



Montenegro
Ministry of Finance and Social Welfare
Directorate for Public Procurement Policy

STRATEGY
for Improving Public Procurement Policy and Public-Private Partnership
2021-2025



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Introduction

Public procurement is an essential component of the country's economic system that directly contributes to adhering to the market economy principles and affects the national economy's condition and sustainability. It is also an instrument that can significantly contribute to implementing smart and sustainable economic growth programmes by ensuring the efficient use of public funds and fostering competition and business innovation. Public procurement is an essential tool for implementing the other public policies' objectives and priorities and often a necessary precondition for implementing the institutions' public competencies. Public procurement is one of the crucial chapters in the accession to the European Union. Montenegro has committed itself to fulfilling the requirements to complete the negotiations in this chapter successfully and, on the other hand, to transfer best practices.

The country's commitment to social progress and responsibility is shown by creating policies in all public areas to achieve the progress objectives. It is also demonstrated by the responsibility and consistency for valid and timely measures and activities to achieve defined objectives. The responsible policy in public procurement and public-private partnership (PPP) implies defining and attaining strategic and operational plans on the one hand and ways and measures to achieve them, on the other hand, to meet European standards in these areas.

Public procurements amounted to 545,150,791.50 euros in 2020. In recent years, the share of public procurement in GDP ranged around 12% compared to 13.06% in 2020. It shows significant potential for savings through this system. The number of contracting authorities in Montenegro was 660 in 2020, while the number of certified persons for work in this area was 734. The number of business entities that participated in public procurement procedures was 574 in 2020.

The Government of Montenegro adopts this strategic framework – the Strategy for Improving Public Procurement Policy and Public-Private Partnership 2021-2025 (Strategy), which includes the action plan for the second half of 2021 and 2022. The Strategy's adoption aims to improve the public procurement system toward sustainability, modernisation, greater efficiency and strength the system's foundation. In addition, this framework of planned activities aims to establish a PPP policy. It conveys the public authorities' clear position on creating all the prerequisites for new projects that can be implemented under this funding model.

The strategic objectives set by the 2016-2020 Strategy were implemented during the same reference period. The work focused on meeting the final criteria from the Negotiating Chapter 5 - Public Procurement. The previous Strategy mainly was implemented. One part (25%) was not due to an inadequate specific measures' definition, their obsolescence, insufficient coordination of stakeholders, unwillingness for specific reforms or lack of financial resources. It can be said that the main objectives defined by the previous Strategy have mainly been achieved. The main result of implementing the 2016-2020 Strategy was adopting a new regulatory framework in line with current EU directives and establishing an electronic public procurement system (CEJN). Specific measures from the accompanying

Action Plan have become inadequate. Therefore, the previous 2016-2020 Strategy was replaced by the Action Plan - Agenda for Public Procurement Reforms and Public-Private Partnership for June 2019 - December 2020. The Agenda was adopted in June 2019 at the Government of Montenegro's proposal. One of the objectives for adopting the mentioned Agenda was to cover the PPP area through a strategic document, which jointly creates the basis for fulfilling the EU benchmark for Negotiation Chapter 5. The new strategic document has to ensure continuity in defining and fulfilling strategic and operating objectives.

The Strategy includes chapters that address the main issues, challenges and risks identified in the public procurement system and the priority areas for public procurement reforms and priority areas for PPP. It should be noted that, for the first time, the Strategy defines the PPP policy, whose objectives are identical to the public procurement policy objectives.

Based on the public procurement and PPP analysis, the Strategy determines the strategic objectives for the next four years. The Action Plan for the Strategy's implementation defines operational objectives, measures, and activities to achieve operational objectives, success indicators, relevant institutions for measures' implementation, monitoring the measures and activities implementation, assessment of the financial impact of the Strategy's implementation on the budget, evaluation, reporting and other issues important for public procurement policy and PPP. To effectively implement and update the activities arising from the operational objectives of this Strategy, action plans will be adopted for a certain period of its duration.

The Link of the Strategy for Improving Public Procurement Policy and Public-Private Partnership 2021-2025 with umbrella strategies and other sectoral documents

The objectives of the Strategy for Improving Public Procurement Policy and Public-Private Partnership 2021-2025 (Strategy) correspond to the obligations and objectives defined by Montenegro's development directions contained in:

- The annual Work Programme of the Government for 2021, within priority 2 – Sound Finance and Economic Development;
- Montenegro's Accession Programme 2021 - 2023;
- Economic Reforms Programme (ERP) 2021-2023;
- National Strategy for Sustainable Development until 2030.

In addition to the above umbrella strategic documents, it is essential to ensure the compatibility of the objectives defined by the Strategy with the following individual industries strategic documents' objectives:

- Public Administration Reform Strategy 2016-2020 and 2021-2025;
- Strategy for Developing Micro, Small and Medium Enterprises in Montenegro 2018-2022;
- National Strategy for Gender Equality 2021-2025;
- National Strategy for Women's Entrepreneurship 2021-2025.

The Strategy should ensure compliance with some of the general objectives of the Sustainable Development Strategy of Montenegro until 2030. These are: achieving balanced regional development, i.e. more balanced socio-economic development of all local governments and the region based on competitiveness, innovation and employment (with particular focus on the northern region's development), human resources development and social inclusion strengthening, efficient management of renewable natural resources, environment and human health improvement, sustainable consumption and production, social responsibility and Montenegrin economy's growing competitiveness. Sustainable and green public procurement has been recognised as an essential aspect of achieving the above objectives.

Through the Strategy for Developing Micro, Small and Medium Enterprises in Montenegro 2018-2022, public procurement has been recognised as an essential factor in the SMEs inclusion in the national and international public procurement market, and SMEs capacity strengthening through providing training and better information on opportunities to participate in public procurement procedures and using e-procurement systems.

The Strategy's objectives should be compatible with the regional development policy objectives and create preconditions for withdrawing funds from the structural, cohesion and Social Development Funds for Montenegro regional balanced development. It is financial support for financing projects aimed at infrastructure development and providing incentives for industrial development and employment. All this aims at further economic development of Montenegro's less developed regions, equalising regional development and strengthening regional competitiveness.

Montenegro's obligations in the Accession Process to the European Union

Montenegro is in an advanced stage of accession negotiations with the European Union. EU policies that determine Montenegro's strategic directions in public procurement and PPP are presented in the standards of the Directives that Montenegro has transposed into its legislation, and the recommendations of the European Commission annual progress reports on candidate countries.¹ Concerning public procurement, three closing benchmarks from the negotiating chapter 5 - Public procurement have been defined, as follows:

- 1. Montenegro should align its national framework with the EU acquis in all areas of public procurement with special emphasis on concessions, private-public partnerships and public procurement for defence purposes, in accordance with EU legislation in the field of public procurement and in accordance with the Treaty on the Functioning of the EU and other relevant provisions of the EU acquis.*
- 2. Montenegro should establish adequate administrative and institutional capacity at all levels and take measures to ensure proper implementation of national laws in this area in good time before entry*
- 3. Montenegro should demonstrate the balance of results of a fair and transparent public procurement system that provides value for money, competitiveness and strong anti-corruption safeguards*

¹ *European Commission's 2020 Report on Montenegro*

It includes, *inter alia*:

Adoption of the legal framework governing public procurement and PPP fully harmonised with the EU Directives from 2014²;

- Establishing an electronic public procurement system that will cover the entire procurement cycle from planning to contract implementation, and
- Developing a comprehensive Strategy that will define the policy, i.e. further directions of developing public procurement and PPP in Montenegro.

Fulfilling all three closing benchmarks will create the conditions for closing the negotiations in this chapter. Recognising that a set of implementing legislation complements the regulatory framework and that the new e-system's implementation has also marked a new phase of public procurement in Montenegro, the Strategy is the last essential precondition on the EU agenda in Chapter 5.

Given the European Commission's recommendations from the 2020 Progress Report for Montenegro, Montenegro's further public procurement policy will aim to fully implement standards accepted by the adopted legal framework applicable since July 2020.

To meet the closing benchmarks, activities from the IPA projects "Improving and strengthening legal and institutional framework in public procurements and state aid" worth 0.87 million euros and "Implementation of electronic public procurement" worth 1.65 million were conducted. Within the cooperation with the EC, the implementation of the TAIEX project is essential. It provides short-term expert and technical assistance to Montenegro, a candidate country for EU membership, to implement European standards in these areas. The latest TAIEX expert mission report confirmed that Montenegro's public procurement system was the most stable in the region. Montenegro has already resolved many issues neighbouring countries were still facing. The same report assessed the Directorate for Public Procurement Policy as a recognisable and prominent administrative body whose activities significantly impact the public procurement system. This body leads the central debates on the public procurement system, and it is the leader in the legal framework changing process.

As a key international partner providing support in the experience exchange with EU member states, SIGMA provides additional expert assistance to Montenegro in attaining the planned objectives within the public procurement and PPP framework.

Montenegro's rights and obligations arising from membership in international organisations

Montenegro continuously fulfils all obligations arising from membership in the World Trade Organization - Government Procurement Agreement (GPA) and the Central European Free Trade Agreement (CEFTA).

² *Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement*

The GPA, which Montenegro joined in July 2015, aims to free access to the public procurement market by member states of the Agreement. It is based on equality and reciprocity principles through establishing a multilateral framework of balanced rights and obligations concerning public contracts. The GPA applies to contracts above certain GPA thresholds. Montenegro's obligations as a member of the GPA include:

- informing members about possible legislation changes;
- statistical reporting on public procurement procedures above EU thresholds;
- active participation in the Secretariat's working bodies.

In addition to the obligations arising from membership in the said plurilateral agreement, it is necessary to point out the obligations arising from Montenegro's membership in the Free Trade Agreement for Southeast European Countries – CEFTA, to promote free trade and the region's economic progress based on WTO principles and values. It implies free access to the public procurement markets of the countries in the region. To that end, Montenegro updates information on possible changes in the legal framework governing public procurement annually. This agreement's objective is identical to the World Trade Organization membership objective.

Montenegro's membership in the North Atlantic Treaty Organization - NATO brings the right of Montenegro-based business entities to participate in public procurement procedures for the needs of this military alliance under identical conditions. It also offers economic entities based in NATO member countries the possibility to participate in public procurement procedures organised for military purposes in Montenegro.

An essential aspect of international cooperation is cooperation with international financial institutions – the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD) and the World Bank (WB) – in implementing development projects for the Western Balkans to which Montenegro belongs. This cooperation provides continuous assessment of the public procurement system and reporting on all aspects, participation in fora, round tables, etc. It also enables candidating various development projects and requesting technical assistance funded by these institutions.

1. Overview and analysis of public procurement's current condition

The situation in Montenegro's public procurement system is presented in the European Commission's 2020 Progress Report³. It states that Montenegro remains moderately prepared for membership in public procurement. The European Commission noted that during 2021, Montenegro should:

- start implementing the laws on PPPs and public procurement and adopt implementing legislation on public procurement, including on defence procurement;
- fully respect the EU public procurement principles when awarding the concession to operate Airports of Montenegro;
- further improve the functioning of the remedy system.

³ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/montenegro_report_2020.pdf

In this regard, Montenegro adopted a set of implementing legislation in public procurement and PPP that enables legislation implementation in these areas.

Meeting the accession process requirements, Montenegro adopted a new Public Procurement Law (PPL) at the end of 2019, applicable since 7 July 2020. The PPL brings many innovations that fully complies with the current EU Directives' standards in public procurement. It creates the preconditions for a broader reform process in this area. The novelties brought by the new regulatory framework are:

- environmental protection, social and labour law, and ensuring energy efficiency principles and the proportionality principle;
- redefining exemptions from the PPL application - exemptions following concluded international agreements, exemptions of specific public procurement subjects, procurement concerning the contracting parties character (in house procurement) and procurement concerning purpose;
- redefining the solution concerning the conflict of interest;
- reintroduction of value classes for implementing legally prescribed public procurement procedures, including simple procurements;
- introducing of new procedures for awarding public procurement contracts;
- redefining the eligibility criteria for participation in the public procurement procedure, including a new way of proving by submitting the business entity's statement;
- the most economically advantageous bid introduced as the only criterion for selecting the most favourable bid, applying the cost-effectiveness principle including the lowest price, price-quality ratio and/or life-cycle cost;
- introducing joint and centralised public procurement;
- contract management, for the first time standardising the contracting authority's obligation to control the concluded public procurement contract execution and the possibility of subsequent amending and terminating the contract;
- introduction of an electronic public procurement system (CEJN) covering the entire public procurement cycle from planning to contract implementation.

According to the PPL, appropriate implementing legislation has been adopted. It is publicly available and represents a further step in transposing EU standards from the directives.⁴

The *Rulebook on the List of Military Equipment and Products, Procedure and Manner of Conducting Public Procurement in Defence and Security* (Official Gazette of Montenegro (OGM) 76/20) was adopted to regulate procurement in defence and security. This implementing legislation was adopted for the first time and systematically regulates procurement in defence and security under Directive 2009/81/EC.

A new act regulating simple procurements, i.e. procurements with a value below the thresholds prescribed by the Law – the *Rulebook on the manner of conducting simple procurements* (OGM 61/20, 65/20, 71/20, 74/20, 102/20, 50/21), abolished the small

⁴ Implementing legislation is available at the following link: <http://www.ujn.gov.me/podzakonska-regulativa-zakona-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19/> (Please note that these documents are available only in Montenegrin language.)

procurements institute and put out of force the contracting authorities' individual acts regulating this area. Simple procurements are regulated uniformly. They are initiated exclusively by publication through the electronic public procurement system, with the contracting authorities' additional obligation to publish all notices related to this procurement type. In that way, their transparency has significantly improved, increasing the business entities' percentage share in simple procurements.

According to the Law, procurements caused by urgency are conducted through a negotiated procedure without prior publication of a call for bids. At the same time, this repealed about 650 contracting authorities' acts that regulated emergency procurement in the previous system. In this way, following EU regulations, this established a unique principle and procedure for conducting procurement caused by urgency.

The current practice of applying regulations governing public procurement and relevant reports of the European Commission⁵ and other international institutions⁶ showed obvious weaknesses and a lack of sensibility for certain institutes provided by regulations. It is reflected in inadequate public procurement planning, irregularities in public procurement contracts awarding procedure and monitoring the concluded contract's implementation. More precisely, this refers to the inadequate selection of the public procurement procedure and the selection of the procedure solely based on the procurement value class; inadequacy in defining the public procurement subject and its possible division into lots; creation of closed technical specifications by contracting authorities; insufficient contracting authorities' sensitivity in creating the eligibility criteria to participate in the public procurement procedure; setting inadequate deadlines for drafting and submitting bids, i.e. applications for eligibility; avoiding and lack of contracting authorities' sensibility in creating the criteria for awarding public procurement contracts (defining the criteria of the most economically advantageous bid); lack of knowledge concerning the use of specific procurement forms - the contract concluding technique (framework agreement)⁷. With the necessary application of innovations from EU directives, the new regulatory framework aims to eliminate all these shortcomings through the Law and a set of implementing legislation.

According to the NGO sector, one of the challenges in the public procurement system relates to the inadequately addressed public procurement planning process in Montenegro. It is noticed through data on significant differences between the planned and spent public procurement budget annually and the frequency of changes in public procurement plans by contracting authorities⁸. In this sense, we should understand the intention that the plan is an initial step in creating the public procurement process. In that sense, changes to the plan do not necessarily have to be wrong steps. From the competent authority's aspect, the intention is to provide monitoring of changes to the plan in the future through the electronic system, with an explanation of the changes.

⁵ <https://www.eu.me/dokumenti-pregovori-o-pristupanju/#1583-1605-godisnji-izvestaji-evropske-komisije-o-napretku-crne-gore> (Please note that these documents are available only in Montenegrin language)

⁶ <http://www.sigmaweb.org/publications/Monitoring-Report-2019-Montenegro.pdf>

⁷ *Reports on inspection for January 2016 – June 2020, 1 January – 30 November 2017 and 1 January – 30 November 2018*

⁸ <https://institut-alternativa.org/en/implementation-of-the-new-public-procurement-law-a-chance-to-leave-the-vicious-circle/>

The Law listed market analysis implementation as a possibility the contracting authority may implement before creating a public procurement plan. Therefore, it is necessary to create conditions for using this legal solution and point out its importance and advantages.

Foreseeing the participation of the subject industry supervisors in defining the criteria relating to the quality of the services is essential to prevent discrimination against bidders and encourage competition in public procurement procedures. In public procurement procedures and simple procurements for specific items, contracting authorities usually determine the mentioned criteria arbitrarily, without using existing and valid parameters. Incorrect and disproportionate scoring of criteria compared to their actual impact on the contracting authorities' service quality provides the unjustified advantage of certain bidders in the procedures.

The institutional framework for public procurement includes institutions identified as important actors for implementing the Strategy. According to Article 44 of the PPL (OGM 74/19), the Ministry of Finance and Social Welfare (MFSW) performs administrative and related professional activities in the public procurement system. The Commission for the Protection of Rights in Public Procurement Procedures protects the rights of public procurement procedures' participants under Article 183 of the PPL and the regulation governing public procurement in defence and security. Article 209 of the PPL sets out that the administrative body responsible for inspection affairs – the Directorate for Inspection – exercises the implementation of the PPL through the public procurement inspector. Under the Decree on the Manner of Centralised Public Procurement Planning and Implementation (OGM 69/20 of 11 July 2020, 105/20 of 29 October 2020), the administrative body responsible for the management of state property - Property Administration - conducts centralised procurement for the account of state administration bodies included in the list published on the website www.ujn.gov.me.

Moreover, the bodies indirectly involved in the procurement implementation are the State Audit Institution, which controls the legality of spending public funds concerning concluded public procurement contracts, and the Agency for Prevention of Corruption that monitors corruption cases and conflicts of interest in public procurement. The Administrative Court monitors the legality of individual decisions of the Commission for Protection of Rights in Public Procurement Procedures. The State Prosecutor's Office prosecutes perpetrators of criminal offences related to public procurement. At the same time, the Police Directorate investigates activities related to criminal offences in public procurement.

The establishing and improving the existing institutional capacities in public procurement created preconditions for the efficient functioning and monitoring of the system's progress.

From 1 January 2019, the **MFSW - Directorate for Public Procurement Policy** – has created and implemented the public procurement policy and monitored its implementation through the competencies prescribed by law⁹. After suspending the Public Procurement Administration that replaced the Public Procurement Directorate established in 2007, public procurement responsibilities transferred to the Directorate for Public Procurement Policy

⁹ <http://www.ujn.gov.me/en/novi-zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019/>

within the MFSW. Furthermore, the Directorate for Public Procurement Policy's¹⁰ competence has been extended to the PPP area¹¹ concerning performing administrative supervision over applying regulations governing this area. The Directorate for Public Procurement Policy continuously monitors the public procurement system. According to the monitoring results, it defines the directions of future action in this area.

The Directorate for Public Procurement Policy employs 18 officers out of 24 systematised positions, representing an occupancy rate of 75%.

The Commission for the Protection of Rights in Public Procurement Procedures is the body responsible for protecting the rights of bidders and other participants in public procurement procedures and procedures for awarding PPP contracts. The new PPL has expanded the Commission's competence. The Commission is now responsible for implementing the legal protection procedure in the procedure of awarding PPP contracts as well. The PPL sets out the competencies, composition and other issues of importance for the work of the Commission for the Protection of Rights in Public Procurement Procedures¹².

The Commission had 75% occupied jobs since 2017, today totalling 88%. It is one of the reasons for reducing the percentage of unresolved cases on appeals. Out of 26 systematised jobs in the Commission for the Protection of Rights in Public Procurement Procedures (including the President and Commission members), 23 positions are filled.

The Public Procurement Inspector from the **Directorate for Inspection** performs inspection supervision in public procurement for compliance with regulations governing public procurement under regulations governing inspection supervision. In addition to the planned inspection, the Public Procurement Inspection acted on initiatives submitted by individuals and legal entities in the past period.

It also supervises the risks of actions with the corruption characteristics for proactive action with prevention and early detection.

During 2019, the Public Procurement Inspection had 8 positions of public procurement inspectors (including the Chief Inspector) systematised and filled, thoroughly filling their capacities. The increased number of inspectors expanded the scope of performed inspection supervisions, thus strengthening this type of public procurement control.

The **Property Administration** is a state administration body, *inter alia*, competent to implement procedures for awarding public procurement contracts on behalf of state bodies and state-funded units for objects subject to centralisation under a special Government decree¹³. The Property Administration - Public Procurement Unit systematised and filled 14 jobs in public procurement tasks.

¹⁰ **Public Procurement Law (OGM 74/19)** <https://ujn.gov.me/en/novi-zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019/>

¹¹ **Public-Private Partnership Law (OGM 73/19)** <https://ujn.gov.me/en/zakon-o-javno-privatnom-partnerstvu-sluzbeni-list-crne-gore-br-073-19-od-27-12-2019/>

¹² <https://ujn.gov.me/en/novi-zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019/>

¹³ <http://www.ujn.gov.me/wp-content/uploads/2020/11/Uredba-o-nacinu-planiranja-i-sprovodjenja-centralizovanih-javnih-nabavki.pdf> (Please note that these documents are available only in Montenegrin language)

Current capacities in terms of the number of employees are sufficient to perform centralised procurement. Still, it is necessary to educate employees on these tasks and analysis of comparative practices to transfer the positive experiences of central procurement bodies from the region or the EU.

Professional training and development of public procurement officers/contracting authorities, bidders and other persons involved in the procurement process aim to create a sustainable training system to meet the system requirements and monitor the education effects by testing acquired knowledge and skills. The particular objectives of training in public procurement are to improve theoretical and practical knowledge, professionalise staff engaged in these jobs, conduct continual professional training that follows EU trends and create a base of trainers in the area for quality transfer of theoretical and practical knowledge in public procurement.

The Directorate for Public Procurement Policy continuously works on training staff who perform tasks in this area and employees in the private sector upon request. Employees of the Directorate involved in implementing the legal framework conduct the training. The training refers to promoting the new legal framework in general, with the possibility of subsequent organisation of training by thematic units. Moreover, employees of the Directorate for Public Procurement Policy - Directorate for Monitoring the Public Procurement System and Electronic Public Procurement Management conduct training related to the new electronic public procurement system implementation.

Data on the number of training, training attendees and the number of certified officers are updated and published on the Directorate's website¹⁴.

The primary condition for the successful implementation of professional training and development in public procurement is an adequate Training Programme, followed by accompanying instructions and guidelines on the practical application of regulations. The Support to the Training Programme is the development of appropriate manuals and other publications aiming to facilitate the implementation and understanding of regulations in this area.

Numerous weaknesses identified in the public procurement system relate to the lack of knowledge about public procurement observed among contracting authorities. Addressing these weaknesses requires training and other support activities. Education of persons performing public procurement activities includes education on the implementation and education related to the electronic public procurement system implementation. However, we note that the current MFSW capacities are insufficient for comprehensive training of contracting authorities and bidders at all levels (public procurement in general and by thematic units). It is significant especially considering the need to improve the knowledge on new procurement trends such as green procurement and procurement for specific and complex items.

¹⁴ <http://www.ujn.gov.me/#>

It is necessary to assess the extent of procurement functions organisation and support professional practice throughout the public procurement process, including contract management. Monitoring the education effects through acquired knowledge and skills verification is carried out primarily through the professional exam. It is taken by persons who have attended the professional training and education programme and earned the title of a public procurement officer. Finally, it is done through monitoring the whole system a.

The electronic public procurement system (CEJN) is the first electronic public procurement system in Montenegro, operational since 1 January 2021. CEJN functions by applying information and communication tools, enabling the implementation and monitoring of all procurement process phases – from planning to contract execution. The introduction of CEJN means the exclusive use of information and communication technologies that must be widely available to all economic entities. There must be no restrictions or any discrimination against participants.

The main strategic objective of the CEJN introduction in Montenegro is primarily to increase public procurement transparency and efficiency, contribute to combating corruption and preventing conflicts of interest in this area, and establish a unified public procurement system through procedures unification and standardisation. Indirect objectives include reducing the administrative costs of participants in the process and strengthening competitiveness through greater participation of small and medium-sized enterprises.

The development and implementation of the electronic public procurement system were achieved through the IPA project “Implementation of electronic public procurement in Montenegro” activities. The key project activities included developing a software solution enabling full public procurement implementation electronically and providing *ex-ante* and *ex-post* public procurement control. It is planned to continue the project that aims, *inter alia*, to introduce new CEJN possibilities, including the part related to PPPs.

The current public procurement portal in Montenegro enabled e-notification, i.e. electronic publication of tender documentation containing a call for public bidding and publication of all other public procurement notices with a statutory obligation to be published. The portal's functions included registration, verification, keeping user records, and keeping notifications, i.e. free creation, validation, publication of notices and reporting within the current system constraints.

CEJN is based on the following modules:

- e-Publication – electronic preparation, submission and publication of all notices in the public procurement procedure (tender documentation; changes, clarifications, decisions and contracts, available to all system users; decisions on the commission forming; minutes on bids opening and evaluation, available only to contracting authorities);
- e-Access - electronic access to tender documents,
- e-Submission - electronic submission of bids / eligibility application,
- e-Evaluation - analysis and evaluation of bids / eligibility application,
- e-Appeal - receipt of appeals by contacting authorities and decision-making on appeals by the Commission for Protection of Rights within the e-system.

Moreover, CEJN enables registration and keeping records of contracting authorities, registration and keeping records of bidders, free access, search, preview and download of published tender and other documentation on the public procurement procedures implementation, and compiling eligibility applications, bids, plans, projects and solutions, free of charge. It also enables making requests for clarification of electronic bids and answers with clarification, submitting reports on public procurement procedures and submitting notifications on purchases of values above the European Union threshold classes to the European Union's Publications Office for publishing in the *Official Journal of the European Union*, and compiling and publishing reports on concluded contracts.

CEJN facilitates the necessary searches of public procurement procedures by various criteria and preparing and submitting bids / eligibility applications. The system also enables evident recording of all procurement procedures, records of the current notifications status and generating various relevant statistical reports, and many other options and benefits. Given these characteristics, CEJN is also a tool to encourage SMEs participation in public procurement procedures.

The main advantages of CEJN are:

- free access to the system and transparency in public procurement contracts awarding;
- encouraging competitiveness in public procurement procedures;
- reducing administrative participation costs and increasing procurement efficiency (public procurement rationalisation);
- maximising opportunities from limited resources (public procurement cost-effectiveness).

CEJN will reduce the risk of irregularities in public procurement procedures by limiting the abuse scope, which will result in a reduced risk of appeals.

Achieving the public procurement principles, primarily efficiency and the public funds use effectiveness and public procurement procedures cost-effectiveness requires the application of special procurement forms such as framework agreement and greater representation of centralised procurement. Data from annual public procurement reports indicate that the use of these procurement forms is low¹⁵. The benefits of this procurement form enable concluding several contracts based on one public procurement procedure. Several contracting authorities can conclude a framework agreement with several bidders. The framework agreement concept provides concluding contracts for public procurement of goods, works and services, which should not require lengthy procedures with an uncertain outcome. The possibility of using the framework agreement as a procurement mechanism was set out in Montenegro at the beginning of the public procurement system development. In 2020, the share of concluded framework agreements was 12.38% concerning all concluded public procurement contracts. Their value compared to the public procurements total value was **6.7%**.

¹⁵ <http://www.ujn.gov.me/category/izvjestaji/> (Please note that these documents are available only in Montenegrin language)

Concerning centralised procurement, the *Decree on the Manner of Centralised Public Procurement Planning and Implementation* (OGM 69/20 of 11 July 2020, 105/20 of 29 October 2020) sets out that the Property Administration is the body that conducts centralised public procurement. The overview below is made based on the submitted individual reports of the Property Administration for the subject public procurements.

Extract of the report on consolidated public procurement of goods and services carried out by the administrative body responsible for the state property management - Property Administration

FORM A	Year	Public procurement subject type	Contracted value
	2020	Goods	8,886,255.53 €
Services		1,753,889.28 €	
Total:			10,640,144.81 €

Centralised public procurement in 2020, contracted through Form A, amounted to 8,886,255.53 euros for goods and 1,753,889.28 euros for services.¹⁶

The presented data are contained in the annual report on consolidated public procurement for goods and services of the Property Administration, available on the Directorate for Public Procurement Policy's website <http://www.ujn.gov.me/pojedinacni-izvjestaji-obveznika-primjene-zakona-o-javnim-nabavkama/>.

In the context of expanding the sustainable and green public procurement use, which is a strategic direction of overall public policy, it is important to stress that green procurement policy corresponds to the objectives of the Sustainable Development Strategy until 2030. These include efficient management of renewable natural resources, improving the environment and human health, sustainable production and consumption, providing innovation, human resource development, and employment and social inclusion. Green public procurement is an essential tool for achieving sustainable development and environmental policy objectives related to climate change, resource use, and sustainable production and consumption, especially considering the importance of the public sector's consumption of goods and services.

Although the environmental protection principle was represented in the previous Public Procurement System Development Strategy 2016-2020, the reporting data show a low degree of social and environmental standards application in awarding public procurement contracts. Therefore, the new Public Procurement Law introduced the principle of environmental protection, social and labour law and energy efficiency ensuring. The PPL sets

¹⁶ According to the Rulebook on Forms in Public Procurement Procedure, which was in force until the adoption of the new PPL (OGM 73/19), Forms A, B and C were used for reporting on conducted public procurement procedures. Form A was used for open, restricted, negotiated procedure with prior publication of a call for bids, negotiated procedure without prior publication of a call for bids and competition), while Form B was used for small value procurement and Form C for urgent procurement.

out the possibility of procuring goods, works and services with specifications and elements of criteria for awarding contracts that contain aspects of energy saving and environmental protection, energy efficiency and total life cycle costs of goods. The PPL also sets out the exclusion from public procurement procedures of those economic entities determined to have breached their obligations in environmental protection in the previous period.

Fair and effective competition is crucial in achieving efficiency and “value for money” in providing public services. To this end, the public procurement market should be attractive to the private sector, which is reflected in the business entities’ interest to participate in calls for tenders and operate with the public sector.

The Annual Report on Public Procurement for 2020 published by the MFSW states that the average number of bids per procedure in 2020 was 2.27¹⁷. The question is whether and to what extent this participation rate in public procurement procedures should be considered satisfactory. It is noted that statistics show participation rates variations between and within different procurement areas, categories and branches. In addition, from the public procurement point of view, the tender’s attractiveness is not determined only quantitatively. The quality of bidders participating in public procurement procedures and their bids’ competitiveness in terms of prices and tender fulfilment play an equal or even more important role. Other important indicators are the number of appeals filed and the presence of price as an evaluation criterion. Both of these indicators were at an unacceptably high level in the past period. It is important to note that after the new PPL entered into force, the number of appeals significantly decreased compared to the previous period before the PPL adoption.

The public market’s attractiveness for the private sector depends on many factors, such as potential economic benefits, participation costs, nature and complexity of public procurement procedures and tender documents, fairness and relevance of eligibility and award criteria, availability of legal aid mechanisms, etc. Another important issue concerning market “attractiveness” is the supply structure, particularly the relationship between large and small and medium-sized enterprises (SMEs) and the latter’s ability to compete and gain a fair share of public contracts. In this part, it is essential to mention the novelties in implementing simple procurements, where requests for bids submission must be published through the electronic system, without exception. It is a significant opportunity for SMEs concerning the availability of these procurements and facilitating their conducting through simple procedures treatment. Also, the CEJN reduces administrative costs for the participants in the procedure, which is essential for SMEs.

The main challenge is how to best ensure the SMEs participation and success in public procurement procedures to a sufficient extent. It is primarily because the public procurement system will tend to centralised and other joint procurement arrangements using framework agreements.

An essential aspect of improving public procurement policy in the coming period is combatting corruption and preventing and eliminating the conflict of interest consequences

¹⁷ <http://www.ujn.gov.me/wp-content/uploads/2021/06/Izvje%C5%A1taj-o-javnim-nabavkama-za-2020.-godinu.pdf>
(Please note that these documents are available only in Montenegrin language)

in public procurement. Corruption related to public procurement is a significant risk factor. In addition to potential participants' discouragement in public procurement procedures, it results in high costs, inefficiency and a competitive environment's distortion. Public procurement is an area particularly vulnerable to corruption and conflicts of interest. Therefore, it is necessary to continuously provide proactive and repressive action mechanisms on actors in public procurement procedures to reduce risk and effectively combat these phenomena. In this segment, the activities of the Public Procurement Policy Directorate as the competent authority are reflected in strengthening transparency through the e-system, and the introduction of risk assessment obligations in public procurement procedures by contracting authorities, additional system monitoring, and finally, in improving knowledge and skills through education.

As defined in the PPL and implementing legislation, an efficient and sustainable public procurement system is based on rules. It encourages competition, promotes transparency, strengthens accountability, and is economical and efficient. Activities that violate the public procurement integrity include conflicts of interest, actions with characteristics of corruption, negotiation of bidders. They also include other actions determined by the Commission for Protection of Rights in Public Procurement Procedures and the Public Procurement Inspection, which performs *ex-post* control. Combatting corruption is one of the main priorities of our political system. It encompasses all sectors of society and is managed and coordinated by the Agency for the Prevention of Corruption. The Corruption Perceptions Index published by Transparency International for 2019¹⁸ shows that Montenegro is ranked 66th out of 198 countries. Still, the number of points is only 45 on a scale of 100, where 0 points indicate a highly corrupt society and 100 points indicate the absence/non-existence of corruption. The research by the NGO sector - *Institute Alternativa*¹⁹ is important concerning the public perception of conflict of interest and corruption existence in Montenegro. Despite positive developments, the research suggests that most citizens perceive the public procurement process as non-transparent, unfair, unobjective, biased, and with the presence of personal rather than general interest. Such conclusion is based on perceived abuses in contract award procedures, insufficient public procurement policy inclusiveness and insufficient media representation. These observations are the basis for other competent authority's actions to create a foundation for improving the public procurement system and create a better public perception concerning the procurement system in Montenegro.

The new PPL sets out *ex-ante* and *ex-post* action mechanisms to prevent corruption and conflicts of interest and eliminate these phenomena's consequences. In practice, it should provide zero tolerance to these phenomena in public procurement. Mechanisms for proactive action in combatting corruption include a Statement on the Absence of Conflicts of Interest of the President And Members of the Commission for Conducting Public Procurement Procedures and an anti-corruption clause in public procurement contracts. On the other hand, *ex-post* acting only includes reporting public procurement procedure irregularities to the MFSW, the Agency for Prevention of Corruption and the State Prosecutor's Office. These institutions take measures and actions within their competencies. To this end, the Ministry adopted a *Rulebook on Records and Methodology of Risk Analysis in Performing Public Procurement Procedures Control*. It contains a comprehensive overview of

¹⁸ <https://www.transparency.org/en/cpi/2019/index/mne>

¹⁹ <https://institut-alternativa.org/en/public-opinion-on-public-procurement/>

potential risk zones for corruption in all phases of the public procurement cycle and a set of preventive measures to eliminate them. The new Public Procurement Law contains an exhaustive list of criminal offences with corruption characteristics, which determine the potential business entities' ineligibility for participation in public procurement procedures.

Furthermore, an essential aspect of public procurement policy is the legal protection of participants in public procurement procedures. In all public procurement procedure phases, legal protection in the public procurement system is executed through pre and post-contractual legal protection. Pre-contractual legal protection is initiated by an appeal before the Commission for Protection of Rights in Public Procurement Procedures. It includes protection of rights and interests of participants in the procedure and other interested persons, from the moment of public procurement procedure initiating to deciding on the selection of the most favourable bid or cancellation of the public procurement procedure. Post-contractual legal protection is exercised before Montenegro's Administrative Court and Supreme Court of Montenegro.

The anti-corruption activities of the Commission for the Protection of Rights are primarily exercised through the appellate control of public procurement procedures. Its consequence may be annulling the procedures determined to be conducted breaching the Law. In this way, it prevents the conclusion of public procurement contracts that breach the anti-corruption rule and prevents corrupt practices. At the same time, the tasks under the Commission for the Protection of Rights in Public Procurement Procedures' competence exercise preventive function and avoid illegal actions and harmful consequences. An essential anti-corruption effect includes the legal practice's public availability. All decisions containing relevant information on the public procurement procedure are published on the Commission for the Protection of Rights in Public Procurement Procedures' website, making the legal protection procedure transparent. Moreover, the annual reports on the Commission's work contain the analytical basis allowing the legislator to correct the legal framework. It certainly has a kind of anti-corruption effect, achieved through continuous education on this issue.

Statistical data on the work of the Commission for the Protection of Rights in Public Procurement Procedures 2016 – 2020²⁰

Cases/year	2016	2017	2018	2019	2020
Total number of cases received	1078	1064	480	341	269
Percentage of cases completed	77,23%	78,84%	94,80%	96,30%	100%
Total number of appeals received	1027	973	435	307	242
Percentage of cases					

²⁰ *Annual Reports of the State Commission for Control of Public Procurement Procedures for 2016, 2017, 2018 and 2019:* http://www.kontrola-nabavki.me/1/index.php?option=com_content&view=article&id=91&Itemid=138&lang=mne
(Please note that these documents are available only in Montenegrin language)

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completed by submitted appeals	93,67%	78,86%	94,97%	96,17%	100%
Total number of appeals to the tender documentation	356	368	101	39	43
Total number of appeals on the decision on the selection of the most favourable bid	487	541	441	228	166
Total number of appeals on the decision on stopping the public procurement procedure	90	91	72	53	26
Total number of appeals on the decision on annulment of the public procurement procedure	5	1	3	6	2
Total number of public procurement procedures annulled <i>ex officio</i>	27	72	262	189	4

The reasons for annulling public procurement procedures *ex officio* determined by the Commission for the Protection of Rights in Public Procurement Procedures stated in annual reports include:

- inconsistency of the tender documentation and the invitation for public bidding, i.e. the invitation for bidding concerning the conditions for participating in the procedure,
- inconsistency of tender and other documentation for public bidding, which led or could lead to bidders' discrimination or market competition restrictions, and omissions made in the process of review, evaluation, comparison and evaluation of bids, and especially lack of reasons and evidence on which the decision was made,
- omissions in the bid opening procedure relating to data on participants in the procedure, particularly the lack of reasons and evidence based on which the decision was made and omissions made in the review, evaluation, comparison and evaluation of bids.

The analysis of data from the Commission's report shows a growing trend in resolved cases from 77.23% in 2016, through 78.84%, 94.80% and 96.30% in 2017, 2018 and 2019, respectively, to 100% in 2020. It results from an increased number of members, strengthening the Professional Service's administrative capacities, and establishing the Commission's information system.

The public procurement system's success and quality are reflected through indicators of the system's certain aspects. First of all, the most significant indicators include the competition intensity in public procurement procedures, shown by 2.27 bids per procedure in 2020 (compared to 2.01 in 2019, and 3.14, 2.66 and 2.21 in 2018, 2017 and 2016, respectively). Moreover, only one bid was submitted in 1566 contracts in 2020 (about 32.22% of the total published procedures). The total value of these procedures was 121,965,940.80 euros, or 22% of the total contracted value in the mentioned period. Another important indicator is the share of the value of contracts concluded using the open public procurement procedure. It amounted to 73.52% in 2020, while it was 83.46%, 79%, 85.17% and 83.03% in 2019, 2018,

2017 and 2016, respectively. The number of suspended public procurement procedures showed a downward trend. Thus, there were 643 suspended and annulled procedures in 2020, compared to respective 739, 1192, 1111 and 1439 in 2019, 2018, 2017 and 2016. Comparing the estimated public procurement value to the contracted value shows savings of 5.44% or some 42 million euros in the first half, and 2.46% or some 2.5 million in the second part of 2020. The total recorded difference between the estimated and contracted procurement value was some 44.5 million euros in 2020, showing an increase compared to 2019 when savings amounted to 37,629,292.70 euros or 6.86% of the estimated value.

Statistical data related to the Commission's work show significant trends in improving the appeal process in previous years, with the Commission's important role in creating more efficient handling of appeals.

The MFSW monitors the public procurement system through collecting, analysing and publishing data on contracted procurements and the number and value of concluded contracts. These data indicate a significant public procurement's share in total public spending and this amount's evident growth in the past period. The MFSW provides feedback by analysing the monitoring results, gives certain opinions and recommendations for eliminating the shortcomings identified by monitoring, and provides advisory assistance to contracting authorities and business entities upon request. Public procurement monitoring assesses how the public procurement system develops and its direction. Specific trends can be noticed only after several years of observation, thus providing relevant information essential for policymaking.

The Ministry's monitoring functions regularly provides statistical data on 1) the share of public procurement in GDP; 2) the participation of the value of the procurements concluded in all implemented procedures, 3) the share of using the economically most favourable bid criterion compared to the lowest price criterion, 4) share of contracts concluded by applying the framework agreement and 5) average daily visits to CEJN (from 1 January 2021).

As a result of the current legal framework application, observed weaknesses of Montenegro's public procurement system relate to an insufficiently clear definition of exemptions from the PPL application, insufficient use of all mechanisms prescribed by law, lack of specific procedures, duration and formalism of contract award procedures (over 90%), the propensity to corruption and consequent distrust of potential bidders in the public procurement system, insufficient competitiveness (2.27 bids per procedure in 2020), and the difference in costs for the same public procurement subject. The civil sector public opinion research showed the general public and the private sector's distrust in the public procurement system despite the shifts compared to the previous period. The mentioned research showed the general public's perception of corruption in public procurement²¹ and mostly distrust in the public procurement policy, especially concerning the lacking transparency in contract award and adequate control mechanisms. There is also a high degree of citizens' ignorance in this area, resulting from insufficient media attention dedicated to this issue.

²¹ *Citizens' opinion on public procurement, Institut Alternativa/Ipsos Strategic Marketing, 2020*

The monitoring and statistical reporting practice has shown weaknesses in verifying the accuracy of the presented data on conducted procedures and concluded public procurement contracts. Moreover, the data were collected and processed manually, which significantly complicated and slowed down the entire process of preparing the annual report. In addition, the overall statistics did not contain data on the procedures and contracts concluded by some contracting authorities that did not submit their reports. Therefore, it questioned the completeness and timeliness of the statistics.

2. The Strategy's Main and Operating Objectives

Stemming from the Progress Report on Montenegro 2020 conclusions²², the national reporting documents and the NGO sector findings, Montenegro made some progress by adopting legislation governing public procurement and PPP and putting an e-procurement system in place.

Based on the current situation analysis in the public procurement system, resulting from system implementation monitoring (statistical reporting, providing training, advisory services, providing expert opinions on the Law application, etc.), the following challenges have been identified:

- a) Inadequate legal framework application, i.e. the insufficient use of the Law institutes; ensuring the right level of professionalism and capacity to manage the entire public procurement process (government, local government and state-owned companies);
- b) Insufficient coordination between institutions in the public procurement system concerning legal framework implementation coherence;
- c) The need to improve system transparency and reduce irregularities;
- d) The need to improve and promote a set of modern procurement instruments, such as a framework agreement, to invest in sustainable procurement that will significantly affect the capacity building needs at all public procurement system levels, to promote the SMEs participation in public procurement procedures;
- e) Improving the legal protection system's efficiency;
- f) Lack of practice in contracting and implementing PPP projects and functioning this area's institutional framework and operational capacities.

The main objective of the national strategy is **Building a sustainable, effective and efficient public procurement system and PPP.**

Based on the identified improvement areas, the Strategy sets the following operational objectives:

1. Professionalisation and improving operating capacities of the contracting authorities

Performance indicators:

²²https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/montenegro_report_2020.pdf

- i) Degree of business entities' trust in the public procurement system
- ii) Number of irregularities identified in inspection procedures

2. Establishing effective mechanisms for coordination and consultative function at the MFSW and other institutions in the public procurement system

Performance indicators:

- i) Number of issued expert instructions on regulations application and best practice
- ii) The degree of meeting the obligations arising from Negotiating Chapter 5 - Public Procurement

3. Improving an electronic public procurement platform (CEJN) which will require the support and engagement of the Ministry, contracting authorities, business entities and other relevant stakeholders in the system

Performance indicators:

- i) Introducing new functions in CEJN
- ii) Number of actively registered business entities
- iii) Number of bids in the public procurement procedure

4. Encouraging the implementation of framework agreements, centralised public procurement, green and sustainable procurement; promotion of SME participation in public procurement procedures with particular emphasis on increasing the involvement of women-led businesses in public procurement and public procurement contracts

Performance indicators:

- i) Share of concluded framework agreements and the share of centralised procurement
- ii) Awarding public procurement contracts with the application of criteria that include parameters related to environmental protection
- iii) Increased participation of women-led or women-owned businesses in public procurement

5. Improving legal protection before the Commission for the Protection of Rights in Public Procurement Procedures

Performance indicators:

- i) Degree of legal protection procedure cost-effectiveness
- ii) Number of legal protection proceedings
- iii) Number of administrative disputes before the Administrative Court

6. Strengthening the institutional and operational capacities of key stakeholders in the system to support the implementation of the legal framework for PPP effectively

Performance indicators:

- i) Improving the administrative capacity of institutions in PPP
- ii) Number of approved PPP projects
- iii) Number of concluded PPP contracts

3. Activities on implementing the Strategy's operating objectives

Operating objective 1: Professionalisation and improving operating capacities of the contracting authorities

To better understand the public procurement system's importance and raise awareness among all actors in public procurement procedures, it is necessary to take activities to promote the possibilities and ways of implementing legal regulations continuously. These activities should increase public procurement procedures efficiency and improve the trust in the public procurement system. It will be achieved first by analysing the key challenges faced by the system users and then by preparing and organising specialised training that will address the identified problems and concerns. Furthermore, it is necessary to promote modern public procurement techniques and the importance of their implementation by developing manuals, online instructions and other promotion forms. After analysing the effects of the new legislation's application, a manual will be designed to eliminate the identified doubts with online instruction. Other promotion types include organising round tables, seminars and workshops with the international experts' participation. These activities would enable the target audience to learn about various public procurement related topics and exchange opinions and experiences about them.

It is necessary to foresee a comprehensive analysis of planning problems at the level of all contracting authorities. The analysis would include quantitative indicators, i.e. the difference between planned and spent public procurement budget, the number of concluded contracts and frequency of changes in contracting authorities' plans. It will also include qualitative analysis that will map reasons for poor planning. The analysis should also cover and significantly improve market analysis as a crucial part of the public procurement planning process.

In addition to the MFSW, implementing the mentioned activities will require involving the Human Resources Management Authority (HRMA), Commission for the Protection of Rights in Public Procurement Procedures, NGOs, business entities associations and international partner institutions.

In the forthcoming period, the policy of strengthening administrative capacities at all levels will be based on continuous theoretical and practical knowledge improvement. In this way, the participants should be introduced to the meaning and purpose of applying specific legal institutes/tools on particular examples from practice to make procurement efficient and

cost-effective. It is essential given the participants' insufficient knowledge, insecurity, and insufficient or inadequate use of specific tools in the procurement process.

Depending on the training attendees' knowledge and scope of work, adjusting both the programme and the lecturers' expertise would be necessary. In this regard, three training levels should be conducted according to the plan, which implementation started in 2020, as follows:

- Level 1 refers to the trainers' training to create a base of national trainers in this field;
- Level 2 includes continual training of contracting authorities, conducted by the MFSW / the Directorate for Public Procurement Policy, independently and in cooperation with the HRMA;
- Level 3 includes training of business entities - bidders.

All stakeholders and the media and NGOs representatives can attend training to raise public awareness of the importance of the public procurement system through training and organising workshops, round tables, and conferences.

In addition to the training mentioned above, special training will be organised for the contracting authorities' management staff. They will be brought closer to the public procurement system's functions and importance and the public procurement officers' demanding work. Another problem in the training organisation is the lack of professional staff conducting training for specific thematic areas in public procurement, such as health, judiciary, public works, and others.

Moreover, appeal procedures and monitoring statistics on the number of submitted appeals by analysing accepted and rejected appeals can indicate adequate procurement rules application by procuring entities.

The complexity and scope of implementing the above activities require more significant financial resources, which would motivate the training programme authors and lecturers to fulfil their mission. Consequently, a higher degree of trainers' motivation and responsibility will result in trainees' more excellent knowledge and competencies, ultimately contributing to the participants' professionalisation in public procurement procedures and greater system efficiency. Furthermore, it would be necessary to improve the financial condition of employees in institutions that carry public procurement policy and public procurement officers as an instrument for combating corruption in this area.

Continuous activities on improving the public procurement training system will contribute to fulfilling the operational objective related to strengthening the contracting authorities and other actors' awareness of public procurement for the proper application of legislation in this area. The impact on the entire public procurement system is reflected through the improved contracting authorities' professionalism and implementation capacities and the smooth CEJN functioning.

Continuous monitoring of the system's aspects and administrative and inspection supervision are public procurement system sustainability instruments. Given that public procurement and PPP legislation is harmonised with the relevant EU regulations, the MFSW

will continually monitor possible changes in EU public procurement legislation and harmonise it. The MFSW will also analyse the effects of the current regulations' application and propose possible amendments.

Cooperation with stakeholders responsible for anti-corruption - the Agency for the Prevention of Corruption, the Police Directorate, the State Prosecutor's Office and the State Audit Institution has to improve. The aim is to reduce the public procurement irregularities risk and act preventively and repressively against actors and potential actors in conflict of interest and corruption. The electronic public procurement system, in force since 1 January 2021, is a step ensuring a higher level of the whole public procurement system's transparency, significantly reducing the space for corrupt activities.

Given the perceived corruption level in Montenegro's public procurement, the number of reports submitted to the Agency for the Prevention of Corruption is very low²³. It points either to an insufficiently established system of corruption reporting in these proceedings or that the perception is not based on realistic indicators.

The suppression of irregularities in public procurement will be implemented through various measures related to all public procurement process phases: planning, public procurement procedure implementation and contract execution. Therefore, the issue of combating irregularities and fighting corruption cannot be considered an exclusive issue of implementing some special anti-corruption measures. It can be considered an objective achieved through various aspects of public procurement reform, such as increasing transparency, professionalisation of staff involved in public procurement, procurement, improved oversight, enhanced internal control, management accountability, and internal and external audit. Activities to combat irregularities will contribute to fulfilling the operational objective - **improving the system's transparency and reducing irregularities**.

The MFSW will collect data from contracting authorities related to records on conflicts of interest, i.e. anti-corruption rule breaches and forms of risk analysis methodology in performing public procurement procedures control. A complete overview of the recorded irregularities in public procurement procedures will be obtained based on these data, thus creating a basis for identifying and addressing the most common risks to public procurement integrity.

Public procurement monitoring aims to create opportunities for collecting and monitoring real-time data on the system, the analysis of the obtained data and the values of indicators that reflect the system's performance.

The establishment of the electronic public procurement system enabled the up-to-date entry of information and data relevant to the public procurement system, available for reporting and monitoring purposes in real-time.

²³ *Data from the Agency's Report show that a total of 28 reports were submitted to the Agency on the existence of grounds for suspicion of corruption related to public procurement for the period 2016-2020, i.e. five each in 2016, 2017 and 2018, 10 in 2019 and three applications in the first half of 2020. The corruption existence was determined in six cases, while there is ongoing determination procedure before the competent authorities in three cases. In the mentioned period, no report of possible conflict of interest in public procurement procedures was submitted.*

The importing and cooperation of competent services through CEJN is essential for further prevention of abuse and corruption. The Ministry will further strengthen it to support the bodies responsible for combating corruption and abuse. Concerning the processing of conflicts of interest (which are not prevented), it is necessary to create legal preconditions for the Agency for the Prevention of Corruption to fully take over these tasks, which is why networking is also important.

The Ministry will take the lead in managing the Strategy implementation process. At the same time, it will be the operational and support centre for implementing all the Strategy's key measures. It applies particularly to the e-procurement platform establishment and the development of new functionalities, including the broader application of the framework agreement, the development of contracting authorities' training and certification, the sustainable procurement application expansion, the integrity improvement, etc.

Operating objective 2: Establishing effective mechanisms for coordination and consultative function at the MFSW and other institutions in the public procurement system

Achieving the public procurement policy objectives is conditioned by the activity and cooperation of relevant institutions, which affect the public procurement system's state and sustainability within their powers.

The key institutions directly affecting the public procurement policy objectives achievement are:

- 1) MFSW – Directorate for Public Procurement Policy;
- 2) Commission for the Protection of Rights in Public Procurement Procedures;
- 3) Directorate for Inspection;
- 4) Property Administration (as a state administration body responsible for implementing centralised public procurement).

In addition to the abovementioned institutions, efficient public procurement system achievement is conditioned by the cooperation and involvement of the following institutions:

- 1) State Audit Institution;
- 2) Agency for Prevention of Corruption;
- 3) Administrative Court;
- 4) State Prosecutor's Office;
- 5) Police Directorate.

The lack of coordination between institutions in the public procurement system concerning the legal framework's coherence in the implementation was identified by giving different opinions on the same problem by the public procurement system institutions. It was recognised through the decisions of the Commission for the Protection of Rights in Public Procurement Procedures, the MFSW's views of interpreting specific provisions of the Law, and the contracting authorities' views in tender documents changes or clarifications. Moreover, the final views on specific issues in practice are given in the Administrative Court judgments. It is necessary to improve policy-making, coordination, and consultation mechanisms to establish coherence in the public procurement system's strategic direction

and ensure the adoption of well-founded decisions and reform initiatives to address the issue.

Achieving an efficient public procurement system, PPP, and control implies strong cooperation of four key institutions (MFSW, Commission, Directorate for Inspection and Administrative Court) and coordinated action with institutions indirectly involved in public procurement policy within their powers. It should ensure uniform application of regulations governing specific issues in public procurement and PPPs and respect for the participants' rights in the public procurement procedure. Activities aimed at achieving the operational objective include organising consultations/briefings to harmonise the positions of the MFSW, the Commission, and the Directorate for Inspection Affairs regarding the new Law's application. The Administrative Court judges' support and expertise are also essential to consider potential implementation problems. These meetings would be semi-annual, and their conclusions would be presented as expert instructions published on the MFSW website.²⁴

Significant activity implies improving cooperation and information exchange of key institutions in the public procurement system with NGOs by organising the Ministry's "Open Door Days" with the NGO sector. It would involve NGO representatives in the decision-making process in the public procurement system and improve information exchange.

It is also essential to coordinate domestic institutions with relevant institutions in the region and experts from relevant international organisations to objectively monitor and review the current situation, meet obligations arising from the EU accession process, and find possible ways to improve the system.

Operating objective 3: Improving electronic public procurement platform, which will require the support and engagement of the Ministry, contracting authorities, business entities and other relevant stakeholders in the system

Although they exist in the system, some CEJN functionalities have not been put into operation yet. *E-Auction* is a repetitive process that includes an electronic system for submitting new prices, revised downwards, and/or new values regarding some bid elements after initial bid evaluation. It enables their ranking using automatic evaluation methods. *E-Catalogue* is an electronic document created by business entities that presents their activities and/or products. These functions will be used in the future, depending on market trends and the CEJN volume of use.

In the upcoming period, it is planned to upgrade the e-system and introduce the following functionalities:

- electronic preparation and submission of a business entity's statement;
- harmonisation of CEJN and implementing legislation in reporting on procurements subject to exemption from the Law application;
- improving the reporting functionality for the Public Procurement Policy Directorate's needs, enabling system administrators to manage data better;

²⁴ <http://www.ujn.gov.me/akti-za-primjenu/> (Please note that these documents are available only in Montenegrin language)

- the System monetisation - introducing the electronic public procurement system's self-sustainability;
- e-Ordering - an electronic ordering system based on a concluded contract or framework agreement;
- e-Invoicing.

In the forthcoming period, it will be necessary to conduct training for all system users, which will require strengthening the MFSW administrative capacity as a system administrator. An initial awareness-raising campaign was conducted, and practical (printed and electronic) instructions for using CEJN were developed. The public procurement process's complete digitalisation will also require harmonising the implementing legislation to be compatible with the electronic public procurement system. It will be necessary to connect it with other electronic platforms in the country, primarily with records kept *ex officio*, to implement the system successfully.

As indicated, a functional and generally available electronic public procurement system will contribute to achieving the Strategy's following operational objectives:

- Broader implementation of framework agreements, centralised public procurement, green and sustainable procurement and encouraging the SMEs participation in public procurement procedures;
- Professionalisation and improving contracting authorities and other participants' operational capacities in the public procurement procedure to properly apply regulations in this area.

Operating objective 4: Fostering the implementation of framework agreements, centralised public procurement, green and sustainable procurement; promotion of SME participation in public procurement procedures with particular emphasis on increasing the involvement of women-led businesses in public procurement and public procurement contracts

Activities that will increase the framework agreement usage in the upcoming period primarily relate to the contracting authorities' training and awareness-raising of this public procurement contracts awarding mechanism's benefits. Training is conducted by trainers from the MFSW and foreign lecturers to transfer best practices from countries where the framework agreement is applied to a greater extent and higher level.

The period since the introduction of centralised procurement of specific goods and services is relatively short, i.e. since 2018. Therefore, a comprehensive analysis of the centralisation effects was not made to indicate its possible shortcomings and savings achieved in a given period. This analysis should be carried out in cooperation with the body responsible for conducting these procedures and the contracting authorities involved in centralised procurement.

In this sense, it is necessary to consider further improving the public procurement centralisation process, expanding or more efficient implementation of these procedures. Public procurement centralisation aims to reduce procurement costs at the central and local levels for typical goods, services and works, improve the public procurement system

efficiency and strengthen competitiveness. (In addition to centralised procurement conducted for the central government needs, the Capital of Podgorica also implements central procurement for its services and bodies).

The objective of the green procurement policy is to encourage contracting authorities to apply life cycle costs in public procurement procedures and provide more environmentally friendly energy-efficient goods following current trends and standards (green procurement, socially responsible procurement, innovative procurement, electronic procurement, SME support, etc.). In that way, it will contribute to the public procurement system's sustainability and the whole economy.

Meeting the environmental protection requirements, social criteria, and the persons with disabilities' rights requires the cooperation of key stakeholders and the application of measures contributing to the realisation of these criteria, and ultimately the economy and society's development and sustainability.

Raising awareness and promoting green and sustainable procurement requires the education of public procurement procedures' participants (from management to public procurement officers) and producing and distributing specialised publications on this topic. It will be necessary to define roles and responsibilities within government institutions to promote and implement the policy. Accordingly, when executing public contracts, contracting authorities should take appropriate measures to ensure that business entities comply with their obligations in environmental protection, social and labour law, including collective agreements, under the law and ratified international conventions on the environment and social and labour law. Administration bodies should take responsibility and take into account the environmental impact of their activities.

For the public procurement system's efficiency and credibility, it is crucial to offer the private sector a highly competitive, reliable, and attractive market for domestic and foreign firms. Our knowledge and understanding of how the private sector views the public market compared to the private market is insufficient and needs improvement. It can be achieved by organising a forum to establish a dialogue with the private sector and identify obstacles and challenges for participation in the public procurement market, both domestic and foreign. Ongoing training should include SME representatives to encourage and increase their capacity to participate in public procurement, especially in light of the system's digitalisation and the opportunities offered by the PPL to increase the involvement of SMEs in public procurement procedures. The material for this type of training should stem from analysing the economic entities' ability to participate and respond appropriately to the conditions applicable to public tenders and contracts. This analysis can be conducted through a questionnaire or survey that would include a wide range of questions from public procurement practice. Greater SMEs' participation in public procurement procedures will also ensure greater competitiveness, i.e. the unsatisfactory number of bids per procedure in the previous period.

The objectives are to strengthen the public sector market's competitiveness, capacity and attractiveness through specific activities, such as:

- Establishing a forum for consultation and dialogue with the private sector;

- Developing guidelines and documentation for private sector training on how to do business with the public sector.

Operating Objective 5: Improving legal protection before the Commission for the Protection of Rights in Public Procurement Procedures

In the upcoming period, activities will be undertaken to harmonise further and strengthen the system for reviewing and deciding on appeals, focusing on legal certainty, transparency, coherence and cost-effectiveness of appeal procedures, and the service's overall capacity.

Establishing a consistent practice in deciding appeals will create a legal practice that contracting authorities and bidders can refer to in future appeal procedures. It will make the system more predictable and reduce the time for making decisions on appeals. Also, the CEJN establishment will increase the transparency and accessibility of the appeal system to participants in public procurement procedures. The capacity of the Commission will be further enhanced to respond effectively to the challenges posed by the recent public procurement system's legislation and electronic reform to the system participants.

The creation of a new electronic system and the application of a new complete electronic approach in the appeal process will significantly contribute to the security of the law protection process. It will also provide the necessary efficiency in handling appeals by both contracting authorities and other actors in the legal protection system.

Operating objective 6: Strengthening the institutional and operational capacities of key stakeholders in the system to support the implementation of the legal framework for PPP effectively

The strategy for PPP development in Montenegro is presented in a separate Strategy's chapter.

4. Priority areas for PPP

Previous strategic documents concerning PPP

Some sectoral legislation recognised PPP in the previous regulatory framework in Montenegro. Still, no umbrella regulation was established to address all issues relevant to the realisation of investments through this investment form. As a concept of the private sector and public services cooperation, PPP in Montenegro was regulated by the Law on Concessions (OGM 08/09) that determined granting concessions in general terms, and partly by the Law on Private Sector's Participation in Public Services ("Official Gazette of the Republic of Montenegro (OGRM) 30/02). Other sectoral laws, such as the Law on Public Utilities, the Law on Waters, the Law on Forests, Law on Geological Research, etc., referred to the application of this regulation. A key segment of cooperation through private sector initiatives was subject to regulation through the Law on Private Sector's Participation in Public Services. This law referred to the contractual relationship segments through raising the private sector participation level within areas of general importance for the public services quality. The application of the Law covered all public institution levels. In contrast,

the application areas included the public services provided relative to different individual sectors through joint investment forms, i.e. the private sector's involvement in the public services. In essence, the private sector and public institutions cooperation in previous decades has traditionally reduced to concession contracting in exploiting mineral resources, i.e. natural resources. It was subject to the Law on Concessions and significantly less contractual relations in some forms of joint investment or ceding specific jobs' realisation to the private sector.

Regulatory inconsistency, non-compliance with EU standards, and a lack of regulations governing this area clearly led to new steps in creating a single regulatory framework through the Public-Private Partnership Law.

The Strategy context – key objectives and expectations

Montenegro is continuously focused on improving public services quality and implementing public works, i.e., public infrastructure improvement. However, many investment requirements also require relevant budget expenditures. Also, during the fiscal constraints period, when the pressure on the public sector to reduce administrative capacity and overall public spending is exceptionally high, the PPP policy in Montenegro was created to provide additional capacity. Moreover, the PPP policy was created to strengthen public finances control and implement new projects in the fiscal part while maintaining the framework and limits in the public borrowing segment.

Considering the crisis period effects and consequently the growth in public debt (up to 80% of Montenegro's GDP) and the budget deficit, the question of further forms of infrastructure projects financing arises. The strategic document's priority is to provide a development basis for opening the space for PPP projects through investments in sectors where the state has traditionally been the ultimate service provider. When referring to this contract model, it is essential to emphasise that Montenegro's private partner, especially in large industries, brings new investment and improves Montenegro's economic image providing a multiplication effect on other related industries.

Moreover, the additional benefit of this contractual model is the transfer and division of certain risks from the state to the private partner, especially in the phases of implementing the investment venture. This benefit refers to better risk distribution. The private sector most often assumes financing and construction risks and, depending on the project type, availability risk and/or demand risk. International financial institutions and European banks (EBRD, EIB) often encourage different PPP forms. At the same time, the World Bank provides them with active support through its Public-Private Infrastructure Advisory Mechanism (PPIAF).

The strategic objective in implementing this document is to ensure strong, long-term sustainable economic development through the PPP application to enable Montenegro's economy to be more competitive and a higher level of public services. By acting together to attract and encourage investment and raise Montenegro's economic competitiveness, it seeks to ensure that Montenegro becomes a highly competitive country in the region through growth and knowledge-based development, high value-added products and

services, which will contribute to new employment. The new infrastructure development and the improvement of the existing one can be ensured through greater involvement of private capital and greater efficiency with implementation forms based on PPP.

In the PPP model application, priority is given to projects with higher value and lower costs than the corresponding traditional projects during the project life cycle.

Following the development plans, while establishing the basis for creating new PPP projects, the system institutions included in broad cross-sectoral activities will foresee priority infrastructure needs in the next period. Accordingly, they will determine the PPP policy with the specification of projects infrastructure and/or improvement of public services, i.e. public works.

4.1 Legislative framework for PPP

Activities preceding the legislative framework adoption

The Public-Private Partnership Law provides a systematic regulation of PPP policy as a new investment policy instrument in Montenegro. To better develop the Law provisions and apply best practices from the European Union and the region, the text of the Law was the subject of consultations with IFC - World Bank, EPEC - European PPP Expertise Centre, and the International Monetary Fund (IMF). The MFSW updated the Draft Law text according to the given suggestions to obtain the European Commission's positive opinion. Moreover, the Public-Private Partnership Law is harmonised with the recommendations and positions of the association of employers in Montenegro - the Chamber of Commerce of Montenegro, the Employers Union of Montenegro, the American Chamber of Commerce in Montenegro and the Council of Foreign Investors in Montenegro. The Law further regulates the treatment of public contracts, which represent the relationship between a private and a public partner in a joint project. The new mechanism aims to initiate investments to improve the new and build and modernise the existing infrastructure. It primarily refers to the industries necessary for Montenegro's further economic development: transport, health, education, and communal infrastructure.

Public-Private Partnership Law

The concept of the new Public-Private Partnership Law (OGM 73/19) brings a systematic approach to implementing PPP projects. Under directives, public contracting authorities, i.e. central and local government bodies and business entities founded by the state, can implement these projects in the public procurement system. It creates the same basis for concluding the contract, with the public partner's obligation to include all essential aspects in selecting the project implementation model in the feasibility analysis. Therefore, the regulation stipulates the obligatory detailed feasibility analysis with the mandatory elements based on the EU member states' experience, particularly regarding the project's economic feasibility, including public interest aspects. The Law provides clear procedures for initiating a PPP procedure, from the idea through the project proposal to the final project proposal's approval.

The law provides for “small-value PPP projects” (under the Directive, a project with a value equal to or less than 5,000,000 euros excluding VAT) to simplify the contract concluding for these projects. The small contract model allows for a more efficient conclusion of these contracts, reducing administrative costs for their initiation. Moreover, the Law brings a novelty in the public contracts system, i.e. a self-initiated proposal. It means that the economy’s initiative, although not recognised by the implementation plan by the public, can be submitted and considered a project proposal with the obligatory additional analysis concerning public interest according to the proposal. It is essential to show our government’s readiness, as an open system, to offer potential partners knowing market trends and economic conditions the opportunity to recognise the investment space.

In choosing a private partner, the Law relies on the procedures established by the Public Procurement Law, which are already known to the private sector. It is essential to emphasise that the new Public Procurement Law set these procedures the same as in the EU member states, allowing the more straightforward application. The Law also contains provisions concerning contract concluding with a private partner, those related to the contract termination, amendment to the contract, and settlement of disputes from the contract, which is an important prerequisite for creating both parties’ legal certainty.

In addition to the project proposer - the contracting authority, the MFSW and the Investment Agency of Montenegro monitor the entire process of contract concluding. If the project subject additionally relies on state property regulations, the Protector of Property and Legal Interests (Ombudsman) is also included in the monitoring. The above points to the public side’s positioning in these contracts and protecting public interests.

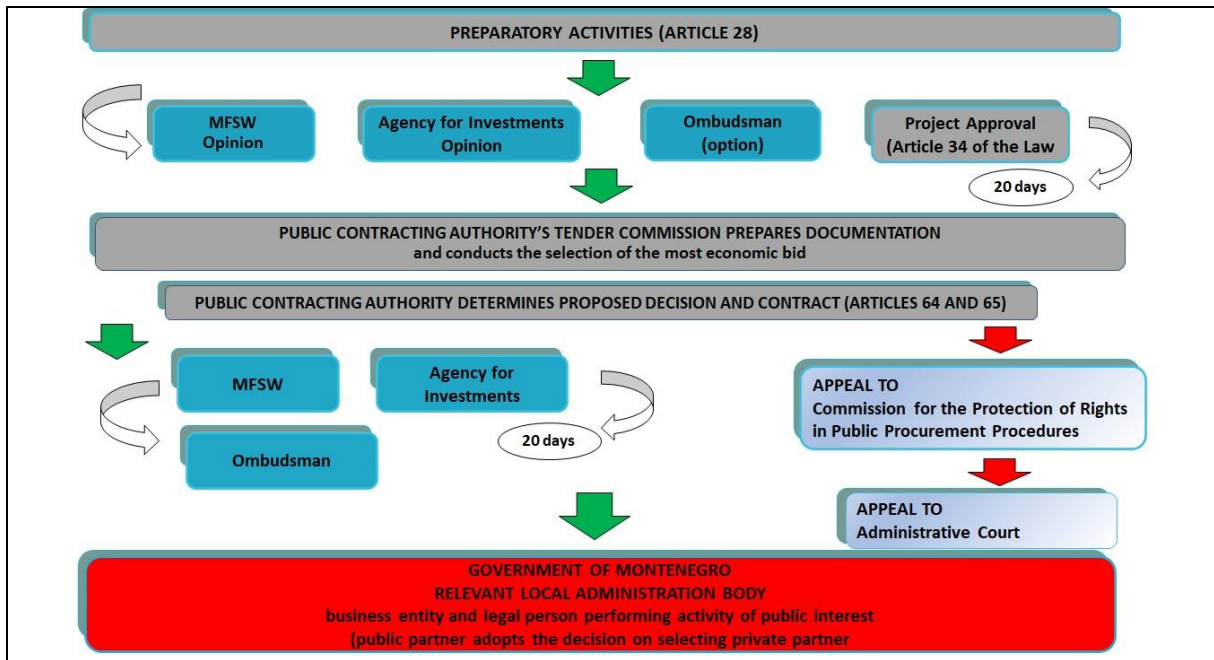
The contracts’ complexity is reflected in their long-term character, emphasising supervision and monitoring, regulated in this manner by the Law for the first time. It is determined by semi-annual reports of public contracting authorities, the Investment Agency and the Tax Administration. It is an essential prerequisite for good project implementation, especially concerning the involvement of all crucial stakeholders from the public side, which the private partner communicates with daily during the project implementation.

Based on best international practice, a PPP project life cycle is organised in phases:

- I: identifying PPP project and feasibility study,
- II: preparing feasibility analysis, draft contract, preparing tender documentation;
- III: implementing the private partner selection procedure and decision-making on the selection of the most favourable bid,
- IV: PPP contract management and implementation monitoring.

PPP project scheme in Montenegro:

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In 2020, in preparing for the implementation of the Public-Private Partnership Law, in cooperation with the Investment Agency of Montenegro and with the support of SIGMA, the MFSW drafted implementing legislation related to the preparation of feasibility analysis in PPP projects, methodologies for preparing various analysis aspects and/or keeping and creating registers of projects and contracts as an important segment of transparency in this process.

Implementing legislation covering acts is available on the web portals of the Agency and the MFSW - Directorate for Public Procurement Policy. These include **Rulebook on the feasibility Analysis Form for PPP** (OGM 59/20 of 20 June 2020), **Rulebook on the Report Form on Implementing the PPP Contract** (OGM 59/20), **Rulebook on the Content and Manner of Keeping the PPP Project Proposals Register** (OGM 59/20), **Rulebook on the Content of the PPP Contracts Register** (OGM 059/20), **Rulebook on the Methodology for Estimating the Obtained Value Compared to Invested Funds** (OGM 059/20), and **Rulebook on the Content of the Statement on the Conflict of Interest Absence of the Tender Commission Members** (OGM 58/20).

4.2 Institutional framework for PPP

It is essential that the Law also adopted a new institutional framework for investment policy and monitoring the development projects implementation - the Investment Agency of Montenegro. The new body included the work of the Montenegrin Investment Promotion Agency (MIPA), the Secretariat for Development Projects, and the Privatisation Council's operational units. It continued the concept of creating centralised Government bodies that will unite several bodies as set by the new Law on State Administration.

Until the new Public-Private Partnership Law adoption, the institutional arrangement was set so that several bodies coordinate the investment policy affairs concerning investment promotion, the realisation of investments of development importance, privatisation, PPP,

and concessions for natural resources exploitation. Such an arrangement did not enable a clear division of competencies but their endless combination and, in the end, a vague message to the interested investor.

By creating new institutional preconditions, the general public will receive more information on potential and concluded PPP projects, primarily through the publication of the Register of Contracts provided by the Law. It will make project implementation more efficient through clearly defined roles and responsibilities, precisely defined project preparation and performance, and transparent control through the register.

The institutional framework in the field of PPP consists of:

- Investment Agency of Montenegro;
- MFSW - Directorate for Public Procurement Policy;
- Commission for Protection of Rights in Public Procurement Procedures.

The Investment Agency of Montenegro institutionally monitors the procedures for awarding contracts and compliance with concluded contractual rights and obligations through legal provisions that more clearly define the projects reporting and monitoring. In addition to the legal competencies concerning PPP, as a single body, the Investment Agency of Montenegro also includes investment promotion, development projects monitoring and activities concerning economic citizenship.

Including best international practices in this area, Montenegro has received a new investment policy. The mentioned Law has improved the PPP policy and Montenegro's investment policy in general by establishing the Agency. It is especially true concerning project success monitoring and implementation and ultimately monitoring the compliance with obligations by both private and public partners.

The Agency's main objective is to promote Montenegro as an attractive investment destination, proactively attract and implement investment projects, monitor and control concluded contracts and improve the Montenegrin economy's competitiveness globally. The primary task is to provide necessary assistance and support to foreign and domestic investors, facilitate the investments' realisation and enable the same investment projects to exploit their full business potential in Montenegro. Individual objectives include increasing the investment projects number, creating new jobs, and supporting the investment environment improving. The Agency's priority activities are a systematised approach to encouraging and monitoring the investment's realisation, promoting all investment models in Montenegro, creating a database of planned, contracted and realised investments, and monitoring and controlling concluded investment contracts. The Agency's competence implies a systemic and operational role in implementing measures and policies that increase the Montenegrin economy's competitiveness through investment incentives (privatisation, foreign direct investments, and PPP and concessions) and monitoring and controlling concluded investment agreements. It also implies support to business environment improvement and a systematic approach to managing data and information on potential and realised investments.

Under legal provisions, the MFSW supervises the implementation of the Law. Its institutional position as a policymaker and regulatory framework also implies apparent involvement in the project approval process, i.e. contract award under the fiscal policy, following the PPP project proposals fiscal effects, fiscal availability, sustainability and feasibility, i.e. direct and indirect fiscal effects and risks.

The new legislative and institutional framework regulated the areas of PPP and concessions and was fully harmonized with EU directives. In the future, it is essential to strengthen coordination and cooperation between the competent authorities – the MFSW and the Investment Agency – and especially between the national and local levels in all PPP contracts implementation phases.

Register of Contracts

The electronic database lack hampered access to previously concluded contracts with the PPP project form and legal framework. Concerning concessions, the register updated by the Concessions Commission contained only information on the concession subject, duration and names of concedent and concessionaire. As previously mentioned, concession agreements in Montenegro mainly were based on natural resource exploitation. Establishing an electronic database of concluded PPP contracts is an essential precondition for successfully implementing projects in this area by keeping the Register of Contracts established by the Law and more closely defined and regulated with the implementing legislation. Creating a Register of Contracts, both for previously concluded and new contracts, is important in improving transparency.

The procedures of the concession policy in Montenegro, which was based exclusively on natural resource exploitation concessions, were expanded following the EU directive, which brought new solutions and improved procedures. Concession procedures have been extended to works concessions and service concessions, in addition to the traditional notion of concessions in Montenegro - natural resource concessions.

PPP - Situation Analysis

For many years, developed market economies have used PPPs as a more efficient and effective way of management in providing public services and building infrastructure in various fields. In the EU countries, this form of partnership's importance is indisputable because it brings an increased quality of buildings, reduced total maintenance costs, and the current borrowing relief of the government as an investor. Therefore, this financing model in project implementation is an alternative in providing preconditions and financial resources compared to, e.g. direct credit borrowing, which is essentially related to the country's fiscal stability and its own credit rating.

PPP – Previous Experience

Montenegro's experience concerning PPP projects in previous years is limited. The concession policy was based on natural resources research and exploitation and shallow in

the part of concessions focused on public services and public works within the meaning of the new Public-Private Partnership Law. In this part, we highlight the experience of **constructing a student hostel in Podgorica**. The PPP subject was hostel financing, design, construction, furnishing, hostel management and providing accommodation services for at least 380 students at least 10 months a year during 30 years. The works subject to PPP partnership were conducted according to the main design and the Law on Spatial Planning and Construction (OGM 51/08, 34/11, 47/11).

Concerning the PPP initiative, the most important thing is to mention the started procedure of granting **Airports of Montenegro** concession. The award procedure was initiated under the Law on Concessions (OGM 08/09). The Ministry of Transport and Maritime Affairs prepared a Concession Act for granting concessions for using Tivat and Podgorica airports by publishing a public call for the first phase of the procedure to select the best bidder competitively. Information concerning the project is available on the portal <https://www.gov.me/mki/saobracaj/vazdusni-saobracaj/koncesije-aerodroma-crne-gore>.

The intention is to provide the Airport's necessary valuation in a long-term sustainable way by granting a concession, with effects aimed at further economic development and national resources management improvement. To implement the project using best international practices and to apply all norms and principles based on the EU countries experience and regulations, the Government of Montenegro provided expert support from the International Finance Corporation (IFC). Under the Law, the Concession' Act text was placed for a public hearing on 6 August 2018 to maximize the positive outcomes of this procedure through comments, opinions, remarks and suggestions of the public and other stakeholders and provide a better and more concise document. Due to the overall national and global situation, the procedure is still without an epilogue.

4.3 Education

The PPP area is a new public institutions policy with traditionally little experience in this part of the cooperation between the private and public sector due to past different political and social order. Professional training and development is the most important form of improving the human resources of all PPP system participants. The MFSW intends to provide international expertise for all approval process phases of a PPP.

At the MFSW request, the EBRD launched Phase 1 of the Support Project to the Ministry of Finance for PPP and Concessions Policy in Montenegro in 2019 to assist the Ministry in building and strengthening PPP capacity in the public sector, including reviewing and improving the existing institutional structure and providing training. *Phase 1* was successfully completed in the same year. The Ministry requested further EBRD technical assistance on the implementation of the new legislation. As the 2019 Public-Private Partnership Law is entirely new, the MFSW needs support in strengthening the capacity and capability of officials working on PPPs and in connection with PPP projects. Another challenge is the limited human resources of Montenegrin authorities and their limited experience (because the scope of PPP projects is still relatively low).

The EBRD has designed the *Phase 2* Technical Cooperation Project (“the Project”) to address these challenges. The Project will also include active participation in PPP regulatory policies, assisting the MFSW by giving various recommendations based on summaries of practices and relevant measures and adjustments introduced or applied in other countries, drafting contract forms for the concession sector and PPP sector without a concession, discussion of main terms and templates, and preparing training materials (presentations, brochures, etc.). It will also include conducting two-day training for up to 20 public servants who work on PPP training and preparing PPP projects, which should cover PPP suitability assessment, PPP contracts preparation, relevant financial budgets, tender documentation, and financing contracts conclusion. The project will be implemented in 2021, focusing on further strengthening the PPP projects creation.

The public should be introduced with PPP to bring this area closer to the citizens. It is necessary to present the legislation in this area and provide adequate professional information through manuals. In that part, the MFSW provided preparation of manuals and instructions for implementing the Public-Private Partnership Law through the project “Capacity Building in the Public Procurement and State Aid System within the European Commission’s support implemented through IPA funding”. After preparing these materials, following the other projects timeline, the MFSW will continue essential activities on staff training for the PPP implementation to educate experts in drafting feasibility studies and projects necessary for economic development. More active research of related PPP projects of other countries is also helpful for a better PPP understanding.

Assistance in the fiscal analyses application to PPP projects is conducted through the MFSW activities with the International Monetary Fund (IMF). In that part, training for using advanced fiscal analysis systems for PPP initiatives was held during 2019/2020. An important segment of the MFSW competence is approving PPP projects.

5. The Strategy Reporting and Evaluation

To implement the Strategy for Improving Public Procurement Policy and PPP 2021-2025 and the Action Plan for the Implementing the Strategy, the Government will, during their adoption, simultaneously adopt a Decision on Establishing the Coordination Body for Continual Monitoring of the Strategy’s Implementation. The Coordinating Body will primarily consist of the representatives of MFSW, the Commission for Protection of Rights in Public Procurement, Directorate for Inspection, Directorate for Property, other relevant bodies, NGO, the business sector, and other stakeholders involved in its implementation. The Head of the Public Procurement Policy Directorate will chair the Coordinating Body.

The Action Plans that will be adopted during the Strategy implementation period are adopted to define activities and measures for the Strategy’s implementation and be its integral part. The Action Plan states the strategic objective, operating objectives, activities for implementing operating objectives, activity holders, deadlines and performance indicators for implementing the Strategy’s activities. If necessary, Action Plans are subject to revision, according to the decisions and timeline determined by the Coordinating Body. The Coordination Body will define the next Action Plans that the Government will adopt.

During the year, the Coordinating Body will hold meetings with a pre-prepared agenda. It will monitor the strategic and operational objectives' impact. By the end of the year, it will prepare an Annual Report on the Strategy and Action Plan Implementation to assess the annual strategic and operating objective's performance. The Annual Report will contain elements that enable direct results monitoring in the Strategy's implementation and real changes produced by the individual activities implementation. The Coordinating Body will submit the Annual Report to the Government for adoption and make it publicly available on the Public Procurement Policy Directorate's website. If necessary, reporting and submission of reports to the Government can be made semi-annually.

In the last quarter of 2025, the Coordinating Body will prepare a closing report on the Strategy's implementation. The Report will evaluate the strategic and operational objectives set by the Strategy during implementation, evaluate any unfulfilled objectives, and determine their relevance for drafting a new strategic document.

During the Strategy's implementation, communication (Public Procurement Forum) will be provided with contracting authorities, business entities, trade unions and NGOs through organized fora, round tables and public hearings. The aim is to discuss the public procurement system and PPP, and its institutional, legislative and other aspects. In that sense, all stakeholders will be invited to participate in implementing the mentioned activities. We anticipate this way of communication (Public Procurement Forum) semi-annually.

It will monitor the results to be achieved and measure the fulfilment of indicators listed in the Strategy's Action Plan. In case of delay or non-fulfilment of the indicators listed in the Strategy, the Coordinating Body will propose specific measures to overcome them and determine the appropriate changes in the AP.

Finally, the strategic and operational objectives' meeting will be evaluated in the last quarter of 2025. The person who coordinated the Strategy's implementation will be appointed as the head of the evaluation. The evaluation reference group, which the MFSW will establish in the last quarter of 2025, will consist of the representatives of institutions and other stakeholders who did not participate in the strategic document's development and implementation.

6. Financial effects of the Strategy and the Action Plan

The financial effects depend on the financial assessment for each individual Action Plan measure. They are tied to the Budget of Montenegro for 2021 and 2022.

Funds for the implementing activities from the Action Plan that will be financed from the Budget are planned in the following positions: Public procurement system regulation - Functional classification 0112, economic classification 412-7 - Other fees; 413-3 - Material for a special purpose; 414-7 - Consultancy services, projects and studies; 414-8 - Professional

development services and 414-9 - Other services. The Action Plan contains the amounts planned for individual activities.

In addition to the abovementioned, the Action Plan envisages activities financed by international organisations funds through current or planned technical assistance projects. Funds for implementing individual activities of existing projects have been defined. The applications for future actions will be made in the coming period after knowing the exact amount for each.

The total funds envisaged by the Action Plan for implementing the Strategy for the period half of 2021 - end of 2022 amount to 439,900.00 euros. Of this amount, 30,900.00 euros are from the budget, while 409,000.00 euros is planned to be provided through international sources of financing. As the next four-year period foresees an increase in budget funds of 10% per year, the total amount of funds allocated from the state budget at the end of the implementation of the Strategy is estimated at around 109,140.00 euros.