate, but HR specialists who are capable of going beyond the traditional compliance orientation and the routine tasks of personnel administration are lacking.

[44] Total number of civil servants and general employees, including fixed-term staff and interns: 26 480 according to the HRMS and 36 053 according to the MoF.

[45] An HR unit is found in 80% of ministries, 40% of special organisations and 33% of Government services; none of the administrative districts has an HR unit, but in any case their size would not justify the creation of such a unit.

[46] If HR specialists are integrated into a larger unit, they are likely to perform other tasks as well. Their workload and dedication to HR affairs therefore depends on the preferences of the superior who is also in charge of other horizontal matters. Under these conditions, HR issues may not be managed as effectively as would be desired.

[47] Most of them have university degrees in Law or Economics.

[48] 255 HR staff for 26 480 civil servants per the Civil Service Registry but 36 053 per the MoF .

[49] International Public Management Association for Human Resources, "2011 Staffing Ratios Survey" *http://ipma-hr.org/2011-staffing-ratios-survey*

[50] The ratio ranges from 1:24 for the Ministry of Regional Development and Local Self-Government to 1:303 for the Ministry of Finance.

[51] The Ministry of Energy, Development and Environmental Protection has five HR staff working in a legal affairs unit with a total of 460 employees, while the MJPA has six staff in an HR unit serving 206 employees. *Source*: HRMS (February 2014), "Analysis of Rulebooks on Internal Organisation and Systematisation".

HRM practices, methodologies and tools

7: Selection, recruitment and promotion of civil servants are based on merit and equal competition.

A significant number of discretionary appointments are still made, especially at the senior level[52]. Eight years after the entry into force of the LCS, 40% of the 326 incumbent senior civil servants were selected through open competition and 60% by discretionary appointment[53] (see Figure 1).

Figure 1. Percentage of senior civil service officials by type of appointment (2013)

	Positions	Merit based appointment	%	Non-merit based appointment	%
Ministries	172	63	37	109	63
Special organisations	61	33	54	28	46
Government services	64	23	36	41	64
Administrative districts	29	10	34	19	66
Total	**326**	**129**	**40**	**197**	**60**

Source: HRMS (February 2014), *Registry of the Civil Service*

The regulations allow political influence in senior staffing in some instances. First, the LCS permits the appointment of an acting civil servant to a senior position for an indefinite period of time[54]. Second, as any member of the competition commission[55] has the right to veto any candidate, the influence of the representative of the recruiting body may be decisive when shortlisting the candidates. Furthermore, the minister may refuse all of the three shortlisted candidates and still appoint a different person to occupy the position as an acting civil servant. An eliminated candidate cannot appeal to the Government Appeals Board[56] and can only initiate an administrative dispute against an unfair decision.

In 2013 a total of 37 senior vacancies were opened to merit recruitment, but the candidates were few. Of those vacancies, 32% attracted three or fewer candidates; for three vacancies there was only a single applicant. The maximum number of candidates in any of the competitions was 17. All external competitions are to be announced one week in advance by the recruiting authority in the *Official Gazette* and in a daily newspaper with national coverage and by the HRMS on its website.

There is also room for discretion when selecting candidates for "executorial" positions[57]. An *ad hoc* competition committee is in charge of managing the competition process. The committee proposes a shortlist of up to three candidates to the principal of the state authority. In accordance with the legislation, the principal can still decide whether to interview the shortlisted candidates. Finally, the principal has some discretion by being able to select any of the three shortlisted candidates.

Candidates may use a clear appeals procedure in the event of disagreement with any decision made during the recruitment process, and civil servants have resorted to such procedures extensively. In 2013,

[52] Senior civil service positions include the following: directors and assistant directors of integrated services; secretaries and assistant ministers in ministries; and directors, deputy directors and assistant directors in special organisations.

[53] *Source*: HRMS (February 2014), *Registry of the Civil Service.*

[54] Under Principle 3 above, mention is made of a draft amendment to the LCS introducing limitations to the period of time that an acting civil servant can occupy a senior civil service position.

[55] The members of competition commissions are appointed by the HCSC, which is in charge of supervising the recruitment process.

[56] The Government Appeals Board cannot review appointments of senior civil servants as they are considered to be Government decisions.

[57] The executorial positions are those beneath the senior civil service positions.

a total of 377 appeals were related to recruitment[58]. According to an interview with members of the Government Appeals Board, these appeals have forced principals to better justify their recruitment decisions, especially when the first shortlisted candidate was not selected.

In addition, two options allow direct recruitment outside the regular merit procedure: the recruitment of temporary employees and personnel "under contract" (service contract). Temporary positions are normally not publicly advertised, as such advertisement is not compulsory. Also, "contracted"[59] personnel are directly hired to fill positions that do not formally exist in the *Rulebook on Internal Organisation and Job Systematisation*, even though they can perform civil service tasks.

Merit-based recruitment in the civil service is regulated but there is a potential for discretion, more for senior positions and less for ´executorial´ positions. Additional distortions of the system result from the misuse of service contracts and the appointment of temporary employees.

8: Training and continuing professional development are recognised in institutional practices as a right and a duty of civil servants. They are organised on an equity basis, cover all the main training needs of the civil servants, and are related to regular performance appraisals.

The HRMS is entrusted with the organisation of training on horizontal issues for all civil servants. The HRMS develops an Annual Professional Development Training Programme, with contributions from all state bodies. This programme is divided into thematic blocks, and each block is targeted at particular groups. The Annual Programme is derived from a training needs analysis based on several sources: requests from individual authorities, analysis of strategic documents, new regulations that may require training, appraisal reports, evaluation forms from trainees, and an electronic survey sent to all civil servants.

In spite of the efforts of the HRMS, horizontal training coverage is still insufficient. The percentage of civil servants who benefit from the courses offered by the HRMS in a year is lower than 15%. Between 2011 and 2013 the number of civil servants trained per year has declined from 3 838 to 2 691, as the number of training events has been reduced. This reduction is partially a consequence of the reduction of donor-financed training[60] and partially due to an increase of the number of hours of the training courses. In addition, according to the HRMS, the requirements imposed by the new Public Procurement Law that became effective in 2013 slowed down the execution of the training programme.

Training announcements specify the target group. Interested civil servants are accepted if their job matches with the target group and if approved by their managers. Since 2013, senior officials may follow an induction course lasting 80 hours[61]. This is a positive development, as senior civil servants previously were not given any specific management training. HRMS evaluates the satisfaction of the participants in the training courses, but no evaluation has been made of the impact of training.

Training could not be easily embedded into the appraisal system, as any unsatisfactory grade was included in the appraisals and development needs, even for those with satisfactory performance, are not identified[62].

The PAR Strategy envisages a new system of professional development in line with the new "Serbia Civil Service Professional Education Strategy 2013-2015", adopted in 2013. This Strategy is the responsibility

[58] These 377 appeals were out of a total of 2 575. In 2013, in total, 921 competitions for executorial positions were held. The number of appeals cannot be linked to these positions because a) the period covered by both statistics is different; and b) some of the 377 appeals may come from the Ministry of the Interior. No data was provided to compare with previous years.

[59] The nature of this type of non-labour contract normally allows it to circumvent the limit of 10% of temporary staff of a particular state authority set by the 2009 Law on Determining the Maximum Number of Employees in Public Administration. According to the MoF, there are 63 498 contracted staff in the whole public sector, most of whom work for local authorities.

[60] The proportion of donor support decreased from 55% of the HRMS training budget in 2011 to 30% in 2013.

[61] In 2013 two induction courses were offered by the HRMS.

[62] "…the connection between the professional training on one hand, and grading of the employees' performance and managing their career development on the other, is weak or non-existent", Strategy of Civil Servants Professional Training 2011-2013.

of the MJPA, while the HRMS is in charge of developing the Annual Professional Development Training Programme. The training programme does not have a clear connection with the Professional Education Strategy.

The Serbian European Integration Office (SEIO)[63] is in charge of training related to European integration, with a main target group made up of civil servants working to prepare and participate in screening and in the negotiating process with the EU. Between 5.5% and 7% of all civil servants attended these courses between 2011 and 2013. SEIO training follows the EU agenda, NPAA, EU Progress Reports and the SEIO annual training needs analysis. Some ministries and public bodies have their own training programmes, which mainly provide specialised training.

In spite of the efforts by the HRMS and the SEIO, the cross-sectoral training system is relatively weak. The number of training courses has declined with no evidence of an increase in quality, and the impact of horizontal training is limited to a low percentage of civil servants. A positive change has been the introduction of courses for senior civil servants.

9: Performance appraisal is fair, transparent and linked to career development, flexible remuneration, prescribed training and disciplinary measures, including dismissal.

Performance appraisal is carried out annually by immediate supervisors. In 2012, almost 90% of civil servants were appraised[64]. Supervisors receive training as evaluators[65], but the inflation of appraisal grades is widespread: 84% of the civil servants appraised were rated as very good or exceptional[66] (see Figure 2 below). This practice indicates that the current system is totally irrelevant. In addition, the performance appraisal has serious dysfunctional consequences. As a result of a "good" performance, most civil servants are entitled to "horizontal" advancement (salary steps), which puts unsustainable pressure on the payroll. The MoF has limited this practice by means of a capped annual percentage of 20%[67]. This capping has in turn fostered discretionary awards of salary steps, since there is no transparent process in place for selecting the 20% who are beneficiaries.

Figure 2. Distribution of the scores that civil servants received in the appraisal (2010-2012) (in %)

	2010	2011	2012
Unsatisfactory	0.0	0.0	0.0
Satisfactory	2.0	1.6	1.3
Good	19.1	16.7	14.9
Distinction	46.8	45.5	44.7
Exceptional	32.1	36.2	39.0

Source: HRMS data, according to reports received from state bodies

Appraised civil servants have the right to appeal against their score. The Government Appeals Board registered 130 appeals connected to performance appraisal in the period from 1 September 2012 to 31 August 2013. One concern is that the appraisal is usually carried out on the sole basis of the job description, without taking into account the contributions to achieving organisational goals. Another criticism is the risk of unfair use of discretion by the supervisors who are free to use their discretion when assessing the open category of "other criteria".

[63] http://www.seio.gov.rs/home.50.html.

[64] Data provided by the HRMS.

[65] 91% of supervisors attended such training.

[66] 78.9% in 2010.

[67] The Law on Salaries of Civil Servants and General Service Employees (for 2009-2011) and the Law on Budget 2012, 2013 and 2014 provide for the capped annual percentage.

HRMS prepares an annual report for the Government on this issue and has made proposals for changing the procedure of performance appraisal several times. This year, an online survey will measure the satisfaction of the civil servants with the appraisal process.

The performance appraisal system, which was adequately designed, is not working in practice, as it is not fulfilling its objectives and results in the discretionary award of salary steps based on unknown criteria.

10: The remuneration system of civil servants is transparent and fair.

The salary system, regulated since 2007 by the Law on Salaries of Civil Servants and General Service Employees, identifies 13 pay levels, eight for "executorial" positions and five for senior positions. Each of the "executorial" positions has eight pay steps, setting a horizontal career ladder. Each level and step has a corresponding coefficient. The monetary pay is calculated by multiplying the coefficient by the salary base set in the annual Budget Law. Subsequent amendments to the Law on Salaries have raised the coefficients of the lowest levels of civil servants, reducing the pay compression ratio[68] from 1:9 to 1:6. The system is today homogeneous and transparent, as most of the allowances of the previous system have been integrated in the basic pay, which currently accounts for about 75% of the total pay.

Although salary steps can be awarded on a discretionary basis, the actual salary structure which applies to civil servants is transparent, fair and based on a job classification system.

11: Disciplinary procedures, appeal procedures, and criteria for termination of employment are uniform and in line with the set of civil service core values and principles, and they are uniform across the whole CS.

The legislation sets out a clear system of disciplinary procedures for minor and serious violations of duty, which are in accordance with civil service values. The process for disciplinary action is fair according to the legislation, being managed by a disciplinary committee[69]. The process entails an oral hearing, where the civil servant has the right to present his/her defence.

The sanction for a minor breach of a civil servant's duty is a fine up to the equivalent of 20% of the monthly salary. Major offenses can be sanctioned by higher fines, temporary suspension, demotion and termination of employment. There are few disciplinary measures connected to poor performance and termination of employment as a disciplinary measure is rarely used.

Disciplinary procedures of senior civil servants are carried out by the HCSC. In the event of a complaint for unfair treatment, those occupying a senior position must initiate an administrative dispute.

Discretionary dismissal was permitted for a short time under the validity of the 2012 Law on Ministries. It allowed ministers to propose, within 45 days of the entry into force of the law, the dismissal of senior civil servants if the ministers considered that they had not achieved the expected results in their work. However, in December 2013 the Constitutional Court found this to be unconstitutional[70].

An appeals system is in place through the Government Appeals Board, which reviews administrative decisions related to personnel management in the civil service and in the Ministry of the Interior[71]. The eight members and the president of the Board are active senior civil servants appointed by the Government, which calls into question their full independence. In 2013 the Board received 1 328 appeals

[68] Ratio of the highest salary compared to the lowest salary.

[69] The committee is composed of three members with university degree, one of which should be in law, and with five years of relevant work experience.

[70] Article 38 of the Law on Ministries (in contradiction with article 76 of the LCS). The Constitutional Court decided that this article was unconstitutional in its session held on 26 December 2013. http://www.b92.net/eng/news/politics.php?yyyy=2012&mm=07&dd=26&nav_id=81473

[71] Including uniformed police forces.

from civil servants, which is approximately five appeals per 100 employees. In 44.7% of the cases, the Board made a decision in favour of the civil servant who had appealed[72].

Termination of a job contract or reassignment of the civil servant can also be caused by a reorganisation, implying the abolition of the position. Several reorganisations took place in 2013, resulting in new assignments for a number of civil servants. Reassignments are one of the most important reasons for complaints to the Appeals Board, representing almost a third of the total number of appeals[73].

Disciplinary procedures are in line with the civil service principles, and reasonable mechanisms for appeal are in place. Termination of employment and reassignment can be used unfairly by abolishing the position through a reorganisation, though an appeals process exists.

12: Measures and tools for promoting integrity and preventing corruption in the CS are implemented.

Conflict of interest of civil servants is regulated in the LCS and in the Law on the Anti-Corruption Agency[74]. The HCSC adopted the Code of Conduct for civil servants in 2008[75]. Awareness of the Code is limited, and some state authorities have developed their own codes[76].

Regarding public administration, the Agency has responsibility for preventing conflicts of interest, monitoring implementation of the National Anti-Corruption Strategy, developing guidelines for state authorities' integrity plans, and co-ordinating the work of state institutions in fighting corruption. The Anti-Corruption Agency has disseminated a *Rulebook on Protection of Persons who Declare Corruption*, and it allows for reporting corruption cases through its website[77].

The visibility of the Anti-Corruption Agency has increased from 60% (citizens who are aware of its existence) in 2010 to 77% in December 2013. However, only 4% thought that the impact of the Anti-Corruption Agency was high, while 52% considered that the Agency has had partial or little impact in the fight against corruption[78]. Furthermore, the UNDP Corruption Benchmarking Survey shows that the percentage of citizens who declared that they had given a bribe to state administration employees had increased by 5% in 2013[79].

Several regulations and tools are being used to promote integrity and prevent corruption in the civil service. Awareness of the codes of conduct is low.

[72] Data provided by Government Appeals Board.

[73] According to the Annual Report of the Government Appeals Board, in 2013 a total of 861 appeals were related to assignments: assignments (415); assignments and rank (232); reallocation (111); and assignments and coefficient determination (103). There is no data on how many of those appeals were ruled in favour of the complainant.

[74] The Law on the Anti-Corruption Agency was adopted on 23 October 2008 and published in the *Official Gazette of the RS*, no. 97/08. See especially Section III of the law for conflict-of-interest regulation.

[75] *Official Gazette* , no. 29/2008.

[76] According to the participants of one of the panel meetings held during the assessment mission

[77] *http://www.acas.rs/sr_cir/component/content/article/41/152.html*

[78] UNDP Corruption Benchmarking Survey, December 2013.

[79] *http://www.rs.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_Corruption%20Benchmarking%20Survey%20December%202013.pdf*.

PUBLIC PROCUREMENT

SERBIA
APRIL 2014

1. State of Play and Main Developments since the Last Assessment

1.1. State of Play

The public procurement system has undergone a number of positive changes in a very short time, in particular with regard to the entry into force of the new Public Procurement Law (PPL) in April 2013, as well as the adoption of implementing regulations and standard tender documents.

Closer alignment with the EC Directives on public procurement has been achieved by the new legal framework, which largely covers the EU *acquis*. The PPL 2012 was enacted to address previous failings in the legal framework and, in particular, to ensure better conditions for increasing transparency and tackling corruption.

Currently, the main institutional bodies and contracting authorities are in the process of ensuring the proper implementation of the new legal provisions, and the overall institutional set-up provides the basic elements needed for a functional system.

1.2. Main Developments since the Last Assessment[80]

The new PPL, adopted on 29 December 2012, entered into force on 1 April 2013.

12 pieces of secondary public procurement secondary legislation and 13 models of tender documents and standard forms, foreseen by the new PPL, were adopted in 2013. Seven have not been yet adopted although three of them are in the process of adoption.

A new Public Procurement Portal, which is managed by the Public Procurement Office (PPO), became operational on 1 April 2013. The number of registered users has more than doubled compared to the old portal. New software for the electronic collection of procurement records and plans has been made available to contracting authorities.

The Central Registry of Bidders has been functional since 1 September 2013. More than 2 000 economic operators have already been registered in the Registry.

The number of staff of the PPO and the Republic Commission for Protection of Bidders' Rights in Public Procurement Procedures (CPR) has increased, by approximately 40 per cent for both institutions.

The number of appeals submitted to the CPR increased significantly (2 067 cases received in 2013, compared to 1 622 in 2012[81]).

In relation to the implementation of the Public-Private Partnerships and Concessions Law, two by-laws have been adopted, one by the Council of Ministers, concerning Supervision over Implementation of Public Contracts and one by the by the MoF, concerning Registration of Public Contracts. The Value-for-Money Methodology has been adopted by the Commission for Public-Private Partnership (PPP Commission). However, the number and value of contracts scheduled for implementation in the near future have not increased significantly.

[80] April 2013.

[81] Data provided by the CPR.

2. Analysis

Policy, regulatory and institutional framework

1: There is a focal point at ministerial level with designated responsibility for public procurement policy making and co-ordination, internally and externally, with a clear mandate and the authority and resources necessary for the task.

Since April 2013 the MoF no longer plays the leading role in preparing public procurement legislation.

The PPO has responsibility for drafting public procurement secondary legislation and for co-ordinating and monitoring the public procurement system in general. All contracting authorities and economic operators interviewed by SIGMA for this assessment consider the PPO to be the main player in the public procurement sector. However, the text of the PPL remains rather ambiguous with regard to the power of the PPO to officially propose amendments to primary legislation.

The PPO has been designated to lead the negotiations with the EU on Chapter 5 – Public Procurement – and it will co-ordinate the activities of all of the other institutions involved. However, the extent to which the PPO is authorised to make commitments on behalf of the Government is unclear. Some important aspects of Chapter 5 (for example, public-private partnerships and concessions and defence procurement) are not in the remit of the PPO.

The Public Procurement Office is the body with primary responsibility for the development of the public procurement system, but its co-ordination role is not sufficiently defined in legislation and its remit does not cover all the necessary aspects of the EU requirements for Chapter 5 accession negotiations.

2: The regulatory framework is aligned with the *acquis* and includes areas covered by the fundamental Treaty principles and EU case law, and also regulates areas of national interest, such as value for money in public procurement.

The new Public Procurement Law (PPL), adopted on 29 December 2012, entered into force on 1 April 2013. The PPL aims to implement the EU *acquis* and to cover in a single piece of legislation all of the EC Directives on public procurement. The PPL 2012 is much more closely aligned with the Directives than the PPL 2008. Some discrepancies remain, including, for example, the definition of a contracting authority, a few exemptions from the Law, the retention of the qualification system in addition to other procurement procedures and, last but not least, national preferences.

The PPL 2012 introduces a number of provisions aimed at increasing transparency in procurement and thus assisting in the prevention of violations. These provisions include the adoption of procurement plans and the publication of procurement notices.

Procurement plans: the new PPL requires that contracting authorities adopt an annual procurement plan by 31 January of each year and submit it electronically to both the PPO and the State Audit Institution (SAI) within ten days of its adoption. Contracting authorities may only initiate procurement procedures that were envisaged in the plan and for which funds have been allocated. In limited circumstances, a subsequent variation is permitted.

Two important practical issues are worth mentioning with regard to the procurement plans:

- The procurement plans have a tight margin of flexibility. The funds that were originally foreseen for a specific public procurement cannot be increased by more than 10%, except in cases of natural disasters, accidents or major breakdowns, or events that occur beyond the control of the contracting authority. The contracting authority may change its procurement plan in the case of a revised budget or amended financial plans, but in such a way that all changes relative to the original plan are visible and are accompanied by justifications. In practice, the modification of any item in the procurement plan generates a considerable administrative burden.

- The PPO is not obliged to publish the procurement plans. Economic operators do not benefit from the advantages of public accessibility to such a database, which remains available only for internal use by the PPO. Only large purchasers are obliged to publish their procurement plans on their own websites. On the other hand, as the PPO does not have the capacity to properly analyse the plans (thousands of documents are received), the advantage of such a burdensome procedure remains unclear.

Publication of procurement notices: all procurement notices must be published on the Procurement Portal. Introduced by the PPL 2012, this is the mandatory obligation to publish notices for all low-value contracts. Low-value contracts[82] represent a substantial part of purchasing activities. The award of a large number of low-value contracts without the requirement of a prior public notification – as was the case under the PPL 2008 – may result in the non-transparent and non-competitive award of contracts. The new rules have increased the transparency of the process and opened up opportunities for economic operators. As under the previous PPL, there is a requirement for the publication of contract notices for larger contracts[83] on both the Procurement Portal (free-of-charge) and the portal of the *Republic of Serbia Official Gazette* (for a fee). The cost of publication on the portal of the *Official Gazette* is high; one contracting authority reported that the cost exceeded EUR 250 for each advertisement.

Moreover, according to the new PPL, whenever the contracting authority makes the decision to initiate a negotiated procedure without a call for competition, the authority is obliged to publish a notice concerning the initiation of this procedure.

The new PPL has introduced a number of measures aimed at reducing malpractices and curbing corruption:

- The PPO's control functions (prior approval for non-competitive procedures and certain decisions of contracting authorities)
- Civil Supervisor for larger contracts
- Central Registry of Bidders
- Clarification of grounds for rejection of tenders
- List of negative references ("blacklist" of bidders)
- Penalties for contracting authorities, procurement officers and bidders

As the time for implementation of the above provisions has been very limited their impact on reducing corruption remains to be seen.

Some progress has been made in connection with the Public-Private Partnerships (PPPs) and Concessions Law. Two by-laws concerning regulations for the Implementation of Public Contracts and Registration of Public Contracts have been approved. The Value-for-Money Methodology required under the PPP Law was approved in July 2013.

The PPL 2012 aims to implement the EU acquis but some discrepancies remain. A number of by-laws have been approved, and various models and standard forms have been posted on the PPO website. Seven by-laws provided for by the PPL are not yet in place.

[82] Article 39 under the PPL 2012, low-value contracts are contracts valued under RSD 3 million (EUR 25 860); below RSD 400 000 (EUR 3 450) the provisions of the PPL do not apply.

[83] Article 57 of the PPL of 2012: larger contracts are those above RSD 5 million (EUR 43 000) for supplies and services and RSD 10 million (EUR 86 000) for works.

3: Central institutional and administrative capacity is in place to support and co-ordinate the continuous development, implementation and monitoring of public procurement regulations and practices.

The PPO[84] is a stand-alone organisation, accountable directly to the Government. The PPO[85] monitors the application of the PPL, adopts by-laws, controls the use of certain procedures, runs the Public Procurement Portal, prepares reports on public procurement procedures, proposes measures aimed at improving the public procurement system, and provides professional assistance to contracting authorities and bidders. The PPO is required to submit to the Government by 31 May of each year a report on the functioning of the public procurement system in the previous year, which includes recommendations for improving the system.

In 2013 the PPO has focused on the preparation of by-laws, model documents and standard forms. Many contracting authorities declared during interviews with SIGMA that they had already used standard forms and models published by the PPO, even if those documents were not mandatory.

The PPL 2012 has significantly expanded the mandate of the PPO to include additional control activities. For example, the PPO is now required to receive and consider annual procurement plans, give its non-binding opinion as to whether the requirements for use of the negotiated procedure without prior notice or competitive dialogue are met, and also give its opinion on the use of centralised purchasing and joint procurement arrangements.

The number of staff in the PPO has been increased from 20 to 27 (+ 35%). However, the large number of requests for various approvals has caused serious problems in practice, and the PPO has been unable to meet all of its obligations in a proper and timely fashion. For example, in the case of *ex ante* control of the use of the negotiated procedure without prior advertisement, the PPO received 2 411 requests. The number of opinions issued was 2 150 (of which around 30% were positive), and only in a few cases was the time limit of ten days, as stipulated in the PPL, observed. A positive trend was noticed in the last months of the year, starting in November 2013, since the delays have been consistently reduced[86]. However, with limited time that the PPO can allocate to analyse each application, the quality level of the examination remains, also in the opinion of the PPO itself, questionable.

The PPO has issued 54 opinions on decisions concerning the joint conduct of procurement, 46 of which were positive. In total, 950 written requests for opinions on interpreting legal provisions have been received since the adoption of the new PPL, and the number of written replies issued was only 358. Such a small number of responses to requests as well as the delays incurred are attributed to the insufficient number of personnel of the institution.

In July 2013 the PPO introduced on its website new software for electronic records on public procurement procedures, by means of which contracting authorities submit their quarterly reports on concluded contracts and on the conduct of public procurement procedures. In mid-January 2014, the PPO introduced dedicated software for procurement planning, covering the elaboration of the procurement plan, amendment of the plan, and reports on execution of the plan. The software has allowed the electronic submission of documents to both the PPO and the SAI.

The new Public Procurement Portal, operational as from 1 April 2013, has been widely used[87]:

- Total number of registered users: 6 456 – the number has more than doubled when compared with the old Portal
- Total number of posted public procurement procedures: 27 358

[84] PPO Website *http://www.ujn.gov.rs*.

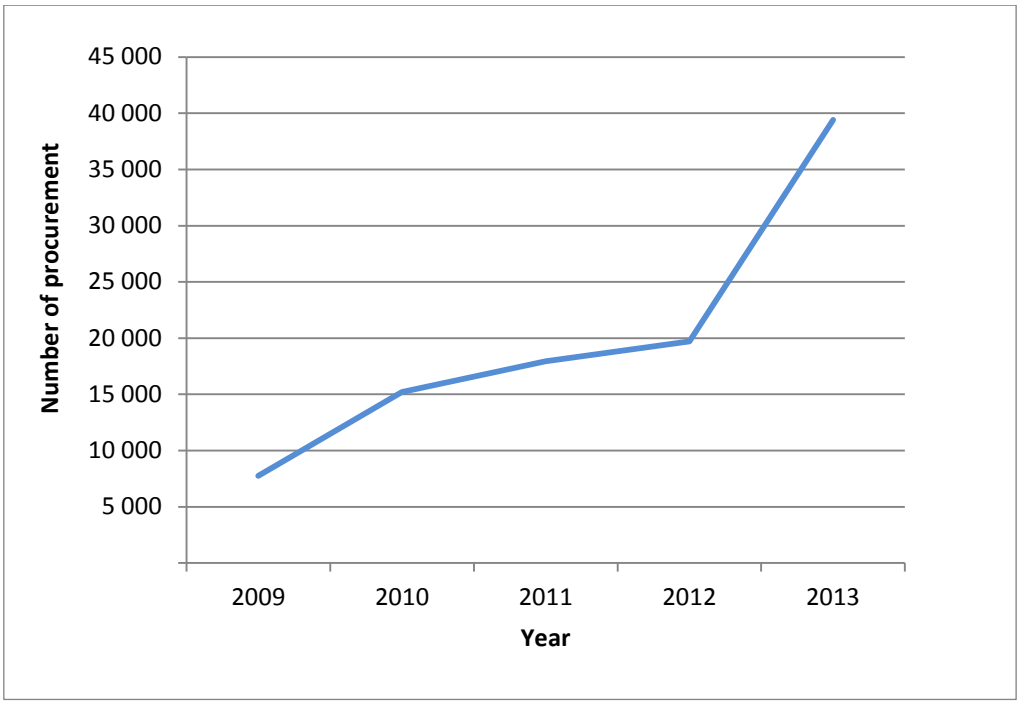
[85] Article 136 of the PPL.

[86] According to data provided by the PPO average number of days for producing an opinion was 13 days in November 2013, in December 10 days, in January 2014 9 days, in February 4 days.

[87] Data provided by the PPO.

- Total number of published decisions of the Commission for Protection of Bidders' Rights (CPR): 161
- Total number of opinions on the negotiated procedure: 2 150
- Average number of posted tenders per day: 137 – an increase of more than 60% when compared with the old Portal
- Average daily visits: 6 170 – when compared with the old Portal, this number reflects an increase of more than 700%

Figure 1. Number of public procurement notices posted on the Public Procurement Portal



Source: PPO

Co-operation among various institutions has considerably improved. The PPO has established regular and continuous co-operation with the CPR, SAI, Commission for the Protection of Competition, and the Anti-Corruption Agency, which has been reflected in daily contacts and co-ordination of positions concerning specific issues involved in the application of the PPL.

The PPO is the leading institution of the Negotiating Group for negotiations with the EU on Chapter 5 - Public Procurement. The Group's first meeting was held on 24 January 2014.

Following the reorganisation of the Government, responsibility for policymaking in the area of concessions and public-private partnerships is not defined. The interministerial PPP Commission, established in 2012, is the main structure dealing with practical aspects in the area of PPPs and concessions. The role of the PPP Commission is to provide technical assistance to contracting authorities on PPP and concession projects. It also provides opinions on proposed projects and on the preparation and publication of annual reports on projects implemented under the PPP and Concessions Law. In practice, no important progress has been achieved in the implementation of PPP and concession projects; only eight or nine projects (small or medium-sized) are foreseen in the short to medium terms. There is no evidence of co-operation between the PPO and the PPP Commission.

The PPO is the key institution in the public procurement system. The main priority for the PPO in 2013 has been to prepare by-laws and develop a new Procurement Portal, but some other duties have been neglected or have not been performed in accordance with procedural requirements set out in the PPL.

Category: Reviews and remedies

4: There is a system for dealing with complaints that is aligned with *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

Under the PPL 2012 all interested bidders, applicants, candidates or other persons, as well as the PPO, SAI, Public Attorney and Civil Supervisor, can appeal (for a fee) against decisions of contracting authorities and of the PPO to the Republic Commission for Protection of Bidders' Rights (CPR).

The CPR[88] is an independent and autonomous body reporting to the National Assembly of the Republic of Serbia. The National Assembly appoints and removes from office the President and the six Members of the CPR. Currently the Commission has in total 54 staff (including the six Members and the President of the CPR), which represents 38% more staff than last year.

In 2013, the CPR held a total of 422 sessions and made 1 879 decisions, 1 522 of which were taken following requests for the protection of rights, 146 on appeals against contracting authorities' decisions (conclusions), 49 on declarations for the continuation of appeals procedures before the CPR (procedural decisions on untimely declarations of claimants in appeals procedures), 112 on requests for reimbursement of expenses in appeals procedures, 30 on proposals to continue the activities of the contracting authority (while the appeals procedure is in progress), 8 on proposals to reinstate the prior status and 12 on actions following decisions of the Administrative Court.

The total number of requests for the protection of rights was 1 595, of which 1 522 were resolved as follows: in 909 cases the requests were admitted (540 procedures were partially annulled and 369 procedures were fully annulled), 51 procedures were suspended, 81 appeals dismissed and 351 rejected.

In administrative disputes initiated following complaints against the CPR's decisions, 112 decisions were taken by the Administrative Court in the given period, dismissing 10 cases, rejecting 85 cases, ruling against the CPR's decisions in 14 cases and suspending three procedures.

The main concern with regard to requests for the protection of rights is the upward trend noted in recent years. In the period from 1 April 2013 to 31 December 2013, the number of applications significantly increased, by 38.66% compared to the same period in 2012.

The CPR should decide on a request within 20 days from the date of receipt of a proper request. In 2013 the average number of days needed to resolve a request for the protection of rights was 19.26 days, according to the statistics provided by the CPR. On the other hand, several contracting authorities have reported delays, sometimes even in non-complex cases.

In 2013 the CPR took actions to monitor the enforcement of its decisions. It requested 696 reports on proceedings concerning CPR decisions, and 635 reports from contracting authorities were analysed. In 24 cases it was found that the decision of the CPR had not been enforced, but all of these cases had been related to the PPL 2008. At the same time, it was established that all of the decisions of the CPR that had been made in accordance with the PPL 2012 were enforced by the contracting authorities, and therefore there were no grounds for the CPR to pronounce fines on the contracting authorities or for responsible officers to inspect the contracting authorities either.

The new CPR powers under the PPL 2012, which were previously within the sole jurisdiction of the courts, include the institution of minor offence procedures against both contracting authority officers and bidders, and the imposition of a range of fixed fines for those offences as well as the cancellation of concluded contracts.

In 2013 the CPR received three requests for the cancellation of procurement contracts but all of them were considered unfounded. However, no reasons for those decisions were found. Some inconsistencies between the current Misdemeanour Law and the PPL blocked the possibility of initiating misdemeanour procedures (five requests last year).

[88] CPR website http://www.kjn.gov.rs.

The Commission for Protection of Bidders' Rights (CPR) is the review body in, and in comparison with previous years important steps have been made during the past year to improve the activity of this institution. However, the CPR still faces a number of significant challenges to cope with the growing number of appeals in timely manner.

Procurement related horizontal issues

5: A horizontal legal and institutional environment supportive of public procurement is in place.

The State Audit Institution (SAI) has a sufficiently broad mandate to audit all public funds, including public procurement. The SAI audits direct budget beneficiaries, local self-government and public companies. All of the reports issued by the SAI include a chapter on public procurement.

According to the new PPL, contracting authorities have the obligation to send their annual procurement plans to both the PPO and the SAI by 31 January. 2014 was the first year in which that provision of the new PPL was applied. In practice, the submission of the plans had to be made using specialised software, but that software was finalised just two weeks before the deadline for transmission set by the PPL. Many contracting authorities encountered problems in meeting the legal obligation in due time but, overall, most of them managed to complete that task without any major delays.

A particular practical issue raised by many contracting authorities was the inadequate correlation between the PPL and the Budget System Law (BSL). The BSL states that contracts must be concluded in compliance with public procurement legislation, but the same article also stipulates that the value of a contract must be established with reference to the annual Budget Law. In practice, the result of this requirement is that all contracts, including routine service contracts, have to be re-tendered on an annual basis. For certain periods – at the beginning of each year – no contractual relationship exists between the state and service providers, for example for road maintenance or hospital cleaning. In some cases, contracting authorities are "forced" to infringe the law by concluding contracts for essential services without following any procedure. Despite the fact that the PPL provides for the possibility of using framework agreements, even in such cases the contracting authorities' understanding is that they must create budgetary reserves for the whole duration of the framework agreement before starting the procurement procedure. For this reason, framework agreements (where they exist) are usually concluded for a short period of time and only until the end of the year.

A new bylaw that regulates conclusion of multi-annual contracts, as well as the annual contracts with payment distributed in two budgetary years, entered into force on 23 February 2014. It is too early to assess its impact.

In 2013 an important issue in the current procurement practice was the difficulty of concluding multi-year contracts or framework agreements. This issue constitutes an unnecessary administrative burden for the public sector and for companies and makes it more difficult for budget users to plan commitments.

6: A regulatory and institutional framework to ensure integrity in public procurement is in place and is working.

One of the most important goals of the PPL 2012 was to introduce more robust anti-corruption mechanisms and measures for sanctioning irregularities and to strengthen the role of bodies in charge of monitoring and control of public procurement procedures. From this point of view, the PPL 2012 represents a significant improvement when compared to the PPL 2008 and it provides a good basis for procurement operations. The most relevant provisions are:

1. The PPL provides, as a mandatory eligibility requirement, that the bidder or its legal representative must not have been convicted for any criminal act as a member of an organised criminal group and must not have been convicted for any commercial criminal offence, criminal offence against the environment, criminal offence of receiving or offering a bribe, or criminal offence of fraud.

2. The PPL sets strict standards of transparency, including mandatory publication of contract notices for low-value contracts and negotiated procedures, which is seen as a major factor in the fight against corrupt practices.
3. The PPL addresses, in a detailed manner, the issues involved in the prevention of corruption as well as conflicts of interest.

Moreover, amendments to the Criminal Code of December 2012 introduced criminal responsibility for aggravated cases of abuse in the domain of public procurement.

There have been no cases in 2013 in prosecuting criminal offences and misdemeanours in the area of public procurement.

In accordance with the PPL[89], the PPO and the Anticorruption Agency have prepared an Action Plan for Combating Corruption in Public Procurement Procedures, in co-operation with other governmental bodies in charge of fighting corruption. The Action Plan contains the measures and activities that are to be implemented in 2014.

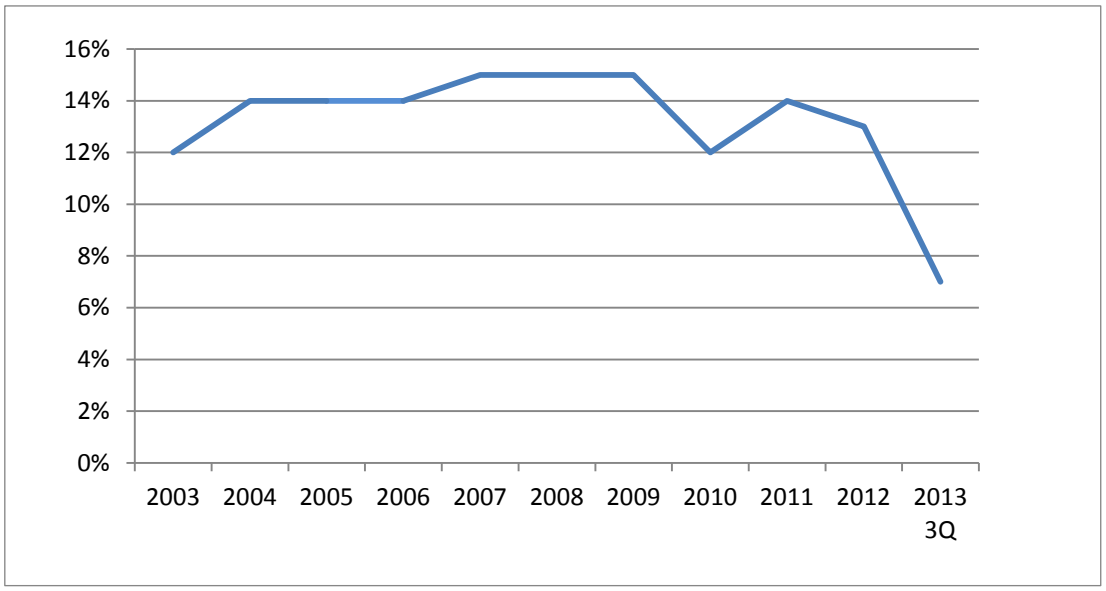
The regulatory framework for integrity in the PPL is sound and constitutes a solid basis for efforts to reduce corruption in public procurement. The key challenge for strengthening integrity in public procurement is now the implementation of the new regulatory framework

Operations and practices

7: Procurement transactions are carried out using modern approaches and methods, including e-procurement, framework agreements and centralised purchasing.

The new provisions obliging contracting authorities to publish contract notices for low-value contracts has produced results, according to the statistical data provided in the report of the PPO for the third quarter of 2013. The ratio (by value) of low-value contracts was only 7%, less than half of the ratio for the same period in 2012.

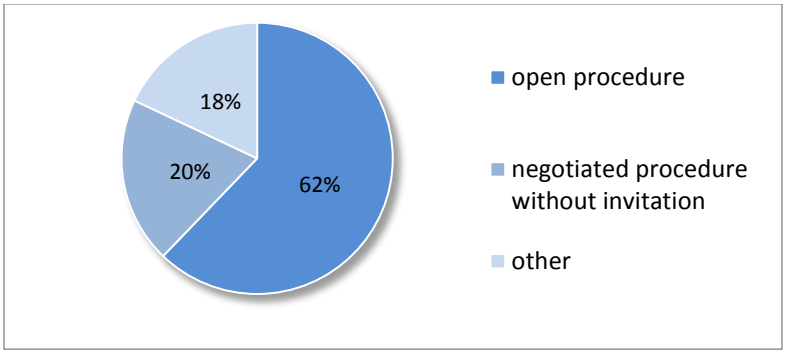
Figure 2. Percentage of share of low-value procurement



Source: PPO

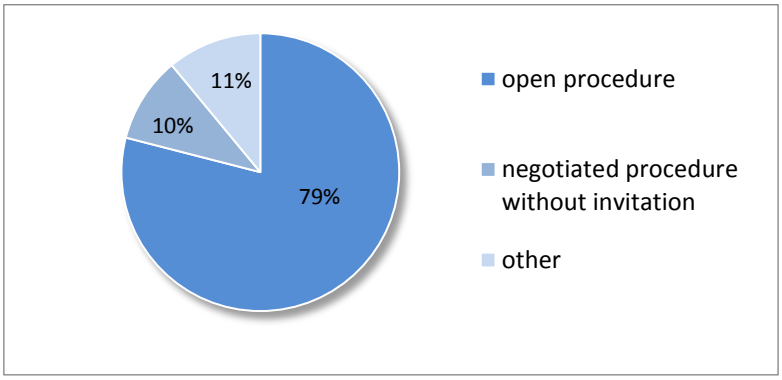
[89] Article 21 of the PPL.

Figure 3. Structure of concluded contracts by type of procedure in third quarter of 2012



Source: PPO

Figure 4. Structure of concluded contracts by type of procedure in third quarter of 2013



Source: PPO

The new PPL provides for implementation of all new instruments regulated in the EC Directives, such as electronic procurement, a dynamic purchasing system, framework agreements, joint procurement and central purchasing bodies.

Although the legal basis for using e-auction and dynamic purchasing systems does exist, such tools have not been used.

Framework agreements have been used rarely by contracting authorities. The reasons for the small number of framework agreements are: (i) the very short time since the entry into force of the new PPL (ii) the lack of any incentive, (iii) the existence of burdens resulting from the difficulty to conclude multi-year contracts.

Contracting authorities may jointly conduct specific public procurement procedures, and they used this solution before PPL 2012. The obligation for contracting authorities to submit their decision on joint procurement to the PPO in order to obtain a preliminary opinion[90] creates an unnecessary bureaucratic burden. The Regulation on Contents of Decision on Joint Conducting of Public Procurement Procedures by several Contracting Authorities has not yet been adopted.

The Administration for Joint Affairs (AJA) is the body in charge of centralised public procurement to meet the needs of government bodies and organisations, including judicial authorities. The relevant regulations regarding the list of contracting authorities that are obliged to turn to the services of the AJA and the list of supplies, services and works that fall under those legal provisions were approved at the beginning of 2014.

[90] Article 48 on centralised procurement requires PPO approval for a decision on contracting authority or agreement between contracting authorities. Article 50 requires opinion from the PPO on the decision on joint conduct of a specific public procurement procedure.

The Republic Fund for Health Insurance (FHI) is a centralised purchasing body for the purchase of medications (166 categories) needed by health institutions. In 2013 the centralised purchasing procedure started too late (partially due to the switch from the PPL 2008 to the PPL 2012 and partially as a result of inadequate preparation of the procedure), and contracts/framework agreements were concluded near the end of the year. This situation generated sensitive issues in terms of the timely delivery of medications and, consequently, an unavoidable use of the negotiated procedure without publication of a notice on the grounds of extreme urgency.

In 2013 the share of negotiated procedures and low-value contracts in procurement showed a notable downward trend. The publication of all types of notices and tender documents electronically is now mandatory. However, the instruments regulated in the EC Directives – such as electronic procurement, a dynamic purchasing system and framework agreements – have not been used.

8: Contracting entities manage the procurement process professionally from the stage of defining the needs until the closing of the file and generate value for money.

Many of the provisions of the new PPL address the need to organise procurement procedures in a professional manner, from the stage of planning until the conclusion of the contract. The short period since the PPL 2012 entered into force as well as the lack of comprehensive statistics do not allow conclusions to be drawn on how all contracting authorities have actually put into practice the relevant rules.

According to the new PPL[91], contracting authorities are obliged to adopt an internal regulation to manage the public procurement process in detail, in particular the manner of planning procurement (criteria, rules, way to determine the subject of public procurement and estimated values, method of market analysis and research), responsibility for planning, public procurement procedure targets, manner of executing obligations in the procedure, manner of ensuring competition, conduct and control of public procurement, and mode of monitoring the implementation of public procurement contracts. It is too early, after the first year of application, to measure the impact of this provision.

All big contracting authorities interviewed by SIGMA have established a department to perform procurement tasks. All of the contracting authorities interviewed indicated that they were satisfied with, and used, the new models for tender documents prepared by the PPO – some of which, with certain adjustments, correlated to their specific contracts.

As for award criteria, there are no discrepancies between the provisions in the PPL and those of the EC Directives. Both criteria – the "most economically advantageous tender" (MEAT) and the "lowest price" – are provided in the PPL without any particular restrictions. The current tendency is to use the "lowest price" only, since this type of evaluation is seen as more transparent and price/quality evaluations involve an element of subjectivity and are therefore more open to abuse.

Not all of the irregularities that have occurred should be automatically connected to corrupt and fraudulent practices. In many cases, the real issue is the inexperience of the people preparing those parts of the tender documents.

The Regulation on the Method and Programme of Vocational Training and Procedure for Taking the Professional Examination for Public Procurement Officers, which should have been adopted in accordance with the PPL[92], has not yet been prepared. The process for certification of public procurement officers was suspended in March 2013.

Public procurement training, mainly for contracting authorities, is provided by the private sector and other organisations, such as the chambers of commerce, often with speakers from the PPO.

[91] Article 22.

[92] Article 134.

The Association of Procurement Professionals was established in early 2012 and currently has 150 registered members. It was closely involved in the consultation process for the PPL 2012. Its activities include the creation of a support network and information-sharing opportunities for procurement professionals, provision of training and co-operation with other professional associations. The Association has International Federation of Purchasing and Supply Management (IFPSM) associate status.

The certification of procurement officers stopped in March 2013. International and domestic focus on corruption has led to the adoption of a large number of legal provisions dealing with anti-corruption aspects and attempts to correct some bad practices.

9: The public procurement market is open and competitive.

According to statistics provided by the PPO in 2012, the total number of purchasing entities is 3 529. The total number of contracts awarded in the first three quarters of 2013 was 63 655, with a total worth of EUR 1.8 billion. Since the figures for the last quarter of 2013 are not yet available, at this moment it is too early to compare the current data with those of 2012[93]. In the first three quarters of 2013, the average value of a contract was approximately EUR 28 600, which is almost identical to the average value in 2012.

The lack of transparency has been one of the most significant criticisms of public procurement in Serbia in recent years. The new PPL ensures the transparency of public procurement procedures by laying down extensive publication rules and thus favouring open competition procedures. The Procurement Portal is an important tool to provide a transparent and well-structured source of information for the business community.

An important goal of the new PPL is not only to enhance transparency and strengthen control, but also to facilitate the way in which bidders prove that they fulfil the eligibility criteria. It is an important step towards de-bureaucratisation that, according to the new PPL, bidders are allowed to prove that they meet the eligibility criteria by submitting copies rather than original documents. Additionally, the PPL provides that bidders are not obliged to supply evidence that is publicly available at websites of competent bodies. The (potential) winner of the procedure will supply original documents, if requested by the contracting authority.

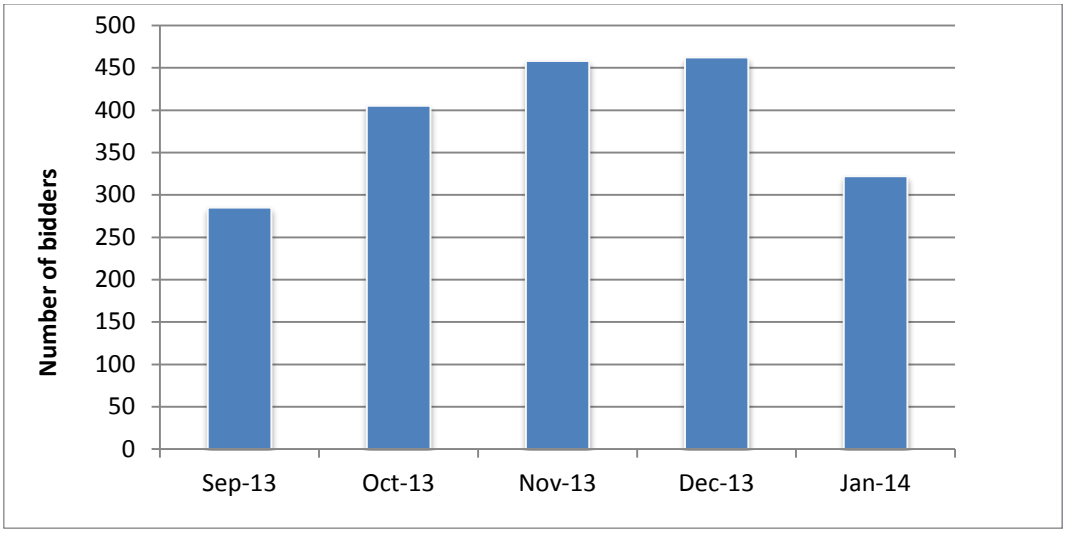
In addition, the Central Registry of Bidders is becoming a successful instrument for verifying the mandatory eligibility requirements for participation in public procurement procedures, with a real potential to reduce bureaucracy as well as the costs of bidding. The Registry became operational on 1 September 2013, and more than 2 000 bidders have already been registered[94].

All of the interviewed parties, from the sides of both contracting authorities and bidders, highly appreciated this initiative. Bidders may submit evidence of the fulfilment of mandatory requirements provided by the PPL to the Serbian Business Registers Agency and, on the basis of that evidence, the Agency registers them in the Central Registry of Bidders. Any economic operator can obtain registration for a reasonably low price (25 euros). Bidders registered in the Registry are not required to obtain evidence on the fulfilment of the four mandatory requirements for each and every public procurement procedure, and instead they are only expected to note in their bids that they are registered in the Central Registry, which can be verified by the respective contracting authority.

[93] 81 833 contracts with a total value of EUR 2.6 billion.

[94] Source: the Business Registers Agency.

Figure 5. Registered bidders by month



Source: Business Registers Agency

The PPL 2012 expands significantly the provisions of the PPL 2008 concerning the impact of negative references on the qualification of bidders. Under the PPL 2012, a contracting authority must automatically reject bids whenever it has evidence that a bidder is contravening one of the listed eligibility requirements. In addition, in such a case the contracting authority is to immediately and without delay submit evidence of any negative reference to the PPO. In the event that the PPO determines that it has received adequate evidence from the contracting authority, it must add the bidder to the negative references list, which is published on the PPO website. That bidder is then excluded from bidding for public procurement contracts of the same type for a maximum period of 15 months. The bidder may appeal the PPO's decision to the CPR.

The PPO received 78 pieces of evidence of negative references over the past year. However, to date no bidders are included in that list (non-fulfilment of the legal requirements).

Although contracting authorities and bidders alike have generally praised the concept of this list, it has to be radically changed or abolished in light of the recent European Court of Justice (ECJ) case C-465/11, which declared that certain forms of automatic exclusion ("blacklisting") is not compliant with EC Directive 2004/18.

The PPL stipulates that contracting authorities may require winning tenderers to provide tender guarantees as well as a performance guarantee. In practice, in almost all cases, contracting authorities still choose to require guarantees.

The practical effects of all of these changes on the procurement system, which has been criticised as overly complex and lacking in transparency, remain to be seen. The initial results are encouraging; the average number of bids per contract shows the following evolution:

Figure 6. Average number of bids per contract in public procurement procedures in 2012 and in the first three quarters of 2013

Average number of bids per contract in 2012 and in 2013	
2012	**2013**
2.6	2.7

Source: PPO

The general interest among economic operators in participating in procurement procedures is still low compared to the average level of interest encountered in the EU, according to EU statistics, which are almost four bidders per contract. The mandatory use of domestic preferences is not compliant with the acquis. The level of foreign participation has decreased in relation to the previous year from 12% to 5%. The share of bidders from the EU in total value of concluded contracts was 4%, and the share of bidders from outside the EU was 1%.

When comparing the public procurement market in 2013 to those of previous years, positive trends can be noted, particularly in relation to the use of competitive procedures. The new PPL ensures the transparency of public procurement procedures by laying down extensive publication rules and thus favouring open competition procedures. The use of domestic preferences remains mandatory.