



Transparentnost Srbija
Transparency Serbia



PUBLIC PROCUREMENT AND PUBLIC-PRIVATE PARTNERSHIPS – BETWEEN SOLID REGULATION AND POOR PRACTICE

TRANSPARENCY SERBIA

2021



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May, 2021

Transparency Serbia

Belgrade

www.transparentnost.org.rs



*This project is supported within the "Matra programme" of the **Netherlands Ministry of Foreign Affairs**. This publication reflects the views only of the author and not necessarily the official views of the Embassy or the Ministry of Foreign Affairs of the Netherlands.*



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PUBLIC PROCUREMENT AND PUBLIC-PRIVATE PARTNERSHIPS – BETWEEN SOLID REGULATION AND POOR PRACTICE

Publisher:
Transparentnost Srbija, 2021.

Print:
Unagraf

ISBN:

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ABOUT THE PROJECT

During 20 months in the period 2019-2021 Transparency Serbia carried out the project **Eye on Public Procurement and Public-Private Partnership in Serbia**. Within the project, we monitored the implementation and tried to influence the procedure of adopting new regulations in the field of public procurement and public-private partnership in Serbia.

The change of these laws and their harmonisation with EU rules was planned during 2019, but the application of the new Law on Public Procurement started only on 1 July 2020, while the drafting of amendments to the Law on Public-Private Partnerships and Concessions did not even begin.

During this period, Transparency Serbia also monitored several dozen procedures for concluding public procurement and public-private partnership contracts, as well as the concluded contract implementation. We also monitored activities of key state bodies in charge of the oversight of public procurements and sent them numerous requests for access to information and initiatives.

MAIN CONCLUSIONS

Public procurement in Serbia is **ever less public**, even though basic regulations in this area are mostly harmonized with European standards.

As bad as the situation in public procurement is, it is far **worse in the area of public-private partnerships**, where even the law is not harmonised with EU standards. The deadlines for improving the law have long expired, and it is not known whether this is being worked on at all.

In addition to numerous shortcomings in the legal framework for public-private partnerships, which concern not only EU standards, but also the transparency of the procedure, a major problem in practice is the unavailability of data on whether and how public authorities monitor private partners' compliance with contractual obligations.

The transparency of procurement is compromised in five ways. The first is that the Government of Serbia contracts suppliers without bidding, but **using interstate agreements** as a legal cover for such arrangements. This type of undermining of public procurements is the most dangerous, because works worth billions of euros are contracted whereby the choice of the company or the criteria for determining the price for such works, good and services are not subject to either parliamentary or public control.

The second manner to undermine the transparency of procurement is to apply **tailor-made laws** designed for one or several projects, instead of the Law on Public Procurement. The most obvious examples from the recent past are related to line infrastructure and state housing.

A very significant reduction of transparency occurred not only by violating and circumventing the implementation of the Law on Public Procurement but, paradoxically, **because of the very application of its**

provisions. Namely, raising the threshold above which public procurements must be announced – from the earlier 500 thousand dinars to the amounts ranging from one to 20 million dinars (depending on the subject and type of the contracting authority) – has obviously drastically reduced transparency. Thus, in 2019, an average of over 5,000 procedures was published on the Public Procurement Portal per month (the last year in which the previous Public Procurement Law was applied during all 12 months), while in the first five months of 2021, there were just over 3,000 such announcements in average monthly.

The consequences of the changes in law during 2020 were even more drastic – although both the old and the new laws were in force for six months, as many as 12 times more contracts were concluded under the provisions of the previous legislation. The reason for that, in addition to raising the thresholds, was the preference of the contracting authorities to conduct as many procurements as possible based on procedures they were familiar with.

The fourth type of transparency reduction is the fact that **some of the important documents** which used to be published **are no longer available on the portal** – such as tender documents and opinions of the Public Procurement Office when conducting a *negotiated procedure with-*

out publishing a call to place bids. This is exactly the type of procurement in which alleged urgency is most often abused as an excuse to shorten the procedures. That was the reason why the previous Law on Public Procurement (2012) introduced the obligation to publish tender documentation, thus allowing the public to check the soundness of the application of such a procedure. Not only these documents are not published on the Portal, but the contracting authorities do not submit them even upon requests for access to information. That was the case of the procurement for equipping a COVID hospital in Batajnica or for purchasing vitamin packages for pensioners.

The fifth type of drastic reduction in transparency refers to the fact that the Government of Serbia **has declared confidential all procurements related to the COVID-19 pandemic**, although such secrecy is supported neither by the old nor by the current Law on Public Procurement. As a recently published international survey showed¹, Serbia is in the group of the worst-ranked countries in terms of this parameter.

The reduction in transparency, as well as numerous other factors, had a negative impact on competition in public procurement. Competition is also distorted through the setting of discriminatory conditions for participation in tenders, as illustrated by the numerous cases of buying and renting cars. Even when procurement is not rigged using criteria that only one bidder can meet, it is obvious that contracting authorities do not make sufficient efforts to ensure competition, by issuing calls to all firms that can deliver certain goods, services or works. It was also noticed that the contracting authorities in the preparation of bids for very complex procurements leave a minimum legal deadline and do not perform sound market research. Furthermore, there are many situations where the purposefulness of public procurement is disputable – again, a good example are situations when contracting authorities rent cars instead of buying them, although this is less profitable in the long run.

Abuses in public procurement generally remain largely investigated and unpunished. In 2020, 89 persons were reported for the criminal offence of "abuse con-

cerning public procurement", which is 18% less than in 2019. Of all pending criminal charges in 2020, 45 (one quarter) were rejected. The number of indictments in 2020 was similar to 2019 (24 vs. 25). As for convictions, 21 was passed in 2020 (of which 20 were suspended sentences) compared to 10 a year earlier. Although they concern property-related crimes, the measure of confiscation of material gain has not been imposed through these verdicts.

For misdemeanour prosecution, where the system did not function at all due to the inconsistency of the Law on Public Procurement and the Law on Misdemeanours between 2013 and 2020, there are no published data for the last year yet.

One of the reasons for a large number of undetected and unpunished irregularities lies in the inadequate monitoring mechanism. The Public Procurement Office foresaw that only five civil servants would monitor public procurement procedures. During 2020, the office monitored the tender documentation in 274 cases and acted in 42 at the requests of public prosecutors, the police and the Anti-Corruption Agency, as well as in 35 cases based on complaints from businesses and other persons. When having in mind the total number of procurements in 2020, this means that only one of the 400 conducted procurement procedures was monitored.

The situation is even worse when it comes to supervising the enforcement of contracts. The new Law on Public Procurement designates the Ministry of Finance as the competent supervisory body. However, it remains unclear in what way and to what extent the ministry will perform the supervision. There is no report on the conducted supervision, although data from that report should be one of the indicators for achieving progress in the field of European integration in this area. The need for stronger supervision is clearly indicated by the data published by the State Audit Institution (SAI): during 2020, the SAI found irregularities in 14.24% of audited public procurements.

All this indicates that it is necessary to correct all identified shortcomings within the next changes to the law. Such changes are necessary for better regulation of the procurement of media services.

MAIN IDENTIFIED SHORTCOMINGS IN THE NEW LAW ON PUBLIC PROCUREMENT

New Law on Public Procurement

The new Law on Public Procurement ("Official Gazette of RS" No. 91/19) was adopted on 23 December 2019², but its implementation began on 1 July 2020. The implementation of the new Law began on time, but the period from the adoption of the law to its implementation was not long enough for contracting authorities and potential bidders to prepare themselves. Due to the constraints imposed by the COVID-19 pandemic, it was difficult to organise trainings and fully prepare for the implementation of the new act. The initiative³ of civil society organizations from the Working group for Chapter 5 of the National Convention on the European Union (NCEU) to postpone the law's implementation was not accepted. Therefore, it is not surprising that the majority of contracting authorities, despite the difficulties caused by the pandemic, announced all procurements for which this was possible by 30 June 2020, applying the rules with which they were previously familiar.

Most of the necessary bylaws were published only on 1 July 2020, the same day when the application of the law had already begun. No public hearings or public consultations were organized on the texts of these acts. Transparency Serbia submitted concrete proposals to the Public Procurement Office for the sake of improvement of three such acts⁴, but they were not accepted.

Highly defined thresholds up to which the Law does not apply

In the previous Law on Public Procurement ("Official Gazette of RS", no. 124/2012, 14/2015 and 68/2015), the value threshold for its application was set at 500,000 Serbian dinars (RSD). That threshold has been increased to RSD 1,000,000 in the new Law on Public Procurement for the procurement of goods and services, and to RSD 3,000,000 for works. The question is how such a solution was reached and on the basis of which comparative statistics

and analytics it was determined that this is the right measure.

In addition, for the procurements from the Article 75 of the new law (social and other special services) which regulates, among others, hotel and restaurant services, legal services that are not already exempted from the law's application, trade union services, political organisations, youth associations and other organisations with membership, the threshold is set at RSD 15,000,000 or at RSD 20,000,000 if the procurement is carried out by a sectoral contracting authority.

According to the data from the Report on Public Procurement in the Republic of Serbia for the period of 1 January 2019 – 31 December 2019 (in the year before the implementation of the new law), the average value of the public procurement contract during 2019 was RSD 3,609,000 (almost € 31.000). That is just a little more than the newly established threshold for the procurement of works. When we take into account the fact that these statistics include all procurements conducted by contracting authorities, i.e., ministries, republic public enterprises, directorates, agencies and all other public entities with large budgets, it can easily be concluded that a large number of public procurements, especially those conducted by local governments and smaller contracting authorities, remained below these thresholds.

Special (Internal) Act of the Contracting Authority

Procurements below the thresholds set by the new law, however, are subject to some rules. Thus, Article 49, paragraph 2 of the new Law on Public Procurement stipulates that the contracting authority is obliged by its special (internal) act, among other things, to regulate in more detail the manner of planning and conducting procurement to which the law does not apply. The new law does not stipulate what should that act contain, and that was necessary

for this act to be meaningful. Among other things, the following elements of the act content could have been listed in the Law:

- planning of these procurements;
- launching and initiating the procurement procedure;
- manner of acting upon the approved request for initiating the procurement procedure;
- a person in charge of conducting the procurement procedure and a procurement commission;
- call to place bids;
- manner of submitting bids and opening bids;
- significant shortcomings of bids;
- making a decision on awarding contract;
- conclusion of contract and the manner of monitoring the execution of the contract;
- special treatment for lower value procurements;
- authorisations and responsibilities in the procurement procedure

Supplements to a Bid

Article 142, paragraph 2 of the new law stipulates that if the data or documentation submitted by the bidder or candidate is incomplete or unclear, the contracting authority may request the submission of the necessary information and documents, respecting the principles of equality and transparency, and within a reasonable period of not less than five days. Such a provision gave a high degree of discretion to the contracting authorities. They may or may not require additional documentation, which, depending on the specific situation and the contracting authority's wish, can be abused. Namely, it remained unclear in which situations the contracting authority was allowed to request a supplement to the bid, and when some bidders would be "forgiven" for not submitting complete evidence.

² <http://www.parlament.rs/upload/archive/files/cir/pdf/zakoni/2019/2478-19.pdf>

³ <https://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts#a2021>

⁴ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_predlozi_za_dopunu_tri_podzakonska_akta_za_primenu_Zakona_o_javnim_nabavkama.pdf

Discretionary powers are left to the contracting authorities in connection with the submission of evidence in the expert evaluation of the bid (Article 119, paragraph 5 stipulates that the contracting authority may invite bidders or candidates to supplement or clarify the evidence on the fulfilment of the criteria for quality selection of the business entity).

Negotiated Procedure Without a Public Call

The principle of transparency is one of the basic principles of the public procurement. However, one of the public procurement procedures in which this principle is deviated from, for justified reasons, is the negotiated procedure without a public call. In addition, in these types of procedures, competition is, as a rule, limited and often completely excluded.

Article 61, paragraph 1 of the Law on Public Procurement prescribes various grounds for conducting a negotiated procedure without a public call. In the practice so far, two following grounds are mostly applied (and therefore abused):

- if only a certain company can deliver goods, provide services or perform works that are the subject of procurement, and
- extreme urgency caused by sudden events.

In both cases, the contracting authority is obliged to publish a notice on the Public Procurement Portal on the implementation of the procedure along with the reasoning for its implementation. At the same time (that is, when notice is published and not before), the contracting authority is obliged to request an opinion from the Public Procurement Office (PPO) regarding the grounds for conducting this procedure. According to the provisions of the previous law, there was an obligation to request an opinion in advance.

Also, another important difference to the previous law is the fact that in the new one, the PPO is not obliged to publish an opinion on the grounds for negotiated procedure on the Public Procurement Portal. Thus, the public is prevented from gaining insight into the position of the office, and even into whether the contracting authority requested an opinion at all.

Data on the execution of the contracts

Contracting authorities are no longer obliged to submit data on the execution of concluded public procurement contracts to the Public Procurement Office. As a result, this information will not be available on the Public Procurement Portal. In this regard, we remind you that Article 132, paragraph 2 of the previous Law on Public Procurement, prescribed that the contracting authority submits a quarterly report to the Public Procurement Office in electronic form, which, among other things, contained data on the execution of public procurement contracts.

On the other hand, Article 154, paragraph 5 of the new Law on Public Procurement stipulates that the ministry in charge of finance supervises the execution of public procurement contracts. The law is not clear on how the Ministry of Finance will supervise the execution of contracts, which is particularly worrying given the number of contracts concluded in Serbia during a year. Namely, the new law does not prescribe the supervision procedure, nor does it provide for the authority to pass a bylaw that would regulate that procedure in more detail. It remains unclear which organizational unit of that ministry will be in charge of that and with what number of staff. If the idea of the proposer of the law was that this work shall be performed by the Budget Inspection Department at the Ministry of Finance, we emphasize that it will not be possible for those contracting authorities who are not budget users, such

as public enterprises, which are the largest contracting authorities in the Republic of Serbia. Also, it remains unclear whether the Ministry of Finance will supervise all or only individual public procurement contracts, and how the selection of contracts to be supervised shall be made.

The lack of data on the contract execution on the Public Procurement Portal will certainly further complicate the supervision. In that sense, it was necessary to provide the collection and publication of the most important data on the execution of the contract on the Public Procurement Portal, such as: data on orderliness in the implementation of the contract (in terms of paid price, compliance with deadlines and payment deadlines), data on possible problems and deviations in the execution of the contract, as well as on collected fines, complaints and realised collateral. In this way, it would be much easier to supervise the execution of the contract, and the ministry could get the necessary information from the contracting authorities themselves. In case of discrepancies or non-logical relations in the filled-in data, the need for further concrete actions could be recognised in terms of performing more detailed supervision over the execution of a specific contract. At the same time, the public availability of these data would also enable the fulfilment of obligations (closure criteria) of the Republic of Serbia from the negotiation process with the European Union under Chapter 5 relating to "detailed monitoring and increased transparency in the implementation of public procurement contracts and systematic risk assessment".

Amendments to the Public Procurement Contract

Compared to the previous law, the new one provides for significantly more possibilities in terms of amending the contract without re-conducting the public procurement procedure. Thus, the new law (in provisions 156 to 161), under certain con-

ditions, allows modifications envisaged by the contract itself, changes in terms of additional goods, services or works, changes due to unforeseen circumstances, change of contracting party, increase in procurement and replacement of subcontractors.

However, despite the fact that there are six bases for amending the contract without conducting a new procedure, the contracting authority is obliged to publish on the Public Procurement Portal a notice on changing the contract only if the change occurs due to additional goods, services or works, or due to unforeseen circumstances. These shortcomings are significant in the context of the already mentioned fact that the law no longer stipulates the obligation of contracting authority to submit data on the execution of concluded public procurement contracts to the Public Procurement Office.

It seems that the possibilities for contract changes are extensive. Thus, for example, following the provisions of Article 157 of the new law, a public procurement contract may be amended to procure additional goods, services or works which have become necessary and were not included in the original public procurement contract, and so that the increase of the contract value can be up to 50%. There was a similar provision in the previous law, but then as one of the grounds for conducting the negotiation procedure without publishing a call for bids and not to exclude bidding completely. The old law also limited the value of additional deliveries of goods, services and works to a maximum of 15% of the original value. Also, the Article 158 of the new law allows modifying of the public procurement contract due to unforeseen circumstances with an increase to 50% of the value of the original contract. The law envisages this possibility only with a general clause without specifying what the changes of the contract due to unforeseen circumstances could refer to.

These detrimental changes are in accordance with the relevant EU Directive, that is,

they have been transcribed. However, the purpose of the directive is to set minimum expected standards, not to spoil what national laws already defined to reduce the scope for abuse. Given the prevalence of corruption in public procurement in Serbia, it would be appropriate to set stricter limits, especially having in mind that effective oversight has not been established yet. For example, in two EU member states (Croatia and Slovenia), the possibility of increasing the value of the original contract is up to 30% (and not up to 50% as stated in the directive) in case of additional goods, services, or works, or in case of unforeseen circumstances.

Since the Public Procurement Portal has already been established, with numerous data, it is not clear why publishing of the contract execution data is not planned and enabled. If it was, the principle of transparency in spending taxpayers' funds would be fully realised, while the possibility of abuse in the phase of contract implementation would be significantly reduced. As we have already pointed out, this would significantly facilitate supervising the execution of the contracts to state bodies.

Apart from publishing notices on contract changes in case of additional goods, services and works, and unforeseen circumstances (as provided by the directive), the portal does not provide the possibility of publishing any other data concerning the stage of execution of public procurement contracts.

Amendments to contracts concluded under the provisions of the previous Law on Public Procurement

From the beginning of the application of the new law, there was dilemma on which provisions the contracts may be modified - the old or the new ones. The Public Procurement Office has issued an opinion stating that reasons provided by the new

law apply to changes in existing contracts. The office justifies its position by saying that the validity of the previous law has ceased in its entirety, except for the completion of initiated proceedings, while the execution and amendment of the contract is not part of the procurement procedure.

The problem here is not in the position of the Public Procurement Office, but the fact that the situation is not clarified in the transitional and final provisions of that law. This caused an interpretation that can create many problems in practice and perhaps also room for abuse. For example, bidders who participated in public procurement procedures under the provisions of the previous law, did not have in mind the wider possibilities for contract changes provided by the new law provisions (for an example, a significantly larger increase in delivery volume which is now possible). That may have led them to give more favourable terms in their bids. Then, some bidders maybe gave up on participating in the procedure because, for example, they were not able to hire subcontractors at the moment (and they needed them), while now, according to the provisions of the new law, it is possible to introduce subcontractors who are not announced in the bid and specified in the contract. Several criminal proceedings were even initiated against the representatives of the contracting authorities because they allowed the engagement of subcontractors who were not represented in the bid and in the concluded public procurement contract (in the period of application of the previous law). Also, it is questionable how to "fit" some new grounds for the change with the provisions of the "old" contracts. Thus, we expect all this to create some confusion, which is getting more important given what is already stated in this report – that it is not clear who will supervise the execution of the public procurement contract, and that the phase of execution and changes to the contract under the provisions of the new law is not transparent.

The administrative dispute in public procurement

An administrative dispute related to public procurement procedures, in the manner regulated by the provisions of the Law on Public Procurement (both old and new one) and the Law on Administrative Disputes ("Official Gazette of RS", No. 111/2009), is not an effective way for dissatisfied participants in public procurement procedures to protect their rights. First of all, the proceedings in the administrative dispute take a very long time – there were cases when the first hearing was scheduled a year later and when for verdict to pass took even longer. By that time, the disputed public procurements had already been fully realised. This fact alone, unless there is significant improvement of efficiency, indicates that the administrative dispute cannot be considered an adequate response to possible misconduct in the process of protection of rights. Therefore, in the process of passing the new Law on Public Procurement, it was repeatedly proposed to regulate administrative dispute thoroughly to have effective

judicial control over the legality of decisions of the Republic Commission. This would not have been an isolated case in Serbia, since there is already an example of more detailed regulation of administrative disputes in a related area. The Law on Protection of Competition ("Official Gazette of RS", No. 51/2009 and 95/2013) as a *lex specialis*, in Article 72, paragraph 5, prescribes that the Administrative Court shall reach a decision on the complaint no later than three months of reception of the response to the complaint, or from the expiration of the deadline for the response to the complaint. Also, this law determines special deadlines for submitting a complaint and a response to a complaint, as well as a special regulation of the suspensive effect of a complaint, but also for deciding on extraordinary legal remedies. These proposals were not accepted with the explanation of the proposer of the law that an administrative dispute cannot be regulated by a special law such as the Law on Public Procurement, although the proposer was informed that in the area of protection of competition this was exactly done by a special law - the Law on Protection of Competition.

EUROPEAN INTEGRATION

What are the priorities for the EU?

The EC Report for Serbia for 2020 assessed that Serbia was **moderately prepared** in the area of public procurement and made a **limited progress** in 2020. According to that assessment, the new Law on Public Procurement is "an important positive step towards compliance". At the same time, it is stated that the "recently adopted law on special procedures for linear infrastructure projects" is likely to seriously undermine the effective implementation of the Law on Public Procurement as it allows exemption of infrastructure projects of "special importance" for the Republic of Serbia „from the application of public procurement rules “.

EC stated that the 2019 recommendations were overall only partially addressed, that they remain largely valid, and suggested that Serbia should in particular:

- ensure further, full alignment with the 2014 EU directives on public procurement, in particular by adopting amendments to the law on public-private partnerships and concessions and by ensuring that projects financed from public funds are subject to public procurement procedures;
- ensure that intergovernmental agreements concluded with third countries do not unduly restrict competition and comply with the basic principles of public procurement, such as transparency, equal treatment and non-discrimination, in line with the national legislation and the EU acquis;

- continue to strengthen the capacity of the Public Procurement Office, the Commission for Public-Private Partnerships and Concessions, the Republic Commission for the Protection of Rights in Public Procedures, and the Administrative Court.

Regarding the Law on Special Procedures for Linear Infrastructure Construction Projects, the EC points out that it "undermines the added value and effective implementation of the new law on public procurement. Through allowing for the circumvention of national legislation as well as EU rules and standards in this way, Serbia maintains serious discriminatory rules in the field of public procurement."

The EC also notes data on irregularities in public procurements identified by the State Audit Institution and mention the Anti-Corruption Council's assessment that the existing framework for internal and external control over the expediency of public procurements in large public utility companies is both inadequate and prone to abuses. „Considering that such contracts represented 27% of the total number and 44% of the total value of concluded contracts in 2019, the relevant institutions should investigate these claims and continuously monitor these processes on both state and local level", the EC concludes.

With regard to procurement during the COVID-19 pandemic, the EC reports that the Public Procurement Office informed contracting authorities about the flexible possibilities allowed by law for such situations. "To mitigate the risks of fraud and corruption, it is especially important

to maintain audit trails. Disclosing all procurement information related to procurement conducted in relation to COVID-19 on government portals would also contribute to enhanced transparency and trust

A significant part of the report is dedicated to statistical data on the application of the law, as well as on the capacities of various state bodies. The assessments related to the need for specialisation of the Administrative Court and for feedback mechanisms informing the procurement officers of the Republic Commission's and/or Administrative Court's decisions are repeated.

Public procurement is also given significant space **in the corruption-related segment of the Report** (Chapter 23). It is said there that the new Law on Public Procurement contains provisions for detection and prevention of corruption during the procurement process. The public procurement rules continue to apply and provide for flexibility in case of extreme emergency situations, like the COVID-19 crisis. "However, the more flexible procedure still requires abiding by the principle of transparency", the Report highlights.

The situation in the sectors particularly vulnerable to corruption (i.e. sectors where there is substantial public expenditure involved, or sectors where there is direct contact with the public (in addition to public procurement, also listed are infrastructure projects, health care, education, construction and spatial planning and public enterprises) remains largely unchanged, according to the assessment in this report. "There are still no tangible improvements in relation to the transparency and corruption risk assessments and mitigation in these fields". **The risks of corruption in the implementation of public-private partnerships and in relation to the use of exceptions in large infrastructure projects have been identified.** A recently adopted law on special procedures for linear infrastructure projects allowing for the exemption from public procurement rules of projects of 'strategic importance', in particular, raises serious concerns regarding

its potential for corruption.

The part of the Report that refers to the economic criteria emphasizes the need to approach the issues of transparency, assessment and prioritisation of investments. "A preliminary assessment shows that the new arrangement allows too many exceptions to the rule, as demonstrated also by the law on special procedures for linear infrastructure projects adopted in February 2020 that allows linear infrastructure projects of 'special importance for the Republic of Serbia' to be exempted from public procurement rules. Public procurement rules are not always fully complied with, nor are they always fully compatible with EU standards, particularly when it comes to big infrastructure projects financed by loans provided by third countries and as a result of these agreements, directly assigned to companies from these countries, without complying with the requirements of transparency, equal treatment or non-discrimination. It currently appears highly unlikely that the new legal arrangement will duly address the gap in transparency and sound public financial management “.

Public Procurement in the Action Plan for Chapter 23

One of the problems in public procurement and public-private partnerships, for which solution is sought through the implementation of plans of other chapters, is widespread corruption. Therefore, the Action Plan (AP) for Chapter 23 (Judiciary and Fundamental Rights), subchapter "Fight Against Corruption", addresses the issue of improving the legal framework and the application of existing rules in public procurement and public-private partnerships. An even better indicator of the interdependence of progress in these two areas is the new methodology of the accession process, where Chapter 5 and Chapter 23 are treated within the same "cluster" (the first one).⁵

⁵https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/enlargement-new-enlargement-methodology-will-be-applied-montenegro-and-serbia_en

Therefore, in the context of Serbia's European integration, it is impossible to separate progress in the areas covered by Chapter 5 from fulfilling the recommendations given for Chapter 23. Deadlines for implementation of Action Plan activities expired in December 2018. and implementation reports were not published for 2019 and 2020.⁶ The long-term audit procedure was completed only in mid-2020 thus, throughout 2019 and the first half of 2020 the anti-corruption activities were carried out without a plan and mechanisms for organized monitoring by the state authorities of the Republic of Serbia. The situation has only partially improved since September 1, 2020, when the implementation of the Law on Prevention of Corruption began. Under the provisions of that law⁷, the Agency for the Suppression of Corruption was given the authority to monitor the implementation of the AP for Chapter 23, Subchapter 2.

The revised Chapter 23 Action Plan for Chapter 23 of July 2020 also addresses the issue of improving the legal framework in the fight against corruption, as well as the application of existing rules in public procurement (and only indirectly in public-private partnerships), especially within the transitional criterion number 2.2.8. Within this criterion, the implementation of measures for strengthening control in public procurement and monitoring of achieved results is required. Also, the establishment of "records of measurable reduction of corruption" is required. The following are identified as impact indicators: 1) positive opinion of the European Commission; 2) annual supervision report of the Public Procurement Office, Annual report of the Republic Commission for the Protection of Rights in Public Procurement and annual report of the State Audit Institution; and 3) number of initiated and finalized misdemeanour and other proceedings for breaches of the Law on Public Procurement.

From the indicators for assessing the success of implementing this recommendation, it is not clear which criteria will be used

to assess whether progress was made and the final goal was achieved. Namely, it is not precisely emphasized that the success will be evaluated in relation to the question whether the Public Procurement Office and other competent bodies used their supervisory powers and whether they initiated procedures to eliminate identified irregularities and punish perpetrators in all detected cases of violations of the law.

The revised Action Plan envisages the following measures:

2.2.8.1. Strengthen staff capacity of the Public Procurement Office especially in terms of the number and position of employees. This measure was planned to be implemented by the end of 2020.

2.2.8.2. Establish a new public procurement portal in line with new functionalities arising from the new Public Procurement Law. Deadline was also the end of 2020.

2.2.8.3. Monitoring the implementation of the measures of supervision and control in public procurement. This activity is carried out "continuously, once a year". Public Procurement Office (PPO), Republic Commission for the Protection of Rights in Public Procurement and Ministry of Finance are responsible authorities for this task. The PPO and the ministry should create annual reports on supervision over the implementation of the Law on Public Procurement, and the commission its annual report. A scope of the conducted supervision is not specified. Moreover, although this measure should include monitoring on how oversight and control in public procurement are implemented, it is not foreseen who will review these reports (the Parliamentary Committee, for example).

2.2.8.4. Conduct training courses for police officers, prosecutors, judges and Public Procurement Office staff to efficiently prosecute cases of corruption in public procurement (pursuant to Financial Investigations Strategy). Trainings are planned to be conducted continuously, with the goal being set as "the percentage

of trained... in relation to those required/in needs of training."

2.2.8.5. Develop Methodology for drafting the Impact assessment of measures undertaken to reduce corruption in public procurement area. Deadline for developing an impact assessment methodology was the end of 2020. The Agency for the Suppression of Corruption, Public Procurement Office and Republic Commission for the Protection of Rights in Public Procurement. However, according to the available data, instead of developing special methodologies for various areas only one was prepared to serve all eight areas. Even that one has not yet been applied to assess the specific effects of anti-corruption measures in public procurement.

2.2.8.6. Establish the Working Group for drafting Impact assessment in Public Procurement field and collect all relevant data. It is not known that the working group was formed, that it collected the necessary data. The deadline for this activity is the second quarter of 2021.

2.2.8.7. Conduct and present Impact assessment in Public Procurement field. The deadline for presenting the findings to the National Assembly after the analysis is only the first quarter of 2022, but the big question is whether it will be fulfilled, considering that no previous actions have been carried out.

2.2.8.8. Undertake corrective measures based on impact assessment findings. "All relevant institutions, based on impact assessment findings" are responsible to fulfil the task until the first quarter of 2023.

Within Recommendation 2.2.5, which refers to the improvement of the rules of free access to information of public importance and their implementation in practice, it was especially emphasized that the rules and application of the law should be changed when it comes to information on public procurement and public expenditure. The activity 2.2.5.1. is about conduct analysis of implementation of Law on free access to information of public importance so far,

in particular emphasizing areas of privatization, public procurement, public expenditures and foreign donations to political subjects. It was supposed to be implemented in third quarter of 2020. However, the work on the draft amendments to the Law on Free Access to Information began without prior analysis. In May 2021, a draft amendment to the law⁸ was published, which, like the existing Law on Free Access to Information, does not separate information on public procurement from other information, neither in terms of prescribing their mandatory availability, nor giving the possibility to apply special restrictions.

The agency's report on the implementation of the revised AP for Chapter 23⁹ states that some activities were carried out. This refers to hiring new employees in the Public Procurement Office, although the same report states that the number of employees was and remained 28 (out of 55 planned), and that seven other people were engaged but not employed. It is also stated that a new Public Procurement Portal was established and that the contract with the GIZ support programme (Gesellschaft für Internationale Zusammenarbeit) has been extended until June 2021. As for "monitoring measures related to the implementation of supervision and control in public procurement", the agency states that the performance cannot be assessed because some institutions did not submit data. While the Public Procurement Office and the Republic Commission submitted their reports to the parliament, the Ministry of Finance reported that it does not have „an organizational unit with competence to supervise the execution of public procurement contracts". The agency also positively assessed the manner in which trainings for police officers, prosecutors and judges were conducted, citing several examples of trainings organized within the framework of international support programs.

The methodology for drafting the Impact Assessment of measures taken to reduce corruption in public procurement was not prepared in time.

⁶ <https://www.mpravde.gov.rs/tekst/26471/polugodisnji-izvestaj-pregovaracke-grupe-za-poglavlje-23-za-treci-i-cetvrti-kvartal-2018-godine.php>

⁷ The Official Gazette of the republic of Serbia, no. 35/2019, 88/2019 i 11/2021 – authentic interpretation, Article 6.

⁸ <http://mduls.gov.rs/javne-rasprave-i-konsultacije/javna-rasprava-o-nacrtu-zakona-o-izmenama-i-dopunama-zakona-o-slobodnom-pristupu-informacijama-od-javnog-znacaja/?script=lat>

⁹ https://www.acas.rs/wp-content/uploads/2021/03/ASKpoglavlje_23web1.pdf

DATA ON THE APPLICATION OF THE NEW LAW

Statistical data on the application of the new law

The Public Procurement Office in its annual report (published only on the Public Procurement Portal but not on office's website¹⁰) stated that in 2020, the registered value of public procurement reached RSD 376.1 billion (slightly more of €3 billion euros), while the number of registered contracts was 135,022. The share of public procurement in the gross domestic product was 6.88%. The decline in the share of public procurement in the GDP results from an increase in the value of procurement that is exempt from the application of the law and disturbances in the public procurement market due to the epidemiological situation. In 2020, the open tender procedure lasted an average of 52 days. The average number of bids per procedure was 2.6. The share of suspended procedures in the total number of conducted public procurement procedures was 9%, while 91% of initiated procedures were successfully completed by concluding a contract or framework agreement.

The contracting authorities concluded 124,281 public procurement contracts worth RSD 337,442,284,000 based on the provisions of the previous law and 10,741 contracts worth RSD 38,682,005,589 relying on the provisions of the new law.

In the second half, public procurers

concluded 9,635 contracts worth RSD 34,665,950,443, while sectoral procurers concluded 1,106 contracts worth RSD 4,016,055,147. Observed by the type of contracting authority, the largest share in the total value of contracts concluded according to the provisions of the 2109 law had the central government bodies with 45.36% participation. The largest individual client was Electrical Power Industry of Serbia (EPS) with a contract value of RSD 51.4 billion, followed by the University Clinical Centre with RSD 17 billion.

According to the subject of public procurement, under the provisions of previous law, the largest share in concluded contracts had goods with 54%, services 27% and works with 19%. The share of public procurements of small value in the total value of public procurements was 7%. In the value of all concluded contracts, 94.29% were those realised in the open tender procedure while the share of contracts concluded in the negotiated procedure without public call was 2.57%.

The most frequently used basis for the application of the negotiated procedure without issuing a public call, according to the provisions of the 2019 law, was Article 61, paragraph 1, item 2) for reasons of extreme urgency brought about by extraordinary circumstances or unforeseen events, when the contracting authority was not able to act within the time limits laid down for the open or restrictive procedure, or competitive pro-

cedure with negotiation or negotiated procedure with publishing the call to place bids. In the total value of contracts concluded in the negotiated procedure without issuing a call, the share of this ground was 75.31%.

A total of 2,779 framework agreements were concluded in 2020, which is 3% less than the year before. Under the old law, 1,965 such agreements were concluded and under the new one 814. That indicates that the provisions of the new law significantly stimulate the implementation of this contracting mechanism. Medical equipment and pharmaceutical products were dominant in this type of contracts in 2020, with a share of more than 50%.

The value of contracts concluded in centralised public procurement procedures in 2020 was RSD 70,197,042,000. The share of the value of this type of contract increased compared to 2019 from 12% to 19%. Medical equipment and pharmaceuticals had a dominant share in centralised public procurement in 2020 (66%).

The application of the criterion "lowest offered price" is still extremely dominant with 94%, which is even more than in previous years.

The registered value of public procurements exempt from the application of the Law on Public Procurement is RSD 203.2 billion. Under the provisions of 2015 law, 285,219 such procurements worth RSD 108,168,027,000 were concluded, while under the 2019 law, there were 495,719 such procurements concluded in a value of RSD 98,209,384,556. The most common grounds for exemption, according to the provisions of 2015 law, were credit services regardless of whether they were related to the sale, purchase or transfer of securities or other financial instruments (26.02%) and procurements from persons or organisations considered as contracting authorities by this law and who are the holders of the exclusive right to perform the activity which is the subject of public procurement (16.71%).

According to the PPO, the most common causes of erroneous application of public procurement regulations are incorrect deadlines, unclear criteria and evidence required

in relation to meeting the criteria.

The average number of bids in 2020 was 2.6, stated to be "slightly higher" compared to the previous year. However, data on the number of bids is not presented by types of procedures and periods of validity of these two laws.

Public Procurement Office Monitoring Report

In the first monitoring report¹¹, the Public Procurement Office stated that since the entry into force of the new law on 1 July 2020, most questions have been about the use and functioning of the new Public Procurement Portal and new legal provisions. The establishment of electronic communication through the Portal was emphasized as the most important novelty. The Monitoring Group has four employees, and a total of five are planned.

In combating and preventing irregularities in public procurement procedures and fighting corruption in 2020, the PPO cooperated with the Prosecutor's Office in 15 cases, with the Ministry of the Interior in 13 and with the Agency for the Suppression of Corruption in 14 cases. All 42 requests referred to proceedings conducted under the old law. The PPO also acted in 35 cases of supervision over irregularities reported by businesses and "in a certain number of cases" not specified by the contracting authorities. In 2020, the PPO submitted eight requests for initiating misdemeanour proceedings, half of which were the result of acting on the submitted complaints.

Misdemeanour complaints were filed because of contracts concluded with no previously conducted public procurement procedure, implementation of a non-open or restrictive public procurement procedure without fulfilling the conditions, failure to communicate lawfully and to publish the public procurement plan.

Comparative data on the number of monitored public procurements with the total number of conducted public procurement procedures in 2020 show that this type

¹⁰ <https://jnportal.ujn.gov.rs/annual-reports-ppo-public>

¹¹ <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/2021/564-21.pdf>

of supervision covers only one out of 400 procurements. The Public Procurement Office has drafted a bylaw¹², the Rulebook on the procedure of monitoring the application of public procurement regulations. The rulebook envisages several types of monitoring - regular, extraordinary, control and supplementary. However, it did not provide deadlines for the Public Procurement Office actions, the minimum coverage of each monitoring (which is checked through the regular monitoring), duration for regular controls and the minimum number of procurements that will be controlled.

The monitoring report was published only on the website of the National Assembly, which has not yet discussed it (it has not been published on the PPO website at all). Although it is a very extensive report, it was published as a non-searchable scanned document.

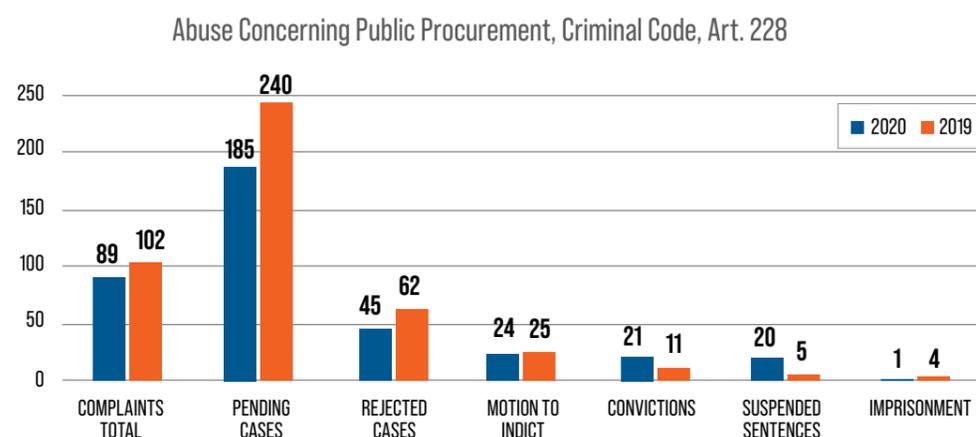
Criminal liability in the field of public procurement

There are several types of sanctions that may be imposed for the violation of public procurement rules. The Criminal Code distinguishes since 2012 a separate criminal offence - misfeasance (abuse) in public procurement - that is developed from the general concept of abuse of official duty.

A responsible person in a company or an entrepreneur, who submits an offer based on false information, colludes with other bidders, or undertakes other unlawful actions with the aim to influence the decision of a contracting authority, shall be punished with imprisonment from six months to five years. Similarly, the penalty will be imposed against a responsible person in the contracting authority who, through abuse of position or powers, by exceeding his/her powers or failure to discharge his/her duty violates the law or other regulations on public procurement and thus causes damage to public funds. When the estimated value of public procurement is higher than RSD150 million (nearly €1,27 million) - no matter how big the actual damage is - the punishment will be higher (one to 10 years).

There is a whole list of misdemeanours in the PPL as well, but they were never sanctioned in the 2013 - 2020 period, due to lack of harmonisation of the provisions of the PPL and misdemeanours law. Violation of integrity rules may also constitute grounds for disciplinary measures against civil servants, but there are no records as to whether such measures have been applied. Therefore, even if sanctions exist and may be proportionate and dissuasive, the frequency of their application is insufficient to deter from wrongdoings.

Prosecution of Abuse Concerning Public Procurement in 2020



Graph no.1: prosecution of criminal offense „Abuse concerning public procurement“ in 2019. and 2020.

¹² http://www.ujn.gov.rs/wp-content/uploads/2021/02/Pravilnik-o-monitoringu-nad-primenom-propisa-o-javnim-nabavka-ma-93_2020-369.pdf

For the criminal offense of Abuse concerning public procurement (Article 228 of the Criminal Code) in 2020, 89 persons were reported, which is a decrease of 17.75% compared to 2019, when 102 persons were reported. When 96 unsolved reports from the previous period are added, the Prosecutor's Office for Organized Crime and special departments in four higher public prosecutor's offices had a total of 185 criminal charges against violators (240 in 2019).

In 65 cases, public prosecutors requested the collection of necessary information, while in 57 cases they took evidentiary actions. Charges against 45 persons were rejected (62 in 2019), that is, one quarter of all reports that prosecutors dealt with in 2020. At the end of the year, 84 more charges remained unsolved, of which 30 in the prosecutor's offices. Investigations orders were issued rarely - twice in 2020, with one more issued earlier.

The number of motions to indict was similar to a year earlier (24 and 25, respectively), two of them being issued following the investigation.

The courts handed down 21 convictions, and in all but one case a suspended sentence. Although the number of convictions for this crime is still very small, it is almost twice as big compared to 2019, when 10 of them and one acquittal were handed down.

It is especially interesting that, according to the Republic public prosecution report, no measure of confiscation of material gain was imposed for this criminal offence under Articles 91 and 92 of the Criminal Code, although it is a type of property crime.

In 2020, the Special Department for the Suppression of Corruption in Kraljevo had 19 reports for the criminal offence of Abuse concerning public procurement, and there were 37 pending cases. Out of that, 32 complaints were submitted by the injured parties, and five by other persons. Criminal charges against 6 people were rejected, due to the lack of grounds for suspicion. There was no rejection based on the application of the principle of opportunity.

Motions to indict were filed against 13 people. Twelve convicting verdicts were passed, of which 6 verdicts due to the criminal offence from Article 228, paragraph 1 of the Criminal Code (which refers to giving false information in the public procurement procedure or concluding unlawful arrangements between bidders). A suspended sentence was imposed on 11 people, and in all cases, a prison sentence of 6 months was imposed.

In 2020, 8 criminal charges for this crime were filed with the Special Department for the Suppression of Corruption in Novi Sad. Six refer to the responsibility of the bidders' representatives and two to criminal charges for abuses related to public procurement, the value of which was estimated at more than 150 million dinars. There are 11 CEOs among those reported for this crime.

The injured parties filed 7 criminal charges, and one was filed by the Ministry of Interior. Six related to abuses concerning public procurement in the field of economy, one in the field of health sector and one in the field of education. One criminal complaint was dismissed, while others were in the process of being investigated.

The Special Department for the Suppression of Corruption in Belgrade had 9 cases for this crime and criminal charges were rejected in six cases. In two cases, evidentiary actions are being conducted, and in one case, a request to collect the necessary information was submitted. Two criminal charges were filed with this prosecutor's office by the Ministry of Interior, four by individuals, one by Ministry of Culture, and two were anonymous. Three charges referred to the abuse by bidders and two to the abuse by the representatives of the contracting authorities.

Twelve criminal charges were filed against 28 people with the Special Department for the Suppression of Corruption in Nis in 2020. Motions to indict were filed against eight persons during the same year, and the same number of persons were convicted.

COVID-19 RELATED PUBLIC PROCUREMENTS

None of the acts adopted either during or after the state of emergency have repealed the provisions of the Law on Public Procurement. The Law on Public Procurement (LPP) was in force when the pandemic started in Serbia ("Official Gazette of RS", No. 124 of 29 December 2012, No. 14 of 4 February 2015, No. 68 of 4 August 2015). At that time, a new Law on Public Procurement had already been passed ("Official Gazette of RS" No. 91/19), but the start date of its implementation was set for 1 July 2020. When the pandemic began, regular public procurement procedures were initially applied (for example, the negotiated procedure for the procurement of 7 ventilators, which the Ministry of Health successfully conducted in early March 2020).

However, contracting authorities soon began to use the possibility to procure without implementing the law, that is, based on Article 7 of the LPP from 2012. According to that article, the provisions of this law are not applied to procurements "for the purpose of ensuring the basic living conditions in cases of natural disasters or technical and technological accidents whose consequences imperil lives or health of people or the environment, in compliance with legislation governing protection from

such disasters."

An epidemic of an infectious disease is indeed one of the possible reasons for such exemption. The correctness of the contracting authorities' conducts in applying this exception depends on the fulfilment of objective conditions. In this sense, the key criterion is the necessity to carry out the procurement without applying another procedure to provide "basic living conditions". The fact that a procurement (for example) benefits the preservation of human life is not a sufficient condition per se, but the situation must be such that it is not possible to wait for the usual period required to carry out the fastest possible public procurement procedure (for example, a usual 7-day long negotiated procedure without a prior public call). Having in mind the nature of this exception, the legislator did not envisage any mechanisms of prior verification of the fulfilment of conditions, but only the possibility of subsequent control of justification. It is important to emphasize that even when conducting such procurements, the procuring entity was obliged (Article 7, paragraph 2) to "act in accordance with the principles of this law" (transparency, non-discrimination, for example).

The manner of realisation of these principles in exempted public procurements was not regulated by the law itself, but exclusively (if at all) by internal acts of contracting authorities themselves. As a result, for example, there was no obligation for contracting authorities to publish information on what they procured, from who and at what price, at least after the conclusion of the contract. Such information they had to provide only in their quarterly reports to the Public Procurement Directorate (which is the Public Procurement Office now). However, even after the publication of the Public Procurement Office Report for 2020¹³, it remains unclear to what extent this exception has been applied. Namely, Table 26 of that report does not list the value of procurements exempted on this basis.

It soon turned out that the application of the Law on Public Procurement was suspended in another way, which was not in accordance with its provisions. Namely, when CSOs and journalists tried to obtain documents related to public procurement of medical equipment and materials, the contracting authorities (e.g. the Health Insurance Fund) rejected the requests for information as inadmissible stating that documents which contain requested information were classified as "top secret". As a basis for refusing to provide information, they cited the Government conclusion of 15 March 2020, SP 05 number: 00-96 / 2020-1. That conclusion was not published, so it cannot be determined whether these allegations of the authorities are true. The Government of Serbia did not act either on the requests for access to information about copies of that conclusion.

The 2012 Public Procurement Law also provided for the possibility of declaring some procurements confidential, but these exemptions were related exclusive-

ly to procurement in the areas of defence and security.

The above-mentioned exception is not present in the new Law on Public Procurement (2020). As a consequence, one of the procedures prescribed by the law must be carried out even in the most urgent procurements. Article 62 stipulates that the contracting authority is obliged to publish a notice on the Public Procurement Portal on the implementation of the negotiated procedure without publishing the call to place bids, which contains an explanation of the grounds for the application of that procedure.

However, the contracting authority is not obliged to publish this notice in case of conducting the procedure "for the purpose of ensuring the basic living conditions in cases of natural disasters or technical and technological accidents whose consequences imperil safety, health or lives of people, material goods or the environment, in compliance with legislation governing emergency situations". Nonetheless, under Article 109, "the contracting authority is obliged to send the contract award notice for publication within 30 days from the day of concluding the public procurement contract or framework agreement." As a consequence of this provision, information on some procurements of goods, services and works related to the suppression of the pandemic appeared in public, at least after the contracts were concluded. Publishing such scanty information, lead to conclusion that the rules were not followed in at least some procurements.¹⁴

Based on data from the PPO annual report (Table 15), the negotiated procedure was applied 418 times in the second half of 2020, and 5,957,036,252 dinars (over 50 million euros) worth procurements were contracted.

¹³ <https://jnportal.ujn.gov.rs/annual-reports-ppo-public>

¹⁴ <https://www.cins.rs/en/procurement-of-pcr-tests-from-egg-laying-hens-to-a-multimillion-deal-with-the-authorities> <https://rs.n1info.com/vesti/a655704-agencija-za-sprecavanje-korupcije-andquotcesljaandquot-zorana-gojkovica> <https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/11844-upitna-zakonitost-nabavke-opreme-za-kovid-bolnice>

INTERSTATE AGREEMENTS

During this period, the government continued to negotiate works directly instead of organizing tenders for public procurement and public-private partnerships. Some of the examples are: business with the "Alstom" company related to the project "Belgrade Metro"; announcement of work with the Russian railway company on the reconstruction of the Belgrade-Bar railway; a deal with the Chinese company CRBC regarding the construction of a tunnel through Fruska Gora mountain; negotiations with "Power China" and "Azvirt" on the construction of Sector C of the Belgrade Bypass; announcement of the construction of the airport in Trebinje (Republika Srpska, Bosnia and Herzegovina) which Serbia will finance; construction of a water purification system in Belgrade (im-

plemented by China Machinery Engineering Corporation - CMEC); negotiations with the Chinese company "Shandong" for the construction of two highways; announcement of construction of a high-speed railway from Belgrade to Nis with "Chinese partners"; project "Belgrade Metro" worth 6 billion euros (contract for project documentation signed with the French company "Egis"); contract with the Chinese company "Shandong" for the construction of a fast road connecting Valjevo with a highway (158 million euros), signed in June 2020, etc. On October 16, 2020, Minister of Construction, Transport and Infrastructure Zorana Mihajlovic said that the value of "joint projects" between Serbia and China is around 9 billion euros.

MAIN RECOMMENDATIONS REGARDING PUBLIC PROCUREMENT

To reduce the risk of corruption in public procurement, as well as to improve competition in public procurement bidding, we propose the following priority measures and activities:

1. Since the amendments to the Law on Public Procurement are planned for the end of 2021, in order to implement the measures from the Media Strategy and the accompanying Action Plan, this opportunity should be used to eliminate all shortcomings noticed so far in the law and not only those related to the regulation of the procedure for the procurement of media services. This includes, but is not limited to:
 - Increasing the number and quality of information that will be published on the Public Procurement Portal, including those related to the execution of contracts, as well as to procurements to which the law does not apply, the number of bids per procurement procedure, and linking to databases with other bodies for a more complete insight into public procurement and its effects;
 - Reintroduce the obligation of contract-
- ing authorities (which existed in the 2012 law) to publish the tender documentation and opinions of the PPO for negotiated procedures without publication of the call to place bids;
- Introduction of the obligation to develop a methodology on the basis of which the Ministry of Finance will oversee the execution of public procurement contracts, in order to maximize the scope and quality of this supervision and to ensure the publication of the supervision results;
- Clarify in the law the issues regulated by the Rulebook regarding the Public Procurement Office monitoring, so that the scope of monitoring is as large as possible and that the obligations of PPO are more precisely defined and provide timely public information on the conducted monitoring;
- Introducing the obligation for the PPO to develop a model of the contracting authority's internal act, to allow contracting authorities to cover all important aspects of public procurement that the Law sufficiently regulates and monitor the application of the rules on internal regulations;

2. Termination of the practice of concluding procurement contracts in any other way than by applying the Law on Public Procurement. This involves several activities:
 - Discontinuation of the practice of enacting special laws establishing special procurement rules for one specific project or one type of projects (e.g., line infrastructure, state housing), repealing existing laws of that type and considering the effects of their implementation;
 - Termination of the practice of directly negotiating or envisaging the possibility of excluding the application of the Law on Public Procurement through interstate agreements. Alternatively: establishing the obligation of the Serbian government's authorised representatives in negotiations prior to concluding agreements with foreign countries, international organizations and financial institutions, to uphold for the application of national law anti-corruption rules and to explain how any agreed deviations from such regulations bring benefits greater than damage;
 - Disclosure of all contracts concluded based on interstate agreements, without the application of the Law on Public Procurement and information on monitoring the implementation of these contracts.
2. Publication of all information on procurements related to the COVID-19 pandemic, conducting monitoring and audit of all such procurements conducted without application of the law, starting from 15 March 2020, that is, procurements conducted under special negotiated procedures without publication of the call to place bids from 1 July 2020. Disclosure of monitoring and/or audit findings;
3. Proactive action by public prosecutor's offices to examine the existence of criminal liability in cases where public procurement rules have not been complied with, as identified by other authorities;
4. Continuation of the State Audit Institution's practice to conduct performance audits in the field of public procurements and monitoring the outcome of performance audits published so far;
5. Strengthening the capacity of bodies conducting public procurement, as well as bodies responsible for the monitoring, control, supervision, audit, review and prosecution of violators, so to enable an optimal level of supervision and correct distinction of legitimate requirements of tender documentation from discrimination of bidders.
6. Organizing a public hearing by the relevant committee of the National Assembly and the national branch of GOPAC to review the results of the conducted supervision of public procurements and support the bodies that should perform it;
7. Encompassing of activities aimed to address all priority topics related to the suppression of corruption in public procurement within the Operational Plan for the Suppression of Corruption (to be adopted based on the AP for Chapter 23), with the involvement of all relevant institutions in this process.

PUBLIC-PRIVATE PARTNERSHIPS

Although public-private partnerships in Serbia show even greater problems than public procurement itself, the current public policy documents envisage changes to these regulations solely for the purpose of harmonisation with the relevant EU directives. Therefore, we will first look at the benefits that this harmonisation could bring and then point out some other issues that should be regulated to reduce the risk of corruption in this area.

Directive

On 26 February 2014, the European Parliament and the Council of the European Union adopted **Directive 2014/23/EU on the award of concession contracts**.¹⁵ The aim of this Directive is to coordinate the laws and regulations of the Member States applicable to certain concession procedures, i.e., to create an appropriate, balanced and flexible legal framework for the award of concessions that would ensure efficient and non-discriminatory market access for all EU economic operators, as well as to ensure legal certainty that favours public investment in infrastructure and strategic services for citizens. Special attention is paid to improving the opportunities for small and medium enterprises to access concession markets.

The basic principles of the directive are the principle of free administration by public authorities, equal treatment, non-discrim-

ination and transparency. It is stipulated that the directive applies only to concessions of € 5,350,000 or more, a threshold revised every 2 years.¹⁶ In addition, the directive has several other exceptions in the areas of water, electronic communications, air transport, activities directly exposed to competition, gambling and betting.

One significant novelty at the EU level which appears in this directive refers to the so-called e-procurement and says that the documentation related to the award procedure aimed at concluding the concession contract must be available in electronic form. Article 34 of the Directive stipulates that public contracting authorities and contracting authorities shall offer by electronic means unrestricted and full direct access free of charge to the concession documents from the date of publication of a concession notice or, where the concession notice does not include the call to submit tenders, from the date on which the call to submit tenders was sent. The aim of this measure is to achieve, in accordance with Article 74 of the preamble, to significantly simplify the publication of concessions and increase the efficiency, speed and transparency of the concession award procedure. It is stated that electronic forms of information and communication could become standard forms of communication and exchange of information in concession award procedures, because they greatly increase the possibilities of economic entities to participate in conces-

¹⁵ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0023>

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1827>

sion award procedures. Another novelty introduced by the Directive is a certain type of standard forms for concessions, which should facilitate the implementation of the procedure in different areas.¹⁷

As the Republic of Serbia has opened negotiations with the European Union regarding Chapter 5, which refers to public procurement but thematically covers PPPs and concessions, and since Serbia has an obligation to harmonise its regulations with the EU legal framework, it is expected that amendments to the Law on Public-private Partnership and Concessions ("Official Gazette of RS", no. 88/2011, 15/2016 and 104/2016)¹⁸ bring harmonisation with the said directive.

The harmonisation was already planned during 2017 in two steps. The first step would identify inconsistencies between the law and the EU legal framework and in particular the directive. It was also planned to identify other laws regulating transport, energy and other areas important for concessions and public-private partnerships and to determine their compliance with the provisions of the directive. In the second step, it was planned based on previously conducted analyses to amend the Law on PPPs and Concessions to achieve full harmonisation with EU law. The same was planned to be done with the sectoral laws, but these changes did not occur.

Previously mentioned electronic publication of concession documentation will not be a novelty for our law, considering that such an obligation is already prescribed for projects worth over € 5 million (directive has even a slightly higher threshold). During the process of harmonisation, more attention will be paid to the rules on contract changes and cases of unforeseen circumstances. The Convention also stipulates that member states are obliged to ensure monitoring of the application of the rules on the award of concession contracts and to inform the public about it, and that

the European Commission may request a monitoring report every 3 years. Given the content of the directive itself and the existing regulations of the Republic of Serbia governing this area, it seems that harmonisation will not lead to major changes in the Law on PPPs and Concessions, except for informing the public about monitoring the contract implementation. However, the process of amending the law itself should be used to address other shortcomings identified in practice

Recommendations for the promotion of public-private partnerships and concessions

Having in mind the findings of the research on the current legal framework¹⁹, the problems identified by other institutions and the analysis of the legal framework in the countries of the region²⁰, Transparency Serbia, while sharing the opinion on the necessary harmonisation with EU law, provides the following key recommendations for the amendment of the regulations related to public-private partnerships:

1. Enabling greater participation of the citizens in making decisions on planning public-private partnerships and in monitoring their implementation; to achieve this goal, it is necessary to have prescribed:

- the obligation to draft and publish an annual or multi-year plan of concessions and other public-private partnerships (such as a public procurement plan);
- the obligation to organize a public discussion of the plan and / or individual PPP projects before the procedure for selecting a private partner begins, with the possibility to modify the plan based on the proposal and remarks from the public debate;
- the obligation to monitor the implementation of the PPP contract and to gather

- information from the interested persons;
- the extension of the notion of excitation, so that in addition to the users of services provided by the authorities, it includes the users of the services of the private partner who conducts the PPP project and the joint venture;
- the obligation to collect information on the effects of the implementation of the PPP contract and the purpose for which the public-private partnership has been launched (e.g. user service surveys) as a part of the monitoring of the situation in the area.

2. Increasing transparency in public-private partnerships and concessions, this includes:

- regulating public data standards and registries of the public contracts by the law;
- the improvement of the Public Contracts Registry, in which all public private partnership contracts and reports on their implementation, will be published;
- extension of the circle of information to be published on the public procurement procedure preceding the conclusion of the public-private partnership contract (in connection with the amendments to the Public Procurement Law);
- the prohibition to be designated as confidential contract provisions or parts of other documents in which the obligations of the public partner are prescribed or explained;
- the inclusion of joint enterprises formed within public-private partnership, under the term "public authorities" in the sense of the Law on Free Access to Information of Public Importance (which would allow oversight of the use of public resources, while not affecting the possibility to deny certain sensitive information in order to protect legitimate business interests of such companies when competing in an open market);

- including information on planned public-private partnerships and the imple-

mentation of existing budget documents (primarily the Fiscal Strategy), in order to review the effects of these contracts on public revenues and public expenditures.

3. Strengthening the effectiveness of oversight of public-private partnerships' planning and the fulfilment of contractual obligations of a private partner;

- prescribing the National Assembly's competence in the approval of PPPs and concessions with very long lifetime or those involving a high value public property;
- imposing the obligation of the Government and / or the Commission for PPPs to periodically report to the National Assembly on the implementation of the public-private partnership contract and the National Assembly's obligation to consider these reports within a certain time-limit and to issue conclusions in this regard;
- prescribing the authority that will be in charge of overseeing the implementation of the contract (PPP Commission or other body);
- precising the rules on conflict of interest in relation to public-private partnerships, since the general rules relating to public officials and civil servants do not include all relevant actors (e.g. hired advisors), while conflict of interest rules of the public procurement law are not fully applicable for public-private partnerships;
- prescribing the minimal supervision elements so as to include not only legal and financial indicators, but also other data that refer to the achievement of project objectives (e.g. the number of service users);
- prescribing the obligation to conduct a competitive procedure with the application of the norms or at least the principles of the Public Procurement Law, for procurement by a joint venture established within the framework of a public-private partnership project;
- introducing the rules that would ensure that the Fiscal Council, from the point of

¹⁷ New public procurement directives, Legal Flash - Cuatrecasas, Goncalves Pereira, 2014

¹⁸ Law on PPP and concession

¹⁹ https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS-Analysis-of-the-risk-of-corruption-in-public.pdf

²⁰ Comparative analysis of individual provisions of Law of PPP and concessions in the countries of the region - TS, 2017

view of its competencies (for example, the impact of implementing projects on the budget in the coming years), should review the plans of public-private partnerships and / or individual projects;

h. specifying the possibility that the State Audit Institution, as a part of the performance audit, will consider the implementation of the public-private partnership contract, as well as the initial decision to choose such type of contracting.

4. The provision of special control measures in cases where the anti-corruption mechanisms of the Public Private Partnership Law do not apply due to the existence of a permitted exception to the application of that law (e.g., interstate agreements) and the avoidance of such arrangements, which includes:

- a. prescribing the obligation of the negotiator on behalf of the Government before concluding an interstate agreement to require that the international agreement contains a clause on the application of national law on PPPs and concessions;
- b. the obligation of the public partner to publish all the documents which also apply to such PPP, except those where secrecy is determined by a special decision;
- c. obligation of the public partner to draft and publish a feasibility study;
- d. obligation of the public partner to ensure competition to the extent possible, or to inform the supervisory authority and the public about what the authority has done to prevent the occurrence of adverse effects due to lack of competition.

5. Provision of the penalties for violations of the rules on public-private partnerships, which, inter alia, includes:

- a. specifying the criminal act relating to abuses in public procurement and unauthorized arrangements by the bidders so as to include all cases of the most serious misconduct in public-private partnerships;
- b. criminal or misdemeanour penalties in

case of concluding a contract without a prior procedure;

- c. misdemeanour penalties for failing to provide mandatory or specially requested documents to the PPP Commission;
- d. misdemeanour penalties for failure to publish mandatory documents on the website of the public partner / joint venture;

6. Improving the legal position of the Commission for Public Private Partnerships, aimed to strengthen its independence, which preserves:

- a. a clear definition of the legal nature of this body, which now does not correspond to the classification of organs and organizations that make up the public sector of Serbia. In view of the competencies currently in place, and especially if those competencies are expanded as necessary, the Commission could be formed and as an independent state body. At the very least, the Commission could be formed as a separate administrative-professional organization (such as the Public Procurement Office). The scope of work of the Commission could also be widespread;
- b. the professionalization of the management by the Commission, the reduction of the number of members and the abandonment of the current concept where the Commission is effectively a set of representatives of ministries and other bodies that may also be stakeholders in individual PPP projects;
- c. enabling the work of the Commission in continuity by enabling the mandate of the members not to be related to the mandate of the Government or the National Assembly convocation (e.g. a five-year mandate if it is a matter of election in the Assembly, appointing an officer on the basis of a conducted competition, if the Government does so, specifying grounds and procedure for potential dismissal of a member of the Commission);
- d. establishing a Commission's expert service that would provide it with all the

necessary assistance in the work and enable greater independence in regard to the Ministry of economy.

In addition, we would like to highlight other recommendations, those contained in the FIC White Book Publication²¹ within the proposal for improving the business environment, as well as those created as a result of research conducted by the Institute for Territorial Economic Development within the study "Transparency of PPP projects in Serbia"²² and "Improving the legal and institutional framework of PPPs in Serbia"²³:

- Harmonisation of the Law on PPP and Concessions and other laws, which especially refers to the harmonisation with the Law on Public Procurement, the Law on Budget System and the Law on Public Property, but also other laws;
- Form and launch a Support Program for the preparation, contracting and implementation of PPP projects in Serbia, whose beneficiaries would be representatives of both the public and private sectors. The program could have at least two measures, one of which would refer to the education of participants in the process, and the other to the provision of professional technical and legal advisory services (for an example through the allocation of vouchers for consulting services but also through other modalities);
- Increase public and private sector information on the possibilities of PPP models, examples of good and bad practices, as well as public awareness of the effects of PPP projects. Introduce continuous training of public sector representatives to work in the field of PPP, introduce a procedure for certification

of public servants to work in the field of PPP and ensure the exchange of experiences with other countries with more experience in this field;

- Better coordination between PPP institutions (better coordination and streamlined cooperation of all relevant PPP institutions with project promoters at all levels of government);
- Avoiding practice of having the same International Financial Institutions (IFIs) being engaged in support to public partner in preparation of PPP project and later procuring the financing to project company;
- Promote available and officially approved contract templates developed in accordance with the best international practice but in full compliance with Serbian law applicable to PPP contract, as well as investing resources in training public sector partners to successfully navigate a PPP project from inception to realization;
- Amending the rules of the Law on General Administrative Procedure so as to exclude or limit the applicability of its provisions relating to "administrative contracts" to PPP contracts;
- Take advantage of the International Financial Institutions (IFI) support for project preparation and their knowhow on PPPs. Resources from the European Investment Bank's (EIB) European PPP Expertise Centre (EPEC), the International Finance Corporation's (IFC) advisory services in PPPs or the European Bank for Reconstruction and Development's (EBRD) Infrastructure Project Preparation Facility (IPPF) can be used for project preparation;

²¹ White Book Publication - FIC, 2020

²² Transparency of PPP projects in Serbia - InTer, 2019

²³ Improving the legal and institutional framework of PPPs in Serbia - InTer, 2018

REVIEW OF SELECTED CASES

Corruption in Railway Companies

Suspicion of corruption in connection with the work of a state-owned railway company, Infrastruktura železnice (Railway Infrastructure), which the public has been informed about while stations broadcasted footage of an arrest, in early 2020, is interesting and important for consideration, regardless of whether anyone's criminal responsibility will ultimately be determined. It was already announced back then that the money, suspected to be a bribe, represented a refund of part of the fee paid by the company for legal services.

From the police statement, it can further be assumed that the suspicions existed on several levels – that these services were not necessary (because the company has its own legal department that performs the same tasks) and that the value of the services was inflated. If so, criminal responsibility could exist without someone accepting bribes, but proving it would be considerably more difficult. Namely, the decision to arrange any procurement that is not necessary could be labelled as "contrary to the law or other public procurement regulations", which is one of the grounds for the existence of a criminal offense. However, what makes

it significantly more difficult to prosecute in such situations is the fact that public procurement plans (including necessary and unnecessary procurement), as well as state-owned enterprise programmes must obtain approval, after which those who planned the unnecessary costs receive "cover" for the harmful contracts in question.

In October 2020, it was announced that the Prosecutor's Office for Organised Crime has filed charges against the former acting director of "Railway Infrastructure" for accepting bribes, as well as against a member of the Supervisory Board of the Company "Ratko Mitrovic" from Novi Sad and two lawyers for bribery, and that all the suspects have denied any wrongdoing.²⁴ However, according to the news in May 2021, the three defendants entered a plea agreement with the Prosecutor's Office, based on which the court handed them verdicts, with only the former director remaining indicted and still denying any wrongdoing.²⁵

In relation to procurement of (unnecessary) legal services, it should be noted that one way to prevent such abuse is to ensure greater transparency of information about procurement of public enterprises, through the publication of contracts

²⁴<https://www.novosti.rs/c/hronika/zlocin/923328/optuznica-protiv-bivseg-ocelnika-infrastruktura-zeleznice-miroljuba-jevtica-terete-mito-10-000-evra>

²⁵<https://www.novosti.rs/c/hronika/hapsenja-i-istraga/1002319/trojica-priznala-davanje-mita-miroljub-jevtic-sve-negirao>

under which the services were obtained and how much was paid for them. However, [a Transparency Serbia survey](#) from 2019, as well as [a repeated survey](#) in 2021, shows that this is one of the weakest points. Thus, in 2019, none of the 40 national and local public enterprises in this survey had published contracts for procurement of legal services, consulting services and advertising services! Therefore, it can rightfully be assumed that the company "Railway Infrastructure" is not the only one in which opaque business has facilitated waste and corruption.

On suspicion of misuse of public procurement in railways, the Secretary of State at the line ministry was briefly apprehended. Allegedly, he influenced the reconstruction of the Pancevo Bridge in Belgrade, and the procurement was carried out by a state-owned enterprise, not just the Ministry. Regardless of anyone's potential criminal liability in this case, some things are known based on all available data from the Public Procurement Portal, so it can be commented on.

The procurement of works (reconstruction of the bridge) was not carried out through an open tender, but in the so-called negotiation process. This procedure can be conducted under the Law due to an urgency that did not occur by the fault of the guilt of the purchaser. In particular, the urgency stems from the findings of the emergency control of the bridge. If these controls are performed according to good engineering practices, and if their findings really show that the reconstruction cannot wait another few weeks or months (the duration of the routine procurement process), then the decision could not have been correct. Of course, that would open up the question of prior regular checks on the state of bridges, but that is a different matter.

What is contentious in this case, however, is who will be invited to participate in the bid for the contract. As can be seen from the [documentation](#) published on the Public Procurement Portal, invitations were sent at only two addresses. A purchas-

er who wants to get quality offers and solve the problem would act differently. Even if he is only familiar with two companies in a particular business, it should be in his interest to inform all registered firms that provide such services, directly or through the Chamber of Commerce, or even through the chambers of commerce of the neighbouring countries.

Hypothetically, there is a possibility for a company that has not been directly invited to be awarded the contract. However, this is unlikely to happen, because preparing the bid takes time and funding, and bidders that realize they are undesirable from the very beginning will be considerably less willing to invest one or the other. In other words, if there was foul play in awarding the contract for the reconstruction of the bridge, the problem should be sought not only in the responsibility of decision-makers from the state-owned enterprise "Railway Infrastructure" a.d. or the Ministry, but also in the fact that the lawmaker left it up to the purchasers to determine by themselves who they will invite to submit emergency bids.

Implementation of PPP - supervision: Airport "Nikola Tesla" and the Belgrade Waterfront

The Law on Public-Private Partnership and Concessions (Article 63) stipulates the obligations of a public partner in relation to monitoring the work of a private partner and fulfilling its obligations under the public contract.

Transparency Serbia has tried to determine how the Republic of Serbia monitors the activity of private partners in the concession cases for the Nikola Tesla Airport and the Belgrade Waterfront public-private partnership, and hence it requested from the Government of Serbia on 6 December 2019, [the following documents](#) :

1. All the requests made by the public partner to the private partner in connection with this concession, in which the pub-

lic partner requested periodic reports on the private partner's work, activities and fulfilment of obligations, in accordance with the public contract;

2. Periodic reports submitted by the private partner in response to requests, as well as any other reports on the fulfilment of obligations submitted by the private partner, even without the request of the public partner;
3. All notices submitted by the public partner to the Ministry of Finance on the periodic reports received;
4. All notices submitted by the public partner to the Ministry of Finance on any identified irregularities and the measures taken.

In a [response](#) dated 31 December 2019, the Serbian government denied the request, saying that the Prime Minister's decisions dated 21 December 2019, December 2018, 21 January 2019, 22 April 2019 and 22 October 2019, had declared all information contained in the Concession Agreement, Supplementary Agreement and Protocol on Updating of Schedules to the Agreement confidential, i.e. that these decisions were assigned the level of confidentiality "TOP SECRET" to "prevent serious damage to the medium-term economic interests of the Republic of Serbia". It also said that in the request, the requestor asked "[access to documents, without specifying which concrete piece of information he wishes to have access to](#)" (underlined in the response).

The explanation goes on to say that "in the specific case, the said information is information which, under the Law on Data Secrecy, must be kept as a state secret, and since the requestor "did not specify which information he wants, asking instead for documents in general terms, the Secretary General believes that the legitimate primary interest of protecting the state's economic interests overrides the interest of accessing information.

TS believes that these allegations that the claimant "did not specify which infor-

mation he wants, asking instead for documents in general terms", are inaccurate and malicious, aimed at discouraging citizens from exercising their constitutional and legal rights.

Namely, in the [request](#) for access to information, TS clearly identified not only the information it seeks, to the extent possible, but also the documents where that information should be contained. On the other hand, it would be absurd to expect a requestor to specify more precisely certain information from the documents he needs, because the contents of the documents are unknown to him (i.e. that is precisely why he has addressed the authorities in order to obtain information / copies of documents).

A similar request was made by TS on 6 December 2019, this time to the Ministry of Finance. It too [denied](#) the request regarding the concession for the airport, citing a similar rationale as the General Secretariat of the Government, adding that there was another decision on declaring the data secret - issued even before the said decisions of the Prime Minister, on 7 February 2017, by the then Construction Minister and Deputy Prime Minister.

The part concerning the data, i.e. reports on the implementation of the Belgrade Waterfront public-private partnership, was not answered to, but a separate memo was issued, saying that this project was not a PPP, i.e. that the subject contract was not signed after the procedure was implemented in accordance with the Law on PPP, and hence the Ministry was unable to provide the requested information.

Regarding the denial of the request in the case of the Airport concession, as well as in relation to the memo on the Belgrade Waterfront, TS has lodged an appeal with the Commissioner.

A request for access to the report on the work of the private partner in the Belgrade Waterfront project has been submitted to the Serbian government. The Serbian government [replied](#) that the provisions of the Law on Public-Private Partnership do not

apply to this project, and consequently they do not apply to the provisions regarding the obligation of the private partner to make reports or the public partner to request such reports. The Law, namely, stipulates that it does not apply when the partnership is based on international treaties, and in this case, it is based on a 2013 agreement between the Serbian government and the UAE government. That agreement, meanwhile, excludes the application of one of the strongest anti-corruption mechanisms for preventing abuse in the spending of public resources - competition. Namely, agreements, contracts, programmes and projects concluded in accordance with this interstate agreement "are not subject to public procurement, public tenders, public bidding or other procedure stipulated in the national legislation of the Republic of Serbia".

Respirators

- The procurement of respirators and other health equipment since the beginning of the pandemic has been declared secret.
- Here are the known facts:
- Serbian President Aleksandar Vucic said on 5 April that the state had invested €370 million in equipment to fight the corona virus.
- Under government decisions, published in the Official Gazette, from 31 March to 10 April, more than 35 billion dinars (RSD35,475,818,000) were transferred to the Republic Health Insurance Fund to mitigate the consequences of the COVID-19 disease caused by the SARS-CoV-2 virus. Of this, RSD 30.552,818,000 (about €260 million) by 5 April.
- The last procurement announced by state authorities and health care institutions on the Public Procurement Portal dates back to 11 March 2020. At that time, the Ministry of Health, with the positive opinion of the Public Procurement Office, opened the negotiation process to purchase 15 respirators, and

chose the more favourable of the two offers after only seven days. In all, RSD 26.7 million were paid excluding VAT.

- Serbian Prime Minister Ana Brnabic said on 12 March 2020, that "the number of respirators in Serbia is being treated as a state secret". Later in the day, the President of the Republic of Serbia, Aleksandar Vucic, stated publicly that Serbia "has 1,008 respirators" and that another 500 would be procured in the next 25 days.
- TS asked the Republic Health Insurance Fund for information on public procurements conducted during the pandemic, but the request was [denied](#), with the explanation that there are as many as two decisions determining that such information is secret:
- The decision of the General Secretariat of the Government of the Republic of Serbia from 11 March 2020, labelling "TOP SECRET data relating to all procurement of medicines, tests, medical devices, protective personal equipment and other necessary equipment for the treatment of patients, for the duration of the COVID-19 disease, caused by the SARS-CoV-2 virus, whose prevention and suppression is in the interest the Republic of Serbia".
- The classification level "Top Secret", pursuant to the Conclusion of the Government of the Republic of Serbia SP 05 number: 00-96/2020-1 from 15 March 2020.
- Although data remains a secret for other citizens, then SNS MP (and now minister) Marija Obradovic said on 27 April 2020, in front of the Serbian Parliament that "we have managed to pay for 4,000 respirators owing to superhuman efforts by the President Vucic and the Government. We will get another 1,500 respirators by the end of the day, and for the rest we will get the money back."
- Although data remains secret for other citizens, SNS MP Aleksandar Martinovic said on 28 April 2020: "As for respirators, dear citizens of Serbia: the

contracted quantity of 3,967 respirators, and so far 585 have been delivered to us, we have been donated 120 and we have serviced 38 respirators ourselves. In total, we have 743 respirators operational in our system". He then presented alleged information about the quantities of face masks and gloves supplied.

- Serbian President Aleksandar Vucic said on 23 July 2020, that Serbia has 1,500 respirators available. "We currently have 958 unpacked respirators in the warehouse in Krnjesevci, another 72 will arrive in the next 24 hours, that is 1,030 respirators that are unpacked. This morning, 205 patients were on respirators, and in hospitals we have another 400 respirators available." That day, according to data from the covid19.data.gov.rs website, there were 185 patients with COVID19 on respirators. It is not known how many other patients were connected to respirators.
- Health Minister Zlatibor Loncar said on 2 October 2020, that 290 respirators were available in Serbia. That day, according to data from the covid19.data.gov.rs website, there were 23 patients with COVID19 on respirators. It is not known how many other patients were connected to respirators.

On 6 April, Transparency Serbia has called on the state authorities and health institutions to release key information on all procurements they had conducted since the state of emergency was declared, including those not implemented under the Law on Public Procurement.

In a situation of high demand for respirators worldwide, one can imagine that even the secrecy of some procurement information could be temporarily justified. However, it is hard to imagine any valid reason not to publish exactly what was purchased and how much was paid for it. Information should be provided by those state authorities that purchase medical equipment. Furthermore, any statements that might be seen as a call for violations of the law should be avoided (e.g. that

respirators had been partially purchased under the table, as Aleksandar Vucic has said).

TS also warned Aleksandar Vucic about some of these principles in a [letter](#) sent after Vucic [responded](#) the following in a TV show on RTS, to the host's remark that Transparency Serbia had requested the release of data on the procurement of medical equipment: "Well, they are actually talking about themselves, imagining how they would steal money from the people."

Public procurement data should be published, to the extent possible, not because someone thinks someone else stole money from that purchase, but precisely so that no one would even consider whether secrecy in procurement involves theft. The principle of transparency under Article 11 of the Law on Public Procurement (2012) applies even to procurements which, since they are necessary to protect the lives of the population, are to be conducted without an open or negotiated procedure. That is stated in Article 7, Paragraph 2 of the Law. There is no harm in reminding that these provisions were introduced into the Law on Public Procurement, which was enacted at the end of 2012, precisely at the suggestion of the SNS parliamentary group.

Planning and implementing the procurement of medical equipment is not a task which the President of the Republic is in charge of or authorized for, either during the state of emergency or outside of it. Consequently, it is not something the President should have informed the public about (e.g. whether there are enough respirators or not) or account for (how much they were paid and so on). Healthcare institutions are responsible for the planning, as well as for the procurement, along with the Ministry of Health. Even in a situation of a global shortage of respirators, when the contacts of the President of the Republic with the heads of other states and governments can be useful, other state bodies, and above all the Milan Jovanovic Batut Institute and the Ministry of Health, should have informed the citizens about

what medical equipment was needed, how much goods had been purchased and how much was paid for it. In reality, the state bodies in charge of these matters remained conspicuously silent.

When procurements necessary to protect life are conducted without a tender, it is also done in accordance to the Law. Even when such acquisitions deviate from the usual practice, and goods are paid in cash for example, or purchased from companies that would not meet the requirements in normal public procurement (e.g. a company that has tax debts, no bank guarantees and the like), it is wrong to create the impression in public that state authorities are doing something illegal; it should just be explained to the citizens that they are applying one of the possibilities provided for by the Law. This is important in order to encourage the citizens to respect the Law during the pandemic, and for the state to have a moral right to punish those who actually violate procurement rules.

In a pandemic situation, there needs to be as much trust as possible between the citizens and state authorities. Transparency of action helps build that trust. On the other hand, releasing incomplete and contradictory information leads to the opposite effect. Thus, citizens received information from the highest representatives of the state that there are "enough respirators", that their number is "state secret", and that 15 new respirators are procured by conducting a public procurement procedure "in order to play it 200% safe". Then, on the same day, the alleged state secret was revealed - by announcing that there are over 1,000 respirators. In the meantime, citizens are getting information that the state has arranged the purchase of 2,200 new respirators and that 573 have already arrived. This creates the impression that state representatives lied to the citizens, falsely portraying the situation as better than it was before or worse than it is now. On the other hand, for the purpose

of strengthening trust, the government should have informed citizens about what the expert assessment of the needs for respirators was and what was the goal of carrying out the purchase (how many respirators there should be in total). Even if the epidemiological situation is such that as many of these devices should be purchased as possible in order to protect human life, communicating such information to citizens can only be useful for strengthening discipline in implementing the measures to prevent the spreading of the virus.

Public procurement analysis - Provincial Authority's Joint Affairs Authority - lease of two vehicles

The Provincial Authority's Joint Affairs Authority issued on 11 March 2021, Decision no. 109-404-143/2021-01²⁶ awarding the vehicle lease agreement to Porsche Mobility Ltd. from Belgrade as the sole bidder. Regarding this public procurement, there have been no requests for protection of rights, neither over the competition documentation or the implementation of the procedure.

The estimated value of the contract was RSD 9.8 million (excluding value added tax - VAT), and the contract was signed for RSD 9,388,534.46 excluding VAT, or 11,266,241.35 with VAT (€95,817.1). The subject of public procurement was the lease of two passenger motor vehicles, "namely new vehicles (unused passenger vehicles with built-in brand new parts, which were first registered in 2021 after delivery)", ranging "from 2900 cm³ to 3000 cm³ engine capacity and 245 kW to 255 kW of engine power", according to the public call.²⁷

According to data from the public call, the two vehicles are leased for 12 months and

²⁶ <https://jnportal.ujn.gov.rs/GetDocuments.ashx?entityId=59425&objectMetalId=2&documentGroupId=169&associationTypeId=1&userToken=71f338a8-de09-4047-9486-4050d30855ef×tamp=2021-05-11T12:26:22.46>

²⁷ <https://jnportal.ujn.gov.rs/GetDocument.ashx?id=a56a4f78-bb83-45ff-93d4-30dc93af9c-9464&userToken=71f338a8-de09-4047-9486-4050d30855ef>

paid in 12 instalments, while the owner of the vehicle, also according to the public call, is the Lessor, for the duration of the contract.

This public procurement was not planned under the Public Procurement Plan for 2021²⁸ or by the first four changes to the Public Procurement Plan - it was only introduced in the sixth version of the Plan, enacted on 16 April 2021.²⁹ The procurement was not foreseen by the Financial Plan for 2021.³⁰ It was unclear whether it was a case poor planning (of needs), a subsequently identified opportunity for the financing of budget expenditures, or a need that suddenly emerged and did not exist before.

What is the problem with this procurement?

First, it was clearly in breach of several provisions of the Law on Public Procurement, with its provision that the colour of the vehicle should be "MYTHOS BLACK METALIC", as indicated in the Technical Specification of Public Procurement Items - this colour directly indicates that the brand of the cars subject to the public procurement must be "Audi", since the colour in question is only used by the Audi brand.

Management did not respond why the said colour "MYTHOS BLACK METALIC" was listed, nor to the question as to which brands other than Audi have this colour of cars in their range. The sole bidder and winner of this public procurement, Porsche Mobility, is part of the Porsche Financial Group in Serbia³¹, offering different forms of cooperation, (leasing, lease, car sharing...) when it comes to Volkswagen Group (VW) cars, whose 12 brands in-

clude Porsche, Volkswagen, Audi, Skoda, Seat...³²

In this way, with the condition that the subject of the public procurement must be a specific car brand, Article 7 of the Law on Public Procurement was undoubtedly violated (the policy of securing competition and prohibition of discrimination), which states that "the Purchaser is obligated to enable as much competition as possible in the procurement process", and that "the Purchaser cannot limit competition with the intention of unjustifiably bringing certain business entities into a more favourable position or into a disadvantaged position, and in particular it cannot prevent any economic entity from participating in the procurement process by **using discriminatory criteria** for the qualitative choice of an economic entity, **technical specifications** and contract award criteria."³³

Article 100 of the Law on Public Procurement was also violated, which article explicitly states that "**technical specifications cannot refer to a specific brand** or source or particular process that characterizes the products or services provided by a particular economic entity or the trademarks, patents, types or specific origin or production, **which would result in giving advantage or eliminating certain economic entities or certain products**, unless this is justified by the subject matter of the contract."³⁴

Indeed, when comparing the required characteristics of the vehicle specified in the Technical Specification with the offer of the company "Audi" in Serbia, you can come up with a "targeted" car model: it is **an Audi A6 Limousine 55 TFSI quattro S-tr. 250 kW**³⁵, which fits perfectly into all the set parameters: length, height, width, inter-axle distance, engine capacity, trunk

size, engine power, gearbox characteristics...

This procurement is also contentious from the standpoint of articles 5 and 6 of the Law on Public Procurement. Article 5 states that "the Purchaser in the application of this Law is obligated to act in an cost-effective and efficient manner, to ensure competition, the secure an equal position of all economic entities, without discrimination, and to act in a transparent and proportionate manner", while Article 6 (Cost-Effectiveness and Efficiency Principle) stipulates that the Purchaser is obligated "to procure goods, services or works of appropriate quality **bearing in mind** the objective, designated purpose and value of the public procurement, i.e. **cost-effective spending of public funds.**"

Why isn't this public procurement cost-effective?

First, for the money paid for the leasing of two vehicles for one year (after which these two vehicles will again be needed) it was possible to buy a new car (the base price, according to the Audi website³⁶, is €65,389.25, while the price with all the requested extras is just over € 81,000) and about € 14,000 would be left.

According to the Rulebook on Depreciation of Fixed Assets, which depreciation is recognized for tax purposes³⁷, the annual depreciation rate for rental leasing cars is 30%. Of course, the price of one year old cars (after the lease expires) is determined by the market, however, we can make an argument, relying on the aforementioned Rulebook, that in principle these two vehicles will lose 30% of their value in one year. As we said, the catalogue price with the required extra equipment of the two cars is about €162,000, which means that after a year, their value will drop by a total of €48,600. Therefore, for such a loss of the value of the vehicle of €48,600, the Bidder will receive from the Provincial Au-

thority almost twice as much in one year - €95,817.1 (If the cars were owned by the Government, the depreciation would be 50% less and amount to 15%).

Also, other conditions are very unfavourable to the Purchaser, i.e. the Provincial Authority. Thus, according to data from the Technical Specification, there is a maximum number of kilometers (40,000) that cars can cross in a year, and for every kilometer exceeding 40,000, the management shall pay the Bidder an extra.

Such vehicles (Audi) have never been purchased before, but from one previous acquisition of the Provincial Authority (no. 414-112/2017 of May 25, 2017), we were able to learn that in the three-year lease of ten Skoda vehicles, they paid €0.3 per kilometre above the agreed limit.

At the same time, all other costs related to the use of the leased vehicles are to be borne by the Provincial Authority - "routine and extraordinary servicing, Casco insurance, tyre replacement, registration, etc."

Asked if it conducted a monitoring of the subject procurement procedure, the Public Procurement Office replied that "the Office did not conduct any monitoring of the said public procurement procedures, ex officio or based of a notification by a legal or natural person, state administration body, autonomous province bodies, the local self-government unit and other state bodies" and noted that related to this issue, "the Office will act in accordance with its legal mandate and conduct monitoring with regard to the subject procedures of public procurement."

Illegal selection of a private partner for facilities on Belgrade railroad station

According to the available data, the Republic Property Directorate has illegally chosen a private partner for the joint con-

²⁸ <https://jnportal.ujn.gov.rs/GetDocument.ashx?id=b00392b3-2391-4300-8d21-c8eb98240b47-3344&userToken=71f338a8-de09-4047-9486-4050d30855ef>

²⁹ <https://jnportal.ujn.gov.rs/GetDocument.ashx?id=9b955bfd-d8dc-4edc-9da9-db32d6bad855-15592&userToken=71f338a8-de09-4047-9486-4050d30855ef>

³⁰ http://www.uprava.vojvodina.gov.rs/UZZPP0_Finansijski_plan_2021.pdf

³¹ <https://www.porscheleasing.rs/o-nama/uopsteno-o-preduzecu>

³² <https://www.volkswagenag.com/en/brands-and-models.html>

³³ <https://www.paragraf.rs/propisi/zakon-o-javnim-nabavkama.html>

³⁴ Ibid

³⁵ https://cdn-rs.audi.at/media/Kwc_Basic_DownloadTag_Component/49497-505500-312763-505503-312764-downloadTag/default/92207df0/1612523062/a6-my21.pdf new car (the base price, according to the Audi website

³⁶ https://cc.porscheinformatik.com/cc-rs/sr_RS_AUDI19/A/model-selection/424?GrossNetSwitch=GROSS&variant=BASIC

³⁷ <https://www.paragraf.rs/propisi/pravilnik-o-poreskoj-amortizaciji.html>

struction of the Belgrade-Centre railway station (Prokop), parking and accompanying commercial facilities.

"There have been no reactions from other state bodies, such as the Government, the Ministry of Finance, the Ministry of Construction, Transport and Infrastructure, the City of Belgrade, the State Attorney's Office, the Serbian Railway Infrastructure Company and the Companies Belgrade Junction Company, which had members in the commission for the selection of bidders., "Transparency Serbia (TS) said in a statement.

The organization recalled that on 16 July 2019, the Property Directorate issued a public call to "potential partners" to send written offers to build the station building, parking lot and accompanying commercial facilities. The invitation specified that the Republic of Serbia would give the land and enable the construction, and the private partner would obtain the documentation and funding of the construction works.

"That this was not just a non-binding call for expressions of interest was also clear from the advertisement that said that after the analysis, the most favourable bid would be selected, which was ultimately the case", TS said. It added the "Framework Agreement on joint construction of a railway station facility, parking lot and accompanying commercial facilities and transfer of real estate rights between the Republic of Serbia and Railway City doo Belgrade, as an investor, was signed."

According to TS, the contract undoubtedly represents a public-private partnership (PPP). However, a different procedure should have been carried out in line with the Law on PPP and Concessions from 2011 to 2014.

"Under the law, the project should have been first approved by the Commission for Public-Private Partnerships, and then a procurement procedure had to be conducted, where the criteria for selecting partners would be precisely defined, protecting the bidders' rights," TS added.

It said that "such a procedure would also guarantee that the public obtains key information about the conducted procedure, obligations of the private partner and investments of the state, which is not envisaged now."

Together with the Coalition for Public Financial Supervision, TS requested Serbia's Government to urgently make all documents publicly available, including the contract with Railway City.

The Property Directorate is misleading the public about Prokop

In the response to the allegations of Transparency Serbia and the Coalition for Supervision of Public Finances, the Republic Directorate for Property (RDP) stated that it relied on the provisions of two other laws. However, the analysis shows that those provisions cannot be applied to this case at all.

Among other things, the RDP points out that the Serbian government has decided that this is a "project of importance for the Republic of Serbia" based on the norm that refers to situations when agricultural land is converted into construction land, although in this case, it is undoubtedly construction land. The also claims that it could have disposed of publicly owned land without public bidding, pursuant to Article 100 of the Law on Planning and Construction and Article 15 of the Law on Public Property, although these norms indicate an obligation to conduct a public-private partnership procedure.

The directorate had two possibilities for the realisation of this project. It could have carried out a joint public-private partnership procedure if the conditions had been met (long-term cooperation between the public and private partner). Another possibility was to conduct several separate procedures that were regulated by the laws of the Republic of Serbia - e.g. one for the procurement of the construction work of the railway station and the other for the sale of construction land for the construction of commercial facilities.

Instead, the directorate decided to conduct a procedure that was not regulated by any legal act ("public call for letters of interest"), and which did not provide an adequate level of transparency, where the criteria for selection of bids were not precisely defined and in which there was no possibility to protect the rights of interested partners or protect the public interest.

We conclude that the Republic Directorate for Property, instead of recognizing and trying to eliminate the serious omissions we identified, clumsily tried to justify the apparently illegal award of the state contract and public property to a private partner, citing as a "legal basis" the provisions of special laws that cannot be applied in this case, with the intent to deceive the public.

Initiative for determining the nullity of the contract on Prokop

Finally, the Coalition for Supervision of Public Finances and Transparency Serbia sent an initiative to the Republic Public Prosecutor's Office to initiate procedures for determining the nullity of the contract on the construction of the railway station "Prokop", parking and accompanying commercial facilities. This contract, concluded between the Republic Directorate for Property of the Republic of Serbia and the company Railway City Belgrade is against the regulations and as such, it must be annulled after the appropriate legal procedure.

For the realisation of this project, the Republic Directorate for Property had a legal possibility to initiate or unify the public-private partnership procedures, if the conditions are met, or to engage in several separate procedures regulated by the laws of the Republic of Serbia - one for the procurement of railway station construction works and the other for the sale of construction land for the construction of commercial facilities.

Instead, the directorate decided to conduct a procedure that is not regulated by any legal act and which does not provide an adequate level of transparency, precise criteria for selecting the most favourable offer or

the possibility of protecting the rights of interested partners. This is a procedure that simply does not exist in the Serbian legislation and is thus not possible. The representatives of the Government, the Ministry of Finance, the Ministry of Construction, Transport and Infrastructure, the City of Belgrade, the State Attorney's Office and two state-owned companies, whose members participated in the procedure, failed to point out this illegality.

Since this contract, which was concluded based on non-existent and illegal procedures, is absolutely null and void under the Law on Contracts and Torts, Transparency Serbia and the Coalition for Public Finance Supervision call on the Republic Public Prosecutor's Office to act on this initiative and file a lawsuit to determine the nullity of the concluded contract on the joint construction of the railway station "Belgrade Centre" (Prokop), parking and accompanying commercial facilities.

The prosecution rejected the initiative regarding Prokop without explanation

The Higher Prosecutor's Office in Belgrade rejected the initiative of the Coalition for Supervision of Public Finances and Transparency Serbia to file a lawsuit to determine the nullity of the contract on the joint construction of the Belgrade Centre railway station (Prokop), parking and accompanying commercial facilities.

The Higher Public Prosecutor's Office only announced that it "found that there were no grounds for acting ... on the submitted initiative and grounds for filing a lawsuit in civil proceedings."

Transparency Serbia will seek an explanation for this decision, as it is unclear on what basis the Prosecutor's Office concluded that there were no grounds, given the clear arguments we presented in the letter - that the contract with a private partner for the construction of the railway station building and accompanying facilities was signed without a legal basis, without carrying out the proper procedure.

Public procurement and public private partnerships in 15 projects financed from Chinese loans

Transparency Serbia has, through a series of requests for access to information of public importance, tried to obtain information on projects financed from “Chinese loans”, more precisely for the financing of the projects in which most of the funds were provided by Chinese creditors. The analysis includes 15 projects, which are either realised, or in the phase of realization, or their realization has yet to begin. With the requests, we requested copies of all documents concluded for the realization of the project, copies of all documents concluded for the purpose of financing the project, as well as copies of all documents envisaging the engagement of companies and workers needed for the realization of the project³⁸. The requests were, depending on the project to which they referred, addressed to the Ministry of Construction, Transport and Infrastructure (MCTI); Ministry of Mining and Energy; Ministry of Interior; Ministry of Trade, Tourism and Telecommunications; Ministry of Finance; while each of the requests was simultaneously sent to the Government of the Republic of Serbia. The aim of this research is to determine how and how much the Republic of Serbia borrowed, under what financial conditions, as well as whether it is obligatory to hire companies and workers from Serbia and in what proportion to the value of the project.

On 20 August, 2009, in Beijing, the Governments of the Republic of Serbia and the People’s Republic of China signed the Agreement on Economic and Technical Cooperation in the Field of Infrastructure (“Official Gazette of RS - International Agreements”, No. 90/09, 9/13, 11/13, 13/13). Additionally, 3 annexes were concluded for

this agreement, but it remained essentially unchanged. The umbrella goal of this agreement is to improve cooperation in the field of infrastructure between the two countries, specifically the road and railway network, bridges, electricity and telecommunications plants, and within that goal is to attract Chinese companies to build infrastructure facilities with loans on favourable terms. Of the specific cooperation projects, only the statement of common interest and support to companies and banks from the two countries in the realization of the bridge project with the associated roads, between Zemun and Borca, along with the data on the length of the bridge and roads, was accepted. Already during the adoption of the Law on Ratification of the Agreement on Economic and Technical Cooperation in the Field of Infrastructure between the Government of the Republic of Serbia and the Government of the People’s Republic of China, care was taken to ensure compliance with Article 7, paragraph 1, item 2) under a) of the Law on Public Procurement. (“Official Gazette of RS” No. 116/08) that the said law does not apply to procurement, delivery of works, materials and services necessary for the construction of facilities under this international agreement, after its entry into force³⁹. The agreement stipulates that proposals and bids submitted by competent state bodies, institutions and / or companies responsible for the implementation of programs and projects and special contracts will be evaluated from the point of view of competitiveness on the international market, especially in terms of prices, payment terms, execution and delivery conditions, as well as the level and quality of equipment and services, on which contracts will be concluded in accordance with the national legislation of both countries. It turns out that this Agreement also served as a legal basis for subsequent projects that were concluded with Chinese contractors and creditors.

³⁸ <https://transparentnost.org.rs/index.php/sr/projekti/187-pogled-na-javne-nabavke-i-javno-privatna-partnerstva-u-srbiji>

³⁹ <https://www.srbija.gov.rs/prikaz/101854>

1. Construction of the bridge Zemun - Borca with associated roads (Pupin’s bridge)⁴⁰

According to the MCTI website, the commercial contract on the design and execution of works was concluded on April 15, 2010 between the Republic of Serbia and the City of Belgrade on the one side, and “China Road and Bridge Corporation”, on the other side. The execution of works began in 2011, and it is stated that the project was essentially completed on November 27, 2015. The bridge, together with the associated roads, was ceremoniously opened on December 18, 2014⁴¹.

The total value of this project, together with additional works whose price was determined by negotiations, and not through a public procurement procedure (something that Transparency Serbia has already written about⁴²), was about 273 million USD, out of which 15% was financed from the budget of the Republic of Serbia. while 85% of the project is financed from a loan from the Chinese Export-Import Bank, concluded on July 14, 2010, which the City of Belgrade and the Republic of Serbia should repay in the ratio of 50% -50%.

When signing the pre-contract for this project, in 2009, the grace period was expected to be 3 years, the loan repayment period will be 15 years, with a fixed interest rate of 3 percent per year, and the deadline for completion of construction should be 3 years from the date of signing contract.⁴³ The then Minister of Economy and Regional Development, Mladjan Dinkic, stated that the Chinese company undertook to hire domestic subcontractors, as well as to use domestic construction materials up to 45% of the total project value, and these conditions were confirmed in the Contract on design and execution of works.

In response to the request, we received from the Ministry of Construction, Trans-

port and Infrastructure, there were copies of the Construction Contract / Contract for the design and execution of works on the construction of the Zemun – Borca bridge with associated roads; Contract on regulation of rights and obligations on project implementation; Project financing agreement, as well as annexes to those agreements. As part of the response, an agreement was reached which envisages the provision of services by a supervisory body that will also perform expert supervision over the execution of works on the project, concluded between the Government of the Republic of Serbia and a group of bidders led by Lous Berger SAS as a leading partner. The contract was concluded on September 9, 2011, following a procedure under the Law on Public Procurement.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Confirmation of the Loan Agreement for the Eligible Buyer for the Zemun-Borca Bridge Construction Project, between the Government of the Republic of Serbia as the Borrower and the Chinese Export-Import Bank as the Lender on 30th of November, 2010, and that it was published in the Official Gazette. Since this is publicly available information, the ministry referred to the Article 10 of the Law on Free Access to Information of Public Importance (“Official Gazette of RS”, No. 120/2004, 54/2007, 104/2009 and 36/2010), which stipulates that the authority does not have to enable the applicant to exercise the right to access information of public importance if the information is already published and available in the country or on the Internet.

2. Construction of the Belgrade - Budapest railway (Sections Belgrade center - Stara Pazova and Novi Sad - Subotica - Kelebija)⁴⁴

⁴⁰ <https://www.mgsi.gov.rs/lat/projekti/izgradnja-mosta-zemun-borca-sa-pripadajucim-saobracajnicama>

⁴¹ <https://www.srbija.gov.rs/vest/227284/svecano-otvoren-pupinov-most.php>

⁴² <https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/6903-placanja-za-dodatne-radove>

⁴³ <http://www.beograd.rs/index.php?lang=cir&kat=beoinfo&sub=1363983%3f>

⁴⁴ <https://www.mgsi.gov.rs/lat/projekti/projekat-modernizacije-i-rekonstrukcije-pruge-beograd-budimpesta-deonica-beograd-stara>

The realization of this project was planned in 2 sections. The first section is from Belgrade (Center) to Stara Pazova, and the second from Novi Sad, through Subotica to Kelebija (state border).

For the needs of the realization of the first section, the Commercial Contract on modernization and reconstruction of the Hungarian-Serbian railway connection on the territory of the Republic of Serbia was concluded, for the section Belgrade Center - Stara Pazova, concluded by the Government of the Republic of Serbia, represented by the Ministry of Construction, Transport and Infrastructure, as a financier and the Joint Stock Company for Public Railway Infrastructure Management "Serbian Railway Infrastructure", as an Investor and JV China Railway International Co. Ltd. & China Communications Construction Company Ltd., as a contractor, on November 5, 2016, totalling approximately \$ 350 million⁴⁵.

In order to finance 85% of the project value, a loan agreement with a privileged buyer was concluded with the Chinese Export-Import Bank, on May 16, 2017. The grace period is 5 years, the repayment period is 15 years, and the annual interest rate is 2%.

For the needs of the realization of the second section, the Commercial Contract on modernization and reconstruction of the Hungarian-Serbian railway connection on the territory of the Republic of Serbia was concluded for the section Novi Sad-Subotica-state border (Kelebija), concluded by the Government of the Republic of Serbia, traffic and infrastructure, as a financier and the Joint Stock Company for Management of Public Railway Infrastructure "Serbian Railway Infrastructure", as an investor and JV China Railway International Co. Ltd. & China Communications Construction Company Ltd., as a contractor, on July 7, 2018, totalling about \$ 1 billion and \$ 162 million⁴⁶.

In order to finance 85% of the project value, a loan agreement with a privileged buyer was concluded with the Chinese Export-Import Bank, on April 25, 2019. The grace period is 5 years, the repayment period is 15 years, and the annual interest rate is 2%.

In response to the request we received from the Ministry of Construction, Transport and Infrastructure, there were copies of both Commercial Agreements (for both sections) with annexes and price tables; Memorandum of Understanding on Cooperation for the Hungarian-Serbian Railway Project, signed in Belgrade by the Commission for National Development and Reforms of the People's Republic of China, the Ministry of Foreign Affairs and Trade of Hungary and MCTI of the Republic of Serbia, December 16, 2014; General agreement on modernization and reconstruction of the Hungarian-Serbian railway on the territory of the Republic of Serbia, signed on November 24, 2014 in Suzhou, between the Ministry of Mining and Energy and Infrastructure of the Serbian Railways, on the one side, and China Railway International Co. Ltd. and China Communications Construction Company Ltd., on the other side. This contract stipulates the obligation of the contractor to procure all equipment and materials necessary for the execution of the project, in accordance with the legislation of the Republic of Serbia and EU law, as well as the rules of TEN-T. The ratio of goods and services in the project is expected to be: 54% of Chinese origin, and 46% of non-Chinese origin of the total project value. Under commercial contracts, the contractor undertook to ensure as much competition as possible in the procurement procedure, as well as to select subcontractors and suppliers after the announcement of the public invitation to tender, which will be public and transparent.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on

Confirmation of the Loan Agreement for the section Belgrade Center - Stara Pazova, on November 24, 2017, and that it was published in the Official Gazette. The ministry referred to Article 10 of the Law on Free Access to Information of Public Importance, and did not provide us with a copy of the document.

3. New Belgrade - Surcin (Part of Corridor 11)⁴⁷

For the realization of this project, a Commercial Agreement on the design and execution of works was signed between MCTI and PE "Roads of Serbia", on the one side, and "China Communications Construction Company Ltd.", on the other side, on August 18, 2019.

The value of this project is 70.5 million USD, and negotiations are underway to provide sources of funding for the completion of project documentation and execution of works.

In response to the request for free access to information of public importance, the Ministry of Construction, Transport and Infrastructure provided us with copies of the Commercial contract on the design and execution of works; Conclusion for the State Road Construction Project, which recognizes it as a project of special importance for the Republic of Serbia; Decision determining the public interest for expropriation, administrative transfer and incomplete expropriation of real estate and the Agreement on Economic and Technical Cooperation in the Field of Infrastructure between Serbia and the People's Republic of China, together with the Annexes.

Under the Commercial Contract, the Contractor undertook obligation to hire subcontractors based outside the PRC, as well as to use construction materials and other goods necessary for the project, which were produced, processed and manufactured outside the PRC, in the amount of

not less than 49% of the total project value.

In response to the request from the Ministry of Finance, we were informed that the funds for this project are provided by the Law on the Budget of the Republic of Serbia for 2021, which can be found on the website of the Ministry of Finance.

4. Construction of the state road Novi Sad - Ruma (Fruskogorski Corridor)⁴⁸

According to the MCTI website, a Memorandum of Understanding and a Protocol on Cooperation in the project of building the "Fruskogorski Corridor" were signed with the Chinese company "China Road and Bridge Corporation". The website of the Corridor of Serbia states that the Commercial Agreement on the design and execution of works was signed on October 6, 2020 with CRBC⁴⁹.

The estimated value of this project is between 550 and 600 million euros. Negotiations are underway to provide sources of funding for the completion of project documentation and execution of works. Public procurement procedures will also not be announced for this project, because everything is decided by interstate and direct agreements and memoranda of cooperation⁵⁰.

In response to the request for free access to information of public importance, the Ministry of Construction, Transport and Infrastructure provided us with copies of the Commercial contract on the design and execution of works; Conclusion adopting the text of the Protocol on cooperation in the project of design and execution of works on the construction of this road; Conclusion for the Project of construction of a fast road, which recognizes this project of construction and reconstruction of public line traffic infrastructure, as a project of special importance for the Republic of Serbia; Decision determining the public interest for expropriation, administrative

⁴⁵ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2017/2320-17%20-%20lat.pdf>

⁴⁶ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2019/1635-19-lat.pdf>

⁴⁷ <https://www.mgsi.gov.rs/lat/projekti/novi-beograd-surcin>

⁴⁸ <https://www.mgsi.gov.rs/lat/projekti/fruskogorski-koridor>

⁴⁹ <http://www.koridor10.rs/sr/projekat-novi-sad-ruma>

⁵⁰ <https://rs.n1info.com/biznis/da-li-su-tenderi-kod-nas-pred-izumiranjem-upozorenja-strucnjaka-i-institucija/>

transfer and incomplete expropriation of real estate and the Agreement on economic and technical cooperation in the field of infrastructure between Serbia and the People's Republic of China, together with its Annexes.

Under the commercial contract, the Contractor undertook obligation to hire subcontractors based in the Republic of Serbia, as well as to use construction materials and other goods necessary for the project, which are produced, processed and manufactured in the Republic of Serbia, in the amount of not less than 49% of the total project value.

In response to the request from the Ministry of Finance, we were informed that the ministry does not have the requested information because the loan approval procedure by the Chinese Export-Import Bank is underway, i.e. that the loan for this project has yet to be signed.

5. Obrenovac - Ub; Lajkovac - Ljig (Part of Corridor 11)⁵¹

For this project, a Commercial Contract for the construction of the highway E763, sector Obrenovac-Ljig with contract number 351-03-326 / 2012 was concluded, the purpose of which is the implementation of the Project, concluded by and between the Ministry of Construction and Urbanism and Corridor of Serbia d.o.o. Belgrade and China Shandong International Economic and Technical Cooperation Group Ltd. of Shandong Hi-speed Group Co. Ltd. on May 13, 2013 - totalling approximately \$ 333 million⁵².

A loan agreement for a loan for a privileged buyer has been concluded with the Chinese Export-Import Bank, so 85% of the project will be financed from a loan from the Chinese Export-Import Bank. The general contractor is "Shandong High Speed Group" (PRC), and the main subcontractors are "Italian Construction" (Italy) and

"Energoprojekt niskogradnja" (Belgrade).

In response to the request for free access to information of public importance, the Ministry of Construction, Transport and Infrastructure first requested an additional deadline of 40 days to respond, and afterwards we were informed that our request was rejected. The reason is given in Article 9. paragraph 1. item 5) of the Law on Free Access to Information of Public Importance, which stipulates that the authority will not enable the applicant to exercise the right to access information of public importance, if it would make available information or a document for which regulations or official acts based on law stipulate that is kept as a state, official, business or other secret, i.e. which is available only to a certain circle of persons, and the disclosure of which could have severe legal or other consequences for the interests protected by law that outweigh the interest in access to information.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Confirmation of the Loan Agreement on November 26, 2013, and that it was published in the Official Gazette, so the ministry referred to Article 10 of the Law on Free access to information of public importance.

6. Surcin - Obrenovac (Part of Corridor 11)⁵³

The commercial contract for this project on design and execution of works was concluded on June 13, 2016 in the total amount of about 233 million USD, between the Government of the Republic of Serbia and "China Communications Construction Company Ltd."

The loan for this project was provided by the Chinese Export-Import Bank, and the value of the loan is 85% of the project value. In terms of loan terms, the grace period

is 5 years, the repayment period is 15 years, and the annual interest rate is 2.5%⁵⁴.

The works on the execution of this project started in May 2017, the deadline for the completion of works was 32 months, and the section was opened for traffic in December 2019⁵⁵.

In response to the request for free access to information of public importance, the Ministry of Construction, Transport and Infrastructure first requested an additional deadline of 40 days to respond, and afterwards we were informed that our request was rejected. The reason is given in Article 9. Paragraph 1. item 5) of the Law on Free Access to Information of Public Importance.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Confirmation of the Loan Agreement on December 27, 2016, and that it was published in the Official Gazette, so the ministry referred to Article 10 of the Law on Free access to information of public importance.

7. Preljina - Pozega (Part of Corridor 11)⁵⁶

A commercial contract for the design and execution of works was concluded on November 27, 2017 between the Government of the Republic of Serbia and "China Communications Construction Company Ltd.", in the total amount of 523 million USD. A loan worth 85% of this project was provided by the Chinese Export-Import Bank. The grace period is 5 years, the repayment period is 15 years, and the annual interest rate is 3%⁵⁷.

Execution of works began in May 2019, and the completion of works is planned for 2022⁵⁸.

In response to the request for free access to information of public importance from the Ministry of Construction, Transport and Infrastructure, we received a copy of the already mentioned Commercial Agreement concluded for this project. This contract regulates the obligation of contractors to hire the following proportions when hiring subcontractors, as well as procurement of materials and other goods: 51% of the total project value for Chinese subcontractors, materials and goods, and 49% for non-Chinese subcontractors, materials. and good.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Confirmation of the Loan Agreement, on May 21, 2019, and that it was published in the Official Gazette, so the ministry referred to Article 10 of the Law on Free access to information of public importance.

8. Construction of a bypass around Belgrade - Sector B (Sections B4, B5 and B6)⁵⁹

Commercial contract on the project of construction of the Belgrade bypass on the highway E70 / E75, section; The bridge over the river Sava Ostruznica - Bubanj potok (Sectors 4, 5 and 6) was concluded between the Government of the Republic of Serbia and "Power Construction Corporation of China" Ltd., on November 5, 2016 in the amount of about 227 million euros⁶⁰.

To finance this project, a framework agreement was concluded on providing the Republic of Serbia with a concession loan from the People's Republic of China, in the amount of 85% of the project (concluded in yuan)⁶¹. The lender is the Chinese Export-Import Bank, and the terms of the loan are as follows: a grace period of 5 years, a repayment period of 15 years, and an annual interest rate of 2.5%. This

⁵¹ <https://www.mgsi.gov.rs/lat/infrastruktorna-gradilista/koridor-11-obrenovac-ub-lajkovac-ljig>

⁵² <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2013/3917-13Lat.pdf>

⁵³ <https://www.mgsi.gov.rs/lat/infrastruktorna-gradilista/koridor-11-surcin-obrenovac-0>

⁵⁴ https://www.mfin.gov.rs/upload/media/TnXHOJ_6017efc235328.pdf

⁵⁵ <http://www.politika.rs/sr/clanak/432630/Ekonomija/Surcin-Obrenovac-u-saobracaju-19-decembra>

⁵⁶ <https://www.mgsi.gov.rs/lat/projekti/izgradnja-auto-puta-e-763-milos-veliki-deonica-preljina-pozega>

⁵⁷ https://www.mfin.gov.rs/upload/media/02bZJG_601808eb5550c.pdf

⁵⁸ <https://rs.n1info.com/biznis/a484537-pocela-izgradnja-deonice-autoputa-od-preljine-do-pozege/>

⁵⁹ <https://www.mgsi.gov.rs/lat/infrastruktorna-gradilista/izgradnja-obilaznice-oko-beograda-sektora-b-sekcije-b4-b5-i-b6-i-sektora>

⁶⁰ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2018/3402-18-lat.pdf>

⁶¹ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2018/3400-18-lat.pdf>

agreement was concluded on September 18, 2018.

Work on the project began in December 2018.

In response to the request for free access to information of public importance, the Ministry of Construction, Transport and Infrastructure first requested an additional deadline of 40 days to respond, and afterwards we were informed that our request was rejected. The reason is given in Article 9. paragraph 1. item 5) of the Law on Free Access to Information of Public Importance.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Ratification of the Guarantee Agreement between the Republic of Serbia and the European Investment Bank on November 30, 2010, and that it was published in the Official Gazette. called for Article 10 of the Law on Free Access to Information of Public Importance.

9. Project „Belgrade subway”

The Minister of Finance, Sinisa Mali, on behalf of the Government of the Republic of Serbia, signed a memorandum of understanding for the “Belgrade subway” project, on January 22, 2021⁶². He stated that at the end of 2021, the construction of the metro will start, the price of which, according to the first estimates, should amount to around 4.4 billion euros⁶³. The first line of the Belgrade metro should be completed by 2028, and the second by 2030.

In response to the request for free access to information of public importance, the Ministry of Construction, Transport and Infrastructure submitted the Donation Agreement, the Donation Implementation Agreement, the Statement of Intent and the Consulting Services Agreement. It was noted that there is no document that envisages the engagement of companies and

workers for this project.

In response to the request from the Ministry of Finance, we were informed that Article 3 of the Law on Budget of the Republic of Serbia for 2021 provides for borrowing to finance the project of construction of “Belgrade Metro”, phase 1, in the amount of up to 600 million euros for this year. investment corporations, funds and banks, as well as in the amount of 80 million euros, by the Republic of France - Treasury, which means that the Republic of Serbia can start negotiations with banks, and that loan agreements will be signed.

10. Revitalization of existing blocks B1 and B2 in TPP unit “Kostolac B”⁶⁴

For the purposes of this project are concluded: Contractual agreement for the implementation of the First Phase Project Package Kostolac-B Power Plant Projects with contract number I-170 / 48-10 and Annex 1 to the Contractual Agreement number 305 / 13-11 for the purpose of project implementation, concluded by the change of the public company “Elektroprivreda Srbije” and the company Termoelektrane i Kopovi Kostolac Ltd. on the one side, and the Consortium consisting of: China Machinery Engineering Corporation (CMEC) and the company Termoelektrane i Kopovi Kostolac Ltd.. December 8, 2010 totaling approximately \$ 344 million.

For the purpose of financing the project, a Loan Agreement for a privileged buyer was concluded with the Chinese Export-Import Bank, which will provide funds for 85% of the project value, on December 26, 2011. The grace period is 5 years, the repayment period is 10 years, and the annual interest rate is 3%.

The works on the realization of the project have been completed.

In response to the request for access to information of public importance, we re-

ceived information from the Ministry of Mining and Energy that this project is being implemented on the basis of the Agreement on Economic and Technical Cooperation in Infrastructure, concluded by the Government of Serbia and the Government of China on August 20. 2009. We were also informed that the Contractual Agreement for the implementation of the first phase of this project is not information generated in the work or in connection with the work of this ministry and that we should contact the PE “Elektroprivreda Srbije”. We addressed the PE “Elektroprivreda Srbije” with a subsequent request, but we did not receive a response until the conclusion of this report.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Confirmation of the Loan Agreement, on January 19, 2015 (sic!), And that it was published in the Official Gazette, so the ministry referred to Article 10 of the Law on Free Access to Information of Public Importance.

11. Construction of block B3 in TPP unit “Kostolac B”⁶⁵

For the implementation of this project, a Contractual Agreement for the implementation of the Second Phase of the Kostolac-B Power Plant Projects Project Package was concluded, which includes the construction of a new block B3 of TPP Kostolac, concluded on November 20, 2013 between the public company Elektroprivreda Srbije and Termoelektrane i Kopovi Kostolac Ltd., on the one side, and China Machinery Engineering Corporation (CMEC), on the other side, worth about \$ 715 million.

For the purpose of financing this project, a loan agreement for a loan for a privileged buyer was concluded with the Chinese Ex-

port-Import Bank, which will provide funds for 85% of the project value, on December 17, 2014. The grace period is 5 years, the repayment period is 10 years, and the annual interest rate is 3%⁶⁶.

Work on the construction of the new block began in 2018, and completion is planned for the fall of 2022.

In response to the request for access to information of public importance, we received information from the Ministry of Mining and Energy that this project is being implemented on the basis of the Agreement on Economic and Technical Cooperation in Infrastructure, concluded by the Government of Serbia and the Government of China on August 20. 2009. We were also informed that the Contractual Agreement for the implementation of the second phase of this project, which includes the construction of block B3, is not information generated in the work or in connection with the work of this ministry and that we should contact PE “Elektroprivreda Srbije”. We addressed the PE “Elektroprivreda Srbije” with a subsequent request, but we did not receive a response until the conclusion of this report.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Confirmation of the Loan Agreement on January 19, 2015, and that it was published in the Official Gazette, so the ministry referred to Article 10 of the Law on Free access to information of public importance.

12. Heating pipeline Obrenovac - New Belgrade⁶⁷

A commercial contract on the project of construction of the heating pipeline was concluded between JKP “Belgrade Power Plant” and the City of Belgrade, on the one side, and “Power Construction Corporation of China” Ltd., on the other side, on Janu-

⁶² <https://mfin.gov.rs/aktivnosti/potpisan-memorandum-o-razumevanju-za-projekat-beogradski-metro>

⁶³ <https://rs.n1info.com/biznis/mali-krajem-godine-krecemo-u-izgradnju-metroa-u-beogradu/>

⁶⁴ <https://serbia-energy.eu/sr/posle-revitalizacije-blokova-b-1-i-b-2-ukupna-snaga-te-kostolac-b-bie-poveana-za-60-megavata/>

⁶⁵ <https://www.mre.gov.rs/lat/aktuelnosti/saopstenja/mihajloviceva-kineskoj-kompaniji-cmec--neprihvatljiva-dinamika-rado-va-na-projektu-te--kostolac--b3>

⁶⁶ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2015/37-15%20lat.pdf>

⁶⁷ <https://mre.gov.rs/lat/aktuelnosti/saopstenja/mihajloviceva--pocetak-izgradnje-toplovoda-obrenovac---novi-beograd-moguc-u-junu-ove-godine>

ary 8, 2020, in the amount of 193 million euros.

The loan for this project was provided by the Chinese Export-Import Bank in the amount of 85% of the value of the commercial contract. The grace period is 3 years, the repayment period is 12 years, while the interest rate is expressed as a variable annual rate that the lender determines as the sum of the current EURIBOR plus margin⁶⁸.

Work on the construction of the heating pipeline should start in June 2021.

In response to the request for access to information of public importance, from the Ministry of Mining and Energy, we received a copy of the Memorandum of Understanding for the heating pipeline, concluded on July 8, 2017 and a copy of the Law on Confirming the Loan Agreement for the Heating Pipeline Project. Regarding the Commercial Agreement concluded for the realization of this project, we have been informed that the ministry does not have it in its possession, and that we should contact the city of Belgrade. We addressed the city of Belgrade with a subsequent request, but we did not receive a response until the conclusion of this report.

In response to the request from the Ministry of Finance, we were informed that the National Assembly ratified the Law on Ratification of the Loan Agreement for the Heating Pipeline Project, on February 24, 2020, and that it was published in the Official Gazette, so the ministry referred to Article 10 of the Law on Free Access to Information of Public Importance.

13. Project „ALL IP” in cooperation with Huawei⁶⁹

In October 2016, Telekom Srbija signed a multi-year contract with Huawei, which includes the procurement of equipment,

services and works from that company, in order to modernize Telekom Srbija fixed network. The signing of this agreement was preceded by the visit of Chinese President Xi Jinping to Serbia, when it was agreed. With this contract, Telekom Srbija invests up to 150 million euros, however, the financial details of this agreement have not been published, so we do not know which part of the project will be financed from the budget of the Republic of Serbia, and which part will be financed by a loan from a Chinese bank.

In response to the request, the Ministry of Trade, Tourism and Telecommunications replied that the requested information did not arise in the work or in connection with the work of that ministry, and that we should send the request to the telecommunications company “Telekom Srbija” joint stock Belgrade. With a subsequent request, we addressed “Telekom Srbija” joint stock Belgrade, but we did not receive a response until the conclusion of this report.

In response to a request from the Ministry of Finance, we were informed that the ministry does not have the requested information.

14. Project „Safe city” in cooperation with Huawei⁷⁰

The “Safe City” project means a project to set up mass video surveillance, which is being carried out by the Ministry of the Interior in cooperation with the Chinese company Huawei. In February 2017, the then Deputy Prime Minister of the Republic of Serbia and Minister of the Interior Nebojsa Stefanovic and President of Huawei David Tang signed in Belgrade a Strategic Partnership Agreement for the introduction of eLTE technologies and solutions for “Safe City” in public security systems. The details of this agreement are not known to us because they are marked as “state,

official and business secret”. So far, about 45 million euros have been invested in the realization of this project⁷¹, and the application of the Law on Public Procurement is excluded in this project as well, because it is being implemented on the basis of an interstate agreement.

We did not receive a response to the request for access to information of public importance, which was sent to the Ministry of the Interior, within the prescribed deadline, nor after it. On this occasion, we filed a complaint to the Commissioner for Information of Public Importance and Personal Data Protection, but we did not receive a response until the conclusion of this report.

In response to the request from the Ministry of Finance, we were informed that the ministry does not have the requested information, and that we should contact the Ministry of Interior.

15. Project „Safe cities” in cooperation with Huawei⁷²

Serbian Deputy Prime Minister and Minister of Trade, Tourism and Telecommunications Rasim Ljajic signed a Memorandum of Understanding for the Smart Cities proj-

ect on April 22, 2019 in Beijing with Huawei. The “Smart Cities” project involves the introduction of various services that are very useful for citizens, such as smart systems for public lighting, garbage collection, traffic signal management or management of public parking spaces. Financial details of this agreement have not been released.

In response to the request for access to information of public importance, we learned that the Government of the Republic of Serbia has decided to conclude a Memorandum of Understanding for the development of Smart Cities projects in Serbia with Huawei, but a copy of this Memorandum was not provided to us. It was also mentioned in the request that in order to realise the mentioned project, no agreements and contracts have been concluded yet. Additional requests were sent to the ministry and the Government in order to obtain the content of the said Memorandum, but we did not receive any responses until the conclusion of this report.

In response to the request from the Ministry of Finance, we were informed that the ministry does not have the requested information, and that we should contact the Ministry of Trade, Tourism and Telecommunications.

⁶⁸ <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2020/114-20%20-Lat..pdf>

⁶⁹ https://www.benchmark.rs/vesti/telekom_srbija_i_huawei_predstavili_projekat_all-ip_transformacije-67583

⁷⁰ http://www.mup.rs/wps/portal/sr/arhiva/!ut/p/z0/fy3LDolwFER_hcSwbG5pkcfSRwKkLTSF2g25hapFLAJV-Pk2ce9qZk4mMyD-gBMLgW1_R6s5g6_JZRGURLK18y-gmW6ymdJZuw3y-3PEiCeEwDuX-UE42aA2sQfxvuzndPJ9iBqLqJFufC6f-JVtdla27N-D7tu0pZgz7F4abfTkfs-tEq0zjPaBD7tHm12iNerSr1kDh4PxrVjCFYPpJKxkkyXhSRCaNEIQs4D2KZjX09-z4Baeo_50!/

⁷¹ <https://www.slobodnaevropa.org/a/huawei-kamere-u-srbiji/30307600.html>

⁷² <https://mtt.gov.rs/slider/ljajic-sa-kompanijom-huawei-potpisao-memorandum-o-razumevanju-za-projekat-pametni-gradovi/?script=lat>

Table 2: Overview of "Chinese" projects and available documents

PROJECT	REQUESTS FOR CONSTRUCTION CONTRACTS AND CONTRACTS FOR HIRING WORKERS (MINISTRIES, GOVERNMENT)	RESPONSES	REQUESTS FOR FINANCIAL AGREEMENTS (MINISTRY OF FINANCE, GOVERNMENT)	ODGOVORI
Zemun - Borca bridge with alongside roads	MCTI, Government	Response	MF, Government	Response
Belgrade - Budapest Railway (Sections Belgrade center - Stara Pazova and Novi Sad - Subotica - Kelebija)	MCTI, Government	Response	MF, Government	Response
Section Novi Beograd - Surcin (Part of Corridor 11)	MCTI, Government	Response	MF, Government	Response
State road Novi Sad - Ruma	MCTI, Government	Response	MF, Government	Response
Section Obrenovac - Ub; Lajkovac - Ljig (Part of Corridor 11)	MCTI, Government	Request denied	MF, Government	Request denied
Section Surcin - Obrenovac (Part of Corridor 11)	MCTI, Government	Request denied	MF, Government	Request denied
Preljina - Pozega (Part of Corridor 11)	MCTI, Government	Response	MF, Government	Response
Bypass around Belgrade - Sector B (Sections B4, B5 and B6)	MCTI, Government	Request denied	MF, Government	Request denied
Belgrade subway	MCTI, Government	Response	MF, Government	Response
Revitalization of blocks B1 and B2 in TPP unit „Kostolac B”	MME, Government	Response	MF, Government	Response
Block B3 in TPP unit „Kostolac B”	MME, Government	Response	MF, Government	Response
Heating pipeline Obrenovac - New Belgrade	MME, Government	Response	MF, Government	Response
Project „ALL IP”	MTT, Government	Response	MF, Government	Response
Project „Safe city”	MI, Government	/	MF, Government	Response
Project „Smart Cities”	MTT, Government	Response	MF, Government	Response

Table 3: Overview of "Chinese" projects, their values and dates

PROJECT	VALUE OF THE PROJECT	DATE OF PROJECT CONTRACTING	PROJECT START DATE / PROJECT END DATE
Zemun - Borca bridge with alongside roads	273 million USD	April 15, 2010	October 2011/27. November 2015.
Belgrade - Budapest Railway (Sections Belgrade center - Stara Pazova and Novi Sad - Subotica - Kelebija)	1.512 billion EUR	November 5, 2016 and July 7, 2018	November 2017. /2024.
Section Novi Beograd - Surcin (Part of Corridor 11)	70.5 million EUR	August 18, 2019	Mart 2021. /October 2022.
State road Novi Sad - Ruma	500 - 600 million EUR	October 6, 2020	May 2021. /2024.
Section Obrenovac - Ub; Lajkovac - Ljig (Part of Corridor 11)	333 million USD	May 13, 2013	2014./August 2019.
Section Surcin - Obrenovac (Part of Corridor 11)	233 million USD	Jun 13, 2016	May 2017. /December 2019.
Preljina - Pozega (Part of Corridor 11)	523 million USD	November 27, 2017	May 2019. /2022.
Bypass around Belgrade - Sector B (Sections B4, B5 and B6)	227 million USD	November 5, 2016.	December 2018. /2022.
Belgrade subway	4.4 billion EUR	January 22, 2021	2021./2028. and 2030.
Revitalization of blocks B1 and B2 in TPP unit „Kostolac B”	344 million USD	December 8, 2010	May 2012. / January 2015.
Block B3 in TPP unit „Kostolac B”	715 million USD	November 20, 2013	2018./Autumn 2022.
Heating pipeline Obrenovac - New Belgrade	193 million EUR	January 8, 2020	Jun 2021. /2024.
Project „ALL IP”	150 million EUR	October 2016	2016./Unknown
Project „Safe city”	Unknown	February 2017	2017./Unknown
Project „Smart Cities”	Unknown	April 22, 2019	Unknown



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