

Annex 1.2

Public procurement legal frameworks

During 2010 the EBRD has been conducting its first assessment of the public procurement (PP) sector in all 29 countries of operations concurrently, examining government purchasing in terms of both “law on the books” and “law in practice”. Although the review of the latter is not yet complete, the assessment has produced some initial findings and analysis on legislation in force and on the efficiency of enforcement procedures.

Public procurement frameworks regulate the interaction between public sector purchasers and the market, and therefore determine how a government’s purchasing power is exercised in relation to private-sector tenderers. As PP constitutes a major economic activity for all governments, its regulation is a significant component of a country’s legal framework and an essential supplement to public finance legislation. It is a challenge for any government to develop a legal regime that will balance the often competing considerations of competition policy, transparency safeguards and efficiency requirements, and in a manner which takes account of local market conditions and prevailing legal and business cultures.

The assessment aims to provide an impartial review of law on the books and law in practice and of institutional frameworks in the countries of operations. The project team has included EBRD staff, international consultants, local contracting authorities, contracting entities in the utilities sector and law firms providing legal advice to contractors and suppliers. In each country the project team has sought to enlist the cooperation of the national PP regulatory bodies.

Mindful of the different levels of market development in the Bank’s countries of operations, the assessment has been based on a specifically designed benchmark structured around the critical elements of the PP process. The benchmark indicators have been adapted from major international legal instruments, including those already in force and some which have a status of “well-accepted drafts”.¹ To facilitate the evaluation of those areas of the procurement process not covered by these instruments, the benchmark has been supplemented by best practice indicators in World Bank and EBRD procurement policies.

The main focus of the assessment is the evaluation of the level of development of PP law and practice across the region and the identification of those elements that reduce the efficiency and effectiveness of the procurement process. This annex presents some preliminary observations.²

Assessment benchmark

Difficulties in the modelling of PP regulation include deciding what constitutes international best practice, assessing how relevant regulation is to a country’s economic and social standing and adequately reflecting local market conditions, the national business culture and the level of a country’s communications technology development. National contract laws and suppliers and contractors active in the market must also be taken into account. In addition, regulation will vary depending upon whether the procurement process is to be funded by a state/municipal budget or by a contracting entity in the utilities sector. Similar considerations are relevant to PP evaluation.

¹ The 2004-07 European Union PP Legislative Package; revised 2010 United Nations Commission on International Trade Law (UNCITRAL) PP Model Law; and revised 2007 World Trade Organization (WTO) Government Procurement Agreement.

² A more detailed report is forthcoming in spring 2011.

For the assessment benchmark, the project team selected the most comprehensive and innovative elements of international best practice structured around the EBRD Core Principles on an Efficient Public Procurement Framework (see Box A.1.2.1). The Core Principles are based on the assumption that the primary role of a PP law is not to ensure unrestricted international trade, or to save public money, but rather to facilitate the process of negotiating a business contract in a public-sector context.

Box A.1.2.1

EBRD Core Principles on an Efficient Public Procurement Framework

- **Accountability.** The framework should promote accountability across all stages of the procurement process, balancing the public and business dimensions.
- **Integrity.** The framework should promote integrity between the procurement function, transparency in delivering government policy and value for money.
- **Transparency.** For public procurement to be acceptable to all stakeholders it should be seen to be public, transparent and objective. Any suggestion of an undisclosed resolution must be avoided.
- **Competition.** The framework should promote fair competition and prevent discrimination. Tenders and tenderers of equivalent status should be given equal treatment, without regard to nationality, residency or political affiliation. The law should not allow domestic preferences.
- **Efficiency.** Sound programming and planning are crucial to agreeing a cost-effective and accurate public contract. The framework should ensure that value for money is achieved, and promote methods of tender evaluation that consider both the quality and cost of purchase.
- **Economy.** The law should enable PP to be accomplished professionally in a reasonable time.
- **Proportionality.** Effective and efficient procurement regulation calls for a proportionality rule, whereby the formality and extent of the procedure should reflect the scope and size of the procurement. The contracting entity should align the value and scope of the contract with an appropriate choice of contract type and tendering procedure.
- **Uniformity.** The framework should be comprehensive and limit derogations to reasonable exemptions acknowledged by international instruments, yet should distinguish between state and utilities PP. Regulation should be unitary and cover all public contracts.
- **Stability.** Stakeholders must be aware of their roles, rights and obligations within a stable legislative framework.
- **Flexibility.** The framework should be flexible, so as to accommodate a changing market.
- **Enforceability.** PP law should be easily enforceable. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ corrective measures when necessary.

Law on the books: initial findings

For evaluation purposes the PP Core Principles have been divided into three general categories: (i) integrity safeguards, (ii) efficiency instruments and (iii) institutional and enforcement measures. These have then been sub-divided into 11 indicators (see below), with the overall score calculated for each country (on a scale of 0 to 100) based on the assumption that all indicators have an equal influence on the effectiveness of the procurement process. For each country, a “spider” diagram reflects the quality and comprehensiveness of the national regulatory framework (see Chart A.1.2.1). The “spider” is based on the PP legal framework in force on 30 June 2010. Each diagram captures the 11 indicators: accountability, integrity, transparency, competition, efficiency, economy, proportionality, uniformity, stability, flexibility and enforceability. The total score has been calculated for each country on the basis of a legislation and institution checklist.³ The scores for compliance range through “very high” (above 90 per cent of the benchmark), “high” (76-90 per cent), “satisfactory” (60-75 per cent), “low” (50-59 per cent) to “very low” (below 50 per cent). The wider the coloured “web” in each diagram, the better the regulatory system.

The results show that only one country (Hungary) achieved “very high” compliance, while three countries (Estonia, Latvia and Lithuania) scored “high” for compliance. Two countries (Tajikistan and Ukraine) had a “low” level of compliance, and three (Azerbaijan, Turkmenistan and Uzbekistan) registered a benchmark score of 50 per cent (a “very low” level of compliance). The remaining countries are rated as “satisfactory”.

It is perhaps surprising that the European Union (EU) countries in the EBRD region, which scored “very high” on basic framework features, such as prevailing open tender procedures or liberal public procurement eligibility rules, did not perform better, with only Hungary having a framework which is more than 90 per cent compliant.

³ Before this review of the laws in the EBRD region started, the legislation and institution checklist providing a basis for the “law on the books” assessment was put to the test using public procurement legislation of developed countries such as the UK and Switzerland, as well as the US federal public procurement policies, which all obtain very high marks for compliance.

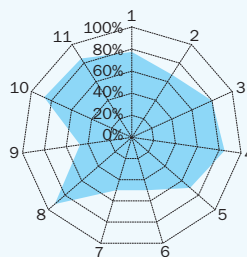
Chart A.1.2.1

Quality of PP legal frameworks in EBRD countries

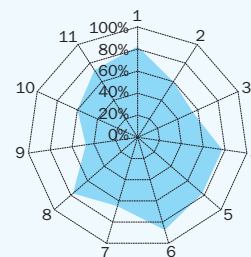
The spider diagrams reflect the quality of the regulatory framework of each EBRD country. Each diagram includes the indicators numbered below. For each indicator, the diagram presents the scores as fractions of the maximum achievable rating. The scores begin at zero at the centre of each chart and reach 100 at the outside so that, in the overall chart, the wider the coloured “web” the better the scores in the assessment.

- 1 Accountability
- 2 Integrity
- 3 Transparency
- 4 Competition
- 5 Efficiency of the contract
- 6 Economy of the process
- 7 Proportionality
- 8 Uniformity
- 9 Stability
- 10 Flexibility
- 11 Enforceability

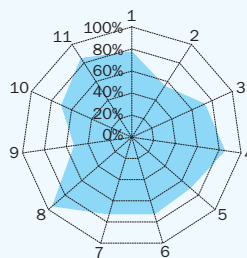
Albania



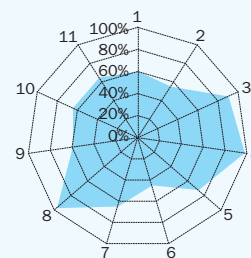
Armenia



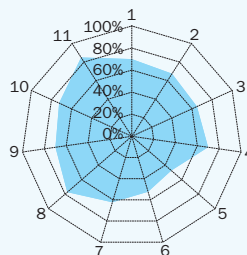
Croatia



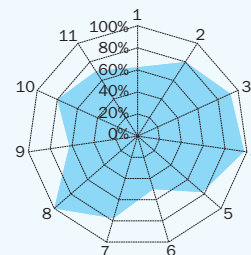
Estonia



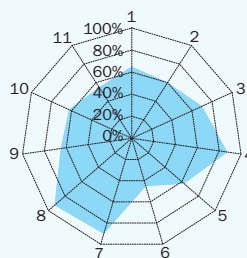
Kyrgyz Republic



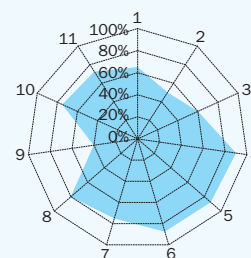
Latvia



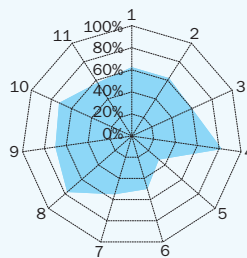
Poland



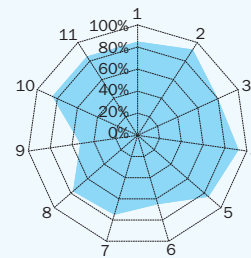
Romania



Tajikistan



Turkey



Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws for each country in the region. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework (see Box A.1.2.1). Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Law on the books: further analysis

This section analyses the results from the review of law on the books. It addresses the following questions:

- Is PP policy-making adequate to the prevailing national business culture and market development?
- Does the scope of PP regulation embrace the public sector as a whole?
- Are the PP eligibility rules clear, consistent and not able to be modified prejudicially by the particular contracting entity?
- Does the PP legislation regulate all of the procurement process phases (pre-tendering, tendering and post-tendering)?
- Does the PP legislation enable the efficient selection of tender type or method based on the specifics of the purchase and contract profile?

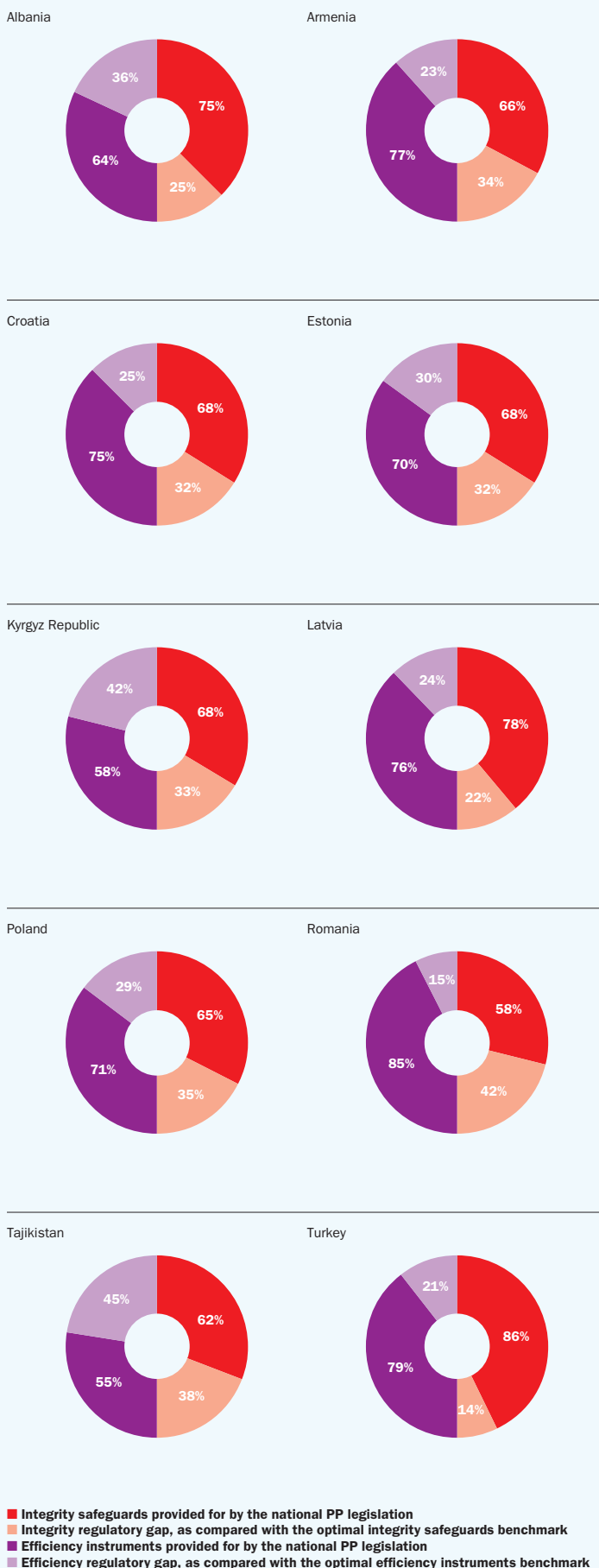
Adequacy of PP policy-making

Some of the benchmark indicators described above can be categorised as anti-corruption or integrity safeguards (accountability, integrity and transparency) and efficiency instruments (competition, economy of the process, efficiency of the contract and proportionality) when reviewing the balance of national policy-making in respect of PP regulation. Historically integrity safeguards have always been a major element in PP policy-making, and should still be considered of paramount importance as a regulatory factor for countries where corruption is perceived to be a serious problem. The incorporation of efficiency instruments in PP regulation is the product of valid concerns about the “value-for-money” of public spending, but can typically only be a dominant policy feature in those countries where legal and business cultures are relatively sophisticated and unaffected by corruption.

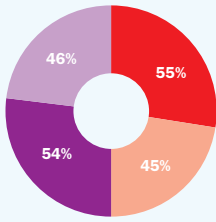
Chart A.1.2.2 reflects the balance of integrity safeguards and the efficiency instruments in the national regulatory framework for each country in the EBRD region. For each country, the two heavily shaded areas of the chart show the percentage of the maximum possible score achieved by the country in integrity safeguards (the shaded red area) and efficiency measures (the shaded purple area). The non-shaded areas in the diagrams therefore indicate the size of the PP framework regulatory gap; it thus reflects which policy choice is prevailing for the reviewed national framework.

The results show that not many of the countries in the EBRD region achieved an appropriate balance between the integrity and efficiency measures. In addition, the regulatory gap between what has been achieved and what remains to be done in terms of integrity safeguards is greater than that for efficiency in the legal frameworks of several countries. This may be a significant challenge for countries associated with low business ethics and a high level of corruption.

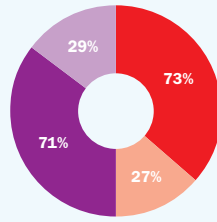
Chart A.1.2.2
Integrity safeguards and efficiency measures
in PP regulation frameworks



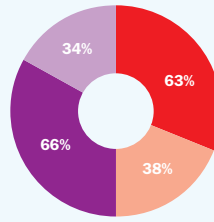
Azerbaijan



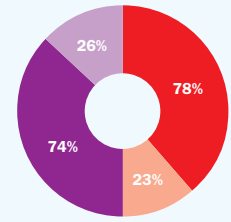
Belarus



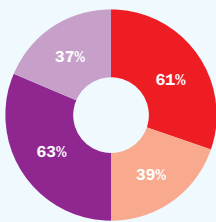
Bosnia and Herzegovina



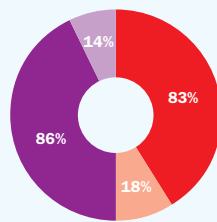
Bulgaria



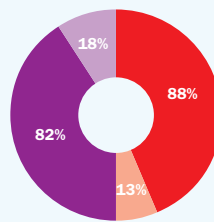
FYR Macedonia



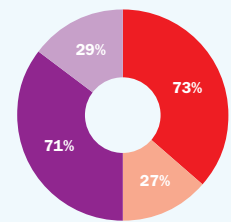
Georgia



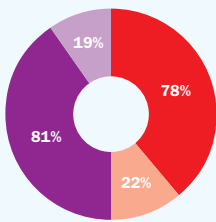
Hungary



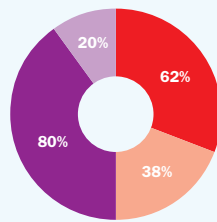
Kazakhstan



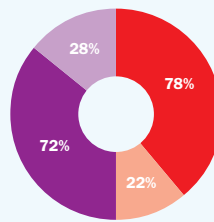
Lithuania



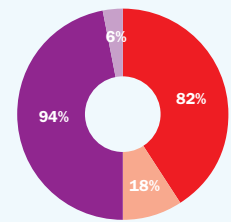
Moldova



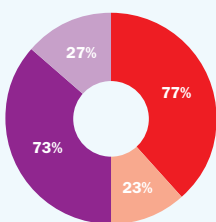
Mongolia



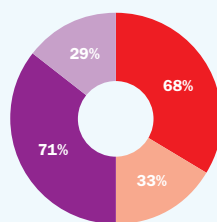
Montenegro



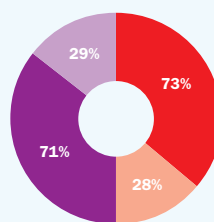
Russia



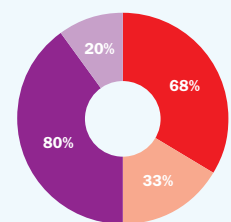
Serbia



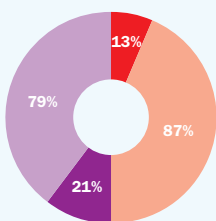
Slovak Republic



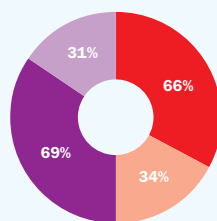
Slovenia



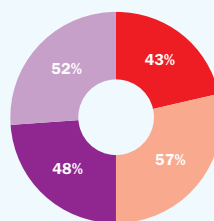
Turkmenistan



Ukraine



Uzbekistan



Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.
 Note: The chart shows the score for integrity safeguards implemented by national PP laws compared with the score for efficiency instruments, as provided by national PP legislation, for each country in the region.
 The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework (see Box A.1.2.1).

Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 50 per cent (half of the pie chart) representing the maximum, optimal score, with each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws "on the books" and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light red and light purple, respectively.

Scope of PP regulation

In addition to the 11 principles captured in the earlier spider charts, the survey also includes a number of general system features, of which one important issue is the scope of public procurement legislation. Specifically, the coverage of the PP regulatory framework includes: government procurement and local government procurement (which together comprise “state” procurement); utilities sector procurement (public services monopolies); public law institutions’ procurement; and public grants beneficiaries’ procurement. It is important to note that, in quite a few countries, it is only government procurement that is covered by public procurement laws. A large section of the municipalities and utilities sector remains outside general regulation or is covered by PP legislation on an ownership basis only.

Table A.1.2.1 summarises the regulatory coverage in each country in the EBRD region. In general, the EU member states, with regard to the scope of regulation, have the most comprehensive and consistent approach. In other countries legislation may not cover all public-sector entities, even if those countries are signatories or observers of the World Trade Organization (WTO) Government Procurement Agreement.

Table A.1.2.1
Scope of PP regulation

Based on scores with PPA revision for all countries

Country	Government	Local government	Utilities	Public law institutions
Albania				
Armenia				
Azerbaijan				
Belarus				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Estonia				
FYR Macedonia				
Georgia				
Hungary				
Kazakhstan				
Kyrgyz Republic				
Latvia				
Lithuania				
Moldova				
Mongolia				
Montenegro				
Poland				
Romania				
Russia				
Serbia				
Slovak Republic				
Slovenia				
Tajikistan				
Turkey				
Turkmenistan				
Ukraine				
Uzbekistan				

- Fully covered by PP primary laws
- Covered by PP primary or secondary laws, with some exceptions
- Not covered by PP primary or secondary laws
- Not regulated

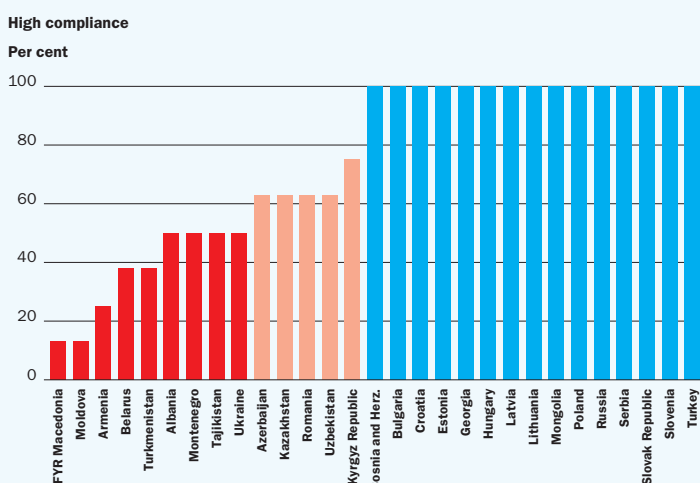
Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.
Note: The table presents desirable features of PP legislation for each country in the region. Marks have been allocated on the basis of a legislation questionnaire. The descriptions are graded from what is considered to be the least (marked in red) to the most satisfactory (marked in light blue), representing optimum quality of PP laws.
Based on assessment scores for all countries as at 22 July 2010, except Bulgaria.

PP eligibility rules

Competition is a critical aspect of public procurement. Primary PP eligibility rules that define who can submit a tender or proposal (or be excluded from the competition) for a public contract are of huge importance for the development of international trade. With the exception of the EU member states, there is no consistent concept or regular understanding of PP eligibility in the EBRD region. It is also significant that PP legislation in some countries does not distinguish between minimum eligibility requirements and candidate qualification criteria individually established by contracting entities for their projects.

Chart A.1.2.3 indicates that a number of countries are deficient in terms of consistency of eligibility rules. For instance, in FYR Macedonia the primary PP eligibility rules were found to be non-compliant with the standard UNCITRAL specifications and, moreover, were confused with EU candidate qualification criteria.

Chart A.1.2.3
National PP eligibility rules



Low compliance

- 100% National PP legal framework provides a distinction between (a) general PP eligibility criteria and (b) qualification and technical requirements to be met by tenderers as defined by the contracting entity
- 51–75% National PP legal framework establishes primary eligibility rules compliant with the UNCITRAL standard. According to the UNCITRAL standard, tenderers are considered to be ineligible to participate in public procurement in the case of (a) bankruptcy or similar proceedings (b) administrative suspension or disbarment proceedings (c) conviction of a criminal offence by the tendering firm or its directors concerning professional conduct (d) failure to fulfil certain tax and social security obligations
- 0–50% National PP legal framework does not establish primary eligibility rules compliant with the UNCITRAL standard

Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.

Note: The chart shows the score for PP eligibility rules in the national PP legal frameworks for each country in the region. The score has been calculated on the basis of a legislation questionnaire. Total scores are presented as a percentage, with 100 per cent representing the optimal score for this benchmark indicator.

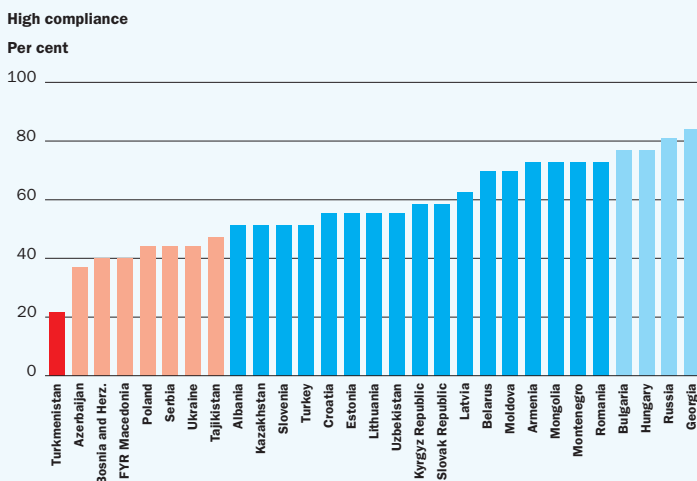
Regulation of procurement tendering phases

The comprehensiveness of a PP framework may be gauged by whether the entire procurement process – embracing the pre-tendering, tendering and post-tendering phases – or just the tendering phase is regulated by legislation. This is measured by the “economy” indicator in the spider diagrams (in Chart A.1.2.1).

In several countries of the EBRD region, including the EU member states, the PP legal framework is lacking appropriate regulation of the pre-tendering phase (procurement planning, in particular) and of the post-tendering phase (public contract management). This means that there is a risk that the allocation of public funds will not adjust properly over time to changes in the market value of goods and services.

This can best be illustrated in relation to public contract management regulation. For each transition country, Chart A.1.2.4 shows the extent to which the national regulatory framework covers the post-tendering phase of the public procurement process. Each indicator in the chart presents the scores as percentages of the maximum achievable rating for the regulation of the post-tendering phase.

Chart A.1.2.4
PP post-tendering phase – regulation of public contract management



Low compliance

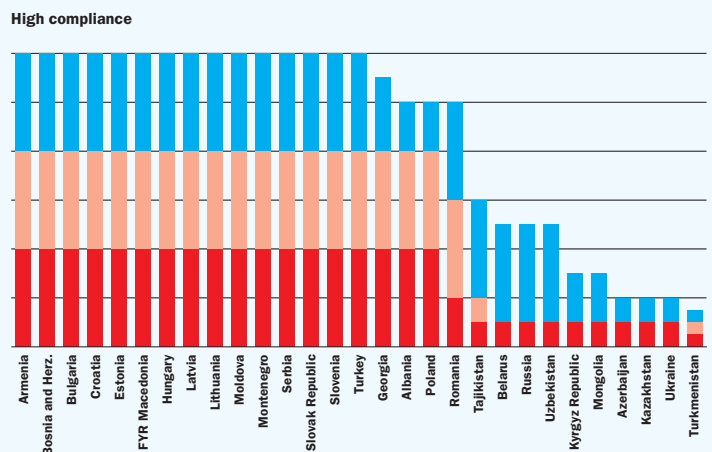
- **100%** National PP legal framework requires a mandatory scrutiny of contract variations by an official body
- National PP legal framework provides for procurement staff having adequate contract management capabilities
- National PP legal framework requires the contract monitoring and administration to be computerised
- **75%** National PP legal framework requests that contracting entities provide for contract administration of the public contract
- National PP legal framework includes a clear test as to when the contracting entity should seek a contract performance guarantee, and limit its maximum amount
- **50%** National PP legal framework requires the preparation and inclusion of a business case into the contract
- **25%** National PP legal framework requires the selection of tender type to be based on the specifics of the purchase and contract profile
- **0%** The PP legal framework does not provide for any recommended feature

Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.
Note: The chart shows the score for regulation of the PP post-tendering phase with respect to PP contract management for each country in the region. The score has been calculated on the basis of a legislation questionnaire. Total scores are presented as a percentage, with 100 per cent representing the optimal score for this benchmark indicator.

Flexibility of procurement procedures

The law on the books assessment also considered the flexibility of the PP framework, in order to help gauge the extent to which specialised negotiation procedures are available to the contracting entities in the region. This relates to the “efficiency” aspect of the PP Core Principles (see above). The review revealed that, contrary to recommended best practice, in several countries (the Central Asian republics in particular) the only procurement procedure available was a lowest-price tender (see Chart A.1.2.5).

Chart A.1.2.5
Regulation of public procurement procedures in the national PP legal frameworks



Low compliance

- Does the law provide for both tendering and negotiated procedures?
- Is there a clear test as to the choice between tendering and negotiated procedures?
- Is the selection of tender type or method based on the specifics of the purchase and contract profile?

Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.
Note: The chart shows the score for regulation of PP procedures for each country in the region. The score has been calculated on the basis of a legislation questionnaire. Total scores are presented as a percentage, from low to high compliance regarding three recommended features (adequacy, flexibility and certainty), with 100 per cent representing the optimal score for these benchmark indicators.

Box A.1.2.2

During the course of the EBRD assessment, Bulgaria and Georgia undertook significant revisions of their PP regulations, resulting in changes to their laws and, consequently, their ratings in the assessment.

The diagrams below give a “before” and “after” comparison of the legislative changes, focusing on:

- each country’s total score in the assessment, calculated according to each of the EBRD’s Core Principles
- the correlation between anti-corruption safeguards and efficiency instruments in previous and new national PP policy
- the development of the PP institutional framework.

While neither country reaches a maximum score on the benchmark, both national PP legal frameworks have been improved with respect to every Core Principle.

Chart A.1.2.2.1 Bulgaria

PP framework’s total score in the assessment

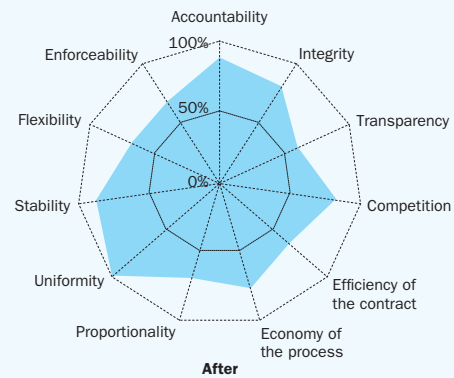
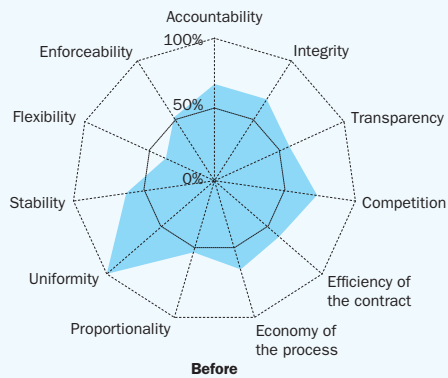


Chart A.1.2.2.2 Georgia

PP framework’s total score in the assessment

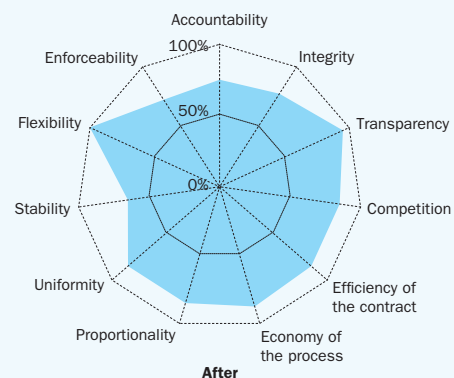
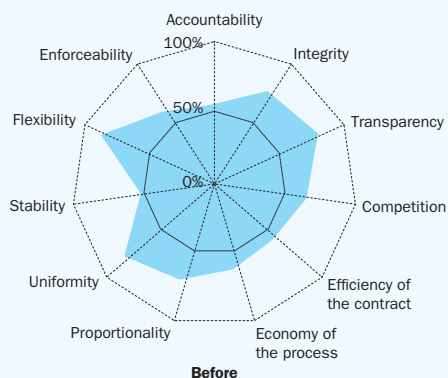


Chart A.1.2.2.3 Bulgaria

The correlation between anti-corruption safeguards and efficiency instruments in the previous and current PP policy

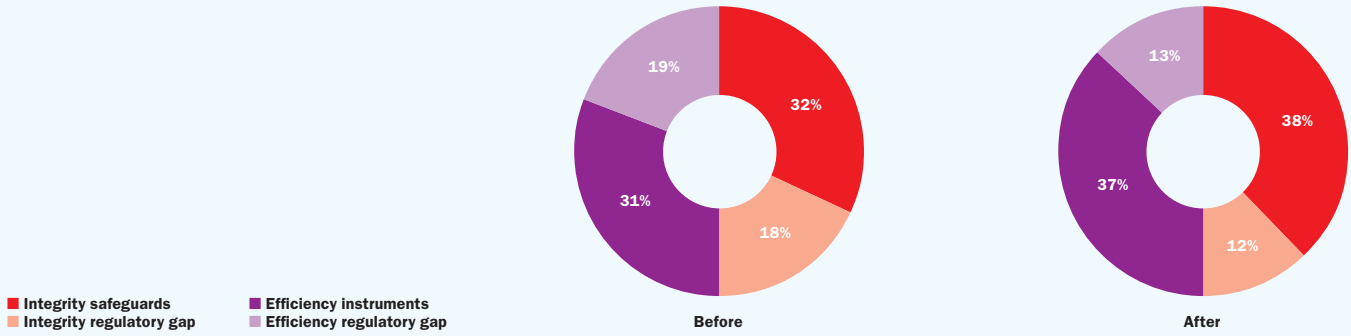


Chart A.1.2.2.4 Georgia

The correlation between anti-corruption safeguards and efficiency instruments in the previous and current PP policy

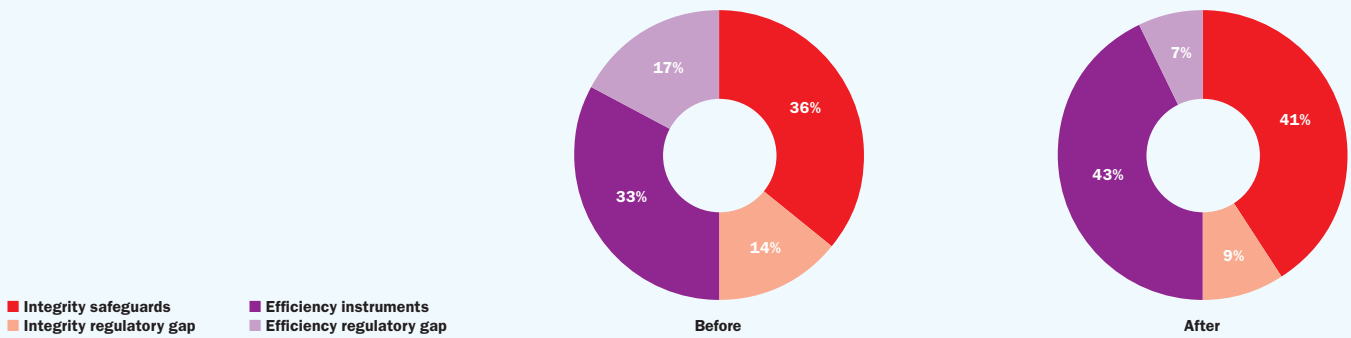


Chart A.1.2.2.5 Bulgaria

Improvements in the PP institutional framework

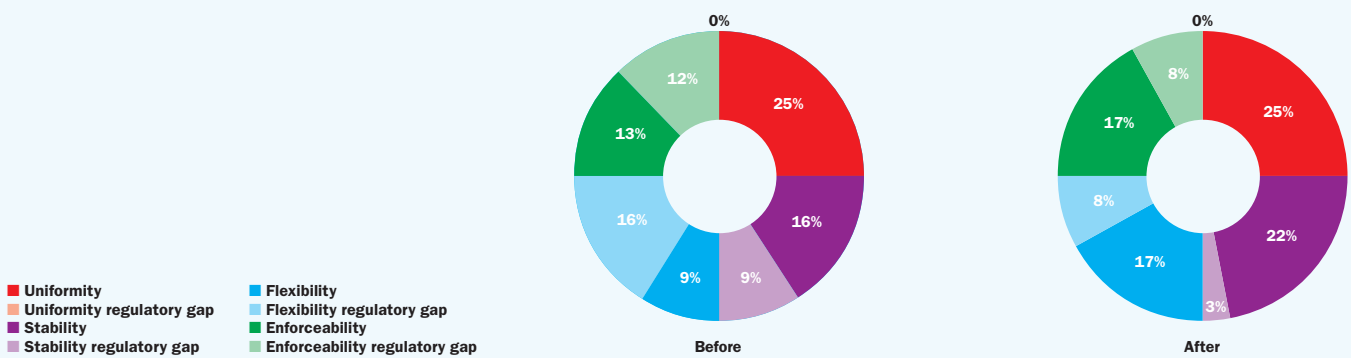
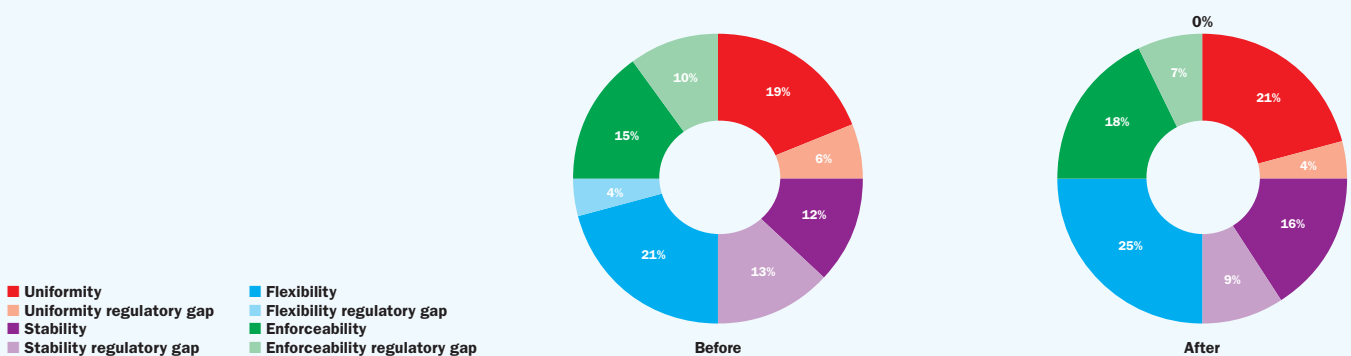


Chart A.1.2.2.6 Georgia

Improvements in the PP institutional framework



Access to regulatory and tender information

The review of PP law on the books was originally intended to be conducted in English and Russian, as it was anticipated that most of the national PP laws in the EBRD region, with international bidders in mind, would be available in one of these languages of international trade (as recognised by the United Nations). The initial research, however, revealed a low availability of national legislation in English or Russian. None of the countries in the region, including the EU member states, was found to have all current PP legislation translated into at least one of these languages. Only Montenegro has all of its PP laws well compiled, translated into English or Russian and made available on the national PP regulatory body web site. Indeed, there is very limited regulatory information on the web sites of other national PP regulatory bodies other than in their national language. The original aim to review only laws readily available to an international tenderer had to be abandoned.

Most of the national PP laws reviewed do not require contracting entities to publish contract notices in any of the recognised UN languages, although in the EU member states summaries are translated on eNotices into languages other than that of the contracting entity.

eProcurement

Several countries in the EBRD region are attempting to implement eProcurement, namely the conduct of the procurement process through electronic means, usually online. So far, it is mandatory only in Albania; however, most national PP regulations require an electronic publication of contract notices. In addition to Albania, several countries have passed laws whereby, for certain goods (for example, medical supplies), the communication or tender submission of procurement must be made by electronic means (Latvia, Montenegro, Romania and Turkey). For most of the countries in the region electronic communication availability is dependent on the decision of the contracting entity in question.

Efficiency of enforcement procedures

A final regulatory issue is enforceability. For any public procurement system bringing together the public and private sectors, the use of unbiased and uncorrupted mechanisms to ensure that the regulatory aims are achieved is particularly important. Consequently, the EBRD assessment included a section on the issues of enforceability of PP regulation. National legislation has been analysed, focusing on the availability of dedicated administrative enforcement and/or monitoring mechanisms and review and remedy procedures, and also on the independence of remedies bodies. Chart A.1.2.6 shows the availability of each legal instrument in the legislation of each country in the EBRD region. For each indicator, the chart presents the scores as fractions of the maximum achievable rating.

The maximum score was achieved by Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Hungary, Latvia, Lithuania, Mongolia, Montenegro, Serbia, Slovak Republic and Ukraine. Belarus, Moldova, Tajikistan and Turkey registered a score of between 50 per cent and 75 per cent, while Azerbaijan, Turkmenistan and Uzbekistan scored below 50 per cent, signalling a need for significant regulatory improvements.

To illustrate the disparity between the law on the books and law in practice review scores with respect to the enforceability of the PP regulatory frameworks, Chart A.1.2.7 gives the comparative results.

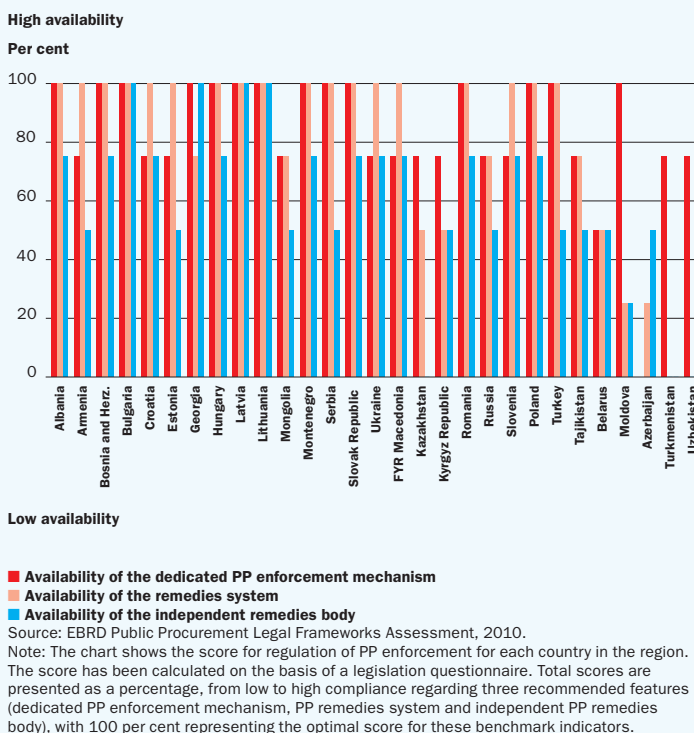
An implementation gap – meaning the difference between the quality of law on the books and the level of implementation – has been identified in 14 countries in the EBRD region. It occurs in countries with both low and very high scores for the quality of their enforcement regulation.

As might perhaps have been expected, the higher the law on the books score, the bigger the implementation gap. The largest gaps are evident in Albania (27 per cent), Montenegro (17 per cent), Hungary and FYR Macedonia (13 per cent) and the Kyrgyz Republic, Mongolia and Turkey (10 per cent, respectively). This indicates the need for more effective enforcement of existing legislation. There was no implementation gap for Estonia, although a relatively low 65 per cent benchmark compliance for enforcement legislation on the books and in practice was recorded.

The review revealed that it remains possible to challenge a decision of a contracting entity in countries where no dedicated remedy mechanisms exist (such as Azerbaijan, Belarus, Tajikistan, Turkmenistan and Uzbekistan) by seeking compensation in the courts. Although this cannot result in a PP procedure being corrected or a contract being annulled, it does at least provide affected parties with a form of redress, and may act as a deterrent to unlawful behaviour on the part of contracting entities.

In several countries, the quality of the practice of review and remedy mechanisms scored higher than the provisions of the

Chart A.1.2.6
PP review and remedies mechanisms



existing regulatory legislation. This may be attributed (in the case of Azerbaijan, Belarus, Moldova, Tajikistan, Turkmenistan and Uzbekistan) to the adjudication of the civil courts making up for the shortcomings in the regulatory framework, or to the judicial capacity of independent remedies bodies, whose professionalism and impartiality may even enhance highly compliant regulatory frameworks (as in Bulgaria, the Slovak Republic and Slovenia).

It is also apparent that there is no correlation between the efficiency and the actual cost of PP review and remedy procedures in the EBRD region, including in the EU member states (see Chart A.1.2.8).

Conclusion

The EBRD assessment indicates that countries in the region can be categorised according to the level of development of their PP laws as follows:

- EU member states that aim for full compliance with EU PP directives and have achieved at least a satisfactory level of compliance with international standards
- south-eastern European countries, together with Georgia, Mongolia and Turkey, which have introduced new PP laws but need to focus on implementation issues and institution-building
- other countries where legislative reform may be under way, but procurement laws have yet to comply with international standards.

The analysis has shown that, in many countries, integrity safeguards and efficiency instruments have been incorporated into national PP frameworks with no consideration for the local business culture and prevailing market conditions. Furthermore, in some countries PP regulation does not cover the whole public

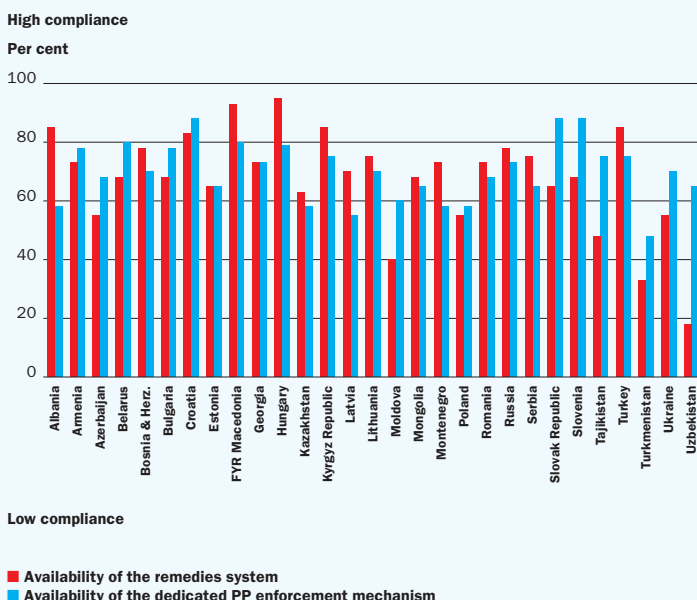
sector, leaving a significant number of public entities outside the procurement system, or legislation is not comprehensive enough and does not regulate all of the PP tendering process. In addition, regulation of the tendering phase does not always ensure the appropriate selection of tender type or method, therefore hindering the efficiency of the public contract.

Other shortcomings identified in the assessment include:

- unclear and inconsistent primary PP eligibility rules
- a lack of understanding of primary PP eligibility
- no enforcement in several national PP laws of a uniform practice between contracting entities in the same jurisdiction
- a lack of independent institutional regulatory agencies, which are a desirable feature in a modern PP framework.

Fully independent dedicated remedies bodies can only be found in the EU member states in the EBRD region. In other jurisdictions either an administrative or judicial review is available, but may not afford impartiality and objectivity. Nevertheless, in those jurisdictions where the PP review function is provided by civil or administrative courts, the quality of practice is relatively higher. A limited number of monitoring or auditing procedures is available in EU member states and the Balkan countries (which are generally utilised for special donor funding such as the EU structural funds). The lack of regulation of procurement planning, budgetary approval procedures and public contract management is a common weakness. The assessment confirms that reforming and upgrading PP legal frameworks and performance across the EBRD region should be on many governments' agendas.

Chart A.1.2.7
PP framework enforcement mechanisms



High compliance
Per cent

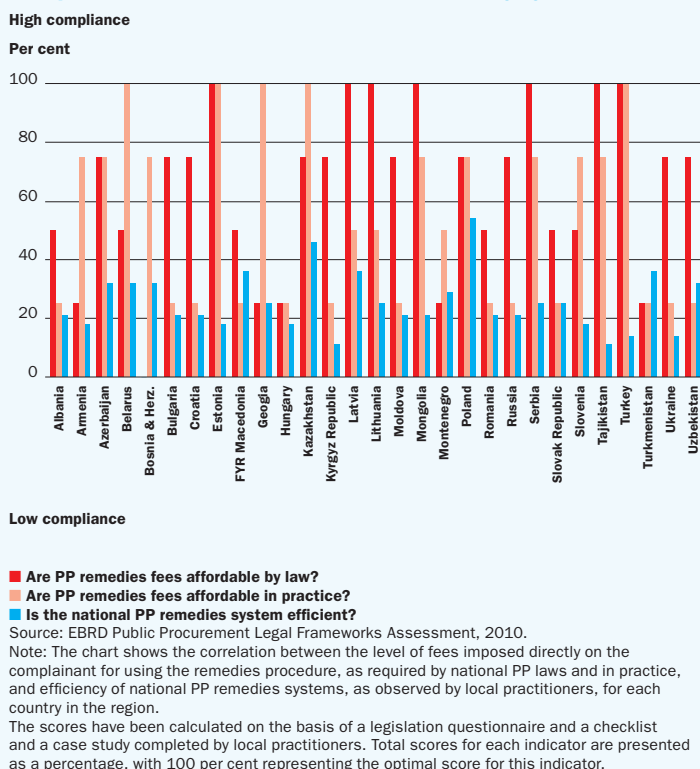
100
80
60
40
20
0

Low compliance

■ Availability of the remedies system
■ Availability of the dedicated PP enforcement mechanism

Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.
Note: The chart shows the correlation between the score for the PP enforcement legislation and marks for PP enforcement practice for each country in the region. The scores have been calculated on the basis of a legislation questionnaire and a checklist and a case study completed by local practitioners, respectively. Total scores are presented as a percentage, from low to high compliance, with 100 per cent representing the optimal score for these benchmark indicators.

Chart A.1.2.8
Comparison of cost effectiveness of PP remedy systems



High compliance
Per cent

100
80
60
40
20
0

Low compliance

■ Are PP remedies fees affordable by law?
■ Are PP remedies fees affordable in practice?
■ Is the national PP remedies system efficient?

Source: EBRD Public Procurement Legal Frameworks Assessment, 2010.
Note: The chart shows the correlation between the level of fees imposed directly on the complainant for using the remedies procedure, as required by national PP laws and in practice, and efficiency of national PP remedies systems, as observed by local practitioners, for each country in the region.
The scores have been calculated on the basis of a legislation questionnaire and a checklist and a case study completed by local practitioners. Total scores for each indicator are presented as a percentage, with 100 per cent representing the optimal score for this indicator.