

NATIONAL STRATEGY

FOR

**DEVELOPMENT OF THE PUBLIC PROCUREMENT
SECTOR IN BULGARIA**

**OVER THE PERIOD
2014 - 2020**

**SOFIA
2014**

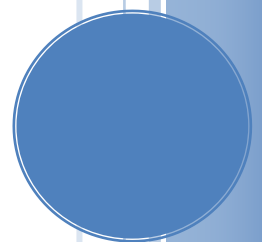


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INTRODUCTION

The national strategy for the development of the public procurement sector in Bulgaria sets the strategic framework for the state policy in the area over 2014 – 2020.

The preparation and adoption of the strategy coincides with an important stage in the country's development as EU member state. A Partnership Agreement is to be signed with the European Commission over programming period 2014 – 2020, which will settle the conditions for the provision of funds from the Union's structural funds. In view of that, one of the tasks of this strategy is to guarantee meeting the preliminary conditions for signing the Agreement in the part concerning public procurement.

In the meantime, it should ensure meeting the national objectives set in accordance with the Europe 2020 Strategy for an intelligent and sustainable economic growth. In order to meet these objectives within the single European market, in the beginning of 2012 the Union's institutions launched a large-scale reform of the public procurement legislation. It needs to ensure the effective use of public funds in order to provide support for economic growth and opening job positions. The European Commission provided new draft Directives based on flexible and easy-to-use instruments to facilitate the transparent and competitive award of procurements. One of the objectives of the new legislative package is to increase the efficiency of public spending in order to ensure achieving the best results in the contracts' implementation in terms of the "price - quality" ratio. Development of effective mechanisms is needed to prevent, detect and eliminate conflict of interests. At the same time, the establishing of simple and flexible rules should lead to increased competition and easier access for SMEs to the pan-European market. This will help the stimulation of the countries' economies (including Bulgaria where these enterprises are the main economic operators), and in a broader sense– the liberalization and expansion of the market within EU. The execution of measures relating to the directives will affect the implementation of other policies– in regard with environmental protection, efficient use of natural resources, promotion of innovations, etc.

The new directives were adopted by the European Parliament and the Council and published in the Official Journal of the European Union. As a member state Bulgaria is to transpose them into its national legislation no later than 18 April 2016.

The programme documents mentioned require assessment and analysis of the stage at which the country is, and in particular the condition of the public procurement sector, as well as identifying suitable development measures. The definition of the aims, measures, specific activities, and the provision of their adequate implementation may be ensured by developing a general strategic document to comprise them in their interrelation.

The adoption of the strategy should also meet the recommendation of the Council and the National Reform Programme Commission for 2013 and the Monitoring progress report under the Mechanism for Cooperation and Verification.

Upon preparing the document, credit should be paid to the progress achieved so far in the area of the legislative and institutional environment, by pinpointing measures for future development so as to ensure continuity and adequate use of the experience acquired.

The time scope of the strategy is set for the period from 2014 to 2020, due to which it comprises three types of measures:

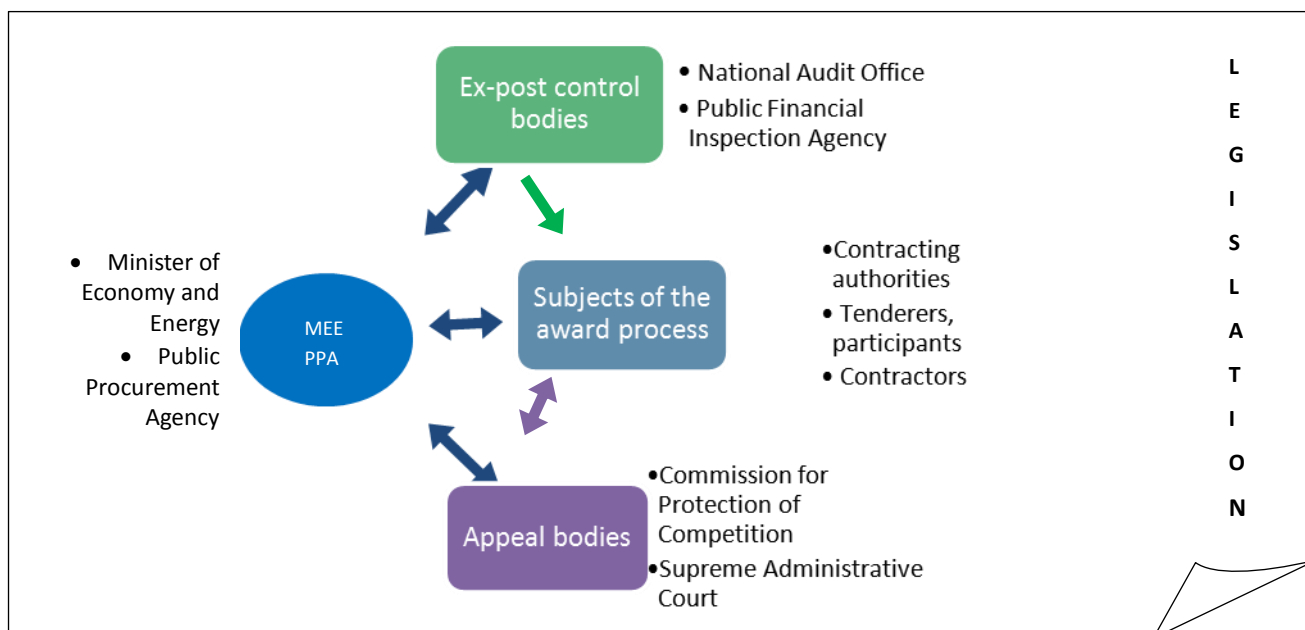
- Short-term – with implementation due by the end of 2014;
- Mid-term – to be implemented over 2015-2016;
- Long-term – to be implemented over 2017-2020.

CONDITION OF THE PUBLIC PROCUREMENT SECTOR IN BULGARIA – MAIN INDICATORS

I. BRIEF OVERVIEW OF THE SECTOR’S DEVELOPMENT

I.1. Legislation

The public procurement sector functions as a set of factors the interaction of which may be viewed as a system.

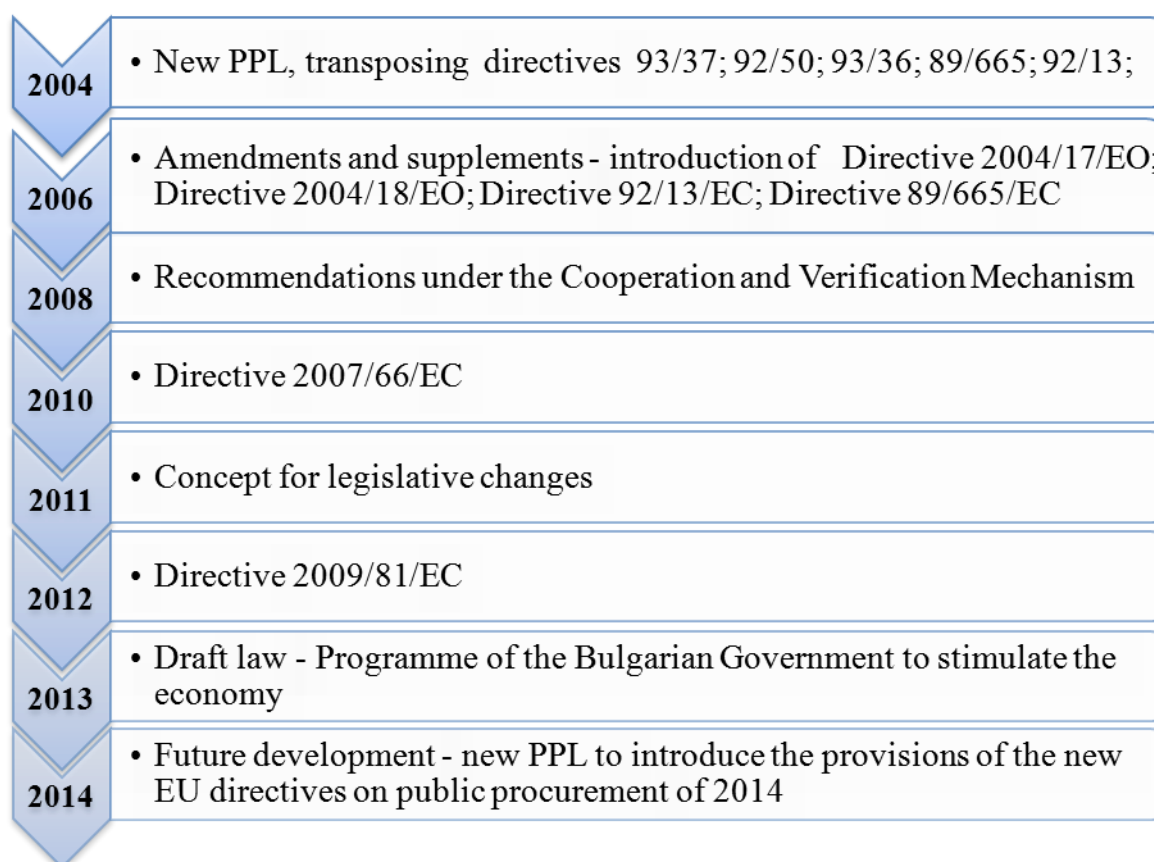


The applicable legislation lies in its base. It settles the relations that arise in relation to the preparation, conduct, appeal, award and control of public procurements and arranges the status and rights of the bodies in this area.

The beginning of the legislation in the area was laid with the Law on the award of state and municipal procurements in 1997. Two years later it was replaced by the Public Procurement Law. Both laws introduced national rules for the award of contracts by contracting authorities, thus laying the base for a public and competitive approach when spending budget funds.

In October 2004, the currently effective Public Procurement Law came into force, transposing for the first time the European Directives – 93/37/EEC, 93/36/ EEC, 92/50/ EEC, 89/665/ EEC and 92/13/ EEC to the Bulgarian legal system. Over 10 years, it has been amended 27 times. Six of the amendments are defined as material ones. Three of them transposed the public procurement directives adopted in 2004 /effective until now/. The other amendments were made in accordance with the national policies in the field of public procurements. There are also many other amendments that settle individual cases or reflect minor technical text editions.

The scheme below presents the major changed chronologically:



Besides the law, the currently effective legislation in the field includes the Regulations for the Application of the Public Procurement Law (RAPPL) and the Ordinance on Holding Competitions in Urban Development and Investment Design, as well as the Ordinance under Art. 13, para 3 of the PPL on the criteria and terms and conditions for procurements in the field of security and defense under Art. 346 of the Treaty on the Functioning of the European Union and the terms and conditions for concluding contracts.

Issues related to control and appeal of public procurements are also included in the Law on the National Audit Office, the Law on the State Financial Inspection, and the

Competition Protection Law. The Concessions Law and the Public-Private Partnership Law include rules that cover some specific subject aspects.

Presently, Law on Amending and Supplementing the Public Procurement Law (LASPPL) has been adopted, coming into force on 01 July 2014, thus realizing the 2013 Programme of the Government of the Republic of Bulgaria. Changes in it cover mainly measures related to increasing the publicity and transparency in awarding, improving the business environment by encouraging competition, creating more opportunities for market access of small and medium-sized enterprises, as well as some measures aimed at optimizing the system for appealing in public procurement.

I.2. Institutional framework. Public procurement subjects. Subjects competent in the field of methodology, ex-ante, ongoing, ex-post control and remedy. Achieving centralized awards

According to the law, the state policy on the field of public procurements is performed by the Minister of the Economy and Energy.

The Public Procurement Agency is the national body which assists the Minister in the conduct of this policy. The Agency was established in 2004 upon the adoption of the currently effective law, in order to fulfill the commitment taken before the European Commission under Chapter One "Free movement of goods" of the negotiation process for Bulgaria's accession to the EU. The aim of establishing such a specialized body is to ensure a single national policy in the field of public procurement in accordance with the European priorities in the following directions:

- timely transposition of the European legislation in the Bulgarian laws;
- provision of methodological support for the correct application of the legislation;
- monitoring of the public procurement market.

The Agency's main functions, regulated in the PPL, may be summarized in the following groups:

- drafting of legislation, under which PPA develops draft legislation in the field of public procurement. The Agency monitors the amendments made to the applicable Directives and Regulations, and aims to facilitate the maintenance of an updated legislative framework;
- methodology, development and dissemination of best practices – activities through which the Agency is involved in reinforcing a lawful, uniform and uncontroversial practice of applying the law. The main forms of performing this function are the methodological instructions, the opinions on specific inquiries, and direct consultations;
- monitoring of the public procurement market and provision of publicity – a function crucial for planning the Agency's activity and directing its efforts to the problematic areas. The monitoring also ensures the provision of annual statistical information to the Commission services in relation to the indicators monitored.

- control functions – performing two types of ex-ante control – on procedures fully or partially funded by EU funds, and on negotiated procedures without a notice. The control is preventive in nature and is a form of methodological assistance.

- cooperation with other institutions and organizations, on both national and international level. An important role is played by the active interaction with the EC.

- maintaining a Public Procurement Portal and Public Procurement Register – an activity to ensure application of the publicity and transparency principles.

In the beginning, the Agency was established as a body to develop draft legislation in the area and provide methodological assistance to contracting authorities. The aim of the methodology is to facilitate the application of the law and unify the practice so as to ensure compliance with the main principles of the legislation in the area. The function is performed in several major forms – replies to written inquiries, publication of methodological instructions on the Public Procurement Portal (PPP), direct consultations and maintaining a 'hotline' for technical consultations in relation to the sending of the information to be entered in the Public Procurement Register (PPR).

A central position among the methods of methodological assistance is the provision of instructions by replying to written inquiries. This form of communication is preferred, since through it the bodies receive an official statement on issues raised.

The inquiries received at the Agency are also a source of feedback about the areas in which contracting authorities, tenderers and participants meet the most frequent difficulties in applying the legislation. Upon ascertaining repeated inquiries, methodological instructions are prepared to all users, which are published on the Public Procurement Portal to be accessible to everyone.

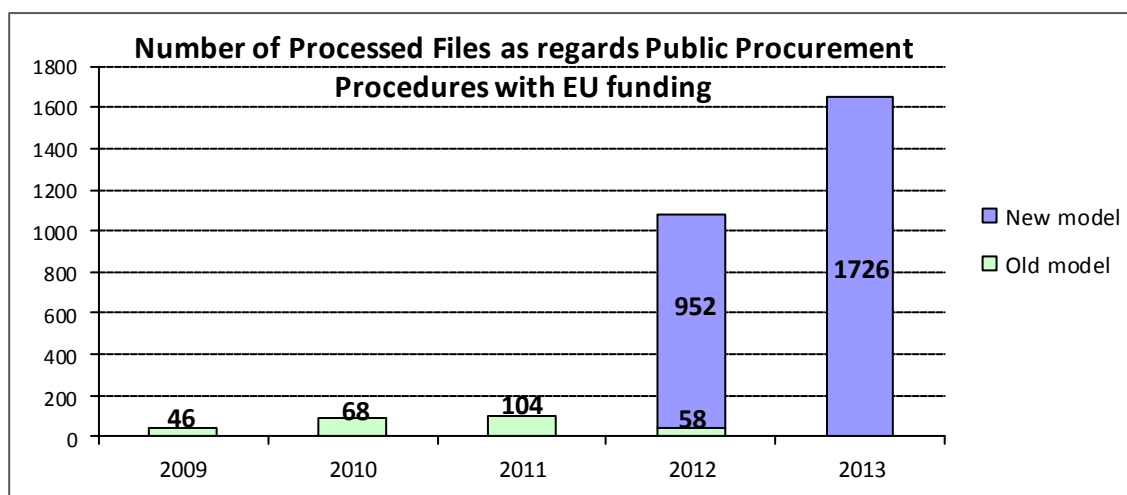
Direct consultations are used to provide immediate assistance on specific issues related to complex cases, when it is hard by means of written correspondence to hold a complex discussion about all facts and circumstances.

Since the beginning of 2009, the Agency has taken on a new function – ex-ante control on procedures deemed sensitive in view of their economic prominence or the degree to which the publicity and transparency principles have been observed.

PPA performs two types of ex-ante control. The first one covers public procurement procedures fully or partially financed by EU funds. In its nature, this control is substantially different from the ex-post control performed by the National Audit Office and the State Financial Inspection Agency, which is mainly sanctioning. The control performed by PPA aims prevention rather than punishment. Through it, the contracting authorities receive methodological support for eliminating omissions and errors made at the stage of preparing and launching the procedures. Its main aim is to minimize the risks of concluding contracts under which subsequent sanctions may be imposed in case of violations of the absorption rules.

In the model that was initially introduced, the control was performed at a single stage, by checking the draft documentation for opening and conducting the procedure. After

the amendments effective as of 26.02.2012, it has been performed at two stages, and a feedback mechanism was introduced to track if PPA's instructions were complied with. The first stage comprises of a check of the draft notice and the bid evaluation methodology before launching the procedures. At the second stage, an assessment is made of the compliance of the already published documents with the legal requirements and with PPA's recommendations.



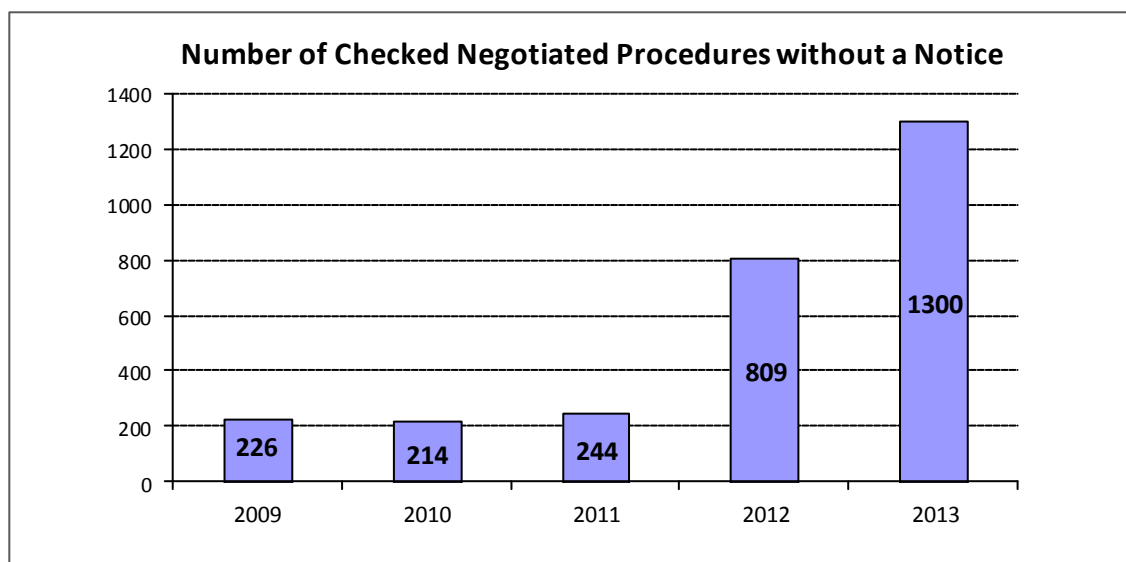
As it can be seen from the graph, in 2012, a total of 1010 files were processed, and in 2013 – 1726, which is an increase of 71%. Of all documents checked in 2013, 831 passed the first stage, and 802 the second. The remaining 93 were returned after it was found that there were no conditions supporting the need of control. In 143 of the cases (in 3 of which at the first stage), no discrepancies were found. This number is equal to almost 9% of all statements and reports prepared over the period. The indicator registered a substantial increase as compared to the results reported in 2012 (3,5%) and supports the conclusions about the control's efficiency.

Another indicator of its usefulness is the practice of appealing against procedures. According to CPC data, out of all 800 procedures subject to control and launched in 2013, in only 44 cases an appeal was filed against the decision for opening the procedures, which was subject to control by PPA. This is 5,5% of the total number of procedures. The decision was deemed unlawful in 15 of the cases, i.e. in under 1,88% of the procedures checked the appeal was successful.

The second type of ex-ante control that PPA performs is on the negotiated procedures without a notice, opened on the grounds of Art. 90, Para 1, items 3-9 of the PPL by contracting authorities under Art. 7, items 1-4 of the law, i.e. the so-called "classical contracting authorities". In this type of procedure, the PPL principles are less enforced. The cases when a negotiated procedure is allowed are related to specific, objective prerequisites as at the time of opening the procedure. In view of that, during the control, the motives of the contracting authorities are checked, as laid out in the decision for opening the procedure and the evidence attached thereto. The aim is to

ascertain the objective nature of the reasons and their connection with the prerequisites stipulated in the law for conducting the negotiated procedure.

The graph below presents the number of negotiated procedures checked over the years.



It can be seen that there was a substantial growth in the checks made in 2012. The reason for that is the abolition of the Ordinance on small public procurements and including the terms and conditions for these procurements into the law, as a result of which they were then part of the scope of PPA's control functions. The dramatic increase in the number of procedures to be controlled had a negative impact on the already insufficient administrative capacity of the Agency.

As a whole, functions in the area of ex-ante control are also performed by the **OPs' Managing Authorities** within their rights, plans and programme directions. This control is performed in a more flexible and legislatively independent way, in view of which it can be viewed as an operational and dynamic impact measure covering the activity of contracting authorities implementing projects funded under the different OPs.

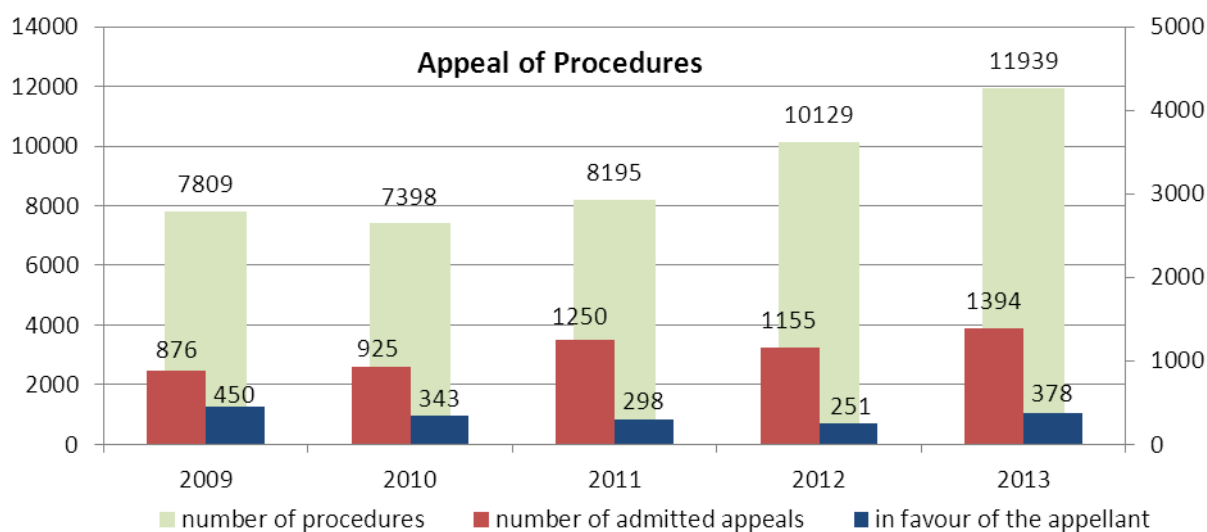
The ongoing control of the procedures is performed via the **remedy system** for appealing against acts or negligence of the contracting authorities, introduced to the PPL as of 01.07.2006. Until then, the decisions of the contracting authorities were appealed against before the respective regional court under the Civil Procedural Code. The court's decision was subject to appeal before the district court, whose decision is final. The alternative to court appeal was the consideration and decision on public procurement disputes before arbitration established within the Public Procurement Agency.

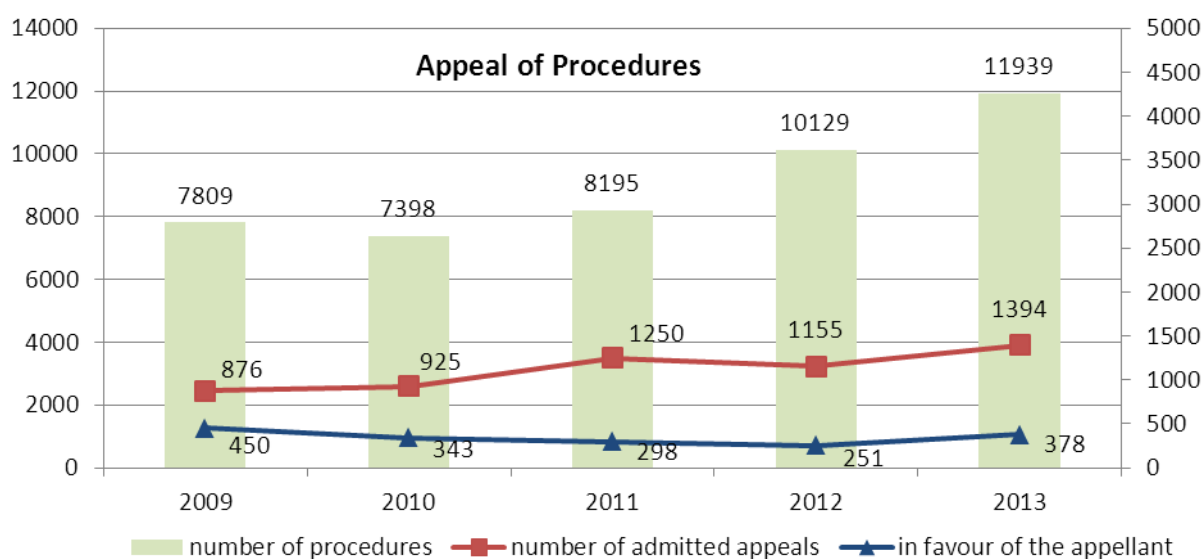
When the requirements of the EU Directives in the field of remedy procedures were transposed (Directives 89/665/EEC and 92/13/EEC), the resolution of public procurement disputes was transferred to an administrative body – the Competition Protection Commission, as first instance. The appeal against its decisions is done before the Supreme Administrative Court.

The law imposes a special procedure following which the CPC considers appeals against decisions, acts or negligence of the contracting authorities in public procurement procedures. For matters unsettled in the remedy proceedings, a subsidiary application of the Administrative Procedural Code (APC) is done. Upon considering CPC rulings, the Supreme Administrative Court (SAC) applies the APC ruled.

The new remedy procedure introduced in the PPL aims to take into consideration some specific requirements of the Directives, unknown to the standard administrative and claim proceedings. Such a requirement is for instance the possibility for imposing an interim suspension measure.

The law also sets deadlines for considering disputes by the two bodies – the CPC issues a ruling within a month from the launch of the proceedings, and the SAC – within a month from receiving the appeal.





The statistics show that over the last 5 years the effectively appealed procedures are 3,9% on average of the total number of procedures opened. While in the beginning of the period, the rulings in favor of the appellant were a bit below 50%, at the end this percentage dropped below 30%. Therefore, the conclusion is that more and more of the appealed procedures are lawful.

Another constituent of the system is the **ex-post control** on the application of the rules. Under the PPL, it is performed by means of two bodies – the National Audit Office and the State Financial Inspection Agency. They also carry out the administrative penal functions under the PPL.

The National Audit Office of the Republic of Bulgaria is an independent external audit institution. The new Law on the National Audit Office in effect from 2011 substantially expanded the scope of the audit activity, and among the new tasks added was the right of imposing administrative penalties in relation to the control imposed on compliance with the public procurement rules.

The State Financial Inspection Agency is an administration with the Minister of Finance. The SFIA is the body that performs a sanctioning role upon identifying violations – ascertains the damage caused and imposes administrative penal and property liability. It is also a competent body to impose administrative penal liability in the field of public procurement.

The data below¹ illustrate the weaknesses identified so far, based on which conclusions have been made about the need of measures in the strategy to eliminate them.

Data from the audit activity of the National Audit Office:

¹ Taken from the annual reports of the respective bodies and provided in addition to PPA in the form of an excerpt report.

Year	Number of acts for administrative violations	Number of issued penal rulings	Number of enforced penal rulings
2012	129	109	
2011	101		

According to the conclusions in the annual reports of the National Audit Office, there is a trend of reduction in the number of violations, and now some of the most serious violations, such as the splitting of public procurements and the failure to conduct procedures, are very limited. A positive effect on the behavior of the contracting authority was imposed by the increased requirements for the absorption of EU funds and the attempt at strict compliance with the legislation, as well as by the enhanced ex-ante control in this area.

Data from the audit activity of the SFIA

Year	Number of acts for administrative violations	Number of issued penal rulings	Number of enforced penal rulings²
2012	1745	1428	574
2011	1963	1678	647
2010	2410	1706	903

The Agency's reports contain detailed information about the number of the conducted procedures, the number of the violations identified, respectively their total value and their distribution as per the legislation violated, the type of contracting authority (municipalities, ministries, etc.), etc. For instance, the 2011 report contained data that can be summarized as follows:

- Procedures checked - 1368
- Procedures with ascertained violations - 821
- Procedures wrongfully not conducted - 358
- Total number of ascertained violations – 2816
- Acts for administrative violations - 2163

The Administrative Penal Liability section states that in 2011, 1934 penal rulings were issued but it is not specified how many of them were for violations as regards public procurement and how many penal rulings were enforced.

Data provided by the two control bodies shows differences in the method of summarizing and presenting information similar in nature, which should be indicative of the behavior of some parties in the process of applying the same legislation.

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² The information is not contained in the annual reports. It was provided to PPA upon request.

process of applying the same legislation.

The OPs' Managing Authorities also have functions in the field of ex-post control. Ex-post control on EU funds absorption is also performed by the specialized executive agency at the Ministry of Finance. The European Union Funds Audit Executive Agency (EUFAEA) is appointed Audit Body and the body to assess the compliance of the management and control systems for all Operational Programmes co-funded by the European Regional Development Fund, the European Social Fund and the Cohesion Fund. The Agency is a secondary budget holder under the Minister of Finance. It is functionally and organizationally independent from the bodies responsible for the management and making of payments under all EU co-funded programmes.

Without this being explicitly regulated, the contracting authorities' internal control units are also technically capable of covering public procurement as part of their control activities. This control should be regarded as internal. In as far as internal audit is an activity to provide assurance and consultation it can be expected to also cover ex-ante control aspects within the organization.

The main participants in the award process are the public procurement **subjects**. These are the contracting authorities, which as part of their functions spend public funds, as well as the bodies specified by the law as belonging to publicly prominent areas. Their partner is the business, represented by applicants, tenderers and contractors of public procurement contracts. Over the years, there has been a constant expansion of the two groups, and at the end of 2013 it reached 5 302 contracting authorities and 20 490 contractors.

A special contracting authority is the **Central Public Procurement Body (CPPB)**. The possibility for establishing such a body is legislatively settled in Art. 8a of the PPL. According to the law, the CPPB is a contracting authority which conducts procedures for concluding public procurement contracts or framework agreements on behalf of other contracting authorities. Such bodies function successfully and have an increasingly prominent role in most EU member states.

With Decision No 68 dated 11.02.2010 of the Council of Ministers, this body was determined to be the Minister of Finance. Upon exercising their rights, they are assisted by the Central Funding and Negotiation Unit at the MF. The functions of the CPPB are regulated in Ruling No 112 dated 04.06.2010. According to it, the CPPB conducts open procedures and concludes framework agreements for the supply of goods and the provision of services for the needs of the state administration (Council of Ministers, the ministries and the respective secondary budget holders). The object scope of the procurements so far covers:

- Delivery of stationery and paper;
- Delivery of copier and printer toners;
- Delivery of car fuel by means of fuel cards;
- Provision of services for ongoing and major building cleaning;

- Provision of airplane tickets.

They do not cover the procurements awarded as part of implementing projects funded or co-funded by EU programmes or funds, by other states or by international or foreign organizations.

After the CPPB concludes the framework agreements, the ministries which are contracting authorities send invitations to the contractors identified, and after a competitive bid selection they conclude individual contracts in accordance with their specific needs and within the approved budget limits.

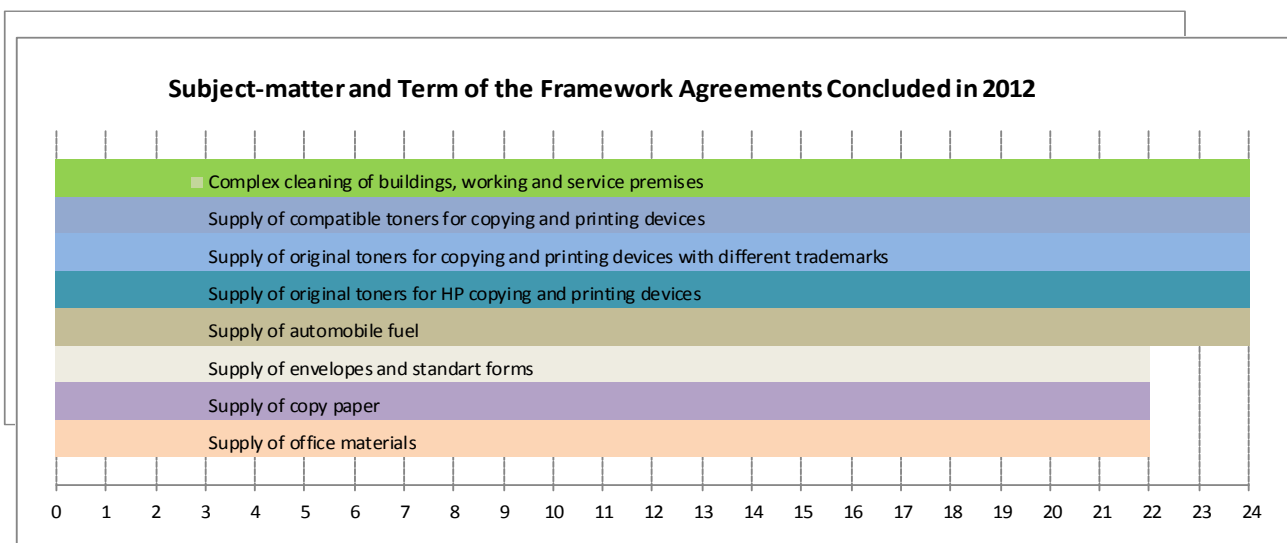
Over the 4 years since it was established, the CPPB has conducted 13 open procedures, of which 11 were successfully completed and a total of 20 framework agreements were concluded.

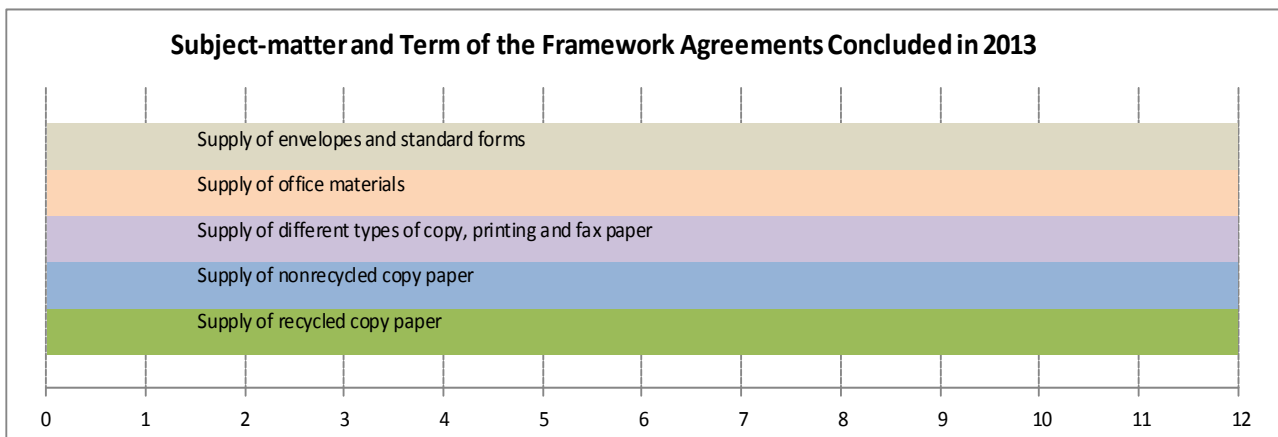
Summarized report on the number and value of the framework agreements concluded by the CPPB and the contracts awarded (per year)

Year	Number of procedures	Number of framework agreements	Number of contracts per framework agreement	Total value in BGN
2010	3	0	0	0
2011	3	7	78	19 943 726,88
2012	3	7	92	41 758 582,30
2013	2	6	75	22 152 391,39
Общо:	11	20	245	83 854 700,57

Note: The report has been prepared based on the data available at the PPR as at 03.02.2014.

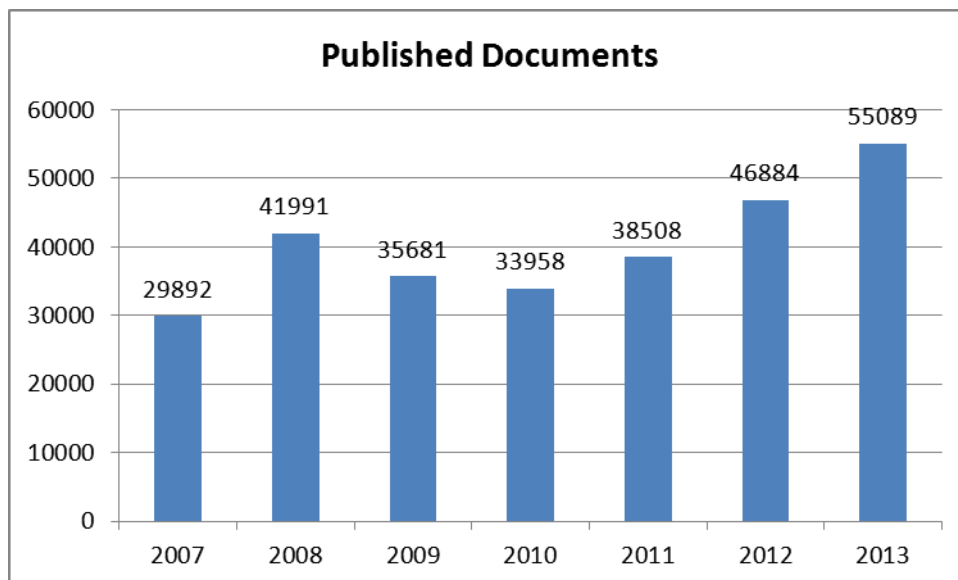
Object and time scope of the concluded framework agreements:





I.3. Ensuring the publicity and transparency principles. Electronic contract notification

The main instrument to ensure compliance with the publicity and transparency principles in the sector is the Public Procurement Register (PPR). It is an electronic database with information about all public procurements launched in the country and the results from their award, including information about contractual implementation. The register was created when the law was adopted in 2004 and is maintained by the Public Procurement Register. Access to the PPR is free of charged and is provided via the Public Procurement Portal at www.aop.bg.



The graph shows the number of documents published in the PPR over the years, With the exception of 2009 and 2010, when there was a drop due to the economic crisis, since 2011 there has been a gradual and constant increase.

PPA registers a sustainable increase of the percentage of documents sent with e-signature. In the PPR, 5061 certified e-signature users have been registered, who send information on behalf of 3652 different contracting authorities. Over the last few years, this percentage has been steadily growing.

The authorized users can also use the free e-Sender service, through which PPA forwards public procurement notices for publication on the Official Journal of the European Union. The number of contracting authorities who used this service in 2012 was 468, and in 2013 – 820. The documents forwarded for publication in the OJ in 2012 were 6031, and in 2013 – 10092, i.e. there was an increase of 60%.

Along with the mandatory information, the Register also contains various details information about public procurements in the country. Thanks to this rich database, the PPR allows the automatic extraction and processing of information for the annual statistical reports, without the need of requesting additional reports from the contracting authorities. The investigating bodies and the prosecution frequently contact PPA with requests for PPR data reports.

In 2009, the Agency's webpage was fully remodeled to grow into a Public Procurement Portal. The portal is a centralized system that provides access to information about all public procurement aspects, arranged in separate topics focused on the specific interests of the main groups of users. Information is provided about the organization and the activity of PPA, the Bulgarian and the EU legislation and practice in the field of public procurements, as well as useful references to other internet resources. The information on the portal is updated on a daily basis. The aim is to achieve higher publicity and transparency on the issues related to public procurements, and to enhance society's awareness.

The Public Procurement Portal provides the following electronic services:

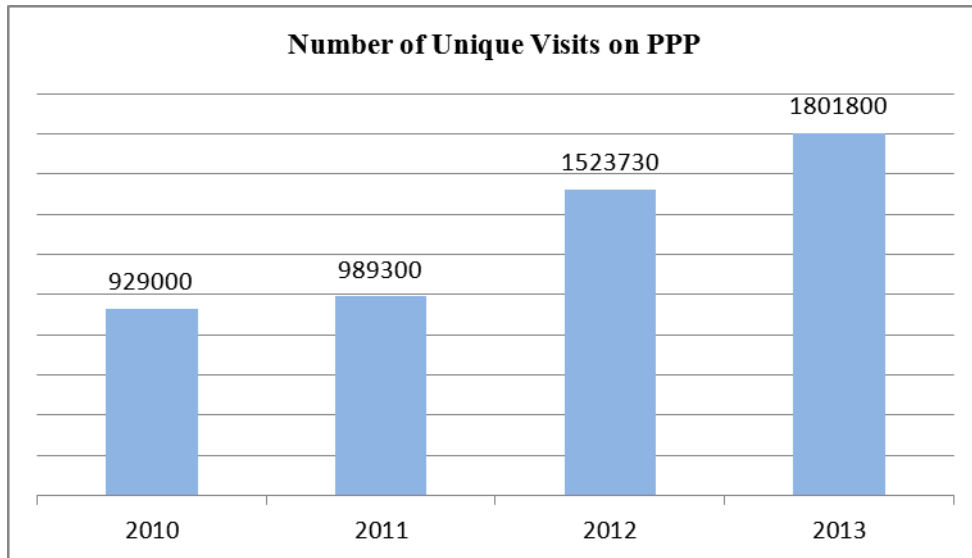
- Sending the information to be registered, also by using e-signature. In 2013, almost 90% of the notices and public invitations were sent in this manner;
- Officially forwarding the information to be published to the Official Journal of the EU through the free e-Sender service. It also includes a notice with confirmation of the publication in the OJ. Upon reviewing such notices, a reference to the respective publication in TED is also visualized;
- Receiving electronic documentation for participation in the procedure;
- Exchange of questions, answers and clarifications on the documentation between the contracting authorities and the potential tenderers;
- Provision of the so-called Portlets of the contracting authorities – a field on the Public Procurement Portal that is designated for the needs of the specific contracting authority, where they can provide general information about the organization and other useful information upon their judgment;
- Wide possibilities for free, quick and detailed search, for saving specimen and search items, and electronic information subscription.

The portal is available in Bulgarian and English and has been adapted for use by

handicapped people. Through it, the Form Editor software can be obtained free of charge.

Over the last few years there has been increased interest in the Public Procurement Portal among users and this can be illustrated by a big increase in the number of unique visits, which has doubled since 2010.

Along with the above, the need of software and hardware improvement and update should be pointed out, and to pose the question about an overall new vision and content structure.



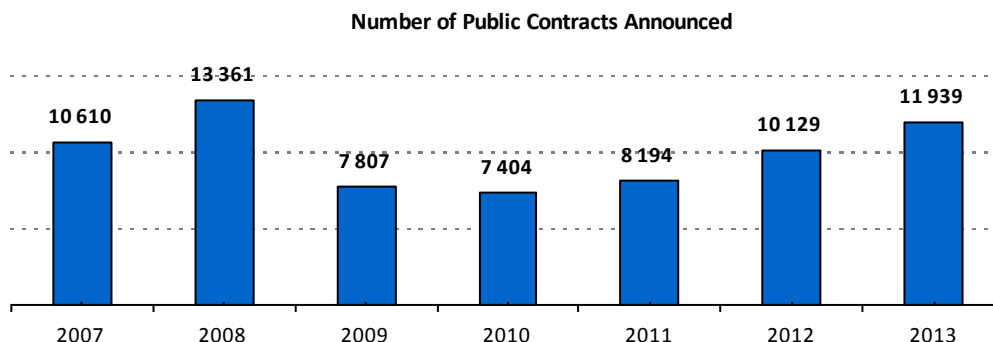
I.4. Market condition

The condition of the public procurement market over the last 7 years has been a reflection of the general economic situation in the country. In its nature, it is an instrument to redistribute a substantial part of the GDP via the different budgets. Public procurements are a factor that determines the direction of expenses for a number of companies operating in sectors of public prominence, such as electricity production and supply, water supply, energy sources abstraction and transportation, infrastructural operations such as airports and ports, postal services and public transport.

The Public Procurement Register and the Portal are a major source for receiving systematized information about the condition of the procurement market in the country. The rich database allows making an in-depth analysis of the current situation and to monitor development trends. The survey and familiarity with the market characteristics is crucial, since it makes it possible to target and take the respective measures upon conducting the state policy in the field. When monitoring the public procurement system, monthly reports are prepared on different criteria. The main monitored indicators are the number of contracting authorities, the number and value of the concluded contracts, the distribution of procedures based on their object, source of funding, type of procedure, proportion of the procedures above the

thresholds under Art. 45a of the PPL, etc.

The graphs below provide summarized information from the market monitoring over the last 7 years per different indicators.

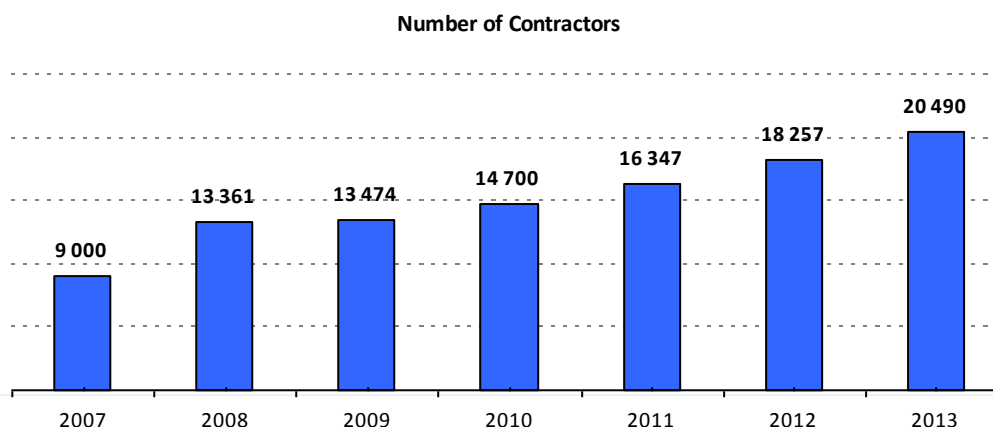


As a whole, over the last few years there has been a substantial increase in the number of contracting authorities. The reasons for that are mostly related to the decentralization of numerous budgets and the emergence of new contracting authorities, such as district mayors, school and kindergarten principals, etc. This is a fact that questions the staff sufficiency and the preparation of the employees involved in the preparation and conducting of the procedures.

The increase in the number of contracting authorities is also related to the obligatory announcement of lower-value procurements in effect as of 2012. Until then, the bodies operating with very small budgets were not covered and were therefore not obliged to publish information about their procurements.

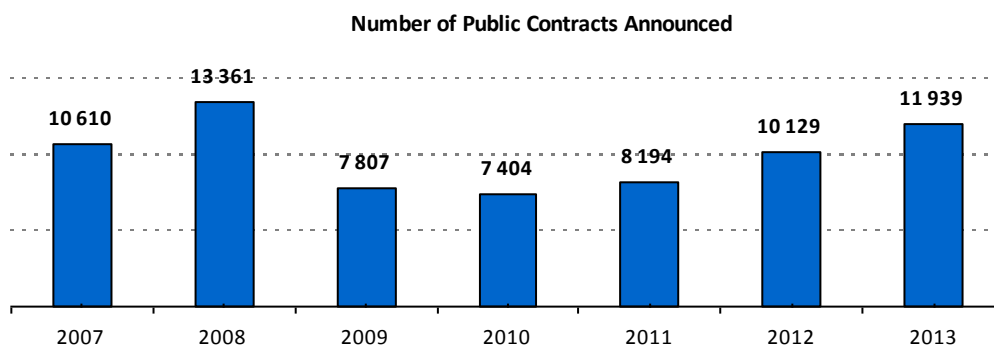
In the process of absorbing EU funds, the increase of contracting authorities has been also influenced by the so-called ad hoc contracting authorities. These bodies are not in fact contracting authorities, but when receiving public funds, including EU funds, they are obliged to apply the PPL.

The graph shows the increase in the number of contractors, which is directly related to the increase of the contracting authorities and the public procurement procedures.

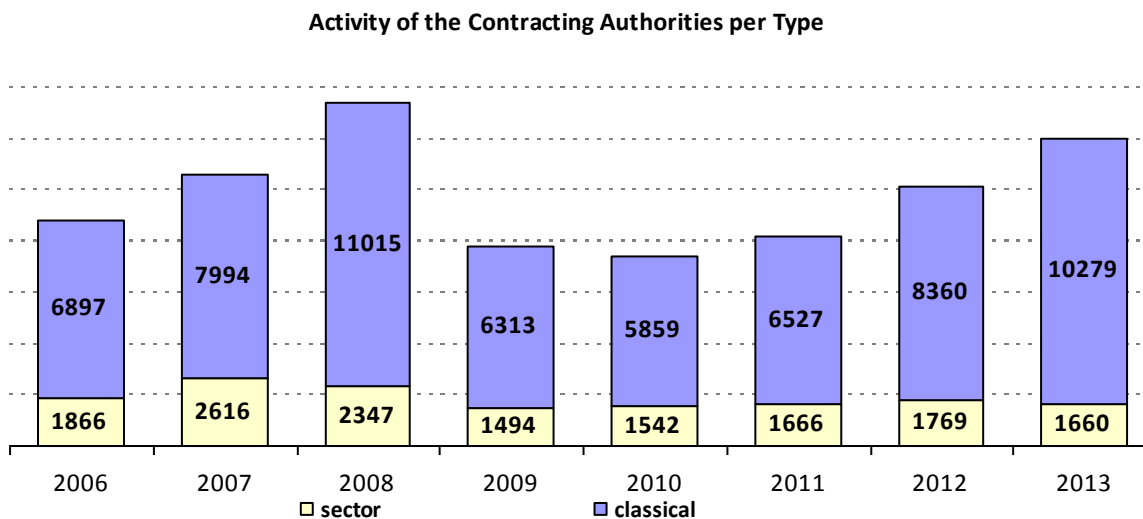


The procedures launched, respectively the number and value of the concluded contracts, are also indicators which are directly dependent on the economic situation. The unfavorable processes in the Bulgarian economy resulting from the economic crisis imposed limiting expenditure, due to which in 2009 there was an overall drop in all surveyed indicators – but mostly so in the number of the procedures launched. It can be seen from the graph that after the dramatic drop in the number of procedures, in 2011 a gradual pick-up began.

An indicator of the activity of the contracting authorities per type is the distribution of the procedures between the classical contracting authorities (under Art. 7, items 1-4

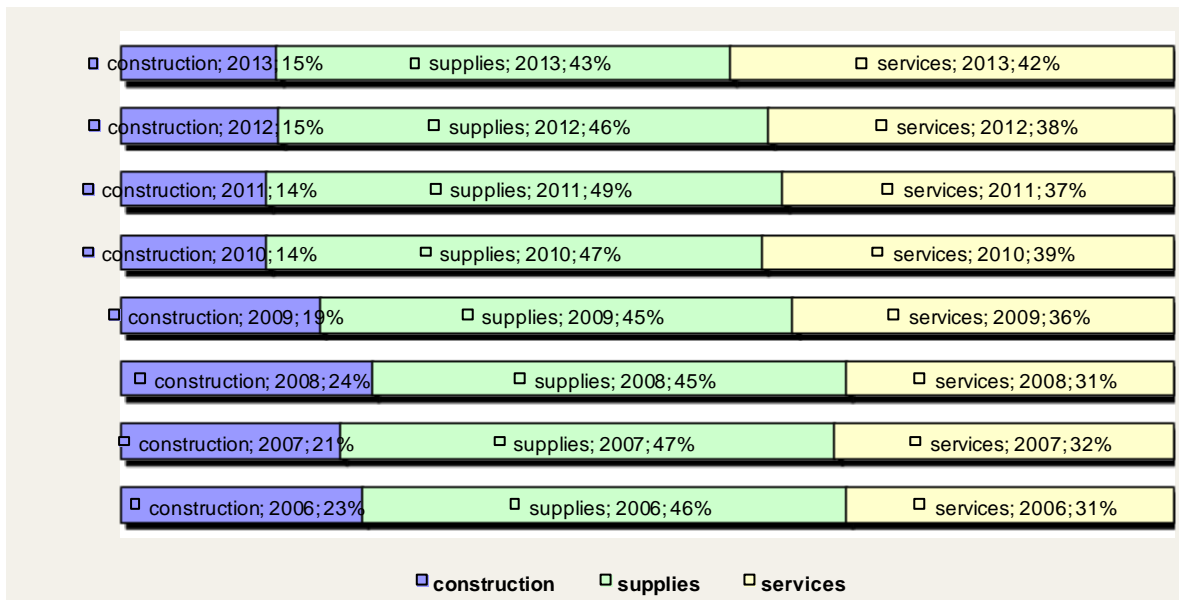


of the PPL) and the utilities (under Art. 7, items 5 and 6 of the PPL).



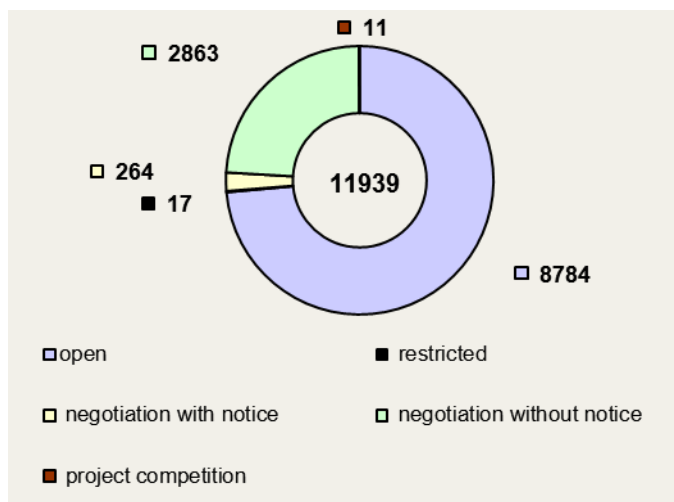
The graph shows the distribution of the public procurements per year, as launched by the two major groups of contracting authorities. It can be seen from it that in 2013 the ratio between the number of procedures launched by classical contracting authorities and utilities was 86 to 14, with the classical ones prevailing. This result is a logical consequence of the higher number of classical contracting authorities.

The distribution of the number of procedures based on their object – works, services or supplies, provides an idea about contracting authorities’ needs.

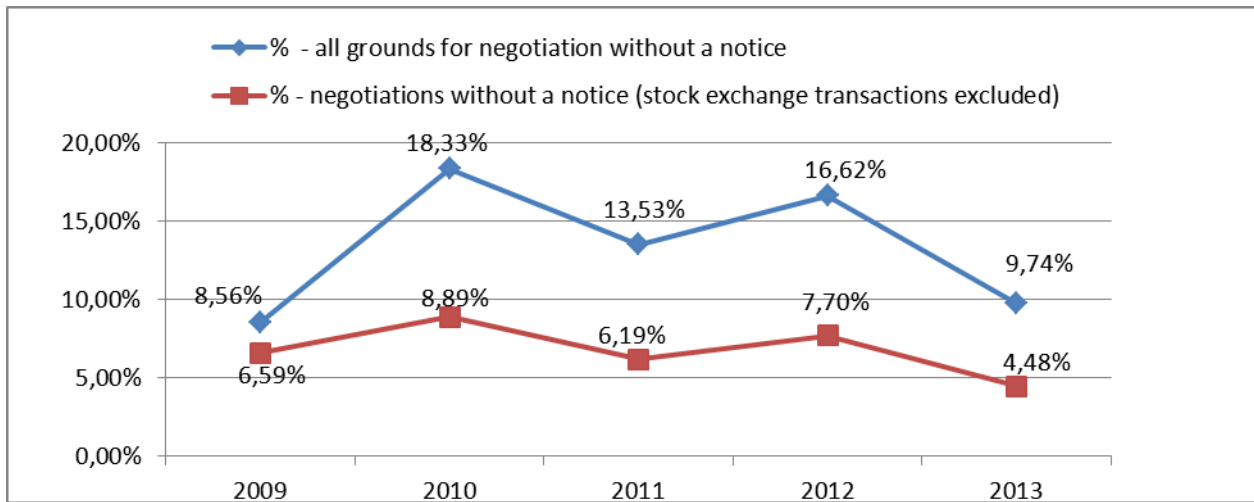


The presented distribution over the last 8 years shows a preserved ratio between works, supplies, and services. Traditionally, the highest proportion is that of supplies, followed by services and construction.

The next important analysis indicator is the distribution of procurements depending on the type of procedure.

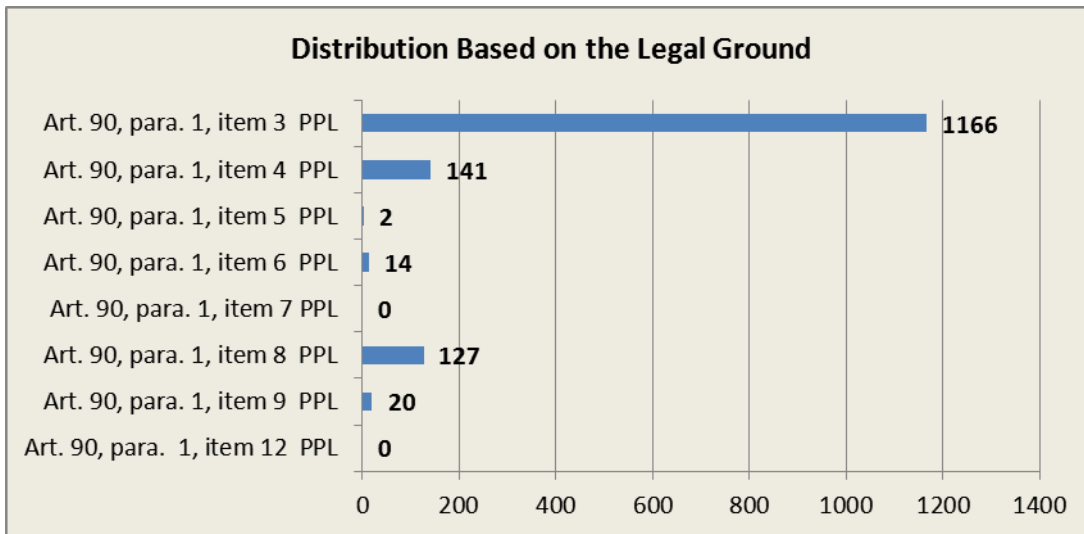


As it can be seen from the graph, over the years, the trend has been preserved for the biggest number of procedures to be the ones that ensure the transparency principle in the award – open procedures under the PPL. They account for 73.57% of the total number of procedures. An important indicator regarding the public procurement market is the share of expenses after negotiated procedures without a notice.



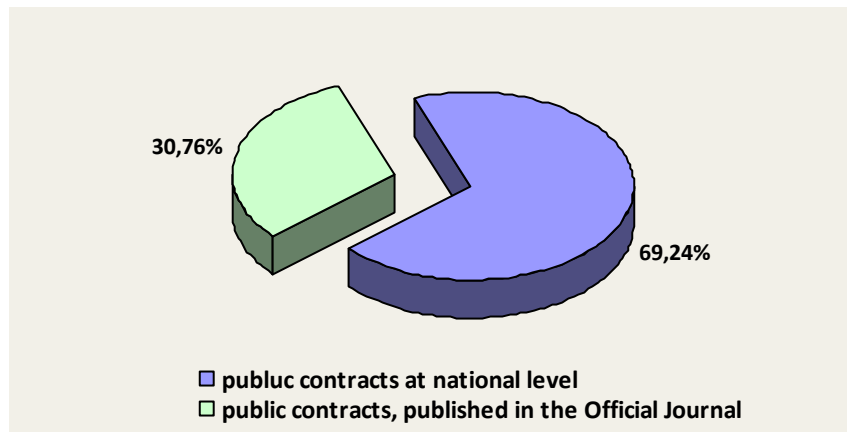
Based on data from the Public Procurement Register, during the last 5 years the value of contracts concluded after a negotiated procedure without a notice (stock exchange transactions excluded) varies between 4.48% and 8.89% of the total value of awarded public contracts, i.e. it does not exceed 9% over the whole period. These indicators show a comparatively low share as regards the value of the contracts awarded likewise, regardless of the relatively large number of negotiated procedures. The reason lies in the many small contracting authorities at local level (schools, kindergartens, etc.), awarding public contracts on the basis of copyright or exclusive rights for the supply of textbooks, electricity, heat energy, water, etc.

Statistics for the previous 2013 (as shown in the graph below) is indicative of the general trend in applying the negotiated procedure without notice in recent years. It is expressed in reduction of the number of cases when this procedure was used. Relatively largest is the share of contracts awarded pursuant to Art. 90 , para . 1, item 3 of PPA , i.e. related to copyright and other similar rights, as well as to exclusive rights held by companies operating in the energy and water supply. Undoubtedly PPA's ex-ante control contributes for this result, too.



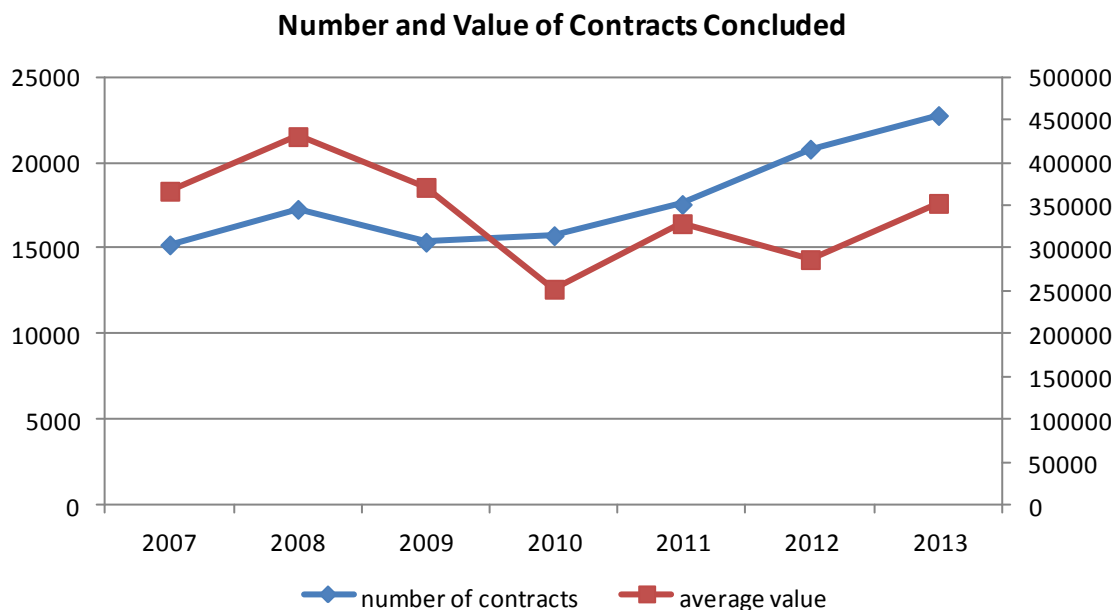
Distribution of negotiated procedures without a notice in 2013

Regarding the evaluation of the prominence of the public procurements launched in the country versus the common European market, data should be provided about the proportion of procedures also announced via the Official Journal of the European Union. These are the procurements whose estimated value exceeds the EU thresholds (under Art. 45a of the PPL).



It can be seen from the figure that in 2013 a total of 3673 procedures were announced on the European market, which amounts to 30.76% of the total number of procurements. As compared to the previous year, there was an increase in the proportion of procedures announced in the OJ, and the data support the conclusion

that there is an increase in the number of procurements above the EU thresholds.



Another major indicator that characterizes the public procurement market is the number and value of the concluded contracts. It can be seen from the graph that the number of contracts follows that of the procedures launched. There has been a relative decrease in the average value per contract, and a stable growth of the total number of contracts. This can be assumed to be an indicator for a decrease in the value of procurements and their constituent lots. As a whole, it can be concluded that the contracting authorities' available capacity has to process more procedures and service more contracts per time unit.

II. SYSTEM PECULIARITIES

The system overview shows that it is characterized by several main features:

II.1. Low award thresholds

The law has stipulated low thresholds for public procurements for which procedures under the Directives should be conducted. The national threshold for supplies, services and design contests is around 4 times lower than the European one, and in the field of construction the difference is a bit over 3 times. For comparison's sake, supply and service contracts are awarded with a PPL procedure at values over BGN 66 000, while the EU threshold is BGN 262 077 (in effect as of 01.01.2014). This peculiarity of the national thresholds is also valid when comparing them to those in the other member states. An overview shows that Bulgaria is among the countries that have imposed the lowest threshold values.

For procurements below the national thresholds (generally, values between BGN 20 000 and BGN 66 000 for supplies and services, and between BGN 60 000 and 264 000

for works), the law has stipulated more relaxed award conditions – by means of the so-called “public invitation”, which also ensures publicity and competitive contractor selection.

II.2. Publicity of negotiated procedures without notice

In accordance with PPL all awarding procedures are to be started upon a decision, with which the rest of the documents related to the procurement are approved – contract notice, documentation, and in cases of negotiation without notice – an invitation for participation to certain candidates. The decision for opening the procedure is mandatorily published in the Public Procurement Register, as this condition refers to negotiated procedures without notice, too. Thus the choice of this type of procedure, as well as the motives of the contracting authority for applying it in the specific case are made public, accessible to all and challengeable by anyone who is interested prior to the conclusion of the contract. This possibility provides for more public control over negotiated procedures without notice, along with the ex-ante control, performed by PPA.

This is a specific national decision differing from the regime in EU legislation. The relevant directives do not require the opening of this type of procedure to be notified, the only obligation being information for the concluded contract to be published.

II.3. Award of the services under Appendix 3 to the PPL by means of procedures under the law

Another specific characteristic on the national legislation is the approach of awarding several types of services, covered by Appendix 3 to the law, respectively Appendix II B to Directive 2004/18/EC. These are the so-called “non-priority services”, considered to be rather of importance for the national markets and not so much so for the common European market. The EU legislation treats them in a much more liberal manner that does not include an obligation for conducting a procedure.

Unlike the Directive, under the PPL these services are awarded by means of an open procedure, a restricted procedure, or a negotiated procedure with a notice.

II.4. Numerous restrictive measures at legislation level. More serious award regulations

A review of the matter settled in the PPL demonstrates the presence of a number of restrictive legislative measures. The law has imposed provisions which restrict, ban, or set strict formal rules. Some of them are the result of country-specific decisions, triggered by case studies missing in the applicable European Directives.

Some examples are:

- Limiting the maximum term of service contracts to 5 years and in exceptional cases 10 years;
- Requirements regarding the composition of the contracting authorities;

evaluation committees;

- Requirements regarding the contents of the bid and their arrangement;
- Detailed rules for the work of the committee upon opening and reviewing bids;
- Ban on contractual amendments;
- Detailed deadlines for sending the information to be published, etc.

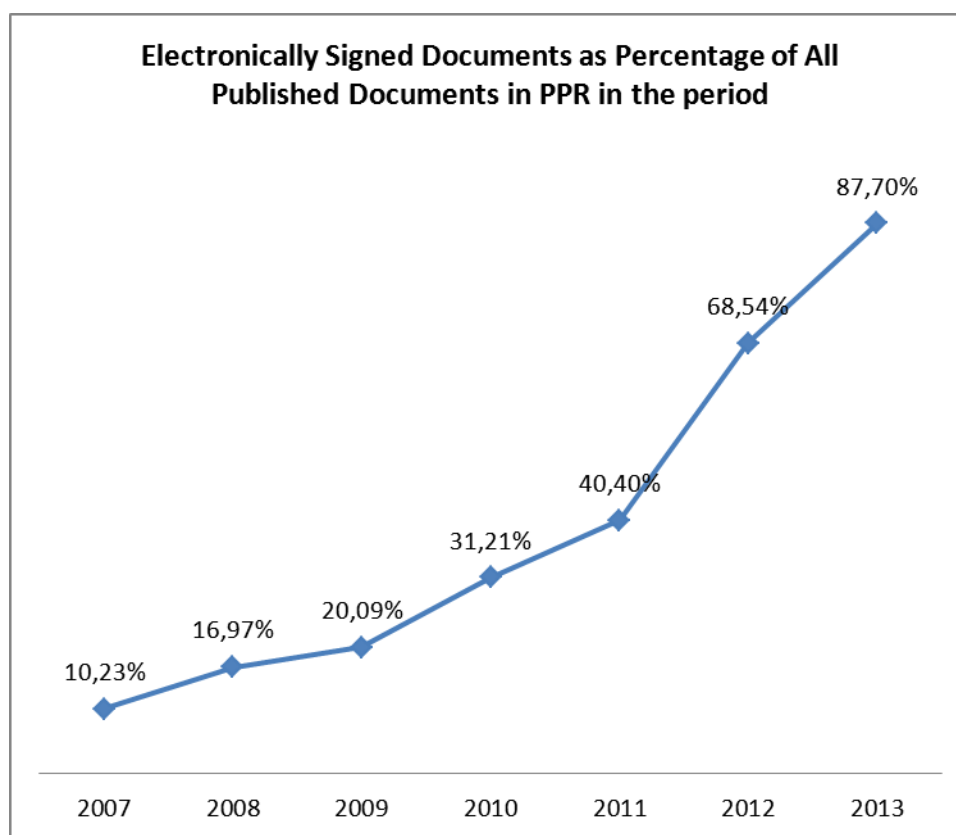
It may be summarized that the result of the specific features mentioned is a comparatively complex legislation that imposes stricter rules for awarding procurements. Observing these numerous rules is difficult not only for the contracting authorities, but for all other subjects involved in or related to the award process. This excessive detail is a prerequisite of making a number of minor violations which create the impression of an overall failure to observe the law. The contracting authorities are faced with the need to often eliminate tenderers from the procedures due to formal discrepancies, which has a negative effect on the competition. The correct application of the legislation requires very good awareness of the regulated matter and the provision of substantial administrative resource on the part of the contracting authorities, the business, and the respective control bodies.

In view of the above, an overall approach for updating the legislation should be focused on developing a framework law to guarantee compliance with the main principles, to contain all applicable rules pursuant from the Directives, and to provide a possibility for more flexibility on the part of the contracting authorities. It is crucial to eliminate the possibility of formal violations and their disproportional sanctioning, and the efforts should be focused on finding material violations and practices of circumventing the law.

II.5. Electronic notice in around 90% of the cases

The gradual adoption of fully electronic procurement award is among the objectives set in the Europe 2020 Strategy and a general trend that the EC encourages by means of various initiatives and documents, including at EU legislation level.

In accordance with that, over the last few years there has been a substantial increase in the number of procurements for which the information to be published is only sent electronically. According to PPR data, in 2013 the proportion of electronically submitted specimen was 87% of all documents sent for publication to the register over the period.



The registered increase is the result of the consistent application of several instruments especially developed and provided to the contracting authorities - the Form Editor software, the possibility for filling in online standard forms on the PPR, as well as the e-Sender service.

For procurements below the national thresholds, the ratio of electronic notification is 100%. This is due to the special terms for awarding by means of a public invitation, for which it is required to only use electronic notification.

III. MAIN AIM OF THE STRATEGY

The overview of the public procurement sector presents a trend of upward development in many aspects. It should be noted that a number of legislative and practical measures are aimed at providing a high degree of publicity and transparency at all stages of the awarding process. One of the most important among them is gathering and publishing basic information (from the opening of the procedure till the implementation of the contract is completed) in a unified electronic database, which is free of charge and accessible to all.

Another such measure is the publicity of the activities of the committee for examination and evaluation of tenders, a most striking example of which is the announcement of the intermediate ranking before the public opening of the price bid etc.

Indicative in this respect is the order for awarding contracts of relatively low value

below the national threshold. Through the so-called "public invitation" announced via the Public Procurement Portal not only publicity and transparency of contracting authorities' expenditure are achieved, but also high competition within a short and simple procedure.

All because of this principle even the use of the least transparent procedure - negotiation without a notice, actually turns out to be more public even at its opening. The announcement of the decision with the motives in the Public procurement Register allows any interested party to challenge the legality of its application.

In terms of legislation, as a step in the right direction should be mentioned the introducing of the four main directives on public procurement (Directive 2004/17/EC, Directive 2004/18/EC, Directive 2007/66/EC and Directive 2009/81/EC) in one law and the relatively small number of secondary legislation acts in relation to its implementation.

Undoubtedly an achievement in recent years has been the emphasis put on the process of prevention. Its most significant manifestation is the introduction of ex-ante control. The good results of its conduct are a clear indicator that it should be developed further not only as regards increasing the number of checked procedures, but mostly by expanding the scope of checks so that other 'sensitive' parts of the documentation, such as. technical specifications or the order for the award, are covered, too (e.g. control on the exemptions from the scope of the law, etc.).

Notice should be taken also of the existence of well-functioning bodies with clearly defined powers as regards the different stages of public procurement. They are used to provide methodological support to contracting authorities, ex-ante, current and ex-post control on the conducted procedures, protection of the rights and interests of both parties in the award process. The functioning of bodies competent in the field of public procurement is a guarantee for the possibility to take adequate measures against negative phenomena or illegal practices in the spending of public funds. These and some other achievements should not only be kept, but also further developed in the coming programming period.

In the meantime, some weaknesses are identified, and adequate specific measures should be planned in order to have them overcome. The country's accelerated economic development is particularly important for social progress. In the field of public procurement it means the creation of conditions for spending public funds in the best possible way, including by maximum absorption of EU funds. In order to achieve this result, it is necessary to have the necessary prerequisites provided.

In this respect, the above-mentioned helps to define the main aim of the strategy for the sector's development over the period 2014 – 2020, as follows: enhancing the efficiency and lawfulness in the award of public procurement.

Reaching this aim makes it necessary to define the target areas, and for each to define specific operational sub-aims and the respective measures and actions.

The system analysis shows that a leading part is played by the legislation and its

correct application in the practice. An important prerequisite is the establishment of publicity and transparency guarantees. In the meantime, the human factor should not be ignored, since without it the system would not be able to function in an effective manner. That is why it is necessary to define measures for building sustainable and competent administrative capacity. The building and sustaining of a durable lawful practice should be ensured by means of a well-structured and effectively working control system, for both ex-ante and ex-post control, and by means of the possibility for sufficiently quick and just appeal procedures.

Therefore, the strategy sets the five impact areas through which the achievement of the above aim will be done – the legislation and its application, publicity and transparency of the public procurements, strengthening the administrative capacity and professionalism in the sector and the control system. To each of them, the following secondary aims have been defined:

- Framework, stable and simplified legislation, fully compliant with the new EU Directives;
- Establishing a lawful practice;
- Enhancing publicity and transparency by introducing fully electronic methods and means for the award of public procurements;
- Creating a sustainable administrative capacity and enhancing professionalism;
- Enhancing the effectiveness of ex-ante, ongoing, and ex-post control on public procurements.

IV. IMPACT SCOPE

IV.1. LEGISLATION

Aim: Simplified, stable framework legislation, fully compliant with the new EU Directives.

The legislation is the base for settling public relations with respect to awarding public procurements. Since the first law was adopted, it has been constantly changed in order to develop and improve the rules for awarding public contracts. An important step in this direction was the reducing of the number of legislative acts by repealing the Ordinance on small public procurements and the Ordinance on special public procurements.

One of the main features of the currently effective legislation is the too detailed rules for the award procedures. This “case” approach has advantages, since in a number of cases it facilitates the contracting authorities when applying the rules. In the meantime however it creates some practical difficulties. They arise from the content of the matter, which generally covers three materially different groups of objects – works, supplies, and services. Each of these groups includes an unlimited number of activities. The detailed rules do not allow flexible actions in a particular situation, but

rather prevent its solution. It may be necessary to terminate the procedure and then re-launch it. This prevents the contracting authorities from meeting their needs. On the other hand, it creates the need of constant legal arrangements for the new cases, which is one of the reasons for frequent changes and the legislation's instability. Related to that is also the criticism of the EC about public procurements, expressed in official letters and monitoring reports about the country's status and progress. The numerous amendments are claimed by the Commission to be one of the prerequisites for making errors in the law's application, in view of the impossibility to build competent administrative capacity. They prevent the establishing of a unified and consistent practice.

In the meantime, the adoption by the European Parliament and the Council of a new package of public procurement directives faces us with the next challenge. The knowledge and experience accumulated in the transposing and application of EU legislation in the area should be used in the best possible way to avoid the drawbacks of the currently effective legislation and develop its achievements. Improving the quality of the legislation is in fact possible only by drafting a new law, rather than making subsequent amendments to the current PPL, which should be repealed. The new framework law should contain clear and simplified rules as a guarantee for its sustainability, in the meantime ensuring full compliance with the new EU Directives. It should also cover the two effective and unchanged directives – Директива 2007/66/EC, which settles issues related to remedy procedures, and Directive 2009/81/EC on the public procurements in the defense and security sector. Outside this legislative framework remains Directive 2014/23/EU on the award of concession contracts, which will be introduced in a separate law, in accordance with the national practice so far.

In relation to the preparation and the adoption of the new legal framework, several measures have been set in the strategy. Their implementation is related to specific activities, described in detail in the action plan which forms a constituent part of it.

Measure 1: Adopting a new legal framework

Activities have been planned in relation to the organization, preparation and adoption of the new framework law. The established working group should prepare the initial draft within a short period – by the end of October 2014. In order to fulfill to the highest possible level the interests of all stakeholders in the award process, the ready draft should be approved by them. Crucial for its future accurate application is that its ideas and principles should be correctly understood and interpreted. This requires a broad discussion of the draft law with representatives of the business, contracting authorities, incl. municipalities, and all other stakeholders and parties involved. It is planned to be conducted by means of publishing on the Public Consultations Portal for a period of 2 months. The statements, opinions and proposals shared will be reviewed in order to include all constructive ideas.

The revised draft law will be approved before submitting it for approval to the Council of Ministers in accordance with the applicable procedure. It is expected that the law will be passed by the National Assembly in the middle of 2015 and be in effect as of the beginning of 2016.

Measure 2: Adoption of new secondary legislation framework

The application of the new law is closely related to the development and adoption of the secondary legislation. The approach for its preparation should aim at settling matters within a single main act – the regulations for the application of the law, and, if necessary, some specific questions may be regulated by separate ordinances. For example, such a necessity may arise in relation to the introduction of a fully electronic awarding process, in order to plan measures regarding operational interoperability and information security, the technical requirements to the used appliances and electronic tools, as well as the elaboration of rules and responsibilities for all parties involved in the process. By all means, the exact volume and scope of these acts may not be predetermined, as they are tightly connected to the provisions of the law. It is important that the secondary legislation contributes to the creation of systematic and simplified legislation, facilitating its understanding and proper application. In view of the legally set order, only the drafting of the rules for the law's implementation, would require about six months.

Along with the work on drafting the new law, it is planned that a separate working group carries out an up-to-date review and analysis of the practice related to the currently effective legislation. The review should be aimed not only at identifying the problem areas but also at analyzing the reasons for the most frequent errors and violations. The group should consider all established practices that, although not contrary to EU law, create excessive administrative impediments and burden the awarding process as a whole. It should not be directed only to the establishment of formal violations but also to conducting a detailed review on the basis of which to identify the sources for the lack of efficiency, effectiveness and economy as far as the latter constitute the principles of sound financial management. For this goal, it is necessary to gather and summarize the practice of bodies with powers in methodology, control and appeal. Valuable source is the information coming from business. The assistance of actively functioning branch organizations should be sought. In terms of contracting authorities particularly useful may be the support from NAMRB and from other smaller associations of local authorities.

The effect of such review and analysis should be in the form of proposals for measures to address the problems identified in practice and to actually improve the system. They may require legal regulation (setting out separate rules in the law and in secondary legislation respectively) or taking various practical steps. Both cases are provided for in the strategy. The results of the analysis and proposals of the working group should be taken into consideration when preparing the draft law and the

secondary legislation.

A constituent part of the legislation are also the mandatory sample contract notices which are enforced by a EC regulation. Their practical application requires the development of standard forms, which allow to be used via PPR's application software. Along with them, national standard forms should also be developed by means of which other information is published in the register to allow fuller tracking of the procurement. For instance, such are the standard form for submitting information about the contractual implementation, the standard form for a decision for termination or amendment of the procedure as well as applicable standard forms related to the ex-ante control, etc.).

As an additional measure, changes to the current Regulations for Application of the Public Procurement Law in order to ensure the implementation of LASPPL, with effect as of 01 July 2014, are foreseen.

IV.2. Law enforcement

Aim: Establishing a lawful practice

Ensuring the correct application of the legislation is a constant process that should be constantly maintained. In this respect, immediate actions should be taken to prevent the spreading of any unlawful practice. The main aim in this area is to use all suitable approaches, means and measures to work towards establishing and sustaining a durable lawful practice at all stages of the public procurement-related process, from their planning to tracking the result of the contract implementation. The effectiveness in the implementation of the measures set requires using the practice accumulated so far, which should be reviewed, developed and constantly enriched.

That is why the measures in this impact area could be conditionally divided into two groups – ones concerning the effective legislation and ones aiming to correctly understand and apply the new legislation.

Measure 3: Prevention and counteraction of bad practices related to the application of the currently effective PPL

In the short term, a series of actions are foreseen aiming to overcome the most common problems in practice, including those identified in the report of the above-mentioned working group. Essential tool for the implementation of this measure is the methodological support provided by PPA. The possibility to prepare and publish on PPP methodological guidelines on certain issues allows the provision in short time of the necessary assistance to contracting authorities in order to end the bad practices that have occurred. In this regard, updating of the methodological guidelines on the application of negotiated procedures without a notice is also planned. In order to avoid cases of misuse as regards the grounds for excluding certain contracts from the scope of the law, methodological guidelines will be prepared to clarify the permissible

exemptions from its application field.

An extremely useful move towards facilitating the contracting authorities is the envisaged publication on PPP of documentations, methodologies, technical specifications and sample documents used in completed procedures that have passed successfully all checks and audits. The fastest way to achieve this result is each body for ex-ante, ongoing and ex-post control to draw and present good examples from its practice. For improving the award of public contracts in different sectors, it is foreseen that Managing authorities will propose standardized documentations or other sample documents which are developed. They would be a useful tool to overcome the problems arising from the lack of skills of contracting authorities, especially at local level. In carrying out this activity close cooperation with the Commission will be sought, as the mediation of the latter will be used to study the practice of other Member States.

Measure 4: Practical assistance in the application of the new legislation.

The availability of better new legislation is not a sufficient condition for its correct understanding and compliance. In this sense, throughout the next period, the development of the process of imposing a lawful practice should continue. Like so far, it should cover all stages of the public procurements – from their planning, through their correct launching and conduct to reaching the desired result from the implementation of the awarded contracts.

It is necessary to use PPA's experience, accumulated over the long work of reviewing and solving various cases, preparing general and specific methodological instructions and ex-ante control. Equally important is the practice of the ex-post control bodies – the National Audit Office and the SFIA. Useful examples in relation to the absorption of EU funds many also be found in the practice of the OPs' Managing Authorities.

Making popular the decisions of the national remedy bodies – the CPC and SAC, as well as the Court of the European Union, ruled after consideration of public procurement disputes, is another important step towards aligning actions and preventing undesired practices.

The efforts should be focused on the wide dissemination of best practices, both from contracting authorities in the country, and from other member states.

Therefore, it is planned to proceed with preparing two practical handbooks. The first will aim to help the contracting authorities by reviewing step by step two of the main procedures. Such a practice is not unfamiliar to the Public Procurement Agency. As early as 2005 a manual relating to the current law was developed, containing clarifications and presenting synthesized models for conducting each of the procedures provided. In it, to facilitate contracting authorities, document templates which are directly applicable in practice were provided. Frequent changes in legislation, however, and the lack of capacity of the agency hindered its updating, despite the good reviews and the considerations regarding the benefits of its issue. In

2009, within the implementation of a project under OP "Administrative Capacity", the agency issued a practical manual on procurement. It contains some practical guidelines on the preparation and planning of procedures with a focus on their most sensitive aspects such as the selection criteria, the methodology and criteria for evaluation of tenders, as well as general guidelines regarding the draft contract. The experience gained up to date shows that detaching practical handbooks from theoretical formulations and explanations has a better effect in practice, without underestimating the need and usefulness of both types of handbooks. Therefore, along with the manual on the key steps in procedures it is planned that the issuing of a practical guidance follows, clarifying the substantive provisions of the new directives. These two activities will help the better understanding of legislation and its proper implementation. Although it is foreseen two separate guidances to be developed, they will be logically consistent and comprehensive with respect to the topics considered.

Methodological guidelines are to achieve a single environment, not allowing the development of guidances by different bodies or for individual sectors. This issue needs to be resolved through clear regulation in the new law, making it clear which is the officially authorized body in the field of methodology.

Along with the above, PPA's guidances and guidelines should be binding not only for contracting authorities, but also for the bodies performing checks and control over their activities.

One of the issues that should be emphasized is the laying of a solid basis for development of green public procurement, i.e. green procurement. The link between it and ecological technologies is determined by the fact that the state, local authorities and a number of large companies in their capacity of contracting authorities under PPL are major users of assets and services that have tangible impact on environment. In this sense, efforts should focus on searching for solutions which are better from the environmental point of view. As public contracts are the main engagement and a source of funding for business, the direction to which business circles will turn their production and the services they offer depends on laying down the terms of the procedures. Along these lines, PPL is a kind of a tool for establishing green practices. Currently, in Bulgaria an action plan on green procurement has been developed, covering the period till the end of 2014. Observations made on its performance show as a major weakness the not very clear definition of product groups indicating the areas in which the state has an interest, resources and opportunities to develop green procurement. Important for the effective implementation of policies in this area is the fact that at the moment green products are more expensive than their conventional rivals are. Recognizing the significance of the problem and the need to intensify the process, the strategy contains a specific measure to accelerate the development of green public procurement. The issuing of a practical handbook for the award of such contracts is planned. There is a possibility that it is developed within a project under

the Bulgarian- Swiss Cooperation Programme, based on the study of established practices in other Member States with more traditions in this area. The handbook will be prepared so as to be coherent and integrated part of other manuals that will be developed in the field of public procurement. General issues treated in other materials will be supplemented and detailed in it, so that a practical tool for conducting these specific procurements is offered to contracting authorities.

Measure 5: Maintaining an environment for the lawful award of public contracts

In order to maintain a lawful practice, it is necessary to perform constant monitoring of the award process, which is a logical completion of exercising the rights of the Agency, the Managing Authorities, and the ex-post control bodies. It will allow the timely identification of violations, which will prevent their dissemination and multiplication.

All control bodies need to periodically review their practice to identify errors and violations and analyze the reasons for them. The information should be summarized in order to facilitate the timely update of the handbooks and methodological guidelines issued.

The planned monitoring will facilitate the tracking of the measure's results, as well as the timely finding/ prevention of possible new violations.

IV.3. Publicity and transparency of public procurement

Aim: Enhancing publicity and transparency through the introduction of entirely electronic methods and tools for awarding public contracts

Conducting procedures in a public and transparent manner is one of the main prerequisites to eliminate the risk of some potential corruption practices. The publicity and transparency principles in the award process are currently reinforced by means of a number of rules and mechanisms. The main role among them is held by the public posting of information about the procurements, as well as the rules for the work of the evaluation committees to ensure a public and transparent approach in the selection of contractors. Therefore, the increased use of electronic methods and means will substantially contribute to the effective combating and prevention of corruption in the field.

Achieving fully electronic award methods will lead to reducing the administrative burden for the business, to realizing substantial economies of funds, time and administrative capacity, in the meantime applying common standards in the award process.

An important effect of the implementation of this process is the easier collection of statistical information about the procurement market development trends, assisting the audit and ex-post control processes, and increasing public trust in the system.

Due to the comparatively high technological culture level in our society, introducing electronic award will facilitate the participation of small and medium-sized enterprises and will in the end result in increasing competition and providing better conditions for the contracting authority.

The abandonment of the conventional “paper” award methods will facilitate the development of the green economy, which will ensure both environmental protection and efficiency and speed of the business processes. In view of that, some of the measures in this area should aim at accelerating the process of making awards fully electronic. Another part should allow expanding the medium for fully electronic information exchange.

Measure 6: Development of a national model for entirely electronic public procurement. Ensuring the possibility for cross-border public procurement

It can be said that there is a technical possibility for implementing the stage of e-notification by publishing all notices related to the procedure in the Public Procurement Register, as well as for publishing and downloading the tender documentation electronically via the Public Procurement Portal. Even though these functionalities have been used for a long time by most contracting authorities, the currently effective PPL does not regulate a specific obligation for that. This, as well as the rules for fully electronic award, is to be set in the new law. By the end of 2016 it is planned to introduce fully electronic communication between the contracting authority and tenderers, up to and including the stage of electronic bids, as well as making electronic all the activities till the stage of concluding the contract. After the successful implementation of this stage, in the long term measures will be taken to impose electronic means in the subsequent stages of the award process – electronic orders within the contracts, e-invoicing, e-payment, etc.

Most of the activities are to be performed under a Consultancy Assistance contract with the EBRD. According to it, the selection of a national e-award model will be preceded by an in-depth analysis of the existing initiatives and solutions, of best European practices, in accordance with the specific national features and the readiness of the end users to introduce and use the system.

Upon implementing the selected mode, equal treatment should be provided for the tenderers from Bulgaria and from EU member states and no discrimination shall be allowed. Accelerating the process of mutual e-signature recognition and the use of the so-called “Trusted list” will facilitate the elimination of the existing technical impediments for European companies to enter the Bulgarian market.

Making this stage of the process electronic will be a substantial change for a major part of Bulgarian contracting authorities and will therefore require preparation and adequate training of the end users. This refers to all participants in the process, including the control and court bodies, the internal auditors, etc.

At present, steps towards providing electronic information exchange have already

been made. The most recent of them are related to changes in the PPL, in force as of 01 July 2014, according to which it is obligatory to publish the documentation electronically and provide full and unrestricted access to it.

Measure 7: Development of the Public Procurement Portal and introduction of new methods for submitting information

The Public Procurement Portal is the main means for fulfilling the publicity and transparency principles in the process of award. The provision of current data and their organization are crucial for achieving usefulness and high customer satisfaction. The Portal's development includes both modernization of the traditional methods of entering information, and the introduction of new ones when needed. Therefore, it should be checked to what extent the contracting authorities in the country use their own electronic award systems. The Agency will develop rules and will approve a technical format that allows the sending of information from these systems to the Public Procurement Register and to the respective databases.

The availability of a considerable in terms of type and volume information, which is accessible via the Public Procurement Portal, necessitates constant efforts to achieve better organization of the data in order to make it easier and more intuitive to use. Therefore, it is planned to reorganize the possibilities for quick and detailed search so as to increase the speed of operations and meet the growing customer interest. It should be taken into account that the development and update of the PPR also includes its integration with other state administration registers. This will facilitate the creation of a single regulated medium of electronic documents in the country and an overall e-government system.

Measure 8: Raising the level of awareness about the condition of the procurement market in Bulgaria

PPA has traditionally provided a wide range of data about the condition of the country's procurement market. One of the ways to do so is by maintaining an electronic Bulletin to illustrate major statistical indicators and the dynamics of the main parameters in public procurements. It provides data on the annual number of contracting authorities and contractors, announced public contracts with EU and national funding and their distribution based on object of procurement (works, supply of goods and services), number and value of concluded contracts, etc. The Bulletin is updated on a monthly basis.

Moreover, through the Public Procurement Portal, it maintains the possibility for preparing automatic dynamic reports on the current number of contracting authorities and the contractors of public procurement contracts, on the number and value of the concluded contracts. The users are also provided with a dynamic annual ranking of the contracting authorities which have concluded the biggest number of contracts.

These two activities are planned to continue throughout the next programming period

by also expanding the content of the Bulletin by publishing additional information and indicators.

IV.4. Reinforcement of the administrative capacity and professionalism in the sector

Aim: Creating a sustainable administrative capacity and increasing professionalism

One of the most important factors for the effective and lawful award of public procurements is the availability of the necessary administrative capacity. It should be sufficient in terms of quantity and quality. This condition refers to both the capacity of contracting authorities and of the empowered bodies (PPA, MA, NAO, PFIA, CPC and SAC). These circumstances, as well as the reasons that cause them, have also been identified by the EC, and the respective recommendations have been made. In the meantime, it cannot be denied that the contracting authorities and the bodies above have qualified staff, some of whom with long experience. As a whole, however, their number is insufficient when compared to the needs and the average number of the public procurements conducted in the country every year.

One of the reasons for the difficulties encountered by contracting authorities in the award process is the frequent legislative amendments. They prove to be a serious impediment for establishing uniform practice and maintaining a sustainable administrative capacity.

Another important factor for the identified problems is the lack of enough qualified staff, educational programmes and standard documentations (especially in some sectors). This is mostly valid for smaller "classical" contracting authorities. In some cases they do not have special units or officials only responsible for public procurements. It is necessary to involve employees who do not possess the necessary knowledge and skills and who are also responsible for numerous other tasks. This deprives them of the possibility for preparation and good understanding of the public procurement legislation and application practice. The result is ineffective planning, errors in the procedures and the impossibility to track the implementation of the awarded contracts.

The practice shows that the big classical or utility contracting authorities have specialized units responsible for this activity. However, due to the award of numerous and varied contracts, they also need special knowledge in many areas, especially in relation to the preparation of the terms of reference. The incidental hiring of external consultants does not always guarantee the successful award and does not facilitate the achievement of a unified and overall approach of awards. Frequently, the documentations from already awarded procurements or from procedures organized by another contracting authority are used. In this approach, however, there are several negative trends – multiplication of already existing errors, failures to register legislative amendments that have occurred in the meantime or changes in the

contracting authority's needs, etc.

It should be concluded that the availability of high-quality practical trainings are the most important prerequisite for enhancing professionalism in the sector. It needs to be pointed out that there is no shortage of lecturers and trainings. Most of the latter are organized on a market principle. Some of the lecturers are self-trained and in the trainings they most often express their understanding and knowledge on public procurement-related topics. This highlights the need of developing an approved uniform programme aiming to establish a correct and consistent/ non-controversial practice.

Last, but not least, there is, although less prominent, a trend of increased staff turnover at some contracting authorities and bodies with functions in the area of public procurement. This is mostly so in the case of the PPA, which has an impact on the scope of the methodology and ex-ante control. The efforts for the further development and strengthening of the administrative capacity and enhancing professionalism in the sector should move on to the next, higher-quality level. With respect to that, several measures have been envisaged.

Measure 9: Enhancing the administrative capacity of the bodies with powers in the area of methodology, control and appeal

In view of the important role of the bodies with methodological, control, and remedy powers for the functioning of the public procurement system it is crucial to build sufficient, sustainable and qualified staff. In order to provide a durable solution to this problem, each of these bodies is planned to analyze and justify their needs based on the current tasks and future plans. The final result should be summarized in a report containing specific actions to optimize the functions towards expanding ex-ante control and enhancing the effectiveness of ex-post control. The report should also contain a reasoning for the staff needed by each body, as well as measures for training and retention of that staff. This is particularly true for the staff of PPA. As a specialized body, the agency covers through its functions all key activities in the field of public procurement - the drafting of legislation, methodology, market monitoring and ex-ante control. Their performance requires sufficient, well-trained and motivated staff with the necessary qualifications. The next step is proper structuring and maintenance of the capacity built. Only in this way PPA would be able to provide utmost implementation of the proposed expansion of functions.

Measure 10: Enhancing professionalism in the public procurement sector: education and life-long learning

Training of specialists in the field of public procurements should start as early as university education. Thus students from various majors will be able to acquire basic knowledge about the legislation and its application. Therefore, it is necessary to develop a probable curriculum, whose content should comprise the entire public

procurement award process, with all stages – from planning to signing the contract. This curriculum should also be used for trainings within post-graduate qualification courses.

Encouraging professionalism in the sector and in particular the persons directly involved in the award process can be achieved by creating conditions for systematic and consistent education, as well as knowledge upgrade. As far as contracting authorities and control bodies (PPA, PFIA and NAO) are mostly executive power bodies, the main role in this process, like so far, will belong to the Institute of Public Administration (IPA). Therefore, within its annual programme, the Institute is foreseen to develop a programme for public procurement trainings. It will include topics for obligatory initial and periodic training. The focus should be on diversifying and enriching the training programme in accordance with the needs and characteristics of contracting authorities. Therefore, the cooperation and experience of the National Association of the Municipalities in the Republic of Bulgaria (NAMRB) should be sought.

The specific features of the activity of bodies with control powers should be taken into account. It is essential for the latter to have trainings organized covering the particularities of procurement in particular sectors as far as they are reflected in defining the selection and evaluation criteria. In this sense, the gaining of general knowledge in the field of construction, design, water sector, food supply, medicines, certain types of services, etc. would help to raise the quality of the control performed. For these trainings it is necessary to rely on business in the face of branch organizations that should propose professionals with extensive experience and practice.

In the meantime, it is planned to conduct short intensive trainings with the Managing Authorities on current issues. In their nature they would rather be exchange of experience, in which PPA will participate with its available resources. Thus, in addition to the general IPA trainings, timely professional consultations and exchange of knowledge on specific practical issues between PPA and MA will take place.

It is crucial for PPA, considering the functions of the specialized body related to legislation, methodology and ex-ante control, to maintain close contacts with the European Commission and similar bodies in other Member States. To this end, it is planned to develop cooperation with educational institutions of the EU, as well to develop joint training programmes and to conclude agreements for training. The realization of these activities mainly relies on IPA's assistance. At the same time, it is necessary to keep increasingly closer relationships with the competent services of the European Commission. The planned holding of regular meetings should contribute to obtaining current information on European practices and trends in the area and to effectively solving problematic cases in the national practice.

An important step for the absorption of funds under the operational programmes is the establishment of a Training Academy on ESIF. Its creating is in line with the

commitments made under the Partnership Agreement of the Republic of Bulgaria, which outlines the ESIF support over the period 2014 – 2020. It is planned that the academy is to be funded under OP 'Good Governance'. It will organize horizontal trainings for the employees of the units, the institutional beneficiaries and the regional and local authorities. These trainings will cover the whole process of preparation, management and implementation of projects, part of them being those related to public procurement. In this regard, the strategy includes a measure the implementation of which envisages trainings on public procurement to be conducted. In order to improve the quality of law enforcement in the area of public procurement, specialized trainings are planned for judges. They are mostly focused on reviewing and making popular the practice of the Court of the European Union. Just like until now, these trainings will be organized and conducted by the National Institute of Justice. Thematic trainings will be conducted also, in relation to LASPPL which enters into force on 01 July 2014, with a view to ensure its proper implementation.

Measure 11: Creation and development of centralized public procurement bodies (CPPBs)

In recent years, centralized procurement through framework agreements shows progress in most European countries. The benefits of such awarding being indisputable, the main ones may be shortly summarized as follows:

- achieving economies due to scale - an effect that is manifested in decreasing prices as a result of the quantities;
- reducing the risk of corruption, as the number of public contracts and contracting authorities consuming similar products is set down to minimum, and the procedure is conducted by a single body, operating in line with clear and publicly known rules;
- savings in terms of time, human and financial resources of contracting authorities.

The latter is valid at the utmost degree for small contracting authorities with low budgets, for which the maintenance of such resources is not justified.

Generally, a well-functioning CPPB allows the needs of contracting authorities to be addressed in a better manner in terms of time and quality, availability of stable contracts and relieving the system for appeal of procedures. In this regard, it should be taken into account that the possibilities of centralized procurement, as well as those of joint procurement by several contracting authorities, are not used at maximum in our country. In view of the insufficient administrative capacity in the area, the fuller use of these two possibilities should be supported. The currently existing CPPB under the MF only awards a limited number of standard supplies and services. In order to achieve a distinct effect of centralizing the awarding process, it is necessary to extend the product scope of public contracts and the circle of bodies that

can use it. Efforts will focus on appropriate actions for institutional and functional strengthening, so that CPPB will have certain organizational autonomy and the status of an administration (agency), which is separate and under the Minister of Finance so as to be able to take decisions within the discretion it has been provided. For this purpose, the existing CPPB should be transformed into a new legal person.

It is essential for the future effectiveness of this body to invest in making processes related to centralized procurement electronic, i.e. accelerating the introduction of fully electronic methods and means in CPPB's activity. The basis for achieving these objectives will be the already launched project 'Establishing electronic market for the needs of the Central Procurement Body', funded under 'Administrative Capacity' OP, whose implementation commenced in 2012. As part of the project, a strategy has been elaborated concerning the development of the Central Public Procurement Body. It contains short-term and mid-term objectives over the next 5 years. As part of the same project, in 2014, the development of software for e-award has commenced. The software should include functionalities for centralized e-award and for the needs of the Central Public Procurement Body and the individual contracting authorities which use it. It is important to ensure the sustainability of the results of the implementation of this project, regardless of the organizational transformation that CPPB will undergo.

It should be also pointed out that the possibility for centralized awarding by territorial bodies, as well as in some sectors is still unused. Such a sector, according to established practices in many countries is healthcare. It is characterized by a large number of users /hospitals, other healthcare facilities/ whose needs are relatively uniform, may be subject to planning and are financed from established sources /health insurance fund, national and local budgets/. Therefore, it would be useful to provide centralized awarding of such supplies as well. In this sense, the scope of activities of the newly-established CPPB should include also public contracts awarded for the needs of the healthcare sector, respectively, these functions should be provided for with the necessary administrative capacity.

The second identified group to which the above conclusions also apply, are municipalities. They represent a large number of contracting authorities with relatively homogeneous needs with regard to their administrative functions. Obtaining the status of a contracting authority by small structures - municipalities, schools, kindergartens, social institutions and so on, often creates an excessive burden for them due to the limited administrative capacity. The question arises of whether it is economically reasonable for these structures to maintain a certain staff in view of the insignificant number of contracts awarded. Therefore, appropriate opportunities to relieve the burden on small entities should be discussed and sought, e.g. combining contracts on territorial or sectoral basis. At the same time, it should be taken into consideration that there are some substantial differences as regards the administrative capacity and the amount of financial resources spent by different municipalities. As the creation of CPPB requires considerable resources in terms of

time and finances, such an initiative needs to be well thought out and organized. Taking the decision for the establishment of such a body has to be preceded by an in-depth analysis, in which both the needs and the impact from its functioning and the related risks have been assessed. In view of the above, developing a concept for the creation of CPPB for municipalities is set as a short-term measure in the Strategy. Responsible institutions for its implementation are CM, MRD, MF and NAMRB.

IV.5. Control system

Aim: Enhancing the effectiveness of the ex-ante, ongoing and ex-post control on public procurements

It can be seen from the system overview that there is control at all stages of the procurement award process. Depending on the moment at which it is done, it can be conditionally divided into ex-ante, ongoing, and ex-post. The ex-ante control begins as early as the drafting of the procedures by the contracting authority, when the main procurement parameters are set as reflected in the decision, notice, and documentation. Its main aim is the lawful launch of the procedure. It is performed by PPA and has two stages (before and after the procedure has been launched). In the meantime, there is also control on the part of the Managing Authorities, which is different for the different OPs.

In as far as appeal allows checking of the decisions of contracting authority made during the procedure, it could be considered a form of ongoing control. Such is also the control of lawfulness in the application of the negotiated procedures without a notice, performed by PPA. A check of the overall process of award after concluding the contracts is done by the NAO and the SFIA in the form of ex-post control. When the procurement is funded by EU funds, this control is performed by AUEF.

It can be concluded from the above that there are numerous bodies with different competences in the area of public procurement control, through which all stages of the process are checked. However, in order to establish a uniform lawful practice, it is crucial when performing their functions these bodies to interpret and apply the legislation in the same manner. Otherwise prerequisites will arise for contradictory practice and numerous mistakes and violations in the procurement awards.

Over the years, the bodies have accumulated knowledge as well as varied and valuable experience in the area. The maintained long-standing cooperation for exchanging best practices among PPA, NAO and SFIA is a good example which should be developed to cover all control bodies. In the meantime, each of the bodies should analyze their activity in order to enhance its effectiveness. A clear delineation should be made of the scope of the types of control in order to avoid overlapping rights, and feedback mechanisms should be envisaged so as to achieve synchronized actions.

Therefore, measures have been proposed, as well as specific activities to implement them.

Measure 12: Optimization of the procurement control system

The above-mentioned outlines the need for effective cooperation between all control bodies in order to coordinate their actions. This will facilitate the imposing of an accurate and uniform practice, which also raises the methodology issue. The currently effective law stipulates a mechanism under which all of PPA's methodological instructions become binding for the ex-post control bodies when approved by them. These are only issued in limited cases, upon identifying non-uniform practices. In future this mechanism should be developed by covering all methodological instructions and all control bodies. In order to achieve this aim, it is necessary to establish prompt and direct communication among them.

In EC's recommendation, prevention is highlighted as a factor of major role for establishing an accurate practice. It facilitates to maximum degree the prevention of errors and violations and in result the increase in the number of lawfully awarded procurements. Therefore, along with the positive assessment of the ex-ante control performed by PPA, it is insisted on its expansion and further development. This will be done in several directions in order to preserve its assisting, rather than sanctioning, nature.

The first one refers to the ex-ante two-staged control which is currently performed. Its current scope is restricted only to EU-funded procedures above certain thresholds. In order to increase its benefits, it is planned to substantially increase the number of procedures subject to control. This will be done by lowering the value thresholds, as well as by checking procurements fully funded by the national budget. Expanding the control towards checks of technical specifications is foreseen. Thus the majority of the essential elements of the procurement will be subject to review prior to conducting the procedure and awarding the contract.

Along with the above, equal opportunity should be established for all other procedures to be subject to preliminary control so as to ensure the lawful conduct of even those which are not covered by mandatory checks. This should be achieved by random control exercised by PPA covering the decision and the contract notice after the opening of the procedure and before the conclusion of the contract. Procedures will be drawn by lot, based on a specially designed objective mechanism with clear and justified criteria enabling the possibility that each procurement may fall under the control sample according to its object, subject-matter and value. Based on risk assessment, that control may also focus on contracting authorities with serious or repeated violations found or public contracts in certain sectors where there is evidence of bad practices. In this connection, rules and procedures for conducting checks will be developed, as well as mechanisms for making impact and reporting the results. Besides providing additional capacity to PPA, the effective implementation of this function will require also a team of professionals with expertise in different areas.

In line with EC's recommendations, it is suggested to introduce control on the application of some exceptions from the scope of the new directives. The performance of the above-mentioned functions of PPA will begin after their regulation in the new legislation and after the necessary administrative and financial resource has been provided. It is envisaged that the control should cover the application of those specific exceptions, where the risk of unlawful circumvention is highest. As for now, the Agency will monitor the environment in which all exceptions are applied and if indications that those, not covered by the control, are used unduly, timely measures will be proposed.

In order to optimize the control system, it is crucial to align the practice of the ex-post control bodies – NAO and PFIA. The two competent bodies should coordinate the terms and rules for performing control by developing a joint manual to unify this control. This should avoid overlapping of checks and ensure the equal treatment of all contracting authorities' violations.

Through the aggregation of measures in this area a single and coherent control environment should be achieved in which the emphasis is put on a uniform and integrated approach. The developed control mechanism must ensure that there are no discrepancies and different interpretations among different bodies performing the same type of checks, as well as between those involved in ex-ante and ex-post control.

Measure 13: Enhancing the effectiveness of sanctions related to irregularities in the public procurement sector

Essential for the effectiveness of control on the award of public contracts in the country is the system of administrative penalties introduced in the PPL. Sanctions for violations of the law should have not only punishing but also preventive and deterring functions. Therefore, they must be appropriate to the nature, type and seriousness of the infringement and the extent to which public interest and basic principles of awarding have been affected. Raising the effectiveness of the sanctioning system requires review of the administrative penal provisions in the law. The review should be based on an analysis of the violations identified by ex-post control bodies (NAO and PFIA) and the respective penalties imposed for them. It is important to monitor the effect of sanctioning activities. Based on it, violations should be defined more precisely, setting apart those which are insignificant and have no impact on competitive awarding and choice of contractor. For such violations no sanctions need to be provided for. On the other hand, penalties must be appropriate to the type and seriousness of the violations, and in establishing the amount of the sanction it is necessary not to have a very wide range for variations. This is one of the prerequisites for unifying the approach of sanctioning bodies.

Extremely beneficial for the optimization of ex-post control is the development of an

integrated system of indicators for periodic reporting of violations and imposed administrative penalties. It will contribute to control's development and allow easier monitoring of trends in practice and tracking of errors and infringements made by contracting authorities. It will also help to take timely measures as regards identification of bad practices, e.g. by providing methodological guidelines and instructions. Last but not least, the uniform approach for reporting the control results will facilitate the statistics.

Measure 14: Enhancing the effectiveness of the remedy system

Over the years, the appeal of public procurements has gone through various models regarding the jurisdiction of courts. Based on the practice, the current order was adopted. It can be characterized with a well-functioning system of remedy bodies. The particularly short ruling deadlines should be highlighted. In most cases, they are complied with by CPC. There is some delay at SAC due to its excessive load.

The statistics show that the percentage of appealed procedures versus the total number of launched procedures is comparatively low. Despite this, almost all high-value EU-funded procedures under the OPs are appealed against. It can be forecast that this trend will increase over the next programming period in view of the estimated increase in the number of procurements. This fact, along with the experience gained by the two bodies, should be used to optimize the process. In relation to that, the timely review and analysis of the currently effective rules would facilitate the identification of ideas and measures to enhance the efficiency of their work. It would be useful to discuss and propose mechanisms against abusing the right to appeal, to envisage a simplified procedure for low-value procurements, etc. so that these could be reflected in the new legislation.