

Stefan Komazec¹, Ivan Todorović², Đorđe Krivokapić³, Ondrej Jaško⁴
^{1,2,3,4} University of Belgrade, Faculty of Organizational Sciences

Capacities of local self-governments in Serbia for compliance with EU directives on public procurement

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The Republic of Serbia is facing major challenges in the process of harmonization of its public procurement regulation with the current EU regulations. By signing the Stabilization and Association Agreement with the EU, Serbia devoted itself to harmonizing national legislation in this area with the EU *acquis* (*acquiscommunautaire*), as well as to applying these rules. The aim of this study is to determine the ability of local self-governments, as one of the most important parts of the state apparatus, to carry out procurement procedures in accordance with the rules of the European Union. For this purpose, a research was conducted in several pilot municipalities of different sizes and development levels. As a result, the research determined that local self-governments are to a large extent able to carry out procurement procedures in accordance to the rules defined by the EU Directives, but there is a need for further capacity building of the personnel, organization, and especially of the technical capacity, in order to ensure effective and transparent public procurements. The limitation of this study is the size of research sample, but also a very short period for the implementation of the new Serbian Law on Public Procurement. In the end of the study conclusions were made which can be applied in the practice of public procurement procedures of local self-governments, and therefore they are extremely useful for state authorities of the Republic of Serbia, notably for the Public procurement office.

Keywords: Public procurement, Local self-governments, municipalities, EU regulations, EU laws, capacity

1. Introduction

The process of European integrations affects to some extent all entities that are part of the economic system of a country that is willing to become a full member of the European Union. Through the mentioned process most areas should be harmonized with the EU regulations. At the same time, through various trade arrangements, the EU rules area affects non-member states (Bock, 1993). The European Union's strategies for strengthening its regulatory impact on non-member states represent the main topic of research dealing with the expansion of the EU to the countries of Central and Eastern Europe (Sedelmeier, 2006).

One of the fundamental characteristics of the European Union is a single market among the Member States, which guarantees the free movement of goods, services, labour and capital (Nielsen & Hansen, 2001). A particularly important area is public procurement because future member states have to adapt their regulations to the legal framework of the EU, which aims to create a fully open market for public procurement among member countries (Arrowsmith, 2009). The term public procurement refers to a situation in which a public body procures necessary goods and services by entering into contracts with other entities (Arrowsmith, Linarelli & Wallace, 2000). The European Union is the largest market for public procurement in the world today, with a total value of public procurement contracts of around 1.4 billion euros per year (Trybus, 2007).

An extremely important part of the state apparatus are local self-governments, primarily due to their role in organizing the functioning of municipalities, cities or entire regions. Also, depending on the level of decentralization of the state, local self-governments' procurement can significantly participate in the total value of all public procurement. For example, in Germany, the value of public procurement carried out by local self-

governments represents over 50% of all public procurement (Eßig, Dorobek, Glas, & Leuger, 2009). In Serbia, the importance of local self-governments is particularly evident in a situation where overall unemployment rate is 24.1% (Statistical Office of the Republic of Serbia, 2013), and when in many underdeveloped municipalities, local self-governments are the largest employers and purchasers. Compliance with the European Union principles of public procurement should contribute to the development of municipalities through the allocation of public works and procurement of goods based on economic criteria. In developed countries, the level of organization of public procurement in the local government is such that the states use their purchasing power to promote sustainable development (Erdmenger, 2003). This fact proves that a whole variety of objectives can be achieved with a proper regulation of public procurement at the local level.

The legal framework of the European Union is the result of mutual experience of member states in regulating certain areas and as such can in advance provide solutions to states seeking accession to the EU.

2. Legal Framework

Since the '70s, public procurement in the European Union, then European Economic Community, was regulated by certain Directives, in order to solve problems of protectionism and discrimination that threatened free competition and form of a single European market (Gelderman, Ghijsen & Brugman, 2006). The Directive was to ensure transparency, but also define the rules for the entire procurement process, such as the publications in which the procurement are to be disclosed, objective specification, the types of public procurement procedures and timelines (Heijboer & Telgen, 2002). Since their introduction, the Directives have to this day been many times adapted to the circumstances through various amendments (Arrowsmith, 2005). For this paperwork, the most important is the Directive on coordination of procedures for the award of public contracts for works, goods and services (2004/18/EC), which was adopted on March 31st, 2004, by the European Parliament and of the Council of the European Union. This Directive applies to public procurement procedures within the public sector (Public Sector Directive), and is also called "the classic" or "the traditional" Directive.

It is important to emphasize that the aim of the Directives is to create an open single market for public procurement in the EU, but not to achieve the best performance of public procurement among the member states, i.e. ensure the compliance with the principle of "value for money" (Arrowsmith, 2005). This, as well as many other aspects of public procurement, remains in the competence of the member states that are supposed to regulate their own public procurement through national legislation. However, the liberty that member states had to regulate their own procurement has significantly decreased over the years (Arrowsmith, 2006). Thus, although the primary objective of the Directives is not to achieve efficiency in public procurement, the authors point out that the very essence of the Directives, i.e. the basic principles that should be followed in the implementation of public procurement, lead to an increase in their efficiency (Martín, 1996).

The new Serbian Law on Public Procurement entered into force on January 6th, 2013, and has been applicable as of April 1st, 2013. The Joint report to the European parliament and the Council on Serbia's progress in achieving the necessary degree of compliance with the membership criteria, published on April 22nd, 2013, notes that significant and positive development was the adoption of the new Law on Public Procurement at the end of 2012. The report states that this Law further aligns the Serbian legislation with the *acquis* and generally improves the efficiency of public procurement procedures. The report concludes that the new Law should result in more transparent and efficient procurement procedures, and increased competition.

Generally speaking, it is safe to say that the new Law on Public Procurement is in its essence in accordance with the EU Directives. This is certainly supported by the Joint report to the European parliament and the Council. Also, the principles of ensuring competition, equity of bidders and transparency which are key principles of the EU Directives, are defined by the Law on Public Procurement as the principles of public procurement and developed by the various provisions of the Law. The types of public procurement procedures have been expanded by the new Law on Public Procurement and they now completely comply with the types of procedures prescribed in the Directives. Bearing this in mind, it can be concluded that the legal framework for public procurement in Serbia is adjusted to the EU legal framework, and that a further development of this research can be reduced to determining the capacity of local self-governments to implement the new Law on Public Procurement of the Republic of Serbia.



3. Methodology

The methodology of data collection in this study was a poll where the questionnaire that was used as a tool for data collection was completed by employees of local authorities which were considered competent for public procurement.

The sample used in the study was based on a study entitled “Methodology for analysis of the impact of the EU accession of Serbia to the local governments in the area of allocation and control of state aid” conducted by the Standing Conference of Towns and Municipalities (SCTM). According to the study, all municipalities in Serbia are classified by development into one of 5 groups and from each group at least one pilot municipalities was selected, so the sample consisted of the following municipalities: 1) Zrenjanin (group I), 2) Uzice (group I), 3) Vranje (Group II); 4) Paracin (group III), 5) Razanj (group IV), 6) Babusnica (devastated areas).

The defined sample contains municipalities of diverse municipal development, which was the primary criterion for determining the sample. All potential additional criteria that could have an impact on the field of public procurement, and which could lead to differences in the municipalities, are covered by the level of development as a composite criterion.

4. Capacities of local self-government for implementing public procurements

In further text several different aspects related to the capacities of local self-governments for implementing public procurements will be analyzed.

Human resource capacities

In local self-governments, one of the main problems for the implementation of the Law on Public Procurement, and therefore for the implementation of the EU Directive are human resource capacities. Without appropriate personnel it is impossible to ensure a transparent and efficient public procurement (Sakane, 2009).

The first problem is the lack of public procurement officers, and the most unfavorable situation is in the municipalities where there are no employees who passed the exam for public procurement officers. The following Figure shows the situation in municipalities.

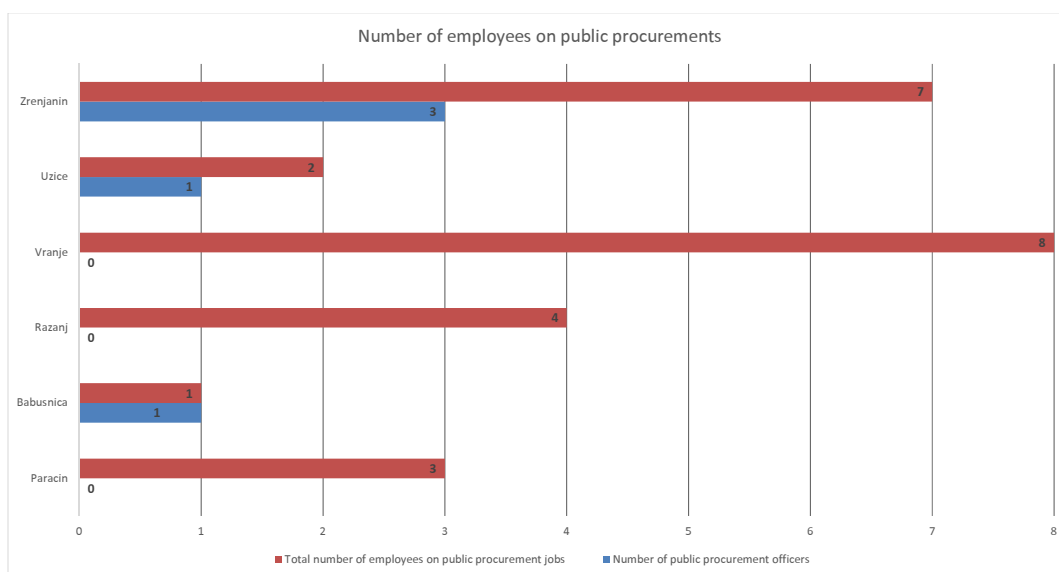


Figure 1: Employees as public procurements and public procurement officers

Municipalities that do not have any certified public procurement officers are not yet able to meet the legal provision that requires 1 public procurement officer per each 21 million dinars worth of procurement (Article 134, paragraph 1, of the Law on public procurement). The research determined that the number of public procurement officers does not relate to the total number of employees, or the development level of the municipality, but rather indicates the lack of a strategy regarding employment and training of personnel in the field of public procurement. As an illustration of such a situation, an example of a municipality could be considered in which officers who have passed the exam do not work in an organizational unit for public procurement while some of the employees in this unit did not pass the exam. None of the analyzed municipalities have a strategy for employee selection and training of persons working in the field of public procurement.

The subject of analysis was the number of employees and their workload in organizational units that are competent for public procurement. In the following Figure we can clearly see the differences in the workload of employees competent for public procurement, expressed in the number of procedures that are carried out during the year.

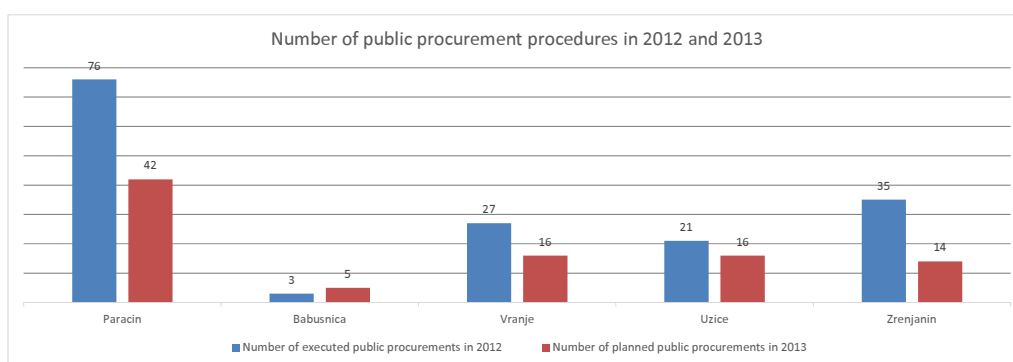


Figure 2: Number of public procurement procedures for 2012 and 2013

Figure 3 clearly shows that the number of procedures per employee vary from 2 to 25, which indicates the overload of employees in some municipalities, and an insufficient use of human resources in the other.

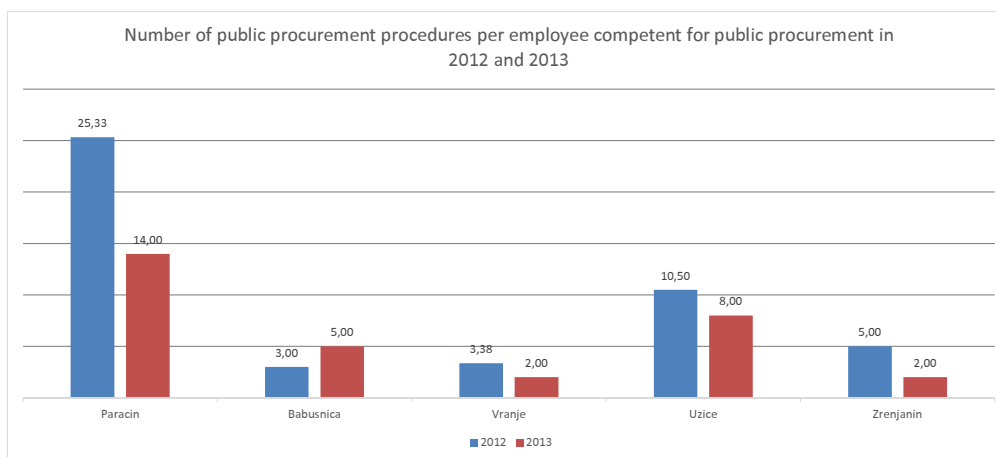


Figure : Number of public procurement procedures per employee competent for public procurement for 2012 and 2013

On the other hand, the data on the number of employees competent for public procurement in comparison with the number of total local self-government employees indicates the importance of public procurement in the local self-government, and could be useful for making conclusions about the surplus/deficit of em-

ployees in certain units of the local self-government. These data are presented in the following Table. The legal provision that requires an approval by the Ministry of Finance for employment each new employee restricts local self-governments in resolving personnel issues in the field of public procurement.

Table 1: Number of employees working in the public procurement in comparison with the total number of local self-government employees

Municipality	Total number of employees working on the public procurement	Total number of employees	Ratio (1:x)
Paracin	3	116	39
Babusnica	1	41	41
Razanaj	4	39	10
Vranje	8	255	32
Uzice	2	196	98
Zrenjanin	7	327	47

The ratio, which varies from 1:10 to 1:98 clearly shows the organizational gap in some local self-governments, and opens up opportunities for significant improvements in the area of public procurement, through organizational restructuring.

Among the analyzed municipalities no significant differences were perceived as regards the level of education of persons who are competent for public procurement. Namely, the educational level of these employees working on the public procurement is between IV (four-year high school) and VII (Faculty - undergraduate study) levels. On the other hand, it was noticed that public procurement officers, or persons competent for public procurement, are in no way distinguished from other employees. They are not distinguished organizationally, nor hierarchically, which means that they do not have any better status than most employees, nor are they rewarded for their work through higher salaries. This does not contribute to their authority, which is particularly important during the planning of public procurement.

Personnel capacities are extremely important for the forming and functioning of the Commission for public procurement. In all analyzed municipalities, the Commission for public procurement is formed by the Chief of Municipal administration. However, none of the municipalities, regardless of size or level of development, has guidelines for the forming of the commission; this work is to be performed intuitively, and in accordance with the legal provisions. This method of work is particularly evident when the member of the commission is not an employee of the procuring entity (in this case the local self-government), so there is no defined procedure for the selection of this member. As expected, the study has shown that the involvement of persons who are not employed by the procuring entity is more frequent in smaller local self-governments which do not have personnel capacities to form their own commission of experts. In larger municipalities, the experts needed for the commission are found in the institutions that have the same founder (utility companies, municipal agencies, inspections), while in the smaller municipalities these possibilities are very limited due to the low number of such institutions. Regardless of the level of development of the municipality, the educational level of commission members ranges between IV (four-year high school) and VII (Faculty - undergraduate study).

Organizational capacities

In every municipality, regardless of its size or development, there is at least one specific employee (in the larger municipalities there is an organizational unit) competent for all public procurement within the local government. Therefore, in no case do organizational units within the local self-government procure goods and services by themselves, that is, they do not conduct the public procurement process.

Considering that, and according to the Directorate General for Research of the European Parliament (1998), public procurement care, of all activities conducted by state or municipalities, the most vulnerable to cor-

ruption, so special attention should be paid to control of the planning, implementation and execution of public procurement procedures. The EU directives concerning public procurement, contribute to the efforts against corruption through two sets of measures. Firstly, through the own nature and the legal framework, and secondly, more specifically, by promoting fairness among entities that are involved in the public procurement process (Bovis, 2006).

The study results shows that only one of the analyzed municipalities, Uzice, has a separate organizational unit for the control of the planning, implementation and execution of the of public procurement procedures. In more developed municipalities, the number of procedures, and in particular the value of public procurements, justifies the existence of this type of organizational units, therefore in Zrenjanin, the forming of the this kind of unit which will have its competence in the control of public procurement is under way.

On the other hand, none of the municipalities which do not contain the separate organizational unit for the public procurement have any specific position, and consequently they do not have employees who are solely responsible for the control of the planning, implementation and execution of the public procurement procedures. The number of employees competent for public procurement (up to 7) in bigger municipalities leaves the possibility for the introduction of such work position.

The serious issues regarding the competence for the control, planning, implementation and execution of the public procurement procedures have been observed in smaller municipalities, where there is no separate organizational unit for public procurements. In these municipalities it is not clearly defined who is responsible for this control, or who, among other lines of duty, controls planning, implementation and execution of the public procurement procedures. In larger municipalities, this control is carried out by a chief of organizational unit for public procurements.

In addition to these organizational shortcomings, local governments do not frequently hire external consultants to carry out supervision over public procurements. In three out of six analyzed municipalities (Zrenjanin, Uzice, Vranje), external consultants to control the planning, implementation and execution of the public procurement procedure were hired, although this is not a standard procedure, but rather an exception.

None of the analyzed municipalities has established cooperation concerning the control of public procurement with another municipality (despite the size).

One of the commitments imposed by the EU Directives is defining the objective criteria for the selection of the best offer (Feliú, 2006). In article 53 (1) of the EU Directive 2004/18/EC there is a list of contract award criteria such as quality, price, running cost, after-sales service, delivery date and delivery period, and although this list is not exhaustive, there is an important limitation in that the criteria must be directly linked to the subject-matter of the public contract in question, and may not be such as to fulfill the secondary objectives (e.g. social objectives) (Arrowsmith, 2009). During the research it was found that one of the major issues in the execution of public procurement was a lack of guidelines for determining the objective criteria for evaluation of offers in the public procurement process. Municipalities have not yet introduced precise internal regulations for the public procurement process, and therefore the guideline for determining the objective criteria does not exist in any of the municipalities, and this is done mainly based on experience. Also, the responsibility for determining the criteria is not clearly defined by the municipalities, although in most cases, the commission for public procurement is responsible in the end.

Technical capacities

There are several Directives in the European Union that promote e-commerce in general (Pearce & Platten, 2000). The European Commission published the action plan for the implementation of e-procurement in 2004 (Commission of the European Communities, 2004), which is followed by a document which in detail sets rules for execution of e-procurement (Commission of the European Communities, 2005). One of the most important segments within the EU framework of public procurement is the execution of electronic auctions, which is covered by Articles 1(7) and 54 of Directive 2004/18/EC (Arrowsmith, 2005).

However, the results of the study has shown that the majority of municipalities, regardless of the size and the level of development, have no adequate technical capacity for the implementation of electronic auction, nor for conducting other activities of e-procurement.

Conclusion

Based on the results of the study it can be concluded that local self-governments are, to a large extent, able to comply with the new Law on Public Procurement of the Republic of Serbia, and therefore with the EU Directives, which formed the basis for this law. During the research it was noticed that some municipalities have successfully conducted public procurement related to the implementation of projects of the European Union, and according to the rules stipulated by the European Union, which is the evidence of their capacities to comply with the principles of the European Directive.

However, in order to further increase the capacity of municipalities to conduct effective and transparent procurements, further improvement of personnel capacities is required. The study showed that for the implementation of the public procurement rules of the EU, rather expertise of employees in public procurement than their number is crucial. Therefore, it is essential that local self-governments adopt a strategy for the employment of personnel competent for public procurement. Also, it is important to emphasize public procurement officers, through their status or salary, in order to ensure their independence.

Considering the extremely high level of corruption in Serbia compared to the EU member states (Transparency International, 2012), as well as the importance of the fight against corruption in the EU Directives, local self-governments should pay special attention to the control of public procurement. Even in smaller municipalities an appropriate organizational unit for the control of public procurement should be institutionalized. If the scope and number of public procurement does not allow such a solution, we should analyze the possibility of centralization that is forming the state authorities to deal with the control of public procurement in few smaller municipalities.

Local governments are expected to significantly improve their technical capacity to implement all procedures provided by Law on public procurement, because the need for all procedures will only increase as the Republic of Serbia moves closer to the European Union.

The main limitation of this study is a sample size, but also a short time since the introduction of the new Law on Public Procurement (April 1st, 2013). This period may be insufficient to fully harmonize the implementation of public procurement in local self-governments with new Law.

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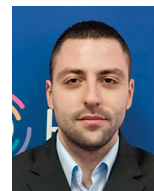
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About the Author

Stefan Komazec

University of Belgrade, Faculty of Organizational Sciences
komazec.stefan@fon.bg.ac.rs



Stefan Komazec, M.Sc., works as a teaching associate at the Faculty of Organizational Sciences, University of Belgrade. His major research interests are organizational design, organizational change, business system restructuring, organizational performance and quality management. He has published one book and more than 20 articles at scientific monographs, journals and conferences. He is one of the founders and project leader of international student sport tournament EuroBelgrade, which is organized every year by the Faculty of Organizational Sciences. He has been involved in 5 consulting projects in the field of organizational design.

Ivan Todorović

University of Belgrade, Faculty of Organizational Sciences
todorovic.ivan@fon.bg.ac.rs



Ivan Todorović, M.Sc., is a teaching associate at the Faculty of Organizational Sciences in Belgrade. His major research interests are business system consulting and restructuring, organizational design, organizational change and organizational performance. As author or co-author, he has published one book and more than 20 articles at scientific monographs, journals and conference proceedings. He has also participated in 5 consulting projects. He was member of the team that won the HULT Global Case Challenge in London in 2012, and he also won the Balkan Case Challenge in Vienna in 2010. He has been a jury member at several local and international business case study competitions.

Đorđe Krivokapić

University of Belgrade, Faculty of Organizational Sciences
krivokapic.djordje@fon.bg.ac.rs



Đorđe Krivokapić, LL.M., is an associate lecturer at the Faculty of Organizational Sciences at the University of Belgrade where he teaches courses on business law and IT law. Before his faculty position, he was employed as a legal associate at the law office of Karanović & Nikolić where he was involved in numerous successful transactions and projects in the Balkan region. Before joining Karanović & Nikolić, Đorđe Krivokapić graduated with a degree in law from the University of Belgrade and received an LL.M. degree from the University of Pittsburgh School of Law. He is currently enrolled in the PhD studies at the University of Belgrade, School of Law.

Ondrej Jaško

University of Belgrade, Faculty of Organizational Sciences
jasko.ondrej@fon.bg.ac.rs



Ondrej Jaško, Ph.D., is a full-time professor at the Faculty of Organizational Sciences, University of Belgrade, who currently lectures at several courses from the field of business system organization. His teaching and research interests are organization theory, organizational models, management and change management. During his university career, he was a Chief of Department for Business System Organization, Vice-Dean and President of the Master Studies Council. He is (co)author of more than 15 books and monographs. He has also published more than 100 papers at various scientific conferences and 35 articles in international and national journals. As an executive officer or a team member, he was involved in more than 20 research projects.

As business consultant, he led projects of organizational design in some of the most significant companies in the Balkan region.