

NO TAXATION WITHOUT INFORMATION

FOL's fight for open public procurement in Kosovo





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“There is not a crime, there is not a dodge, there is not a trick,
there is not a swindle, there is not a vice which does not live by
secrecy.”

– **Joseph Pulitzer**

List of Abbreviations

OECD	Organization for Economic Co-operation and Development
OCP	Open Contracting Partnership
EU	European Union
EC	European Commission
PPRC	Public Procurement Regulatory Commission
TI Slovakia	Transparency International Slovakia
CoST	The Construction Sector Transparency Initiative
GDP	Gross Domestic Product
PRB	Procurement Review Body
CPA	Central Procurement Agency
CoC	Code of Conduct
KBRA	Kosovo Business Registration Agency

1.0 Main Findings

1. Current legal framework offers limited transparency on public expenditures
 - a. Law on access to public documents offers passive transparency based on the rule “*if you don’t ask, it is not open*”
 - b. Law on business organizations offers limited transparency with regard to business owners, management, and beneficiaries
 - c. Law on public procurement limits access to public documents
2. Kosovo has a code of conduct in public procurement aiming at strengthening the integrity of public procurement officials; it is well written but lacks enforcing mechanisms.
3. A highly decentralized procurement system leads to more corruption. Kosovo has around 170 contracting authorities.
4. Only managers of public procurement declare assets, not the rest of the staff.
5. All positions of officers working in public procurement are prone to corruption.
6. Kosovo does not have a Register of Partners of public sector in public procurement
7. KBRA does not fully verify foreign businesses before registration on business register.
8. PPRC does not require knowledge of beneficiaries of companies before signing a public contract
9. KBRA offers limited information on ownership and does not offer information on the history of company management.
10. Company information in KBRA are not up to the date, and the history of the changes made to that information is not available to the public.
11. One cannot verify if management or other representing structures in a company are public officials.
12. Contracts are closed and not open for public by default. One needs to file a formal request to access a public contract
13. Often contracts are censored and not given to public based on commercial interest
14. Bid offers are not open to public

15. PPRC offers limited information on machine-readable format, most of the information has to be download through PDF
16. PPRC offers limited information on e-procurement
17. Access in e-procurement for the purpose of downloading the dossier and seeing the bids is restricted and no one can register.
18. Ministry of Finance and Tax Administration Agency offer limited transparency about tax spending. Citizens cannot follow their money and there is no online information about business profit and business annual financial statements.
19. The management plan, orders, and invoices are not public and access to them is being censored by public institutions based on trade secrets and commercial interest.
20. Kosovo has made regress on transparency in public procurement by amending the Law on Public Procurement. From transparency to any person, the new law offers transparency to selected individuals who can prove a material interest.
21. Institutions are restricting access to procurement records by wrongly applying the law on access to public documents.
22. The process of accessing a public contract takes too long. Base on FOL' research, in some cases it takes up to 30 days.
23. When the access is granted, it is often limited access.
24. The limitation of the access derives from Article 12 of Law on Access to Public Documents, protection of commercial and other economic interest.
25. Constitution foresees the limitation to the right of access to public information to protect i.e. trade secrets, personal information, and classified documents
26. The limitation in access to public information based on protection of commercial and other economic interest is against the Constitution.
27. There is no witnesses during the opening of electronic tenders from civil society organizations.

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3.0 Executive Summary

No one in Kosovo today disputes the fact that corruption is the main obstacle to the development of democracy. Civil society constantly highlights that corruption is blocking Kosovo's prosperity, is causing uneven and unequal development in society and for worse is feeding organized crime and criminals, harming this way the image of the country in the international arena.

A recent report from [SAR Consultancy](#)¹, written by author [Sheelagh Brady](#) for the Embassy of Norway in Kosovo, emphasizes that corruption is centered around the government as it is the concentration of political and financial power and that the most corrupt areas **are public procurement**, state-owned enterprises, and private businesses.

Although such assertions are not new, they are never the less disturbing. Local NGOs highlight this problem every day and yet there are weak efforts to root it out, partly because political parties and the leaders who lead institutions are said to be themselves involved in organized crime and corruption, hence the argument goes that they will not fight themselves, and partly also because there is no serious commitment.

Uncovering corruption cases is never an easy job. Many big businesses operating today in Kosovo are believed to be linked to politicians and those in the high office, but the current legislation does not allow for citizens to see that because it blocks transparency. Kosovo does not have the necessary transparency when it comes to public expenditures. We don't know who run the businesses that win public tenders and we don't have access to beneficial owners which could be linked to politicians and those in high office. There are cases when there has been pressure from

¹ http://sarconint.com/?page_id=45

civil society and the media about individuals linked to organized crime and corruption where the [prosecution has had to act](#)².

Reports also point to the public procurement as the most corrupted area that made politicians millionaires³. The popular opinion is that the majority of companies who have been awarded public tenders over the past two decades have been linked to major politicians and their relatives in a long chain.

Lëvizja FOL has consistently monitored public procurement in the past with an emphasis on the transparency of the procedures that lead an economic operator to do business with the government. Such procedures have not always been transparent, and some of the major contracts have not been published in due time and even when they have, important parts of the contract have been hidden from the public⁴.

A reform is needed around public procurement to bring transparency on public expenditures. Such reform requires a change of laws, adaptation of new laws and a change of mindset that promotes transparency as a tool to fight corruption and organized crime.

‘No taxation without information’ is a call for transparency to see where the citizen’s taxes are being spent. It is only right that we ask our decision makers to allow us to see who profits from our taxes and where are they are being spent and invested. This report is also an unprecedented initiative by Lëvizja FOL to fully open public procurement to save taxpayers money and uncover high-level corruption.

² <http://kallxo.com/nisin-hetimet-ndaj-adem-grabovcit/>

³ https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/honouring-25-journalists-2017-eu-investigative-journalism-awards-western-balkans_en

⁴ <http://telegrafi.com/zero-tolerance-zero-transparence/>

4.0 Introduction

Public procurement refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies.⁵

Public Institutions, as well as state-owned enterprises, need to procure goods, services and work to carry out their responsibilities and duties (OECD, 2016).

Due to the high volume of transactions and the level of financial interests at stake, public procurement is one of the government activities most vulnerable to corruption. Corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders. (OECD, 2016)

In 2015, OECD reported that in OECD countries the total volume of public procurement accounted for 12% of GDP and 29% of general government expenditure amounting to EUR 4.2 trillion⁶. While worldwide, Open Contracting Partnership (OCP), reports that public contracting for goods, works, and services worldwide is worth approximately US\$9.5 trillion per year⁷.

In 2015, EU Commission reported that **10, 895** contracts with a total value of almost EUR **401 million** were awarded in Kosovo, accounted for **7% of GDP** (European Commission, 2016).

In Kosovo, it is a common perception that public procurement, awarding the contract for private companies, is prone to corruption. (FOL, 2012) (FOL, 2013)

⁵ https://ec.europa.eu/growth/single-market/public-procurement_en

⁶ <http://www.oecd.org/gov/public-procurement/>

⁷ https://d3n8a8pro7vhmx.cloudfront.net/opencontracting/pages/1/attachments/original/1444666090/OCP_Strategy_2015.pdf?1444666090

This perception is confirmed yearly by EU Commission Progress Report who especially criticizes public procurement. In 2015, Commission expressed its concern that public procurement is prone to corruption and highlighted that monitoring is insufficient in this area. (EUROPEAN COMMISSION, 2015, p. 41)

Last year EU again concluded that the perception of corruption in public procurement remains prevalent and the enforcement of integrity rules remains insufficient. (European Commission, 2016).

Commission's key recommendation in 2016 for Kosovo was to:

“improve transparency at all stages of public procurement, in particular by systematically monitoring the implementation of public procurement tenders, strengthening the remedy system and ensuring e-procurement functions properly” (European Commission, 2016)

Knowing that public spending has a direct impact on the economy, a transparent process of public procurement is not only in the interest of the public but it would stimulate economic growth and the development of the private sector and would bring into account those who misuse authority or yield influence for their own or their family profit. (*Transparency is discussed thoroughly in chapter 2 page 32 together with Slovakia's case*).

Kosovo still faces problems that risk the procurement process such as poor procurement planning, lack of adequate needs assessment and poor monitoring of the quality of work. EU commission in 2015 reported a lack of a clear needs assessment and the lack of a clear planning of budgeting from governmental authorities. (EUROPEAN COMMISSION, 2015).

With e-procurement, information is now more visible which helps businesses not just to save time but also be informed equally on the business opportunities, yet the platform is far from being fully open.

An important issue is the cancellation of the contract notices. In 2014 around 30% of the contract notices were canceled due to bad needs assessment and the low number of bidders, this figure, however, is improved in 2015 with 14% cancellation (EUROPEAN COMMISSION, 2015).

Cancellation of contract notices in cases where there is not enough competition, together with the lack of information and the lack of needs assessment is a great concern because they all speak of a lack of competition and possible irregularities. This affects the price and quality directly and shows that there is little or no trust on the neutrality and impartiality of the public procurement process and low competition hints that businesses still consider the process to be rigged.

The transfer from classic to e-procurement is a major achievement for Kosovo. The system is far from perfect, and there are a lot of problems reported which have to do with the system usability, security, and performance, but its existence is a major step forward towards transparency.

EU reports that actual implementation of electronic procurement faces delays because of weak oversight, as well as weak human and technical capacities of the responsible government agencies. Adequate resources need to be ensured to support the implementation and maintenance of e-procurement, including the recruitment and training of the necessary technical/IT experts (European Commission, 2016)

PPRC has reported that the system sometimes slowdowns due to heavy usage⁸. The platform still does not allow registration of citizens and NGOs who want to download the dossier.

The existence of the system itself is progress. Contract notices now can be accessed without registration, as well as crucial information about

⁸ Safet Hoxha, Chair of PPRC, participant in roundtable “e-procurement in Kosovo – Challenges and Opportunities”. April 25, 2017, Villa Germia, Prishtine.

contract value, contracting authority, tendering procedure, and criteria for selection.

The system itself does not guarantee that corruption, nepotism, and favoritism will be rooted out. Procurement process must be observed, primarily from PPRC but from media and civil society as well, so that they guarantee a fair and just process and competition which helps achieve better value for the money.

PPRC has the primary responsibility for overseeing the contract notices, especially the selection criteria so that corruption, nepotism, and violation of rule and procedures are avoided and that officers abide by the code of conduct on integrity. But PPRC should not be left alone in this process. A major role in preventing high-level corruption and enabling more transparency has to be played by the Business Registration Agency (KBRA). KBRA, helped by Ministry of Trade and Ministry of Finance and Ministry of Justice should create more effective tools in offering more transparency about businesses. We are not asking here to make it harder for businesses to operate and do business in Kosovo, we are asking to know who runs the businesses, and we are asking to shed light on the real businesses and help prevent corruption.

Businesses are awarded every week with big amounts of taxpayer's money through public contracts, and we need to make sure that political parties' affiliates or affiliates of public officials do not run such businesses.

EU Commission regularly asks Kosovo to investigate inexplicable wealth (EUROPEAN COMMISSION, 2015). It is our belief that such inexplicable wealth is largely generated through public procurement, thus taxpayer's money.

We don't have proof to prove how certain politicians and public officials running state agencies and enterprises have gathered such inexplicable wealth if we did we would have filed them to prosecutors already, but we are certain that transparency can shed light in that direction. One way, perhaps the best way, to know this is by disclosing information about

business beneficiaries, business management, and ownership and by verifying the legitimacy of the businesses local and foreign. By doing this, we will be in a position to search and investigate and judge for ourselves as citizens, as media and civil society.

So, this report is a call for reform on transparency in public procurement, perhaps the biggest reform ever. To do this, we need to be proactive; we need every help we can get from our institutions and our representatives, we need them to understand the gravity of the situation and understand that transparency will not damage but help them.

In the digital age, where access to information is a click or a screen touch away, transparency cannot be a choice, but a necessity.

The report is separated into 2 chapters, 19 headings, and 36 sub headings. In the first chapter, we talk about corruption in public procurement, we bring latest reports from Organization for Economic Co-operation and Development (OECD) on corruption in public procurement, and we try to connect such findings with Kosovo to offer a comparative view. Throughout the chapter, corruption is analyzed as a lack of transparency in the process and as a result of it.

That paves the way for chapter two, where we talk about transparency in public procurement in Kosovo or lack of it. In this chapter, we bring a case study to simplify the message of the report. Slovakia is taken as a case study. Slovakia was chosen as a case study for the following reasons: It is a country that has suffered from corruption in public procurement; is part of the EU, which Kosovo aims to join, and is not an advanced economy, meaning that their reforms on transparency are repeatable by any country.

The chapter analyses mainly the similarities and differences between Kosovo and Slovakia about institutional design and about legislation on transparency in the public procurement. In the institutional setup part, it analyses and compares the similarities and differences in function and competence of the institutions and the lack of them. For example, Slovakia

has some institutions who regulate public procurement which are nonexistent in Kosovo. In the legislation part, we analyze the main laws and regulations that regulate transparency in public procurement. We analyze major obstacles in Kosovo that prevent transparency and compare them to the Slovak legislation that enables for more transparency. In this chapter, we also bring the case of Transparency International Slovakia in building the open public procurement platform, parallel to the office of public procurement and how Lëvizja FOL is taking the initiative to build a similar one in Kosovo. In the end, we give a list of recommendations on how to bring transparency in public procurement.

In this report, we offer 14 ‘fact boxes’ with clear and precise information. Since Slovakia is our case study, many of these boxes bring the main differences between Kosovo and Slovakia, but they also bring case studies from other countries.

5.0 Methodology

The methodology used in this study is mainly desk research on transparency in public procurement. The method includes extensive desk research, a gathering of information, interviews, fact checking, case study, comparative analysis and report writing. Formal request to access public documents were sent to many institutions for research purpose and a broad literature was consulted, read and reviewed on public procurement. More specifically, because the report deals only with the issue of transparency in public procurement, many reports by civil society on transparency local and international, publications, articles, and journals that dealt with transparency in public procurement were read. Web sites of public procurement bodies in Kosovo and Slovakia and some other countries were read and analyzed, including websites, reports, and publications on business organizations.

5.1 Area of research

The report is focused on fighting corruption in public procurement through transparency. Therefore, it does not analyze other aspects of public procurement, such as procedures, institutional cooperation, efficiency and efficacy and other aspects, although transparency may contribute to the practicality of procedures and efficiency.

CHAPTER - I

6.0 Public procurement prone to corruption

6.1 OECD Countries

OECD considers that public procurement is one of the government activities most vulnerable to corruption.

Embezzlement, undue influence in the **needs assessment, bribery** of public officials involved in the award process, or **fraud** in bid evaluations, invoices or contractual obligations are the most repeated and persistent acts in public procurement. (OECD, 2016)

In many OECD countries, significant corruption risks arise from a **conflict of interest in decision-making**, which may distort the allocation of resources through public procurement (European Commission, 2014).

Moreover, **bid-rigging** and **cartelism** may further undermine the procurement process. In 2014 more than half of foreign bribery cases occurred to obtain a public procurement contract and almost two-thirds of foreign bribery cases studied occurred in sectors closely associated with contracts or licensing through public procurement: the extractive,

construction, transportation and storage, and information and communication sectors. (OECD, 2015)

6.2 KOSOVO

In 2016 Kosovo ranked 95 out of 176 countries in corruption perception index of Transparency International and had a score of 36 out of 100⁹.¹⁰ It ranked 66 out of 189 in the World Bank's doing business report¹¹.

In a survey conducted by UNDP Kosovo, 18% of the citizens ranked corruption as the second problem after unemployment, which was an increase after being traditionally listed in the third place. 58% of the respondents believe that corruption has not changed in the last 12 months and the majority of participants in focus groups believe that corruption is prevalent in central institutions, namely public enterprises, **procurement office** and the justice system. (UNDP Kosovo, 2016)

In its yearly report, Anticorruption Agency has filed criminal reports about public procurement managers and officers for violation of



FACT BOX - I

Auditor General

Report in Kosovo

Key irregularity issues on procurement on central and local level in Kosovo in 2015:

Issue: Purchases without procurement procedures, in cases when procurement is required. Avoidance of open procurement procedures, application of price quotation or minimal value procedures.

Cause: Lack of controls ensuring that procurement requirements applied relative to contract size

Impact: Reduced competition and transparency result in failure to achieve value for money or potential financial loss.

Issue: Lack of projects for capital investments.

Cause: Lack of staff knowledgeable on project design and management's negligence to appropriate funds for contracting these services.

⁹ <https://www.transparency.org/country/KOS#>

¹⁰ 176 is the lowest rank meaning the most corrupt, while 36 is a high rank considering that 100 is the least corrupt while 1 is most corrupt in TI measuring methodology.

¹¹ <http://www.doingbusiness.org/data/exploreeconomies/kosovo>

procedures and violation of rights of economic operators and has issued 62 opinions and 25 pieces of advice on prevention of corruption in public procurement. (Kosovo Anticorruption Agency, 2016)

Bureau of Economic and Business Affairs in its Investment Climate Statements for 2016 published by United States Embassy in Kosovo, gives a general overview of Kosovo about its investment climate and notices that in 2016 the Assembly passed amendments to the Public Procurement Law mandating electronic procurement to improve transparency and reduce the risk of corruption. It notes that while the government seeks transparency, international companies competing in high-value public procurement projects have reported numerous irregularities. Some procurement managers in Kosovo's budgetary units have been indicted for corruption.

The report notices that few private-sector associations and non-governmental organizations serve as watchdogs or organize stakeholder input on regulatory processes.

The report in corruption section concludes that corruption is **most widespread in public procurement** and is recognized by both local

Impact: Lack of projects risks the quality of works and value for money and there is a risk that construction will cost more than planning.

Issue: Lack of bill of quantities

Cause: Lack of responsibility and sufficient controls by high levels of control.

Impact: This indicates weaknesses in needs identification, causes additional costs, budget changes and leads to delays in contracts execution.

Issue: Delays in implementation of capital projects

Cause: lack of controls to ensure that procurement procedures are initiated on time and implementation of contract timescale not monitored effectively. Failure to match projects' cash flow requirements with available funds

Impact: Delays in obtaining project benefits and pressure on next year budget due to timing of required payments

and international businesses as one of Kosovo's largest obstacles to attract investment.¹²

EU Commission has stressed its concern regarding the large number of contracting authorities¹³, which for the commission poses a high risk of corruption¹⁴. *This concern should be read in relation with the heading on the positive and negative sides of decentralization or centralization of public procurement at page 27.* EU stresses that risks and shortcomings continue to exist at all stages of public procurement (European Commission, 2016).

Issue: Non-adherence to the PPL requirements

Cause: Systematic weaknesses in procurement occurred because relevant officers avoided procurement procedures and guidelines

Impact: Potential favoring of or discrimination against Eos. Poor Value for money achieved and/or specified services not received

Although the recent amendments to the law on public procurement puts new mechanisms in place regarding the integrity of officers, nevertheless, EU stresses that the perception of corruption in public procurement remains prevalent and the enforcement of integrity rules remains insufficient. (European Commission, 2016). See page 25 for our take on integrity rules in public procurement.

Although the recent amendments to the law on public procurement puts new mechanisms in place regarding the integrity of officers, nevertheless, EU stresses that the perception of corruption in public procurement remains prevalent and the enforcement of integrity rules remains insufficient. (European Commission, 2016). See page 25 for our take on integrity rules in public procurement.

7.0 Cost of corruption

According to OECD, the direct costs of corruption include loss of public funds through misallocations or higher expenses and lower quality of goods, services, and works (OECD, 2015).

Those paying the bribes seek to recover their money by **inflating prices, billing for work not performed, failing to meet contract standards, reducing the quality of work or using inferior**

¹²<https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?dliid=254379&year=2016#wrapper>

¹³ To date there are 174 contracting authorities registered on the system

¹⁴ See heading (...) centralization vs decentralization. FOL also shares the belief that a highly decentralized procurement system leads to more corruption.

materials, in the case of public procurement of works. That results in exaggerated costs and a decrease in quality.

Although it is difficult to measure the exact cost of corruption in OECD countries, due to its hidden nature, it has been estimated that between 10-30% of the investment in publicly funded construction projects may be lost through mismanagement and corruption (COST, 2012),

The Construction Sector Transparency Initiative (CoST) estimates that “*annual losses in global construction through mismanagement, inefficiency, and corruption could reach USD 2.5 trillion by 2020*” (COST, 2012).

Within the European Union, corruption more generally is estimated to cost €120 billion per year (European Commission, 2014), which represents approximately 1 % of the EU GDP and represented slightly less than the annual budget of the EU in 2014, which amounted to €143 billion (European Commission, 2014). Regarding indirect costs, corruption in public procurement leads to distortion of competition, limited market access and reduced business appetite for foreign investors.

In Kosovo, there are no estimates of the cost of corruption in public procurement. It is a common perception that around 20% of tenders go to the pockets of governmental officials. Business usually translates this 20% in **inflating prices, billing for work not performed, reducing the quality of work or using inferior materials**. Use of inferior material o cover for loss in bribes that goes to government officials is considered the most common type of corruption in Kosovo. ^{15 16 17}

¹⁵ <http://archive.koha.net/?id=9&l=1589> “Asfaltohet rruga, prishet pas një muaji!”

¹⁶ <http://cms.koha.net/?id=9&l=38584> “Rruga e asfaltuar në Fushë Kosovë prishet një vit pas ndërtimit”

¹⁷ <http://www.gazetaexpress.com/lajme/ndodh-edhe-kjo-rruga-e-asfaltuar-para-dy-dite-prishe-ne-prizren-video-399017/>

8.0 OECD

Recommendation on preventing corruption

8.1 Integrity OECD Countries

What is integrity in the public procurement?

According to the OECD recommendations on the Council on Public Procurement in 2015, integrity in public procurement refers to:

“...the use of funds, resources, assets, and authority, according to the intended official purposes and in a manner, that is well informed, aligned with the public interest, and aligned with broader principles of good governance;” (OECD, 2015)

The integrity of actors in the procurement process may significantly reduce corruption risks. Integrity refers to upholding ethical standards and moral values of honesty, professionalism, and righteousness, and it is a cornerstone for ensuring fairness, nondiscrimination and compliance in the public procurement process. Recognizing the importance of integrity for good governance and trust in public institutions, countries apply ***national integrity standards for all public officials***, for example through ***civil service regulation*** or a ***generic code of conduct*** outlining the standards and expectations for good conduct of civil servants. Often, a dedicated government department is responsible for developing, updating and diffusing the code of conduct, and may provide tailored advice, guidance and practical examples supporting the implementation of the code.

Most common conflict of interest situations is related to personal, family or business interests and activities, gifts and hospitality, the disclosure of confidential information, and future employment. Consequently, the additional standards can include provisions on asset declaration

requirements, whistleblowing procedures, and protection measures for whistleblowers.

About conflict of interest management, all OECD countries surveyed in the 2014 '*OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection*' reported having policies, rules and procedures to manage conflicts of interest of public officials. **Integrity violations of companies may lead to permanent or temporary exclusion from public procurement.** In line with the EU legislation, there are mandatory (KRPP, 2016) debarment/exclusion rules in place in the EU Member States according to which bidders against whom final court convictions for corruption have been handed down are excluded from future tenders (European Commission, 2014a).

8.2 Kosovo

Kosovo has a code of conduct (CoC) in public procurement, most recently updated in 2016. The code of conduct is well written and aims to the highest morals of public procurement officials. According to the code of conduct: all public procurement officers, members of the commission for evaluation of offers and officers of PPRC, PRB and CPA have to take an oath. (KRPP, 2016)

The CoC is based on such principles as integrity, confidentiality, competence, and objectivity. The CoC requires that all public officers make a statement of interest, meaning that wherever there is a conflict of interest in a public procurement procedure, they should declare it. It

requires a clear division of labor so that officers do not sign papers where they are not required. It prohibits taking gifts and sharing confidential procurement information and also giving false or misleading information during the procurement process.

It forbids working with a business that is not registered in Kosovo and those who don't pay taxes. It lists all the scenarios where a gift can be accepted and those in which gifts have to be refused. It also defines what is a conflict of interest in the procurement process and how to avoid it. Furthermore, CoC gives clear indications where a public procurement process can be in violation of CoC which it calls **red flags**. Those can be a deviation from standard procedures, irregular invoices, loss of documentation, resistance from auditing, etc.

Although the CoC is well written and it puts a lot of measures in place, yet the monitoring mechanism is weak. There are also no reported cases where an official has been fired or excluded from public procurement due to the violation of CoC¹⁸. The PPRC annual report¹⁹ makes no mention of such cases,

¹⁸ FOL has sent email to PPRC to verify to ask for the number of disciplinary measures taken against public procurement officer for violating CoC, but has received no answer.

¹⁹ <https://krpp.rks.gov.net/krpp/PageFiles/File/Raportet%20Vjetore/2016/Raporti%20vjetor%202015%20Shqip.pdf>



BRIEF BOX - I

Code of Conduct in Public Procurement in Kosovo

Kosovo's Code of Conduct in Public Procurement was most recently updated in 2016 by Public Procurement Regulatory Commission.

The Code objective is to determine the essential values, ethical behavior standards and the main principles on public procurement. These principles in which the Code of Conduct is based are: integrity, confidentiality, ability-competence and objectivity.

The code also includes some behaviors conducts such as: the statement of interest (meaning that wherever there is conflict of interest in a public procurement procedure, they should declare it), the clear division of labor, confidentiality, prohibition on taking gifts and bribery, prohibition on working with business that are not registered in Kosovo and those who don't pay taxes, and efforts on creating a fair competition.

It also defines what a conflict of interest in procurement process is and explains the circumstances under which it

whereas EU Commission reports that enforcement of integrity rules remains insufficient (European Commission, 2016, p. 49). There are simple questions to be answered, such as what happens if an officer takes a gift who isn't supposed to take and no one reports it? What happens if a person does not declare a conflict of interest and no one else reports this? What happens if an officer violates the CoC and no one reports it?

It gives clear indications where a public procurement process can be in violation of Code of Conduct which it calls red flags that include but are not limited in: deviation from standard procedures, irregular invoices, loss of documentation, resistance from auditing, dictatorial style of management, etc.

Has the division for monitoring and oversight of public procurement in PPRC the necessary tools and capacity to prevent this from happening and to sanction when it happens?

Our research shows that only the heads of procurement offices are required to declare their assets and not the rest of the staff²⁰²¹. That should change because all officers are prone to corruption due to the high complexity and risks involved in the public procurement process. Declaration of assets by all procurement officers would also reinforce the CoC.

9.0 Centralization vs. Decentralization of public procurement

OECD considers that corruption in public procurement can both occur at the national (central) and sub-national (local) levels.

²⁰ http://www.akk-ks.org/sq/deklarimet?path=declaration_assets%2F2017%2FInstitucionet_e_Pavarura%2FKomisioni_Rregullativ_i_Prokurorimit_Publik

²¹ http://www.akk-ks.org/sq/deklarimet?path=declaration_assets%2F2017%2FKomunat%2FKomuna_e_Prishines

In one side, the advantages of centralization in public procurement are that it leads to large procurement volumes, which could reduce prices by achieving economies of scale as well as increasing competition. Furthermore, they reduce duplication, transaction costs, and increase certainty, simplicity, and uniformity, allowing for more focused delivery of policy goals (OECD, 2015, p. 142).

The disadvantage is that it can increase the risk of corruption since it increases the amount of money in the tenders. In unstable democracies and developing countries (*like Kosovo*²²), where independent institutions are fragile, when the size of tenders is big, so are the efforts from companies to influence the process. The bigger the tenders, it attracts big and influential companies/businesses. Such companies (*in the case of Kosovo many big companies are foreign*) higher realtors to try and bribe public procurement officials and politicians to sway the decision in their benefit.

On the other side, the advantages of decentralization in public procurement are that it may narrow the scope for corruption, in line with the assumption that politicians and public officials at subnational levels are more accountable to the citizens they serve. Voters may be better able to discern the quality of their leadership and the results they deliver. Likewise, local politicians and civil servants can be more in touch with specific needs and contexts of their constituencies. (OECD, 2015)

The disadvantage is that in subnational level (local level) there can be weaker governance capacity, which often translates into less developed auditing functions, limited legal expertise or low IT capacity, or closer community contacts between public officials and business representatives.

Both centralization and decentralization have advantages and disadvantages. Knowing the context of Kosovo, it is wise that CPA centralizes more and more products. The reason for this is that the existence of many contracting authorities makes it harder not just for auditing from general auditor but also for monitoring from civil society,

²² Author's note

media, and citizens. The close interaction between procurement officials and businesses is unavoidable with too many contracting authorities and too many procurement officers.

In 2011 a new law on Public Procurement was approved that terminated the then Public Procurement Agency (PPA) mandate and established Central Procurement Agency (CPA)²³.

All archives, personnel, and assets were transferred from PPA to CPA. Before it changed the mandate, CPA was an independent agency that issued decisions and opinions on public procurement procedures. Nevertheless, it also procured goods on a central level with the request of the government²⁴.

To date, there is no analysis what kind of impact has the change of mandate from PPA to CPA brought. EU Commission in its 2016 country report draws the attention about high number of contracting authorities by saying that “***the plethora of entities (174 contracting authorities) brings an increased risk of corruption***” hinting that the country needs to move toward more centralization

Lëvizja FOL has published in November 2016 an investigation about a violation of the law on public procurement from the then minister of finance, Abdullah Hoti, who refused to sign three contracts on the value of 12 Million Euro. The contracts were signed by the head of CPA according to the law in force, but the minister refused to sign them without any reasonable justification and used his authority to intimidate the head of CPA and yielded influence over PPRC, Audit General and PRB²⁵.

Such cases where independent agencies and state agencies can bend towards political influence risk the integrity of those institutions and don't favor centralization of public procurement. But the alternative is decentralization and too many contracting authorities, which is more vulnerable to all kinds of influence. What is needed is more integrity rules, whistleblowing protection and more independent overseeing and

²³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

²⁴ <https://aqp.rks-gov.net/sq/raportet>

²⁵ <http://levizjafol.org/folnew/wp-content/uploads/2016/11/Raporti-FINAL.pdf>

auditing. Furthermore, in cases where undue influence is yielded over independent agencies, there should be an investigation by the prosecution and sanctions from justice must follow. This is the best deterring and preventing mechanism.



BRIEF BOX - II

Central procurement agency in Kosovo

The Central Procurement Agency (CPA) is an independent executive agency whose key function is to conduct centralized procurement procedures for central and local level.

The following is a list of items that will be procured centrally by CPA. This list has been approved under the Administrative Instruction NO. 03/2017. Contracting Authorities that are included in the central purchasing list, are not authorized to develop procurement procedures for these items:

- Supply of fuel
- Supply of copy paper
- Supply of expendable office material
- Supply of cleaning material, tools and agents
- Supply of food products and services for food provisions
- Supply of airplane tickets
- Supply of tires
- Supply of IT equipment
- Services of photocopy
- Supply of car oils
- Printing of editions

Source: https://aqp.rks.gov.net/Uploads/Documents/Njoftim%20per%20Autoritetet%20%20Kontraktuese%20Nivel%20qendror%20dhe%20Lokal_wvgauoukxs.pdf



BRIEF BOX - III

Slovakia

The Ministry of Interior acts as the central purchasing body for commonly available goods, services and works. The MoI operates an online platform, the EKS, which includes an e-market, dynamic purchasing system and statistical data tracking system.

The state, municipalities, regional administrations, as well as the organisations managed by them will be obliged to make purchases through the electronic marketplace if the value of the goods, services or construction works exceeds €1,000 and amounts to €134,000 in the case of the state, or €207,000 in the case of other procurers. In construction, the limit is €5,186,000.



BRIEF BOX - III

Central procurement in State of Louisiana

The Office of State Procurement (OSP) serves the agencies and people of Louisiana by ensuring that the state's contracting and purchasing activities are conducted legally, fairly, and efficiently.

The following is a list of items that will be procured centrally by OTS. This includes, but are not limited to:

Computer hardware, including maintenance for:

- Enterprise Server computer and peripherals (mainframe)
- Intel File & Application Servers and peripherals
- Personal Computers and peripherals (including desktops, laptops, monitors, printers, scanners, Personal Digital Assistants (PDAs) , Tablet/Slate Devices such as iPads and other tablet Smart Devices)
- Personal Computer-Assisted Design and Drafting (CADD) workstations and peripherals
- Geographic Information System (GIS) workstations and peripherals
- Computer Projectors
- Any other computer systems and/or communications device and their peripherals (including networking, wireless access points, disk drives, monitors, video conferencing equipment, etc.)
- Computer applications, systems, software, and maintenance, whether developed in-house or purchased.
- Any type of contract involving the delivery, support, or IT consulting services regarding any of the above.

There are some consumable or specialty items which may be required only by a specific agency which will not have to be procured centrally by OTS and the agencies may procure those items themselves.

CHAPTER - II

10.0 Transparency - A Case Study

Public procurement in Slovakia vs Kosovo. Governing Structures, Accessibility and Transparency

10.1 Transparency

Transparency is a widely used word today in almost every aspect of governance. The idea surrounding the word transparency about the government is that it assumes that citizens are informed about what is being done on their behalf. That is an honest and sincere assumption about transparency in governance, the idea that there is nothing to hide from citizens, the idea that the business is being done in the light of the day and to the best interest of the citizens.

With a varying degree from developed to less developed countries, we know that this is not the case, that transparency is a word that those in the high office sometimes fear the most. That is because not every business is being done in the light of the day and with best intentions.

Big deals with large sums of money are done behind closed doors and dark rooms somewhere late at night in a far restaurant or a hotel where the interests of citizens are last concern.

In Kosovo, we have witnessed such officers from high and low, we have seen how they used all their power entrusted by citizens to enrich themselves and their relatives.

This has to stop.

Now, when more than 90% of Kosovo citizens have access to the internet, it is time to open up and bring light to government undertakings.

Transparency is needed in every sector, not just in public procurement, but it is the public procurement who needs to be open urgently.

From small to big contracts, public procurement manages with more than 400 million of euros every year. A considerable percentage of that money often ends up in the pocket of corrupt officials and politicians who use their influence to profit for themselves, their businesses and their relatives in a long chain.

So, with transparency, we understand the ability and possibility of citizens to access and know almost everything that they government does on behalf of them, from simple notices for a change of colors of the walls in a small office in a remote village to big contracts on building highways.

All procurement plans, notices, criteria, contracts, payments, and invoices should be open for the public to see and oversee. If there is a health director somewhere who refuses to supply the local healthcare center with clean towels but spends thousands of euros in car rent and car wash, then citizens should know about him. If there is a mayor who spends all tax money on asphalt just so that a relative of his/her who hides behind some business, benefits from such contract while schools don't have a heating system during winter, then parents should know about that.

There is nothing to lose from being transparent and open towards citizens, the only ones who lose are those who misuse taxpayer's money.

10.2 Transparency in public procurement

The area most prone to corruption is public procurement. That is because officials working in public procurement can influence the process in which companies are awarded contracts from taxpayer's money in many ways, some of those already discussed above. Such influence can be yielded by manipulating the criteria that favor one company over the others, share of internal information with the business that can give one company an advantage over the others, intimidation of companies that are not willing to pay bribes to politicians and influential individuals in high office, request of unrelated and unnecessary documents and criteria to disqualify certain companies that do not pay bribes.

Those and many other corrupt activities which can result in the awarding of the contract to those who have bribed the officials or who have agreed to share part of their profit with them.

Knowing the potential for corruption, many countries have taken efforts to bring transparency in public procurement by opening for the public the process of awarding a public contract.

Transparency in public procurement varies across countries depending on the level of corruption and the level of trust in the institutions. In countries where there is low trust in public institutions, there is a need for more transparency and more oversight, while in those where public institutions have a strong image and strong faith by citizens, transparency is not a big concern.

As shown by [UNDP Reports, through public pulse](#), Kosovo is part of the countries with low trust in public institutions, especially those in public procurement, hence the need for transparency is urgent.

According to OECD, transparency in public procurement not only promotes accountability and ensures access to information, but it also serves an important role **in leveling the playing field for businesses**

and allowing small and medium enterprises to participate on an equal footing (OECD, 2015).

In this report, we analyze transparency in Kosovo by comparing it to Slovakia, a country that has recently introduced full transparency in public procurement due to a high level of corruption and distrust in institutions.

11. Kosovo

Article 120 of the Constitution of Kosovo states that: “*Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency, and **transparency.***”

Kosovo had the law on access to official documents since 2003. The law was repealed and replaced in 2010 with the ‘law on access to public documents Nr. 03/L-215’.

The new law offers passive transparency or transparency on demand, meaning that government or any public authority will not offer access to documents unless someone asks for it. This approach is considered discouraging because it does not offer information in real time when it is needed, but it can delay the information for a month, which in some cases can lose its relevance.

In the digital age, transparency means having all the information online, in a click of a mouse or a touch of the screen. Transparency can no longer mean a process where a citizen or institution files an official request and waits a month until it receives such information. Such transparency is bureaucratic and is designed to delay information and make it harder to access.

From a legal point of view, nothing stops institutions in Kosovo from offering active transparency or publishing data in an open and readable format through their websites. Furthermore, the law on access to public

documents requires that all institutions publish **all publishable data** on their websites. The meaning of the phrase ‘*all publishable data*’ should be reviewed by the meaning of transparency on public expenditures, given by constitution of Kosovo. See heading “*Transparency in public procurement, a legal analysis, page 90*”

Given that all institutions have websites where they can publish such information it is not clear why they don’t do that.

11.1 Governing structures in public procurement in Kosovo

Being in its first steps of implementation, the legal framework surrounding public procurement in Kosovo still needs to be amended, especially the dispositions regarding transparency.

In Kosovo, procurement bodies operate either under Kosovo Assembly or Ministry of Finance. Main institutions are Public Procurement Regulatory Commission (PPRC), Procurement Review Body (PRB) and Central Procurement Agency (CPA).

Central Procurement Agency, who operates within the Ministry of Finance, is the central contracting authority for purchasing and procuring goods and services in central level. The main competence of the CPA is to procure centralized goods and services and joint activities for public institutions in Kosovo²⁶.

In Slovakia, which is our case study, such function is carried by the Ministry of Interior who acts as the central purchasing body. This ministry runs the e-market online platform, which represents a dynamic system of goods and data, and its main goal is to increase transparency in public procurement and to promote fair and transparent competition.

²⁶ Law No. 04/L-042 on Public Procurement in the Republic of Kosovo. Central Procurement Agency.

Similar to the [Procurement Review Body](#), in Slovakia operates the [Antimonopoly Office](#), which has more competencies and a wider scope of activities regarding public procurement. PRB in Kosovo is an independent entity responsible for reviewing the procurement process. The main competencies of PRB consist on acting in any situation where there is a breach of Public Procurement Law. In such cases, PRB has the authority to request access to data, information or documents from companies or public authorities to investigate or proceed with reviewing the certain procurement activity. PRB has the authority to issue an order that renders a concluded and signed contract ineffective if it has been concluded without prior publication by the Public Procurement Law, or if the signing of the contract was done before the expiry of the time limit mentioned in this law²⁷.

11.2 E-procurement

According to the Public Procurement Law of Kosova No.04/L-042, the Public Procurement Regulatory Commission (PPRC) is responsible for the overall development, operation and supervision of the public procurement system in Kosova. One of the functions is to establish and maintain an information website which provides to the public unrestricted **access** regarding all information concerning Public Procurement in Kosova. (Law.No.04/L-042).

In 2014, financed by the World Bank through the Ministry of Finance in Kosovo, [INFODOM](#), a Croatian company in partnership with [KOMTEL](#), a Kosovar company, was contracted to establish for the first time an electronic procurement platform, called '[e-procurement](#).' By September 2016, e-procurement was available for large budgetary institutions, and by January 2017 it was open for all contracting institutions. It is reported that until April 2017 there were 159 contracting authorities registered with 4200 users and 1700 procedures being completed since its launch.²⁸

²⁷ Law No. 04/L-042 on Public Procurement in the Republic of Kosovo. Procurement Review Body.

²⁸ Safet Hoxha, Chair of PPRC, participant in roundtable “e-procurement in Kosovo – Challenges and Opportunities”. April 25, 2017, Villa Germia, Pristine.

E-procurement is one of the biggest steps toward transparency on public expenditures. The website has the potential to be developed further and offer a wider transparency. We consider that the current format of the e-procurement falls behind regarding transparency when compared to other countries, especially to Slovakia, which is our case study in this report.

Run and managed by the Public Procurement Regulatory Commission (PPRC), this platform offers the following:

- a) Contract notice
- b) Contract signing notice
- c) Contract award notice
- d) Cancellation notice for the procurement activity²⁹

As a non-registered user, this platform offers limited information for each contract such as the type of contract, buyer, estimated amount, dates and number and upon download on PDF format offers the complete call with selection criteria. However, you can only have full access to the tender file, if you are a registered user, specifically only if you are registered as an economic operator.

While using this platform, the user faces several difficulties. Except the fact that this platform is not updated frequently, several contracts are not presented correctly regarding contract amounts.

Homepage allows the user to choose between the categories including e-notices for procurement and sales and awarded contracts. The Contracts Notice that is accessible to the public contains information regarding the number of procurements, contracting authority, type of contract and the amount of the contract. However, upon selecting a contract, the whole tender file is not available for the non-registered user. The screenshots below show what this platform offers, when is an account needed and what information is provided to the public. The screenshots also include an example how an awarded contract is presented to the user.

Awarded contracts lack detailed information also. Except for the list of institutions (Contracting authorities) and the usual information as the

²⁹ <https://e-prokurimi.rks-gov.net/Home/default.aspx>

name of the supplier and the other basic information, the platform does not offer more inside information. In Slovakia a non-registered user has access in the history of the supplier and other details that link the supplier with the work contracted for.



Screenshot 1: E-Procurement homepage

Njoftim - B05 Njoftim per Kontrat

Hape: [Shqip](#) [Ueb faqja](#) [Dokument PDF](#)

Bleresi	MINISTRIA E INFRASTRUKTURES
Kodi Numri	2017/205-17-2871-S-2-1/B05-0006071
Emri/Adresa	Ndodhja e miratimit në rrugën Nacionale N25 – segment: Besi – Podujevë, Lot 5 – Km: 18+770 (në "qershat")
Lloji i dokumentit	B05 Njoftim per Kontrat
Lloji i kontratës	5 Pune
FPP	45000000-7 Pune ndërtimi
Lloji i procedurës	1 Procedurë e hapur
Vlera e parashikuar	341.000.00
Afati për dorëzimin e ofertave/kërkesës për pjesëmarrje	04.07.2017 14:00
Data e njoftimit	19.06.2017
Data e dërgimit	14.06.2017
Ligji	LIGJI Nr. 044-042 PER PROKURIMIN PUBLIK NE REPUBLIKEN E KOSOVES
Dorëzimi elektronik i ofertave	Po

Njoftimet të tjera në procedurën e njëjtën të prokurimit :

Lloji i dokumentit	Data e publikuar	Data paraqitur
B05 Njoftim per Kontrat	19.06.2017 00:00:00	14.06.2017 00:00:00

[Shikuar gjatë "Dosja tenderit"](#)

[Dosja e Tenderit](#)

21. qershor 2017.

KARTELA E KONTRATËS ZK104-17-982-2-2-1/C2

PER PROKURIM

Reference: ZK104-17-982-2-2-1
Titulli: Shërbime të dizajnit - ritender

TE DENAT E KONTRATËS

Reference: ZK104-17-982-2-2-1/C2
Ane kontratës: EUROPRINTY SH.P.K.
Tipi kontratës: Kontratë me urdhërat
Vlera e kontratës (pa TVSh): 8.954,40
Status: Në përgatitje
Data e miratimit: 07.06.2017
Data e mbarimit:

Screenshot 2: Notices are very short in the machine-readable format; the rest should be download. There is no legend that shows what each notification means

11.3 Kosovo Business Registration Agency


Another important institution about the transparency in public procurement is the Kosovo Business Register Agency (KBRA). According to the law No. 04/L-006, the Ministry of Trade and Industry administers the business registration system since September 13, 2001. Kosovo Registry of Business Organizations and Trade Names was established based on Regulation 2001/6 and Administrative Order 2002/22.


Business Registration Agency carries out the registration of all business organizations including the foreign business organization by the Law No.02/L-123 on Business Organizations and the Law No.04/L-006 amending and supplementing of the applicable Law on Business Organizations. It provides information and cooperates with the Statistical Office, Tax Administration, Customs, Police Service and other Agencies.

This is a crucial agency when it comes to transparency in public procurement. Although no one links the KBRA with public procurement, FOL believes that PPRC should cooperate with KBRA³⁰ to bring full transparency on the businesses who participate in public procurement. When it comes to doing business with the state, the information that is available in this agency is crucial to identify the company address, authorized persons, and owners.

According to our research, KBRA is far from offering minimum transparency about the companies that do business with the state. In fact, because there is no register of public sector partners, KBRA does not make a distinction between businesses that participate in public procurement and those that don't. As we will show below, compared to Slovakia, KBRA needs major reforms to achieve transparency.

³⁰ Such cooperation would include at least Kosovo Assembly, PPRC, Ministry of Trade and Industry – KBRA, Ministry of Finance and Ministry of Justice.





REPUBLIKA E KOSOVËS
MINISTRIA E TREGTISË
DHE INDUSTRISË

ARBK AGJENCIA E REGJISTRIMIT
TË BIZNESEVE TË KOSOVËS

Webmail | Harta e faqes | Shqip | English | Serbian

Ballina

Agjencia

Sektori i Pengut

Legjislacioni

Dokumentet

Raportet

Media

Kontakti

Emri i Biznesit

Regjistrimi i Biznesit

- > Llojet e Bizneseve
- > Regjistrimi i Biznesit të ri
- > Regjistrimi i ndryshimeve në biznes
- > Kërkesa për shuarje të biznesit

Numri i Biznesit

Numri i Fiskal

ID e Pronarit

Aktiviteti Kryesor

Aktivitetet Tjera

[Redacted] K.	
Lloji Biznesit	Shoqëri me përgjegjësi të kufizuar
Nr Regjistrimit	[Redacted]
Nr Fiskal	[Redacted]
Nr Cerfitikues KTA	
Nr Punëtorëve	65
Data e konstituimit	2012.02.13
Data e Aplikimit	2003.02.21
Komuna	[Redacted]
Adresa	Zahir Pajaziti
Telefoni	039 433 411
E-mail	
Kapitali	1030000.00
Statusi në ATK	//

Personat e Autorizuar

[Redacted]	Aqj. Regj.
------------	------------

Personat e Autorizuar

[Redacted]	Agj. i Regj.
[Redacted]	Drejtor

Pronarë

1	[Redacted]
---	------------

Aktivitet/et

1083	Përpunimi i çajit dhe kafes	Primarë
3511	Prodhimi i energjisë elektrike	Tjera
3103	Prodhimi i dyshekëve	Tjera
1084	Përpunimi i erëzave dhe salcave	Tjera
1392	Prodhimi i artikujve të tekstilit të konfeksionuar përveç veshjeve	Tjera
1399	Prodhimi i tekstileve të tjera p.k.t	Tjera

e-Shërbimet

-
-

Modelet e Statuteve

- > Marrëveshja për themelim
- > Statuti i një Shoqërie me përgjegjësi të kufizuar
- > Statuti i një shoqërie akcionare

Formularët-A

- > A-0 - Regjistrim Fillestar
- > A-0 - Gjuhë turke
- > A-1 - Ndërrim të Emrit
- > A-3 - Ndërrim Adrese
- > A-4 - Ndërrim të tipit
- > A-5 - Ndërrim të numrit të punëtorëve
- > A-6 - Ndërrim të kapitalit

Screenshot 3: Website of the Kosovo Business Registration Agency

In the illustration above we give a screenshot of what does the KBRA offers. The company taken as an example in our case, registered in KBRA, is [REDACTED]. As seen in the screenshot 3 KBRA offers limited access to the company owners. Under ownership, it gives only a name of a person.

From those records, we don't know who is behind the company. It most cases when it comes to big corporates it does not give names, nationality, and address of the owners and beneficiaries, and whether someone from owners, management, and beneficiaries is a public official or not. Given the fact that companies do business with the state, thus taxpayers money, it is only fair that citizens know who the owners are, thus who benefited from taxpayers' money.

Despite not showing the beneficiaries, KBRA does not offer any history on the change of management, ownership, and beneficiaries that would make it possible for the citizens to check the legality of the business and whether someone from the past in this company was a public official. As we will see below on the Slovakia case, all such questions have answers on their online system.

11.4 Tax Administration of Kosovo

In any country, the tax administration agency is of extreme importance. Application, collection, and policies on taxes are the cornerstones of any healthy country. The belief that everyone pays their fair share is what creates a sense of justice and solidarity in the country and society. Thus, having a transparent taxation system is key to creating that sense of security and the feeling that you are not being robbed blind, but you have the right and possibility to follow your money and see where they are being invested, see how they are being returned for the benefit of the society.

Kosovo falls short when it comes to the transparency on taxation. The title of this report is rather purposive. If citizens have a duty to pay taxes than institutions have a duty to disclose information on how those taxes are

being spent and who benefits from them. So far citizens don't have the possibility to check companies that do business with the state; to check if they are paying their fair share of taxes; to check who are the beneficiaries; to check and be sure that no one in high office is profiting illegally from their taxes.

Kosovo Tax Agency does not offer the possibility to access crucial financial information about companies such as the yearly financial statements of companies, especially those that do business with the state and other important information. Directory of Planning and Analyzing within the Tax Administration collects annual financial statements from the registered businesses in Kosovo. Although this Directory has confirmed via e-mail that it has this information, such information is not available online for the public or on the website of the Tax Administration, whereas this particular Directory does not have any official website. As we will see below, Slovakia offers such possibility online, in real time and up to the date.

12.0 Slovakia

In 2000, Slovakia adopted the freedom of information Act ³¹. Its assumption rested on openness by demand, meaning that citizens could ask and get any information on the work of government, except those that would undermine privacy or national interest. (TI Slovakia, 2015).

In 2010, Slovakia amended the freedom of information act by switching from passive transparency (transparency on demand) to active transparency (automatic transparency). The government would publish its contracts, receipts, and orders automatically online, without anyone asking for them. Moreover, no government contract would come into effect **unless it was published online**³². The Slovak Republic, [Act No.](#)

³¹ Comparable to Kosovo's Law on Access to Public Documents

³² <http://www.transparency.sk/wp-content/uploads/2015/05/Open-Contracts.pdf>

[546/2010](#) Coll. supplementing Act No. 40/1964 requires all public contracts, with certain limited exceptions, to be published online. To avoid secret contracts, any unpublished contracts are declared to be unenforceable³³. The change applied to all institutions who decided for contracts dealing with public money, from central and local government bodies to institutions or companies set up by them. (TI Slovakia, 2015).

“The availability of data has lowered the barriers to entry for participating in the oversight process. This has enabled much greater public participation in uncovering suspect procurements. Before the reforms, exposing corruption relied on whistleblowers alerting journalists or watchdogs of suspicious proceedings. Now more tips come from local activists and individuals. For example, teachers, highlighted information about large Ministry of Education procurements for flowers and alcohol and the Ministry of Finance conducted an audit.”

In Slovakia, the fight for openness was started at the municipality level. In 2007, **Sala**, a town of 25 thousand people in south-western Slovakia, started publishing contracts and receipts online as the first municipality in Slovakia, three years later a north-central city of **Martin**, with a population of 60 thousand, adopted the same approach of active transparency. In 2009, two years after municipality of Sala adopted its active contract transparency approach, two groups of opposition MPs proposed to copy the policy on the national level.

There were debates among political parties, with some opposing the openness because people would misuse information, but despite opposition, the fight was won.

With some exception of concerns on the trade secrets (know-how), in Slovakia, business associations were largely supportive of the new legislation, even though they would have to disclose the contracts as counterparties to the state. They saw transparency as an effective tool against corruption, which has been a big worry for entrepreneurs.

Trade secrets issue was a big deal at the beginning, but now it is not anymore. Companies themselves declare what is a trade secret according

³³ <http://www.opengovguide.com/country-examples/in-slovakia-government-contracts-are-published-online/>

to the law and the authorities have to review and approve whether they are true and decide what is trade secret according to the law. Eventually, the trade secret issue faded away as companies didn't have such big trade secrets to hide from the public after all³⁴.

The Slovak example of mandatory open contracts has been repeated in the Czech Republic and Slovenia. (TI Slovakia, 2015)

12.1 Governing structure in public procurement in Slovakia

Slovakia is considered amongst the first places of Central Europe that have arranged the legal framework on public procurement in line with European Union directives. High level of corruption that characterizes this sector made transparency in public procurement a priority for Slovakia.³⁵

Procurement system in this country is relatively centralized, since contracting authorities (in central level, regional or local) deal with some contracts, while other contracting authorities shall buy goods or services from the Ministry of Interior, which acts as the central purchasing body³⁶. The Ministry of Justice has a say in the public procurement system through the Department of Sectorial Strategy, Budget, and Administration. Through this department is organized public procurement and it also drafts of methodological guides on public procurement³⁷.

The Public Procurement Office (PPO) of Slovakia, is an independent body and at the same time, it represents the central institution of state administration for public procurement in Slovakia. Similar to the Public

³⁴ Interview with Gabriel Sipos, executive director of Transparency International Slovakia.

³⁵ http://ec.europa.eu/regional_policy/sources/policy/how/improving-investment/public-procurement/study/country_profile/sk.pdf

³⁶ http://ec.europa.eu/regional_policy/sources/policy/hoë/improving-investment/public-procurement/study/country_profile/sk.pdf

³⁷ <http://wwwold.justice.sk/a/ëfn.aspx?pg=h052&htm=ho/h05/sdeaa.htm>

Procurement Regulatory Commission (PPRC) in Kosovo, the main task of this institution is to control the compliance of public procurement procedures with laws in force. Furthermore, this Office deals with public procurement oversight, **fines for administration wrongdoings**, publishes documents in the electronic system to enable electronic communication between suppliers and contracting authorities.

Unlike general auditor in Kosovo who doesn't have any special cooperation with PPRC, in Slovakia, the Supreme Audit Office serves as the main body of external control that reviews procurement procedures and their compliance with laws, and issues recommendations for the Public Procurement Office.

Supreme Audit Office issues orders and takes actions when it comes to violation of rules:

“Audited entities shall be obliged to take measures to remedy weaknesses and shortcomings identified by the audit and to submit them to the Office within the time period specified by the Office. They shall be obliged to submit written follow-up report of the fulfillment of these measures.”

“If any corruption or misapplication, respectively ineffective use of public funds occur due to incorrect procedures in the public procurement, the Office reports it to bodies active in penal proceedings.”

Compared to the Procurement Review Body, in Slovakia operates the Antimonopoly Office, although it has a broader and wider scope of work regarding public procurement. The Procurement Review Body is an independent review body responsible for the implementation of the procedures for reviewing the procurement process. The main competencies of the PRB have to do with taking actions in case of possible breaches of Public Procurement Law. In such cases, PRB has the authority to request access to data, information or documents from companies or public authorities to investigate or proceed with reviewing the certain

procurement activity. PRB has the authority to issue an order that renders a concluded and signed contract ineffective if it has been concluded without prior publication by the Public Procurement Law, or if the signing of the contract was done before the expiry of the time limit mentioned in this law.

Antimonopoly Office in Slovakia operates as an independent central body within the state administration. The main task of this body is the protection and promotion of competition. In the same time, this office intervenes against prohibited practices with the main focus on abuse of position by economic operators and control of large amount transactions. This office also has the authority to sanction state or local administration bodies in case there has been any advantage towards an economic operator, or there was a limitation of fair competition in any form.



FACT BOX - II

Governing bodies

Slovakia VS Kosovo

Central Purchasing bodies:

Ministry of Internal Affairs	Central Procurement Agency (Ministry of Finance).
------------------------------	---------------------------------------------------

Regulatory bodies

Office of Public Procurement. Additional function: issues fines	Public Procurement Regulatory Commission PPRC. Rules Department
--------------------------------------------------------------------	--------------------------------------------------------------------

Assisting bodies

Supreme Audit Office Additional function: Main body for external monitoring;	
---------------------------------------------------------------------------------	--

Protection/Review bodies

Antimonopoly Office Additional function: Protection and Promotion of Competition	Procurement Review Body
-------------------------------------------------------------------------------------	-------------------------

Organizing Body

Ministry of Justice Additional function: Organizes Public Procurement and compiles methodological guides on Public Procurement.	Public Procurement Regulatory Commission (PPRC)
------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------

12.2 E – Procurement

Founded by Act No. 63/1999 Coll. on Public Procurement, the Office of Public Procurement in Slovakia (UVO), was given the competence to run and make available examples of electronic documents, special software meeting the conditions for electronic communication and other elements needed to ensure electronic communication in the procurement of supplies to the contracting authority and contracting entity on its internet site³⁸.

UVO in its platform publishes open contracts and the possibility to download related documents for each contract. In the section called Public Procurement Bulletin, the platform offers publications with contracts and short profiles for the buyers.

The contracts are presented in an open and machine-readable format also with pdf attachments, thus making it possible for the user to reuse the data or to just download it.

EVO is the electronic platform Slovakia uses for public procurement tenders, which is the equivalent of e-procurement in Kosovo. It is maintained centrally by the Office of Public Procurement. Access is granted by each contracting authority or utility on request. Each organization created in EVO has its space and own role (local admins, consultants, council & auditor). Within one system there are several organizations with their spaces (system in system). Organizations cannot see or have access on each other dossiers³⁹.

EVO platform shows the list of contracts, while also offering categories such as Auction Overview and Tender Overview. The users are possible participants who can read more detailed information on the selected contracts.

³⁸ http://www.kozbeszerzes.hu/data/filer_public/ed/bo/edb03598-371a-4122-b4ba-37c3fdfef105/emilia_gregorova_angol1.pdf

³⁹ http://www.kozbeszerzes.hu/data/filer_public/ed/bo/edb03598-371a-4122-b4ba-37c3fdfef105/emilia_gregorova_angol1.pdf

Registered users can upload tender documents or submit questions, whereas available for public (without registration) is an overview of all available tenders, tender notice details, tender deadlines and the possibility to log in to tender. The difference between EVO in Slovakia and e-procurement in Kosovo on the call for tender notice is that in Slovakia the criteria are machine-readable and which can be reused to build information, while in Kosovo they are not.

The illustrations below show the open contracts as published in the UVO platform

LEGENDS

- = Prior Information Notice / Periodic Indicative Notice
- = Contract Notice / Call for Tender (Prequalification)
- = Qualification System (QS)
- = Dynamic Purchase System (DPS)
- = Periodic Indicative Notice / Call for Competition
- = Contract Notice / Call for Tender (Open Procedure)
- = Contract Notice / Call for Tender (Restricted Procedure)
- = Contract Notice / Negotiated Procedure
- = Competitive Dialogue
- = Contract Notice / Restricted Procedure (QS)
- = Contract Notice / Negotiated Procedure (QS)
- = Contract Notice / Restricted Procedure (DPS)
- = Contract Award Notice / Information on Contract Signature
- = Cancel Tender Notice

STATE	CONTRACTING AUTHORITY/UTILITY	LIMIT	CONTRACT NO.	CONTRACT NAME	TIME LIMIT
	Úrad vlády Slovenskej republiky	BL	01.01	Dodávka kytic, vencov a kvetovno	
	Špecializovaná nemocnica sv. Svorada Zobor, n.o.	SL	01.03	Mlieko pre špecializovanú nemocnicu	
	Špecializovaná nemocnica sv. Svorada Zobor, n.o.	SL	01.04	Mliečne výrobky pre špecializovanú nemocnicu	
	Druhá Testovacia	BL	01.07	test ISZU podlím VS 01	
	Ústav na výkon väzby v Žiline	SL	01.27	Bravčové mäso - zákazka s nízkou cenou	
	Ústav na výkon väzby v Žiline	SL	01.28	Hovädzie mäso - zákazka s nízkou cenou	
	Ústav na výkon väzby v Žiline	SL	01.30	Pšeničná múka a ryža - zákazka s nízkou cenou	
	Ústav na výkon väzby v Žiline	SL	01.31	Zemiaky - zákazka s nízkou cenou	
	Ústav na výkon väzby v Žiline	SL	01.32	Rastlinné tuky - zákazka s nízkou cenou	
	Úrad vlády Slovenskej republiky	AL	02.01	Bezhotovostný nákup pohonných látok	
	Polhonákup TATRY, a. s.	AL	03.09	Nákup a naskladnenie potravín	
	Polhonákup TATRY, a. s.	AL	03.13	Nákup a naskladnenie potravín	
	Ministerstvo obrany SR, Posádková správa budov Martin	AL	04.01	Dodávka tuhých palív	
	AGROPLANT	BL	05.01	Kolesový traktor	24. 6. 2014
	AGRO ŽITAVA, s.r.o.	BL	05.01	Kolesový traktor a dvostranný sklápač	18. 6. 2014

Screenshot 4: Notice the legends on the left. They show what is offered on the EVO without registration.

and the non-registered user/public view of the EVO platform.



Corrigendums

corrigenda2 7.1 IDES test by VS 01

INTERNAL EVO

TENDER OVERVIEW

AUCTION OVERVIEW

NEWS

HOW TO REGISTER

GUIDES FOR CONTROL
AUTHORITIES

GUIDES FOR CANDIDATES

FAQ

ERROR REPORT

NOTICE OF CONTRACT AWARD

Form: Annex. 7 Pursuant to Decree No. 530/2009 Coll.

SECTION I: CONTRACTING

I.1. Name and address of contact point (s)

SECOND TEST

ID: 00000002

The unrealistic X, 850 00 Bratislava - city district Petržalka
Slovakia

Contact point (s): Test IDES

Contact: test IDES

Phone: +421 287 654 321

Fax: +421 287 654 321

Email: evo1@uvo.gov.sk

I.2. Type of contracting authority and main activity or activities

I.2.1. Type of contracting authority

Ministry or any other national authority, including their regional or local sub-divisions

Classification procuring entity under the Act:

§ 6 par. 1 point. a)

I.2.2. Main activity or activities

General public services

I.2.3. The contracting authority is purchasing on behalf of other contracting authorities

Not

SECTION II. OBJECT OF THE CONTRACT

II.1. description

II.1.1. Title attributed to the contract

IDES test by VS 01

II.1.2. Type of contract and location of works, place of delivery or of performance

goods

purchase

Main place of delivery: test IDES

NUTS code (for the selected category)

SK01

II.1.4. Short description of the contract or purchase (s)

IDES test

II.1.5. Common (CPV)

Main object

Main vocabulary: 03111100-3

II.2. Total final value of contract (s)

II.2.1. Total final value of contract (s)

Value 1 000,0000 EUR

including VAT

VAT rate (%): 23

SECTION IV. APPROACH

IV.1. Type of procedure

IV.1.1. Type of procedure

public tender

IV.2. Award criteria

IV.2.1. Award criteria

Lowest price

IV.2.2. Use the electronic auction

Yes

IV.3. administrative information

IV.3.2. Previous publication (s) concerning the same contract

Yes

If yes (please fill in the appropriate box) notice of the contracting authority

Notice number in the VVO: 12611-MST, no VVO 203/2012 of 19/10/2012

SECTION V: AWARD OF CONTRACT

Title: test IDES

V.1. Date of contract

21/10/2012

V.2. The number of submitted bids

10

V.3. Name and address of the supplier, with whom contracted

IDES Test

ID: Test IDES

test IDES test test IDES IDES

Slovakia

Phone: +421 123456789

V.4. Information on value of contract

Initial estimated total value of the contract

Value: 1 000,0000 EUR

Without VAT

Total final value of contract

Value 1 000,0000 EUR

including VAT

VAT rate (%): 23

V.5. It is likely to be subcontracted

Not

SECTION VI. ADDITIONAL INFORMATION

VI.1. The contract relates to a project and / or program financed by EU funds

Not

VI.2. More details

IDES test

VI.3. Date of dispatch of this notice

22/10/2012

Screenshot 5: Detailed information on the awarded contract in a machine-readable format.

Private zone | Contacts SK EN

UVO ÚRAD PRE VEREJNÉ OBSTARÁVANIE

Vyhľadať SEARCH

[Home](#)
[About office](#)
[The contracting authority / entity](#)
[The candidate / tenderer](#)
[Legislation / methodology / Supervision](#)
[information service](#)

introduction > Journal

Communication 1200 - in US [← BACK](#)

Contents

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Bulletin no. 14/2014 - 01/22/2014

NOTICE OF CONTRACT AWARD
Form: Annex. 3 in accordance with Implementing Regulation (EU) No. 842/2011

Type of procedure: Restricted
Type of contract: Services

SECTION I: CONTRACTING

I.1) NAME, ADDRESSES AND CONTACT POINT
The Ministry of Interior of the Slovak Republic
 National ID: 00151866
 Pribinova 2, 81272 Bratislava - Nové Mesto
 Slovakia
Contact point (s): Ministry of Interior of the Slovak Republic Pribinova 2, 812 72 Bratislava
 Contact person: Ing. Alena Polakovičová
 Phone: +421 250944841
 Fax: +421 250944008
 E-mail: alena.polakovicova@minv.sk

I.2) TYPE OF AUTHORITY
Type of the contracting authority Ministry or any other national authority, including their regional or local sub-divisions

I.3) Main activity
 General public services
 Public order and safety

I.4) Contract award on behalf of other contracting authorities
 Yes
Annex A1) address of another contracting authority on behalf of which contracting authority is purchasing
 Enter as many times as is used in Annex A: 1
 Official name: The in point VI.2) of this notice
 , national ID number: 00000000
 Mailing address: Listed in point VI.2) of this notice
 City / Town: As referred to in paragraph VI.2) of this notice
 ZIP: 00000
 Country: Slovakia

Screenshot 6: Open Contracts in Slovakia. Offered through Public Procurement Office. The equivalent of Public Procurement Regulatory Commission in Kosovo.

SECTION II: OBJECT OF THE CONTRACT

II.1) DESCRIPTION

II.1.1) Title attributed to the contract

Professional consulting services

II.1.2) Type of contract and location of works, place of delivery or of performance service

Categories of services listed in Annex C1 11

Main site or location of works, place of delivery or of performance: Slovak Republic

NUTS code

SK0

II.1.3) Information on framework agreement or dynamic purchasing system (DPS)

The notice involves framework agreement

II.1.4) Short description of the contract or purchase (s)

Consulting services in the areas of:

- financial audit and performance
- audit, human resources,
- audit systems
- Audit processes
- audit management and financial management system of the operational program,
- legal services,
- legal advice
- legal representation.

II.1.5) Common (CPV)

Main object

Main vocabulary: 79410000-1

II.1.6) Information about Government Procurement Agreement (GPA)

The contract is covered by the Government Procurement Agreement (GPA) Yes

II.2) Total final value of contract (s)

II.2.1) Total final value of contract (s)

one value

Value 100,000 000,0000 EUR

Without VAT

SECTION IV: PROCEDURE

IV.1) TYPE OF PROCEDURE

IV.1.1) Type of procedure

restricted

IV.2) AWARD CRITERIA

IV.2.1) Award criteria

The most economically advantageous tender in terms of

1. Price - 80
2. Functional Features - 20

IV.2.2) Information about electronic auction

An electronic auction was used No

IV.3) ADMINISTRATIVE INFORMATION

IV.3.1) File reference number attributed by the contracting authority

OVO2-2013 / 000501

IV.3.2) Previous publication concerning the same contract

Yes

Fill Prior Information Notice

Notice number in OJ. in. EU: 2013 / S 130-224557

from: 06.07.2013

Fill notice Contract

Notice number in OJ. in. EU: 2013 / S 140-244025

from: 20.07.2013

Other previous publications (if applicable) Yes

Notice number in OJ. in. EU: 2013 / S 160-279417

from: 20.08.2013

The buyer profile

Order:	Professional consulting services
authority:	The Ministry of Interior of the Slovak Republic

Screenshot 7: The inside of an open contract. Pay attention to the details.



FACT BOX III

E-procurement Slovakia VS. Kosovo

Online Access	
Yes, since 2011	Yes, since 20`17
Platforms	
UVO, Established by National Council of Slovak Republic EVO, maintained by UVO	KRPP, established by the Assembly of Kosovo E-Prokurimi, maintained by KRPP
List of notices	
<ul style="list-style-type: none"> a) Prior information notice/Periodic Indicative Notice b) Contract Notice/Call for tender (prequalification) c) Qualification System d) Dynamic Purchase System e) Periodic Indicative Notice/ Call for Competition f) Contract Notice/ Call for Tender (Open Procedure) g) Contract Notice/ Call for tender (restricted procedure) h) Contract Notice / Negotiated Procedure i) Competitive Dialogue j) Contract Notice / Restricted Procedure (QS) k) Contract Notice / Negotiated Procedure (QS) l) Contract Notice / Restricted Procedure (DPS) m) Contract Award Notice n) Cancel Tender Notice 	<ul style="list-style-type: none"> a) Contract notice b) Contract signing notice c) Contract award notice d) Cancellation notice for the procurement activity e) Standard Template for correction of errors in Published Notices
Awarded Contracts	
<p>YES.</p> <p>Open without registration Machine-readable format Information on the Contract: Name, type and address of the contracting authority, procurement, communication, scope of the contract including title, CPV code, short description, estimated value, place of execution and dates.</p>	<p>YES.</p> <p>Short form in PDF or Excel Sheet containing short information such as reference number, name and type of contract, reference number, estimated amount, status of the contract and dates.</p>

Continued	
Slovakia VS. Kosovo	
Active Contracts (Notices)	
<p>Yes.</p> <p>Open for the public: Separate platform for active tenders equipped with legend that shows the stage of the contract.</p> <p>Open contracts contain detailed information such as contracting authority and details regarding it, type of contract, place of performance of the good, place of delivery, description of the contract purchase, scope of the contract, duration of the contract, estimated amount, name of supplier and contact information, bid evaluation criteria, conditions for required documents. Regarding the supplier there are terms and conditions related to their financial and technical capacity. The notice may include additional information depending on the type of contract/project.</p> <p>Restricted upon registration: Files on Contract Notice (Prequalification), Call for Tender</p>	<p>Yes.</p> <p>Included in the KRPP Platform</p> <p>Open for the public: Name of the contract, type of contract, buyer, number of contract, estimated amount and dates.</p> <p>Restricted upon registration: Complete tender file</p>
Information on Company Management	
<p>YES</p> <p>Information regarding past and present management, including their shares, previous work and/or their involvement in public institutions.</p>	NO
Information on capital of the company	
<p>YES</p> <p>Information on past and present capital, including the capital of each owner or shareholder.</p>	YES. No history
Information on legal acts (history) of the company	
<p>YES</p> <p>This information consists on financial statements, founding documents and memorandums or other related documents.</p>	NO
Information on database update	
YES. Up to the date	NO. In some contracts, there are different amounts in the list of the contracts and different in the pdf format of the contract.

13.0 Summary of E-procurement differences between Slovakia and Kosovo

From the screenshots above, one can get a clear picture of where Kosovo stands in e-procurement transparency vis-a-vis Slovakia. To simplify the process of searching for a certain contract on public procurement, Slovakia has two separate platforms. Both platforms provide access for the public. However, EVO requires an account when it comes to the complete file of an active contract⁴⁰, whereas UVO platform, similar to Kosovo's PPRC website, offers open contracts for the public without the need for registration.

Slovakia through UVO offers the possibility to see contracts at the portal without having the need to download. Such contracts are machine-readable, accessible without registration and free of charge. PPRC in Kosovo does not offer the possibility to see contracts at all. UVO, through EVO, makes a difference about active and passive contracts. Active meaning not yet awarded and passive meaning already awarded and a lot of other legends which shows the status of each document.

PPRC in Kosovo does not make such distinction which makes it harder to understand the difference between documents.

Screenshot 2 “notice for contract” from PPRC in Kosovo shows the information for the awarded contract. When compared to screenshot 6 “notice of award contracted” from UVO in Slovakia, we can see the missing information. The notice in Slovakia is separated in sections, **I: Contracting** – which provides information on contracting authority **II:**

⁴⁰Selection criteria and other criteria are available without registration, just like in the case of e-procurement in Kosovo, but in a more advanced level and machine-readable format.

Object of the Contract – which includes information on the type of contract and the value. PPRC in Kosovo does not offer such information. It offers information on the value of the contract and type of contract in a non-reusable format, which is PDF, meaning information is not machine-readable.

PPRC currently sends reports to Auditor General when there are violations of procedures but there is no concrete cooperation between the two institutions. With a better cooperation, general auditor could identify shortcoming in public procurement and PPRC could address them by issuing fines to both contracting authorities and companies.

14.0 Business Register on the Internet - Slovakia

Administrated by the Ministry of Justice of Slovakia, Business Register offers wide information regarding businesses operating in Slovakia.

The search engine allows the user to search a business from the business name, the name of the owner or the registration number. Upon searching a business, the platform shows:

- a) the history of that business
- b) including information for partners
- c) contributions of each member
- d) management body (past and present),
- e) capital
- f) supervisory body and
- g) company representatives.

Additionally, the platform offers the opportunity to investigate each person i.e. Member of a business or a partner, and the system shows the history of this person with the corresponding business. Included in the information are also collected documents of the businesses such as

MINISTRY OF JUSTICE OF THE SLOVAK REPUBLIC
BUSINESS REGISTER
ON INTERNET

Slovensky  |  English

Searching by business name

Business name :	<input type="text" value="██████████"/>
Legal form :	<input type="text" value=""/> ▾
Court :	<input type="text" value=""/> ▾
Way of searching :	<input type="checkbox"/> string anywhere in the name
Scope of searching :	<input checked="" type="checkbox"/> in actual records only
<input type="button" value="Search"/> <input type="button" value="Delete"/>	

Searching by : [business name](#) | [identification number](#)
[registered seat](#) | [registration number](#) | [name of a person](#)

Screenshot 8: Business Register.

documents on financial results, founding documents and declarations of trustees.









MINISTRY OF JUSTICE OF THE SLOVAK REPUBLIC

BUSINESS REGISTER
ON INTERNET

Slovensky  |  English

Results of searching by business name
(searching in actual records only)

Business name starts with: ██████████	Page: 1 / 1
Legal form: any	Records: 1 - 6 / 6
Court: any	Date: 6/20/2017

	Business name	Extract	Collection of documents
1.	██████████	Actual Full	
2.	██████████ s.r.o.	Actual Full	
3.	██████████ s.r.o.	Actual Full	
4.	██████████ s.r.o.	Actual Full	
5.	██████████ s.r.o.	Actual Full	
6.	██████████ r. o.	Actual Full	

Screenshot 3: The list of companies rendered by the search



MINISTRY OF JUSTICE OF THE SLOVAK REPUBLIC
BUSINESS REGISTER
ON INTERNET

Slovensky English

Extract from the Business Register of the District Court Bratislava I
This extract has only indicative character and is not applicable for legal acts!

Section : Sro		
Business name:	████████████████████	(from: 07/20/2005)
Registered seat:	Digital Park II, Einsteinova 23 Bratislava 851 01 Digital Park II, Einsteinova 23 Bratislava 851 01 Apollo BC, Príevozská 2/B Bratislava 2 821 09	(from: 09/11/2009) (from: 08/21/2009 until: 09/10/2009) (from: 07/20/2005 until: 08/20/2009)
Identification number (IČO):	35 946 067	(from: 07/20/2005)
Date of entry:	07/20/2005	(from: 07/20/2005)
Legal form:	Private limited liability company	(from: 07/20/2005)
Objects of the company:	činnosť podnikateľských, organizačných a ekonomických poradcov v rozsahu voľnej živnosti konzultačná a poradenská činnosť v oblasti manažmentu činnosť účtovných poradcov poradenská činnosť v oblasti obchodu a služieb v rozsahu voľnej živnosti sprostredkovateľská činnosť v oblasti obchodu a služieb v rozsahu voľnej živnosti organizovanie seminárov a školení školiaca činnosť v rozsahu voľnej živnosti počítačové služby služby súvisiace s počítačovým spracovaním údajov prieskum trhu a verejnej mienky administratívne služby vydavateľská činnosť činnosť agentúry dočasného zamestnávania	(from: 07/20/2005) (from: 07/20/2005) (from: 07/20/2005) (from: 07/20/2005) (from: 08/05/2006) (from: 08/05/2006) (from: 04/06/2011) (from: 04/06/2011) (from: 04/06/2011) (from: 04/06/2011) (from: 11/12/2016)
Partners:	████████████████████ LIMITED Lampousas 1 Nicosia P.C.1095 Cyprus ████████████████████ CYPRUS LIMITED Arch. Makarios III Avenue, Eftapato Court,256 Limassol CY3105 Cyprus	(from: 02/10/2006) (from: 07/20/2005 until: 02/09/2006)
Contribution of each member:	████████████████████ LIMITED Amount of investment: 6 839 EUR Paid up: 6 839 EUR ████████████████████ S.S. LIMITED ████████████████████ S.S. LIMITED Amount of investment: 200 000 Sk Paid up: 200 000 Sk	(from: 02/26/2009) (from: 07/20/2005 until: 02/09/2006) (from: 02/10/2006 until: 02/25/2009)
Management body:	konatelia Marian Hudák Vretenová 3554/16 Bratislava 841 04 From: 12/15/2008 Ing. Ivan Lužica Triblavinská 1018/17A Chorvátsky Grob 900 25 From: 06/01/2011 Vladimir Masár Haváškova 3594/35B Bratislava 841 05 From: 09/01/2013 Gavin Flook U parku 978 Praha - Průhonice 252 43 Česká republika From: 07/01/2015 Ivana Lorencovičová Lalénska 731/3 Bratislava Rusovce 851 10 From: 06/01/2016 Marian Hudák Bakošova 44 Bratislava 841 03 From: 12/15/2008 Iain Child	(from: 07/20/2005) (from: 06/09/2009) (from: 06/01/2011) (from: 09/05/2013) (from: 07/02/2015) (from: 06/04/2016) (from: 01/13/2009 until: 06/08/2009) (from: 02/10/2006 until: 11/30/2010)

Screenshot 10: On the left are given categories. i.e. business name, registered seat, date of data entry, legal form, activities of the company

Iain Child Tunbury Ave South 185 Walderstade, Chatham, Kent Veľká Británie From: 02/01/2006	(from: 02/10/2006 until: 11/30/2010)
Iain Child Tunbury Ave South 185 Walderslade, Chatham, Kent Veľká Británie From: 02/01/2006 Until: 12/01/2010	(from: 12/01/2010 until: 11/30/2010)
John Edward Nicholson Durham st. 28 Langley Park, Durham Veľká Británie From: 02/01/2006	(from: 02/10/2006 until: 01/12/2009)
John Edward Nicholson Durham st. 28 Langley Park, Durham Veľká Británie From: 02/01/2006 Until: 12/15/2008	(from: 01/13/2009 until: 01/12/2009)
Ing. Michal Petman Irská 796/1 Vokovice, Praha 6 160 00 Česká republika From: 02/01/2006	(from: 02/10/2006 until: 09/30/2009)
Ing. Michal Petman Šermířská 2378/5A Břevnov, Praha 6 169 00 Česká republika From: 02/01/2006	(from: 10/01/2009 until: 11/09/2012)
Ing. Michal Petman Šermířská 2378/5A Břevnov, Praha 6 169 00 Česká republika From: 02/01/2006 Until: 10/08/2012	(from: 11/10/2012 until: 11/09/2012)
Johnny Jozef Hubert Ploem Na malé sárce 810 Praha 6 Nebušice 164 00 Česká republika From: 10/08/2012	(from: 11/10/2012 until: 07/01/2015)
Johnny Jozef Hubert Ploem Na malé sárce 810 Praha 6 Nebušice 164 00 Česká republika From: 10/08/2012 Until: 07/01/2015	(from: 07/02/2015 until: 07/01/2015)
Jiří Polák Strašín 57 Říčany, Praha - Východ 261 01 Česká republika From: 07/20/2005	(from: 07/20/2005 until: 01/30/2007)
Jiří Polák Strašín 57 Říčany, Praha - Východ 261 01 Česká republika From: 07/20/2005 Until: 12/12/2006	(from: 01/31/2007 until: 01/30/2007)
Ing. Maroš Sokolovský Párickova 13 Bratislava 821 08 From: 06/01/2011	(from: 06/01/2011 until: 03/31/2014)
Ing. Maroš Sokolovský Párickova 13 Bratislava 821 08 From: 06/01/2011 Until: 04/01/2014	(from: 04/01/2014 until: 03/31/2014)
Trevor Wallinger Crofton Close 16 Bedford MK418AJ Veľká Británie From: 07/20/2005	(from: 07/20/2005 until: 02/09/2006)
Trevor Wallinger Crofton Close 16 Bedford MK418AJ Veľká Británie From: 07/20/2005 Until: 02/01/2006	(from: 02/10/2006 until: 02/09/2006)
Acting in the name of the company:	Spoločnosť má jedného alebo viacerých konateľov. Ak je menovaný jeden konateľ, koná v mene spoločnosti konateľ samostatne. Ak je menovaných viacero konateľov, konajú za spoločnosť dvaja konatelia spoločne. Podpisovane za spoločnosť sa uskutočňuje tak, že každý konateľ k písanému alebo výtlačnému obchodnému menu spoločnosti a k menu pripoji svoje meno a vlastnoručný podpis. (from: 11/12/2016)
Capital:	6 639 EUR Paid up: 6 639 EUR (from: 02/26/2009) 200 000 SK Paid up: 200 000 SK (from: 07/20/2005 until: 02/25/2009)
Other legal facts:	Obchodná spoločnosť bola založená zakladateľskou listinou zo dňa 20.04.2005 podľa § 57, §§ 105-153 Obchodného zákonníka č. 513/1991 Zb. v znení neskorších predpisov. (from: 07/20/2005) Rozhodnutie jediného spoločníka zo dňa 7.6.2006 - rozšírenie predmetu podnikania. (from: 08/05/2006) Rozhodnutie jediného spoločníka spoločnosti zo dňa 12.12.2006 - odvolanie konateľa spoločnosti. (from: 01/31/2007) Rozhodnutie jediného spoločníka zo dňa 28.11.2008. (from: 01/13/2009) Rozhodnutie jediného spoločníka zo dňa 30.7.2009 - zmena sídla. (from: 08/21/2009)
Date of updating data in databases:	06/19/2017
Date of extract:	06/20/2017

Searching by : business name | identification number
registered seat | registration number | name of a person

Screenshot 11: continued. Pay attention to the long list of management showing the full history of changes, the capital and legal facts. The database is up to the date.



As seen from the screenshots above, Business Register on the Internet in Slovakia is way more advanced when it comes to transparency.

The system offers the ability to check the partners of the company on the internet and their registered seat. That is an important tool which **can help journalist and civil society organizations in checking the connections of companies and their background while investigating suspicious contracts.**

The system also allows checking for the shareholders – capital, a crucial information on the benefits that will be generated by each member when doing business with the state.

While it is easy to spot the places where Kosovo business register falls short in the box on the right, we

can see how business register in Slovakia offers the possibility to see who runs the company. This information is detailed, and all changes to the management are reflected in the system. Again, such information is crucial in understanding the behavior of the company; understanding

  FACT BOX - IV Business Register Slovakia VS. Kosovo	
Governing body	
Ministry of Justice	Ministry of Trade
Information on Business seat	
Full information. Past and Present	Limited information. Only Present.
Information on Business activities	
YES	YES
Information on Partners	
Yes, detailed	NO
Information on Contributions of members	
YES, detailed.	NO
Information on Company Management	
YES. Past and Present. Detailed.	NO
Information on authorized persons	
YES	YES
Information on capital of the company	
YES. Past and Present.	YES. No history.
Information on legal acts of the company (*)	
YES. Detailed	NO
Information on database update	
YES. Up to the date	NO

whether the company was established or linked with public officials or their affiliates in the past, or whether there is a potential conflict of interest in the present.

Furthermore, the system allows you to see the history of legal changes made by the company. Such legal acts include information on decisions for a change of shareholders, decisions on the change of management, etc. which again are a great tool in investigating for links between business and public officials and their affiliates.

15.0 Register of partners of public sector

Register of partners of the public sector (RPVS) is a **statutory** list of data on the partners of the public sector in Slovakia which is available online. According to the Law no. 315/2016, only business registered in the specific registry can obtain public funds from the government. This applies to all levels of public procurement (both governmental and municipal), that exceed the amount of 100,000 euro or the aggregate amount exceeds 250,000 euro per the calendar year. The registration is not required for delivery of goods, work, or service who receive payment from the Embassy of the Republic of Slovakia.

The registry is administrated and operated by the Ministry of Justice, whereas the registration is carried out at the District Court Žilina. Partners of the public sector must be entered in the register for at least the duration of the contract.

The information that has to be submitted by the companies are:

- a) the name or business name,
- b) seat


- c) legal form,
- d) organization identification number, if assigned,
- e) list of beneficial owners,
- f) List of public officials performing functions in the Slovak Republic who are part of the ownership structure or management structure of the public-sector partner.
- g) Data on authorized person.

If there is a change of data entered in the register relating to the beneficial owners, partner of the public sector is obliged to immediately inform the authorized person registered in the register and the authorized person is obliged to notify the registering authority within 60 days from the date when the change occurred.

The accuracy of data entered in the register, the identification of the beneficial owner, and verification of the beneficial owner, is the responsibility of the partner of the public sector and also of the authorized person registered in the register.

In the case that the registration application contains false or incomplete information, the partner of the public **sector will be fined equivalent to the economic benefit that it gained**, in the case where the actual gains cannot be identified the registering authority shall impose a fine of 10 000 euros to 1 million euros. In the case of a breach of duty by the statutory body, a fine of 10 000 euros to 100,000 euros will be imposed.

A company cannot register itself in RPVS system. This is done by an authorized person (*the law authorizes a lawyer, notary, bank, branch of*



FACT BOX - V

Register of partners of public sector
Slovakia VS Kosovo

Governing Body	
Ministry of Justice	Does not exist
Provided Information	
Name of business, legal form, ID, address, date of establishment etc	Does not exist
Authorized person	
Beneficial owners	
Public officials in the management structure	
Notice of verification of beneficial	
Fines	
Updated data	

a foreign bank, accountant or tax adviser, registered office or place of business in Slovakia). The mentioned authorities must conclude an agreement on compliance with the authorized person from the company to be registered on the RPVS. After this procedure, the authorized person can perform all acts related to RPVS as a partner of the public sector.

In other words, for any company that wants to do business with the state, registration in the register of partners of the public sector is mandatory.

This is very important not just regarding transparency but also for the purpose of legal verification of companies.

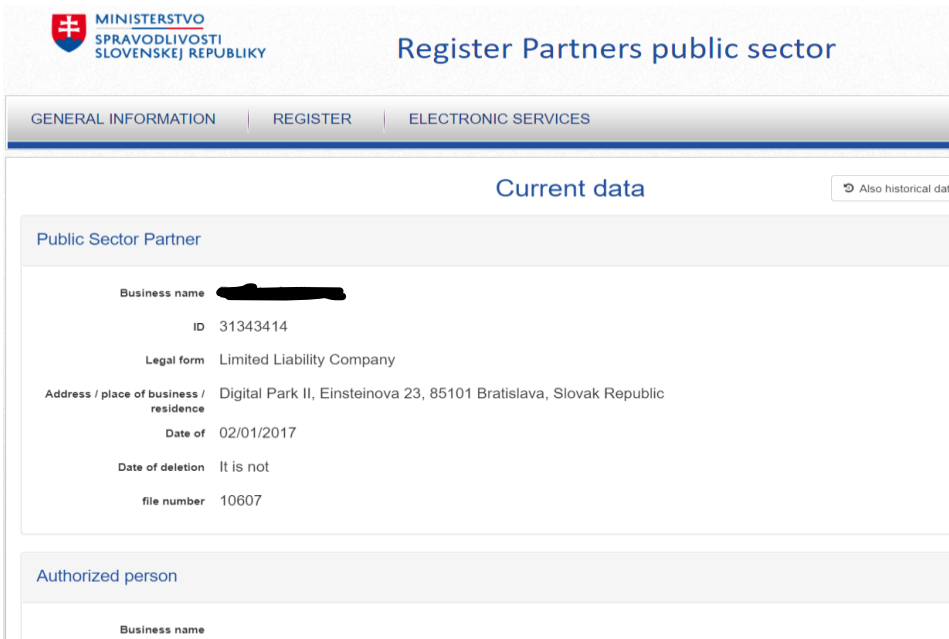
The platform offers information regarding:

- a) Company data – name of the business, legal form, ID, address, date of establishment, etc.
- b) Authorized person – person, authorized by company
- c) Beneficial owners – persons that own the company, those who benefit from company
- d) Public officials in the management structure
- e) Notice of verification of beneficial
- f) Fines – Fines issued to the company by authorities.
- g) Updated data – up to the date.

Kosovo legislation does not foresee such a requirement for the economic operators when dealing with public funds. Kosovo does not require that businesses are registered in a specific registry before doing business with the state nor does it ask for the identification of the beneficiaries. Furthermore, even the current information provided in the Business Registration Agency are not fully confirmed⁴¹. However, this can be easily regulated. FOL, recommends two options on how such a regulation can be incorporated into the national legislation:

⁴¹ Registration of foreign business in Kosovo is done through simple procedures and KBRA does not require a full identification of mother company. Such verification would include original documents in the country of registration, verified by a notary and state and verification of beneficiaries of the mother company.

- a) Drafting of a specific law on the registrar of the partners of the public sector – this can be achieved by passing a law, similar to the Slovakia’s act.
- b) Amendment of the current laws – the Law on Public Procurement and the Law on Business Organization, can be amended by adding provisions that would impose a duty on the economic operator to register in the specific registry to be qualified to enter into a contract with the public institutions, and other relevant provisions.



Screenshot 12: Register of Partners of Public Sector. Kosovo does not have this register.

Beneficial owners

Name and surname	Date of birth	Nationality	Address	public official
Alastair Teare Guy Beaumont		United Kingdom of Great Britain and Northern Ireland	Zsiroshgyi Ut. 36, 1029 Budapest, Hungary	Not
Attila Zoltán Kövesdy		Hungary	Galgoczy U. 28, 1125 Budapest XII., Hungary	Not

Verification document (pdf) For the body was found verification document

Public officials in the management structure

No matching records

Beneficial owners

Name and surname	Date of birth	Nationality	Address	public official
Alastair Teare Guy Beaumont		United Kingdom of Great Britain and Northern Ireland	Zsiroshgyi Ut. 36, 1029 Budapest, Hungary	Not
Václav Loubek		Czech Republic	Petrovická 153/5, 10000 Praha - Strašnice, Czech Republic	Not
Martin Tesař		Czech Republic	Field 303, 25245 Zvole near Prague, Czech Republic	Not
Frederic Maziere		The French Republic	Bulgarian 588/1, 11000 Prague 10, Czech Republic	Not
Petr Michalík		Czech Republic	Záhradní 368/5, 77900 Samotšky, Czech Republic	Not
Diana Rádl Rogerová		Czech Republic	Gočárova 847, 14900 Prague 4, Czech Republic	Not
David Batal		Czech Republic	U hňště 396, 25081 Nehvizdy, Czech Republic	Not
Attila Zoltán Kövesdy		Hungary	Galgoczy U. 28, 1125 Budapest XII., Hungary	Not
Pavel Raštica		Czech Republic	Trestle 831, 66401 Bilovice nad Svitavou, Czech Republic	Not
Ladislav Šauer		Czech Republic	Dalecin no. 166, 59241 Dalečín, Czech Republic	Not

Verification document (pdf) For the body was found verification document

Notice of verification of beneficial

No matching records

fined

No matching records

Date of updating data 06/21/2017

Date of listing 06/22/2017

Screenshot 13: Pay attention to the details of the register. All beneficiaries are disclosed with information including names and surnames, nationality, latest living address and whether they are public officials or not. Information on their verification and fines.

16.0 Account Register

Account Register operates on behalf of the Ministry of Finance of Slovakia. It was established to improve and simplify the business environment and reduce the administrative burden of business. By using this website, users can search through the list of entities, browse available financial statements and other documents published in the Register, and view, save and print statements and other documents published in the Register.

The platform offers:

- a) Financial statements of companies
- b) Auditor's reports
- c) Annual reports

The platform offers information for the public and non-public part. In the public section are available financial statements of companies,

Register accounts
Ministry of Finance of the Slovak Republic

Home search What is a registry of accounts Frequently asked Questions Contacts

» Search ÚJ » Detail ÚJ and the FS

Detail entity

Data Source: SO SR, updated: 31.05.2017

Identification Tax: 2020325516	Address: Einsteinova 23 85101 Bratislava-Petrzalka	Date of establishment: 05.03.1993
NACE: 69200 Accounting Business	District: In bratislava region: Bratislava Region	Date of termination:-
		Legal form: Spol. Ltd
		Cat. size: 100-149 employees
		ownership: Foreign

Individually financial statements | **Annual reports**

season	type statements	tabled on	prepared on	approved on	audited day
▶ 01/2016 - 12/2016	individual ordinary	05/26/2017	05/16/2017		
▶ 01/2015 - 12/2015	individual ordinary	03/24/2016	03/24/2016	07/01/2016	
▶ 01/2014 - 12/2014	individual ordinary	07/15/2015	29.03.2015	17.06.2015	
▶ 01/2014 - 12/2014	individual ordinary	30.03.2015	29.03.2015	05/05/2015	
▶ 01/2013 - 12/2013	individual ordinary	31.03.2014	26.03.2014		
▶ 01/2012 - 12/2012	individual ordinary				
▶ 01/2011 - 12/2011	individual ordinary				
▶ 01/2010 - 12/2010	individual ordinary				

Screenshot 14: Information found on the register of account includes financial information on the company, such as annual financial reports.

corporations, state agencies, government entities and entities which are accounted for by international accounting standards and other selected entities.

In the non-public part of the register are financial statements of entities that are not in the public section. These include in particular the accounts of entrepreneurs - individuals and non-profit organizations that do not have an obligation to publish.

This is very important to shed light on the data for businesses, especially those who do business with the state.

The account register in Slovakia was supported by Slovak Chamber of Auditors, Slovak Chamber of Tax Advisors and the Slovak Association of Corporate Financiers.



FACT BOX - VI

Account Register Slovakia VS. Kosovo

Governing body

Ministry of Finance	Does not exist
---------------------	----------------

Supported by:

Slovak Chamber of Auditors, Slovak Chamber of Tax Advisors and the Slovak Association of Corporate Financiers.	Does not exist
----------------------------------------------------------------------------------------------------------------	----------------

Provided Information

Financial statements	Does not exist
Auditor's reports	
Annual Reports	

17.0 Stakeholder participation

To promote government accountability and foster trust in public institutions, several OECD countries have long-standing practices whereby a large range of stakeholders are involved in the procurement process, including anti-corruption offices, private sector organizations, end-users, civil society, the media and the general public. More recently, some countries have introduced direct social control by involving citizens at critical stages of the procurement process. **Open and regular dialogue** with suppliers and business associations can reinforce mutual understanding of factors shaping public markets. For example, the Chief Acquisition Officers Council in the United States has institutionalized the dialogue with external stakeholders. Stakeholders involvement in policy processes is also an important foundation of OECD instruments promoting integrity. The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015b) recommends that adherents foster **transparent and effective stakeholder participation**. Moreover, the *OECD Draft Recommendation of the Council on Public Integrity* encourages adherents to safeguard integrity and the public interest at all stages of the political and policy process, in particular through (1) granting all stakeholders – civil society organizations, businesses, the media and citizens equitable voice in the development and implementation of public policies; and (2) enabling a civil society that includes ‘watchdog’ organizations, citizens groups and independent media in order to ensure effective accountability

17.1 KOSOVO

Since the public procurement now is electronic through PPRC, it is important to know how the process works and if there is room for civil society and other actors to monitor it directly.

Article 36 of [Rules and operational guide on public procurement](#) states the following:

“36.2 In any process of e-Procurement are created two keys that belong exclusively to the proceedings in which they are created.”

“36.4 The process of the public opening can start with the expiration of validity period for submission of tenders. Upon the expiration of the validity period, automatic form for loading private keys appears. **Authorized representatives** are required to apply to the platform and each separately enclosed assigned private key that was initially submitted to them by e-mail.”

“36.5 tendering opening procedure starts with entering the authorized representatives of the contracting authorities”

Based on the Mexico example, Kosovo could also assign representatives from civil society above a given threshold. That would further increase transparency and increase the credibility of the opening of the tender process. The agency on anti-corruption could also have its representatives take part on the opening of tenders and other monitoring activities.

Kosovo should consider the possibility of creating a procurement ombudsman. Public Review Body will still be performing its functions, but the office of ombudsman should serve as alternative dispute when parties agree that PRB is one sided or its decision has been influenced anyhow.

Currently, PBR members are chosen by parliament in a process which is problematic because MPs are members of political parties. We recommend that members of Public Review Body be chosen by competition through clear guidelines and criteria. Such criteria should ensure high integrity, no political party membership in the past and high excellence.



BRIEF BOX - IV

Social Witness

Since 2009, social witnesses are required to participate in all stages of public tendering procedures above certain thresholds, as a way to promote public scrutiny. In 2014, these thresholds are MXN 336 million (\approx USD 25 million) for goods and services and MXN 672 million (\approx USD 50 million) for public works.

Social witnesses are non-government organizations and individuals selected by the Ministry of Public

Administration (SFP) through public tendering. SFP keeps a registry of the approved social witnesses and evaluates their performance; unsatisfactory performance potentially results in their removal from the registry.

When a federal entity requires the involvement of a social witness, it informs SFP who designates one from the registry.

As of January 2014, SFP had registered 39 social witnesses for public procurement projects: 5 Civil Society Organizations and 34 individuals.



BRIEF BOX -V

Procurement Ombudsman in Canada

In Canada, A Procurement Ombudsman was set up in 2008 to increase the effectiveness and transparency of business practices in relation to procurement. This was part of a series of reforms to implement the Federal Accountability Action Plan in order to help strengthen accountability and increase transparency and oversight in federal government operations.

Objectives

The overall objective of the Office of the Procurement Ombudsman is to promote fairness, openness and transparency in federal government procurement. Its mandate and role are as follows:

1. Review departments' practices for acquiring materials and services to assess their fairness, openness and transparency and make any appropriate recommendations to the relevant department.
2. Review any complaint respecting the award of a contract for the acquisition of goods below the value of CAN 25 000 and services below the value of CAN 100 000, where the criteria of Canada's domestic Agreement on Internal Trade would apply but for the dollar thresholds.
3. Review any complaint respecting the administration of a contract for the acquisition of materials or services by a department or agency, regardless of dollar value.
4. Ensure an alternative dispute resolution process is provided, if all parties to the contract agree to participate.

Source: OECD (2013a), <http://dx.doi.org/10.1787/9789264201385-en>.

18.0 Open contracts

Neither Published Nor Open

In 2009, Kosovo signed the biggest contract ever. Its real value never became clear to the citizens because the way it was negotiated it could go from a couple of hundred million of Euros to more than one billion euro. The contract was won by a construction consortium called **Bechtel & Enka**. *Bechtel*, an American company, together with Enka, a Turkish company, won the tender on building Kosovo's first highway with international standards. The 72 kilometers four-lane Kosovo Highway, known as Ibrahim Rugova Highway, was completed in November 2013 for roughly \$1.3 billion — or about \$18 million per kilometer⁴².

Kosovo business registration agency does not give any single detail about the owners and beneficiaries of both Enka and Bechtel. The only owners registered under such companies are “**Bechtel International INC C20091007-0301**” and “**Bechtel International Inc**” and “**Enka Insaat Ve Sanayi A.S.**”.

To this date, we don't know who are the people behind such big corporates and where has all the profit paid by Kosovo's taxpayer's money gone.

Due to the enormous cost of the contract, civil society started raising questions not just on the need for such project, but also requested transparency on the implementation as the tax payer's money was at issue.

Ministry of Infrastructure refused to bring transparency to the process for years and never gave complete information on a dossier of the tender.

Due to its costs, a large number of local companies were awarded subcontracts by the consortium. Many believe that the local companies were linked directly with the decision makers in the government at the

⁴² http://foreignpolicy.com/2015/01/30/steamrolled-investigation-bechtel-highway-business-kosovo/?utm_content=buffer01d63&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer

time when the deal was struck and further down the road (Levizja FOL, 2011).

The contract with Bechtel & Enka was and remains one of the most powerful examples of why contracts on their entirety should be open and why beneficiaries must be declared.

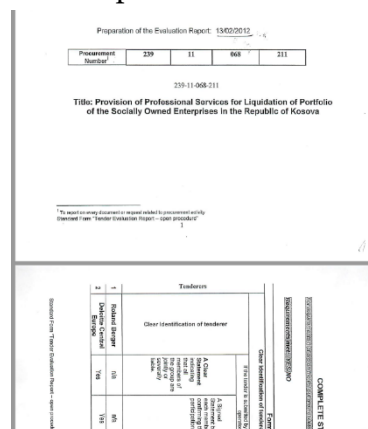
18.1 What are open contracts?

One of the biggest discussions when it comes to transparency in public procurement is the opening of the contracts for the wider public. Those who oppose this openness do not truly and fully understand the importance of such openness in promoting a fair and healthy competition, saving taxpayers money and fighting high-level corruption.

As we will show on the legal analysis part below, the governmental institutions are mistakenly interpreting the law on business organizations, public procurement and access to public documents only to limit the access to public documents, including contracts.

Although the discussion is fierce, not everyone knows what an open contract really is. And because there are no clear guidelines on the publication of documents, then this has led to different institutions applying laws on access to public documents differently.

To some extent, in Kosovo, there is a belief that if you put a document on the website then you have achieved your mission of transparency, even if the link is broken or the document is of poor quality or scanned improperly (*as in the screenshot 17.*)



Screenshot 15: The contract sent from Kosovo privatization agency after officially requesting the contract. Notice how the first page is in portrait mode and the second in landscape mode

In the digital age, a contract should be considered to be truly open if it fulfills the following conditions:

- a) Is published and is available online automatically
- b) Is free of charge
- c) Has metadata provided in it
- d) Is accessible, searchable in a machine-readable⁴³ format

According to Open Contracting Partnership, a network based in Washington, open contracting involves the full chain of government deal-making, from the sale of state assets to the procurement of goods and services for citizens. It covers not only the awarding of contracts, but also procurement, contract negotiation, implementation, and performance (Open Contracting Partnership (OCP), 2015).

18.2 Disclosure of information about the planning of contracts.

Transparency during the planning of a contract is crucial when it comes to achieving Better Value For Money (BVFM), but also on preventing corruption schemes. For example, Public Contracts Portal in Scotland gives a forward plan for at least one year to give the possibility to economic operators to prepare in advance⁴⁴. The forward plan is meant to provide information on potential collaborative opportunities from public sector buying organizations in Scotland which may be advertised over the next 12-18 months. This gives suppliers advance notice of collaborative opportunities that may be offered by the public sector in the future - so that they can plan accordingly”.

In Kosovo, we have witnessed how roads and bridges were built in the election month in the past. Kosovo has a very good legal framework for

⁴³ Machine-readable documents are in a form that can be understood and used by a computer. http://lexicon.ft.com/Term?term=machine_readable&mhq5j=e1

⁴⁴ <https://www.publiccontractsscotland.gov.uk/Default.aspx>

procurement planning. [Article 8](#) of the law on public procurement sets clear guidelines and deadlines on forwarding procurement planning.

It asks each contracting authority to send one-year procurement forecast to the Central Procurement Agency not less than 15 days before the beginning of the new fiscal year. Forward procurement planning helps prevent last-minute payments. Although this is a public document from its nature, this document cannot be found online, and as such, it is not being shared with economic operators to give them the advantage of preparing and collaborating. To achieve BVFM, such document should become public and available to everyone, especially to economic operators.

Transparency in the planning phase helps not only achieve BVFM, thus saving taxpayers money, but it also helps media and civil society to monitor for misuse of public funds and corruption.

18.3 Disclosure of information about the tendering or negotiating process

The information given by authorities during the tendering process is crucial in providing security towards economic operators that the process is fair and transparent. Among others, this will increase competition in the



Screenshot 16: Open Contract Partnership guide of open contracts

process leading to BVFM. Drawing on Cyprus guiding principles (*brief box VI*), authorities should act fairly during the whole procurement lifecycle without imposing unnecessary burdens or constraints on suppliers or potential suppliers and they should avoid any favorable treatment to specific supplier or potential supplier.

In Kosovo, the information about the tendering process is open through e-procurement. As shown in fact-box III, e-procurement provides important information regarding contract, tendering procedure, value, and selection criteria.

Compared to Slovakia's EVO e-procurement platform, Kosovo's e-procurement platform offers less information in a machine-readable format, but it offers the possibility to download some information in PDF, such as the criteria for selection, which are of extreme importance.

The differences between Kosovo's active contracts and Slovakia's active contracts are illustrated in fact-box III at page 54.

BRIEF BOX -VI

Providing Better Value for the Money (BVFM)

The goal and the basic principle in public procurement is to **achieve better value for the money (BVFM)**. What this means is that contracting authorities put strict principles when it comes to spending tax payers' money.

Public procurement directorate in Cyprus, uses the following guiding principles to achieve BVFM.

Competition - Competition among suppliers should be encouraged in the most efficient and effective way.

Efficiency & Effectiveness - Efficiency and effectiveness should be sought in the procurement process to secure value for money for the contracting authority.

Fairness/ Non Discrimination – Act fairly during the whole procurement lifecycle without imposing unnecessary burdens or constraints on suppliers or potential suppliers. Avoid any favorably treatment to specific supplier or potential supplier.

18.4 Disclosure of information about contract award

After the tendering process is finished and the authority has decided to award the contract, it is of crucial importance that such contract is published online. Disclosure of contracts is regulated differently in different countries. In Slovakia, which is our case study in this report, contracts are open in their entirety. According to the Slovak law, each contracting authority is obliged to publish contracts online on the website of public procurement office (UVO), or their own website and contracts that are **not published online are not considered to be in force.**

Slovakia also discloses all annexes and appendices to the contract. *For more on Slovakia's open contracts see e-procurement heading on Slovakia, at page 37.*

Kosovo offers limited access to contracts. PPRC does not offer the possibility to see contracts online, nor does it offer any link to a database where such contract can be downloaded. The rule is that all contracts are closed and not shared with the public unless someone demands otherwise through a written letter. This categorizes Kosovo as offering passive transparency in

Objectivity/Integrity/Honesty – Declare any conflict of interest that affects or appears to affect their judgment; Reject gifts, hospitality and benefits of any kind from supplier or a potential supplier, which might be reasonably seen to compromise their objectivity or integrity.

Transparency – Ensure equal conditions and accessibility to all economic operators, by informing them in an open and transparent way.

Accountability – Be accountable for the responsibilities assigned to them, as well as for the decisions made by them, keep the appropriate records

Confidentiality/Accuracy of Information/Protection of Intellectual Property – Respect the confidentiality of information acquired in the course of performing their duties and not disclose any such information without having proper and legitimate authority to do so.

public procurement, meaning that information is made available only if someone demands it.

Even though it is information on demand, Kosovo falls short in meeting the transparency standard. Lëvizja FOL has tested transparency on demand approach with institutions, and the results are disappointing. Not only the process of accessing a public contract takes too long, but even when the access is granted, it is usually limited access.

For more on contract disclosure policy in Kosovo read our legal analysis at page 86.

18.5 Disclosure of information regarding implementation of the contract, including payments.

Following the end of the tender procedure and the signature of the contract, the Contractor is called upon to **implement** the Project in accordance with the terms and conditions of the contract while the Contracting Authority, in turn, is called upon to **manage the contract** that has been signed with the Contractor and **monitor** the Contractor's performance during the execution of his works.

At this stage, it is required the disclosure of information about contract administration, management, and most importantly payments. Payments to the contractor are usually related with achievements on the contract. Disclosure of payments allows civil society, media and citizens to see if companies are being paid due to the terms of the contract and whether they have achieved the requirements of the contract. All relevant information during the monitoring and evaluation process should also become public.

Kosovo fails badly on transparency in this phase. As you will see below on our legal analysis, almost nothing is being disclosed to the public on this phase. Lëvizja FOL was refused access to the contract management and

payments by many institutions on the grounds of trade secrets, but such grounds do not hold, and institutions seem to be violating the Constitution and the law on public documents each time they refuse access. *Read our legal analysis at page 90 for more on this.*

In this part, all invoices that are delivered to the contracting authority by operators should become public as well as orders and payment made by contracting authority. This is of crucial importance since this allows civil society and media to check the quality of the work that has been made through taxpayers' money.

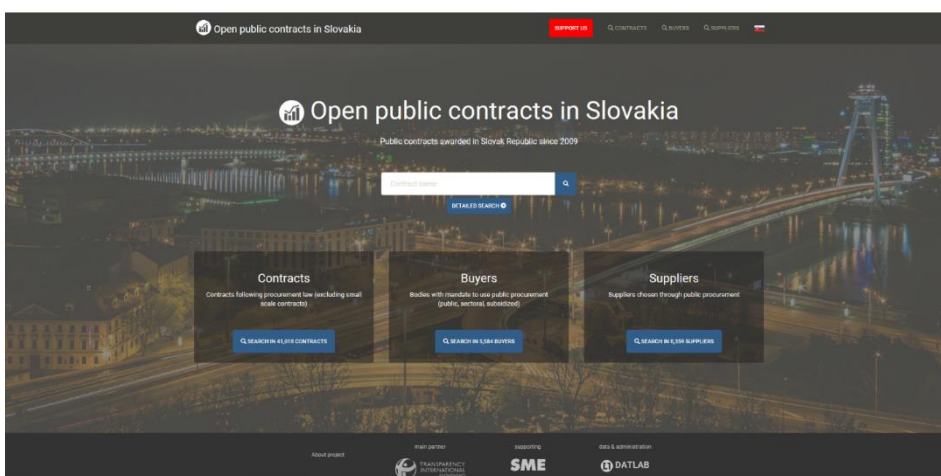
The brief-box VI on the right shows some basic principles that must be taken into consideration by procurement bodies during the lifecycle of each procurement procedure. PPRC in Kosovo has a code of conduct (*see page 26 and the brief box I*) - and most of the principle are there, but what is lacking are measured from the enforcement mechanisms. The annual reports from PPRC show that department for monitoring is not capable of functional oversight because, despite the high level of perception of corruption in procurement offices, there are no disciplinary measures taken.

19.0 Alternative transparency – the case of Transparency Slovakia

In January 2011, Slovakia introduced the regime of unprecedented openness by deciding to have most of the public contracts published online with metadata⁴⁵ provided in an open, machine-readable format.

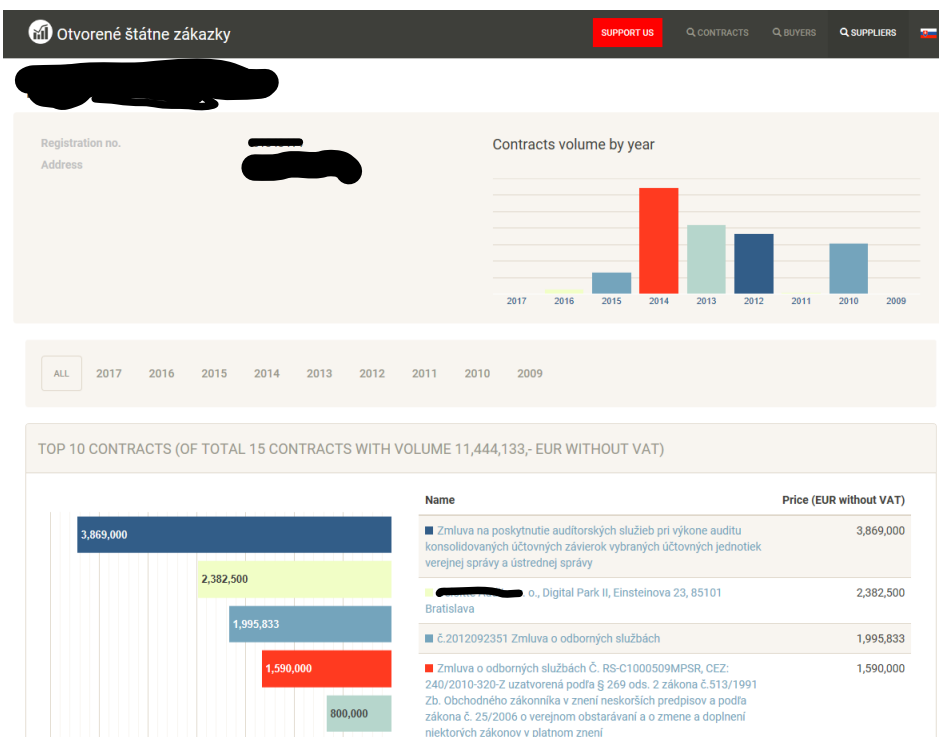
[Transparency International Slovakia](#) used this opportunity to build its own platform that would offer the possibility for extensive research from civil society, media and citizens on identifying red flags for corruption cases on public procurement.

The idea of TI Slovakia was to use the portal to interconnect the database of contracts, orders, and invoices, with procurement documentation and business register, grants and subsidies databases and so on to create an investigative tool for journalists but also for the citizens.



Screenshot 17: Transparency Slovakia Homage of Open Public Contracts

⁴⁵ A set of data that describes or gives information about other data or information that describes other information in order to help you understand or use it
<https://en.oxforddictionaries.com/definition/metadataoxford>



Screenshot 4: The details offered by the platform on the supplier

TI Slovakia's 'Open Public Contracts in Slovakia' (<http://tender.sme.sk>) captures contracts dating back to 2009. The site covers over 40,000 contracts. The user can search by the government entity awarding the contracts as well as the companies winning the contracts.

Since November 2015, all information on the beneficial owners of companies winning public contracts in Slovakia is published in a public register <https://rpvs.gov.sk/rpvs>. This enabled TI Slovakia to focus in greater depth on the beneficial owners of companies winning public contracts, drawing on the business registry data. TI found that in the past, shell companies⁴⁶ linked to party officials were found to have won public contracts in Slovakia. After this had been made public, the government in

⁴⁶ A non-trading company used as a vehicle for various financial manoeuvres or kept dormant for future use in some other capacity. https://en.oxforddictionaries.com/definition/shell_company

Slovakia decided to present law, which parliament passed, **to limit bidders with unknown owners from participating in public procurements**. Lawmakers in Slovakia focused on so-called **tax havens**⁴⁷, making any company based in one of them ineligible to take part in public tenders in Slovakia. TI Slovakia linked the public procurement and business registry data sets and identified two major public procurement scandals around [catering and construction in the healthcare sector](#). As a consequence, the media published the findings, and a series of public officials were forced to resign, and more ambitious transparency reforms were accepted into law

19.1 FOL wants ambitious reforms with regard to transparency in public procurement in Kosovo

Transparency and accountability

E-procurement has proven to be a stepping stone in bringing transparency in public procurement in Kosovo. There is no going back from e-procurement but advancing it further so that the process becomes more and more effective, efficient and transparent. But as this report and case study reveals, Kosovo is only on the first steps in providing transparency and e-procurement alone is not enough.

In the legal analysis below we highlight the complexity of the obstacles that stand in the way of achieving this transparency.

We have already identified some important steps that need to be taken to open the way towards transparency on public procurement.

⁴⁷ A place where people pay less tax than they would pay if they lived in their own country <http://dictionary.cambridge.org/dictionary/english/tax-haven>

The following actions need to be taken by certain institutions to both bring transparency in public procurement and fight high-level corruption.

We want Public Procurement Regulatory Commission to:

- a) Publish online automatically on its website all contracts, annex contracts and Appendices dated from 2010 in a machine-readable format.
- b) Publish online all orders, invoices and payments resulting from public contracts, managed by PPRC in a machine-readable format
- c) Publish one year forward procurement planning from all contracting authorities in a machine-readable format
- d) Publish full information on the contract notices, selections criteria (*call for tenders*) with simple legends in a machine-readable format
- e) Publish bidders offers in a machine-readable format.
- f) Exempt bidders with unknown owners from participating in public procurement
- g) Exempt companies (*economic operators or businesses*) to participate in public procurement with hidden or unknown beneficial owners
- h) Exempt companies, company owners and beneficiaries who are fined for corruption or misuse of public funds in any way to participate in public procurement process
- i) Work with KBRA and other institutions to create the public sector partners and exempt all those who are not registered in this register from participating in the public procurement

We want KBRA to publish:

- a) Full business data, including up to the date address, nationality of the authorized persons, owners, management, and partnerships
- b) The full history of authorized persons, owners, management, and partnerships.
- c) The full history of legal interventions, legal acts.

- d) Full disclosure of beneficial owners in a separate website. Such owners should be listed after verified by notary offices, as regulated by law.

We want Ministry of Finance to publish:

- a) Online annual financial data of all companies doing business with the state in a public-sector partner register platform. All such companies to be considered partners should disclose full information so that taxpayers know who owns and operates with such companies.
- b) Tax Administration Agency should publish more data on allowing citizens to follow their taxes.

We want the government to revise and amend laws on:

- a) Access to public documents
- b) Public Procurement, and
- c) On Business organizations

Draft a new law on:

- a) Beneficial owners and tax havens, and
- b) Public sector partners register

All these changes will strengthen transparency and accountability in public procurement. Companies would no longer be considered partners in public procurement unless they are registered in the public-sector partners and have their full information fully disclosed.

19.2 Creating a parallel open procurement platform

Drawing on the experience of Transparency International Slovakia, FOL with the support of its partners plans to build a similar platform in Kosovo in the upcoming months. The platform will be similar to TI Slovakia tender.sme.sk but with more filters and visualizations. FOL will start populating this platform by using the law for access to public documents to access contracts, invoices and orders, implementation data and

management plans, business data and so on. This will enable civil society actors and media to ask for more accountability and transparency. And where challenges will arise we will seek help from responsible institutions, but also address them in the right instances, including the constitutional court.

We will also ask KBRA to give all the information that is public about businesses, ***and we will try to link all data sets to an open procurement platform.***

We do this because citizens want to know how a deal comes about, who won the contract and why they won it. Who is responsible for implementing the contract and who is in charge of overseeing the implementation. What are the results on the ground and are the results satisfactory?

As taxpayers, they should be able to see where the money goes. This information needs to be disclosed in an open, accessible, and digestible way. Until the legal reform completes, FOL will try to offer such transparency using current laws.

We believe transparency helps prevent corruption affairs and misuse of authority. When the process is open for all parties than overseeing the process and finding irregularities are much easier which in

BRIEF BOX -VII

What is machine-readable data?

Data is machine-readable if it is in a format that can be easily read, written, parsed and displayed by a computer.

Digitally accessible documents are a prerequisite for machine-readable ones, but only if they are in specific formats.

Machine-readable format means a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure.

Machine-readable formats that are most used by governments and companies are CSV, JSON and XML.

Comma-separated values (CSV), is a format for tabular data. It stores tabular data (numbers and text) in plain-text form.

CSV represents lines of data, where each of them is separated from the next by a comma. It can be loaded in applications like Excel ergo making it accessible for the users.

Considered as a “denominator” for open data, CSV supports broad reuse of open data.

Source: Open Data Handbook
European Data Portal
Data.gov

turn helps towards a fair process. When the business is done in the light of the day, we can all see who is profiting from our taxes and how. Through transparency, irregularities, nepotism, bid rigging and favoritism can be discovered, and those behind such irregularities will be kept responsible.

20.0 Active vs. Passive Transparency

Long delays and discouragement

Article 120 of the Constitution of Kosovo states that: “*Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency, and transparency.*” Before the Constitution, Kosovo had the law on access to official documents since 2003. The law was repealed and replaced in 2010 with the ‘law on access to public documents Nr. 03/L-215.

In theory, the law provides access to all citizens on what is public to ensure transparency, accountability and to oversee the work of the institutions, but in practice, only well-educated people can access the documents. In practice, it is the media and civil society that uses the law the most and not random citizens.

The reason behind this is that the law does not offer automatic transparency but transparency on demand. *The rule is that “if you don’t ask for a document officially, through official communication channels, then such document is not public”*. And even when you ask, the process of obtaining the information is designed to discourage you from asking any further.

Based on the law, any institution can delay the requested information for seven working days, and if you are not satisfied with the information you are given, you can ask for a review. The review, according to article 8 of law on access to public documents, takes another eight days, but there is a catch, because the law says that the deadline will be “*continued,*” some

institutions consider this as a new deadline, meaning that the previous deadline is over and the review triggers a new 15 days' deadline.

This interpretation was given by Ministry of Economic Development when we asked them to review their decision. They responded by putting a new 15-day deadline, referring (implying) to article 8 of LAPD.

If the deadline is not continued from the basic 7-day deadline but is considered as a new deadline, then the whole process of obtaining a public document takes 22 working days, which means a month, taking into consideration the weekends.

20.1 No transparency without demand

Strictly speaking, the main difference between active and passive transparency is whether the data is available on demand or is available online automatically.

In countries where transparency is passive, data are considered partially open, and citizens can access them based on the knowledge they have about certain documents and their capacity to address in a written form to the institutions through official communicating channels.

In countries where transparency is active, all information is made available online without demand.

In Kosovo, the law No.03/L –215, on Access to Public Documents (LAPD), makes information available on demand but also electronically when possible. Article 16 of the law requires that institutions *publish all that can be public electronically* but does not specify whether important documents, such as contracts, contract management plans, and other important documents should be published without demand. As a result, no institution in Kosovo publishes contracts awarded through a public procurement process without demand.

21.0 Transparency in public procurement

21.1 A legal analysis

Public procurement is a process through which the Government and other public bodies acquire goods, service or works from a company. Taking into consideration that the Constitution foresaw that the “**public expenditure and the collection of public revenue should be based on the principles of accountability, effectiveness, efficiency, and transparency,**” FOL has conducted research on Kosovo legislation to see how such transparency is provided.

The accessibility to the documents that contain public information is regulated by the Constitution and the Law on Access to the Public Documents. Besides those two acts, the transparency of the information and documents gathered and used through the procurement process is regulated by the Law on Public Procurement.

Hence, when it comes to the accessibility of the procurement information, there are three Acts that regulate this specific area. In this short legal analysis, **Part I** offers a brief analysis of those acts, their compliance, and their interpretation by the public institutions, whereas **Part II** addresses the issue of the trade secrets which according to our research is being wrongly used by institutions to limit and deny access to public information.

21.1.1 Transparency of public procurement

Public procurement is carried out by using public funds. The transparency framework of usage of those funds is set by the Constitution, while in details is regulated by LPP.

21.1.2 Constitution

Public funds should be spent by i.e. the principles of transparency⁴⁸.

21.1.3 Law on Public Procurement

LPP contains a clear set of rules that provide for a high level of transparency of the information related to the public procurement activities.

First, it defines the purpose of its set of rules as “***to ensure the most efficient, cost-effective, transparent and fair use of public funds [...] by establishing the requirements and rules that shall be observed [...], shall be performed, by persons, economic operators, undertakings, contracting authorities, works concessionaires and public bodies conducting, or involved, participating or interested in, a procurement activity [...]***”.

Paragraph 2 of the same Article, clearly state that the objective of the Law among other is to achieve transparent and fair use of public funds “*while strictly complying with the procedural and substantive requirement of the present law.*” In the meaning of this paragraph, this law will apply to all activities related to the procurement process, which has to be transparent.

Furthermore, Article 2, paragraph 2, continues by defining the scope of the Law, as to which applies to “***all persons, economic operators, undertakings, as those terms are defined herein, involved, participated or interested, directly or indirectly, in all procurement activities covered by this law, such persons, operators, undertakings are also required to observe and comply with the applicable procedural and substantive requirements of the present law***”.

Based on the above paragraphs, it is clear that the purpose of the LPP is to establish a clear set of rules that will provide for fair use of public funds, and that use will be transparent, through all activities related to it, while

⁴⁸

those rules shall be monitored by all persons that are interested directly or indirectly in this process.

Nevertheless, LPP was amended and supplemented in January 2016, by the Law No. 05/L -068. There were some changes made to the basic law, more specifically Article 10 that regulates means of providing transparency and the access to the records concerning the procurement activities.

The basic law, in paragraph 3 of Article 10 foresaw that “*upon the request of any person, a contracting authority shall provide such person prompt and reasonable access to the records...*”. Paragraph 2 of the same Article, provides for the accessibility of the minimum of all:

- (i) all documents related to, developed or acquired in the course of, or used to initiate, conduct or conclude, a procurement activity, regardless of whether such activity results in a contract or design award
- (ii) if the procurement activity has resulted in a contract or design award, all documents related to such award, and
- (iii) if the procurement activity has resulted in the execution of a public contract, a copy of the public contract and all documents relating to that contract and its performance.

Furthermore, this paragraph makes a reference to the accessibility of the documents, as described in Article 81 of LPP: produce a contract management plan in particular matters of organizational, economic, technical and legal aspects of contract management including:

- (i) project management teams;
- (ii) frequent review of the contract;
- (iii) protocols for handover of commissioned equipment;
- (iv) regular dialogue with the contractor;
- (v) use of correct quality standards;
- (vi) management of payments/claims;
- (vii) complaints procedures;

(viii) control remedies specified in the contract.

In 2016, when LPP was amended, the language used in Article 10 was changed. This change was made on the identification of the parties who can have access to the documents listed above. Basic Law foresaw for the access to the information for *any person*, while the same now is replaced with an *interested party*.

An *interested party* as defined by the law is:

“a person who can demonstrate a specific material interest in the outcome of a procurement activity conducted by a contracting authority and relating to a specific public contract or design contest including any person who has been or risks being harmed by an alleged infringement.”

This change in the law limits the access to the procurement information by narrowing the audience that can have access to the records, as to only for those that can show material interest, the access to the information related to the procurement activities will be allowed. **This change is not in compliance with the principles of transparency set in LPP and Constitution as it contradicts them directly, by limiting the procurement transparency below the minimum required standards.**

So far, we could not confirm on how this change in law is interpreted by the public institutions, since when allowing or rejecting the access to the documents, they are referring to the LAPD, even though the access to those documents should be decided upon LPP as elaborated below in part D. However, because of the possible impact that the change can have on transparency of the public procurement and specifically on the access to the information, in our opinion it is of a general interest to bring the attention of the public to the possible effect of the above-mentioned change.

Thus, in case that the change will affect the accessibility of the procurement related information to only those who show a legitimate material interest, bearing in mind that procurement is carried out by using

public funds, it is within every Kosovo citizen interest to see how, on what, and where the public funds were spent.

21.1.4 Law on Access to Public Documents

Access to the documents that are drafted and held by the public institutions in Kosovo is regulated by the Law on Access to Public Documents. Article 1 of the Law reads: *“the law applies to all documents maintained, drawn or received by the public institutions.”*

Based on our research, when asked about specific performance documents related to a procurement contract under Article 10 of LPP, i.e. records of payment, quality inspections, management plan of the contract, that under this Article should be available upon request, the access to those documents was based on the LAPD, not on LPP.

The public institutions when rejecting the access to the requested information they refer to Article 12.1.6 and 12.1.7., which foresees the exemption grounds to refuse the access to the documents, for the protection of the *“privacy and other private legitimate interests”* and *“commercial and other economic interests.”*

The requested documents are within the focus of the LPP, Article 10(2), which requires that *“documents concerning contract performance include especially the contract management plan required according to Article 81 of this Law”*, to be available to the interested persons upon the request.

However, despite the fact that LPP foresees access to such information, public institutions restrict the access to such documents by referring to LAPD.

21.1.5 Conflict of Laws?

The access to the procurement records is regulated through two different laws, and as a result, the access to the same information is restricted in different ways.

When a conflict of laws exists, which law applies is decided based on the doctrine *lex specialis derogat legi generali*. This principle, provides for the solution of the conflict of laws, through identifying the scope of the law. Based on this principle, the specific law (in this case LPP) will be applied over the general law (LAPD). The general law (LAPD) will be applicable only if the specific law (LPP) has not regulated the concerned matter, or it sets limits below those set by the general law.

Consequently, institutions are mistakenly referring to the LAPD when limiting the access to the procurement records, as the access to such documents has to be rendered in accordance with LPP, since the latter has regulated the access to procurement information.

21.1.6 Trade secret and access to the information

As explained in I.I.C, Lëvizja FOL has asked some institutions for procurement information as part of research on public procurement. Among those institutions, Kosovo Privatization Agency and Ministry of Economic Development have refused access to public documents by referring to *economic or other commercial interest* as a reason for rejection, whereas the Ministry also made a reference to Article 11 of LPP (trade secrets).

Transparency of the public funds as foreseen by the Constitution and the Laws means that the whole process concerning how public funds are spent has to be transparent, and the information has to be accessible to the general public to fulfill the transparency requirement.

Since the public documents are not yet available online to the public, to monitor this process, the information is obtained throughout the process of requesting the information from the institutions in the form of a request to access the public documents⁴⁹. Accessibility of those documents is regulated by the **I.** Constitution and the **II.** the Law on Access to Public Documents, however the latter limits the accessibility to certain

⁴⁹A process which is considered as passive transparency.

information, resulting in the restriction ***that constitutes a breach of the Constitution.***

21.1.7 Constitution

Article 41 of the Constitution of the Republic of Kosovo⁵⁰, in paragraph 1, foresees that “*Every person enjoys the right of access to public documents.*”

Paragraph 2, specifies what is considered a public document by identifying them as “*Documents of public institutions and organs of state authorities are public...*”⁵¹. Further, this provision foresees the limitation as to when ***information contained in a public document*** can be limited to the audience, by stipulating that those documents will be accessible “*...except for information that is limited by law due to **privacy, business trade secrets or security classification.***”

This paragraph clearly identifies that:

- a) Only the **information** contained in a document can be limited (not the document as a whole)
- b) The information that the access to can be lawfully restricted must be of the nature that will breach:
 - Privacy;
 - Business trade secret or;
 - It falls within security classification.

Other imposed limitations which are not listed in Constitution and as a result narrow the access to the information, will constitute a breach of the Constitution.

⁵⁰ Constitution of the Republic of Kosovo, dated 15 June 2008, retrieved from: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

⁵¹ *Id.*

21.1.8 Law on Access to Public Documents (Law No.03/L-215)

When asked for access to public documents, the public institutions allowed/rejected the request, based on the Law on Access to Public Documents.

In two of the case studies, when the institution refused the request to access the documents, the reasoning made a reference to Article 12 (1.7) of LAPD, without providing any further explanation for the rejection, or any interpretation of how such provision applies to the requested information.

Article 12 of LAPD, foresees the circumstances as to when the limitation to the right of access, will be exercised proportionally for the purpose of i.e. “*commercial and other economic interests*”⁵².

The requests sent by FOL, included a list of documents, i.e. management plan of the contract, payment information, the performance of the contract, etc. The access to such information was limited due to LAPD.

This provision of the law restricts much more the access to the documents, then what is foreseen by the Constitution.

When it comes to the commercial aspect of the information that can be classified as secret, only information that can disclose a trade secret can be classified as secret. The exceptions from the right of access to documents, cannot be refused based on *commercial and other economic interests*, since this does not constitute a trade secret in form of “*any formula, pattern, machine, or process of manufacturing used in a business that may give the user a competitive advantage; plan or process, tool, mechanism, or compound known only to its owner and those of its employees to whom it is necessary to disclose to*”.

Even in the case that the information requested indeed constitutes a trade secret, then “*if such item is contained in a document that also contains*

⁵² Law No.03/L-215 on Access to Public Documents, Article 12 (1.7). Retrieved from: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2724>

non-confidential information, then the institution should prepare a “sanitized” version of such document.”

Nevertheless, even in the case that the requested document contains only trade secret, then *“the contracting authority shall prepare and include in the accessible material a document containing a general summary of the contents of the withheld document. The contracting authority shall attach to the front of such summary a notice that (i) the contracting authority has classified all the information contained in the original document as confidential business information at the request of the concerned economic operator and (ii) the attached document has been prepared by the contracting authority and is a general non-confidential summary of the original”.*

21.2 Transparency of the beneficiaries

Kosovo legislation does not foresee such a requirement for the economic operators to be registered in a specific registry nor identifying the beneficiaries. However, this can be easily regulated. FOL, recommends two options on how such a regulation can be incorporated into the national legislation:

- a)** Specific law on the registrar of the partners of the public sector- this can be achieved by passing a law, similar to the Slovakia’s act.
- b)** Amend two laws- the Law on Public Procurement and the law on Business Organization can be amended by adding provisions that would impose a duty on the economic operator to register in the specific registry to be qualified to enter into a contract with the public institutions, and other relevant provisions.

21.2.1 Bidders with unknown owners

The government decided to present law, which parliament passed, to limit bidders with unknown owners from participating in public procurements. 23 Lawmakers focused on so-called tax havens, making any company

based in one of them ineligible to take part in public tenders in Slovakia.
(Transparency International Slovakia, 2016)

22.0 Conclusion

We are aware of what we are asking. We are not asking to change a regulation or a law or to publish a specific document. We are asking for a major reform in public procurement, perhaps the biggest reform ever that would finally bring transparency on public expenditure, honor the constitution of the country, help prevent high-level corruption and respect the taxpayers - citizens.

We are also aware of the resources and costs involved in this unprecedented initiative to bring transparency in public expenditures. But we are more than ever convinced that this is the right approach, and the costs of not taking this initiative are far more expensive.

We are asking to change laws and regulations, adopting new laws and regulations and more importantly, we are asking to change the mindset. A mindset that accepts transparency as a core principle of any decision-making process and opens itself to criticism and scrutiny towards taxpayers – citizens.

We are asking to open the mind towards the possibility of open data, towards doing the business in the light of the day, toward not just informing the citizens about any government undertakings, but also in educating them.

So yes, we are asking as taxpayers as well, as a taxpayer who pays for that bridge and for that road, for that car and for that luxury lunch in that fancy restaurant.

As a taxpayer, we are asking you to bring us the bill.

FOL is starting this initiative, but it is not alone in this. We know others will follow and support and we will not give up on transparency.

Because we know the cost of corruption, we know it as we have felt it in our bones.

The inexplicable wealth of our politicians and our influential individuals from high and low should be transparent and we want to start with public

procurement, which has been the source of enrichment for so many who have misused their authority as public officials to benefit to corrupt and benefit for themselves.

And let's be clear that this is not a request to make the life harder for businesses, on contrary. An honest business does not fear transparency but it fights for it. A business that does not corrupt or bribes public officials has nothing to fear from this initiative.

We just want to bring light to how our government manages with our taxes and yes we also want to know who benefits from our taxes. Through transparency, we can see the end beneficiaries wherever they are. This means that it becomes impossible hiding your name behind an offshore company or a company in another country where the profits gained from taxpayers' money in Kosovo go.

We are a poor country but nevertheless, we have signed contracts worth billions of euro. We have to make sure that no one uses public funds to make themselves rich.

This reform helps to uncover those affiliated with politicians and those in high office who can influence a contract towards certain businesses.

We want a fair competition by potential companies of all sizes to get the best value for money.

To ensure fair competition and to sanction corrupt practices, companies with a proven track record of integrity breaches should be excluded from access to public procurement.

PPRC could be the authority that issues such fines to all those operators that violate rules, hide information, evade taxes or are found or caught in any way as acting irresponsible, corrupting or misusing taxpayer's money.

And we call on our leaders, our representatives who promise zero tolerance against corruption to support this initiative in the Parliament.

We need your help to voice our concerns and to push any government in taking this commitment forward and making it a reality.

If we pay our taxes, we need to know what we are paying for.

23.0 Recommendations

1. PPRC should open contracts for the public
 - a. Contracts, annex contracts and appendices
 - b. Orders and invoices, payments
 - c. Publish contract management plans
2. PPRC should cooperate with the general auditor in identifying shortcomings in public procurement and PPRC could address them by issuing fines to both contracting authorities and companies. Both PPRC and auditor general can send the cases to prosecutions in cases of penal acts.
3. Change and amend current legal framework on transparency on public expenditures
 - a. The rule “*if you don’t ask, it is not open*” should change from passive to automatic transparency
 - b. Law on business organizations must be amended to offer full transparency with regard to business owners, management, and beneficiaries
 - c. Law on public procurement must change the part that limits access to public procurement documents
4. CPA should have more products on its central procurement lists to limit the possibility for corruption and simplify the monitoring process.
5. All procurement staff should declare assets as they position is considered as being prone to corruption
6. Drafting of a specific law on the registrar of the partners of the public sector – this can be achieved by either passing a new law, similar to the Slovakia’s act or making amendments to current laws.

7. Forward procurement plans should be published online to help economic operators prepare and collaborate, but also to prevent last minute payments and contracting.
8. PPRC should Work with KBRA and other institutions to create the public sector partners and exempt all those who are not registered in this register from participating in the public procurement
9. PPRC should publish automatically online on its website all contracts, annex contracts and Appendices dated from 2010 in a machine-readable format.
10. Publish all orders, invoices, and payments resulting from public contracts online, managed by PPRC in a machine-readable format
11. Publish full information on the active contracts, selections criteria (*call for tenders*) with simple legends in a machine-readable format
12. Publish bidders offers in a machine-readable format.
13. Exempt bidders with unknown owners from participating in public procurement
14. Exempt companies (economic operators or businesses) to participate in public procurement with hidden or unknown beneficial owners
15. PPRC should allow social witness during the opening of tenders. Civil society representatives from NGOs can be assigned through a rotation system to participate in the opening of tenders above a certain threshold.

Kosovo Business Registration Agency should publish:

16. Full business data, including up to the date address, nationality of the authorized persons, owners, management, and partnerships
17. The full history of authorized persons, owners, management, and partnerships.

18. The full history of legal interventions, legal acts.
19. Full disclosure of beneficial owners in a separate website. Such owners should be listed after verified by notary offices, as regulated by law.

Ministry of Finance should publish:

20. Online annual financial data of all companies doing business with the state in a partner register platform. All such companies are considered business partners should disclose full information so that taxpayers know who owns and operates with such companies.
21. Citizens should be able to follow their money and see where they are invested. KTA should make it possible in cooperation with other institutions and there is no online information about business profit and business annual financial statements

The government should revise and amend laws on:

22. Access to public documents
23. Public Procurement
24. On Business organizations

Should draft new laws on

25. Beneficial owners and tax havens
26. Public sector partners register

Ombudsman should:

27. Create a special office with Ombudsman office to oversee public procurement process, offer advice on the process and serve as alternative body for resolving disputes among parties

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