



MONTENEGRO

Negotiating Team for the Accession of Montenegro to the European Union
Working Group for Chapter 5 – Public Procurement

Bilateral screening: Chapter 5
PRESENTATION OF MONTENEGRO



Brussels, 19 November 2012





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UTILITIES PROCUREMENT

Sandra Škatarić
Independent Advisor I
Public Procurement Administration
of the Government of Montenegro





EU Acquis references

MNE Legislation Partially Harmonised

UTILITIES PROCUREMENT RULES

- **Directive 2004/17/EC** of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

THRESHOLDS

- Commission **Regulation 1251/2011** of 30.11.2011 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the awards of contract

REMEDIES

- **Directive 2007/66/EC** of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts
- **Directive 92/13/EEC** of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

STANDARD FORMS

- Commission Implementing **Regulation (EU) 842/2011** of 19 August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005

MORE: http://ec.europa.eu/internal_market/publicprocurement/rules/index_en.htm





Exempted Markets

Montenegro will take into account all decisions within harmonisation process.

Specific utilities markets in given countries may be exempt from public procurement rules if it can be proved that: (the legal/regulatory environment permits access and competition in the sector concerned, the utility operators in the market concerned are subject to competitive pressure).

Exemption decisions so far:

Energy Sector

- Production and wholesale of electricity in Italy ([2012/6665/EU](#))
- Production and wholesale of electricity in Germany ([2012/218/UE](#))
- Exploration for oil and gas and extraction of oil in Denmark ([2011/481/EU](#))
- Exploration for oil and gas and extraction of oil in Italy ([2011/372/EU](#))
- Exploration for and extraction of coal in the Czech Republic ([2011/306/EU](#))
- Production and sale of electricity in Italy ([2010/403/EU](#))
- Exploration for and exploitation of oil and gas in UK ([2010/192/EU](#))
- Exploration for and exploitation of oil and gas in the Netherlands ([2009/546/EC](#))
- Electricity production in the Czech Republic ([2009/47/CE](#))
- Production and wholesale of electricity in Poland ([2008/741/EC](#))
- Production of electricity in Austria ([2008/585/EC](#))
- Production and sale of electricity in Sweden ([2007/706/EC](#))
- Supply of electricity and gas in England, Scotland and Wales ([2007/141/EC](#))
- Production and sale of electricity in Finland, excl. Åland Islands ([2006/422/EC](#))
- Electricity generation in UK ([2006/211/EC](#))

Postal Services

- Certain financial services in the postal sector in Hungary ([2011/C200/07](#))
- Domestic parcel logistic services in Hungary ([2012/C313/10](#))
- Certain postal services (parcels) in Austria ([2010/142/EU](#))
- Certain financial services in the postal sector in Italy ([2010/12/EU](#))
- Postal services in Sweden ([2009/46/CE](#))
- Postal services in Finland ([2007/564/CE](#))
- Courier and parcel services in Denmark ([2007/169/EC](#))

MORE: http://ec.europa.eu/internal_market/publicprocurement/rules/exempt_markets/index_en.htm





PPL (“OG of MNE”, no. 42/11) overview

Law on Public Procurement (“Official Gazette of Montenegro”, no 42/11)

Rulebook on the methodology of expressing sub-criteria in the corresponding number of points, method of evaluation and comparison of bids

Regulation on the Forms in Public Procurement Procedure

Rulebook on Manner of Keeping and Content of Records on Violation of Anti-Corruption Rules

Rulebook on the records of public procurement procedures

Other implementing Acts:
<http://www.ujn.gov.me>



Legal framework

- Law on Public Procurement (OG of MNE 42/11)
- Regulation on the forms in the public procurement procedure (OG of MNE 62/2011)
- Rulebook on the methodology of expression of sub-criteria in the corresponding scores, grades, and comparison of bids (OG of MNE 63/2011)
- Rulebook on the manner of keeping and the contents of the records on the violation of anti-corruption rules (OG of MNE 63/2011),
- Rulebook on the records of public procurement procedures (OG Of MNE 63/2011)
- Law on Communal Services (OG of MNE 12/95)
- Law on the Exploration and Production of Hydrocarbons (OG of MNE 41/10 , 40/11)
- Law on Mining (OG of MNE 65/08, 74/10, 40/11)
- Law on Energy (OG of MNE 28/10)
- Law on Waters (OG of MNE 27/07, OG of MNE 32/11 and 47/11)
- Law on Financing of the Water-Management (OG of MNE 65/08)
- Law on Montenegrin Coast Regional Water Supply (OG of MNE 13/07)
- Law on Postal Services (OG of MNE 57/11)
- Law on Roads (OG of MNE 42/04, OG of MNE 54/09 and 36/11)
- Law on Railway (OG of MNE 21/04 and 54/09, OG of MNE 40/11)
- Law on the Air Transport (OG of MNE 66/08 and 40/11)
- Law on Ports (OG of MNE 51/08 and 40/11)
- Law on the Sea (OG of MNE 17/07, 6/08 and 40/11)



Characteristics of the PPL ("OG of MNE", no. 42/11)

- **New** Public Procurement Act since 2011;
- **Consolidated regulation** of the procedures for the award of contracts by authorities in the **public sector** and **utilities** entities in the water, energy, transport, mining, telecommunications and postal sectors;
- **Sublimated provisions** on the procurement of goods, works and services;
- Provisions **regulate all aspects of the procurement process**, from definition of subject matter to contract award;
- Emphasis **on transparent and efficient** use of budget & other funds;
- Regulation establishes an effective and rapid **remedies system**;
- Simulation on **free market competition**.



Parties obliged to adhere to the PPL (1)

CONTRACTING AUTHORITIES

state administration bodies, local self-government units, public services and other beneficiaries of the Budget of MNE
(performing tasks of public interest)

BODIES GOVERNED BY PUBLIC LAW

Business organisations & legal entities performing tasks of public interest

PPL and Implementing Acts

CONTRACTING ENTITIES

performing activities in areas of water management, energy, mining, telecommunications, postal services and transport
(Holders of special and exclusive rights)

SUBSIDIZED CONTRACTS

business organizations, legal entities, and entrepreneurs when procuring works, supply or services contracts that are funded by more than 50% from the Budget of Montenegro, local self-government or other public funds





Parties obliged to adhere to the PPL (2)

- The list of covered parties (classical and utilities sector) is published at the public procurement portal www.ujn.gov.me
- The contracting authorities are obliged to implement this Law even in the cases when they are not included in the List
- New element introduced with the new PPL is the opportunity for centralized purchases.



Subject of Public Procurement in Utilities sector (1)

1. Construction, maintenance, supply and exploitation of facilities for the production, transport or transmission and distribution of potable **water, electricity, gas and heat**;

The subject of public procurement in the energy sector shall also be the **procurement of electricity, oil and gas**;
2. Exploration for or production of **oil and gas** (hydrocarbons), exploration for or extraction of **coal and other solid fuels**;
3. Construction, maintenance and utilization of **telecommunications networks** and facilities and provision of **telecommunication services**;
4. Construction, maintenance and utilization of facilities used in **postal transport**;
5. Construction, maintenance and utilization of **facilities used in air, sea, lake, river and railway transport**, as well as regular **urban and suburban passenger transport** in road transport that is performed by buses.



Subject of Public Procurement in Utilities sector (2)

The subject of public procurement in the water management sector shall also include the procurement of contracts connected with:

- 1) Hydraulic engineering projects, irrigation or land melioration, provided that over 20% of the total quantity of water provided through these projects, by irrigation or land drainage is to be used as potable water;
- 2) Filtration and drainage of rainwater and waste water.

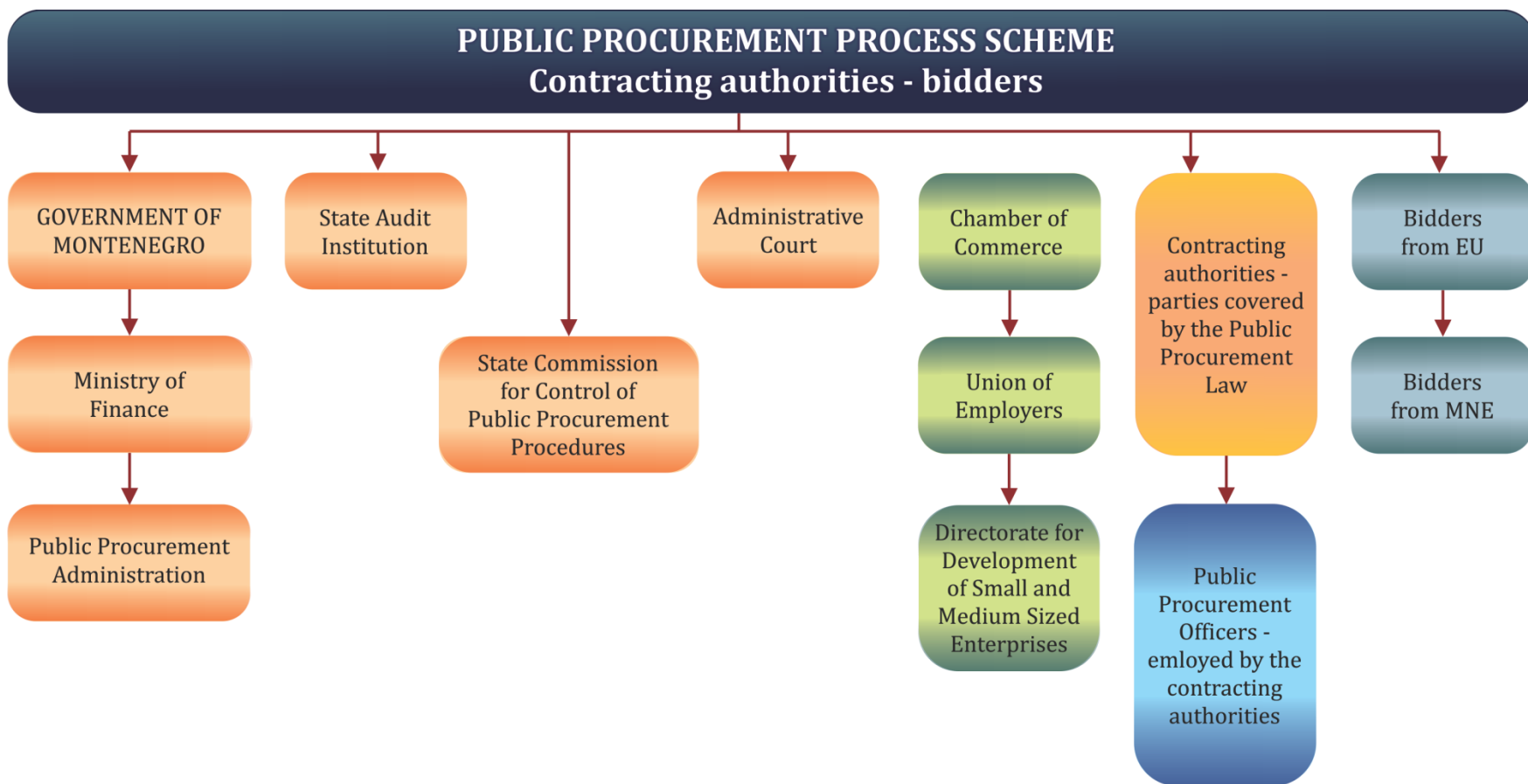


Exemptions

- Exemptions from the PPL (“OG of MNE”, no. 42/11) - **Article 3**
- Contracts in the Water, Energy, Mining, Telecommunications and Transport Sectors not Subject to this Law – Exemptions from the Application of PPL (“OG of MNE”, no. 42/11) - **Article 113**



Institutional framework





3 Thresholds / 9 Procurement procedures

Value Scale I	Value Scale II	Value Scale III
<p>Contract value $\leq 5.000 \text{ €}$ (Services / Supplies / Works)</p>	<p>Contract value $5.000 - 25.000 \text{ €}$ (Services / Supplies) $5.000 - 50.000 \text{ €}$ (Works)</p>	<p>Contract value $\geq 25.000 \text{ €}$ (Services / Supplies) $\geq 50.000 \text{ €}$ (Works)</p>
<p>9) Direct assignment</p>	<p>8) Shopping Method</p>	<p>1) open procedure; 2) restricted procedure; 3) negotiated procedure with prior publication of a contract notice; 4) negotiated procedure without prior publication of a contract notice 5) framework agreement; 6) consulting services; 7) contest;</p>



Assessment of alignment

- Partially harmonised;
- New law brought progress;
- PPL needs to be further harmonised with respect to special regime for Utilities sector;
- EU funded Project : “Enhancing the public procurement system in Montenegro”.



Further harmonization

- Introduction of more flexible procedures: (shorter deadlines, qualifications systems, less rigid negotiated procedure);
- Development of centralized purchasing techniques;
- Utilization of electronic procurement tools: Electronic auctions , dynamic purchasing systems.



Thank you for your attention!

QUESTIONS