



*Making Public Procurement Public – A Multi-Stakeholder Roundtable in Bosnia and Herzegovina*

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## TPP-RATING.ORG

Transparent Public Procurement Rating is a bilingual (English-Russian), easy to use, online platform dedicated to public procurement.

### What can the website be used for?

- Compare countries according to their public procurement legislations and find areas that need improvement.
- View assessments of how the legislation is being put to practice.
- Get the latest news about public procurement related matters.

## Making Public Procurement Public – A Multi-Stakeholder Roundtable in Bosnia and Herzegovina

*Bosnia and Herzegovina (BiH) is at an important crossroads in terms of modernizing its public procurement system towards more transparency and electronic procedures. Its current legal framework dates back to 2014 and was prepared in accordance with EU Directives. In an effort to further harmonize the legislation with that of the EU, a public procurement reform was developed by the multi-stakeholder Working Group for Amendments to the Law on Public Procurement.*

In addition, a two year monitoring effort of the BiH public procurement system undertaken by public sector and civil society actors, such as Transparency International BiH, Open Society Fund, Audit Office and the Public



Public Procurement Agency, revealed major challenges and risks of misspending and corruption, further stressing the necessity of another wave of legislative reform.

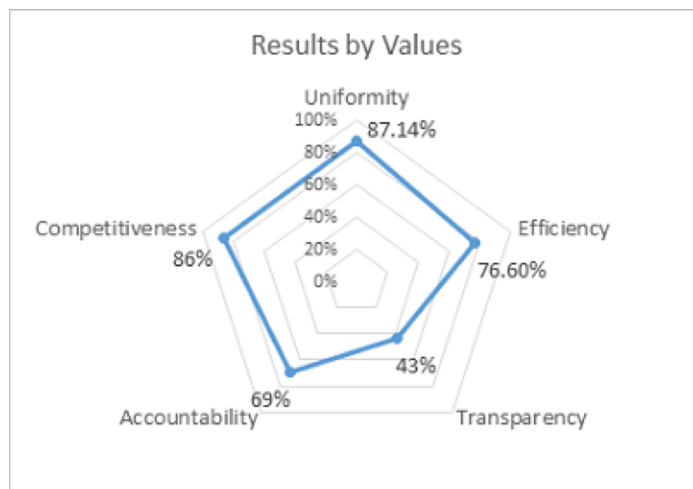
Meanwhile, the BiH Public Procurement Agency has set transparency as a major goal and is gradually opening up more and more public procurement information. If continued to the logical conclusion of establishing a fully transparent e-procurement system, these efforts will enable systematic and automatic generation of data that can be used to identify problems and measure success, eliminate human-to-human interaction and, in this way, reduce opportunities for corruption, increase public trust by opening documents and data, and boost efficiency by automating procurement procedures.

In an effort to bring together all of these ongoing efforts to improve the public procurement system of Bosnia and Herzegovina, the local Transparency International chapter (TI BiH) organized a roundtable titled 'To Make Public Procurement Public' on December 11, 2018, in Sarajevo, on the occasion of the International Anti-Corruption Day.

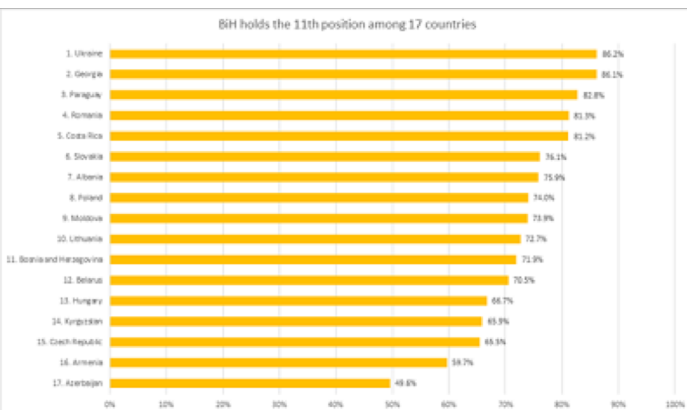
The round table included representatives of the **Public Procurement Agency**, **Procurement Review Body**, working group that prepared amendments to the **Law on Public Procurement**, non-governmental sector and the

representatives of the judiciary, business community, public procurement trainer, auditing institutions and other interested parties. The participants discussed the above monitoring results and prospects for amending the public procurement legal framework in Bosnia and Herzegovina.

During this event, important insight into the strengths and weaknesses of the BiH public procurement legislation was offered by IDFI through its presentation of BiH's results in the Transparent Public Procurement Rating (TPPR). According to these results, transparency is a major challenge in BiH, suggesting that improvements in this direction would yield the most results in the short term. In this regard, future prospects are promising, considering the Public Procurement Agency's commitment and ongoing effort to increase transparency.



As of December 2018, BiH holds the 11<sup>th</sup> position in the TPPR ranking (out of 17 countries) with improvement to legal framework necessary in areas such as – **Transparency, Efficiency and Competitiveness.**



Based on the TPPR evaluation, IDFI and TI BiH also elaborated a set of guiding points for improvements to the public procurement legislation that can be used for future cooperation and advocacy work in Bosnia and Herzegovina. Transparency recommendations include electronic access to submitted complaints and resolutions, access to tender bids and related documents, information on subcontractors (including contracts), payment information and related documents, access to inspection and quality control reports.

Other recommendations include: introducing a possibility for regular citizens to file complaints in the Procurement Review Body, removing domestic preferences; defining quality control procedures in draft contracts or procurement

regulations; introducing standardized Annual Procurement Plans with at least: subject-matter (CPV) of planned procurement, planned date (week/month/quarter), estimated value, location; and obligatory disclosure of justification for using direct procurement procedures.

## **Kazakhstan's Possibilities: Advocacy Visit**

*IDFI participated in the training for Journalists and CSOs in Astana, Kazakhstan, as a part of IDFI's advocacy efforts in the framework of the project [Transparent Public Procurement Rating \(TPPR\)](#). The 3 day training was organized by [Organization for Security and Co-operation in Europe \(OSCE\) and CSO Zertteu Research Institute \(ZRI\)](#), based in [Kazakhstan. Representative of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption was also taking part in the training sessions.](#)*

During the training sessions, IDFI's Head of Research Direction – Giorgi Lomtadze discussed Kazakhstan's Public Procurement Legislation, its strengths and weaknesses, as according to the TPP assessment methodology.

The journalists and CSOs had the possibility to provide their opinion on the current state of public procurement system in Kazakhstan and share thoughts on ways to improve the current situation.

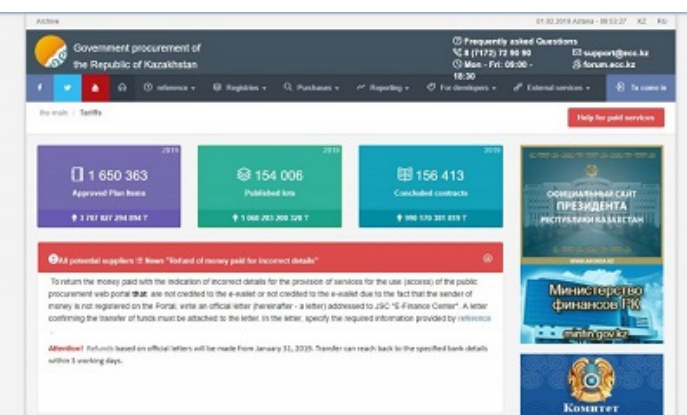
Public procurement in Kazakhstan is regulated by the 2015 Law on State Procurement. The PPL applies to ministries, state agencies, companies and enterprises in which the state holds more than 50% of the shares. As Kazakhstan is part of the Eurasian Economic Union (EEU), the PPL of the country complies with the standards of the Union.

The procurement system in Kazakhstan is decentralized with different government agencies and companies managing specific procurement projects. The functions of law-making, monitoring and coordination are divided within two state entities. The Ministry of Finance of Kazakhstan develops procurement policies and the Committee for Public Procurement is responsible for enforcing the laws and regulations on public procurement, as well as gathering statistical information on public procurement.

Kazakhstan has a single portal for hosting public procurement information [goszakup.gov.kz](http://goszakup.gov.kz) and the focus of the training was the advantages and disadvantages of this system.

An important advantage of the PPL of Kazakhstan is that procedures are 100% electronic and paper-based procurement is not possible for competitive procedures. The new portal offers detailed information (most of it in JSON format) on the procedures starting from the planning till execution. Nevertheless, IDFI discussed the weak points of the PPL of Kazakhstan and provided several recommendations to improve the existing law and e-procurement system. One important issue with Kazakhstan is that, the PPL of the country and its transparency guarantees do not fully correspond with the existing e-procurement system and the levels of transparency it provides. Despite the fact that the new portal provides much of information on the pre-tendering and tendering phases, the portal does provide exhaustive information on contract performance (payment receipts, quality control reports).

Publishing contracts and acts of delivery and acceptance are legally obligatory, therefore adding payments and quality reports to legal guarantees will enhance the monitoring capacity of the e-portal of Kazakhstan. Additionally, no obligation in the legislation to consult with civil society or with the business community on the functioning of the public procurement system in Kazakhstan diminishes the level of accountability in public procurement and hinders healthy discussions on how to improve the system.



One of the problems discussed during the training was the vast list of exceptions to the PPL in Kazakhstan and the negative effects this may have on several sectors of the economy. One particular sector deliberated was procurement of services of media organizations (printed, online, TV, radio), which in Kazakhstan, is completely outside of the PPL. Transparency and competition in this sector is not studied as of yet, however, lack of competition in the sector is often linked to government effort to control the media through direct contracting and favoritism.

IDFI's representative also talked about the importance of an independent dispute settlement mechanism for procurement procedures. This mechanism can incorporate representatives of academia, CSOs and the business, along with the relevant authorities, which will enhance the trust of the business towards the system. In this regard, examples of Georgia and Ukraine were discussed so as to see the benefits of an independent mechanism for public procurement

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Kazakhstan has a solid public procurement framework, which ensures sufficient level of transparency. Nevertheless, improvements can be made and examples of other countries can be used to further enhance public procurement procedures in Kazakhstan. Maximum level of transparency, access to information in machine-readable (open data) formats, reducing the list of exceptions from the law and the possibilities of direct contracting are essential to Kazakhstan's overall success in the area of public procurement. Improvements may be beneficial for levels of competition in public procurement as well as citizen engagement in the process of monitoring public procurement.

During the training, IDFI's representative discussed the possibilities of further cooperation with ZRI and the representative of the Anti-corruption Agency. Plans were made to provide specific recommendations on multiple aspects of



the law, by comparing Kazakhstan’s PPL with those countries that received higher scores. The next advocacy visit in Kazakhstan is planned in the period of February-March.

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### Comparative Analysis of Public Procurement Legislations in the Countries of Eurasian Region



The purpose of this comparative analysis prepared by IDFI is to show parallel trends and shared characteristics of public procurement systems in Eurasian countries, including the best practices. Firstly, the study describes public procurement systems of each country. Subsequently, the study compares the general positive and negative sides of these laws, shortcomings, and possible problems of their implementation.

Studying the public procurement systems of sixteen countries in the Eurasian region reveals that despite considerable differences in their legislations and practice, some of the major problems and challenges are in fact shared. Some of these countries have moved on to fully electronic procurement with a single point of access, while others have remained paper-based or mixed. Some have a centralized system where an independent institution is responsible for managing the procurement of all other state entities, while others have a decentralized arrangement.

However, despite such core differences, almost all of these countries struggle with the same problems of unjustified exemptions from the legislation, corruption and conflict of interest, inefficient (i.e. paper-based, non-automated) procedures, weak follow up in contract execution, inaccessible dispute resolution procedures, and lack of free and easy public access to all procurement information.

Such commonality of problems suggests that more active cooperation between countries may help them tackle these challenges more easily by sharing best practices and learning from each other’s mistakes. The Transparent Public Procurement Rating is actively working on facilitating this sharing process.

[View the full document on the following link.](#)

## Lithuania: Room for Improvements

According to a survey conducted by Transparency International Lithuanian Chapter (TI) in May 2018, one out of two businesspeople think that Vilnius and Kaunas city municipalities organize public procurement transparently, however, **one third think the opposite**. Half of the businesspeople surveyed also tend to trust their competitors and **one third of them don't**. One out of ten businesspeople in Vilnius and one out of seven in Kaunas think that there are situations when their **competitors receive confidential information**. One businessperson in ten has never participated in a public procurement due to an excessively short application period. [1]

Despite the research being focused on two main cities, the survey still shows the needs of the business sector in Lithuania vis-à-vis public procurement. The perception that certain companies receive information in advance, or that tender documentation can be tailored for a particular economic operator **is detrimental for the trust in the public procurement system**. Is such lack of trust simply a perceptive matter, or does it hold ground?

The accuracy of perceptions is difficult to measure, however, they may reflect the realities that in this case business faces in Lithuania. TPPR network conducted an assessment of Public Procurement Legislation (PPL) of Lithuania, with the help of TI Lithuania and



found [transparency to be the weakest link](#) of the Lithuanian PPL. Perhaps lack of transparency can be one of the reason for distrust. Despite having a single portal for posting information, the law does not ensure access to several important pieces of information:

- [Tender candidate applications](#) are not accessible – therefore the documents candidates submit are out of reach to those who wish to verify if any particular tender documentation was tailored to the capacities or characteristics of a certain company or individual.
- The same goes for the [bids](#) offered by the tender participants, which can only be obtained only upon request.
- The [decision on the winning company](#) is not mandatory to be shared immediately

once the decision is made, despite having an electronic portal.

- ❑ The **complaint texts** as well as **final decisions** of dispute resolutions are not available to the public.

In fact, without these data points, it would be impossible to make conclusions on whether corrupt practices, such as rigged tenders, actually take place or not. Without transparent dispute settlement process, trust is less likely to be gained, therefore ample room is left for speculations.

Based on the research TI Lithuania and IDFI prepared a set of guiding points for improvements to the PPL and on December 4th 2018, discussed them with the experts from the Public Procurement Office, the Information Society Development Committee under the Ministry of Economy, the National Audit Office and the Center of Registers.

The aim of this meeting was to:

- ❑ ***Present the TPPR evaluation of public procurement legislation in Lithuania to the main stakeholders in the country, share examples of different countries, which are part of the TPPR network;***
- ❑ ***Identify the main challenges (i.e. where Lithuania scored the least), and***

- ❑ ***Agree on how to best address them, or which ones to prioritize.***

These were the initial steps and many more must be taken. However, bringing about changes needs more evidence, research and collective effort of the state institutions, research organizations and CSOs.

- [1] For further information, view the [link](#).***





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