

# Public Procurement Integrity in Southeast Europe

**Mechanisms, Red Flags, and State-Owned  
Enterprises in the Energy Sector**



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The Regional Good Governance Public-Private Partnership Platform (R2G4P), coordinated by the Center for the Study of Democracy, Bulgaria aims to deliver shared anticorruption solutions to increase the accountability of state institutions and strengthen civil society and the rule of law in Southeast Europe (SEE). In 2021/2022, the initiative focused its efforts on two of the most challenging governance vulnerabilities in the region: analyzing the integrity of the public procurement systems and the management of the energy sector in nine SEE countries (Bulgaria, Croatia, Hungary, Romania, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia). The analysis is based on two unique big-data corruption risk assessment tools: *Open Tender* and *State Capture Assessment Diagnostics*. The key conclusions and policy recommendations are summarized in the current report.

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# LIST OF ABBREVIATIONS

|               |   |
|---------------|---|
| <b>ANAP</b>   | Agenția Națională pentru Achiziții Publice<br>(National Public Procurement Agency of Romania)                     |
| <b>BEH</b>    | Bulgarian Energy Holding  |
| <b>BGH</b>    | Balkan Gas Hub  |
| <b>BiH</b>    | Bosnia and Herzegovina  |
| <b>BRIN</b>   | Balkan Investigative Reporting Network  |
| <b>CF</b>     | Cohesion Fund   |
| <b>CNSC</b>   | Consiliul Național de Soluționare a Contestațiilor<br>(National Council for the Settlement of Appeals of Romania) |
| <b>CPC</b>    | Bulgarian Commission for Protection of Competition  |
| <b>CPV</b>    | Common Procurement Vocabulary   |
| <b>CRI</b>    | Corruption Risk Index   |
| <b>CSD</b>    | Center for the Study of Democracy   |
| <b>CSOs</b>   | Civil Society Organisations   |
| <b>DCM</b>    | Decisions of the Council of Ministers   |
| <b>EBRD</b>   | European Bank for Reconstruction and Development  |
| <b>EEA</b>    | European Economic Area  |
| <b>EFT</b>    | Energy Financing Team   |
| <b>EIB</b>    | European Investment Bank  |
| <b>EPC</b>    | Engineering, Procurement, and Construction Contractor   |
| <b>EPCG</b>   | Elektroprivreda Crne Gore<br>(Electricity System Operator of Montenegro)  |
| <b>EPPO</b>   | European Public Prosecutor's Office   |
| <b>ERDF</b>   | European Regional Development Fund  |
| <b>EPS</b>    | Elektroprivreda Srbije (Electricity System Operator of Serbia)  |
| <b>ESF</b>    | European Social Fund  |
| <b>ESM</b>    | Elektrani na Severna Makedonija<br>(Electricity Production Company in North Macedonia)                            |
| <b>ESO</b>    | Electricity System Operator   |
| <b>ETS</b>    | European Union Emissions Trading System   |
| <b>EWRC</b>   | Bulgarian Energy and Water Regulatory Commission  |
| <b>GERB</b>   | Citizens for European Development of Bulgaria (political party)   |
| <b>GSP</b>    | Grup Servicii Petroliere<br>(Romanian Offshore Service Company for Oil and Gas)                                   |
| <b>GTI</b>    | Government Transparency Institute   |
| <b>HDZ</b>    | Hrvatska Demokratska Zajednica<br>(Croatian Democratic Union - political party)                                   |
| <b>HEP</b>    | Hrvatska Elektroprivreda (Electricity System operator of Croatia)   |
| <b>HERA</b>   | Hrvatska Energetska Regulatorna Agencija<br>(Croatian Energy Regulatory Agency)                                   |
| <b>INA</b>    | Industrija Nafta, d.d. (Croatian Oil Company)   |
| <b>IPA II</b> | Instrument for Pre-accession Assistance   |
| <b>JKP</b>    | Javno Osvetljenje<br>(Electric Power Distribution Company in Belgrade)  |

|              |   |
|--------------|---|
| <b>KESH</b>  | Korporata Elektroenergjitike Shqiptare<br>(Albanian Power Corporation)  |
| <b>KLSH</b>  | Kontrolli i Lartë i Shtetit (State Supreme Audit of Albania)  |
| <b>KPIs</b>  | Key Performance Indicators  |
| <b>MEKH</b>  | Magyar Energetikai És Közmű-Szabályozási Hivatal<br>(Hungarian Energy and Utilities Regulatory Agency)                                |
| <b>MEPSO</b> | Makedonski Elektroprenosen Sistem Operator<br>(Electricity System Operator of North Macedonia)  |
| <b>MFF</b>   | Multiannual Financial Frameworks  |
| <b>MOL</b>   | Magyar OLaj- és Gázipari Részvénytársaság<br>(Hungarian Oil and Gas Company)  |
| <b>MVM</b>   | Magyar Villamos Művek Zártkörűen működő Részvénytársaság<br>(Hungarian Energy Holding)  |
| <b>NEK</b>   | Natsionalna Elektricheska Kompania<br>(Bulgarian State-owned Electric Company)  |
| <b>NPP</b>   | Nuclear Power Plant   |
| <b>NRRP</b>  | National Recovery and Resilience Plan   |
| <b>OLAF</b>  | European Anti-Fraud Office  |
| <b>OSHEE</b> | Operatori i Shpërndarjes së Energjisë Elektrike<br>(Albanian Electricity Distributor)   |
| <b>OST</b>   | Operatori i Sistemit të Transmetimit<br>(Transmission System Operator of Albania)   |
| <b>PECA</b>  | Public Enterprises and Control Agency   |
| <b>R2G4P</b> | Regional Good Governance Public-Private Partnership Platform  |
| <b>SCAD</b>  | State Capture Assessment Diagnostics  |
| <b>SDA</b>   | Stranka demokratske akcije<br>(Party of Democratic Action of Bosnia and Herzegovina)  |
| <b>SEE</b>   | Southeast Europe  |
| <b>SEE-9</b> | Southeast Europe Nine (Bulgaria, Croatia, Hungary, Romania, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia) |
| <b>SELDI</b> | Southeast Europe Leadership for Development and Integrity   |
| <b>SIGMA</b> | Support for Improvement in Governance and Management  |
| <b>SMEs</b>  | Small and Medium Sized Enterprises  |
| <b>SOEs</b>  | State-owned-enterprises   |
| <b>SPAK</b>  | Struktura e Posaçme Anti-Korrupsion (Special Prosecution Office against Corruption and Organized Crime of Albania)                    |
| <b>TED</b>   | European Tender Electronic Daily  |
| <b>TPP</b>   | Thermal Power Plant   |
| <b>TSO</b>   | Transmission System Operator  |
| <b>USKOK</b> | Ured za suzbijanje korupcije i organiziranog kriminaliteta<br>(Croatian Office for Suppression of Corruption and Organised Crime)     |
| <b>VEB</b>   | Vnesheconombank (Russian State Development Corporation)   |
| <b>WBIF</b>  | Western Balkans Investment Framework  |

# EXECUTIVE SUMMARY

The principles of good governance continue to face an increasing number of challenges in the region of Southeast Europe. The war in Ukraine has starkly demonstrated how **rule of law challenges** in the region **undermine** not only its economic development but also the **EU's unity and resilience** vis-à-vis external authoritarian threats. The new EU member states from the region are among the largest net recipients of EU funding. Yet, democratic backsliding and corruption continue to haunt their societies, despite continuing strong public outcry and protests, and the introduction of specific EU and US steps to address these challenges. Such steps included the Cooperation and Verification Mechanism to monitor anti-corruption and judicial reforms in Bulgaria and Romania after their accession in 2007, the much harsher rule of law requirements for Croatia's accession in 2013, the US sanctions under the Global Magnitsky Act in Bulgaria in 2021, and the triggering of a newly devised penalty processes for freezing EU funds for Hungary in 2022. The Western Balkan countries, which all aspire to join the EU, face even steeper governance challenges. Coupled with the EU's enlargement fatigue this has resulted in continuously delayed EU accession prospects, rising popular frustration in their societies and recurring undemocratic tendencies. Persistent governance gaps across Southeast Europe, have been further exacerbated by the COVID-19 pandemic and the Kremlin's war in Ukraine.<sup>1</sup> The *SEE Good Governance Report* aims to provide a deeper understanding of these challenges and pave the way for effective anti-corruption reforms in nine countries – four member states and five aspiring for EU membership – Bulgaria, Croatia, Hungary, Romania, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia. This year's report focuses on two of **the most testing governance vulnerabilities in the region**: public procurement and governance of state-owned enterprises in the energy sector.

## Public procurement integrity

Public procurement constitutes a substantial portion of GDP in both high- and low-income economies. Across the globe it represents 15% to 30% of GDP. This huge volume of public spending could play a crucial role in economic and social progress if allocated efficiently. However, it is also one of the government activities most vulnerable to corruption.<sup>2</sup> According to the United Nations Office on Drugs and Crime, **10% to 25% of a public contract's overall value may be lost due to shady practices.**<sup>3</sup> While corruption in

<sup>1</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in Southeast Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

<sup>2</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for – a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>3</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

public procurement can take many forms, there is a **clearly definable set of corrupt techniques** that are actively used in Southeast Europe to siphon out public money for private gain.

- ***Favoritism and Clientelism.*** One of the most common forms of procurement irregularities in the region is the preferential treatment of companies due to the good political connections of their owners. For example, in Croatia, around a half of the total contract value is won by bidders which are not private entities, but companies partially or fully owned by the state.<sup>4</sup> Many private companies across the region whose owners are closely linked with high-ranking politicians are winning public procurements that are almost exclusively created for them. For example, in Hungary during the last 11 years, the ruling party has created a new economic elite whose corporations receive large subsidies in sectors such as tourism.<sup>5</sup>
- ***Overpricing of contracts.*** Overpricing of contracts is another prevailing form of procurement fraud based on favoritism. It involves a broader spectrum of contracting authorities and suppliers. In Hungary, 90% of public procurement projects are overpriced by 25% on average.<sup>6</sup> Similarly, in North Macedonia investigative reports have found large differences between market prices and contract prices of some products with identical specifications.<sup>7</sup>
- ***Tailored tender specifications.*** A frequent corruption technique is creating overly specific tender requirements that only fit the qualification and expertise of a specific firm.
- ***Conflict of interest in the tendering process.*** Cases of “high-level” conflict of interest were not rare in the past years in Serbia and became even more frequent since the COVID-19 pandemic started.<sup>8</sup> In Bulgaria, conflict of interest has materialized in in-house procedures,<sup>9</sup> in which budget funds were provided without tendering to a state-owned enterprise. The latter, instead of carrying out all activities in-house as foreseen by the law then sub-contracted private companies, which had been pre-selected in unrelated procedures. Such rogue in-house contracting

<sup>4</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>5</sup> András, B., “Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát” [Shocking: the government has provided two-thirds of tourism subsidies to half of those claiming], *valaszonline.hu*, 26 February 2021.

<sup>6</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben* [Corruption, Economic Performance and the Rule of Law in Hungary: Corruption Perceptions Index Results in 2019], TI Hungary, 2019.

<sup>7</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>8</sup> Centar za primenjenu evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine* [ALARM REPORT on the situation in public procurement in Serbia in 2020], CPES, November 2020.

<sup>9</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

reached EUR 4.4 billion or over 42% of the value of all government public procurement contracts in 2019 – 2020.<sup>10</sup>

- **High share of non-open procedures.** There are a few credible reasons for using closed or restricted procurement procedures, for example if revealing the content of the tender would pose a risk to the national security or if the value of the tender is small enough not to pose significant corruption risks. Nonetheless, SEE contracting authorities often overuse restricted procedures in cases where they would not be necessary.
- **Contract modification in the implementation phase.** CSOs from the region report the malicious practice of ex-post contract modifications, resulting in a much higher price than the initial expectations. These modifications are hard to track due to limited information on most of the official procurement websites.<sup>11</sup>

### COVID-19 induced changes in public procurement and overuse of urgent procedures

The pandemic increased the number of inherently restricted “urgent” procedures that circumvent the usual procurement legislation. The quantitative assessment of the procurement market shows that it caused **an overall decline in public procurement integrity**, especially in the most affected – healthcare and other COVID-related product – markets. These issues have been exemplified by the infamous “Respirator Affair” in Bosnia and Herzegovina.<sup>12</sup> In Croatia, the list of goods and services for which direct procurement agreements could be used was kept confidential until December 2020. The list was only published due to significant pressure from the general public.<sup>13</sup> In Hungary, during the State of Emergency the Prime Minister had the power to decide which procedures were related to the COVID-19 pandemic, and hence could be purchased through direct awards.<sup>14</sup>

<sup>10</sup> Sokolova, T., „Служебният кабинет спира харченето на милиарди без обществени поръчки” [The cabinet stops spending billions without public procurement], *Mediapool.bg*, 30 June 2021.

<sup>11</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data – An Implementer’s Guide*, 2015.

<sup>12</sup> Katavić, I., “Afera ‘Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i” [‘Respirators’ affair: FBiH Prime Minister Fadil Novalić detained at SIPA ], *Slobodnaevropa.org*, 28 May 2020; Radiosarajevo.ba, “Afera Respiratori: Novalić i drugi optuženi stigili na novo ročište” [Respirators affair: Novalić and other indicted arrive for new hearing], 17 November 2021.

<sup>13</sup> Nacionalno.hr, “Most traži da se medicinska oprema nabavlja kroz postupak javne nabave” [The Bridge requires that medical equipment is procured through a public procurement procedure], 9 December 2020; Croatian Government, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, [Report on purchases of protective equipment for the purpose of health protection measures implementation and strengthening supervision over the spread of coronavirus], Ministry of Economy and Sustainable Development, Directorate for Commodity Stocks, 2020.

<sup>14</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben* [Opinion of the Public Procurement Authority on certain public procurement issues related to the emergency situation in view of the spread of the coronavirus], 2020.



### Procurement-related corruption risk in the healthcare sector

The big data analysis for the current report shows that between the first quarter of 2017 and the second quarter of 2021, the COVID market *Corruption Risk Index (CRI)*<sup>15</sup> has increased by around 10 percentage points in Romania and Croatia.<sup>16</sup> The increase was temporary and was followed by a slow but steady decline. The big data analysis also reveals that in the last one and a half years the healthcare sectors' average buyer dependence significantly grew in Hungary, as well as slightly in Croatia, compared to the 2017-2020 period. Moreover, **captured contracting authorities** have not only provided a higher share, but also a higher value of public funds to their favored suppliers.

### Governance of state-owned-enterprises in the energy sector

The energy sector is one of the main systematic governance problems leading to significant losses of public wealth<sup>17</sup> and providing inroads for illicit finance and foreign authoritarian influence in the region.<sup>18</sup> The energy sector is of crucial importance for Southeast Europe, due to its status as a natural monopoly (often owned by the state), the social sensitivity of the people to price increases (as protests throughout the region during the past decade have demonstrated), and the large investments and financial interests at stake. The *State Capture Assessment Diagnostics (SCAD)* identifies the sector as **highly vulnerable to monopolization**.<sup>19</sup> The SEE countries have faced multiple allegations for blocking gas market liberalization in favor of local oligarchic corporate networks and for the benefit of Kremlin-controlled gas suppliers. Thus, unless properly governed the sector can undermine SEE countries' independence and development.

**Public accountability deficits** in energy state-owned-enterprises (SOEs) are visible in a number of cases, uncovered by investigative media reports, civil society reports or the audits of relevant public authorities across the SEE region. These issues contribute to a socio-political environment where financial mismanagement practices at SOEs are allowed to thrive and inefficient or damaging investment decisions are carried out. The absence of a solid legal framework is a key factor that enables the **limited financial transparency** and **widespread political meddling** in the day-to-day management of SOEs.

<sup>15</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>16</sup> See GTI's [Global Government Contracts database](#), 19 July 2021.

<sup>17</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>18</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy, 2018.

<sup>19</sup> Based on data for Bulgaria, Romania, Italy and Spain. For more information: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019. See also, Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.



### Key governance risks for the management of the energy sector SOEs



Source: Center for the Study of Democracy, 2022.

### Transparency

The corporate governance regulatory framework is still under development in the region, although some improvements have been made in recent years. The legal framework regulating the management of energy SOEs in the Western Balkans is not compliant with the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.<sup>20</sup> The EU member-states perform better in terms of applicable laws, however their implementation remains limited and slow.<sup>21</sup> Companies in a worse financial shape tend to be less transparent. One way to improve their transparency is for them to go public, which has been the case for Romgaz and Hidroelectrica in Romania. In another positive example, MOL Group, a listed company in Hungary, posts its financial statements and discloses the amount of shares each Board Member holds.<sup>22</sup> Financial data transparency remains particularly poor in the Western Balkans.<sup>23</sup>

### Financial vulnerability

Energy SOEs in the nine countries under study show a varying degree of financial vulnerability, revealed by their large debt exposure and high debt ratios, as well as low liquidity and falling current ratios. These financial difficulties have been particularly pronounced in fossil-fuel-based companies

<sup>20</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>21</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

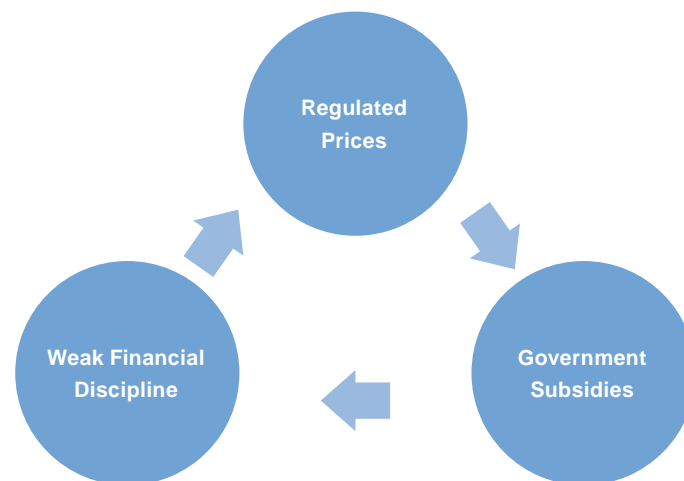
<sup>22</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports (1999-2020)*.

<sup>23</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

that have struggled to cope with constantly rising CO<sub>2</sub>, coal and natural gas prices. The efforts of the government to keep energy prices artificially low to avoid a social backlash are at the expense of the financial health and political independence of SOEs, as well as the impartiality of the regulatory authorities. The **low quality of financial management** is often related to: a) excessive staff size; b) overly generous remuneration; and c) the mismanagement of public procurement. The unfolding energy price crisis in Europe since the second half of 2021, which started with gas shortages and continued with the war in Ukraine, will likely exacerbate vulnerabilities further, despite the windfall profits for some companies.

SEE's long-standing **dependence on fossil fuel imports** from Russia, coupled with historical ownership, technological and managerial path dependence and deep (and often very opaque) financial links, has further exacerbated the vulnerability of its state-owned energy sectors. In practice, some of the largest investment projects in the SEE region are the result of intergovernmental agreements with non-EU states, most notably with Russia. The Russia-led TurkStream project<sup>24</sup> is a prime example. Affecting directly Bulgaria, Serbia, and Hungary, and indirectly the whole region and Europe, it has benefitted from and contributed to the further weakening of energy policy-making institutions and to the entrenching of oligarchic networks of influence of both Russian and local private interests with close ties to the government. China, while a newcomer, has created its own investment framework in the region, in particular in the Western Balkans, Croatia and Hungary, setting the stage for further tensions in these countries' further EU integration. Chinese investments, while welcome on cost terms, are often not consistent with EU technical standardisation and/or with the EU *acquis* on competition and public procurement. They also create, similar to the Kremlin, an **erosion of democratic and market standards** by their secret

#### Common path dependencies affecting the operation of SOEs



Source: Center for the Study of Democracy, 2022.

<sup>24</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.

and opaque nature. In many cases such projects reinforce national coal industries, ignore environmental regulations, or are not compliant with the overall policy of decarbonisation and sustainable growth.<sup>25</sup>

### Appointment of CEOs and board members

The rules on the appointment of board members and other company leaders in SEE energy SOEs are also unclear, especially when considering potential political influence. There have been numerous examples of **political meddling in the appointments** of management boards in SEE SOEs and regulatory authorities, which has undermined professional expertise in the planning and execution of difficult decisions in the energy sector. Hence, the business activities of SOEs are often influenced or could even serve the interests of companies or individuals with strong political ties, at the expense of the SOEs' financial performance.

### Governance gaps in the energy sector public procurement

The energy sector shows particularly strong governance deficits in public procurement. Some of these deficits coincide with the general procurement risks discussed above, however some are even more pronounced and/or unique to the sector, due to its size, natural monopoly status, and technical complexity.

#### Public procurement irregularities observed in the energy sector

| Before the selection procedure  | During the selection procedure  | After the selection procedure  |
|---|---|--|
| <ul style="list-style-type: none"> <li>• a company created solely to win a specific tender (no past experience)</li> <li>• tender specifications "tailored" for a specific company</li> <li>• provision of inside information</li> <li>• unrealistically short deadlines</li> <li>• creating artificial competition (submitting offers from fake competitors)</li> <li>• allocateing funding for unsubstantiated investments</li> <li>• overpricing the contract</li> </ul> | <ul style="list-style-type: none"> <li>• conflict of interest, political influence or bribing the evaluation committee</li> <li>• avoiding the use of procurement procedures by: <ul style="list-style-type: none"> <li>• direct negotiations</li> <li>• lowering the price under the thresholds</li> <li>• use of emergency procedures</li> </ul> </li> <li>• listing specific projects as pre-determined for funding in national planning documents</li> <li>• using framework agreements favouring big market players</li> </ul> | <ul style="list-style-type: none"> <li>• annulling tenders &amp; disqualifying competitors</li> <li>• changes of the tender conditions through annexes</li> <li>• paying for services/equipment which do not meet minimum requirements</li> <li>• no investigation of high-level officials and businesspersons linked to a certain contract</li> </ul> |

Source: Center for the Study of Democracy, 2022.

<sup>25</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

## The way forward

Despite continuous uneven progress, the **SEE countries face considerable good governance challenges**, which have been compounded by internal and external authoritarian threats. The region stands to continue to benefit from rising substantial financial and technical support from the democratic community of countries within the EU, the European Economic Area (EEA), and the US. How each country uses such support to progress on the path of democratization and anti-corruption depends ultimately on the efforts of its citizens, businesses and governments. The SEE EU countries need to follow closely their commitments under the Rule of Law Mechanism as well as the European Semester and invest accordingly the enormous fiscal stimulus provided by the Recovery and Resilience Facility and the 2021 – 2027 Multiannual Financial Framework. All four EU countries need to overcome governance roadblocks but in particular Bulgaria and Hungary need to work on increasing the effectiveness of the judiciary and de-concentrating power in the executive, respectively. The SEE Western Balkans countries need to work unilaterally to carry out the reforms needed under the EU negotiating chapters even if formally the enlargement process might have been blocked, as in the case of Albania and North Macedonia. Serbia faces particular challenges given its close ties and dependencies to authoritarian regimes.

General good governance challenges often boil down to addressing two interconnected systems in the SEE national economies: public procurement and the management of energy SOEs. Based on the in-depth review provided in the current report, several **key policy recommendations** could be outlined for these two domains:

- The **EU** and its partners from the **EEA** and the **US need to continue providing technical assistance** in mainstreaming EU public procurement good practices both in the management of EU funds for the region and the governance of national resources. Particular attention needs to be paid to increasing the combined capacity and joint work of anticorruption and public procurement regulatory authorities in the executive, public prosecution and courts.
- **SEE governments** should be safeguarding public procurement integrity, through **strengthened procurement monitoring** (such as the Open Tender or SCAD tool), increased institutional efficiency, reduced share of non-open procedures and improved contract awarding mechanisms. The countries from the Western Balkans need to open their procurement data to allow better diagnostics and control, while the EU member-states from SEE need to continue building capacity to identify and tackle red-flags for public procurement corruption.
- National governments should **withdraw the Covid-19 emergency procurement rules** by reversing to the original procurement legislation. Emergency spending in the future should be accompanied with in-built stronger ex-post monitoring and evaluation of efficiency.

- SEE governments, SOEs and business associations should **adopt and apply the best international standards on corporate governance** of state-owned enterprises in the energy sector, such as those developed by the OECD. SEE SOEs need to strive to report to similar or higher standards of corporate disclosure than their publicly traded private peers in the EU.
- SEE parliaments and governments need to **improve the independence of the national energy and competition regulators** by increasing their administrative and financial capacity, and removing political appointments. Shorter mandates of board members should also be introduced. SEE energy regulators need to work closely with their EU peers on establishing a community of practice. Regulators' decisions need to abide by the highest standards of public disclosure of information.
- SEE governments should **refrain from entering into large-scale bilateral energy projects** without proper safeguards, which as a minimum could include the involvement of international public financial institutions, such as EIB, EBRD or the World Bank. Such projects need to involve as a rule a system of information disclosure of higher standards than the typically prevailing in the SEE countries. Such system should also be made public in a timely manner, providing information regarding large-scale energy infrastructure projects, including a detailed cost-benefit analysis.
- SEE national governments need to work with the European Commission, EU and EEA member states and the US to introduce better **safeguard to their economies from illicit or corrosive funds linked to authoritarian countries**. This safeguard should include the introduction of better institutions and regulations regarding investment screening and sanctions monitoring mechanisms.
- SEE governments and their EU/EEA and US partners need to **build sustainable interaction models with national and local civil society and investigative media** with regards to increasing the monitoring of public procurement and energy SOEs. The R2G4P platform<sup>26</sup> experience can inform such efforts at the regional level. There are already existing models of public support for civil society organizations across the region but these are either in their infancy or often invoke fears among CSOs and media about compromising their independence.

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<sup>26</sup> The [Regional Good Governance Public-Private Partnership Platform \(R2G4P\)](#) is a three-year pilot initiative, supported by the EEA and Norway Grants Fund for Regional Cooperation, which gathers the efforts of thirteen organizations from ten countries and aims to deliver shared anticorruption solutions to increase the accountability of state institutions and strengthen civil society and the rule of law in Southeast Europe.



# INTRODUCTION

The principles of good governance continue to face a number of challenges in the region of Southeast Europe. The hesitant and ambiguous reactions to the Kremlin's war in Ukraine across capitals in South East Europe in the beginning of 2022 have only been the latest reminder of the **unfinished democratization and EU integration process** in the region, with serious outstanding rule of law gaps. This calls for further efforts to improve governance and tackle corruption and state capture across the region, which requires action at political and technical level by national governments, civil society and EU and international partners.

The current report aims to provide a **deeper understanding of the good governance challenges** and pave the way forward for nine countries (SEE-9)<sup>27</sup> – four member states and five aspiring for EU membership (Bulgaria, Croatia, Hungary, Romania, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia). It focuses, in particular, on two main elements of the good governance mix that have been identified as **critical impact opportunities** during the first year of operation of the Regional Good Governance Public-Private Partnership Platform (R2G4P):

- **Public procurement integrity:** observed irregularities (including due to loosened procurement regulations during the COVID-19 pandemic), and the use of red-flags warning systems;
- The **governance of state-owned-enterprises** (SOEs) in the energy sector, including management of financial resources, investment decisions, appointment of board members, and energy-related public procurement.

The report is based on information from **two state-of-the-art data tools**:

- The Open Tender portal, which provides big data analytics on red flags or irregularities in public procurement across the EU/EEA;
- The State Capture Assessment Diagnostics, which provides assessment of state capture risks at sectoral level in SEE-9.

The data from the tools has been complemented by the work of national contributors from the SELDI network and by inputs and feedback from the representatives of the public and civil society sector taking part in the R2G4P Platform.

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<sup>27</sup> For the sake of clarity and coherence we will use for these nine countries the abbreviation SEE-9 throughout the report.





# PUBLIC PROCUREMENT IRREGULARITIES – HIDDEN RISKS FOR THE POST-COVID ECONOMIC RECOVERY

## Irregularities in the procurement market

Public procurement constitutes a substantial portion of GDP in both high- and low-income economies. Across the globe it represents 15% to 30% of the GDP of many countries. This huge volume of public spending could play a crucial role in economic and social progress if allocated efficiently. However, it is also **one of the government activities most vulnerable to corruption**.<sup>28,29</sup> According to the United Nations Office on Drugs and Crime, 10% to 25% of a public contract's overall value may be lost due to shady practices.<sup>30</sup>

While corruption in public procurement can take many forms, there is a clearly definable set of corrupt techniques that are actively used in SEE-9 to siphon out public money for private gain. This chapter introduces evidence on **the most common irregularities in the procurement markets of the region**. These irregularities are not mutually exclusive, and one may even stem from another, but they largely explain different practices and require the corruption of different parts of the public procurement process.

It is important to note that there are also **positive public procurement trends** in the region. As highlighted by SIGMA (Support for Improvement in Governance and Management) several Western Balkans countries have recently adopted new public procurement laws implementing provisions of 2014 EU public procurement directives (namely Albania, Montenegro, North Macedonia, and Serbia). Furthermore, the transparency and functionality of some **electronic procurement systems** have improved and the independence of procurement review bodies responsible for appraisal of appeals submitted by aggrieved economic operators have also increased.<sup>31</sup> However, the case studies and other qualitative evidence assembled for this report suggest that the region is grappling not simply with a high amount of corruption transactions but with **systemic corruption**, which often amounts to state capture. **State capture networks** can blunt any too specific, too technical or poorly designed policy solutions attempting to increase procurement system integrity. State capture issues require a broader set of responses on political and technical level, and if left unresolved – these more system-wide problems can undermine the above achievements.

<sup>28</sup> OECD, *Preventing Corruption in Public Procurement*, 2016.

<sup>29</sup> World Bank, *Fraud and corruption awareness handbook: how it works and what to look for – a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>30</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances – Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>31</sup> OECD/SIGMA, *The Principles of Public Administration – Western Balkans, Support for Improvement in Governance and Management*, Regional Overview, 2022, pp. 60-67.

### *Favoritism & Clientelism*

One of the most common forms of procurement irregularities in the region is favoritism, the preferential treatment of a group of companies due to the good political connections of their owners. As this is the broadest category, many of the subsequent irregularities are more specific forms of favoritism. In Croatia, a significant part (around a half) of the total contract value is won by bidders which are not private entities, but companies partially or fully owned by the state.<sup>32</sup> Furthermore, many private companies whose owners are closely linked with high-ranking politicians are winning **public procurements that are almost exclusively tailored** for their profiles (see Box 1). In Hungary during the last 11 years, with the help of a two-third majority in the parliament, the ruling Fidesz party has created a new economic elite that is fully loyal to the incumbent government. In return, their corporations receive large subsidies in sectors such as tourism<sup>33</sup> and they are also very successful in the broader procurement market. An example that has become popular is Lőrinc Mészáros, who is close to the prime minister, and whose companies and consortium partners won 5.4% of the total contract value of public procurements in 2017 and 3.7% in 2018.<sup>34</sup> Clientelism is also a large issue in Montenegro where, in recent years, specific companies owned by well-connected families received almost a third of the procurements in their corresponding markets.<sup>35</sup> These businesspersons have family ties with actors involved in major public corruption scandals<sup>36</sup>, but no abuse has been proven in court in securing public procurement deals.

The other sign of favoritism in the region is the **de facto legal immunity** enjoyed by large procurement providers and recipients. Prosecutions, court cases and verdicts are very rare despite many public corruption allegations and scandals. In Montenegro, there have been no known cases of someone being arrested or convicted for rigging a tender. Yet, there are cases each year where the Administrative Court annuls public procurement proceedings, indicating the existence of irregularities.<sup>37</sup> In Bosnia and Herzegovina, the problem of impunity of those responsible for manipulations in the public procurement process has been widely discussed in the media. However according to legal experts, the share of obsolete cases which are dismissed due to inaction is very high, indicating a serious problem with impunity in the country.<sup>38</sup> In

<sup>32</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>33</sup> András, B., "Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát" [Shocking: the government has provided two-thirds of tourism subsidies to half of those claiming them], *valaszonline.hu*, 26 February 2021.

<sup>34</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben* [Corruption, Economic Performance and the Rule of Law in Hungary: Corruption Perceptions Index Results in 2019], TI Hungary, 2019.

<sup>35</sup> Information is based on an interview with a public official who has requested anonymity.

<sup>36</sup> Monitor, "DESET NAJBOGATIJIH CRNOGORSKIH PORODICA: Milioneri preko državne grbače" [Ten Richest Montenegrin Families: Millionaires over the state hump], 2 January 2020.

<sup>37</sup> For example, there were 19 such judgments in 2019.

<sup>38</sup> Vujatović, D., "Skoro 600 zastara i 28.000 obustava istraga: Objektivni razlozi ili nekažnjivost onih koji ne rade svoj posao" [Nearly 600 statutes of limitations and 28,000 suspensions of investigations: Objective reasons or impunity for those who do not do their job], *Detektor.ba*, 15 October 2021.

Hungary, the Prosecutor's office has suspended several investigations where politicians or politically connected individuals were involved.<sup>39</sup> In Romania, even though fraudulent companies are being brought to justice, they continue to be awarded public procurement contracts.<sup>40</sup>

### Box 1. Croatia: Corruption in the allocation of Advent houses (2016-2021)

The Mayor of the City of Zagreb is authorized to tender the allocation of public areas in the city for commercial use by business entities. A criminal investigation of the Office for Suppression of Corruption and Organised Crime (USKOK) established that, in the period from 2016 to 2020, the now deceased previous Mayor of Zagreb had allegedly colluded with friends to provide their companies with licenses to do business at the city's most attractive locations at various events. Allegedly, in exchange the said businesses provided the mayor with part of the generated profits. The mayor ordered a member of the Commission for Leasing Public Spaces to take actions to prevent other interested applicants from participating in the public tenders.

The newly elected mayor of the City of Zagreb is now looking to recuperate the public revenue lost due to the scheme under investigation. The city administration is said to adhere to those indictments of the Office for Suppression of Corruption and Organised Crime (USKOK) that the court has confirmed so far and suspend the respective companies from further bidding. This includes the owners of companies that benefited from said criminal activities, as well as some experts and lawyers who have enabled them. The city administration demands the return of more than HRK 227 million (EUR 30 million). The aforementioned case and some other cases related to misuse of public tenders by the former mayor are still in court.<sup>41</sup>

### Overpricing of contracts

Overpricing of contracts is another prevailing form of procurement fraud. While it is often connected to favoritism, it is a more specific corruption technique that involves a broader spectrum of contracting authorities and suppliers.

<sup>39</sup> Katalin, E., [Elszabotált nyomozások: 20 fontos ügy, ami megakadt az ügyészségen](#) [Tortured investigations: 20 important cases that got stuck in the Prosecution], *atlatszo.hu*, 16 September 2021.

<sup>40</sup> Ionescu, A., ["Tel Drum a încheiat un nou contract de 11 milioane de euro pentru întreținerea drumurilor din Teleorman / Compania, controlată, potrivit DNA, de către Liviu Dragnea, este inculpată pentru evaziune fiscală și constituire de grup infracțional organizat"](#) [Tel Drum concluded a new contract of EUR 11 million for the maintenance of roads in Teleorman / Company, controlled, according to DNA, by Liviu Dragnea, is accused of tax evasion and of organized crime], *g4media.ro*, 15 August 2020; Ionescu, A., ["Tel Drum, compania despre care DNA susține că ar fi controlată de Liviu Dragnea, nou contract de aproape 2,7 milioane de euro pentru întreținerea drumurilor județene din Teleorman"](#) [Tel Drum, the company that DNA claims to be controlled by Liviu Dragnea, a new contract worth almost 2.7 million euros for the maintenance of county roads in Teleorman], *g4media.ro*, 19 October 2021.

<sup>41</sup> Lukic, S., ["Doznajemo: Tomašević traži od 'bandičevaca' 227 milijuna kuna izvučenih kroz poznate afere"](#) [We find out: Tomašević is asking the 'Bandić family' for 227 million kunas extracted through well-known scandals], *jutarnji.hr*, 30 August 2021; Šljivak, M., ["Potvrđeno Indexu: DORH će istražiti neobične okolnosti Bandićeve smrti"](#) [Confirmed to Index: DORH will investigate the unusual circumstances of Bandić's death], *index.hr*, 11 March 2021; Al-jazeera, ["Hapšenje u Hrvatskoj: USKOK objavio detalje afere"](#) [Arrests in Croatia: USKOK announces details of scandal], *balkans.aljazeera.net*, 1 July 2021.

In Romania, many of the investigations concerning public procurement irregularities show that public authorities sign and pay for overpriced products and services. Low quality goods and services are being supplied at very high prices and some goods and services exist only on paper. Furthermore, these cases can often be connected to fraud or money laundering.<sup>42</sup> In Hungary, some findings show that 90% of public procurement projects are overpriced by 25% on average.<sup>43</sup> In North Macedonia, investigative reports found large differences between market and contract prices of some products with identical specifications suggesting that public money is lost due to the overreliance on specific suppliers.<sup>44</sup> The necessity of improvement of the risk management systems used in all governmental agencies of North Macedonia has also been noted by the UNODC.<sup>45</sup> These problems have been amplified by the ongoing COVID-19 pandemic.

**Box 2. North Macedonia: Purchase of overpriced protective gear for police and communal workers (2020)**

The State Audit Office and the Center for Civil Communications, a non-governmental organisation, each in their separate monitoring of urgent procurement of personal protective equipment for the police and communal workers, confirmed significant price differences for the same items between different contracts and with the prevailing market prices. Such differences were not characteristic solely for the Ministry of Interior and the communal public enterprises, which were provided only as examples of the wider problem of overpricing of public contracts throughout the public administration. According to the findings, often contracting authorities invited one bidder and did little to research the market prices (despite the volatile markets and the possibility for substantial price arbitrage). This drove very different outcomes, in terms of price, for similar or the same products procured from different administrations at different points in time. Differences in prices were also thought to be the result of vague technical specifications in the affected tenders, which permitted products with different specifications to compete in a single tender (e.g., one use suits vs multiple use protective suits).<sup>46</sup>

<sup>42</sup> Constantin, A., “Prahova: Pedepse de până la 7 ani și 4 luni de închisoare în dosarul Romprest; inculpații vor plăti ANAF 19 milioane lei” [Prahova: Sentences of up to 7 years and 4 months in prison in the Romprest case; the defendants will pay ANAF 19 million lei], *Agerpres.ro*, 23 November 2020; Digi24.ro, “Patronul Romprest, vizat într-un caz de evaziune fiscală de 14 milioane de euro. Procurorii au pus sechestru pe conturile lui Florian Walter” [The owner of Romprest, targeted in a tax evasion case of 14 million euros. Prosecutors seized Florian Walter’s accounts], 6 May 2015; Fernoagă, C., “SURSE: DNA a demarat procedura de soluționare a plângerii formulate de Clotilde Armand, împotriva directorului Romprest, Bogdan Adimi” [SOURCES: DNA has started the procedure for resolving the complaint filed by Clotilde Armand against the director of Romprest, Bogdan Adimi], *G4media*, 26 July 2021.

<sup>43</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben*, [Corruption, Economic Performance and the Rule of Law in Hungary: Corruption Perceptions Index Results in 2019], TI Hungary, 2019.

<sup>44</sup> CCC, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, 2020.

<sup>45</sup> UNODC, *Country Review Report of North Macedonia – Review by Montenegro and the Republic of Moldova of the implementation by North Macedonia of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021*, 2021.

<sup>46</sup> CCC, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, 2020; State Audit Report on Public Procurement Related to COVID-19 March-August 2020.

### Tailored tender specifications

Another frequent corruption technique is creating overly specific tender requirements that only fit the qualification and expertise of a certain firm. This technique **eliminates competition** leaving the favored supplier as the sole bidder. The Bulgarian procurement system has a high share of contracts with the enlistment of unnecessary, overly technical (or subjective) requirements which can often be met only by a single (politically) preferred bidder.<sup>47</sup> The preference of a particular bidder through the narrowing down of procurements' requirements is also a known issue in Croatia. This is particularly the case when private companies are owned by family members of government officials as well as those with owners who are close to the circles of high-ranking politicians. In Albania, there are several reasons for the lack of sufficient procurement competition, one of which is caused by the overspecification of the tender participation criteria. For example, Open Data Albania underlined that out of the 100 tenders with the highest value in 2021, 35 were marked by a red flag for lack of competition.<sup>48</sup> Similarly, one of the main reasons for reported limited competition in Serbia is due to too restrictive specifications.<sup>49</sup>

#### Box 3. Serbia: Procurement for New Year decoration by Keep Light d.o.o. (2016-2020)

The investigative portal Pištaljka, which follows public procurement procedures in Serbia and exposes suspicious activities, has recognized the 2016 tender for the New Year's decoration in Belgrade as shady.<sup>50</sup> An inspection of the tender documentation, revealed that the included pictures of ornaments, lightning, and other decoration elements were copied from the catalogue of the only company that has this kind of decoration – Keep Light d.o.o.<sup>51</sup> In particular, photos were copied from the Fotodiastasi company from Greece. The official importer of the goods and services of the Green company for Serbia is Keep Light d.o.o. The tender also demanded samples of all pieces of decoration to be submitted together with the offer.<sup>52</sup> Presumably, that stipulation excluded all companies except the Keep Light d.o.o. from competing. Eventually, only two companies applied in the tender announced by the JKP "Javno osvetljenje" (Public Communal Company "Public Lighting").

<sup>47</sup> Stoyanov, Gerganov, and Yalamov, *State Capture Assessment Diagnostics*, Sofia: CSD, 2019.

<sup>48</sup> Open Data Albania, *Out of the 100 tenders with the highest value in 2021, 35 are marked by RedFlag for lack of competition*, 19 January 2022.

<sup>49</sup> Public Procurement Office, Public Procurement Directorate, *Public Procurement Report in the Republic of Serbia for the Period 1.1.2020 – 31.12.2020, 2021*.

<sup>50</sup> Pistaljka.rs, "Тендер за београдску новогодишњу расвету намештен" [Christmas Lights Procurement Rigged], 17 December 2016.

<sup>51</sup> The [original tender documentation](#) as well as the original catalogue from the Fotodiastasi [website](#) are available online.

<sup>52</sup> JKP Javno osvetljenje Beograd, *Konkursna dokumentacija za nabavku dobara oprema za svečano osvetljenje* [Tender documentation for the procurement of good equipment for festive lighting], OPD-13/16, 2016, p. 18.

The Public Procurement Directorate (today's Public Procurement Office) initiated proceedings to determine the regularity of this tender.<sup>53</sup> After two months of proceedings, the Directorate determined that the aforementioned tender did not violate the law.<sup>54</sup> According to the Directorate's explanation, aesthetic criteria required that JKP "Javno osvetljenje" uses catalogue pictures in the tender documentation.

In the following year, 2017, another public tender that Keep Light d.o.o. won regarding the New Year's tree, drew the attention of investigative journalists. As the only bidder, the company offered a price that was only 0,3% lower than the estimated value in the public procurement tender.<sup>55</sup> Additionally, the tree was assembled and set up three days before the announcing of the tender winner and the signing of the contract with Keep Light d.o.o. After the "Ne da(vi)mo Beograd" movement filed criminal charges against Keep Light's director and accountable officials for rigging the public procurement tender, the Belgrade mayor Siniša Mali announced that the contract would be terminated.<sup>56</sup> However, it cannot be verified whether the contract has actually been terminated, as no information on the contract termination has ever appeared on the Public Procurement Portal, while the Prosecutor's Office has rejected all criminal charges.

### *Conflict of interest in the tendering process*

The conflict of interest in public procurement indicates that the financial and political interests of actors involved in the tendering process overlap. Overlapping interests can materialize between the contracting authority and the supplier if there is a **particularistic relationship** between the leadership of the two organizations. In other cases, the conflict of interest occurs between the monitoring agency and the supplier or between the monitoring authority and the contractor. Such is the case in Hungary, for example, where the governmental organization deciding on the beneficiaries of EU funded projects and the organization that is tasked to monitor these projects are subordinates of the same authority.<sup>57</sup>

In Serbia, conflict of interest has often allegedly taken another form. While procurers are obliged by law<sup>58</sup> to prevent conflict of interest within their organizations, the law does not regulate the potential conflict of interest in other situations where those who are able to affect the purchase agreement by virtue of their public prominence could have economic, financial, or other private interests. The cases of "high-level" conflict of interest, where prominent polit-

<sup>53</sup> Djuric, S., "Управа за јавне набавке испитује тендер за новогодишњу расвету" [The Public Procurement Administration is examining the tender for New Year's lighting], *pistaljka.rs*, 30 December 2016.

<sup>54</sup> Djuric, S., "Управа за јавне набавке оправдава намештени тендер" [The Public Procurement Directorate justifies the rigged tender] *pistaljka.rs*, 19 March 2017.

<sup>55</sup> Transparency Serbia, "Transparentnost Srbija pregled aktivnosti za period" [Transparency Serbia overview of activities for the period], *Bilten broj 52/2017*, 29 December 2017.

<sup>56</sup> RTS, "Raskinut ugovor sa dobavljačem jelke u Beogradu" [Contract with Christmas tree supplier in Belgrade terminated], *rts.rs*, 21 December 2017.

<sup>57</sup> Ligeti, M. et al., *Korupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korupció Érzékelési Index eredményei 2019-ben* [Corruption, Economic Performance and the Rule of Law in Hungary: Corruption Perceptions Index Results in 2019], TI Hungary, 2019.

<sup>58</sup> Law on Public Procurement, Official Gazette RS, No. 124/12, 14/15 and 68/15.



ical figures and their family members got involved, were not rare in the past years but they became more frequent after the COVID-19 pandemic started.<sup>59</sup>

The Romanian PREVENT system presents a good example for an established mechanism, detecting conflicts of interest particularly in public procurement.<sup>60</sup>

### *High share of non-open procedures*

There are a few credible reasons for using closed or restricted procurement procedures<sup>61</sup>, for example if revealing the content of the tender would pose a risk to the national security or if the value of the tender is small enough not to pose significant corruption risks. Nonetheless, contracting authorities often **overuse restricted procedures** in cases where they would not be necessary. These practices can cause corruption risk and can considerably decrease the transparency of the procurement system.

In Albania, until 2017, a high share of procurements was done by direct negotiation without announcement, as also noted by the World Bank.<sup>62</sup> The law stipulates that this process takes place in emergency situations and that they are justified by the institution that is carrying it out. Since 2018, the number of direct negotiation procedures has decreased significantly.<sup>63</sup> In North Macedonia, urgent procedures can be used to purchase goods and services that have low value and are required with little prior notice. However, the North Macedonian State Audit Office review of public procurement practices during the pandemics, as well as external monitoring by civil society organizations, identified that urgent procedures were very often inadequately implemented, allowing for procurements which are not necessarily urgent to be processed as such.<sup>64</sup>

<sup>59</sup> CPES, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine* [ALARM REPORT on the situation in public procurement in Serbia in 2020], November 2020.

<sup>60</sup> Consultă aici *Legea nr. 184/2016 din 17 octombrie 2016* privind instituirea unui mecanism de prevenire a conflictului de interese în procedura de atribuire a contractelor de achiziție publică [Law 184/2016 of 17 October 2016 on the establishment of a mechanism for preventing conflicts of interest in public procurement contracts awarding].

<sup>61</sup> According to the EU legislation, anyone may ask to participate in a restricted procedure, but only those who are pre-selected may submit tenders. The Western Balkan countries, however, may have further restrictions, including on the deadlines for submission of offers. For example, in Albania, the minimum time limit for submission of bids for a restricted procedure is 20 days, while in an open tender, it is a minimum of 52 days (Article 43 of the *Law on Public Procurement*).

<sup>62</sup> The World Bank, *Albania – Country Procurement and Contract Implementation (CPCI) Review*, *The World Bank*, 2017.

<sup>63</sup> Since 2018 there is a continuous decrease in the number of negotiated procedures without prior publication of the contract notice and 2021 marks the lowest number since 2010 with only 143 negotiated procedures without prior publication or 3.3% of the total number of awarded procedures. Art. 47 of the *Albanian Law on public procurement 162/2020* provides a number of situations in which this type of procedure can be used in line with the EU procurement directives. See also: Albanian Public Procurement Agency's *Annual Reports* (2009-2021) and SIGMA Monitoring Report, *The Principles of Public Administration: Albania*, 2021.

<sup>64</sup> State Audit Report on Public Procurement Related to COVID-19 March-August 2020; Center for Civil Communications – Special Monitoring Reports on Public Procurement related to COVID-19; Iportal, “*The SCPC found irregularities in public procurement*,” 1 November 2019.

In Croatia, the present practice of direct contracting leaves plenty of room for improvement. The Public Procurement Act<sup>65</sup> enables the implementation of simple procurements (without announcing a public tender) for goods and services and implementation of project tenders with an estimated value of less than HRK 200,000 (EUR 26,000), or for the procurement of works with an estimated value of less than HRK 500,000 (EUR 65,000). In such cases, the Public Procurement Law does not apply, and the procurement is carried out in accordance with the adopted internal acts which describe the rules, conditions, and procedures of simple procurement. However, contracting organizations often do not adequately regulate low value procurements, particularly the tasks and responsibilities of participants in these procedures. The lack of regulation ultimately leads to a lot of low transparency direct contracts.<sup>66</sup> In Serbia, changes in procurement law due to the COVID-19 situation have also increased fears regarding the misuse of urgent and closed procedures<sup>67</sup>.

In Bulgaria, a specific abuse of non-open tendering has become popular in recent year, in-house contracting. This procedure is designed for situations where a contracting authority performs certain activities internally, without using external resources or services. In such instances, the state authority provides the supplies, services, or works that it requires.<sup>68</sup> However, in the case of Bulgaria this practice seems to have been overused and abused, reaching BGN 8.6 billion (EUR 4.4 billion) or over 42% of all government contracts in 2020, according to the Bulgarian Minister of Finance.<sup>69</sup> The principles of in-house procurements stipulate that the supplier of the contract must conduct the procurement without involving any third parties. However, in many cases in Bulgaria, the suppliers compensated for their insufficient resources by directly contracting multiple private companies for the execution of the procurement without any notice to the state institution initiating the initial in-house procurement. Thus, they have provided to a network of companies direct access to public procurements without participation in open competition related specifically to the in-house public procurement.

<sup>65</sup> [Zakon o javnoj nabavi](#) [Public Procurement Act], *Croatian Parliament*, 13 December 2016.

<sup>66</sup> State Audit Office, [Izvešće o obavljenoj financijskoj reviziji studentskih centara](#) [Report on the performed financial audit of student centers], State Audit Office of the Republic of Croatia, 2019.

<sup>67</sup> CPES, [ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine](#) [ALARM REPORT on the situation in public procurement in Serbia in 2020], November 2020.

<sup>68</sup> SIGMA, [In-house Procurement and Public/Public Co-operation](#), Sigma Programme, Brief 39, 2016.

<sup>69</sup> Sokolova, T., „Служебният кабинет спира харченето на милиарди без обществени поръчки“ [The cabinet stops spending billions without public procurement], *Mediapool.bg*, 30 June 2021.



#### Box 4. Bulgaria: Repair and restoration works on water dam walls and related facilities (2021-)

On 13 July 2018 the State Consolidation Company EAD conducted an in-house contract with its subsidiary company Montagi EAD for the inspection, repair and restoration of 196 water dams at the price of EUR 250 million with an additional EUR 75 million loaned by the Bulgarian Development Bank. Although Montagi EAD was assigned to solely conduct the tasked repairs and restorations on the water dams, the company, contrary to in-house procurement rules, subcontracted private companies without procurement procedure related to the specific in-house contract to complete the works. Furthermore, none of the subcontracted private companies had certifications for assuring the quality of the repairs. As a result, by 2021 only 10 water dam repairs have been completed. In addition, an on-site investigation by the Directorate for National Construction Supervision found illegal construction on all 10 repaired water dams. None of the sites has been approved for construction, and none had any construction documents nor guarantees for the quality of the materials. This investigation has also found that the subcontracted companies have been paid twice as high prices for the concrete used in the repairs and five times higher for the transportation of the materials. A particular issue of corruption risk related to this case is the fact that the in-house procurement has been assigned for repairs of 51 well-functioning dams, that had already been repaired before the procedure. Yet, the irregularly contracted private companies have received a 50% advance payment also on these 51 well-functioning dams.<sup>70</sup>

#### *Contract modification in the implementation phase*

Several CSOs from the region have reported the malicious practice of **unjustified ex-post contract modifications**. In many of these procedures the supplier wins the contract with a competitive price which is then modified making the procedure significantly more expensive than the initial tender. These **modifications are also hard to track** due to the limited or no information about them on most of the official procurement websites.<sup>71</sup> In Montenegro, it is a common practice that after the award decision has been made the contract is supplemented by additional annexes incorporating extra costs and respectively payments for the contractor. The most recent example is the case of the reconstruction of the Pljevlja Thermal Power Plant, where an annex was added to the contract immediately after the award decision was made at the end of 2021. The annex stipulated a EUR 15 million cost

<sup>70</sup> Capital.bg, „Новата черна дупка: 630 млн. лв. са излети в язовири без състезание и без нужда“ [The New Black Hole: BGN 630 million were poured into dams without competition and without need], 12 June 2021; Prosecutor's Office of the Republic of Bulgaria, „ВКП се самосезира за ремонт на язовири със средства на Държавната консолидационна компания“ [The Supreme Administrative Court filed a complaint for the repair of dams with funds from the State Consolidation Company], 14 June 2021; Montagi EAD, „Ремонтно-възстановителни работи по язовирните стени и съоръженията към тях“ [Repair and restoration works on the dam walls and related facilities], 2018; Capital.bg, „На „Хемус“ и язовирите има незаконно строителство и няма гаранция за качеството“ [There is illegal construction on Hemus and the dams, and there is no guarantee of quality], 09 September 2021.

<sup>71</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data – An Implementer's Guide*, 2015.

## COVID-19 induced changes in public procurement

increase.<sup>72</sup> In Serbia, the new procurement law simplifies the modification of the contracts during their implementation phase. It is not only true regarding prices, but the change of entities involved, as well.<sup>73</sup> Additionally, ex-post monitoring and evaluation of the quality of contract implementation and subsequent changes occurs very rarely.

The COVID-19 pandemic has affected – and still affects – the societies across the globe. According to estimates, as of the beginning of 2022 more than 270 million people have been diagnosed and more than 5.3 million have lost their lives due to the virus.<sup>74</sup> The global economy has also been heavily hit. Major economies lost around 3.4% of their total GDPs in 2020.<sup>75</sup> Due to the quick spread of the virus many countries have announced a state of emergency that affected the everyday functioning of societies and the economy, including the management and implementation of public procurement. This chapter introduces the main public procurement policy changes during the pandemic in SEE-9. Additionally, it highlights corruption risks and regional procurement market trends caused by these policy changes.

### Timeline and description of policy changes

The changes in public procurement have been implemented at the beginning of the emergency periods in each country. The emergency periods began around mid-March 2020 and the strictest restrictions remained in place until mid-May or mid-June the same year, with the notable exception of Montenegro where a state of emergency was never formally declared. While the most prominent regulatory changes had been lifted with the end of the emergency periods in 2021, weaker forms of state of emergency were still in place in Hungary, Croatia, Serbia, North Macedonia, Albania and in Bosnia and Herzegovina as of December 2021. Similarly, the state of emergency was replaced by a “State of Alert” in Romania and by an “Emergency Epidemic Situation” in Bulgaria. Although most of the temporary changes made in procurement legislations have been lifted by the summer of 2020, **the integrity of the procurement systems has been negatively affected** in the longer term as indicated by data-driven trends outlined in this report.

On 1 April 2020, the European Commission published a guideline on the use of the public procurement framework in the emergency related to the COVID-19 crisis.<sup>76</sup> These guidelines offer the possibility for the public procurement

<sup>72</sup> Nikolic, P., “REKONSTRUKCIJA TE PLJEVLJA I PRIJE POČETKA OSPORENA SA VIŠE ADRESA: Milioni bi mogli otići u dim” [Reconstruction of Pljevlja is Challenged from Several Addresses before the Beginning: Millions could go up in smoke], *Monitor online*, 1 October 2021.

<sup>73</sup> Law on Public Procurement, Official Gazette RS, No. 124/12, 14/15 and 68/15.

<sup>74</sup> Ritchie, H. et al., *Coronavirus Pandemic (COVID-19)*, Our World In Data, 2021.

<sup>75</sup> Szmigiera, M., “Impact of the coronavirus pandemic on the global economy – Statistics & Facts”, *Statista*, 26 April 2022.

<sup>76</sup> EUR-Lex, *Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis*, 2020/C 108 I/01, Official Journal of the European Union, 2020.

frameworks of the Member States to be more flexible and adaptable to the pandemic situation. EU Directive 2014/24/EU<sup>77</sup> provides clear deadlines which are adaptable to emergency situations similar to that of the COVID-19 pandemic<sup>78</sup> (according to Art.27 and Art. 28 of Directive 2014/24/EU, a state of emergency may reduce the time limit for the receipt of tenders from 35 days to 15 days in open procedures, and from 30 to 10 days in restricted procedures). Thus, the Public Procurement Law and EU Directive 2014/24/EU provided a suitable legal basis (both for EU and Non-EU member states) for speeding up public procurements in cases of emergency.

Nonetheless, some of the countries considered in this report have adopted additional measures, over and above the ones provided by the EU, to regulate their corresponding procurement markets. Conversely, some countries have used clauses in their existing public procurement legislation to deal with the changes brought by the pandemic.

### *Countries with changes to public procurement legislation*

In Romania several exceptions to the Public Procurement Law 98/2016 were made through emergency ordinances and Presidential Decrees 195/2020<sup>79</sup> and 240/2020<sup>80</sup> to speed up the emergency procurement of medical and other relevant supplies. For these types of procedures there were no publication requirements, no time limits, no minimum number of candidates to be consulted, or other procedural requirements. In Croatia, goods that the government determines as necessary to fight the pandemic can still be purchased by direct agreement without public procurement. Additionally, between March and May 2020, due to social distancing, contracting authority representatives and bidders could only discuss procurement related matters through phone and without the presence of any advisors. Similarly, in Hungary for procedures related to the COVID-19 pandemic, the contracting authority could use direct negotiation without publication (with the invitation of three potential suppliers). Additionally, in cases of utmost urgency goods could be purchased as outright awards. The ban on the acquisition of assets for the budgetary bodies under the control or supervision of the Government was also temporarily suspended.<sup>81</sup> In Albania, through two Decisions of the

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<sup>77</sup> EUR-Lex, [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#), Official Journal of the European Union, 2014.

<sup>78</sup> See Art. 27 and Art. 28 para. 6 of Directive 2014/24/EU.

<sup>79</sup> The President of Romania, [DECRET nr. 195 din 16 martie 2020 privind instituirea stării de urgență pe teritoriul României](#) [DECREE no. 195 of March 16, 2020 regarding the establishment of the state of emergency on the Romanian territory], MONITORUL OFICIAL nr. 212 din 16 martie 2020.

<sup>80</sup> The President of Romania, [DECRET nr. 240 din 14 aprilie 2020 privind prelungirea stării de urgență pe teritoriul României](#) [DECREE no. 240 of April 14, 2020 on the extension of the state of emergency on the Romanian territory], MONITORUL OFICIAL nr. 311 din 14 aprilie 2020.

<sup>81</sup> Public Procurement Authority, [A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben](#) [Opinion of the Public Procurement Authority on certain public procurement issues related to the emergency situation in view of the spread of the coronavirus], 2020.

Council of Ministers (DCM), procedures and contracting related to Covid-19 were considered “Classified Contracts”<sup>82</sup>, indicating that public information regarding these contracts would be restricted.<sup>83</sup> The above-mentioned Decisions of the Council of Ministers led to situations, where contractors were selected without any published calls for expression of interest.

With the start of the COVID-19 pandemic the Bulgarian parliament declared a situation of emergency on 13 March 2020. Then on 14 May 2020 the parliament enacted emergency legislation impacting the application of the Public Procurement Law. The new legislation established that the Public Procurement Law is not to be applied in the case of the purchase of hygienic materials, disinfectants, medical devices and personal protective equipment, necessary for securing the anti-epidemic measures; and the purchase of medical devices, the provision of services for sampling and reporting of the results, purchase of medical and laboratory equipment, necessary for diagnosis and treatment of infected patients, their consumables, as well as activities related to their implementation and warranty maintenance.<sup>84</sup>

#### *Countries without changes to procurement legislation*

Other countries in the region have not changed their procurement regulations but have promoted the use of existing rules on urgent contracting. On 17 March 2020 the Public Procurement Agency of Bosnia and Herzegovina issued an official notice stating that in situations of extreme emergency, when it is not possible to apply regular public procurement procedures but still there is enough time, it is possible to apply a negotiated procedure without prior publication. It is further stipulated that contracting authorities are, exceptionally, allowed to grant contracts based on negotiated procedure without prior publication, when due to reasons of extreme emergency, caused by unpredictable events for certain contracting authority, minimal deadlines prescribed for regular procedures cannot be respected.<sup>85</sup> Similarly, the Montenegrin government has encouraged the use of preexisting rules regarding “**urgent**” procedures in case of emergency contracting. Such rules allow contracting authorities to procure urgently with almost no restrictions in terms of providing transparency and competition. On 24 March 2020, the Public Procurement Administration of the Republic of Serbia published a notice on its official website stating that even during the state of emergency, contracting authorities are obliged to act in accordance with the provisions of the Public Procurement Law.<sup>86</sup> It has also encouraged the temporary suspension of procurements in the event of objective inability of continuing an already initiated public tendering due to pandemic circumstanc-

<sup>82</sup> Decision of the Council of Ministers no. 203, dated 26.2.2020, the amendment of law no. 9643, dated 20.11.2006, “On public procurement”, and law no. 8457, dated 11.2.1999, “On information classified as state secret”. Through this decision, the procedures used for concluding contracts that are dictated by the essential interests of the state have been changed.

<sup>83</sup> ODA, “Purchases for Covid-19 Situation, the Albanian Government applies Secrete Contracts, bypassing Participation and Transparency”, *Open Data Albania*, 27 January 2021.

<sup>84</sup> State Gazette, Issue 44/13.05.2020.

<sup>85</sup> Deloitte, “COVID-19 – Overview of measures for the stabilization of economy in Bosnia-Herzegovina”, *Deloitte Bosnia and Herzegovina*, 11 May 2020.

<sup>86</sup> Official Gazette RS, No. 124/12, 14/15 and 68/15.

es. Nonetheless, similarly to the other countries in the region, Serbian authorities used urgent procedures frequently (that require significantly less preparation and transparency) for the purchase of medical equipment and materials.

### Procurement risks arising from the pandemic

Most of the measures that were taken in the realm of public procurement to fight the pandemic were truly necessary. It is unquestionable that hospitals, schools, retirement homes and other governmental organizations promptly needed medical equipment to slow the spread of the virus and to prevent the death of many at risk. Yet, some new rules and guidelines introduced with the inception of the pandemic were poorly designed and implemented, creating a **procurement environment ripe for abuse and corruption**. The following irregularities could have been prevented by better planning and a more efficient resource allocation or by following the above-mentioned guidelines proposed by the European Commission.

#### *Overuse of urgent procedures*

The main tool for the emergency purchase of medical equipment was the use of “urgent” or “extremely urgent” procurements. While the exact definition of this procedure type may vary by country, it has similar features across SEE-9 allowing the quick purchase of essential goods and services. It requires a significantly shorter advertisement and decision periods and simpler technical and administrative requirements. Most importantly, urgent tendering allows the **use of outright (direct) awards and non-published negotiated procedures**. Any form of competition restriction increases corruption risk, hence it should only to be used under very specific circumstances or in a limited timeframe.

In Romania, the new regulations have led to a considerable rise in the use of negotiated procedures without publication. According to the National Public Procurement Agency (ANAP), this type of procedures made up 40% of the total procurement procedures used in 2020 (EUR 35 billion in value, a 30% increase from 2019). Out of these 58% were justified by “extreme emergency”.<sup>87</sup> The National Council for the Settlement of Appeals (CNSC) estimates that the cost of procurement irregularities amounted to EUR 4.9 billion in 2020.<sup>88</sup> In Montenegro, the Public Procurement Law enabled the frequent use of direct contracting due to the public health emergency. In 2020, the urgent procurement spending tripled compared to 2018 and 2019 and reached close to EUR 55 million, 10% of the overall annual public procurement budget.<sup>89</sup> Similarly, in Bosnia and Herzegovina contracting

<sup>87</sup> Romanian National Public Procurement Authority, *Indicatorii de monitorizare a eficienței procedurilor de achiziție publică finalizate prin contract, în anul 2020* [Efficiency of Public Procurement procedures finalized in a contract in 2020 – Monitoring Indicators], 2020, p. 17.

<sup>88</sup> Economica.net, “CNSC: Valoarea neregulilor constatate în cadrul procedurilor de achiziție publică a depășit 4,9 miliarde de euro în 2020” [CNSC: The value of irregularities found in public procurement procedures exceeded EUR 4.9 billion in 2020], 27 May 2021.

<sup>89</sup> Šemić, A., “[EWB Interview] Đurđević: CSOs in Montenegro have never been fully recognised as partner in democratisation process”, *europeanwesternbalkans.com*, 11 October 2021.

authorities increased the use of restricted procedures. During the State of Emergency more than 416 public procurements were conducted through a negotiated procedure without a notice. Media reports in the country provided information on a large number of abuses of this type of public procurement. Many lawsuits were initiated in 2020 and 2021, suspecting the legitimacy of conducting such public procurements (see Box 5). In Hungary, while there is no exact information on the share of implemented urgent procedures during the pandemic, the Corruption Research Center, Budapest showed that the share of non-competitive procedures has slightly increased during the emergency period. More importantly, in the first four months of 2020, the share of non-competitive contracts from among all contracts won by “crony companies”<sup>90</sup> rose from the already high level of 51% to 68%.<sup>91</sup>

#### **Box 5. Bosnia and Herzegovina: Respirator Affair (2020-)**

During March and April 2020, the Government of the Federation BiH – in accordance with the request from the Federal Administration of Civil Protection – decided on the urgent procurement of ventilators for patients with severe symptoms of COVID-19 infection. In a record time of only 30 days, the government selected a supplier (who is not registered for import, transport, and procurement of medical devices), accredited the supplier for such procurement, registered the subject of procurement with the Agency for Medicines and Medical Devices of Bosnia and Herzegovina (because this type of ventilator was not registered), and imported it from China. Based on experts’ assessment, the purchased ventilators were exceedingly more expensive than their estimated market price. After the medical accreditation of the devices, it was uncovered that the ventilators were not suitable for use on patients in intensive care. All hospitals refused to use the devices.

In relation to the procurement, Fadil Novalic the Prime Minister of the Federation of Bosnia and Herzegovina, Fahrudin Solak the director of the Federal Civil Protection Administration and Fikret Hodzic the owner of the agricultural company “Srebrena Malina” (the winner of the procurement) have been charged with conspiracy to commit criminal offenses related to acts of abuse of position or authority, receiving a reward or other form of use for trading in influence, money laundering, etc. Jelka Milicevic, Minister of Finance of the Federation of BiH has been charged with work negligence.<sup>92</sup>

#### **Lack of transparency**

The other procurement irregularity that has been amplified by the pandemic is the lack of transparency. On the one hand, the emergency government

<sup>90</sup> Companies with owners with good connection to the government, and more specifically with PM Viktor Orbán (e.g. Lőrinc Mészáros, István Garancsi, István Tiborcz, Lajos Simicska).

<sup>91</sup> CRCB, *New Trends in Corruption Risk and Intensity of Competition in the Hungarian Public Procurement from January 2005 to April 2020*, Corruption Research Center Budapest, Flash Report 2020:1.

<sup>92</sup> Katavić, I., “Afera ‘Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i” [‘Respirators’ affair: FBiH Prime Minister Fadil Novalić detained at SIPA], *slobodnaevropa.org*, 28 May 2020; Radiosarajevo.ba, “Afera Respiratori: Novalić i drugi optuženi stigli na novo ročište” [Respirators affair: Novalic and other indicted arrive for new hearing], 17 November 2021.



decrees, most probably intentionally at least in some cases, gave unclear details of the temporary regulatory changes. On the other hand, the publication requirements for direct and negotiated awards are by default significantly less strict, hence they are lacking the satisfactory level of transparency.

In Croatia, the list of goods and services for which direct procurement agreements could be used was kept confidential until December 2020. The list was only published due to significant pressure from the general public.<sup>93</sup> In Hungary, during the state of emergency the Prime Minister had the power to decide which procedures are related to the COVID-19 pandemic hence could be purchased through direct awards<sup>94</sup>. Additionally, often no satisfactory justifications were released about the underlying reasons for some of these purchases or about the supplier selection for these purchases. Information about these procurements is not available on the official e-procurement website. A large-scale respirator purchase by the Ministry of Foreign Affairs and Trade of Hungary created the biggest public outcry. In April 2020 the Ministry bought 16,000 heavily overpriced and redundant ventilators for HUF 300 billion (EUR 812 million) mostly from Chinese firms, with no significant track record or reputation in the specific domain. The machines have later been announced for re-sale on a discount to foreign governments due to underutilization.<sup>95</sup> In Albania, the use of “Classified Contracting”<sup>96</sup> has made it impossible to obtain information on large scale purchases related to the pandemic. The Balkan Investigative Reporting Network (BRIN) found that between March and May in 2020 at least 15 public tenders were purchased through secret contracts. The tenders were closed, which is actually part of the definition of “classified contracting”; hence it is not known how many companies participated and what conditions or criteria were applied during the awarding of these tenders.<sup>97</sup>

<sup>93</sup> Nacionalno.hr, “Most traži da se medicinska oprema nabavlja kroz postupak javne nabave” [The Bridge requires that medical equipment is procured through a public procurement procedure], 9 December 2020; Croatian Government, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa* [Report on purchases of protective equipment for the purpose of health protection measures implementation and strengthening supervision over the spread of coronavirus], Ministry of Economy and Sustainable Development Directorate for Commodity Stocks, 2020.

<sup>94</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben* [Opinion of the Public Procurement Authority on certain public procurement issues related to the emergency situation in view of the spread of the coronavirus], 2020.

<sup>95</sup> Bucsky, P., “Az állami kórházzellátó feleannyiért vett közel 2500 lélegeztetőgépet, mint a külügy” [The state hospital provider bought nearly 2,500 ventilators for half as much as the ones bought by the ministry of foreign affairs], *g7.hu*, 14 July 2020; András, B., “Nekik jól jött a vírus: Orbán főtanácsadójának köre a lélegeztetőgép-bizniszben” [They benefited from the virus: Orbán’s chief consultant in the ventilator business], *valaszonline.hu*, 04 September 2020; Ezalenyeg.hu, “A lélegeztetőgép-mutyi az egyik legdurvább fideszes botrány” [The ventilator muty is one of the worst Fidesz scandals], 30 July 2021.

<sup>96</sup> Such procedures have been conducted in accordance with the previous public procurement legislation which provided the exclusion from the scope of the law of the secret contracts and contracts related to the essential interest of the state. Covid related procedures fall under the second category and have been conducted based on the Decision of the Council of Ministers no. 203, dated 26.02.2020 “On the procedures to be used for awarding of contracts related to essential interests of the State”, as amended.

<sup>97</sup> Sinoruka, F., “Concern in Albania over String of Secretive COVID-19 Tenders,” *Balkan Insight*, 7 October 2020.

### Box 6. Albania: Tender for the purchase of medical devices (2020)

During the period of March to April 2020, the Ministry of Health and Social Protection proceeded with the purchase of 54 respirators. It was reported in the media that during the procedures performed by the Ministry of Health and Social Protection, actions were taken in violation of the law and bylaws, claiming that the purchase price of respirators used during the COVID-19 pandemic was several times higher than the market price.

By order no. 200, dated 24 March 2020 the Secretary General established the evaluation commission for receiving, reviewing and evaluating the bids. The working group received bids from several economic operators. After receiving the submitted bids, it determined the value of ALL 129.8 million (EUR 1.07 million) (excluding VAT) for the purchase of 54 respirators, which corresponds to the value of ALL 2.4 million (EUR 20,000) per respirator. The economic operator that was chosen as the winner was “Axent medical”, based in Germany.

The Special Prosecution Office against Corruption and Organized Crime (SPAK) has been conducting criminal investigations into the procurements conducted in emergency conditions of the COVID-19 pandemic by the Ministry of Health under the “classified tendering” procedure<sup>98</sup>. According to SPAK, in the specific case of the purchase of ventilators, the price was determined without a market study, but by making an average of the offers made by the companies. Even though SPAK found violations in this case, it excused itself from the case, delegating the file to the Tirana Prosecutor’s Office, as according to SPAK it only amounted to “abuse of office”, which was not in SPAK’s authority. According to the SPAK prosecutors no elements of the criminal offense corruption, were found in the case.<sup>99</sup>

### Opaque regulations

Finally, opaque regulations and recommendations have **significantly limited the possibility of prosecution** of suspicious public procurement cases in SEE-9. In Romania, while some of the new regulations introduced during the pandemic were in line with EU recommendations, the additional decrees were too vague, making contracting authorities fully immune to legal consequences of breaching the procurement regulations.<sup>100</sup> In Bosnia and Herzegovina, Montenegro, and Serbia the lack of changes to the procurement legislation during the first months of the pandemic led to the overuse of urgent procedures. In Bosnia and Herzegovina, there were no specifications about what goods and services can be purchased via urgent procedures; contracting authorities were only required to explain why a particular procedure was urgent.

<sup>98</sup> Based on Decision of the Council of Ministers no. 203, dated 26.02.2020.

<sup>99</sup> Hoxhaj, E., “SPAK heton tenderat “sekretë” të qeverisë gjatë pandemisë” [SPAK investigates government “secret” tenders during the pandemic], *reporter.al*, 30 April 2020; Paloka, K., “Tenderat e institucioneve gjatë pandemisë, barna, masa mbrojtëse dhe oksigjen” [Institutional tenders during the pandemic, drugs, safeguards and oxygen], *Albanian Center for Quality Journalism*, 10 July 2021; Data from [Open Data Albania](#).

<sup>100</sup> Popescu, A., “Haosul achizițiilor publice în starea de urgență. Expert: decretetele președintelui, „semnal periculos” [The chaos of public procurement in a state of emergency. Expert: President’s decrees, “dangerous signal”], *Europa Libera Romania*, 11 May 2020.



## Regional trends in public procurement during the pandemic

The COVID-19 induced policy changes have considerably reduced the integrity of the often already troubled procurement systems in the SEE-9 countries. The current report outlines additional public procurement trends and risks by using **big data analytics of public procurement datasets** of the Open Tender platform and a deep quantitative methodology developed by the Government Transparency Institute (GTI).

### Box 7. Monitoring public procurement irregularities: Available datasets and methodology description

GTI collects, cleans, and maintains public procurement data from e-procurement websites in several countries<sup>101</sup>. Currently, SEE-9 regional lot level data is available for Croatia, Hungary, Romania, and Bulgaria (TED data only<sup>102</sup>), and North Macedonia. The report analyses procurement market data from these countries to give a more holistic picture about the changes in public procurement risk caused by the pandemic. The main limitation of the data driven approach is the general lack of transparency of major purchases made during the state of emergency. Information on some large value procurements is not published on the official e-procurement websites of the respective countries and is therefore not included in the datasets. An appropriate example is the large-scale respirator purchase of the Hungarian Ministry of Foreign Affairs and Trade introduced above. Its EUR 812 million value is larger than the total tender value spent on COVID related public purchases between 2017 and 2021 (see Figure 1). According to calculations by investigative journalists this would have covered roughly two months of costs of the entire Hungarian healthcare system.<sup>103</sup> Despite this limitation, the analysis provides a useful general insight into changes in the integrity of the most exposed sectors.

The methodology uses “red flags” to identify public procurement risks.<sup>104</sup> Several indicators are tested and validated using rigorous statistical methods to create the composite Corruption Risk Index (CRI) that measures the overall corruption risk of each procurement contract.<sup>105</sup> The indicators used in this report to create the CRI are provided in Table 1 below. Each indicator can take a value of between 0 and 1, where 1 indicates high corruption risk. The CRI is the simple arithmetic average of the seven risk indicators. For each country level dataset, the same indicators were used to maintain comparability.

<sup>101</sup> See GTI's [Global Government Contracts database](#), 19 July 2021.

<sup>102</sup> Bulgarian data only contains contract published on the European Tender Electronic Daily (TED) website.

<sup>103</sup> Bucsky, P., “Az állami kórházellátó feleannyiért vett közel 2500 lélegeztetőgépet, mint a külügy” [The state hospital provider bought nearly 2,500 ventilators for half as much as foreign affairs], *g7.hu*, 14 July 2020.

<sup>104</sup> Red flags are indicators of corruption in the procurement market. For example, a widely used red flag is single bidding; it has been empirically shown that if there is no competition for a tender it tends to have a higher price. It also correlates with the World Bank's World Governance Indicators' Control of Corruption Index.

<sup>105</sup> For a detailed description of the methodology see Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute.

**Table 1. Potential integrity indicators**

| Risk indicator name                           | Indicator description   |
|---|---|
| Single Bidding                                | Tenders/contracts receiving only one bid  |
| Buyer Dependence on Supplier                  | By winner-year-supplier: share of supplier in total annual awarded contract value by the same contracting authority |
| Company Tax Haven Registration <sup>106</sup> | Supplier is registered in tax haven country   |
| Submission Period                             | Period between call for tender publishing date and submission deadline  |
| No Call for Tender                            | Contract published without call for tender  |
| Decision Period                               | Period between call for tender submission deadline and award decision date  |
| Procedure Type                                | Procurement's procedure type (open, urgent, negotiated etc.)  |

*Source: Government Transparency Institute (GTI).*

### **Corruption risk in the healthcare sector<sup>107</sup>**

As the first wave of the pandemic hit Europe during the spring of 2020, demand for masks, oxygen, sterilizers, respiratory monitors, and other COVID-related products skyrocketed. The data indicates that all observed countries have seen **a considerable uptake in the value of COVID-related product purchases** (see Figure 1). In North Macedonia, Croatia, and Hungary, the total value of COVID-related purchases between 2020Q1 and 2021Q2 was about the same as between 2017Q1 and 2019Q4, with the aggregate value being respectively around 1.6, 2.4, and 2.7 times the aggregate value a year and a half before the pandemic. The value growth was the largest in Romania as the total value was 4 times higher after 2019Q4 than between 2017Q1 and 2019Q4 and 4.1 times higher than the aggregate value a year and a half before the pandemic. The only country where COVID related expensed have not increased was Bulgaria, nonetheless this most likely was due to the incomplete procurement data available on the TED portal.<sup>108</sup> Therefore, results confirm the increasing importance of the healthcare sector during the pandemic.

**Emergency changes in the procurement regulation** affected the integrity of the procurement markets. The CRI data indicates that in each country either the healthcare, the COVID or both markets were visibly affected by the

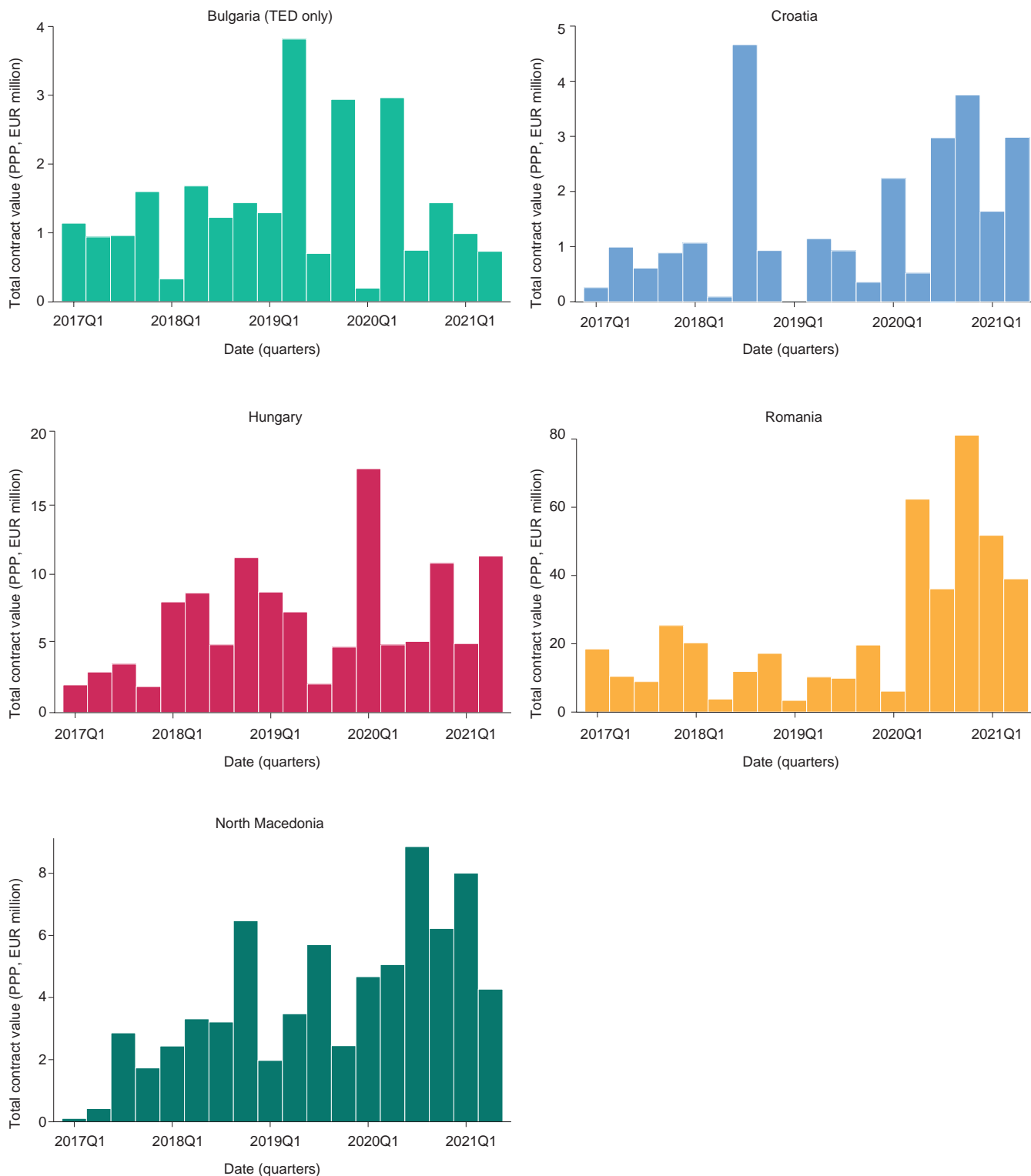
<sup>106</sup> The tax haven variable was not used for North Macedonia and for Bulgaria as there were less than 200 contracts supplied by foreign contractors in the full dataset.

<sup>107</sup> The healthcare market and COVID-19 related goods and services have been identified using Common Procurement Vocabulary (CPV) codes. The healthcare market is represented by the 33<sup>rd</sup> CPV division. COVID related product codes are identified using TED-s COVID related tenders list and products regulated for the COVID emergency in the Romanian Ordinance nr 11/2020. The CPV codes and descriptions can be found in the Annex.

<sup>108</sup> Work related tenders with a value less than EUR 5,186,000 and service supply type tenders with a value less than EUR 135,000 do not have to be uploaded.

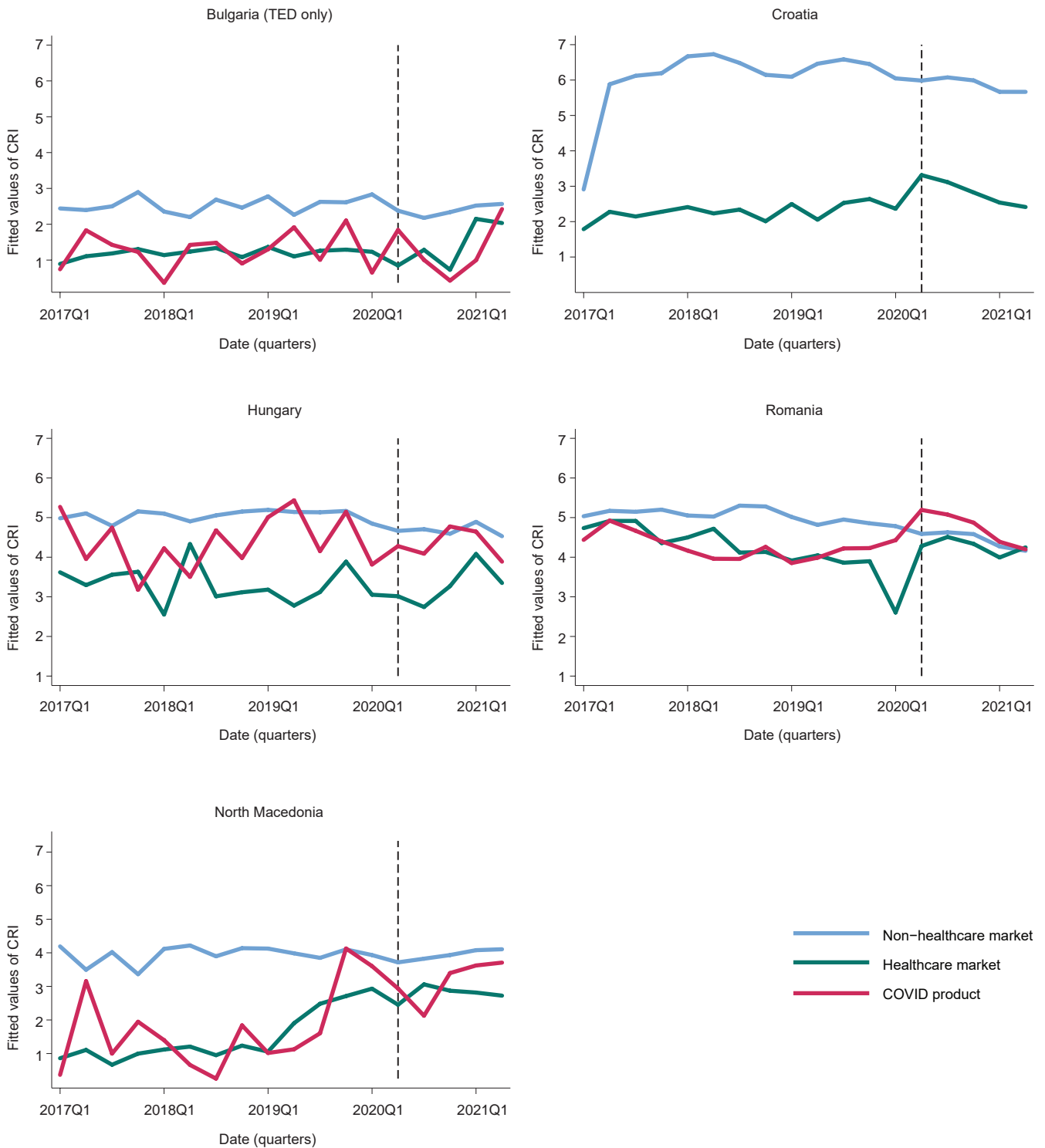
pandemic (see Figure 2). As the COVID-related market is very small compared to the healthcare, or any other conventional sector, the CRI composite index's variance is significantly larger in this group leading to somewhat less consistent results.

**Figure 1. Total quarterly contract value of COVID-19 related goods procured between 2017Q1 and 2021Q2**



Source: GTI calculation based on e-procurement data from Bulgaria (TED), Croatia, Hungary, North Macedonia and Romania.

Figure 2. Corruption risk by sector between 2017 and 2021Q2 <sup>109</sup>



\* Dashed line represents the beginning of the emergency period  
 \*\* Emergency period starts in the second half of March

Source: GTI calculation based on e-procurement data from Bulgaria (TED), Croatia, Hungary, North Macedonia and Romania.

<sup>109</sup> In the case of Croatia, due to the small number of related products and a highly volatile related CRI, we have combined the COVID group with the healthcare market.

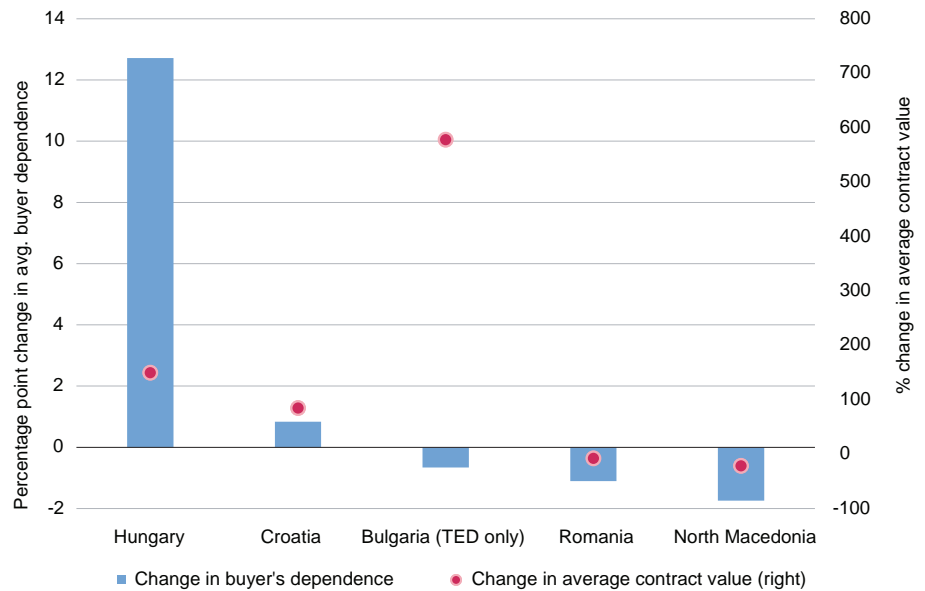
In Romania, the COVID market CRI has increased by around 10 percentage points. The increase was temporary and was followed by a slow but steady decline. In North Macedonia both the COVID-related product market and the broader healthcare market was affected, however the CRI growth had already begun a quarter before the pandemic, therefore it is hard to separate the effects of the pandemic from other policy changes. In Croatia the CRI of the healthcare market temporarily increased by around 10 percentage points and decreased to its original value by 2021Q2. In Hungary the effect of the pandemic on the CRI is less straightforward as both the COVID product market and healthcare market related indices have significant variances. Nonetheless, **a considerable healthcare market CRI uptake is observable** after 2020Q3 (after most of the regulations were revoked). Additionally, TED data might not fully grasp the CRI trends in Bulgaria as many, lower value and potentially riskier contracts are not included.

Overall, while the effects are not completely uniform, due to different regulatory measures, somewhat different procurement publication policies and distinct public procurement data quality, the results clearly indicate that the temporary regulatory changes have negatively affected regional procurement market integrity.

#### *Increased buyer dependence on specific suppliers*

The broader public procurement healthcare market (including COVID and non-COVID products) has been affected in different ways by the pandemic (see Figure 3). Contracting authorities' dependence on contractors changed due to the changes in the procurement market. As explained above, the buyer's dependence measures the total contract share that a contracting authority allocates to the same supplier provided that the authority purchases at least four procurements in a given year. Intuitively, if a contracting authority grants most of its procurements to the same supplier it may imply corruption. The data shows that in Hungary **the healthcare sectors' average buyer dependence grew significantly** in the last one and a half years compared to the 2017-2020 period. Average buyer dependence also grew slightly in Croatia. Additionally, average contract values have also increased in these two countries indicating that captured contracting authorities have not only provided a higher share, but also a higher value of public funds to their favored suppliers. The Bulgarian procurement data from TED indicates that, while buyers' dependence has not changed significantly, average contract values in the healthcare market have increased considerably during the pandemic. Meanwhile, Romania and North Macedonia fared considerably better in this aspect as indicated by a slight decrease in buyer's dependence in the healthcare sector.

**Figure 3. Average buyer dependence and contract value change during the pandemic in the healthcare sector (2020Q1-2021Q2 compared to 2017Q1-2019Q4)**



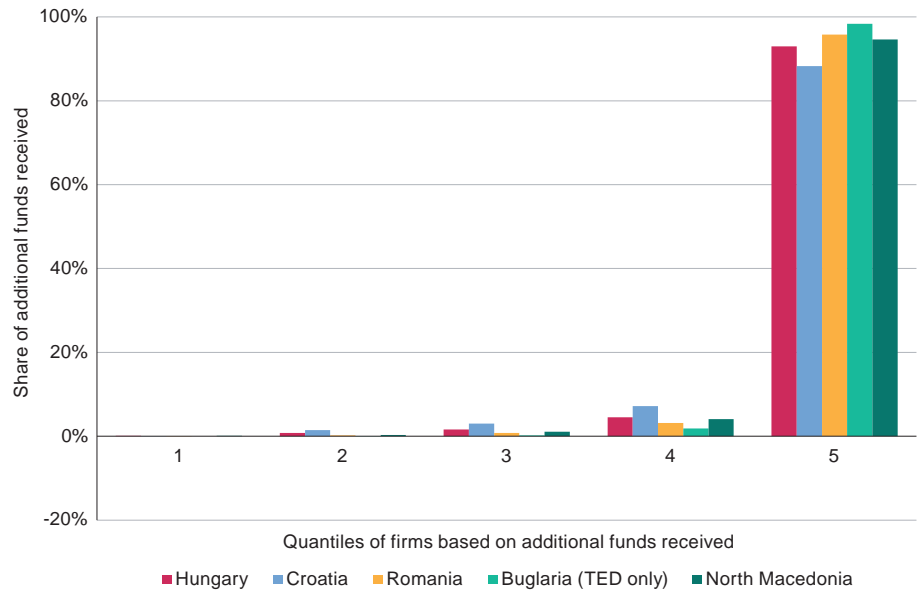
*Source: GTI calculation based on e-procurement data from Bulgaria, Croatia, Hungary, and Romania.*

### **Lack of competition for extra healthcare funds**

According to publicly available procurement data from the healthcare sector in the countries under review, some suppliers have benefited greatly from the pandemic.<sup>110</sup> In North Macedonia the top five companies together received EUR 404.7 million more, in Romania EUR 273.7 million more, in Hungary EUR 256.8 million more, in Bulgaria EUR 166.2 million more and in Croatia EUR 73 million more. In each country the biggest 25% of the winners received 88% to 96% of the additional funds distributed between 2020Q1 and 2021Q2 compared to 2018Q3 and 2019Q4 (see Figure 4). This indicates that a select few companies have skimmed the vast majority of the extra funding in the healthcare sector. It could also support the findings of the qualitative research that favoritism and clientelism are a serious problem in the region.

<sup>110</sup> Table 5 in the Annex shows the top 5 companies from each country that have achieved the highest absolute growth in public procurement value between 2020Q1 and 2021Q2 compared to their winnings between 2018Q3 and 2020Q4.

**Figure 4. Distribution of additional funds received by companies in the healthcare sector by quantile (2020Q1-2021Q2 compared to 2018Q3-2019Q4)**



**Source:** GTI calculation based on e-procurement data from Bulgaria, Croatia, Hungary, and Romania.





# IMPROVING THE GOVERNANCE OF STATE-OWNED ENTERPRISES IN THE ENERGY SECTOR

## Why analyse the governance of the energy sector in SEE-9?

The energy sector has a crucial importance for any country, due to its status as a natural monopoly, the social sensitivity of societies to any price increases (as popular protests against price-hikes across Europe at the beginning of 2022 have shown<sup>111</sup>), and the large investments and financial interests at stake. At the same time, the *State Capture Assessment Diagnostics* tool identifies the sector<sup>112</sup> as **highly vulnerable to monopolization** and hence **prone to state capture risks**. The countries from the region have faced multiple allegations for blocking gas market liberalization in favor of local oligarchic corporate networks and for the benefit of Russian gas suppliers.<sup>113</sup> Thus, the sector becomes even more relevant to the energy dependent countries and unless properly governed it can undermine their independence and development. This justifies a closer look at the potential cases of energy corruption in South East Europe, to provide better protection from illicit internal and external influences.

The 2021-2022 rise in energy prices in Europe and globally, proved that good governance in the energy sector is **a matter not only of energy security, but also of national security**. However, most countries from the Southeast Europe region lack adequate energy security strategies, necessary to break the close interdependence between corporate and political interests. The main **systematic governance problems**, which could lead to significant losses of public wealth in the region's energy sector are:

- Lack of strategic planning and coherent evidence based regulatory policy;
- Structural dependency on fossil fuels;
- Focusing of state and EU funding in large and non-sustainable projects, without derailed cost-benefit analysis or clear benefits for the society on the long term;
- Restricting free competition and excluding smaller players, though monopolization of certain segments in the hands of few well-connected companies (including the construction, maintenance and engineering of energy infrastructure);

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<sup>111</sup> Economist Intelligence, "[Rising prices in Europe spark protests](#)," 17 January 2022.

<sup>112</sup> The analyzed sub-sectors include: electricity, gas, steam and air conditioning supply, as well as solid, liquid and gaseous fuels.

<sup>113</sup> Based on data for Bulgaria, Romania, Italy and Spain. For more information: Stoyanov, Gerganov, and Yalamov, *State Capture Assessment Diagnostics*, Sofia: CSD, 2019.

- Financial mismanagement (including cross-subsidisation) resulting in debts of energy state-owned enterprises (SOEs);
- Political appointments in energy SOEs;
- Public procurement corruption risks due to use of non-transparent procedures, high level of single bidding, accepted use of SOEs' internal public procurement norms and multiple allegations of bid rigging;
- Discrepancy between European principles, aims and commitments, and the national practices.<sup>114</sup>

At the same time, **substantial amounts of EU and national funding** are foreseen to be distributed in both the Western Balkans and the SEE EU member states for the 2021-2027 period. This funding should be carefully monitored by energy regulators, competition and anti-corruption bodies, the civil society and the media, in order to avoid corruption, favouritism and fraud. EU level bodies, such as the European Commission, the European Anti-Fraud Office (OLAF) and European Public Prosecutor's Office (EPPO) will play a key role in that regard.

#### EU funding for SEE member states

The European Union provided an unprecedented response to the coronavirus crisis through the adoption of the EU's Recovery and Resilience Plan (2021-2027). At its heart is **a stimulus package worth EUR 2.018 trillion**. It consists of the EU's long-term budget (Multiannual Financial Framework-MFF) for 2021 to 2027 of EUR 1.211 trillion, topped up by EUR 806.9 billion (EUR 750 billion in 2018 prices) through NextGenerationEU, a temporary instrument to power the recovery.<sup>115</sup> Within this framework, several funds could be listed as having **energy and green transition focus**:

- The 2021-2027 Cohesion Policy (EUR 392 billion)<sup>116</sup> focuses on five policy objectives, including a greener, low-carbon transitioning towards a net zero carbon economy. The net zero carbon economy objective is supported mainly through the Cohesion Fund (CF) and the European Regional Development Fund (ERDF).

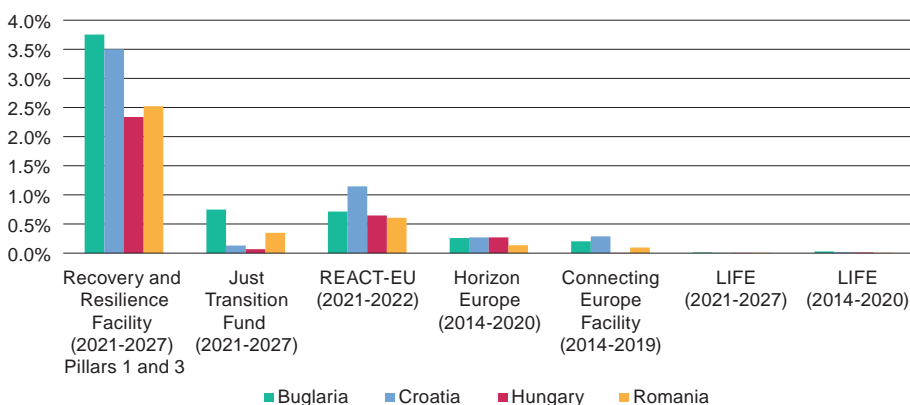
<sup>114</sup> For example, the Generous state-sponsored feed-in tariffs that contradict EU guidelines on state aid for environmental protection and energy, could end up causing not only unfair competition, but also environmental damages. Jovanović, S., "Western Balkans urged to end subsidies for destructive small hydropower – report," *Balkan Green Energy News*, 25 September 2019.

<sup>115</sup> European Commission, Directorate-General for Budget, *The EU's 2021-2027 long-term budget and NextGenerationEU: facts and figures*, 2021.

<sup>116</sup> European Commission, *Cohesion Policy 2021-2027* and *The EU's main investment policy*.

- The Just Transition Fund, the first pillar of the Just Transition Mechanism (funded by ERDF and the European Social Fund – ESF)<sup>117</sup>, provides support for energy efficiency measures and closure of facilities involving fossil fuel production.<sup>118</sup> The Just Transition Fund is estimated at EUR 19.2 billion, and is expected to mobilize around EUR 25.4 billion in investments.<sup>119</sup>
- Recovery and Resilience Facility, an instrument for providing grants and loans to support reforms and investments in the EU Member States;
- Horizon Europe, aimed to make sure the EU has the capacity to fund more excellence in research;
- Connecting Europe Facility, aimed to accelerate investments in Europe's transport, energy and digital infrastructure networks;
- LIFE, aimed to achieve the shift towards a sustainable, circular, energy-efficient, renewable-energy-based, climate-neutral and resilient economy.

**Figure 5. EU programme funding as a share of 2020 GDP, in %**



**Sources:** EU funding: Bruegel, 2021; nextgeneration.bg; European Commission: Just Transition Fund, Horizon Europe 2020; REACT-EU; LIFE; Data on GDP: World Bank; Data on EU spending: European Commission.

**Notes:** For the Recovery and Resilience Facility 2021-2027 data includes Pillars 1 and 3 (Green transition and Smart, sustainable and inclusive growth). For LIFE, the amount displayed is the sum of EU contribution to each countries' projects. For Horizon Europe (2021-2027) data is not available, data refers to predecessor programme Horizon 2020.

It is also important to note that the current and future planned EU funding related to energy, climate and green activities represents a substantial part of the 2020 GDP levels. In the four analyzed EU member states, for example, the Recovery and Resilience Facility 2021-2027 funds for Pillars 1 and 3 (Green transition and Smart, sustainable and inclusive growth) constitute between

<sup>117</sup> The other two pillars include the InvestEU "Just Transition" scheme (expected to mobilize EUR 10-15 billion) and Public Sector Loan Facility (which will combine EUR 1.5 billion of grants financed from the EU budget with €10 billion of loans from the European Investment Bank, to mobilize EUR 18.5 billion of public investment).

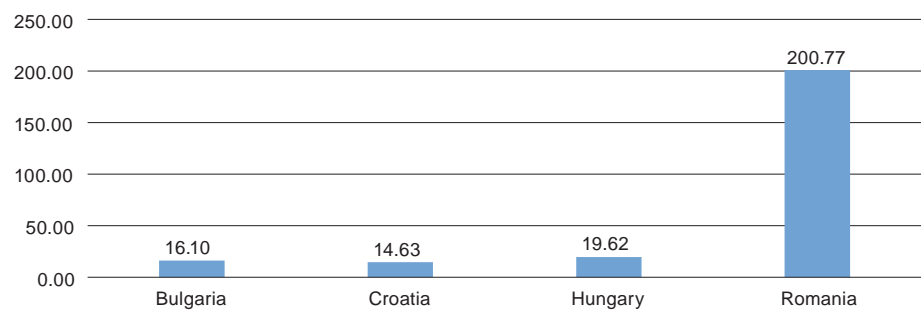
<sup>118</sup> European Commission, Cohesion Policy 2021-2027 and The EU's main investment policy.

<sup>119</sup> European Commission, The Just Transition Mechanism: making sure no one is left behind.

2.3% and 3.75% of the 2020 GDP levels. REACT-EU (2021-2022) planned funds vary between 0.6% and 1.1% of the 2020 GDP levels.

The Modernisation Fund is another relevant instrument, which aims to support 10 lower-income EU Member States in their transition to climate neutrality by helping to modernise their energy systems. The Fund will operate under the beneficiary Member States, in cooperation with the European Investment Bank (EIB), and the Investment Committee and the EC. The total revenues of the Modernisation Fund may amount to some EUR 14 billion in 2021-2030, depending on the carbon price.<sup>120</sup>

**Figure 6. Modernisation Fund country budgets for 2021-2027, in EUR million**



*Source: European Commission, Modernisation Fund.*

### EU funding for the Western Balkans

For the Western Balkans, the foreseen funding relevant to the **energy and green transition areas**, could be identified in three major support schemes.

- the Economic and Investment Plan for the Western Balkans<sup>121</sup> providing EUR 9 billion of grant funding, which is expected to mobilize additional EUR 20 billion for the region for the period 2021 – 2027 to support the long-term economic recovery of the region focusing on the priorities of the Union.
- The Commission's Instrument for Pre-Accession Assistance III (EUR 13.8 billion), which allocates 42% (or EUR 5.9 billion) from the funds to the priority of Green Agenda and Sustainable Connectivity for the period 2021-2027, which makes it the priority with the largest foreseen funding.<sup>122</sup>
- The Western Balkans Investment Framework (WBIF), which supports EU enlargement and socio-economic development since 2009, including projects in the energy sector. The framework finances infrastructure

<sup>120</sup> European Commission, [Modernisation Fund](#).

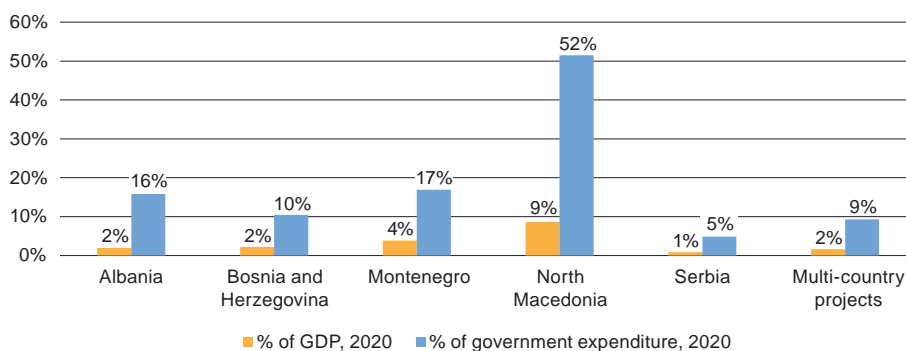
<sup>121</sup> European Commission, [Economic and Investment Plan for the Western Balkans](#), COM(2020) 641 final, Brussels, 6.10.2020.

<sup>122</sup> European Commission, [Overview – Instrument for Pre-accession Assistance](#), European Neighbourhood Policy and Enlargement Negotiations.

projects through grants and loans from participating financial institutions and 14 bilateral donors.<sup>123</sup>

WBIF total investment value, including co-financing (2009-) in the energy sector as a share of 2020 GDP varies between 1% and 9% for Albania, Bosnia and Herzegovina, Montenegro and North Macedonia, and represents 18% on average of the 2020 government expenditure.

**Figure 7. WBIF investment value (2009-) in energy as a share of 2020 GDP and government expenditure, in %**



Sources: WBIF website; World Bank (GDP and government expenditure).

The IPA II funds dedicated to climate and energy also constitute between 2% and 7% of the 2020 government expenditure and around 1% of the 2020 GDP of the respective countries. This further confirms the need of careful **monitoring of any future spending in the energy sector.**

## Public accountability and transparency of energy SOEs' management

### Key uncovered risks

**Public accountability deficits** in energy SOEs are visible in a number of cases, uncovered by investigative media reports, civil society reports or the audits of relevant public authorities across the SEE region. These issues contribute to a socio-political environment where financial mismanagement practices at SOEs are allowed to thrive and inefficient or damaging investment decisions are carried out. The absence of a solid legal framework and its consistent implementation are key factors that enable the limited financial transparency and widespread political meddling in the day-to-day management of SEE SOEs.

The OECD Guidelines on Corporate Governance of State-Owned Enterprises<sup>124</sup> provide the key features of a solid regulatory framework that ensures efficient, transparent and accountable management of SOEs. While the sole existence of a compliant legal framework does not in itself ensure the implementation of these rules, its absence provides a conducive environment

<sup>123</sup> Website of the [Western Balkans Investment Framework](#).

<sup>124</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

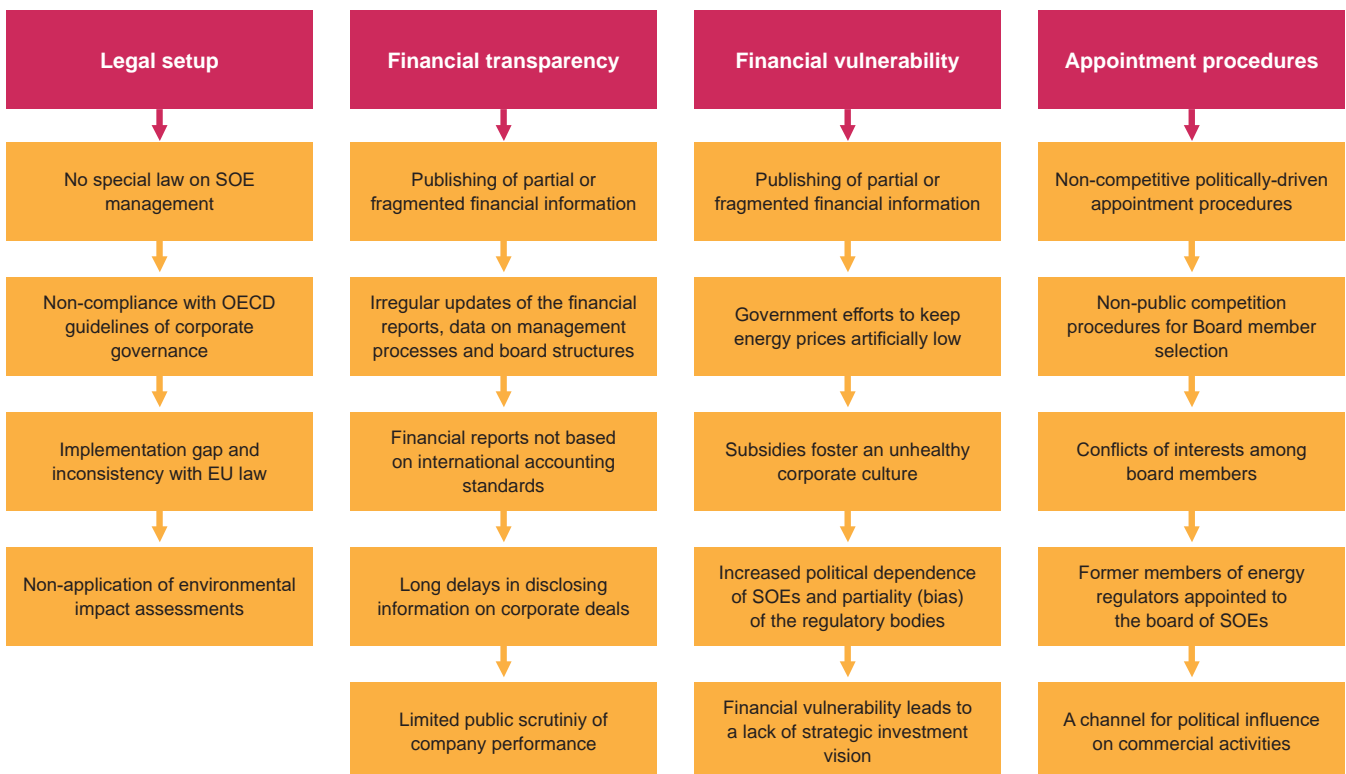
**Figure 8. Key uncovered governance risks for the management of the energy sector SOEs**



Source: Center for the Study of Democracy, 2022.

for the lack of financial transparency and the political meddling in management decisions. There are **a number of specific governance deficits** for the four key governance risk categories that have been observed in the SEE-9 region (see Figure 9). These then in turn also impact public procurement integrity in the energy sector, which is one of the economic sectors worst affected by public procurement abuse in the region (discussed in a separate section).

**Figure 9. Management risks in energy SOEs**



Source: Center for the Study of Democracy, 2022.

**EU membership does not necessarily coincide with lower governance risks in energy SOEs**, as some non-EU member countries display a similar or even slightly better performance than EU members from SEE. In particular, Albania, Bulgaria, Croatia, and Romania show similar levels of financial transparency risk. Meanwhile, the risks related to political appointments show a high degree of severity across all countries, with the surprising exception of Hungary, where SOEs are more transparent about their leadership. However, political appointments are an issue there as well. The following three subsections dive into the details of the four key governance risks.

**Figure 10. Financial transparency and political appointment risks in SOEs management<sup>125</sup>**

|                        | Financial transparency |                      |               | Management appointments                 |                        |           |
|------------------------|------------------------|----------------------|---------------|---|------------------------|-----------|
|                        | Regular reporting      | Detailed information | Accessibility | Transparency of the selection procedure | Political independence | Integrity |
| Albania                | ■ ■ ■ ■                | ■ ■                  | ■ ■ ■ ■       | ■ ■                                     | ■                      | ■         |
| Bosnia and Herzegovina | ■ ■                    | ■                    | ■ ■           | ■ ■                                     | ■                      | N/A       |
| Bulgaria               | ■ ■ ■ ■                | ■ ■                  | ■ ■ ■ ■       | ■ ■                                     | ■ ■                    | ■         |
| Croatia                | ■ ■ ■ ■                | ■ ■                  | ■ ■ ■ ■       | ■ ■                                     | ■                      | ■         |
| Hungary                | ■ ■ ■ ■ ■              | ■ ■ ■ ■ ■            | ■ ■ ■ ■       | ■ ■ ■ ■                                 | ■ ■                    | N/A       |
| Montenegro             | ■ ■ ■ ■                | ■                    | ■             | ■ ■                                     | ■                      | ■         |
| North Macedonia        | ■ ■                    | ■ ■                  | ■ ■           | ■ ■                                     | ■                      | ■         |
| Romania                | ■ ■ ■ ■                | ■ ■                  | ■ ■ ■ ■       | ■ ■ ■ ■                                 | ■ ■                    | ■ ■       |
| Serbia                 | ■ ■ ■ ■                | ■                    | ■             | ■                                       | N/A                    | N/A       |

|           |              |         |              |     |                |   |                  |     |                                  |
|-----------|--------------|---------|--------------|-----|----------------|---|------------------|-----|----------------------------------|
| ■ ■ ■ ■ ■ | Front-runner | ■ ■ ■ ■ | Satisfactory | ■ ■ | Unsatisfactory | ■ | Major concerns.5 | N/A | Not enough available information |
|-----------|--------------|---------|--------------|-----|----------------|---|------------------|-----|----------------------------------|

Source: Research performed by R2G4P members.

<sup>125</sup> 1) Front-runner: Full compliance with the OECD Guidelines, with regular and timely reporting of financial and other strategic information in machine-readable format, easily accessible on the company website. Only a few reported issues related to political appointments and integrity of SOE management by investigative media that have been publicly sanctioned, high degree of public confidence in the independence and integrity of management; 2) Satisfactory: Some deviations from the OECD Guidelines, with some gaps in financial reporting (e.g. no quarterly reports, information is not in machine readable format). There are some reported issues related to political appointments and integrity of SOE management by investigative media. 3) Unsatisfactory: Major deviations from the OECD Guidelines with limited financial information, not in machine-readable format, low level of public confidence in the political independence and integrity of SOE management with numerous reported issues. 4) Major concerns: Severe transparency issues, with irregular reporting that does not allow for meaningful financial analysis, limited or no public information about the selection produce and identities of board members, with political interference and corruption perceived as mainstreamed.

## Financial transparency

Energy SOEs in SEE-9 are not transparent enough about their financial situation. The disclosed information is usually only partial, and it is often not provided in a timely manner, nor in an accessible way to the general public. **Companies in a worse financial shape tend to be also less transparent.** One way to improve their transparency is for them to go public, which has been the case for Romgaz and Hidroelectrica in Romania. After going public, they have begun publishing detailed reports in 2019 and 2020. Hidroelectrica has also included data on investment and development plans, as well as information on public procurement procedures and contracts. In Hungary, the MVM Group Ltd., which controls a significant part of the domestic electricity and gas distribution, publishes regular financial reports with cash-flow statements. Yet, not all of these reports, include data on public procurement.<sup>126</sup> In another positive example, MOL Group, which is also a listed company, posts its financial statements and discloses the amount of shares each Board Member holds.<sup>127</sup>

While Hungary and some companies in Romania stand out as positive examples, there are major shortcomings in the rest of the nine countries. Albania, Bulgaria, and Croatia show relatively similar risk exposure, as they do not provide a great level of detail of the financial data of their SOEs. Financial data transparency remains particularly poor in Bosnia and Herzegovina, Montenegro, and Serbia. In Bosnia and Herzegovina, there is no information regarding business indicators, plans and results. The **reporting on performance indicators** is almost entirely restricted to annual business plans and annual reports, which are not readily available to the public.<sup>128</sup> Meanwhile, although in Montenegro, SOEs are subject to the law on free access to information, which obliges them to proactively publish financial data on the salaries of officials, list of employees, annual reports, information on public procurement, public registries, etc. on their websites, this information is largely not available.<sup>129</sup> For example, the main state-owned power generation and transmission company, EPCG, does not have its audit reports published since 2017.<sup>130</sup> In Serbia<sup>131</sup>, even if some information on state companies' business plans, number of employees, gross property value and older public procurement procedures have been made available, major concerns persist as these details are merely excerpts from the aggregated reports and are usually outdated.<sup>132</sup>

<sup>126</sup> MVM Group (S.A.), [Annual Reports](#) (2001-2019).

<sup>127</sup> MOL Group Careers, [Management and Operations](#); MOL Group, Publications, [Annual Reports](#) (1999-2020).

<sup>128</sup> Shentov, Stefanov, and Todorov, (eds.), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>129</sup> MANS, "Većina javnih preduzeća u Crnoj Gori proaktivno ne objavljuje ni polovinu informacija" [Most CSO do not publish not even half of legally obliged data on websites], 19 November 2018.

<sup>130</sup> Montenegrin Electric Enterprise AD Niksic (EPCG), [Financial reports](#).

<sup>131</sup> Transparency Serbia, [Transparency Index of the Public and State-Owned Enterprises \(PET-RA 2021\)](#), May 2021.

<sup>132</sup> Srbijagas was given the lowest score of only 25% out of 100% on the transparency scale, *Ibid*, p. 10.



## Appointment of CEOs and board members

The rules on the appointment of board members and other company leaders in energy SOEs are also unclear, especially when considering **potential political influence**. In some countries such as Croatia, there is even a membership fee or “party tax” whereas the appointed by (most commonly the ruling) political party board members are (unofficially) obliged to pay a significant part of their monthly salary to the party funds.<sup>133</sup> Such appointees are more vulnerable to corruption risks as they are more likely to accept bribes in attempt to recover the full size of their compensation.<sup>134</sup>

One of the consequences from the political meddling in the appointment of management boards in SOEs and regulatory authorities is the **resulting lack of professional expertise** in the execution of difficult decisions in the energy sector. The widespread nepotism also contributes to an overall poor financial management and lack of transparency in decision-making. Hence, the business activities of SOEs in SEE-9 are often not in line with the companies’ objectives but serve the interests of other companies or individuals with strong political ties, at the expense of the SOEs’ financial performance. This has been the case, for example, of the Serbian state-owned power supplier, EPS<sup>135</sup>, as well as of the North Macedonian Energy Regulatory Commission where shareholders or former managers in private energy companies have been appointed as members.<sup>136</sup> In addition, a former vice president<sup>137</sup> of the regulator was appointed as the CEO of MEPSO, the state-owned power transmission company in North Macedonia, despite an objection to the decision by the country’s Anticorruption Commission.<sup>138</sup> Romania is not an exception, with numerous allegations about the common practice of ruling political parties appointing party members on SOE boards.<sup>139</sup>

<sup>133</sup> Čular, G., “Stability and Permissiveness: Party Regulation and Party Competition in Croatia,” In Bértoa, F., and Biezen, I. (eds.), *The Regulation of Post-Communist Party Politics*, New York/London: Routledge, 2018, pp. 257–289; Mišić, G., *Do Regulation Matters? Impact of Political Financing Regulation on Party Corruption in Croatia and Serbia*, doctoral thesis, Budapest: Central European University, 2018.

<sup>134</sup> Čular, G., “Stability and Permissiveness: Party Regulation and Party Competition in Croatia,” In Bértoa, F., and Biezen, I. (eds.), *The Regulation of Post-Communist Party Politics*, New York/London: Routledge, 2018, pp. 257–289.

<sup>135</sup> Transparency Serbia, *Elements of the Captured State*, 2018.

<sup>136</sup> 360stepeni, “Антикорупциска ќе испитува судир на интереси кај членот на РКЕ Атанаско Тунески” [Anticorruption will investigate conflict of interest with ERC member Atanasko Tuneski], 4 November 2020; Time.mk, “Макпетрол со пријава до ДКСК за конфликт на интерес” [Makpetrol with a report to the SCPC for conflict of interest], 5 November 2020.

<sup>137</sup> Telma.mk, “И покрај судирот на интереси потврден од ДКСК, Куштрим Рамадани, стана генерален директор на МЕПСО” [Despite the conflict of interest confirmed by the SCPC, Kushtrim Ramadani became CEO of MEPSO], 4 December 2020.

<sup>138</sup> State Commission for Prevention of Corruption (SCPC).

<sup>139</sup> Hotnews.ro, “Fondul Proprietatea: Darkest day in the history of corporate governance in Romania / The parliamentary majority decides to replace professional management boards with political appointees in SOEs,” 21 December 2017.

### Box 8. Examples of political appointments in energy SOEs in SEE-9

In Albania, the director of the state-owned electricity company OSHEE, Adrian Çela, was appointed as the leader of the Socialist Party campaign in Durres, for the parliamentary elections of 25 April 2021.<sup>140</sup> Before leading OSHEE, Çela was Chairman of the Tender Commission in the Municipality of Durres. During this time, a lawsuit was filed against him by KLSH (Supreme Audit Institution) for abuses in public tenders.<sup>141</sup> A second similar case is the candidacy of the director of the company KESH to become member of the Parliament, while he continued to exercise his function.<sup>142</sup>

In Bulgaria, the lack of transparency in the staffing procedures persists despite the adoption of the Law on Public Enterprises in 2019, which mandated education and experience requirements for appointment nominees, as well as a competition procedure for the Boards of Directors appointments in SOEs.<sup>143,144</sup> Recent examples of politically tainted appointments refer to the selection of members and supporters of the former ruling party between 2009 and 2020, Citizens for European Development of Bulgaria (GERB), in the management boards of Bulgarian energy SOEs with 5-year terms, just before the 2021 election cycle. The appointments were announced in April 2021 without publishing detailed results of the carried-out selection procedures.<sup>145</sup> In November 2021, the Minister of Energy from the caretaker government began a process of replacing the GERB-appointed directors and additional board members in the energy SOEs, which is likely to exacerbate even further the financial standing of enterprises. The replacement procedures were similarly non-transparent and avoided competitive appointments altogether, often leading to political battles in the boards of affected SOEs.<sup>146</sup>

<sup>140</sup> Shqiptarja.com, “Befasia/ Drejtuesi i fushatës në Durrës Adrian Çela nuk figuron fare në listën e kandidatëve të PS” [Surprise / Campaign leader in Durrës Adrian Çela does not appear at all in the list of SP candidates], 11 March 2021.

<sup>141</sup> Botasot.com, “Kreu i OSHEE-së, Ardian Çela i paditur nga KLSH-ja” [The head of OSHEE, Ardian Çela, sued by KLSH], 19 January 2015.

<sup>142</sup> Telegraf, “Kallzohet në “SPAK” ish-drejtori i KESH-it, Benet Beci” [The former director of KESH, Benet Beci, is reported in “SPAK”], 25 May 2021.

<sup>143</sup> With the 2019 Law on Public Enterprises, requirements for University degree and five years of professional experience were introduced for the first time in Bulgaria in regards to the appointment of directors and board members of SOEs. Moreover, the persons appointed at these high-level positions should not be members of boards or other control bodies of public enterprises with similar area of activities. Independent members of the boards and oversight councils should constitute one third of all members, including the chairperson. All members with control functions should be appointed after a competition procedure. The Privatization Agency was transformed into the Public Enterprises and Control Agency (PECA) under the administration of the Council of Ministers, and became the main public body overseeing the implementation of the law.

<sup>144</sup> Economix.bg, „Новият ред за държавните компании – най-рано през 2021 г.” [New regulation for the state companies – in 2021 at the earliest], 4 May 2020; Law on Public Enterprises, 8 October 2019, in force from 1 January 2020.

<sup>145</sup> Stanchev, I., „ГЕРБ овладя енергетиката за следващите 5 години” [GERB will rule the energy in the next 5 years], *Capital.bg*, 20 April 2021; Mediapool, „На прощаване ГЕРБ се бетонира в държавната енергетика” [As farewell GERB is firming its position in the state energy], 20 April 2021.

<sup>146</sup> Mediapool, „БЕХ се сдоби с втори директор и разширен борд” [BEH got a second director and an expanded board], 8 November 2021.

An interesting example from Montenegro is the case of the President of the Board of Directors of the state-owned power supplier, EPCG, Djoko Krivokapić, who had a conflict of interest during his term, according to a decision of the Agency for Prevention of Corruption.<sup>147</sup> During that three-year period, Krivokapić was both the president of the Board of Directors of EPCG and a member of the Board of Directors of Prva Banka, which is majority owned by the brother of the country's President Đukanović. Mr. Krivokapić resigned from his post in Prva Banka, after the Agency for Prevention of Corruption passed its Decision on violation of Article 12 (Performing public functions in public companies and public institutions) and Article 13 (Obligation to resign) of the Law on Prevention of Corruption. Furthermore, members of the Boards of Directors of SOEs were replaced, after a new government came into power in 2020. The new boards announced the introduction of stronger controls on financial operations and public procurement in order to prevent embezzlement that has been the subject of media investigative reports for years. The prosecution has filed criminal charges against former members of the government and the EPCG on suspicion of criminal association, abuse of power and illegal influence.<sup>148</sup>

### Legal setup and inconsistency with the OECD Guidelines on Corporate Governance of SOEs

The legal framework regulating the management of energy SOEs in the Western Balkans is not compliant with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.<sup>149</sup> The **corporate governance regulatory framework is still under development in the region**, although some improvements have been made in recent years. The EU member-states perform better in terms of applicable laws, however their implementation has also been assessed as limited and very slow.<sup>150</sup> (see Table 2).

The often incomplete or fragmented or opaque legal setup for SOE management in SEE-9 provides **a conducive environment for the thriving of financial mismanagement practices** and other governance deficiencies. This in turn is a key contributor to the financial instability of SOEs in the energy sector and to the inefficient investment decisions and mismanagement of public funds. The non-compliance with the "Disclosure and transparency" principle of the OECD Guidelines presents a particular concern in SEE-9.

<sup>147</sup> Agency for Prevention of Corruption, [Decision 02-01-36/12-2020](#).

<sup>148</sup> Vijesti, "EPCG podnijela krivične prijave protiv Markovića, Sekulić, Krivokapića, Pejovića..." [EPCG filed criminal charges against Markovic, Sekulic, Krivokapic, Pejovic], 09 April 2021.

<sup>149</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>150</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

**Table 2. Challenges to the application of the OECD Guidelines on Corporate Governance of SOEs**

| Country                       | Regulatory framework relevant to the governance of SOEs   | Main challenges   |
|-------------------------------|---|---|
| <b>Albania</b>                | Under development   | The law does not specify how SOEs should inform the public about the structure of their boards, investments made, or open tenders.  |
| <b>Bosnia and Herzegovina</b> | Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) both have Laws on Public Companies                                | There is a need for policy documents that outline the rationale for government ownership of SOEs, and their operational and financial objectives. The oversight frameworks are also lagging behind standards. RS needs to more frequently update its SOE register. <sup>151</sup> |
| <b>Bulgaria</b>               | 2019 Law on Public Enterprises, developed with OECD support   | Need to strengthen disclosure requirements, raise capacities of the boards of directors (in terms of size, independence and responsibilities), and maintain a level-playing field with private companies. <sup>152</sup>  |
| <b>North Macedonia</b>        | In the general Commercial Companies Law <sup>153</sup> and not in a specific legislation dedicated specifically to SOEs. <sup>154</sup> | Under the general Commercial Companies Law, the management of SOEs does not need to comply with higher standards and procedures related to the public sector governance.  |
| <b>Montenegro</b>             | Law on Companies applies  | There is a need to operationalize the company or organisations which supervises the financial situation of state-owned enterprises (SOEs). <sup>155</sup>   |
| <b>Serbia</b>                 | Pending adoption of legal framework to enforce April 2021 strategic documents, based on the OECD Guidelines.                            | Need to establish a policy of disclosure of information relevant to SOEs, foreseen in the 2021-2027 Action Plan to the Strategy of State Ownership and Management of Economic Entities Owned by the Republic of Serbia. <sup>156</sup>  |
| <b>Romania</b>                | In place since 2012   | Poor overall operational and financial performance, limited transparency, distorted investment decisions and inefficient use of public resources. <sup>157</sup>  |
| <b>Hungary</b>                | In place since 2009   | An amendment from 2016 in Law CXXII <sup>158</sup> made the disclosure and transparency standards of energy SOEs and large-scale investment projects less strict.   |
| <b>Croatia</b>                | SOEs are subject to controversial provisions and requirements   | In the current legal setup, the distinction between SOEs of special interest and other SOEs remains unclear, as well as the various requirements related to the legal form of SOEs, their size and / or dependence on the state budget. <sup>159</sup>                            |

**Source:** Research performed by R2G4P members.

<sup>151</sup> Cegar, B. and Parodi, F., *State-Owned Enterprises in Bosnia and Herzegovina: Assessing Performance and Oversight*, IMF Working Paper, 2019.

<sup>152</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Bulgaria*, 2019.

<sup>153</sup> Official Gazette of the Republic of Macedonia no. 21/2011, Закон за трговските друštva [Law on Trade Companies].

<sup>154</sup> Gjorgjievski, J., *Legal criteria for the appointment of management of public enterprises, regulatory and independent bodies*, Policy Brief 19/2018, Institutit për Demokraci "Societas Civilis" – Shkup.

<sup>155</sup> Ralev, R., "Montenegro incorporating company to support reforms at state-owned firms," SeeNews, 6 August 2021.

<sup>156</sup> Official Gazette of the Republic of Serbia, No. 36/2021, *Strategy of State Ownership and Management of Economic Entities Owned by the Republic of Serbia for the Period from 2021 to 2027*, Section 2.

<sup>157</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p.60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

<sup>158</sup> Wolters Kluwer, 2009. évi CXXII. Törvény a köztulajdonban álló gazdasági társaságok takarékosabb működéséről \* [CXXII. Law on the more efficient operation of publicly owned companies], 2009.

<sup>159</sup> OECD, *OECD-ov pregled korporativnog upravljanja u poduzećima u državnom vlasništvu u Hrvatskoj* [OECD Review of Corporate Governance in Businesses in the state sector in Croatia], 2021.

### Box 9. Non-compliance with disclosure and transparency guidelines in Romania and Croatia

In Romania, in 2017 and 2018 there were repeated attempts by the parliamentary majority at the time to exempt around 100 SOEs from corporate governance rules via legislative amendments. The Constitutional Court declared<sup>160</sup> these amendments as unconstitutional but despite this ruling, the parliamentary majority revived the debates in 2018. An analysis made by the Fiscal Council concluded that the 2019 deterioration of SOEs' performance indicators and their net profit after six years of growth, was at least partially due to this legislative turmoil.<sup>161</sup>

In Croatia, the contract whereby the national oil producer INA was sold to the Hungarian MOL<sup>162</sup> was disclosed to the public only 10 months after it was concluded.<sup>163</sup> No formal and institutional consultations were carried out regarding the Croatian government's declaration of intent in mid-2020 to purchase INA back from MOL.

## Regulation, financial state and investment decisions

The main financial management deficits in energy SOEs across the region, come at the backdrop of some common features of such organizations in SEE-9. SOEs in the region are typically fossil-fuel- dependent companies, which tend to underperform in the energy transition to decarbonization. In addition, they have inherited **a wealth of path dependencies that lead to the vulnerable financial state of energy SOEs**, in particular the role of price regulation and major financial mismanagement related to state ownership. This subsection examines the central role of political influence (on both the management of SOEs and the regulatory authorities) as one of the main factors for perpetuating poor financial management practices. The section showcases evidence across the region that helps analyze the implications of state capture risks for the SOEs' investment activities.

### The unhealthy financial state of energy SOEs

Most energy SOEs in the region are in a precarious financial position, struggling with losses, high debt exposure, and **inability to complete their investment programs**. This in turn is contributing to an aging asset base and a further erosion of their financial position. These financial difficulties are particularly pronounced in fossil-fuel-based companies that have struggled to cope with constantly rising CO<sub>2</sub>, coal and natural gas prices. The coal power plants are often the worst performing entities in a SEE-9 country but

<sup>160</sup> Constitutional Court of Romania, *DECIZIA Nr.62 din 13 februarie 2018* [Decision no. 62 of 13 February 2018].

<sup>161</sup> Dimitrescu, B. et al., *Analiza performanței economico-financiare a companiilor de stat din România în anul 2019* [Analysis of the economic and financial performance of SOEs in 2019], Romanian Fiscal Council, p. 33.

<sup>162</sup> MOL Group is an international oil and gas company, headquartered in Budapest, Hungary.

<sup>163</sup> Dnevnik.hr, "Objavljen ugovor Ine s MOL-om" [INA's contract with MOL published], 11 November 2009.

their financial state also cascades through the system as more profitable companies subsidize the losses of financial laggards. The rise in gas and electricity prices in 2021/2022 has considerably improved the profitability of SEE-9 SOEs but these are temporary factors that are likely to only gloss performance short-term, making it even more difficult to carry out necessary financial management reforms in the medium term.

- Key financial indicators

Energy SOEs in SEE-9 show a **varying degree of financial vulnerability**<sup>164</sup>, revealed by their large debt exposure and high debt ratios,<sup>165</sup> as well as low liquidity and falling current ratios.<sup>166</sup> The key contributing factors are the strong politicization of the energy sector and a number of structural and governance deficits. The efforts of governments to keep energy prices artificially low to avoid a social backlash come at the expense of the financial health and political independence of SOEs, as well as the impartiality of regulatory authorities across the region. **Governments use SOEs as political tools** and keep them afloat using subsidies, which in turn allows mismanagement practices to thrive and foster an unhealthy corporate culture, where the management of SOEs does not act in the enterprise's best interest.

Some of the more extreme **examples of poor financial performance** comes from Albania, where energy SOEs are in a deep financial crisis. Albania's electricity distribution company, OSHEE, has the worst quick and current ratios among the nation's three energy SOEs, both standing at close to 0.3 in 2019<sup>167</sup>, indicating severe liquidity issues. It also has an exceedingly high debt ratio, which cascades into impacting negatively the finances of the energy producer, KESH, which faces delayed debt repayments from OSHEE. The financial statements of KESH, OSHEE and OST (the transmission system operator) indicate that the liabilities between each other amount to ALL 69.6 billion (about EUR 568 million).<sup>168</sup>

<sup>164</sup> The data about the financial performance of some non-EU-based energy companies is scarce. In Bosnia and Herzegovina there are only some basic indicators about the three vertically-integrated electricity companies that operate in each entity of the country. The available indicators do not allow the estimate of performance indicators such as the debt or current ratios, but reveal the high volatility of net profits, which indicates operational risks.

<sup>165</sup> The debt ratio is calculated as the ratio of total debt to total assets. It shows that a company has more debt than assets (a ratio higher than 1) and is an indicator of the risk of default for that company. Additionally, companies with high debt ratios compared to the average for their industry would have more difficulties borrowing money due to lower trust from creditors. For companies in the energy sector, higher debt ratios are generally accepted due to the capital-intensive nature of the industry and typically stable cash flows. Nevertheless, debt ratios that are close to 1 or higher are a concern. Meanwhile, debt ratios that are significantly below the industry average may indicate inefficient operations.

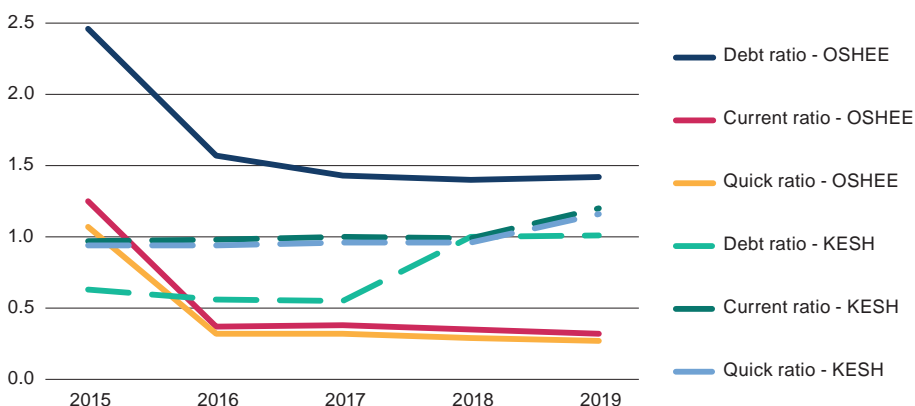
<sup>166</sup> The current ratio is calculated as the ratio of current assets to current liabilities. It provides a snapshot of a company's ability to cover its short-term debt. A ratio below 1 indicates that if all current liabilities come due at that moment, the company would be unable to cover them with its current assets. However, a very high current ratio may also indicate inefficient management of working capital.

<sup>167</sup> Calculations based on [Annual Reports](#) (2015, 2016, 2017, 2018, 2019), Electricity Distribution Operator (OSHEE).

<sup>168</sup> [ACER calculations](#) based on the financial statements of OSHEE, KESH, OST.



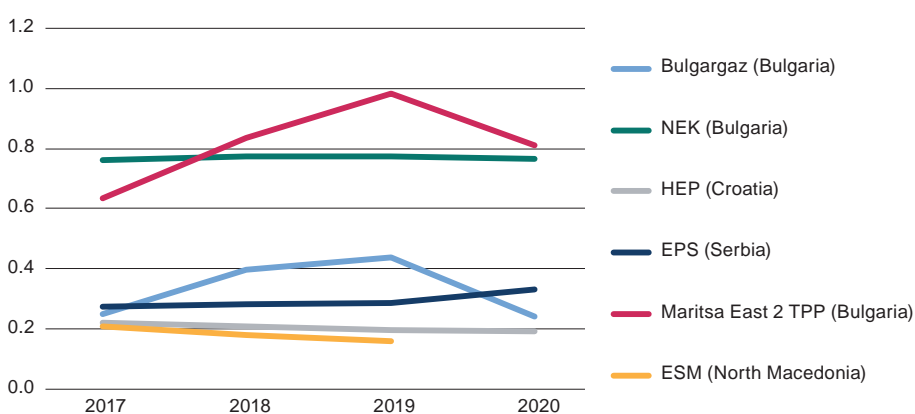
**Figure 11. Key financial indicators for selected Albanian energy SOEs**



Source: CSD based on data from KESH and OSHEE annual financial reports.

Other energy SOEs in the region have also seen their debt ratios rise, such as NEK and Maritsa East 2 in Bulgaria (respectively the country’s state-owned electricity-holding and largest coal thermal power plant), albeit the situation is not as severe as the case of Albania. Most SOEs remain within the comfort zone of up to 0.6, both in EU and non-EU countries. Nevertheless, acceptable levels of indebtedness do not spell an overall stable financial health, as some of the SOEs with healthy debt ratios are making considerable annual losses and have short-term liquidity issues. Serbia’s EPS is a good example, with its current ratio declining towards 1 in recent years, indicating a mounting default risk, as current liabilities are close to exceeding current assets.

**Figure 12. Debt ratios for selected SEE-9 SOEs**



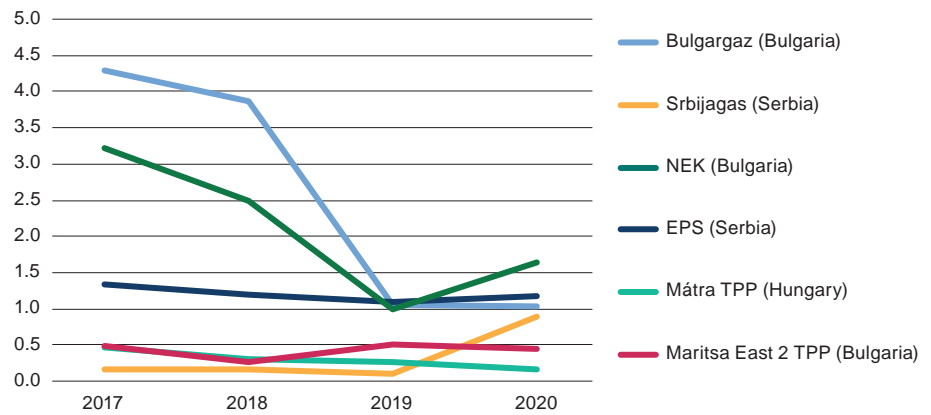
Source: CSD based on data from KESH and OSHEE annual financial reports.

Short-term liquidity issues are much more pronounced, with many SOEs having a current ratio significantly below 1, indicating that current assets are not enough to cover current liabilities if they all come due simultaneously, increasing the risk of a technical default. NEK in Bulgaria is among the weakest performers, with its current ratio declining consistently over the past years and reaching a low of merely 0.16 in 2020. Like in many other cases across the region, part of the poor financial health of NEK is due to the decision to



get involved in a large-scale geopolitical project – the failed construction of a second Russia – back nuclear power plant in Belene.<sup>169</sup>

**Figure 13. Current ratios for selected SEE-9 SOEs**



*Source: CSD based on data from KESH and OSHEE annual financial reports.*

#### Box 10. Underperformance of fossil-fuel companies

With the exception of Hungary's MOL, fossil-fuel and especially coal-based SOEs tend to underperform compared to hydro and nuclear power generation companies. The underlying reason behind this diverging performance is the higher variable production costs of fossil-based power plants, linked also to the rising prices of carbon emissions. For example, the lignite fired Mátra Thermal Power Plant (TPP) in Hungary has seen its losses accelerate since 2017, whereas its net annual loss at over EUR 120 million in 2020 was three times higher than in 2017.<sup>170</sup> In the same way, the two worst-performing energy SOEs in Romania are the Hunedoara and Oltenita Energy Complexes<sup>171</sup>, which are coal-based electricity and heat producers. Meanwhile, the hydro and nuclear generators, Hidroelectrica and Nuclearelectrica, have seen their financial performance improve significantly over the past several years on the back of rising wholesale prices. Similarly, in Bulgaria, the Kozloduy nuclear power plant (NPP) is showing strong profitability, while the lignite Maritsa East 2 TPP, the biggest coal power plant in SEE, has accumulated total losses of more than EUR 700 million before the 2021/2022 price increases alleviated losses temporarily.<sup>172</sup>

The **cross-subsidization of SOEs** undermines the investment program of more profitable firms and poses a long-term financial risk to their balances. Cross-subsidization is often possible when several state-owned energy companies are consolidated under the umbrella of a national major holding structure such as the Bulgarian Energy Holding (BEH) or Hungary's MVM. In

<sup>169</sup> Stefanov, R. et al., *Energy and Good Governance in Bulgaria: Trends and Policy Options*, Sofia: Center for the Study of Democracy, 2011.

<sup>170</sup> E-beszámoló, *Mátrai Erőmű Zártkörűen Működő Részvénytársaság [Mátra Power Plant Ltd.]*, 2021.

<sup>171</sup> Ministry of Finance, *2018 Annual Report on the Activity of State-Owned Enterprises*, p. 40, and *2019 Annual Report on the Activity of State-Owned Enterprises*, p. 25.

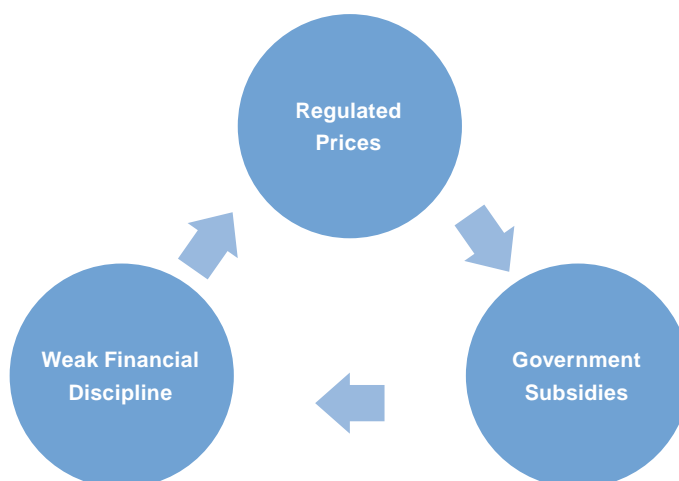
<sup>172</sup> Bulgarian Energy Holding, *TPP Maritsa East 2 interim financial report – individual*, Q2-2021.

the latter case, the acquisition of the Mátra TPP by MVM in 2019 has weighed on MVM's finances, as the holding company had to pay off the outstanding debts of the Mátra TPP amounting to HUF 75.14 billion (EUR 213 million).<sup>173</sup> Similarly, BEH has been covering the debt and losses of the struggling companies within the group. For example, BEH has been covering the debt, amounting to over BGN 100 million (EUR 51 million) annually, of the Sofia district heating company, one of the biggest debtors of the state-owned wholesale gas supplier, Bulgargaz.<sup>174</sup> The holding company has also been buying ETS quotas on behalf of state-owned Maritsa East 2 lignite plant as it struggles to cover the carbon costs on its own power generation as the price of carbon has increased.

### Common path dependencies

The poor financial performance of energy SOEs is often the result of **two key factors eroding their profitability** – financial mismanagement and artificially low regulated energy prices. The low quality of financial management is often related to: 1) excessive staff size linked to party-politically motivated job-creation; 2) overly generous remuneration in comparison to achieved results; and 3) the mismanagement of public procurement. Excessive company spending on staff and procurement eat into the SEE-9 SOEs' revenues, which are already suffering from artificially low regulated prices on the domestic market and the failure to collect payments from customers (mainly households or other state-owned entities). Instead of addressing the root cause for the SOEs' financial problems, however, the approach of most governments in the

**Figure 14. Common path dependencies affecting the operation of SEE-9 SOEs**



Source: CSD, 2022.

<sup>173</sup> Brückner, G., "Hatalmas „na, erre nem számítottam” a Mátrai Erőműnél: 42,7 milliárd forint a tavalyi veszteség" [Huge „well, I did not expect this” at Mátra Power Plant: last year's loss was HUF 42.7 billion], *telex.hu*, 2021; Czinkóczi, S., "Több mint 42 milliárdos veszteséget termelt a Mátrai Erőmű, mióta az állam megvette Mészáros Lőrincctől" [Mátra Power Plant has made a loss of more than 42 billion since the state bought it from Lőrinc Mészáros], *444.hu*, 2021.

<sup>174</sup> Gocheva, R., „«Булгараз» повишава печалбата си до 39.6 млн. лв. през 2020 г.” [“Bulgargaz” increases its profit to BGN 39.6 million in 2020], *Capital.bg*, 28 April 2021.

region is to subsidize the ailing companies, which perpetuates and deepens the problem by allowing corporate mismanagement practices to solidify as part of corporate culture. The rationale behind this approach has been the fear of social backlash against high energy prices, which leads to price control mechanisms and the widespread use of subsidies to prevent the economic collapse of the SOEs in question. This closes a **vicious circle of growing inefficiencies** due to ignoring of market principles.

### *Misguided Regulatory Policy*

Maintaining energy prices artificially below market levels is a common factor eroding SEE-9 SOEs' revenue base. The key motive for maintaining such prices is to gain politically by keeping prices artificially low for households and social institutions. Governments maintain prices fixed by installing a regulated market that may encompass the whole domestic market, or key segments such as households and some business consumers, thus sometimes functioning in parallel to the free market. In a regulated market, the regulatory authority sets the prices instead of supply and demand dynamics on power and gas exchanges. Hence, **exercising political influence on the regulatory authorities**, mainly through the appointment of their members, is a key tool that SEE-9 governments use to control energy prices. In this context, delaying or in some cases even reversing the market liberalization process is used by the governments to maintain political control over energy pricing (see Box 11).

SEE-9 SOEs in power, gas and heating distribution are particularly affected by price controls, as the artificially low regulated prices and the inability to collect payments from some customers erode their revenue bases. In turn, their losses negatively impact the whole sector as unpaid liabilities lead to cascading financial difficulties in other companies including transmission operators and energy producers/suppliers.

#### **Box 11. Reversing the market liberalization process in Hungary and Bulgaria**

The overhead reduction program launched by the Hungarian government in 2013 has significantly reversed the market liberalization process. The ultimate goal of the program was to control the rise of household consumer prices by reinstating regulated pricing for electricity, heating, gas and other utility retail services and ultimately, to enable the re-election of PM Victor Orban in 2014. This move came on the back of an intergovernmental agreement with Russia for reducing the price of gas imports under the long-term supply contract, which enabled a cut in domestic tariffs. The 2021/2022 Russia-incited energy price-hike for Europe, shows how such agreements turn into a political leverage tool for the Kremlin. A key step to implementing the program was a legislative change<sup>175</sup> that gave more powers to the national energy regulator, MEKH,

<sup>175</sup> Wolters Kluwer, 2013. évi XXII. Törvény a Magyar Energetikai és Közmű-szabályozási Hivatalról \* [Law XXII of 2013 on the Hungarian Energy and Public Utility Regulatory Office].

while reducing its political independence. A political appointment at the heart of the regulator had an instrumental role. Over 2013-2020, when the Parliament increased the powers of MEKH, the institution was presided by a former leader of the local office of the Fidesz party in Szeged.<sup>176</sup> The legislation empowered MEKH to issue regulations on electricity and gas system tariffs, which can only be challenged in the Constitutional Court.<sup>177</sup> Following the implementation of the overhead reduction program, the Hungarian company FŐTÁV, dealing with district heating in Budapest, saw a sizeable 25% drop<sup>178</sup> of its revenues compared to the 2008-2013 average.<sup>179</sup>

In December 2021, in view of the energy crisis in Europe and skyrocketing electricity prices, the energy regulatory authority in Bulgaria, EWRC, published a report assessing the new market trends and proposing an upward revision of domestic regulated electricity prices by 11.5% from January 2022. Immediately, the newly elected Parliament voted a moratorium on prices, in direct violation of the independence of the regulatory authority, citing EWRC's close allegiance with the previous ruling party, GERB, as a key motive for the price increase. This move was followed shortly thereafter by the replacement of the members of EWRC and the introduction of legislative reforms regarding the functioning of EWRC, as well as other regulatory bodies. Such politically-motivated changes in the regulator have long tradition in Bulgaria and have resulted in serious state-capture pressures and the reduction of competition in regulated energy markets and beyond.<sup>180</sup>

Keeping artificially low regulated prices weighs heavily on the profitability of SOEs. The national governments in SEE-9 usually resort to two key strategies to offset this financial pressure and to prevent the companies from defaulting: 1) direct state aid or 2) the redistribution of the profits of more successful SOEs to struggling entities. The provision of state aid often takes the form of direct cash injections, providing a loan with preferential terms, or debt write-off (see Box 12 on a case from Serbia).

Regardless of the form of government financial support for SOEs, there is one key common negative impact. The confidence of SOE management boards that public authorities will always step in to support the company in times of financial difficulty means that **bad financial management practices are allowed to persist**. So far, the efforts to tie EU or state aid provision with company restructuring plans have had a limited effect in SEE-9. For example, the Hunedoara and Oltenita Energy Complexes have received state aid in exchange for company restructuring. However, both of the cases have received criticism from the European Commission – respectively for constituting illegal

<sup>176</sup> Marnitz, I., "Orbán elküldte a közműhivatal exfideszes elnökét," *nepszava.hu*, 12 July 2020.

<sup>177</sup> Wolters Kluwer, 2013. évi XXII. Törvény a Magyar Energetikai és Közmű-szabályozási Hivatalról \* [Law XXII of 2013 on the Hungarian Energy and Public Utility Regulatory Office].

<sup>178</sup> E-beszámoló, *Annual Reports of FŐTÁV Ltd.*, *e-beszamoló.gov.hu*, 2021.

<sup>179</sup> Ibid.

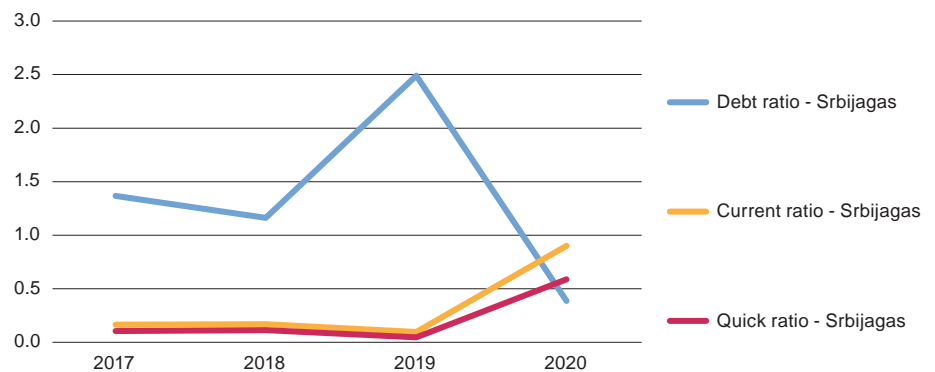
<sup>180</sup> Stefanov, R. et al., *Energy Sector Governance and Energy (In)Security in Bulgaria*, Sofia: Center for the Study of Democracy, 2014.

state aid because they gave the company an unfair economic advantage<sup>181</sup> and for a flawed restructuring plan, which did not ensure a sustainable decarbonization path for the entity.<sup>182</sup>

#### Box 12. Political meddling in the financial management of Srbijagas

Srbijagas, the company dealing with production, supply and trade of gas in Serbia was struggling with severe debt issues until 2019, when its debt ratio reached a high-risk point of 2.5. Similar to other SOEs in SEE-9, its profitability was suffering from selling at artificially low prices and failing to recover payments from its customers. Nevertheless, its debt ratio dropped sharply in 2020 to a healthy 0.4, while short-term liquidity also improved. The reason for the improvement was that the Serbian government wrote off the company's debt amounting to EUR 1.2 billion, converting the debt into capital.

Figure 15. Key financial indicators for Srbijagas



Source: Calculations based on company annual financial reports.

#### Financial Mismanagement

Weak financial discipline is a key factor that leads to excessive operational costs and hinders the profitability of energy SOEs. Apart from the mismanagement of public procurement, to be discussed separately, some of the most prominent financial management issues identified are related to the **maintenance of an excessive staff size** and an overly generous remuneration.

The economic consequences of the financial mismanagement of energy SOEs weigh on taxpayers as SOEs do not contribute adequately to the state budget. In addition, governments need to allocate large subsidies and other forms of state aid to the ailing companies without a sound economic

<sup>181</sup> Ministry of Energy, *RAPORT privind evoluția și performanța activității regiilor autonome și societăților din domeniul energiei și resurselor energetice la care Ministerul Energiei deține calitatea de Autoritate Publică Tutelară, pentru anul 2020* [2020 Report on the Evolution and Performance of Autonomous Regions and Companies in the Energy Sector], June 2021, p. 30-32.

<sup>182</sup> Pirvoiu, C., "Ministrul Energiei: Guvernul va acorda un ajutor Complexului Energetic Oltenia / Greenpeace: Compania riscă insolvența, iar autoritățile române sunt neconvingătoare" [Minister of Energy: The Government will provide aid to Oltenia Energy Complex/ Greenpeace: The company risks insolvency, and the Romanian authorities are unconvincing], *Hotnews.ro*, 30 March 2021.

assessment on how to restructure the companies and place them on a more sustainable financial basis. Imposing stricter competition rules and improving SOE's transparency are a key step towards escaping this vicious circle. Romania provides a somewhat positive example, where pressure on the national government to implement **EU competition law improved the transparency of SOEs**, as well as increased the independence from political influence of the companies' management boards. The improvements in the regulatory environment have coincided with a gradual improvement of the financial performance of energy SOEs in the past decade.

#### **Box 13. Trading with posts in energy SOEs in Bosna and Herzegovina**

A case from Bosnia and Herzegovina showcases well the political strings attached and corruption pressure that often come with employment opportunities at energy SOEs in SEE-9. Amir Zukić, the Secretary of the conservative Bosniac party SDA, was allegedly involved in trading with job positions at Elektroprivreda BiH. According to investigative media publications, the price for the job positions in the energy SOE ranged around EUR 8,000 – 10,000 and were conditional on become a member of the SDA party.<sup>183</sup> This particular case, provides an example of extreme mainstreaming of political influence in SOEs' day-to-day operations.

#### *Political influence on company management*

Maintaining artificially low prices to avoid a social backlash and supporting loss-making companies to avoid an increase in the unemployment rate serves political objectives at the expense of the financial health of energy SOEs. **Political influence on the regulatory authorities** leads to three key risks: 1) instating artificially low regulated prices; 2) creating a situation where conflicts of interest thrive; 3) eroding market competition.

**Maintaining artificially low prices** is often used as an instrument for tackling energy poverty in SEE-9 instead of more sustainable and effective measures such as targeted social support for energy poor consumers and incentives for the introduction of energy efficiency measures and the adoption of renewable-based decentralized energy supply solutions. Compared to the regulated prices approach, however, such measures require a long-term strategic vision for the development of the energy sector and do not provide immediate results, and hence politically favorable outcomes in the short run. As a result of the preference for direct political involvement in regulatory matters in SEE-9, the market rules can become tailored for well-connected market players, compromising the efficiency and integrity of decision-making and stifling innovation. The undue advantage could be to the benefit specific private companies, at the expense of the interest of SOEs and the taxpayers (See Box 14).

<sup>183</sup> Rovčanin, H., "Počelo suđenje Amiru Zukiću i ostalima" [The trial of Amir Zukic and others has begun], *Detektor*, 23 May 2017.

Political influence on the regulator could also be directed towards **maintain their dominant or monopolistic position** on the national market, thus allowing political control over outsized financial flows outside the rules of public procurement. Historically, SOEs in SEE-9 have been vertically integrated entities controlling production, transmission and distribution of energy on the domestic market. The unbundling of these entities across the region, and the encouragement of new market participants to enter the sector has been a key element of aligning national energy policies with the EU. An independent regulator is a key guarantor for the practical implementation of the unbundling process and for the development of market competition, leading to better outcomes for consumers. The lack of independence of the energy market regulators from political influence risks that they turn a blind eye to SOEs that abuse their historically dominant position on the national market suppress private sector competitors.

#### **Box 14. Examples of abuse of office within energy regulatory bodies in SEE-9**

Tomislav Jureković, the president of the Management Board of Croatia's energy regulator HERA, was allegedly under the influence of Josipa Rimac, a member of the Croatian ruling party, HDZ, receiving bribes of some HRK 40,000 monthly (about EUR 5,000) over the 2017-2019 period. In return HERA gave the status of privileged electricity producer to the company CEMP, an investor in the Krš-Padene wind farm. This allowed CEMP to sell electricity to HROTE, a SOE purchasing electricity from renewable energy sources, at more than double the standard price for a period of 25 years.<sup>184</sup>

The appointment of Natasha Veljanovska as member of the energy regulator of North Macedonia, raised concerns about a potential conflict of interest, as she had previously served in the cabinet of the Deputy Prime Minister, Kocho Angjusev, who in turn has business interests in the energy sector.<sup>185</sup> In particular, Angjusev is the CEO of FERRO INVEST LLC, a company active in the electricity sector with 25 small hydro power plants.

In Bulgaria, the Energy and Water Regulatory Commission (EWRC) and the Commission for Protection of Competition (CPC) have seen their independence eroded by political meddling. One strategy has been to keep the members of these regulators in office, years beyond their term.<sup>186</sup> One example of how such instruments of political pressure play in the government's hands has been a complaint by the private company Overgas to the EWRC regarding the abuse of market power by BEH. As a result of the complaint the European Commission launched an investigation in 2013 that revealed BEH had been breaching EU antitrust rules. The European Commission found that BEH used the dominant

<sup>184</sup> Knežević, A., „Došli smo do detalja: Plan je bio da krug oko Rimac 25 godina Hrvatskoj prodaje preskupu struju. I zaradi milijarde“ [We came to the details: The plan was for the circle around Rimac to sell overpriced electricity to Croatia for 25 years. And for a billion], *Telegram.hr*, 31 May 2020.

<sup>185</sup> Lokalno.mk, „Марко Бислимовски именуван за претседател на Регулаторната комисија за енергетика“ [Marko Bislimovski appointed chairman of the Energy Regulatory Commission], 2018.

<sup>186</sup> Veselinova, M., „Играта с мандатите в регулаторите“ [The game of mandates in the regulatory bodies], *Capital.bg*, 22 January 2021.



position of its subsidiary Bulgartransgaz over gas transmission infrastructure to restrict the access of private companies in favor of another of its subsidiaries – Bulgargaz, the state-owned gas monopoly incumbent. However, only a limited number of companies in SEE-9 have the capacity to pursue their interests on the European level. The small share of complaints reviewed by the EWRC that were then submitted to the CPC for investigation in Bulgaria (4 out of 30 complaints submitted between 2019-2020) demonstrates the need for easier recourse to EU action.<sup>187</sup>

### SOE investment activities: state capture vulnerabilities

The precarious financial situation of SOEs in the SEE-9 has **undermined their ability to invest** in the maintenance and modernization of existing infrastructure and in new projects that improve their performance. Across Central and Eastern Europe, the energy transition process towards decarbonization requires an increase in the level of investment in the energy sector infrastructure above and beyond the investments necessary for simply maintaining its current capacity.<sup>188</sup> This represents an important challenge for SEE-9 SOEs and a significant risk that the additional funds, which will be invested in the next decade, including such provided by the EU, might be wasted within existing and new state capture networks.

The financial constraints of SOEs in combination with the high ambition for the decarbonization and the modernization of the sector in SEE-9 require a consistent long-term investment strategy based on a comprehensive cost/benefit assessment. State and EU funds play a key role in providing financial support, as well as a strategic direction for the planned investments. The **lack of a strategic vision** in the national policy frameworks of SEE-9 countries and the absence of operational strategies with specific targets and priority investment focus areas contribute to the ad-hoc nature of SOE decisions. Most often, SOEs provide limited, sporadic or no information about their investment plans. Even in Hungary, where SOEs publish more detailed information on a regular basis, there is still no quantitative assessment of the specific investment projects. One positive example comes from Croatia, where Hrvatska Elektroprivreda d.d. (HEP) has developed a detailed 2030 investment strategy aiming at a flexible and sustainable production portfolio, aligned with the Integrated National Energy and Climate Plan. The strategy further includes specific steps for its implementation.<sup>189</sup> The company adopted stricter corporate rules regarding transparency, timeliness, and accuracy

<sup>187</sup> Energy and Water Regulatory Commission, Republic of Bulgaria, [Annual Report 2020](#).

<sup>188</sup> For example, in Hungary, the estimated annual investment needs to meet the objectives set out in the National Energy and Climate Plan by 2030 (EUR 1.6 billion) is 15% higher than the maximum annual investment volume in the energy sector over the 2016-2020 period (reached in 2019) and 40% above the annual average over the same period, calculations based on Hungarian Central Statistical Office (KSH), as provided in the national Annual Background Analysis of the R2G4P platform.

<sup>189</sup> Tarnik, T. and Alfirev, D., [Izješće o poslovanju i održivosti HEP Grupa 2020](#) [Business and Sustainability Report HEP Group 2020], Croatian Electric Power Company Zagreb (HEP), 2021.

of disclosing financial information as required by its listing on international capital markets and the need to attract the interest of potential investors.

Some of the largest, and hence most risky, investment projects in energy SOEs in SEE-9 are the result of **intergovernmental agreements** with foreign states, most notably with Russia and China. Such projects reinforce the geopolitical influence of such non-EU states and are **often associated with domestic political and economic networks and corruption risks**. The corruption risks of such projects have increased exponentially, as the Kremlin war in Ukraine has widened the rift between the EU and non-democratic third countries. The economic rationale of such investment projects often comes after geopolitical considerations and has typically been misaligned with national and EU energy and climate security objectives. The Russia-led **TurkStream project** (see Box 15) is a prime example in this respect. Affecting Bulgaria, Serbia, and Hungary, it has benefitted from and contributed to the further entrenching of oligarchic networks of influence consisting of both Russian and local private interests with close ties to the respective incumbent governments. These networks have pushed for the development of the project with the expectation that companies linked to them would receive lucrative (overpriced) public procurement contracts. It has resulted in a number of energy sector governance deficits. Moreover, in many cases such large infrastructure projects have become a key factor undermining the financial stability of SEE-9 energy SOEs by locking them into unprofitable investments that also go against their own strategic interests and increase their debt burden in the process.

Chinese investments in SEE-9 have also often been **inconsistent with EU technical standardization** and/or with the EU acquis on competition and public procurement. Environmental regulations have also often been ignored or projects have not been compliant with the overall policy of decarbonization and sustainable growth. The increase of China's economic footprint in SEE-9 has coincided with a deterioration of governance standards in the region. National governments, particularly in the Western Balkans, have provided Chinese contractors with preferential treatment and state aid in the form of tax exemptions and the circumvention of labor standards. The more indebted a SEE country is to China relative to its GDP, the higher the likelihood that China leverages existing governance deficits to expand its economic and political influence.<sup>190</sup>

In many cases China-led investment projects in SEE-9 have reinforced national coal industries.<sup>191</sup> The lignite-fired Stanari power plant in Bosnia and Herzegovina is a case in point. The EUR 600 million project, financed mainly by the China Development Bank, benefits from preferential regulatory treatment. National legislation has been changed to enable the transfer of concession rights for the nearby coal mine to the Energy Financing Team (EFT), which is developing the power plant project. The company also gained an exemption from coal mining fees and a reduction for the coal power

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<sup>190</sup> Vladimirov and Gerganov, *Chinese Economic Influence in Europe*, Sofia: CSD, 2021.

<sup>191</sup> *Ibid.*

generation concession fee from 3.6% to 0.2%. A Chinese company, Shanghai Electric Power Engineering, was also the main contractor for the Možura wind farm project in Montenegro, which was marred by a corruption scandal linked to the absence of a cost-benefit analysis. The concluded contract for the wind farm provided much higher subsidies than warranted for the project, implying a significantly higher than normal electricity production costs for the project worth EUR 90 million.<sup>192</sup>

The lack of transparency in the use of energy SOEs' funds is another serious corruption risk. Such risks were at the heart of claims in 2021 that the Bulgarian Electricity System Operator (ESO) planned to allocate EUR 261 million from the National Recovery and Resilience Plan (NRRP) to a contractor that had already concluded a framework agreement with ESO and that had been implicated in a scandal linked to receiving preferential treatment from the state-owned transmission firm. A former employee of the contractor, was the CEO of ESO at the time of the negotiation of the NRRP investment.<sup>193</sup> A similar case in Srbijagas revealed that a specific company with strong political ties was awarded the contract for the construction of the Belgrade-Valjevo-Loznica gas pipeline without a tender procedure.<sup>194</sup>

#### Box 15. Kremlin backed projects in SEE-9: state capture risks

##### TurkStream in Bulgaria<sup>195</sup>

From its onset, the Kremlin designed the South Stream, and its successor the TurkStream pipeline, to serve its geostrategic interests in Europe and to further entrench its existing state capture networks and influence in SEE-9. The TurkStream project consists of two pipeline strings. The first delivers natural gas directly to the Turkish market, while the second enters into Bulgaria on its way to Serbia, Hungary, and Austria. Ultimately, it provided the Kremlin with the possibility to circumvent transit through Ukraine and to strengthen its dominant position on gas markets in the SEE region, thus enabling its war in Ukraine.

In January 2019, the Bulgarian gas transmission system operator (TSO), Bulgartransgaz, decided to build the Bulgarian leg of TurkStream after the shippers (Gazprom and the Hungarian-Swiss trader MET) committed to reserve 100% of the offered capacity on both the Turkish-Bulgarian and the Bulgarian-Serbian borders for a 20-year period.<sup>196</sup> Bulgartransgaz estimated the costs of the new infrastructure at around EUR 2.4 billion with most of the funding coming directly from the Bulgarian TSO. The latter will be compensated from the future transit revenues from TurkStream, with 4.1% interest rate to be

<sup>192</sup> Nikolić, B., „Abazović: Građani preko računa za struju plaćaju korupciju” [Abazovic: Citizens pay for corruption through electricity bills], *Vijesti*, 24 July 2020.

<sup>193</sup> Stanchev, I., „Държавната ЕСО: Един милиард за Таню от Разбойна” [The state-owned ESO: One billion for Tanio from Razboina], *Capital.bg*, 28 May 2021; Stanchev, I., „Дай ми 511 милиона от Плана за възстановяване” [Give me 511 million from the Recovery Plan], *Capital.bg*, 28 May 2021.

<sup>194</sup> Beta, „Jeremić: Da li je Milenijum tim dobio 75 miliona evra iz budžeta za 15 minuta?” [Jeremić: Did Millennium team get EUR 75 million from the budget in 15 minutes?], *N1*, 24 June 2021.

<sup>195</sup> Stefanov and Vladimirov, *The Kremlin Playbook in Southeast Europe*, Sofia: CSD, 2020.

<sup>196</sup> It is likely that MET took part in the market test on behalf of Gazprom to formally show that Gazprom was not the only company that was going to transit gas through Bulgaria. Bulgartransgaz did not release a breakdown of the volumes booked by the three companies.

covered additionally by Bulgartransgaz. In addition, Bulgartransgaz would have to spend additional EUR 750 million in operational costs over the next 20 years of the transit contract. Gazprom will be paying transit fees worth around EUR 170 million per year,<sup>197</sup> which is 70% more than the annual transit fee revenues that Bulgartransgaz used to receive from shipping Russian gas along the Transbalkan pipeline coming from Ukraine. The total transit revenue for the whole contractual period would be around EUR 3.6 billion, which means that the project would break even only after around 15 years of operation.<sup>198</sup>

The Bulgarian government was also forced to forgo its ship-or-pay transit agreement with Gazprom valid until 2030 with guaranteed revenues of more than EUR 700 million until 2030 in exchange for the TurkStream transmission contract. Hence, the actual profit from the TurkStream pipeline could be lower than the one from the previous agreement through Ukraine where the Bulgarian transmission operator had only small operational and maintenance costs.

The construction of the TurkStream pipeline demonstrated a number of management deficits, including the lack of public consultations and a detailed cost-benefit assessment of the project, as well as public procurement, environmental, and labor irregularities. TurkStream was constructed in Bulgaria in a year's time in 2020 by a consortium led by the Saudi company ARKAS, with no prior experience on this particular market in Europe. As it later turned out many of the financing institutions and the sub-contractors for the implementation of the project changed to include Russian entities. The latter are likely to end up on US and EU sanction lists after the start of the war in Ukraine, considerably increasing the financial viability of the project in the long-run, which in turn would undermine the financial standing of the investor Bulgartransgaz.<sup>199</sup>

The convoluted and opaque procurement process for the choice of an engineering, procurement, and construction (EPC) contractor lacked transparency and the tenders for bookings on the new pipeline have been pre-designed in such a way as to comply with EU rules on paper without guaranteeing real competition for bidders. Despite Bulgarian authorities' claim that they precisely followed EU public procurement rules, no major company with experience in Europe applied.

The Minister of Energy in the Caretaker government between April and November 2021, Andrei Zhivkov, demanded publicly that the Bulgarian Energy Holding dismissed Bulgartransgaz' Board of Directors following a report of the energy regulator revealing that Bulgartransgaz had accumulated more than EUR 0.5 billion in debt for the construction of TurkStream, increasing the company's total debt to above EUR 2 billion. Moreover, the Bulgarian SOE failed to meet certain regulatory requirements, with some clauses of TurkStream contracts missing mandatory authorizations.<sup>200</sup>

<sup>197</sup> Bulgartransgaz signed a 20-year transit contract with the following prices: EUR 0,48/MWh for entry at the Bulgarian-Turkish border and almost EUR 0,82/MWh on the Bulgarian-Serbian border. The TSO offered on the Turkish border around 290 GWh/d from 2019 to 2021 and 511 GWh/d for the rest of the period.

<sup>198</sup> CSD estimates based on the projected construction and exploitation costs, and the transit revenues based on the capacity booked by Gazprom on the Turkish and Serbian borders.

<sup>199</sup> Center for the Study of Democracy, "[Russia Evades US Sanctions on TurkStream using Proxy Companies](#)", CSD Blog, 19 October 2020.

<sup>200</sup> Radio Free Europe, "[„Енергийният министър поиска уволнения в „Булгартрансгаз“ заради „Турски поток“](#)" [Energy Minister demands dismissals at Bulgartransgaz over TurkStream], 5 July 2021; Mediapool.bg, "[„Уволненията заради „Турски поток“ прескачат от борд към борд“](#)" [The TurkStream layoffs are jumping from board to board], 5 July 2021.

### PAKS II NPP in Hungary

A similar case in Hungary involves the project for the construction of the Paks II Nuclear Power Plant Units 5 and 6, with two new nuclear reactors (1.2 GW each) by the Russian company Rosatom for a total cost of EUR 12.5 billion. With current nuclear capacity in Hungary standing at 2GW, or over a fifth of total installed capacity in the country<sup>201</sup>, the potential increase to 4.4 GW upon completion of the project would mean that Russia would play an increasingly dominant role in the national power sector, which creates major energy security risks.

This project has been under development since the late 2000s (approved by unanimous parliamentary vote in 2009). Nonetheless, there have been no economic analyses of potential alternative options and the government failed to deliver evidence that the project would be profitable. In 2014, Hungarian Prime Minister Victor Orbán and Russian President Vladimir Putin signed an intergovernmental agreement about the construction of the new units, outlining the capacity of the reactors and the financing scheme, which essentially relies almost fully on Russian capital. A loan from the state-owned Russian bank, VEB (under EU and US sanctions after the start of the war in Ukraine), with a particularly high interest rate (4.5% during the implementation phase and 4.9% thereafter) is set to cover 80% of the total cost.<sup>202</sup> The deal was a major surprise for many, as it had been prepared in total secrecy, without any public debates, lacking administrative and industrial justification. The management of the project has also been marked by financial deficits.

The procurement contract was awarded to Rosatom through a non-transparent and non-competitive tender procedure, essentially via bilateral closed-door negotiations only considering Rosatom as the main contractor. Moreover, the government of PM Orban resorted to extreme legislative measures to shield the Paks II project from public scrutiny, as key details from the contract were made secret for 30 years. The non-disclosure was enshrined in a law passed in 2015.<sup>203</sup> The law cited unspecified national security interests and the protection of intellectual property rights in general as grounds for the blanket restriction that left no discretion for data controllers and rendered the option for judicial review of any refusal to gain access to information meaningless. The same year, the European Commission started an infringement procedure of the non-transparent procurement contract, which, however, was quickly closed in 2016. Although in 2019 parts of the contract became public, the Termination clause<sup>204</sup> is still not available.

Meanwhile, hardly anything is known about the management of the construction works. The Paks II project has been directly controlled by the Prime Minister's Office, taking it entirely out of public scrutiny. The government commissioner responsible for Paks II argued that the contracts oblige Rosatom to deliver turnkey blocs by the deadlines, thus the risks on the Hungarian side are minimized. Given the problems with Rosatom's own projects (Baltic I, the Leningrad blocs, Novovoronezh II) and the weak Hungarian nuclear project management record, and the complexity of the project in terms of permits and

<sup>201</sup> Calculations based on Eurostat data for 2019

<sup>202</sup> Erdélyi, K., "120 milliárd forintot elköltöttek, két irodaház és egy konyha már megépült a Paks2-projektben" [120 billion spent, two office buildings and a kitchen already built in the Paks2 project], *atlatszo.hu*, 17 December 2020.

<sup>203</sup> Ibid.

<sup>204</sup> The penalties in case of breach of contract by one of the contracting parties.

other legal aspects, the prospects for cost overruns and significant delays in the commissioning of the project remain very likely. Paks II has already suffered considerable setbacks. By the end of 2020, the preparatory groundwork had been started and EUR 120 million had been drawn down from the Russian loan. While the initial completion date was set to 2023, in late 2021 the construction license for the project was delayed by the national Atomic Energy Authority and the expected commissioning date was re-set for 2029. With the continuing war in Ukraine, the financial risks for the project increase. Corruption risks are also likely to rise, as Russian companies are likely to seek ways to circumvent imposed sanctions, trying to draw the Hungarian government in complicity in the process.

## Countering governance deficits in the energy sector public procurement

### Understanding public procurement corruption risks

Public procurement corruption in energy SOEs in SEE-9 typically involves the **steering of a particular contract to a favored bidder**. This is achieved by either avoiding competition or by tailoring technical specifications or sharing inside information about the application process. Misconduct could occur during all critical decision points in the procurement process – planning and advertisement of the call, proposal submission and selection, evaluation of the offers, contract negotiations and the actual implementation. Research has highlighted that misuse will not be eliminated by formal regulations alone, though these can help reduce risks. Yet, there is a need to also better understand the methods used for public procurement corruption in energy SOEs in order for this phenomenon to be tackled.<sup>205</sup>

As a first step towards analyzing the pre-conditions for procurement infringements, it should be noted that **the energy sector is particularly vulnerable to corruption and mismanagement**, due to:

- The sheer size of the projects and the significant economic interests at stake;
- (Often naturally) lower competition and the monopolization of certain segments of the sector (including the construction, maintenance and engineering of energy infrastructure);
- Lack of transparency, public awareness and independent monitoring of the energy SOEs, coupled with limited access to information (sometimes due to reasons related to national security);
- Technical complexity of the sector.

<sup>205</sup> Budak, J., “Korupcija u javnoj nabavi: trebamo li novi model istraživanja za Hrvatsku?” [Corruption in Public Procurement: Do We Need a New Research Model for Croatia?], *Ekonomski pregled*, 67 (4), 2016, pp. 306-327.



Furthermore, as the analyses and practical examples have shown, the energy sector in SEE-9 is characterized by:

- Prevalence of non-transparent procedures;
- Relatively high level of single bidding;
- Accepted use of SOEs' internal public procurement norms and rules, at the expense of using more general public procurement law regulations;
- Evidence of bid rigging.<sup>206</sup>

Thus, **rigorous monitoring of the procurement integrity** should be applied on energy SOEs in SEE-9. These monitoring mechanisms could be government-led (e.g. integrity plans based on a self-assessment of public institutions, the Romanian PREVENT system, etc.), or CSO-led (e.g. Opendender.eu).

#### **Box 16. Integrity plans in Montenegro used to assess procurement in the energy sector**

Public procurement risks in the energy sector in Montenegro are assessed as part of the general area of risk “Financial planning and management” in the integrity plans, prepared by the public entities in the country. The Agency for Prevention of Corruption analyses the plans and makes recommendations for further policy improvements. According to the latest available 2021 report, the highest level of implementation of measures was achieved in the area of “Financial planning and management” (83.1% of measures were implemented), as well as in “Management and governance” (82.4% of measures). The Agency further highlights the most common risks in the field of public procurement, according to the integrity plans – insufficient transparency, illegal influence, possibility of giving preference to certain companies through biased scoring (clientelism, nepotism, cronyism) or conflicts of interest, adjustment of technical specifications to the interests of certain companies, non-compliance with prescribed procurement procedures, etc.<sup>207</sup> The OECD Competitiveness Report for South East Europe 2021 confirms the benefits of applying corruption risk assessment (integrity plans).<sup>208</sup>

<sup>206</sup> Romanian Competition Council, *Report on the preliminary results of the sectoral investigation on the Romanian electricity market*, December 2014; Romanian Competition Council, *Consiliul concurenței investighează un posibil abuz de poziție dominantă al hidroelectrica sa* [Press release, The Competition Council is investigating a possible abuse of dominant position from Hidroelectrica S.A.], September 2018; Romanian Competition Council, *Decizia nr. 43/11.08.2020* [Decision no. 43/11.08.2020].

<sup>207</sup> Information provided by the Agency for Prevention of Corruption of Montenegro. For more information: Agency for Prevention of Corruption, *Izveštaj o donošenju i sprovođenju plana va integriteta u 2021* [Report on the adoption and implementation of integrity plans in 2021] (forthcoming).

<sup>208</sup> OECD, *Competitiveness in South East Europe 2021: A Policy Outlook*, 2021.

## Country specifics and practical cases

In the SEE-9 energy sector, there is evidence for substantial **integrity gaps in public procurement**. These gaps have undermined the principles of free competition and have eroded the trust in public institutions. See Figure 16 for a summary of the key public procurement irregularities observed in the energy sector of the region.

**Figure 16. Public procurement irregularities observed in the energy sector in SEE-9**

| Before the selection procedure   | During the selection procedure  | After the selection procedure   |
|--|---|---|
| <ul style="list-style-type: none"> <li>• a company created solely to win a specific tender (no past experience)</li> <li>• tender specifications "tailored" for a specific company</li> <li>• provision of inside information</li> <li>• unrealistically short deadlines</li> <li>• creating artificial competition (submitting offers from fake competitors)</li> <li>• allocating funding for unsubstantiated investments</li> <li>• overpricing the contract</li> </ul> | <ul style="list-style-type: none"> <li>• conflict of interest, political influence or bribing the evaluation committee</li> <li>• avoiding the use of procurement procedures by:               <ul style="list-style-type: none"> <li>• direct negotiations</li> <li>• lowering the price under the thresholds</li> <li>• use of emergency procedures</li> </ul> </li> <li>• listing specific projects as pre-determined for funding in national planning documents</li> <li>• using framework agreements favouring big market players</li> </ul> | <ul style="list-style-type: none"> <li>• annulling tenders &amp; disqualifying competitors</li> <li>• changes of the tender conditions through annexes</li> <li>• paying for services/ equipment which do not meet minimum requirements</li> <li>• no investigation of high-level officials and businesspersons linked to a certain contract</li> </ul> |

Source: CSD, 2022.

### *Use of restrictive tendering procedures and single bidding, resulting in higher cost for society*

One of the most **common corruption risks** in the energy sector public procurement in SEE-9 relates to the use of restrictive tendering procedures, **especially in the Western Balkans countries**. For example, in Albania procurement procedures are conducted frequently with the participation of a single bidder not due to the lack of interest, but because the contracting authority has formulated the criteria in such a way as to preclude the entry of any other company except the predetermined winner. *Open Data Albania* identified 2682 cases of public procurement tenders that have been conducted since 1 July 2015 with only one operator participating in the competition<sup>209</sup>. Another alarming fact was that in 2017 a total of 31.8% of all procurement procedures in Albania were negotiated without prior announcement.<sup>210</sup> The situation gradually improved after that, and the negotiated procedures without prior publication

<sup>209</sup> Further 33 cases were identified whereas the minimum deadlines set out in Article 43 of the Law on Public Procurement have not been respected. See also: [Open Data Albania organization](#), Open Procurements program.

<sup>210</sup> Public Procurement Agency, [Analiza Vjetore 2017](#) [Annual Analysis 2017], p. 20.



were reduced to 3.3% of the total awarded procedures in 2021.<sup>211</sup> Moreover, according to the Albanian *Law on Public Procurement 162/2020*, a modification of the tender value after the conclusion of the initial contract is allowed. Thus, companies that won tenders because they submitted lower financial bids, often requested and received increases of the contract value of up to 20% later on, justified by unforeseen cost increases. Similarly, in North Macedonia some of the largest procurements<sup>212</sup> were carried out through a negotiating procedure without a prior announcement.<sup>213</sup> Meanwhile, Serbia utilizes a centralized public procurement system, introduced in 2012, permitting the signing of framework agreements with suppliers.<sup>214</sup> Such a procedure tends to favor the bigger players on the market, and might artificially lower competition in bidding.<sup>215</sup> The law in these situations prescribes that the procedure shall be divided into lots, so that small and medium-sized companies might also participate. Still, there is lack of monitoring and assessment of the implementation of this provision.<sup>216</sup> Although the relevant anti-corruption authorities are legally tasked with overseeing the legislative process in Serbia, the Anti-Corruption Agency stopped publishing its opinions in the area of public procurement in 2018.<sup>217</sup> At the same time, the average number of bidders in 2019 fell to 2.5 down from an average of 8.5 per public procurement contract 15 years ago. Moreover, in 55% of the cases the authorities received only single bids.<sup>218</sup> These numbers show that the level of competition in public procurement in Serbia has gone down to a record low level, which highlights the lack of trust of the bidders in the public procurement system, and is indicative of an increased corruption risk.<sup>219</sup>

#### Box 17. Selected examples of restrictive tendering procedures in the Western Balkans

All tenders by the Albanian Electricity Distribution Operator for fuel purchases since 2017 (worth EUR 5.69 million) have benefited the same company, “Kastrati Group”. Thus, in the last eight years the company has seen a rapid growth of its public procurement turnover. It has often been accused by the opposition<sup>220</sup> and the civil society of oligarchic ties to the government.<sup>221</sup>

<sup>211</sup> Albanian Public Procurement Agency, *Annual Reports* (2009 – 2021).

<sup>212</sup> Center for Civil Communications, *Извештај од мониторингот на јавните набавки* [Public procurement monitoring report], Извештај, Vol. 33, July-December 2019, May 2020.

<sup>213</sup> Center for Civil Communications, *Извештај од мониторингот на јавните набавки* [Public procurement monitoring report], Извештај, Vol. 34, January-June 2020, February 2021.

<sup>214</sup> Ponudaci Srbije, “*Intenzitet konkurencije u javnim nabavkama*” [Intensity of Competition in Public Procurement], 27 April 2020.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> Transparency Serbia, *Analiza koruptivnih rizika u propisima* [Analysis of Corruptive Risks in Legislation], 2020, p. 3.

<sup>218</sup> Ponudaci Srbije, “*Intenzitet konkurencije u javnim nabavkama*” [Intensity of Competition in Public Procurement], 27 April 2020.

<sup>219</sup> Ibid.

<sup>220</sup> Democratic Party, *Edi Rama u jep oligarkeve te karburanteve dhe ndertimit me koncension nje port privat* [Edi Rama gives the oligarchs fuel and concession construction a private port], 30 April 2020.

<sup>221</sup> Erebara, G., “*Qeveria “Rama” i jep Aeroportin per 13 vjet shtese Kastratit pa tender*” [The

In North Macedonia, SV-Invest, a company, newly-formed in 2016 saw a quick rise in profit and revenues as it began winning major contracts from the REK Bitola coal plant complex. The company got its first tender in 2018 in a direct negotiation procedure, with the contracting authority citing emergency needs in order to bypass open tender legal requirements. The relationship between the plant and the contractor expanded from cleaning mining byproducts to a more lucrative renting of digging equipment. In 2018, the opposition accused REK Bitola's management of awarding procurement contracts to SV-Invest due to the company's close ties with the family of the Prime Minister Zoran Zaev. Although in 2021, SV-Invest declared insolvency, it was later revealed that a new company called Novomatriks has replaced SV-Invest in receiving most of the contracts from the coal plant. Both companies are registered on properties owned by the same person, and Novomatriks is owned by a former manager in SV-Invest.<sup>222</sup>

In Serbia, Transnafta a.d. contracted services without going through a tendering process, for the total amount of around EUR 257,000 for 2019 and 2020 (recipients included: Jugoinspect JSC, Belgrade; NIS JSC, Novi Sad and "DDOR Novi Sad").<sup>223</sup> The State audit institution analyzed the case and concluded that there has been a violation of the *Public Procurement Law* as it did not foresee any exceptions allowing such procedures. The procured services involved fire protection, quality control of crude oil facilities, and insurance.<sup>224</sup>

**SEE-9 EU member states** also exhibit a substantial share of public procurement contracts in the energy sector signed after negotiated procedures without publication or after a direct award. A review of the public procurement from 2015 to 2020 in all energy sub-sectors in Romania revealed that there was a preference of the contracting authorities to award contracts through less-transparent procedures. This is particularly evident in the electricity sector, where 42% of the contracts awarded in these five years used the negotiation without prior publication procedure. In the oil and gas sub-sector, the majority of contracts (34%) were awarded via open procedures, followed by negotiated procedures with bidders (31%). The average number of received offers per procedure was three for both the electricity and the gas and oil sector. In the electricity sector, 19% of contracts were won by single bidders, while this share stood at 25% in the oil and gas sector. The overwhelming majority of contracts were awarded

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"Rama" government gives the airport for an additional 13 years to Kastrati without a tender], *Reporter.al*, 29 January 2021.

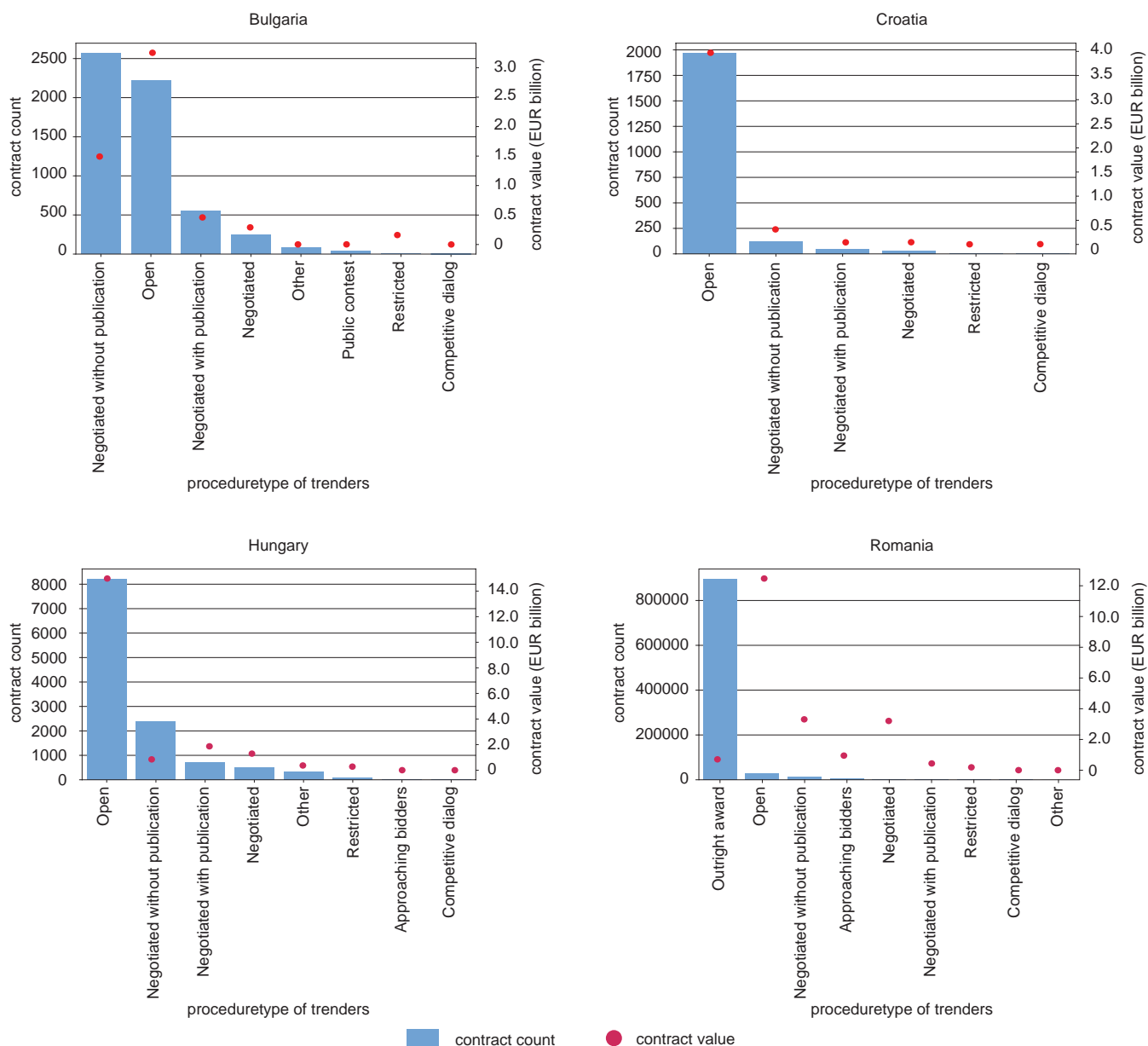
<sup>222</sup> Dimitrievski, A., "Тендери во РЕК Битола: „СВ-Инвест“ во стечај, „Новоматрикс“ ја „користи“ празнината" [Tenders in Mining and Energy Combine Bitola: "SV-Invest" in bankruptcy, "Novomatrix" "uses" the gap], *360Stepeni*, 29 June 2021; Apostolov, V., "Жив и надграден: Лукративниот бизнис-клуб околу РЕК Битола" [Alive and upgraded: The Lucrative Business Club around Mining and Energy Combine Bitola], *Prizma*, 16 December 2019.

<sup>223</sup> State Audit Institution, *Izveštaj o reviziji pravilnosti poslovanja Akcionarskog društva za transport nafte naftovodima i transport derivata nafte produktovodima „Transnafta“: Pančevo u delu koji se odnosi na javne nabavke za 2019. i 2020. godinu po ugovorima za rad van javnog odnosa i ostale naknade fizičkim i pravnim licima za 2020. godinu* [Report on the audit of the regularity of operations of the Joint Stock Company for transportation of oil through pipelines and transport of oil derivatives through the pipelines "Transnafta": Pancevo in the part related to public procurement for 2019 and 2020 under contracts for work outside public relations and other compensations to natural and legal persons for 2020], No. 400-87/2021-06/12, 29 July 2021, p. 7.

<sup>224</sup> *Ibid.*, p. 7.

using the lowest price criterion (95% for electricity and 96% for oil and gas), thus avoiding the evaluation of qualitative, social and/or environmental aspects of tenders. This could lead to sub-optimal contract conditions and procurement results and fails to take into consideration the full complexity of energy projects, including their environmental, social and other impacts. It should also be noted that in Romania a large number of contracts are signed as low value procedures, which could be awarded directly, without an open procedure.<sup>225,226</sup>

**Figure 17. Types of procedures used in the energy sector in SEE-9 EU countries (2011 – 2021)**



Source: Procurement data collected by GTI from the public procurement authorities' webpages.

<sup>225</sup> Author's calculations based on data from the [Romanian Open Data Portal](#) and [Opentender.eu](#).

<sup>226</sup> The database used for this review retrieved only two contracts for the coal sub-sector. Therefore, the analysis refers to the electricity and the gas and oil sub-sectors. The latter sub-sectors were merged because, in many cases, neither CPV codes nor object of contract made it clear to which one of the sub-sectors (oil or gas) the contracts referred to.

While in Hungary most contracts are awarded in an open competition procedure among bidders, there are still a significant number of awards where the competition is restricted or completely eliminated. In the last 10 years, 67% of procurement contracts have been open, while more than 20% were negotiated without publication or had some other form of competition restrictions in place. In contrast, when analyzed by the value of the contracts, only 12.3% of the tenders involved restrictions.<sup>227</sup> The **introduction of e-procurement** in 2018 made Hungary's procurement system more transparent.<sup>228</sup> Yet, the high proportion of single bidding is still a problem (39% of the total in 2018 and 27% in the energy sector<sup>229</sup>). Furthermore, most procurement contracts valued below the EU threshold<sup>230</sup> are organized through special procedures with restricted availability.<sup>231</sup>

Lack of transparency, nepotism and favoritism are among the corruption risks that have haunted public procurement also in Bulgaria for years.<sup>232</sup> Since 2006, bribes for public procurement contracts started to show **signs of oligopolization and later – of state capture**, as fewer and fewer companies had any access to the public procurement market.<sup>233</sup> For example, the share of public authorities (buyers) in Bulgaria that provided over 60% of the value of awarded contracts to a single supplier is about twice as much as the respective share in Romania, Italy and Spain.<sup>234</sup>

#### Box 18. Public procurement corruption risks: the case of ESO in Bulgaria (2017-2021)

A case in point of corruption risks in Bulgaria is the operation of a company in the Bulgarian energy sector that received more than EUR 204 million in the form of public procurement contracts between 2017 and 2020. EMU, the beneficiary, has been awarded these public procurement contracts, despite the fact that it bid, on certain occasions, prices 47% higher than its competitors. EMU delivered a number of services to the Electricity System Operator – one

<sup>227</sup> Procurement data collected by GTI from the Hungarian Public Procurement Authority's [webpage](#).

<sup>228</sup> European Commission, *2019. évi országjelentés – Magyarország* [Country Report Hungary 2019], Brussels, 27.2.2019, SWD(2019) 1016 final.

<sup>229</sup> According to procurement data acquired by GTI.

<sup>230</sup> The monetary value thresholds, above which different types of public procurement procedures need to be launched, are described in [Directive 2014/23/EU](#) on the award of concession contracts, [Directive 2014/24/EU](#) on public procurement, and [Directive 2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors.

<sup>231</sup> Transparency International, [Corruption Perception Index](#), 2020; Transparency International, [CPI 2020: Western Europe & European Union](#), 2020; Wiedemann, T., "Már a korrupciót is államosította a kormány" [Corruption has already been nationalized by the government], [g7.hu](#), 2018.

<sup>232</sup> Stefanov, R., Galev, T., and Karaboev, S., *Governance of the Bulgarian Public Procurement Sector: Corruption Risks and Criminal Prosecution*, Sofia: Center for the Study of Democracy, 2016.

<sup>233</sup> Stoyanov, Gerganov, and Yalamov, *State Capture Assessment Diagnostics*, Sofia: CSD, 2019.

<sup>234</sup> According to analysis of the wholesale of fuels, wholesale of pharmaceuticals and the construction sector. Galev, T., Gerganov, A., and Todorov, B., *State Capture Deconstructed: Risk Measurement in Vulnerable Economic Sectors in Europe*, Sofia: Center for the Study of Democracy, 2021.

of the largest state-owned enterprises in Bulgaria.<sup>235</sup> Some of the contracts were concluded through single-bidder framework agreements whose budget has been consequently surpassed by a large margin.<sup>236</sup> In June 2021, the then caretaker government declared that the case would be investigated by the State Financial Inspection Agency.<sup>237</sup> In addition, in June 2021, ESO published a new tender for EUR 138 million that seemed to be designed to fit EMU's profile. The tender concerned activities that had previously been awarded exclusively to EMU, making the company the only competitor with relevant experience. In addition, following previous patterns and contrary to legal standards, the tender documentation allowed yet again the signing of additional contracts on top of the framework agreement, opening the door to potentially exceeding the tender budget.<sup>238</sup>

### *Tailored technical specifications*

Another common malpractice in the energy sector public procurement in SEE-9 is the tendency of SOEs to tailor the technical specifications so as to fit the experience of a specific bidder. To guarantee the success of this method, SOEs in the region use consultants related to the pre-defined winner of the bid.

#### **Box 19. Hungary: the Elios case (2009-2014)**

An investigation by the EU anti-fraud agency, OLAF, revealed that between 2010-2014 many public procurement procedures in Hungary were tailored in favor of the company Elios Innovatív Ltd. (mostly for the provision of LED lights at higher than market prices). OLAF noted that a whole network of companies and consultants with ownership or personal links to Elios were involved in the fraudulent scheme. Many calls for proposals were drafted so that only this particular company was eligible to tender. To create the illusion of competition, alternative offers were submitted from “straw” bidders. The investigators discovered that these alternative offers were created on the same computer as the winning bid, providing 7% or 12% higher prices so that Elios's offer would win in each procurement. Furthermore, some of the external consultants who prepared the procurement offers had direct connection to Elios. The most prominent player was Sistrade Llc., owned by Endre Hamar, who was a co-owner of Elios until 2014 and was a business partner of István Tiborcz. Tiborcz was the CEO of Elios between 2009 and 2013 and its owner between 2014 and 2015; he is also the son-in-law of Prime Minister Viktor Orbán. Following the OLAF report, the Public Prosecutor's Office started an investigation in 2018, but the police suspended it citing the lack of evidence of a criminal offense.

<sup>235</sup> Stanchev, I., „Държавната ЕСО: Един милиард за Таню от Разбойна” [The state-owned ESO: One billion for Tanio from Razboina], *Capital.bg*, 28 May 2021.

<sup>236</sup> Stanchev, I., „АДФИ ще проверява договорите на Таню от Разбойна с ЕСО за 400 млн. лв.” [The state financial inspection agency will inspect the contracts of Tanio from Razboina with ESO for BGN 400 million], *Capital.bg*, 2 June 2021.

<sup>237</sup> Ibid.

<sup>238</sup> Gocheva, R. and Stanchev, I., „Преди проверките ЕСО обяви нова съмнителна мегаторъчка за 275 млн. лв.” [ESO published new suspicions mega-procurement for BGN 275 million before the inspections], *Capital.bg*, 10 June 2021.

In 2019, the government removed the invoices for the projects carried out by Elios from the bundle of financial documents to be submitted for review to the EU, effectively sabotaging further investigation.

In Bulgaria, as in other SEE-9 countries, the use of tailored technical specifications is often premised or excused by the **insufficient administrative and technical capacity of contracting authorities**. This has led to an increased tendency to outsource the process of tender documentation preparation to external consultants which, in turn, increases the risk of informal agreements (collusion) with the potential suppliers. In addition, the volume of public procurements in Bulgaria and in the other SEE-9 countries has increased exponentially in the past several years, increasing corruption risks associated with the many more tenders.<sup>239</sup>

### *Cancellation of tenders and disqualification of companies*

The assessment of corruption practices in public procurement in Croatia<sup>240</sup>, Albania<sup>241</sup> and North Macedonia<sup>242</sup>, has revealed another concerning practice in SOE tendering in SEE-9 – the unjustified cancellations of tenders and disqualifications of companies. The alleged objective is to eliminate competing bids and to ensure that the “designated” winner signs the contract. For example, often when a politically-connected company provides a price offer, which is higher than the one of any of the other competitors, the latter are disqualified on some (often minor) technical or administrative grounds, leaving the higher offer to legally win. Sometimes, if a suitable ground for disqualification cannot be found, the whole procedure is cancelled and re-launched with different technical requirements, tailor-made for the “designated” winner. In some cases, no specific reasons were given. In addition to rigging the process of free competition in public procurement, with time such practices also lead to unnecessarily and overly complex bidding requirements, which in themselves limit competition.

<sup>239</sup> Stefanov, Galev, and Karaboev, *Governance of the Bulgarian Public Procurement Sector*, Sofia: CSD, 2016..

<sup>240</sup> Grund, Z., “Poništen milijunski natječaj za koji istražitelji sumnjaju da je bio namješten za Peteka” [The million-dollar tender that investigators suspect was rigged for Petek has been annulled], *Telegram*, 15 October 2020; Pavić, F., “Novi udarac za moćnog poduzetnika iz afere Janaf: Peteku izbili 150 milijuna kuna iz džepa” [A new blow for the powerful entrepreneur from the Janaf affair: Petek got 150 million kuna out of his pocket], *Jutarnji list*, 15 October 2020; Toma, I., „Slučaj Janaf samo je kap u moru lopovluka u Hrvatskoj, a zna se tko jedini to može dokinuti” [The Janaf case is just a drop in the ocean of theft in Croatia, and it is known who alone can end it], *Jutarnji list*, 18 September 2020.

<sup>241</sup> Exit news, “KESh Officially Approves Dubious Tender,” 4 August 2017.

<sup>242</sup> Center for Civil Communications, *Извештај од мониторингот на јавните набавки* [Public procurement monitoring report], Извештај, Vol. 33, July-December 2019, May 2020; Center for Civil Communications, *Извештај од мониторингот на јавните набавки* [Public procurement monitoring report], Извештај, Vol. 34, January-June 2020, February 2021.



### Box 20. Croatia: Waste water collection and treatment system of Velika Gorica (2020 – ongoing)

At the beginning of 2020, the largest utility project in the City of Velika Gorica was launched. The wastewater collection and treatment system had an estimated value of EUR 13 million and was managed by the local public company VG Vodoopskrba d.o.o. Two bidders competed in an open call from July 2020 – construction company Strabag and Elektrocentar Petek. VG Vodoopskrba announced soon after the closure of the bidding procedure that they were cancelling the tender because the best submitted offer (from Elektrocentar Petek) was higher than the estimated value of the procurement. However, alleged wiretaps released to the media seemed to show collusion talks between officials and Elektrocentar Peter, which led The Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK) to start investigation against the owner of Petek, the then mayor of Velika Gorica and the former president of VG Vodoopskrba d.o.o. Shortly thereafter the collusion allegations were confirmed by two representatives from VG Vodoopskrba d.o.o. who admitted that, on the order of the mayor of Velika Gorica, they set up the tender in favor of Petek's company. The Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK) suspects that the people who worked on the public tenders adjusted the text of the procurement notice, after they received guidelines from Petek. As of October 2021, the case is still under investigation by USKOK.<sup>243</sup> In the meantime, the wastewater public utility project has been re-tendered two more times and was still in court procedures as of the beginning of 2022.<sup>244</sup>

### Bribery

Some corruption schemes in public procurement in energy SOEs in SEE-9 rely on outright bribery. In many such cases the bribes for the evaluators or the voting members are concealed in the form of a commission or a fee for a service. In addition, bribes are used after the procurement contract signature, in order to hide the fact that the winning company has not delivered the equipment or service in the quantity and/or quality promised in its technical offer.

<sup>243</sup> Grund, Z., "Poništen milijunski natječaj za koji istražitelji sumnjaju da je bio namješten za Peteka" [The million-dollar tender that investigators suspect was rigged for Petek has been annulled], *Telegram*, 15 October 2020; Pavić, F., "Novi udarac za moćnog poduzetnika iz afere Janaf: Peteku izbili 150 milijuna kuna iz džepa" [A new blow for the powerful entrepreneur from the Janaf affair: Petek got 150 million kuna out of his pocket], *Jutarnji list*, 15 October 2020; Toma, I., "Slučaj Janaf samo je kap u moru lopovluka u Hrvatskoj, a zna se tko jedini to može dokinuti" [The Janaf case is just a drop in the ocean of theft in Croatia, and it is known who alone can end it], *Jutarnji list*, 18 September 2020.

<sup>244</sup> Gorica.info, "Natječaj za velikogorički pročištač: Rok za otvaranje ponuda pomaknut zbog nove žalbe, novi određen za sljedeću srijedu, 12. Siječnja" [Tender for Velika Gorica Purifier: Deadline for opening bids postponed due to new appeal, new one set for next Wednesday, January 12], 7 January 2022.

### Box 21. Use of bribery in public procurement tenders in energy SOEs in Romania

Bribery investigations have skyrocketed in Romania over the past decade on the back of the much more active role of the anti-corruption prosecution, the DNA. This has provided a good set of examples of how bribery schemes in the energy sector have been organized in the country.

A case in point is the largest hydro power producer, Hidroelectrica. In October 2013 Mihăilă Ioan, a member of the Supervisory Board and advisor to the Romanian Counsellor for the Minister Delegate for Energy, promised EUR 1.4 million to another member of the same council (the whistleblower in this case). The deal was to vote in favor of concluding a four-year bilateral contract for the sale of around 7 TWh of electricity to Energon Power & Gas S.R.L., for EUR 263 million, resulting in a financial damage to the company of almost EUR 40 million. Brădean Eugen, a member of the Board of Directors of the company and coordinator of the Marketing and Supply Department aided in the bribe attempt by concealing it as a commission agreement for services that would have been concluded by an offshore company and the SOE. Both defendants were sentenced to three years in jail in 2014 and 2015, respectively, for bribe taking and complicity to bribe taking.<sup>245</sup>

Similarly, in 2011, the Targu Mures branch of Romgaz awarded a public tender for the purchase of equipment for the gas thermal engines in Cojocna, Cluj County, to a consortium of three companies. In the framework of this contract, the director of the Romgaz branch was accused of receiving EUR 60,000 from a representative of one of the winning bidders, in order to accept and receive equipment (motor generator) which did not meet the requirements set out in the award documentation. The director, together with two members of the works reception commission, were further accused of signing a document on the receipt procedure for the electricity generator, resulting in financial damages of over EUR 500,000 for Romgaz (the equivalent to the value paid for the respective equipment). The case was concluded with acquittals in 2016, due to the fact that the evidence obtained by the Romanian Information Service through specific technical surveillance means was considered illegal.<sup>246</sup>

### Creating ghost companies to win tenders

Often in SEE-9 energy tenders there are instances when a ghost company with no real economic activity or previous experience is created only to apply for specific tenders. These companies are usually registered with a small starting capital, and in several months succeed to win tenders worth millions. Their **success is most often guaranteed by pre-existing political ties**

<sup>245</sup> National Anticorruption Directorate, [Press release no. 999/VIII/3](#), 13 November 2013; Mediafax.ro, “[Dosarul “Mită la Hidroelectrica”](#) [Bribe at Hidroelectrica Case], 13 November 2013.

<sup>246</sup> National Anticorruption Directorate, [Press release no. 338/VIII/3](#), 6 April 2017; National Anticorruption Directorate, [Press release no. 1272/VIII/3](#), 27 December 2017; National Anticorruption Directorate, [Press release no. 324/VIII/3](#), 21 March 2016; [Decision no. 51 of 16](#) from February 2016 regarding the exception of unconstitutionality of art. 142 paragraph (1) of the Code of Criminal Procedure; Mihai, A., “[Efectele Deciziei Curții Constituționale nr. 51/2016 în privința cauzelor penale aflate pe rolul instanțelor de judecată și a celor definitiv soluționate](#)” [The effects of the Decision of the Constitutional Court no. 51/2016 regarding the criminal cases pending before the courts and with a final ruling], [juridice.ro](#), 17 March 2016.



of the companies' owners. Some of the companies also utilize fraud or other illegal administrative tricks to claim having substantial work experience in other countries, difficult to be verified by the national authorities. Moreover, the allocated tenders sometimes constitute a substantial share of the overall procurement portfolio of the respective contracting authority. This provides the newly established companies with further leverage and places the public bodies in a state of dependency, with little control over the quality of the provided services.

#### **Box 22. Examples of ghost companies and their procurement success in Albania**

In 2018, the Albanian Transmission System Operator (OST) announced a tender for the construction of a new 220 kV high-voltage power line between Burrel and Peshkopi. Then on 30 October 2018 OST entered into contract with the tender winning company, DH Albania which claimed to be a branch of a foreign company, Dunwell Haberman. DH Albania was registered in the country on 18 July 2018, just three months before signing the contract with OST. The tender was worth EUR 11 million and accounted for about 30% of the value of all tenders conducted by OST in 2018. The capital of the winning company at the time of registration in Albania was only USD 1000.

In addition to the OST tender, in 2018 DH Albania won another tender worth EUR 18 million for the construction of a road intersection in Tirana. Investigative journalists contacted the Department of Corporations in the state of Delaware, which verified that the foreign parent company Dunwell Haberman was also established very recently on June 25, 2018, just a few days before registering at the National Business Center in Albania (Trade Registry). Hence, it did not have the 20 years of experience or the projects worth millions of dollars it claimed to win the tender. The Tirana Prosecutor's Office started an investigation into the case, after the broadcast of the investigative show "Te paekepozuarit". However, on 24 January 2020, the Tirana Court dismissed the investigation of senior officials of the Albanian Road Authority and the Transmission System Operator, claiming that these officials had no responsibility for verifying the documents submitted in tenders.<sup>247</sup>

<sup>247</sup> Te paekepozuarit, [Zbulohet mega vjedhja e parave te shqiptareve](#), Youtube Video, 6 December 2018; Balkan Web, ["Zbulohet mashtrimi me tenderin e Unazës së Tiranës"](#) [Fraud with the tender of the Tirana Ring is revealed], 6 December 2018; BIRN, [gazetamapo.al, "Gjykata vulose mbylljen e hetimit per ARRSH dhe OST per skandalin e DH-Albania"](#) [The court seals the closure of the investigation against ARA and OST for the scandal of DH Albania], 24 January 2020; Euronews Albania, [pamfleti.net, "Prokuria mbyll hetimet per tenderin e Unazes"](#) [Prosecution closes investigations for the tender of the New Ring, Braimllari reacts: 'Ramaforma' is clear, it imprisons the citizens], 23 January 2020.



# THE WAY FORWARD: CONCLUSIONS AND POLICY RECOMMENDATIONS

The comparative analysis of SEE-9 public procurement and energy SOEs management practices reveals continuing corruption and state capture risks, despite overall improvement in governance and the emergence of good practices.

**Public procurement integrity** risks in the region stem largely from favouritism and clientelism, i.e. the preference of a group of companies due to their owners' political connections. In addition, the common practice of contract overpricing and tailored tender specifications leads to inefficient tendering and thus to considerable losses to both the national budget and the society as a whole. Inefficient bureaucratic practices and often-unclear hierarchy of actors involved in procurement processes regularly lead to conflict of interests. Furthermore, the high share of non-open procedures curtails overall transparency and limits the usability of public procurement databases. Finally, the malicious practice of ex-post contract modifications indicates the presence of corruption. The pandemic has only added fuel to the fire by increasing the number of inherently restricted "urgent" procedures that circumvent the usual procurement legislation. The overuse of less transparent urgent procedures has led to more abuses and the unclear regulations made ex-post accountability of contractors and suppliers more difficult. The quantitative assessment of the procurement market shows that the pandemic caused overall integrity to decline, especially in the most affected – healthcare and other COVID-related product – markets. There are also some positive public procurement trends in the region, such as the implementation of new procurement laws, the launch of better functioning electronic procurement systems and to some extent – the improvement of the transparency in the procurement review processes. However, the most deeply rooted issues remain.

A number of common regulatory and governance deficits that have also undermined the **management of energy state-owned enterprises (SOEs)** and contributed to the increase of state capture risks in Southeast Europe. The lack of transparency and public accountability are at the heart of the problem. This affects the appointment of SOE board members, the financial and operational reporting and the companies' investment decisions. Insufficient transparency can be attributed to the lack of appropriate monitoring mechanisms and a strategic vision for improving the governance of SOEs. The available (although sometimes incomplete) financial data about the companies reveals their overall poor performance and considerable debt and liquidity issues, especially among coal-based power generation plants. The financial mismanagement cases reveal common path dependencies, where

political influence on the SOEs' management and regulatory authorities breed financial mismanagement practices (e.g. weak financial discipline) and harmful regulatory decisions (e.g. prices artificially-held below market level). The resulting financial instability in turn eats into the profitability of SOEs and their ability to invest in the maintenance of their assets and in new projects. In a number of cases, the financial mismanagement of SOEs remains unsanctioned and is even facilitated by direct or indirect state aid for struggling SOEs, which perpetuates existing governance risks. Ultimately, these bad practices weigh on the state budget and taxpayers. In addition, there is a tendency to award energy sector public procurement contracts via non-transparent procedures, with a high share of single bidding. Contractors can sometimes use consultants close to the winning organization to "tailor" the documentation and technical specifications for a specific company. In some cases, procurement procedures are avoided altogether via direct-negotiation agreements or by using emergency procedures. Companies, which have not been pre-selected by the contracting authority are disqualified on dubious grounds, or the whole tenders are cancelled. Amendments to the procurement contracts through annexes, including such that increase the price or lower the quality requirements are also increasing corruption risks and undermine the efficiency of public procurement procedures.

Based on the in-depth review of the public procurement systems and the management of energy SOEs, several **key policy recommendations** could be outlined (see Table 3). These need to be urgently taken into consideration and implemented to reduce their negative effect on market competition and democratic integrity in Southeast Europe. Closing these outstanding governance gaps has become particularly important with the rise of global power competition and the increase of pressure from authoritarian regimes on the region, most notably Russia and China.

The Kremlin's war in Ukraine, which has triggered successive rounds of G7 economic sanctions on Russia are likely to increase significantly the geoeconomics governance risks for the SEE-9 countries. Russian and Chinese capital flows in the region, in particular such related to large-scale energy projects are likely to be further concealed and to seek non-competitive access to regional markets.<sup>248</sup> The Kremlin is also likely to increase its pressure on SEE-9 countries to defy their EU bids and adopt bilateral-deal-based contracts, rather than rely on rule-based public procurement systems. Hence, while embarking on specific reforms outlined below, this calls on the EU, its member states and the SEE-9 countries to act together to reinforce the EU-integration path of the region, guaranteeing its democratic and rule of law-based development. Good governance reforms in SEE-9 require both strong political action as well as continuing technical capacity building to close governance vulnerabilities in public procurement and the energy sector SOEs.

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<sup>248</sup> Shentov, O., Stefanov, R., and Vladimirov, M. (eds.), *The Kremlin Playbook in Europe*, Sofia: Center for the Study of Democracy, 2020.

**Table 3. Policy recommendations**

| Identified problem   | Recommended actions, measures and solutions   |
|--|---|
| <b>Safeguarding public procurement integrity</b>   |   |
| <p>There is overwhelming evidence on the presence of particularistic (informal) ties between contracting authorities and politically favored suppliers. The resulting inefficiencies caused by tender overpricing and tailored tender specifications can lead to severe losses for the budget and the society.</p> | <p><b>Strengthen procurement monitoring</b></p> <p>Policymakers should increase the efficiency and frequency of audits and monitoring visits. A higher risk of punishment, in turn, could contribute to higher levels of compliance with rules and lower levels of corruption<sup>249</sup>. However, as frequent audits could demotivate companies to use of more complex open procedures,<sup>250</sup> it is important to implement targeted audits based on thorough risk analysis. This requires:</p> <ul style="list-style-type: none"> <li>• the development and maintenance of appropriate, publicly available procurement datasets;</li> <li>• the development of efficient, dynamic, risk models (e.g., time and practice sensitive “red-flag” identification);</li> <li>• the recurring training of the monitoring agencies’ staff, with potential CSO support.</li> </ul> |
| <p>The unclear hierarchy and conflict of interest in public procurement governance increases the risk of systemic corruption.</p>  | <p><b>Increase institutional efficiency</b></p> <p>Policymakers should separate different government functions related to public procurement by clarifying roles and reducing ambiguity and overlap between institutional mandates. Furthermore, the implementation of a procurement code of conduct or code of ethics could provide much needed guidance in situations of conflicts of interest or corruption.<sup>251</sup> In particular, SEE-9 need to strengthen the capacity of public prosecutor offices and courts to investigate and adjudicate on more complex public procurement procedures. In this respect, the European Public Prosecutor’s Office, EU anti-fraud service OLAF, as well as Europol and the European Court of Auditors could provide valuable guidance, best practice examples, and support to national efforts to improve institutional efficiency.</p> |
| <p>The overuse of non-open procedures is a severe problem in many countries in the region. Restricted and closed procedures can increase corruption risk and procurement prices while decreasing the transparency and accountability of the procurement market.</p>  | <p><b>Decrease the share of non-open procedures</b></p> <p>Policymakers should promote the use of open procedure types (as opposed to non-open procedures) by modifying legislation accordingly. This could be achieved for example, by decreasing the value threshold below which procedures can be directly awards. Decision-makers could also influence the number of non-open procedures indirectly by educating contracting authorities on the importance of transparency and accountability.</p>  |
| <p>The possibility for discriminating tenderers based on technical specifications as well as the overly detailed characteristics of the subject of public procurement discourages competition and increases corruption risk.</p>   | <p><b>Improve contract awarding mechanisms</b></p> <p>Contracting authorities should strive to draft inclusive tender specifications, without overburdening the decision process. Meanwhile policymakers should set clear recommendations and straightforward regulations on when more restrictive specifications are acceptable. Finally, independent monitoring agencies should closely follow compliance with these regulations.</p>   |

<sup>249</sup> Fazekas, M. and Blum, J., *Improving Public Procurement Outcomes: Review of Tools and the State of the Evidence Base*, Policy Research Working Paper No. 9690. World Bank, Washington DC., 2021.

<sup>250</sup> Gerardino, M., Litschig, S., and Pomeranz, D., *Can Audits Backfire? Evidence from Public Procurement in Chile*, NBER Working Paper Series, 23978, 2017.

<sup>251</sup> Fazekas and Blum, *Improving Public Procurement Outcomes*, Policy Research Working Paper No. 9690, World Bank, Washington DC., 2021.

Table 3. Policy recommendations

(Continued)

| Identified problem  | Recommended actions, measures and solutions   |
|---|---|
| <b>Discontinuing Covid-19 emergency procurement rules</b>   |   |
| <p>The emergency regulatory changes have significantly affected the integrity of the procurement markets in SEE-9. Although the strictest restrictions have been lifted by the end of the summer of 2020, there are still a few pandemic specific regulations that remain at the beginning of 2022. In addition, governments are not transparent about their “returning to normal” plans, and hence loopholes for the excessive use of urgent procedures persist.</p> | <p><b>Reverse temporary changes to emergency procurement rules</b></p> <p>Any remaining public procurement related regulatory changes should be withdrawn, such as the simplified use of urgent procedures during the pandemic. The withdrawal should be appropriately communicated by the relevant governmental organizations. Furthermore, in-depth guidance should be given both to contracting authorities and suppliers on how to return to their normal procurement practices.</p>  |
| <p>The pandemic has highlighted the need for more transparent public procurement policy making processes. Specific details on newly introduced regulations were often vague or not properly reported. This significantly reduced transparency and the ex-post accountability of contractors and suppliers. The limited reporting requirements of specific procurements, such as urgent procedures have increased the risk of corruption.</p>                          | <p><b>Increase the transparency of the public procurement system</b></p> <p>Greater transparency can be achieved by informing citizens adequately and promptly about changes in public procurement legislation. Furthermore, transparency should be promoted by the procurement authorities, including increase of data availability about all types of procedures on e-procurement websites (i.e., urgent procedures should have stricter ex-post reporting requirements).</p> <p>Additionally, policymakers should rely more on the resources and capabilities of anti-corruption agencies, civil society organizations and their watchdog portals. These organizations could provide novel indicators and red-flags to help make sense of the diverse and often hard-to-interpret data, as well as ideas on how to improve the government public procurement portals with new functionalities.<sup>252</sup></p> <p>Public procurement practices during the Covid-19 emergency periods in SEE-9 should be inspected specifically for any irregularities and fraud.</p> |
| <p>The dependence of contracting authorities on specific suppliers is hindering competition. Procurement data shows that these tendencies have been amplified by the pandemic in SEE-9.</p>   | <p><b>Decrease buyers’ dependence by increasing the fair competition</b></p> <p>Policymakers should foster fair competition by breaking down market entry barriers. Empirical evidence suggests that the more favorable treatment of specific underrepresented bidder and product classes, such as SMEs, could successfully reduce procurement prices.<sup>253,254</sup> Competition could be promoted by aiding smaller enterprises – often with insufficient administrative and human resources – to enter the procurement market. This can be done, for example, through:</p> <ul style="list-style-type: none"> <li>• reserving contracts to be awarded solely to SMEs;</li> <li>• carrying out trainings and workshops for SMEs;</li> <li>• making documentation or guidance focused on SMEs available online;</li> <li>• simplifying administrative procedures.</li> </ul>  |

<sup>252</sup> Ibid.

<sup>253</sup> Krasnokutskaya, E. and Seim, K., “Bid Preference Programs and Participation in Highway Procurement Auctions,” in *American Economic Review*, Vol. 101(6), 2011, pp. 2653–2686.

<sup>254</sup> Nakabayashi, J., “Small business set-asides in procurement auctions: An empirical analysis,” in *Journal of Public Economics* Vol. 100, 2013, pp. 28–44.

Table 3. Policy recommendations

(Continued)

| Identified problem                                    | Recommended actions, measures and solutions  |
|---|--|
| <b>Improving the energy sector management of SOEs</b> | <p data-bbox="576 555 1313 613"><b>Apply the best international standards on corporate governance of state-owned enterprises</b></p> <ul data-bbox="576 629 1461 1800" style="list-style-type: none"> <li>• Counter corruption and state capture risks in the energy sectors of the countries in the region through cancelling market-distorting energy subsidies, separating political parties from the management of state-owned companies, and improving the staffing procedures in SOEs in order to professionalize the management of the energy sector;</li> <li>• Interparty committees in the SEE parliaments should commission external independent annual energy policy reviews, which could include: a) an assessment of energy policy performance vis-a-vis the stated priorities for the year, the programming budget, and the strategic goals; b) an evaluation of the financial state of state-owned energy enterprises and an identification of the risks to the sector's development, including required state guarantees and risks of hidden privatization; c) an outline of the priority areas of development of the energy policy for the next year.</li> <li>• Improve the independence of national energy and competition regulators by increasing their administrative and financial capacity, and removing political appointments that do not comply with the highest conflict of interests and technical qualification standards;</li> <li>• Make the legal base and the practices applied in energy SOEs fully compliant with the OECD Guidelines on Corporate Governance of State-Owned Enterprises;<sup>255</sup> Crucially, this includes clear rules and mainstreaming of practices that ensure: <ul data-bbox="608 1263 1461 1435" style="list-style-type: none"> <li>– The operational autonomy of SOEs, the independence of their boards from political influence, and merit-based appointments.</li> <li>– Full transparency and disclosure of relevant financial and non-financial information, including but not limited to timely, regular publication of detailed financial reports, disclosure of the governance structure of SOEs, company objectives and the plan for their implementation.</li> </ul> </li> <li>• The use of national, EU, or other forms of public funds in large-scale projects should be tied to a clear strategy with well-defined targets and key performance indicators (KPIs) that are the result of open public discussion. There should also be full public accountability regarding the actual spending of the funds.</li> <li>• Detailed information regarding large-scale energy infrastructure projects, including cost-benefit analysis, should be made public in a timely manner;</li> <li>• Reconsider involvement in large-scale energy projects pursued by non-democratic states, such as the TurkStream gas pipeline, in light of the risks they pose to energy security and their role in reinforcing Kremlin-backed state capture networks. In light of the war in Ukraine, Bulgaria, Serbia and Hungary need to re-examine the terms of the pipeline's utilization, so as to ensure bigger third-party access to the infrastructure to diversify the gas supply in the region.</li> </ul> |

<sup>255</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.



Table 3. Policy recommendations

(Continued)

| Identified problem   | Recommended actions, measures and solutions   |
|--|---|
| <p>Integrity rules and due diligence are largely missing in the public procurement practices of energy sector SOEs in SEE-9.</p> | <p><b>Establish integrity checks and stronger due diligence specifically for the procurement procedures in the energy sector SOEs:</b></p> <ul style="list-style-type: none"> <li>● The integrity of the evaluation committees and any external experts or consultants should be guaranteed and constantly checked, thus excluding any possibility for conflict of interest or political influence;</li> <li>● Framework contracts and restrictive procedures should be used only in exceptional circumstances, and these should be carefully reviewed and submitted to a selective external audit on an annual basis;</li> <li>● Deadlines for tender submission should be sufficient and proportional to the complexity of the offer;</li> <li>● Strict internal procedures should be put in place to detect fake competition practices; Recently created companies with no experience in the procurement area should either be excluded from certain competitions or included with great caution;</li> <li>● Large procurement contracts, with strategic importance to the sector and the society in general, should not be evaluated solely based on the lowest price, but also include qualitative, technical and environmental assessment criteria;</li> <li>● Annuling of tenders as well as any changes of the contract through annexes (including increase of the price or lowering of the requirements) should be rare and duly justified;</li> <li>● Special attention should be placed on monitoring the integrity risks of listing specific projects as pre-determined for funding under national investment strategies such as National Recovery and Resilience Plans, Territorial Just Transition Plans and national-based operational programs for the EU Regional Development Funds;</li> <li>● Past concession agreements in the energy sector could also benefit from reviews and integrity checks;</li> <li>● Information on public procurement should ideally be available in machine-readable format within a database allowing search by multiple criteria and filters.</li> </ul> |

Source: R2G4P, 2022.

# ANNEX: COMMON PROCUREMENT VOCABULARY AND CONTRACT VALUE GROWTH

Table 4. CPV code description

| CPV code   | CPV Description                                  | CPV code | CPV Description                                      |
|--|--|----------|--|
| <b>Products identified from the TED COVID related tenders list</b>                           |  |          |  |
| 45215142   | Intensive-care unit construction work            | 33157810 | Oxygen therapy unit                                  |
| 33631600   | Antiseptics and disinfectants                    | 39330000 | Disinfection equipment                               |
| 33191000   | Sterilisation, disinfection, and hygiene devices | 35113400 | Protective and safety clothing                       |
| 33191100   | Steriliser                                       | 33157110 | Oxygen mask  |
| 33191110   | Autoclaves                                       | 33157400 | Medical breathing devices                            |
| 33192120   | Hospital beds                                    | 33694000 | Diagnostic agents                                    |
| 33157000   | Gas-therapy and respiratory devices              | 33141420 | Surgical gloves                                      |
| 33157100   | Medical gas masks                                | 33195110 | Respiratory monitors                                 |
| 33157110   | Oxygen mask                                      | 33670000 | Medicinal products for the respiratory system        |
| 33157200   | Oxygen kits                                      | 33673000 | Medicinal products for obstructive airway diseases   |
| 33157300   | Oxygen tents                                     | 33674000 | Cough and cold preparations                          |
| 33157400   | Medical breathing devices                        | 33675000 | Antihistamines for systemic use                      |
| 33157500   | Hyperbaric chambers                              | 18143000 | Protective gear                                      |
| 33157700   | Blow bottle                                      | 18424300 | Disposable gloves                                    |
| 33157800   | Oxygen administration unit                       |          |  |
| <b>Products regulated for the COVID emergency based on the Romanian Ordinance nr 11/2020</b> |  |          |  |
| 33192160   | Stretchers                                       | 33735200 | Frames and mountings for goggles                     |
| 33172200   | Resuscitation devices                            | 33735000 | Goggles  |
| 33195000   | Patient-monitoring system                        | 42514310 | Air filters  |
| 33195100   | Monitors   | 33111640 | Thermographs   |
| 33195200   | Central monitoring station                       | 33186100 | Oxygenator   |
| 33194110   | Infusion pumps                                   | 33127000 | Immuno-analysis devices                              |
| 18114000   | Coveralls  | 33926000 | Autopsy fluid collection vacuum aspirators or tubing |
| 35113410   | Garments for biological or chemical protection   | 33141310 | Syringes   |
| 18142000   | Safety visors                                    | 33141320 | Medical needles                                      |
| 33735100   | Protective goggles                               | 33124130 | Diagnostic supplies                                  |

**Table 5. Top 5 companies with the largest absolute contract value growth between 2020 - June 2021 compared to their winnings between July 2018 - 2020**

|                            | Suppliers' name                       | Absolute contract value growth (EUR) |
|----------------------------|---------------------------------------|--------------------------------------|
| <b>Hungary</b>             | Atlas Pharma Kft.                     | 98,200,000                           |
|                            | Medimpex Zrt.                         | 79,200,000                           |
|                            | EUROMEDIC-PHARMA Zrt.                 | 35,800,000                           |
|                            | Biotest Hungaria Kft.                 | 22,500,000                           |
|                            | Roche (Magyarország) Kft.             | 21,100,000                           |
| <b>Croatia</b>             | Oktal Pharma d.o.o.                   | 57,300,000                           |
|                            | Bioveta, a.s.                         | 5,310,547                            |
|                            | Biomax d.o.o.                         | 3,824,602                            |
|                            | Medi-lab d.o.o.                       | 3,632,288                            |
|                            | BIOSPECTRA, d.o.o.                    | 2,955,134                            |
| <b>Romania</b>             | Mediplus exim Srl.                    | 100,000,000                          |
|                            | Farmaexim Sa.                         | 84,100,000                           |
|                            | Farmaexpert D.C.I. Srl.               | 56,500,000                           |
|                            | Medical Ortovit Srl.                  | 33,100,000                           |
|                            | Europharm Holding Sa.                 | 27,400,000                           |
| <b>Bulgaria (TED only)</b> | B. Brown Medical EOOD                 | 42,000,000                           |
|                            | Sopharma Trading AD                   | 36,900,000                           |
|                            | Roche Bulgaria EOOD                   | 36,400,000                           |
|                            | Phoenix Pharma EOOD                   | 26,300,000                           |
|                            | Pharmnet EAD                          | 21,600,000                           |
| <b>North Macedonia</b>     | Dr. Panovski Skopje                   | 170,000,000                          |
|                            | Promedika Dooel Skopje                | 80,500,000                           |
|                            | Alkaloid Cons uvoz izvoz Dooel Skopje | 52,800,000                           |
|                            | Biotek Doo Skopje                     | 51,000,000                           |
|                            | Avicena Doo Skopje                    | 50,400,000                           |

# Annex: Executive Summaries in National Languages

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# PËRMBLEDHJE EKZEKUTIVE

Parimet e qeverisjes së mirë vazhdojnë të përballen me një numër në rritje sfidash në rajonin e Evropës Juglindore. Lufta në Ukrainë ka treguar qartë se si sfidat e sundimit të ligjit në rajon minojnë jo vetëm zhvillimin e tij ekonomik, por edhe unitetin dhe qëndrueshmërinë e BE-së përballë kërcënimeve të jashtme autoritare. Shtetet e rajonit të anëtarësuar në BE vitet e fundit, janë ndër përfituesit më të mëdhenj neto të financimit të BE-së. Megjithatë, luhatjet e demokracisë dhe korrupsioni vazhdojnë të ndjekin shoqëritë e tyre, pavarësisht nga përpjekjet e vazhdueshme, dhe ndërmarrja e hapave specifikë të BE-së dhe SHBA-së për të adresuar këto sfida. Këto hapa përfshijnë Mekanizmin e Bashkëpunimit dhe Verifikimit për të monitoruar reformat anti-korrupsion dhe reformat në systemin gjyqësor në Bullgari dhe Rumani pas anëtarësimit të tyre në 2007, kërkesat shumë më të ashpra për sundimin e ligjit për anëtarësimin e Kroacisë në 2013, sanksionet e SHBA sipas Aktit Global Magnitsky në Bullgari në 2021, dhe nxitja e një procesi të ri ndëshkues të krijuar për ngrirjen e fondeve të BE-së për Hungarinë në vitin 2022. Vendet e Ballkanit Perëndimor, të cilat aspirojnë të anëtarësohen në BE, përballen me sfida edhe më të mëdha të qeverisjes. Së bashku me lodhjen e BE-së nga zgjerimi, kjo ka rezultuar në vonesa të vazhdueshme të perspektivave të anëtarësimit në BE, rritje të zhgënjimit popullor në shoqëritë e tyre dhe tendenca të përsëritura jodemokratike. Boshllëqet e vazhdueshme të qeverisjes në të gjithë Evropën Juglindore, janë përkeqësuar më tej nga pandemia COVID-19 dhe lufta e Kremlinit në Ukrainë.<sup>256</sup> *Raporti i Qeverisjes së Mirë të EJK-së* synon të ofrojë një kuptim më të thellë të këtyre sfidave dhe të hapë rrugën për reforma efektive kundër korrupsionit në nëntë vende – katër vende anëtare dhe pesë që aspirojnë për anëtarësim në BE – Bullgaria, Kroacia, Hungaria, Rumania, Shqipëria, Bosnja dhe Hercegovina, Maqedonia e Veriut, Mali i Zi dhe Serbia. Raporti i këtij viti fokusohet në dy nga dobësitë më të sprovuara të qeverisjes në rajon: prokurimin publik dhe qeverisjen e ndërmarrjeve shtetërore në sektorin e energjisë.

<sup>256</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in South-east Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

## Integriteti i prokurimeve publike

- Prokurimi publik përbën një pjesë të konsiderueshme të PBB-së si në ekonomitë me të ardhura të larta ashtu edhe në ato me të ardhura të ulëta. Në të gjithë globin ajo përfaqëson 15% deri në 30% të PBB-së. Ky vëllim i madh i shpenzimeve publike mund të luajë një rol vendimtar në progresin ekonomik dhe social nëse shpërndahet në mënyrë efektive. Megjithatë, është gjithashtu një nga aktivitetet e qeverisë më të cënueshme ndaj korrupsionit.<sup>257</sup> Sipas Zyrës së Kombeve të Bashkuara për Drogën dhe Krimin, 10% deri në 25% e vlerës së përgjithshme të një kontrate publike mund të humbet për shkak të praktikave të dyshimta.<sup>258</sup> Ndërsa korrupsioni në prokurimet publike mund të marrë shumë forma, ekziston një grup teknikash korruptive që përdoren në mënyrë aktive në Evropën Juglindore për të përdorur paratë publike për përfitime private.
- **Favoritizmi dhe klientelizmi.** Një nga format më të zakonshme të parregullsive të prokurimit në rajon është trajtimi preferencial i kompanive për shkak të lidhjeve politike të pronarëve të tyre. Për shembull, në Kroaci, rreth gjysma e vlerës totale të kontratës fitohet nga ofertuesit që nuk janë subjekte private, por kompani pjesërisht ose plotësisht në pronësi të shtetit.<sup>259</sup> Shumë kompani private në të gjithë rajonin, pronarët e të cilave janë të lidhur ngushtë me politikanë të rangut të lartë, po fitojnë prokurime publike që janë krijuar pothuajse ekskluzivisht për ta. Për shembull, në Hungari gjatë 11 viteve të fundit, partia në pushtet ka krijuar një elitë të re ekonomike, korporatat e së cilës marrin subvencione të mëdha në sektorë të tillë si turizmi.<sup>260</sup>

<sup>257</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for – a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>258</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>259</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>260</sup> András, B., "Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát", *valaszonline.hu*, 26 February 2021.

- **Mbiçmimi i kontratave.** Mbiçmimi i kontratave është një formë tjetër mbizotëruese e mashtrimit të prokurimit të bazuar në favorizim. Ai përfshin një spektër më të gjerë autoritetesh kontraktore dhe furnitorë. Në Hungari, 90% e projekteve të prokurimit publik mbiçmohen mesatarisht me 25%.<sup>261</sup> Në mënyrë të ngjashme, në Maqedoninë e Veriut raportet hetimore kanë gjetur dallime të mëdha midis çmimeve të tregut dhe çmimeve të kontratës të disa produkteve me specifika identike.<sup>262</sup>
- **Specifikimet e përshtatura të tenderit.** Një teknikë e shpeshtë e korrupsionit është krijimi i kërkesave tepër specifike të tenderit që përshtaten vetëm me kualifikimin dhe ekspertizën e një firme.
- **Konflikti i interesit në procesin e tenderimit.** Rastet e konfliktit të interesit të “nivelit të lartë” nuk ishin të rralla vitet e fundit në Serbi dhe u bënë edhe më të shpeshta që nga fillimi i pandemisë COVID-19<sup>263</sup>. Në Bullgari, konflikti i interesit është materializuar në procedurat e brendshme,<sup>264</sup> në të cilin mjetet buxhetore janë siguruar pa tender për një ndërmarrje shtetërore. Kjo e fundit, në vend që të kryente të gjitha aktivitetet brenda, siç parashikonte ligji, më pas nënkontraktonte kompani private, të cilat ishin përzgjedhur paraprakisht në procedura të papërshtatshme. Një kontraktim i tillë mashtrues i brendshëm arriti në 4.4 miliardë euro ose mbi 42% të vlerës së të gjitha kontratave të prokurimit publik të qeverisë në 2019 – 2020.<sup>265</sup>
- **Përqindja e lartë e procedurave jo të hapura.** Ka disa arsye të besueshme për përdorimin e procedurave të mbyllura ose të kufizuara të prokurimit, për shembull nëse zbulimi i përmbajtjes së tenderit do të përbënte rrezik për sigurinë kombëtare ose nëse vlera e tenderit është mjaft

e vogël për të mos paraqitur rreziqe të mëdha korrupsioni. Megjithatë, autoritetet kontraktore të EJK-së shpesh përdorin procedura të kufizuara në rastet kur ato nuk do të ishin të nevojshme.

- **Modifikimi i kontratës në fazën e zbatimit.** OShC-të nga rajoni raportojnë praktikën keqdashëse të modifikimeve të kontratës pas nënshkrimit, duke rezultuar në një çmim shumë më të lartë se pritshmëritë fillestare. Këto modifikime janë të vështira për t'u gjurmuar për shkak të informacionit të kufizuar në shumicën e faqeve zyrtare të internetit të prokurimit.<sup>266</sup>

### COVID-19 shkaktoi ndryshime në prokurimet publike dhe përdorimin e procedurave urgjente

Pandemia rriti numrin e procedurave “urgjente” të kufizuara në thelb që anashkalojnë legjislacionin e zakonshëm të prokurimit. Vlerësimi sasior i tregut të prokurimit tregon se ai shkaktoi një rënie të përgjithshme të integritetit të prokurimit publik, veçanërisht në tregjet më të prekura – të kujdesit shëndetësor dhe të produkteve të tjera të lidhura me COVID. Këto çështje janë ilustruar nga „Çështja e respiratoreve“ në Bosnje dhe Hercegovinë.<sup>267</sup> Në Kroaci, lista e mallrave dhe shërbimeve për të cilat mund të përdoshin marrëveshjet e prokurimit të drejtpërdrejta u mbajt konfidenciale deri në dhjetor 2020. Lista u publikua vetëm për shkak të presionit të konsiderueshëm nga publiku i gjerë.<sup>268</sup> Në Hungari, gjatë Gjendjes së Jashtëzakonshme, Kryeministri kishte fuqinë të vendoste se cilat procedura kishin të bënin me pandeminë COVID-19, dhe për këtë arsye mund të bliheshin përmes çmimeve të drejtpërdrejta.<sup>269</sup>

<sup>261</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben*, TI Hungary, 2019.

<sup>262</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>263</sup> Centar za primenjenu evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine*, CPES, November 2020.

<sup>264</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>265</sup> Sokolova, T., „Службеният кабинет спира харченето на милиарди без обществени поръчки“, *Mediapool.bg*, 30 June 2021.

<sup>266</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data – An Implementer's Guide*, 2015.

<sup>267</sup> Katavić, I., “Afera ‘Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i”, *Slobodnaevropa.org*, 28 May 2020; Radiosarajevo.ba, “Afera Respiratori: Novalić i drugi optuženi stigili na novo ročište”, 17 November 2021.

<sup>268</sup> Nacionalno.hr, “Most traži da se medicinska oprema nabavlja kroz postupak javne nabave”, 9 December 2020; Croatian Government, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, Ministry of Economy and Sustainable Development, Directorate for Commodity Stocks, 2020.

<sup>269</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben*, 2020.



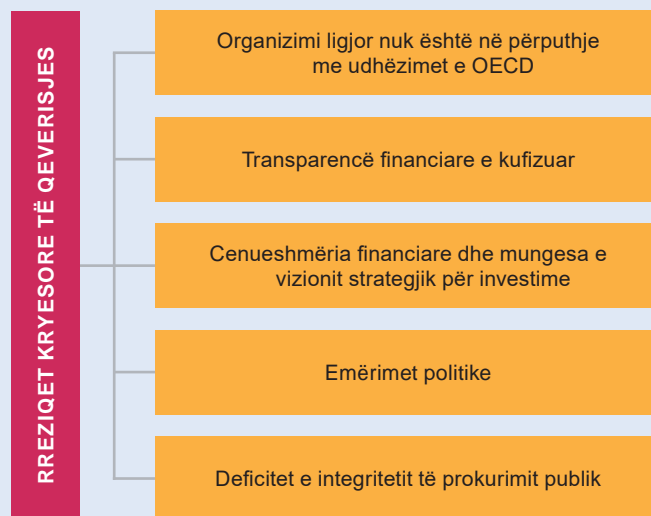
## Rreziku i korrupsionit lidhur me prokurimet në sektorin e kujdesit shëndetësor

Analiza e të dhënave për raportin aktual tregon se midis tremujorit të parë të 2017 dhe tremujorit të dytë të 2021, *Indeksi i Rrezikut të Korrupsionit* në tregun e COVID (CRI)<sup>270</sup> është rritur me rreth 10 pikë përqindjeje në Rumani dhe Kroaci.<sup>271</sup> Rritja ishte e përkohshme dhe u pasua nga një rënie e ngadaltë por e qëndrueshme. Analiza e të dhënave zbulon gjithashtu se në një vit e gjysmë varësia mesatare e blerësve të sektorëve të kujdesit shëndetësor u rrit ndjeshëm në Hungari, si dhe pak në Kroaci, krahasuar me periudhën 2017-2020. Për më tepër, autoritetet e kapura kontraktore jo vetëm që kanë ofruar një pjesë më të madhe, por edhe një vlerë më të lartë të fondeve publike për furnitorët e tyre të favorizuar.

## Qeverisja e ndërmarrjeve shtetërore në sektorin e energjisë

Sektori i energjisë është një nga problemet kryesore sistematike të qeverisjes që çon në humbje të konsiderueshme të pasurisë publike<sup>272</sup> dhe siguron hyrje për financime të paligjshme dhe ndikim të huaj autoritar në rajon<sup>273</sup>. Sektori i energjisë është i një rëndësie vendimtare për Evropën Juglindore, për shkak të statusit të tij si një monopol natyror (shpesh në pronësi të shtetit), ndjeshmërisë sociale të njerëzve ndaj rritjes së çmimeve (siç kanë treguar protestat në të gjithë rajonin gjatë dekadës së fundit), dhe investimet e mëdha dhe interesat financiare në rrezik. *Diagnostifikimi i Vlerësimit të Kapjes së Shtetit* (SCAD) e identifikon sektorin si shumë të cenueshëm ndaj monopolizimit.<sup>274</sup> Vendet e EJL janë përballur me akuza të shumta për bllokimin e

## Rrisqet kryesore të qeverisjes për menaxhimin e NSH-ve të sektorit të energjisë



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liberalizimit të tregut të gazit në favor të rrjeteve lokale të korporatave oligarkike dhe për përfitimin e furnizuesve të gazit të kontrolluar nga Kremli. Kështu, nëse nuk qeveriset siç duhet, sektori mund të dëmtojë pa varësinë dhe zhvillimin e vendeve të EJL.

Deficitet e llogaridhënies publike në ndërmarrjet shtetërore të energjisë (NSH) janë të dukshme në një numër rastesh, të zbuluara nga raportet investigative të mediave, raportet e shoqërisë civile ose auditimet e autoriteteve publike përkatëse në të gjithë rajonin e EJL. Këto çështje kontribuojnë në një mjedis socio-politik ku praktikatat e keqmenaxhimit financiar në NSH lejohen të lulëzojnë dhe merren vendime joefikase ose të dëmshme për investimet. Mungesa e një kuadri ligjor të qëndrueshëm është një faktor kyç që mundëson transparencën e kufizuar financiare dhe ndërhyrjen e gjerë politike në menaxhimin e përditshëm të NSH-ve.

<sup>270</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015

<sup>271</sup> See GTI's *Global Government Contracts database*, 19 July 2021.

<sup>272</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>273</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy, 2018.

<sup>274</sup> Based on data for Bulgaria, Romania, Italy and Spain. For more information: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019. See also, Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.

## Transparenca

Kuadri rregullator i qeverisjes së korporatave është ende në zhvillim në rajon, megjithëse janë bërë disa përmirësime në vitet e fundit. Kuadri ligjor që rregullon menaxhimin e NSH-ve energjetike në Ballkanin Perëndimor nuk është në përputhje me *Udhëzimet e OECD-së për Qeverisjen Korporative të Ndërmarrjeve Shtetërore*.<sup>275</sup> Shtetet anëtare të BE-së performojnë më mirë për sa i përket ligjeve në fuqi, megjithatë zbatimi i tyre mbetet i kufizuar dhe i ngadaltë.<sup>276</sup> Kompanitë në gjendje më të keqe financiare prirën të jenë më pak transparente. Një mënyrë për të përmirësuar transparencën e tyre është që ato të bëhen publike, sic ka qenë rasti për Romgaz dhe Hidroelectrica në Rumani. Në një shembull tjetër pozitiv, MOL Group, një kompani e listuar në Hungari, publikon pasqyrat e saj financiare dhe zbulon sasinë e aksioneve që zotëron çdo Anëtar i Bordit.<sup>277</sup> Transparenca e të dhënave financiare mbetet veçanërisht e dobët në Ballkanin Perëndimor.<sup>278</sup>

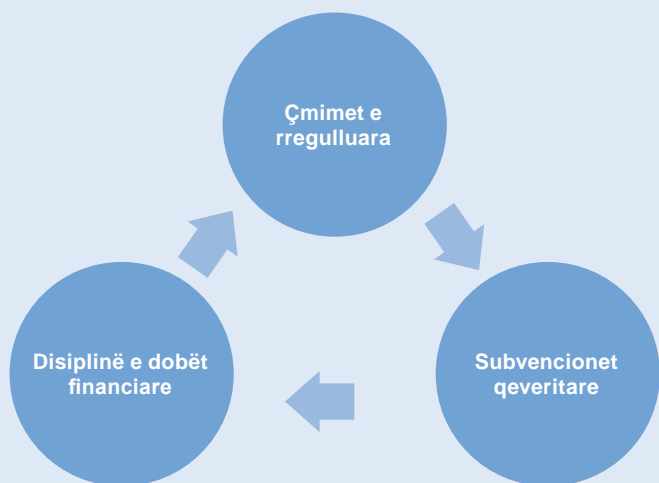
## Cënueshmëria financiare

Ndërmarrjet Shtetërore të Energjisë në nëntë vendet në studim tregojnë shkallë të ndryshme të cënueshmërisë financiare, e zbuluar nga ekspozimi i tyre i madh ndaj borxhit dhe raportet e larta të borxhit, si dhe likuiditeti i ulët dhe raportet aktuale në rënie. Këto vështirësi financiare kanë qenë veçanërisht të theksuara në kompanitë e bazuara në lëndë djegëse fosile, të cilat kanë luftuar për të përballuar rritjen e vazhdueshme të CO<sub>2</sub>, dhe çmimit të qymyrit dhe gazit natyror. Përpjekjet e qeverisë për të mbajtur çmimet e energjisë artificialisht të ulëta për të shmangur një reagim social janë në kurriz të shëndetit financiar dhe pavarësisë politike të NSH-ve, si dhe paanshmërisë së autoriteteve rregullatore. Cilësia e ulët e menaxhimit financiar lidhet shpesh me: a) madhësinë e tepërt të stafit; b) shpërbllim tepër

bujar; dhe c) keqmenaxhimi i prokurimit publik. Kriza e shpalosur e çmimeve të energjisë në Evropë që nga gjysma e dytë e 2021, e cila filloi me mungesat e gazit dhe vazhdoi me luftën në Ukrainë, ka të ngjarë të përkeqësojë më tej cënueshmërinë, pavarësisht fitimeve të papritura për disa kompani.

Varësia e gjatë e EJK-së nga importet e karburanteve fosile nga Rusia, e shoqëruar me pronësinë historike, varësinë nga rruga teknologjike dhe menaxheriale dhe lidhjet e thella (dhe shpesh shumë të errëta) financiare, ka përkeqësuar më tej cënueshmërinë e sektorëve shtetërorë të energjisë. Në praktikë, disa nga projektet më të mëdha të investimeve në rajonin e EJK-së janë rezultat i marrëveshjeve ndërqeveritare me shtetet joanëtare të BE-së, veçanërisht me Rusinë. Projekti TurkStream<sup>279</sup> i udhëhequr nga Rusia është një shembull kryesor. Duke prekur drejtpërdrejt Bullgarinë, Serbinë dhe Hungarinë, dhe indirekt të gjithë rajonin dhe Evropën, ajo ka kontribuar në dobësimin e mëtejshëm të institucioneve të politikëbërjes së energjisë dhe në forcimin e rrjeteve oligarkike të ndikimit të interesave private ruse me lidhje të ngushta me qeverinë. Kina, megjithëse e re, ka krijuar kornizën e saj të investimeve në rajon, veçanërisht në Ballkanin Perëndimor, Kroaci dhe Hungari, duke krijuar terrenin për tensione të mëtejshme në integrimin e këtyre vendeve në BE. Investimet kineze, ndonëse të mirëpritura

## Varësitë e rrugëve të përbashkëta që ndikojnë në funksionimin e NSH-ve



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<sup>275</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>276</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

<sup>277</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

<sup>278</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>279</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.

## Parregullsitë në prokurimin publik të vërejtura në sektorin e energjisë

| Para procedurës së përzgjedhjes  | Gjatë procedurës së përzgjedhjes   | Pas procedurës së përzgjedhjes   |
|--|--|--|
| <ul style="list-style-type: none"> <li>• një kompani e krijuar vetëm për të fituar një tender specifik (pa përvojë të kaluar)</li> <li>• specifikimet e tenderit të "përshtatura" për një kompani të caktuar</li> <li>• sigurimi i informacionit të brendshëm</li> <li>• afate joreale të shkurtra</li> <li>• krijimi i konkurrencës artificiale (paraqitja e ofertave nga konkurrentët e rremë)</li> <li>• ndarja e fondeve për investime të pabazuara</li> <li>• mbiçmimi i kontratës</li> </ul> | <ul style="list-style-type: none"> <li>• konflikti i interesit, ndikimi politik ose rryshfet për komisionin e vlerësimit</li> <li>• shmangia e përdorimit të procedurave të prokurimit nga: <ul style="list-style-type: none"> <li>• negociatat e drejtpërdrejta</li> <li>• uljen e çmimit nën pragje</li> <li>• përdorimi i procedurave emergjente</li> </ul> </li> <li>• renditja e projekteve specifike si të paracaktuara për financim në dokumentet kombëtare të planifikimit</li> <li>• Përdorimi i marrëveshjeve kuadër që favorizojnë aktorët e mëdhenj të tregut</li> </ul> | <ul style="list-style-type: none"> <li>• anulimi i tenderëve dhe skualifikimi i konkurrentëve</li> <li>• ndryshimet e kushteve të tenderit nëpërmjet anekseve</li> <li>• pagesa për shërbime/pajisje që nuk plotësojnë kërkesat minimale</li> <li>• asnjë hetim i zyrtarëve dhe biznesmenëve të nivelit të lartë të lidhur me një kontratë të caktuar</li> </ul> |

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në kushtet e kostos, shpesh nuk janë në përputhje me standartin teknik të BE-së dhe/ose me *acquis* të BE-së për konkurrencën dhe prokurimin publik. Ato gjithashtu krijojnë, ngjashëm me Kremlinin, një erozion të standardeve demokratike dhe të tregut për shkak të natyrës së tyre të fshehtë dhe të errët. Në shumë raste projekte të tilla përforcojnë industrinë kombëtare të qymyrit, injorojnë rregulloret mjedisore ose nuk janë në përputhje me politikën e përgjithshme të dekarbonizimit dhe rritjes së qëndrueshme.<sup>280</sup>

### Emërimi i CEO-ve dhe anëtarëve të bordit

Rregullat për emërimin e anëtarëve të bordeve dhe udhëheqësve të tjerë të kompanive në NSH-të energjetike të EJT janë gjithashtu të paqarta, veçanërisht kur merret parasysh ndikimi i mundshëm politik. Ka pasur shembuj të shumtë të ndërhyrjes politike në emërimet e bordeve menaxhuese në NSH-të e EJT-së dhe autoritetet rregullatore, gjë që ka dëmtuar ekspertizën profesionale në planifikimin dhe zbatimin e vendimeve të vështira në sektorin e energjisë. Prandaj, aktivitetet e biznesit të NSH-ve shpesh ndikohen ose madje mund t'u shërbejnë interesave të kompanive ose individëve me lidhje të forta politike, në kurriz të performancës financiare të NSH-ve.

### Boshllëqet e qeverisjes në prokurimin publik të sektorit të energjisë

Sektorin e energjisë shfaq deficite veçanërisht të forta qeverisëse në prokurimet publike. Disa nga këto deficite përkohë me rreziqet e përgjithshme të prokurimit të diskutuara më sipër, megjithatë disa janë edhe më të theksuara dhe/ose unike për sektorin, për shkak të madhësisë, statusit të monopolit natyror dhe kompleksitetit teknik.

### Rruga përpara

Pavarësisht progresit të vazhdueshëm të pabarabartë, vendet e EJT-së përballen me sfida të konsiderueshme të qeverisjes së mirë, të cilat janë komplikuar nga kërcënimet autoritare të brendshme dhe të jashtme. Rajoni do të vazhdojë të përfitojë nga rritja e mbështetjes thelbësore financiare dhe teknike nga komuniteti demokratik i vendeve brenda BE-së, Zonës Ekonomike Evropiane (EEA) dhe SHBA. Mënyra se si çdo vend e përdor këtë mbështetje për të përparuar në rrugën e demokratizimit dhe antikorrupsionit varet përfundimisht nga përpjekjet e qytetarëve, bizneseve dhe qeverive të tij. Vendet e BE-së të EJT-së duhet të ndjekin nga afër angazhimet e tyre sipas Mekanizmit të Sundimit të Ligjit si dhe Semestrit Evropian dhe të investojnë në përputhje me rrethanat stimulin e madh fiskal të ofruar nga Lehtësia e Rimëkëmbjes dhe Rezistencës dhe Korniza Financiare Shumëvjeçare 2021-2027. Të katër vendet e BE-së duhet të

<sup>280</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

kapërcejnë pengesat e qeverisjes, por në veçanti Bullgaria dhe Hungaria duhet të punojnë në rritjen e efektivitetit të gjyqësorit dhe dekoncentrimin e pushtetit ekzekutiv. Vendet e Ballkanit Perëndimor të EJL-së duhet të punojnë në mënyrë të njëanshme për të kryer reformat e nevojshme sipas kapitujve të negociatave të BE-së edhe nëse zyrtarisht procesi i zgjerimit mund të jetë bllokuar, si në rastin e Shqipërisë dhe Maqedonisë së Veriut. Serbia përballet me sfida të veçanta duke pasur parasysh lidhjet dhe varësitë e saj të ngushta me regjimet autoritare.

Sfidat e përgjithshme të qeverisjes së mirë shpesh përfundojnë në adresimin e dy sistemeve të ndërlidhura në ekonominë kombëtare të EJL: prokurimi publik dhe menaxhimi i NSH-ve të energjisë. Bazuar në rishikimin e thelluar të dhënë në raportin aktual, disa rekomandime kryesore të politikave për këto dy fusha:

- BE-ja dhe partnerët e saj nga EEA dhe SHBA duhet të vazhdojnë të ofrojnë asistencë teknike në integrimin e praktikave të mira të prokurimit publik të BE-së si në menaxhimin e fondeve të BE-së për rajonin ashtu edhe në qeverisjen e burimeve kombëtare. Vëmendje e veçantë duhet t'i kushtohet rritjes së kapaciteteve të kombinuara dhe punës së përbashkët të antikorrupsionit dhe autoriteteve rregulatore të prokurimit publik në ekzekutiv, prokurorinë dhe gjykata.
- Qeveritë e EJL duhet të ruajnë integritetin e prokurimit publik, përmes monitorimit të përforcuar të prokurimit (siç është Tenderi i Hapur ose mjeti SCAD), rritjen e efikasitetit institucional, uljen e përqindjes së procedurave jo të hapura dhe përmirësimin e mekanizmave të dhënies së kontratave. Vendet nga Ballkani Perëndimor duhet të hapin të dhënat e tyre të prokurimit për të lejuar diagnostifikim dhe kontroll më të mirë, ndërsa vendet anëtare të BE-së nga EJL duhet të vazhdojnë ndërtimin e kapaciteteve për të identifikuar dhe trajtuar shenjat e kuqe për korrupsionin në prokurimet publike.
- Qeveritë kombëtare duhet të heqin rregullat e prokurimit të urgjencës Covid-19 duke iu kthyer legjislacionit origjinal të prokurimit. Shpenzimet emergjente në të ardhmen duhet të shoqërohen me monitorim më të fortë dhe vlerësim të efikasitetit.
- Qeveritë e EJL-së, NSH-të dhe shoqatat e biznesit duhet të miratojnë dhe zbatojnë standardet më të mira ndërkombëtare për qeverisjen korporative të ndërmarrjeve shtetërore në sektorin e energjisë, siç janë ato të zhvilluara nga OECD. Ndërmarrjet Shtetërore të EJL duhet të përpiqen të raportojnë me standarde të ngjashme ose më të larta se të ngjashmit e tyre në BE.
- Parlamentet dhe qeveritë e EJL duhet të përmirësojnë pavarësinë e rregullatorëve kombëtarë të energjisë dhe konkurrencës duke rritur kapacitetin e tyre administrativ dhe financiar dhe duke hequr emërimet politike. Duhet të futen edhe mandate më të shkurtra të anëtarëve të bordit. Rregullatorët e energjisë në EJL duhet të punojnë ngushtë me kolegët e tyre të BE-së për krijimin e një komuniteti praktikash. Vendimet e rregullatorëve duhet të respektojnë standardet më të larta të zbulimit publik të informacionit.
- Qeveritë e Evropës Juglindore duhet të përmbahen nga përfshirja në projekte dypalëshe energjetike në shkallë të gjerë pa garancitë e duhura, të cilat si minimum mund të përfshijnë institucionet financiare publike ndërkombëtare, si BEI, BERZH ose Banka Botërore. Projekte të tilla duhet të përfshijnë si rregull një sistem të zbulimit të informacionit të standardeve më të larta se ato që mbizotërojnë zakonisht në vendet e EJL. Një sistem i tillë duhet gjithashtu të bëhet publik në kohën e duhur, duke ofruar informacion në lidhje me projektet e infrastrukturës energjetike në shkallë të gjerë, duke përfshirë një analizë të detajuar kosto-përfitim.
- Qeveritë kombëtare të EJL-së duhet të punojnë me Komisionin Evropian, vendet anëtare të BE-së, EEA-së dhe SHBA-në për të siguruar mbrojtje më të mirë për ekonominë e tyre nga fondet e paligjshme të lidhura me vendet autoritare. Kjo mbrojtje duhet të përfshijë futjen e institucioneve dhe rregulloreve më të mira në lidhje me mekanizmat e kontrollit të investimeve dhe monitorimit të sanksioneve.
- Qeveritë e Evropës Juglindore dhe partnerët e tyre në BE/EEA dhe SHBA duhet të ndërtojnë modele të qëndrueshme ndërveprimi me shoqërinë civile kombëtare dhe lokale dhe mediat investigative në lidhje me rritjen e monitorimit të prokurimit publik

dhe NSH-ve të energjisë. Përvoja e platformës R2G4P281 mund të informojë përpjekje të tilla në nivel rajonal. Tashmë ekzistojnë modele të mbështetjes publike për organizatat e shoqërisë

civile në të gjithë rajonin, por këto janë ose në fillimet e tyre ose shpesh shkaktojnë frikë në mesin e OSHC-ve dhe mediave për kompromentimin e pavarësisë së tyre.

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<sup>281</sup> Platforma Rajonale e Partneritetit Publik-Privat për Qeverisje të Mirë (R2G4P) është një nismë pilot treveçare, e mbështetur nga EEA dhe Fondi i Granteve të Norvegjisë për Bashkëpunim Rajonal, i cili mbledh përpjekjet e trembëdhjetë organizatave nga dhjetë vende dhe synon të ofrojë zgjidhje të përbashkëta kundër korrupsionit për rritjen e përgjegjshmërisë së institucioneve shtetërore dhe forcimin e shoqërisë civile dhe sundimit të ligjit në Evropën Juglindore..



# SAŽETAK

Načela dobrog upravljanja i dalje se suočavaju sa sve većim brojem izazova u regiji Jugoistočne Evrope. Rat u Ukrajini jasno je pokazao kako izazovi vladavine prava u regiji potkopavaju ne samo njen ekonomski razvoj nego i jedinstvo i otpornost EU u odnosu na vanjske autoritarne prijetnje. Nove zemlje članice EU iz regije među najvećim su neto primateljima sredstava EU. Ipak, demokratsko nazadovanje i korupcija i dalje proganjaju njihova društva, uprkos kontinuiranom snažnom negodovanju javnosti i protestima te uvođenju konkretnih koraka EU i SAD-a za rješavanje ovih izazova. Takvi koraci uključivali su Mehanizam saradnje i provjere za praćenje antikorupcijskih i pravosudnih reformi u Bugarskoj i Rumuniji nakon njihovog pristupanja 2007, mnogo oštrije zahtjeve vladavine prava za pristupanje Hrvatske 2013, američke sankcije prema „Global Magnitsky Act“ u Bugarskoj u 2021. i pokretanje novoosmišljenih krivičnih procesa za zamrzavanje EU fondova za Mađarsku 2022. Zemlje Zapadnog Balkana koje teže pridruživanju EU suočavaju se s još oštrijim izazovima upravljanja. Zajedno s oslabljenošću od puta ka proširenja EU, to je rezultiralo kontinuiranim odgađanjem izgleda za pristupanje EU, rastućim građanskim frustracijama u njihovim društvima i ponavljajućim nedemokratskim tendencijama. Trajni nedostaci u upravljanju širom Jugoistočne Evrope dodatno su pogoršani pandemijom COVID-19 i ratom Kremlja u Ukrajini.<sup>282</sup> *Izveštaj o dobrom upravljanju u jugoistočnoj Evropi* ima za cilj pružiti dublje razumijevanje ovih izazova i osigurati put učinkovitim antikorupcijskim reformama u devet zemalja – četiri države članice i pet koje teže članstvu u EU – Bugarska, Hrvatska, Mađarska, Rumunija, Albanija, Bosna i Hercegovina, Sjeverna Makedonija, Crna Gora i Srbija. Ovogodišnje izvješće fokusira se na dvije slabosti upravljanja koje se najviše testiraju u regiji: javnu nabavku i upravljanje državnim preduzećima u energetskom sektoru.

<sup>282</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in Southeast Europe: Economic Influence and Sharp Power*, Sofia: Centar za proučavanje demokratije, 2020.

## Integritet javnih nabavki

Javne nabavke čine značajan dio BDP-a u ekonomijama s visokim i niskim dohotkom. Širom svijeta javne nabavke predstavljaju 15% do 30% BDP-a. Ova ogromna javna potrošnja mogla bi igrati ključnu ulogu u ekonomskom i društvenom napretku ako se učinkovito raspoređuje. Međutim, to je također jedna od aktivnosti vlade koja je najosjetljivija na korupciju.<sup>283</sup> Prema Uredu Ujedinjenih naroda za droge i kriminal, 10% do 25% ukupne vrijednosti javnog ugovora može biti izgubljeno zbog sumnjivih praksi.<sup>284</sup> Lako korupcija u javnim nabavkama može imati različite oblike, postoji jasno definisan skup koruptivnih tehnika koje se aktivno koriste u Jugoistočnoj Evropi za dobivanje javnog novca u svrhu privatne dobiti.

- **Favoritizam i klijentelizam.** Jedan od najčešćih oblika nepravilnosti kod javnih nabavki u regiji je povlašteni tretman kompanija zbog dobrih političkih veza njihovih vlasnika. Naprimjer, u Hrvatskoj oko polovine ukupne vrijednosti ugovora osvoje ponuđači koji nisu privatni subjekti, već kompanije u djelimičnom ili potpunom vlasništvu države.<sup>285</sup> Mnoge privatne kompanije širom regije čiji su vlasnici usko povezani s visokopozicioniranim političarima pobjeđuju na javnim nabavkama koje su gotovo isključivo kreirane za njih. Naprimjer, u Mađarskoj je tokom posljednjih 11 godina vladajuća stranka stvorila novu ekonomsku elitu čije korporacije primaju velike subvencije u sektorima kao što je turizam.<sup>286</sup>

<sup>283</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for - a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>284</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>285</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>286</sup> András, B., "Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát," *valaszonline.hu*, 26. februar 2021.

- **Precijenjenost ugovora.** Previsoke cijene ugovora još su jedan prevladavajući oblik prevare u nabavkama utemeljen na favoriziranju. Uključuje širi spektar naručitelja i dobavljača. U Mađarskoj je 90% projekata javne nabavke u prosjeku precijenjeno za 25%.<sup>287</sup> Slično, u Sjevernoj Makedoniji istražni izvještaji otkrili su velike razlike između tržišnih cijena i ugovornih cijena nekih proizvoda s identičnim specifikacijama.<sup>288</sup>
- **Prilagođene specifikacije tendera.** Česta tehnika korupcije je stvaranje pretjerano specifičnih zahtjeva za tender koji odgovaraju samo kvalifikacijama i stručnosti određene kompanije.
- **Sukob interesa u postupku nadmetanja.** Slučajevi sukoba interesa „visokog nivoa“ nisu bili rijetki proteklih godina u Srbiji, a postali su još češći od početka pandemije COVID-19.<sup>289</sup> U Bugarskoj se sukob interesa definisao u internim procedurama,<sup>290</sup> u kojima su budžetska sredstva osigurana bez konkursa za državno preduzeće. Posljednji, umjesto da obavljaju sve aktivnosti unutar kompanije, kako je predviđeno zakonom, tada su unajmljivali privatne kompanije koje su prethodno odabrane u nepovezanim postupcima. Takvo lažno unutrašnje ugovaranje doseglo je vrijednost od 4,4 milijarde eura ili više od 42% vrijednosti svih državnih ugovora u javnim nabavkama u periodu 2019 – 2020.<sup>291</sup>
- **Visok udjel zatvorenih postupaka.** Postoji nekoliko vjerodostojnih razloga za korištenje zatvorenih ili ograničenih postupaka nabavke, naprimjer, ako bi otkrivanje sadržaja konkursa predstavljalo rizik za nacionalnu sigurnost ili ako je vrijednost ponude dovoljno mala da ne predstavlja značajne rizike od

korupcije. Uprkos tome, naručitelji iz Jugoistočne Evrope često prekomjerno koriste ograničene postupke u slučajevima kada oni nisu potrebni.

- **Izmjena ugovora u fazi provedbe.** OCD-i iz regije prijavljuju zlonamjernu praksu naknadnih izmjena ugovora, što rezultira znatno višom cijenom od početnih očekivanja. Te je izmjene teško pratiti zbog ograničenih informacija na većini službenih web stranica o nabavci.<sup>292</sup>

## COVID-19 je izazvao promjene u javnim nabavkama i pretjeranu upotrebu hitnih postupaka

Pandemija je povećala broj „hitnih“ postupaka koji zaobilaze uobičajeno zakonodavstvo o javnim nabavkama. Kvantitativna procjena tržišta nabavke pokazuje da je ono uzrokovalo sveukupni pad integriteta javnih nabavki, posebno na najugroženijim tržištima – zdravstvu i drugim tržištima povezanim s COVID-19. Ova su pitanja ilustrovana u zloglasnoj „Aferi respiratora“ u Bosni i Hercegovini.<sup>293</sup> U Hrvatskoj je popis dobara i usluga za koje se mogu koristiti ugovori o direktnoj nabavci čuvan u tajnosti do decembra 2020. Popis je objavljen samo zbog značajnog pritiska javnosti.<sup>294</sup> U Mađarskoj, tokom vanrednog stanja, premijer je imao ovlast da odlučuje koji su postupci povezani s pandemijom COVID-19, te su se stoga mogli provoditi putem direktnih dodjela.<sup>295</sup>

<sup>287</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben, A Transparency International Magyarország Alapítvány jelentése*, TI Mađarska, 2019.

<sup>288</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>289</sup> Centar za primjenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine*, CPES, novembar 2020.

<sup>290</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>291</sup> Sokolova, T., „Служебният кабинет спира харченето на милиарди без обществени поръчки“ [The cabinet stops spending billions without public procurement], *Mediapool.bg*, 30. juni 2021.

<sup>292</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data - An Implementer's Guide*, 2015.

<sup>293</sup> Katavić, I., „Afera 'Respiratori': Premijer FBiH Fadil Novalić zadržan u SIPA-i,“ *Slobodnaevropa.org*, 28. maj 2020.

<sup>294</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave“ [The Bridge requires that medical equipment is procured through a public procurement procedure], 9. decembar 2020; Croatian Government, *Izvršnim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, [Report on purchases of protective equipment for the purpose of health protection measures implementation and strengthening supervision over the spread of coronavirus], Ministry of Economy and Sustainable Development, Directorate for Commodity Stocks, 2020.

<sup>295</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben* [Opinion of the Public Procurement Authority on certain public procurement issues related to the emergency situation in view of the spread of the coronavirus], 2020.



## Rizik od korupcije povezan s nabavkom u zdravstvenom sektoru

Analiza podataka za trenutni izvještaj pokazuje da je između prvog tromjesečja 2017. i drugog tromjesečja 2021. Indeks rizika od korupcije na tržištu COVID (CRI)<sup>296</sup> porastao za oko 10 postotnih bodova u Rumuniji i Hrvatskoj.<sup>297</sup> Povećanje je bilo privremeno, a pratio ga je polagani, ali stalan pad. Analiza podataka također otkriva da je u posljednjih godinu i po prosječna ovisnost o kupcu zdravstvenog sektora značajno porasla u Mađarskoj, ali i neznatno u Hrvatskoj, u odnosu na period 2017 – 2020. Također, naručitelji ne samo da su svojim favoriziranim dobavljačima osigurali veći udio već i višu vrijednost javnih sredstava.

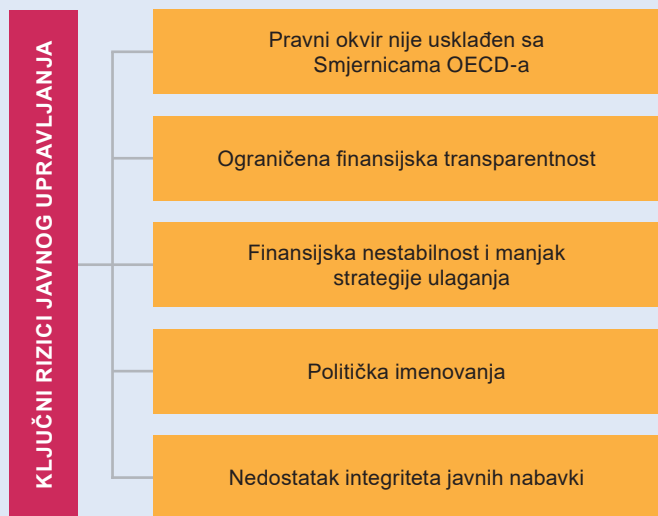
## Upravljanje preduzećima u državnom vlasništvu u energetsom sektoru

Energetski sektor jedan je od glavnih problema sistemskog upravljanja, koji dovodi do značajnih gubitaka javnog bogatstva<sup>298</sup> i otvara prostor za nezakonito finansiranje i strani autoritarni uticaj u regiji.<sup>299</sup> Energetski sektor je od presudne važnosti za Jugoistočnu Evropu zbog svog statusa prirodnog monopola (često u vlasništvu države), društvene osjetljivosti ljudi na povećanje cijena (kao što su demonstrirali protesti širom regije tokom protekle decenije), kao i različitih finansijskih interesa i velikih ulaganja. State Capture Assessment Diagnostics (SCAD) identifikuje sektor kao vrlo osjetljiv na monopolizaciju.<sup>300</sup> Zemlje Jugoistočne Evrope suočile su se s višestrukim optužbama za blokiranje liberalizacije tržišta plina u korist lokalnih oligarhijskih korporativnih mreža i u korist dobavljača plina pod kon-

trolom Kremlja. Stoga, osim ako se njim pravilno ne upravlja, sektor može umanjiti nezavisnost i razvoj zemalja Jugoistočne Evrope.

Manjak javne odgovornosti u energetsom javnim preduzećima (SOE) vidljiv je u brojnim slučajevima, a otkriveni su istraživačkim medijskim izvješćima, izvješćima civilnog društva ili revizijama relevantnih javnih tijela u regiji jugoistočne Evrope. Ova pitanja pridonose društveno-političkom okruženju u kojem se dopušta da prakse finansijskog lošeg upravljanja u javnim preduzećima napreduju i da se provode neučinkovite ili štetne odluke o ulaganju. Nepostojanje čvrstog pravnog okvira ključni je faktor koji omogućuje ograničenu finansijsku transparentnost i široko rasprostranjenu političku umiješanost u svakodnevno upravljanje javnim preduzećima.

### Ključni rizici za upravljanje javnim preduzećima u energetsom sektoru



Izvor: Centar za proučavanje demokratije, 2022.

## Transparentnost

Regulatorni okvir korporativnog upravljanja još uvijek je u razvoju u regiji iako su posljednjih godina napravljena određena poboljšanja. Pravni okvir koji reguliše upravljanje energetsom javnim preduzećima na Zapadnom Balkanu nije usklađen sa Smjericama OECD-a o korporativnom upravljanju preduzećima u državnom vlasništvu.<sup>301</sup> Države članice EU imaju bolje rezultate u

<sup>296</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>297</sup> Vidjeti GTI's *Global Government Contracts database*, 19.juli 2021.

<sup>298</sup> Liderstvo za razvoj i integritet Jugoistočne Evrope, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>299</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Centar za proučavanje demokratije, 2018.

<sup>300</sup> Bazirano na podacima za Bugarsku, Rumuniju, Italiju i Španiju. Za više informacija: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Centar za proučavanje demokratije, 2019. Također pogledati: Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.

<sup>301</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

pogledu primjenjivih zakona, no njihova provedba ostaje ograničena i spora.<sup>302</sup> Kompanije u lošijem finansijskom stanju obično su manje transparentne. Jedan od načina da se poboljša njihova transparentnost jeste njihov izlazak u javnost, što je bio slučaj s Romgazom i Hidroelectricom u Rumuniji. U drugom pozitivnom primjeru, MOL Group, kompanija iz Mađarske, objavljuje svoje finansijske izvještaje i iznos dionica koje svaki član uprave ima.<sup>303</sup> Transparentnost finansijskih podataka i dalje je posebno loša na Zapadnom Balkanu.<sup>304</sup>

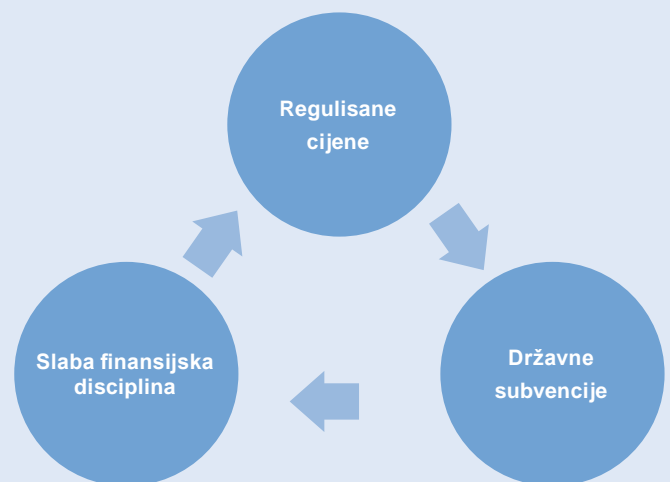
## Finansijska ranjivost

Energetska državna preduzeća u devet proučavanih zemalja pokazuju različit stepen finansijske ranjivosti, što se otkriva po njihovoj velikoj izloženosti dugu i visokim omjerima duga, kao i niskoj likvidnosti i padu tekućih omjera. Te su finansijske poteškoće bile posebno izražene u kompanijama baziranim na fosilnim gorivima koje su se borile s konstantno rastućim cijenama CO<sub>2</sub>, ugljena i prirodnog plina. Napori vlade da cijene energije održe umjetno niskim kako bi se izbjegla društvena reakcija na štetu jesu finansijske stabilnosti i političke nezavisnosti javnih preduzeća, kao i nepristranosti regulatornih tijela. Niska kvaliteta finansijskog upravljanja često je povezana sa: a) prevelikim brojem uposlenika; b) pretjerano izdašnim naknadama i c) lošim upravljanjem javnim nabavkama. Kriza cijena energije koja se razvija u Evropi od druge polovine 2021, a koja je započela nestašicom plina i nastavila se ratom u Ukrajini, vjerojatno će dodatno pogoršati ranjivost, uprkos neočekivanoj dobiti za neke kompanije.

Dugogodišnja ovisnost Jugoistočne Evrope o uvozu fosilnih goriva iz Rusije, zajedno s historijskim vlasništvom, ovisnošću o tehnološkom i upravljačkom putu i dubokim (i često vrlo nerazumljivim) finansijskim vezama, dodatno je pogoršala ranjivost njenih državnih energetskih sektora. U praksi, neki od najvećih investici-

jskih projekata u regiji Jugoistočne Evrope rezultat su međuvladinih sporazuma s državama koje nisu članice EU, a ponajviše s Rusijom. Projekt „Turski tok“<sup>305</sup>, pod vodstvom Rusije, izvrstan je primjer. Imajući direktan uticaj na Bugarsku, Srbiju i Mađarsku, a indirektan i na cijelu regiju i Evropu, doprinijelo je daljnjem slabljenju institucija za kreiranje energetske politike i učvršćivanju oligarhijskih mreža uticaja ruskih i lokalnih privatnih interesa koji imaju bliske veze s vladom. Kina je, iako je novajlija, stvorila vlastiti investicijski okvir u regiji, posebno na Zapadnom Balkanu, Hrvatskoj i Mađarskoj, postavljajući teren za daljnje napetosti u daljnjoj integraciji ovih zemalja u EU. Kineska ulaganja, iako su dobrodošla u smislu prihoda, često nisu u skladu s tehničkom standardizacijom EU i/ili s pravnom stečevinom EU o tržišnom konkurisanju i javnoj nabavci. Oni također stvaraju, slično kao Kremlj, eroziju demokratskih i tržišnih standarda svojom tajnom i nerazumljivom prirodom. U mnogim slučajevima, takvi projekti jačaju nacionalnu industriju ugljena, zanemaruju ekološke propise ili nisu u skladu s cjelokupnom politikom dekarbonizacije i održivog rasta.<sup>306</sup>

## Uobičajena putanja faktora koji utiču na rad državnih preduzeća



Izvor: Centar za proučavanje demokratije, 2022.

<sup>302</sup> Evropska komisija, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 58.

<sup>303</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

<sup>304</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>305</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.

<sup>306</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Centar za proučavanje demokratije, 2021.

## Uočene nepravilnosti u javnoj nabavci u energetsom sektoru

| Prije postupka selekcije   | Tokom postupka selekcije  | Poslije postupka selekcije   |
|--|---|--|
| <ul style="list-style-type: none"> <li>kompanija stvorena isključivo za pobjedu na određenom tenderu (bez prethodnog iskustva)</li> <li>tenderske specifikacije "krojene" za konkretnu kompaniju</li> <li>pružanje unutrašnjih informacija</li> <li>nerealno kratki rokovi</li> <li>stvaranje umjetne konkurencije (podnošenje ponuda lažnih konkurenata)</li> <li>dodjeljivanje sredstava za neutemeljena ulaganja</li> <li>precijenjen ugovor</li> </ul> | <ul style="list-style-type: none"> <li>sukob interesa, politički uticaj ili podmićivanje ocjenjivačkog odbora</li> <li>izbjegavanje korištenja postupaka nabavke:               <ul style="list-style-type: none"> <li>direktni pregovori</li> <li>spuštanje cijene ispod krajnjeg praga</li> <li>korištenje postupaka u hitnim slučajevima</li> </ul> </li> <li>navođenje određenih projekata kao unaprijed određenih za finansiranje u nacionalnim planskim dokumentima</li> <li>korištenje okvirnih sporazuma koji pogoduju velikim tržišnim igračima</li> </ul> | <ul style="list-style-type: none"> <li>poništanje tendera i diskvalifikovanje konkurenata</li> <li>izmjene uslova tendera putem aneksa</li> <li>plaćanje usluga/opreme koja ne zadovoljava minimalne zahtjeve</li> <li>nema istrage visokih dužnosnika i poslovnih ljudi povezanih s određenim ugovorom</li> </ul> |

Izvor: Centar za proučavanje demokratije, 2022.

## Imenovanje izvršnih direktora i članova uprave

Pravila o imenovanju članova odbora i drugih čelnika kompanija u energetske državnim preduzećima Jugoistočne Evrope također su nejasna, posebno kada se razmatra potencijalni politički uticaj. Brojni su primjeri političkog uplitanja u imenovanja upravnih odbora u državnim preduzećima Jugoistočne Evrope i regulatornim tijelima, što je narušilo profesionalnu stručnost u planiranju i izvršavanju teških odluka u energetske sektoru. Stoga su poslovne aktivnosti državnih preduzeća često pod uticajem ili bi čak mogle služiti interesima kompanija ili pojedinaca s jakim političkim vezama, na štetu finansijskog učinka državnih preduzeća.

## Nedostaci u upravljanju javnom nabavkom u energetske sektoru

Energetski sektor pokazuje posebno jake deficite upravljanja u javnim nabavkama. Neki od tih nedostataka podudaraju se s opštim rizicima nabavke, o kojima se raspravljalo iznad, no neki su još izraženiji i/ili jedinstveni za sektor zbog njihove veličine, statusa prirodnog monopola i tehničke složenosti.

## Put naprijed

Uprkos kontinuiranom neujednačenom napretku, zemlje Jugoistočne Evrope suočavaju se sa značajnim izazovima dobrog upravljanja, koji su otežani unutrašnjim i vanjskim autoritarnim prijetnjama. Regija će i dalje imati koristi od rastuće značajne finansijske i tehničke potpore demokratske zajednice zemalja unutar EU, Evropskog ekonomskog prostora (EEA) i SAD-a. Način na koji će svaka zemlja koristiti takvu potporu za napredak na putu demokratizacije i borbe protiv korupcije u konačnici ovisi o naporima njenih građana/ki, preduzeća i vlada. Zemlje Jugoistočne Evrope EU moraju pomno slijediti svoje obaveze u okviru Mehanizma vladavine prava, kao i Evropskog semestra, te, u skladu s tim, ulagati velike fiskalne poticaje koje pruža Instrument za oporavak i otpornost i Višegodišnji finansijski okvir za period 2021 – 2027. Sve četiri zemlje EU moraju prevladati prepreke u upravljanju, ali posebno Bugarska i Mađarska moraju raditi na povećanju učinkovitosti pravosuđa i dekoncentraciji moći u izvršnoj vlasti. Zemlje Jugoistočne Evrope i Zapadnog Balkana moraju nezavisno raditi na provođenju reformi potrebnih u okviru pregovaračkih poglavlja EU, čak i ako je formalno proces proširenja možda bio blokiran, kao u slučaju Albanije i Sjeverne Makedonije. Srbija se suočava s posebnim izazovima s obzirom na svoje bliske veze i ovisnost o autoritarnim režimima.

Opšti izazovi dobrog upravljanja često se svode na rješavanje dva međusobno povezana sistema u nacionalnim ekonomijama Jugoistočne Evrope: javne na-

bavke i upravljanja energetske državnim preduzećima. Na temelju detaljnog pregleda iznesenog u ovom izvještaju, moglo bi se navesti nekoliko ključnih preporuka za ove dvije domene:

- EU i njeni partneri iz EEA i SAD-a trebaju nastaviti pružati tehničku pomoć u uvođenju dobrih praksi EU u javnim nabavkama kako u upravljanju fondovima EU za regiju, tako i u upravljanju nacionalnim resursima. Posebnu pažnju potrebno je posvetiti povećanju kombinovanog kapaciteta i zajedničkog rada regulatornih tijela za borbu protiv korupcije i javnih nabavki u izvršnoj vlasti, državnom tužilaštvu i sudovima.
- Vlade Jugoistočne Evrope trebale bi štititi integritet javnih nabavki kroz pojačano praćenje procesa javnih nabavki (kao što je Opentender ili SCAD alat), povećanu institucionalnu učinkovitost, smanjen udio zatvorenih postupaka i poboljšane mehanizme dodjele ugovora. Zemlje Zapadnog Balkana trebaju otvoriti svoje podatke o nabavki kako bi omogućile bolju dijagnostiku i kontrolu, dok zemlje članice EU iz Jugoistočne Evrope trebaju nastaviti graditi kapacitete za prepoznavanje i suzbijanje crvenih zastavica za korupciju u javnim nabavkama.
- Nacionalne vlade trebale bi povući COVID-19 pravila o vanrednim nabavkama tako što će se preusmjeriti na izvorno zakonodavstvo o nabavkama. Hitna potrošnja u budućnosti trebala bi biti popraćena ugrađenim jačim naknadnim praćenjem i ocjenom učinkovitosti.
- Vlade Jugoistočne Evrope, državna preduzeća i poslovna udruženja trebaju usvojiti i primjenjivati najbolje međunarodne standarde o korporativnom upravljanju preduzećima u državnom vlasništvu u energetske sektoru, poput onih koje je razvio OECD. Državna preduzeća moraju nastojati izvještavati prema sličnim ili višim standardima korporativnog otkrivanja od njihovih privatnih vršnjaka kojima se javno trguje u EU.
- Parlamenti i vlade Jugoistočne Evrope moraju unaprijediti nezavisnost nacionalnih regulatora za energiju i tržišno konkurisanje povećanjem njihovih administrativnih i finansijskih kapaciteta i onemogućavanjem političkih imenovanja. Također bi trebalo uvesti kraće mandate članovima odbora. Energetski regulatori Jugoistočne Evrope moraju blisko sarađivati sa svojim kolegama iz EU na uspostavljanju zajednice praksi. Odluke regulatora moraju se pridržavati najviših standarda javnog objavljivanja informacija.
- Vlade Jugoistočne Evrope trebale bi se suzdržati od ulaska u velike bilateralne energetske projekte bez odgovarajućih zaštitnih mjera, koje bi kao minimum mogle sadržavati uključivanje međunarodnih javnih finansijskih institucija, kao što su EIB, EBRD ili Svjetska banka. Takvi projekti, u pravilu, trebaju uključivati sistem otkrivanja informacija viših standarda od onih koji tipično prevladavaju u zemljama Jugoistočne Evrope. Takav bi sistem također trebao biti javno objavljen na vrijeme, pružajući informacije o velikim energetske infrastrukturnim projektima i uključujući detaljnu analizu troškova i koristi.
- Nacionalne vlade moraju sarađivati s Evropskom komisijom, državama članicama EU i EEA te SAD-om kako bi uvele bolju zaštitu svojih ekonomija od nezakonitih ili korozivnih fondova povezanih s autoritarnim zemljama. Ova zaštitna mjera trebala bi uključivati uvođenje boljih institucija i propisa u vezi s mehanizmima provjere ulaganja i nadzora sankcija.
- Vlade Jugoistočne Evrope i njihovi partneri iz EU/EEA i SAD-a trebaju izgraditi održive modele interakcije s nacionalnim i lokalnim civilnim društvom i istraživačkim medijima u pogledu povećanja praćenja javnih nabavki i energetske državnih preduzeća. Iskustvo korištenja platforme R2G4P<sup>307</sup> može informisati o takvim naporima na regionalnom nivou. Postoje već modeli javne potpore organizacijama civilnog društva u cijeloj regiji, ali oni su ili u ranim počecima ili često izazivaju strah među organizacijama civilnog društva i medijima o kompromitovanju njihove nezavisnosti.

<sup>307</sup> Regionalna platforma javno-privatnog partnerstva (R2G4P) trogodišnja je pilot-inicijativa koju su podržali EEA i Norveški fond za regionalnu saradnju, a koja okuplja napore trinaest organizacija iz deset zemalja i ima za cilj pružiti zajednička antikorupcijska rješenja za povećanu odgovornost državnih institucija i jačanje civilnog društva i vladavine prava u Jugoistočnoj Evropi.

# РЕЗЮМЕ

Принципите на доброто управление продължават да се сблъскват с нарастващ брой предизвикателства в Югоизточна Европа (ЮИЕ). Войната в Украйна ярко показва как предизвикателствата пред върховенството на закона в региона подкопават не само икономическото му развитие, но и единството и устойчивостта на ЕС спрямо външни авторитарни заплахи. Новите държави – членки на ЕС от региона са сред най-големите нетни получатели на европейско финансиране. Тези страни обаче продължават да се характеризират с отстъпление от демокрацията и наличие на корупция, въпреки продължаващите обществени протести, недоволство и въвеждането на конкретни мерки от страна на ЕС и САЩ за справяне с тези предизвикателства. Такива стъпки включват Механизма за сътрудничество и проверка, чрез който се наблюдават антикорупционните и съдебните реформи в България и Румъния след присъединяването им през 2007 г., много по-строгите изисквания за върховенство на закона при присъединяването на Хърватия през 2013 г., санкциите на САЩ по Глобалния закон „Магнитски“ в България през 2021 г. и задействането на новоразработените наказателни процеси за замразяване на средствата на ЕС за Унгария през 2022 г. Страните от Западните Балкани, които се стремят да се присъединят към ЕС, са изправени пред още по-сериозни предизвикателства в областта на управлението. В съчетание с умората от разширяването, това доведе до непрекъснато забавяне на перспективите за присъединяване към ЕС, нарастващо обществено недоволство и повтарящи се недемократични тенденции. Продължаващите пропуски в управлението в ЮИЕ бяха допълнително изострени от пандемията COVID-19 и войната на Кремъл в Украйна.<sup>308</sup> Докладът за добро управление в Югоизточна Европа има за цел да осигури по-задълбочено разбиране на тези предизвикателства и да проправи пътя за ефективни антикорупционни реформи в

<sup>308</sup> Стефанов, Р. и Владимирова, М., *Кремълският наръчник в Югоизточна Европа: Икономическо влияние и остра сила*, София: Център за изследване на демокрацията, 2020.

девет държави – четири държави членки (България, Хърватия, Унгария, Румъния) и пет, които се стремят към членство в ЕС – Албания, Босна и Херцеговина, Северна Македония, Черна гора и Сърбия. Тазгодишният доклад се фокусира върху две от най-силно изразените слабости на управлението в региона: обществените поръчки и управлението на държавните предприятия в енергийния сектор.

## Интегритет на обществените поръчки

Обществените поръчки представляват значителна част от БВП, както в икономиките с високи, така и в тези с ниски доходи. В целия свят те съставляват от 15 до 30% от БВП. Този огромен обем публични разходи може да играе решаваща роля за икономическия и социалния напредък, ако се разпределя ефективно. Същевременно това е и една от най-уязвимите на корупция дейности на правителството.<sup>309</sup> Според Службата на ООН по наркотиците и престъпността, от 10 до 25% от общата стойност на дадена обществена поръчка може да бъде загубена поради съмнителни практики.<sup>310</sup> Макар корупцията при обществените поръчки да приема множество форми, съществува ясно определен набор от корупционни техники, които се използват активно в Югоизточна Европа за присвояване на публични средства за лична облага.

- **Фаворизиране и клиентелизъм.** Една от най-разпространените форми на нередности при възлагането на обществени поръчки в региона е преференциалното третиране на дружества заради добрите политически връзки на техните собственици. В Хърватия например около

<sup>309</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for - a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>310</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.



половината от общата стойност на договорите се печелят от участници в търгове, които не са частни субекти, а дружества, частично или изцяло притежавани от държавата.<sup>311</sup> Много частни дружества в региона, чиито собственици са тясно свързани с високопоставени политици, печелят обществени поръчки, разработени специално за тях. Друг пример е Унгария, в която през последните 11 години управляващата партия създаде нов икономически елит, чиито корпорации получават големи субсидии в сектори като туризма.<sup>312</sup>

- **Сервъхвисока цена на договорите.** Завишаването на договорните цени е друга преобладаваща форма на измама с обществени поръчки, основана на фаворизиране. Тя включва по-широк спектър от възлагащи органи и доставчици. В Унгария 90% от обществените поръчки са надценени средно с 25%.<sup>313</sup> По подобен начин в Северна Македония различни разследвания установяват големи разлики между пазарните цени и цените на договорите за продукти с идентични характеристики.<sup>314</sup>
- **Специално разработени тръжни спецификации.** Често срещана корупционна техника е създаването на прекалено специфични изисквания за търга, които отговарят на квалификацията и опита на само една определена фирма.
- **Конфликт на интереси в тръжната процедура.** Случаите на конфликт на интереси на „високо ниво“ не са рядкост през последните години в Сърбия и зачестиха още повече след

началото на пандемията COVID-19.<sup>315</sup> В България конфликтът на интереси се материализира във възлагането на вътрешни (in-house) процедури,<sup>316</sup> при които бюджетни средства са били предоставени без търг на държавно предприятие. Предприятието, вместо да извършва всички дейности вътрешно, както е предвидено от закона, след това сключва договори с частни дружества, предварително избрани в несвързани процедури. Тази практика, базирана на вътрешни поръчки, е достигнала 4,4 млрд. евро, или над 42% от стойността на всички обществени поръчки, възложени от държавата през 2019 – 2020 г.<sup>317</sup>

- **Висок дял на закритите процедури.** Съществуват няколко основателни причини за използване на закрити или ограничени процедури за възлагане на обществени поръчки, например ако разкриването на съдържанието на офертата би представлявало риск за националната сигурност или ако стойността на офертата е достатъчно малка, за да не представлява значителен корупционен риск. Независимо от това, възлагащите органи в Югоизточна Европа често злоупотребяват с ограничените процедури в случаи, в които те не са необходими.
- **Изменение на договора във фазата на изпълнение.** Неправителствените организации (НПО) от региона съобщават за злонамерена практика на последващи изменения на договорите, в резултат на които цената се вдига много по-високо от първоначалните очаквания. Тези модификации са трудни за проследяване поради ограничената информация, публикувана на повечето официални уебсайтове за обществени поръчки.<sup>318</sup>

<sup>311</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>312</sup> András, B., „Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát” [Шокиращо: правителството е предоставило две трети от субсидиите за туризъм на половината от кандидатите], *valaszonline.hu*, 26 February 2021.

<sup>313</sup> Ligeti, M. et al., *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben* [Корупция, икономически резултати и върховенство на закона в Унгария: Резултати от Индекса за възприятие на корупцията през 2019 г.], TI Hungary, 2019.

<sup>314</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>315</sup> Centar za primenjenu evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine* [Тревожен доклад за ситуацията с обществените поръчки в Сърбия през 2020 г.], CPES, November 2020.

<sup>316</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>317</sup> Соколова, Ц., „Службеният кабинет спира харченето на милиарди без обществени поръчки”, *Mediapool.bg*, 30 юни 2021.

<sup>318</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data - An Implementer's Guide*, 2015.

## Промени в правилата на обществените поръчки поради COVID-19 и прекомерно използване на спешни процедури

Пандемията увеличи броя на „спешните“ процедури, с които се заобикаля обичайното законодателство в областта на обществените поръчки. Количествената оценка на пазара на обществени поръчки показва, че пандемията е довела до цялостен спад в интегритета на обществените поръчки, особено на най-засегнатите – пазарите на здравни услуги и други продукти, свързани с COVID-19. Тези проблеми бяха илюстрирани със станалата известна „афера с респиратори“ в Босна и Херцеговина.<sup>319</sup> В Хърватия списъкът на стоките и услугите, за които могат да се използват споразумения за пряко възлагане, се пази в тайна до декември 2020 г. Списъкът беше публикуван само поради значителния натиск от страна на широката общественост.<sup>320</sup> В Унгария по време на извънредното положение министър-председателят имаше правомощието да реши кои процедури са свързани с пандемията COVID-19 и следователно могат да бъдат закупени чрез пряко възлагане.<sup>321</sup>

## Риск от корупция при обществените поръчки в сектора на здравеопазването

Анализът на големи масиви от данни за целите на настоящия доклад показва, че между първото тримесечие на 2017 г. и второто тримесечие на 2021 г. пазар-

<sup>319</sup> Katavić, I., „Afera ‘Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i“ [„Респиратори“: Премиерът на БиХ Фадил Новалич е задържан в SIPA], *Slobodnaevropa.org*, 28 май 2020; Radiosarajevo.ba, „Afera Respiratori: Novalić i drugi optuženi stigili na novo ročište“ [Респиратори: Новалич и други обвиняеми пристигат за ново изслушване], 17 ноември 2021.

<sup>320</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave“ [Мостът изисква медицинското оборудване да се закупува чрез процедура за възлагане на обществена поръчка], 9 декември 2020; Правительство на Хърватия, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa* [Доклад относно закупуването на защитно оборудване за целите на прилагането на мерки за опазване на здравето и засилване на контрола върху разпространението на коронавируса], Министерство на икономиката и устойчивото развитие, Дирекция „Стокови запаси“, 2020.

<sup>321</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben* [Становище на Органа за обществени поръчки относно някои въпроси, свързани с обществените поръчки във връзка с извънредната ситуация с оглед на разпространението на коронавируса], 2020.

ният *Индекс на корупционния риск* (CRI) на COVID-19<sup>322</sup> се е увеличил с около 10 процентни пункта в Румъния и Хърватия.<sup>323</sup> Увеличението е било временно и е последвано от бавен, но стабилен спад. Анализът на големите масиви от данни разкрива също, че през последната година и половина средната зависимост на купувачите в секторите на здравеопазването е нараснала значително в Унгария, както и леко в Хърватия, в сравнение с периода 2017 – 2020 г. Нещо повече, завладените от частни интереси държавни възложители са предоставили не само по-голям дял, но и по-висока стойност на публичните средства на предпочитаните от тях доставчици.

## Управление на държавните предприятия в енергийния сектор

Енергийният сектор предизвиква един от основните системни проблеми на управлението, които водят до значителни загуби на обществени ресурси<sup>324</sup> и предоставя възможности за незаконно финансиране и чуждестранно авторитарно влияние в региона.<sup>325</sup> Енергийният сектор е от решаващо значение за Югоизточна Европа поради статута му на естествен монопол (често притежаван от държавата), социалната чувствителност на населението към повишаването на цените (както показаха протестите в целия регион през последното десетилетие), както и големите инвестиции и финансовите интереси, свързани с него. *Диагностичната оценка на завладяването на държавата* (State Capture Assessment Diagnostics – SCAD) определя сектора като силно уязвим към монополизация.<sup>326</sup> Страните

<sup>322</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>323</sup> See GTI's *Global Government Contracts database*, 19 July 2021.

<sup>324</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>325</sup> Владимирова, М и др., *Руският икономически отпечатък в Западните Балкани: Рискове от корупция и завладяване на държавата*, София: Център за изследване на демокрацията, 2018.

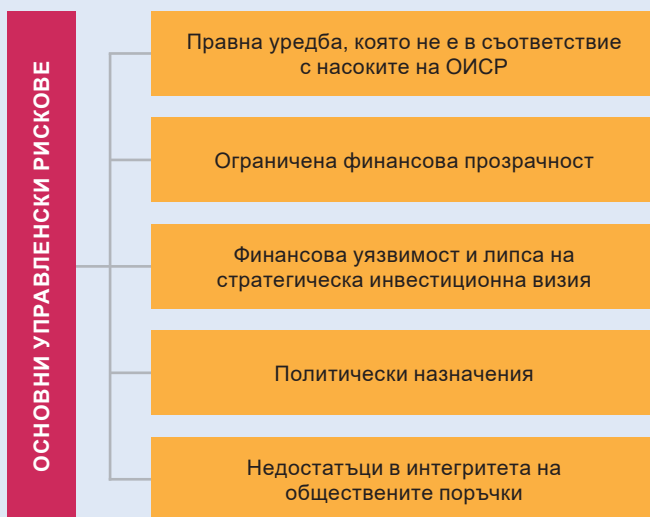
<sup>326</sup> На база данни за България, Румъния, Италия и Испания. За повече информация: Стоянов, А., Герганов, А., и Ялъмов, Т., *Диагностична оценка на завладяването на държавата*, София: Център за изследване на демокрацията, 2019. Виж още: Шентов, О., Стефанов, Р., и Тодоров, Б., (ред.), *Западните Балкани през 2020: рискове от завладяване на държавата и политически реформи*, SELDI, 2021.



от Югоизточна Европа са често обвинявани в блокиране на либерализацията на газовия пазар в полза на местните олигархични корпоративни мрежи и в полза на контролираните от Кремъл доставчици на газ. По този начин, ако не се управлява правилно, секторът може да подкопае независимостта и развитието на страните от региона.

Дефицитът на публична отчетност в държавните енергийни предприятия е видим в редица случаи, разкрити от разследващи медийни репортажи, доклади на гражданското общество или одити на публичните органи в региона на Югоизточна Европа. Тези проблеми допринасят за създаването на социално-политическа среда, в която се допуска лошо финансово управление в държавните енергийни предприятия и се вземат неефективни или вредни инвестиционни решения. Липсата на солидна правна рамка е ключов фактор, който позволява ограничената финансова прозрачност и широко разпространената политическа намеса в ежедневно управление на държавните предприятия.

#### Основни рискове за управлението на държавните предприятия в енергийния сектор



Източник: Център за изследване на демокрацията, 2022 г.

### Прозрачност

Регулаторната рамка на корпоративното управление в региона все още е в процес на разработване, въпреки че през последните години бяха направени някои подобрения. Правната рамка, регулираща управлението на държавните

енергийни предприятия в Западните Балкани, не е в съответствие с *Насоките на ОИСР за корпоративно управление на държавните предприятия*.<sup>327</sup> Държавите – членки на ЕС се представят по-добре по отношение на приложимите закони, но тяхното прилагане остава ограничено и бавно.<sup>328</sup> Компаниите в по-лошо финансово състояние са по-малко прозрачни. Един от начините за подобряване на прозрачността им е да станат публични, както е случаят с Romgaz и Hidroelectrica в Румъния. Друг положителен пример е, че MOL Group, дружество, чиито акции се търгуват на борсата в Унгария, публикува своите финансови отчети и разкрива размера на акциите, които притежава всеки член на управителния съвет.<sup>329</sup> Въпреки това, прозрачността на финансовите данни остава особено слаба в Западните Балкани.<sup>330</sup>

### Финансова уязвимост

Държавните предприятия в енергетиката в деветте изследвани държави показват различна степен на финансова уязвимост, която се разкрива от голямата им задлъжнялост, както и от ниската ликвидност и спадащото съотношение на текущите активи към текущите пасиви. Тези финансови затруднения са особено ясно изразени при дружествата, базирани на изкопаеми горива, които се опитват да се справят с постоянно нарастващите цени на CO<sub>2</sub>, въглицата и природния газ. Усилията на правителството да поддържа изкуствено ниски цени на енергията, за да избегне социална реакция, са за сметка на финансовото здраве и политическата независимост на държавните предприятия, както и на безпристрастността на регулаторните органи. Ниското качество на финансовото управление често е свързано с: а) прекомерна численост на персонала; б) прекале-

<sup>327</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>328</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

<sup>329</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

<sup>330</sup> Шентов, О., Стефанов, Р., и Тодоров, Б., (ред.), *Скрита власт: оценка на корупцията и скритата икономика в Югоизточна Европа*, SELDI, 2016.

но щедри възнаграждения; и в) лошо управление на обществените поръчки. Разгръщащата се от втората половина на 2021 г. насам криза с цените на енергията в Европа, която започна с недостига на газ и продължи с войната в Украйна, вероятно ще изостри допълнително уязвимостта, въпреки неочакваните печалби за някои дружества.

Дългогодишната зависимост на Югоизточна Европа от вноса на изкопаеми горива от Русия, съчетана с историческата зависимост от собствеността, технологиите и управлението и дълбоки (и често много непрозрачни) финансови връзки, допълнително изостри уязвимостта на държавните енергийни сектори. На практика някои от най-големите инвестиционни проекти в региона са резултат от междуправителствени споразумения с държави извън ЕС, най-вече с Русия. Воденият от Русия проект TurkStream<sup>331</sup> е ярък пример за това. Засягайки пряко България, Сърбия и Унгария, а косвено – целия регион и Европа, той се възползва и допринася за по-нататъшното отслабване на институциите, определящи енергийната политика, и за утвърждаването на олигархични мрежи за влияние на руски и местни частни интереси, тясно свързани с правителството. Китай, въпреки че е нов играч, въведе своя собствена инвестиционна рамка в региона, по-специално в Западните Балкани, Хърватия и Унгария, създавайки предпоставки за по-нататъшно напрежение при последваща интеграция на тези страни в ЕС. Китайските инвестиции, макар и добре дошли от гледна точка на разходите, често не са съобразени с техническата стандартизация на ЕС и/или с достиженията на европейското право в областта на конкуренцията и обществените поръчки. Те също така създават, подобно на Кремъл, ерозия на демократичните и пазарните стандарти поради тайния си и непрозрачен характер. В много случаи такива проекти укрепват националните възгледни индустрии, пренебрегват екологичните разпоредби или не са съобразени с цялостната политика на декарбонизация и устойчив растеж.<sup>332</sup>

<sup>331</sup> Стефанов и Владимир, *Кремълският наръчник в Югоизточна Европа: Икономическо влияние и остра сила*, София: Център за изследване на демокрацията, 2020.

<sup>332</sup> Герганов, А. и Владимир, М., *Китайското икономическо влияние в Европа: Рискове пред доброто управление и климата*, София: Център за изследване на демокрацията, 2021.

### Общи зависимости в дейността на държавните предприятия



Източник: Център за изследване на демокрацията, 2022 г.

### Назначаване на изпълнителни директори и членове на управителните съвети

Правилата за назначаване на членове на управителните съвети и други ръководни длъжности в държавните енергийни предприятия в Югоизточна Европа също са неясни, особено като се има предвид риска от политическо влияние. Има многобройни примери за политическа намеса при назначаването на управителните съвети в държавните енергийни предприятия от региона и в регулаторните органи, което подкопава професионализма при планирането и изпълнението на трудни решения в енергийния сектор. В резултат, бизнес дейностите на държавните предприятия често са повлияни или дори обслужват интересите на дружества или лица със силни политически връзки за сметка на финансовите си резултати.

### Пропуски в управлението на обществените поръчки в енергийния сектор

В енергийния сектор се наблюдават особено големи дефицити в управлението на обществените поръчки. Някои от тези дефицити съвпадат с общите рискове в обществените поръчки, разгледани по-горе. Някои от тях обаче са още по-изразени и/или уникални за сектора поради неговия размер, статут на естествен монопол и техническа сложност.

## Наблюдавани нередности при обществените поръчки в енергийния сектор

| Преди процедурата по избор на изпълнител  | По време на процедурата по избор на изпълнител   | След процедурата по избор на изпълнител  |
|---|--|--|
| <ul style="list-style-type: none"> <li>• дружество, създадено единствено с цел спечелване на конкретен търг (без предишен опит)</li> <li>• спецификациите на търга са „пригодени“ за конкретна фирма</li> <li>• предоставяне на вътрешна информация</li> <li>• нереалистично кратки срокове</li> <li>• създаване на изкуствена конкуренция (представяне на оферти от фалшиви конкуренти)</li> <li>• отпускане на средства за необосновани инвестиции</li> <li>• завишаване на цената на договора</li> </ul> | <ul style="list-style-type: none"> <li>• конфликт на интереси, политическо влияние или подкупване на комисията за оценка</li> <li>• избягване на използването на процедури за възлагане на обществени поръчки чрез: <ul style="list-style-type: none"> <li>• пряко договаряне</li> <li>• намаляване на цената под праговете</li> <li>• използване на спешни процедури</li> </ul> </li> <li>• вписване на конкретни проекти като предварително определени за финансиране в националните документи за планиране</li> <li>• използване на рамкови споразумения в полза на големите пазарни участници</li> </ul> | <ul style="list-style-type: none"> <li>• анулиране на тръжни процедури и дисквалифициране на конкуренти</li> <li>• промени в тръжните условия чрез анекси</li> <li>• заплащане на услуги/оборудване, които не отговарят на минималните изисквания</li> <li>• липса на разследване на високопоставени длъжностни лица и бизнесмени, свързани с определен договор</li> </ul> |

Източник: Център за изследване на демокрацията, 2022 г.

## Пътят напред

Въпреки продължаващия неравномерен напредък, страните от Югоизточна Европа са изправени пред значителни предизвикателства, свързани с доброто управление, които се усложняват от вътрешни и външни авторитарни заплахи. Регионът може да продължи да се възползва от нарастващата значителна финансова и техническа подкрепа от страна на демократичната общност на страните от ЕС, Европейското икономическо пространство (ЕИП) и САЩ. Начинът, по който всяка страна ще използва тази подкрепа, за да напредне по пътя на демокрацията и борбата с корупцията, зависи в крайна сметка от усилията на нейните граждани, предприятия и правителство. Държавите – членки на ЕС от Югоизточна Европа трябва да следват стриктно ангажиментите си по механизма за върховенство на закона, както и по европейския семействър, и да инвестират съответно огромния фискален стимул, осигурен от Механизма за възстановяване и устойчивост и многогодишната финансова рамка за периода 2021 – 2027 г. И четирите държави от ЕС трябва да преодолеят пречките в управлението. По-специално България и Унгария трябва да работят за повишаване на ефективността на съдебната система и съответно за намаляване на прекомерните правомощия на изпълнителната власт. Страните от Западните Балкани трябва да работят за провеждане на необ-

ходимите реформи в рамките на преговорните глави на ЕС, дори ако формално процесът на разширяване е бил блокиран, както в случая с Албания и Северна Македония. Сърбия е изправена пред още по-специфични предизвикателства, предвид тесните си връзки и зависимости от авторитарни режими.

Общите предизвикателства пред доброто управление често се свеждат до справяне с две взаимосвързани системи в националните икономики на страните от Югоизточна Европа: обществените поръчки и управлението на държавните предприятия в областта на енергетиката. Въз основа на задълбочения преглед, представен в настоящия доклад, могат да се очертаят няколко ключови препоръки за политиката в тези две области:

- ЕС и неговите партньори от ЕИП и САЩ трябва да продължат да предоставят техническа помощ за интегриране на добрите практики на ЕС в областта на обществените поръчки – както в управлението на средствата на ЕС за региона, така и в управлението на националните ресурси. Особено внимание трябва да се обърне на повишаването на комбинирания капацитет и съвместната работа на антикорупционните и регулаторните органи в областта на обществените поръчки в изпълнителната власт, прокуратурата и съдилищата.

- Правителствата на държавите от региона следва да гарантират интегритета на обществените поръчки чрез техния засилен мониторинг (като например инструмента Open Tender или SCAD), повишена институционална ефективност, намален дял на затворените процедури и подобрени механизми за възлагане. Страните от Западните Балкани трябва да отворят данните си за обществените поръчки, с цел извършване на по-добра диагностика и контрол, а държавите – членки на ЕС от Югоизточна Европа, трябва да продължат да изграждат капацитет за идентифициране и справяне с рисковите зони (т.нар. „червени флагове“) за корупция при обществените поръчки.
- Националните правителства трябва да отеглят извънредните правила, въведени в началото на COVID-19, като се върнат към първоначалното законодателство в областта на обществените поръчки. Допълнителните разходи в бъдеще следва да бъдат съпроводени от по-строг последващ мониторинг и оценка на ефективността.
- Правителствата на държавите от Югоизточна Европа, държавните предприятия и бизнес асоциациите следва да приемат и прилагат най-добрите международни стандарти за корпоративно управление на държавните предприятия в енергийния сектор, като например тези, разработени от ОИСР. Държавните енергийни предприятия от региона трябва да се стремят да разкриват информация по сходни или по-високи стандарти, отколкото публично търгуваните частни дружества в ЕС.
- Парламентите и правителствата на страните от Югоизточна Европа трябва да подобрят независимостта на националните регулатори в областта на енергетиката и конкуренцията, като увеличат техния административен и финансов капацитет и премахнат политическите назначения. Следва да се въведат и по-кратки мандати на членовете на управителните съвети. Енергийните регулатори от региона трябва да работят в тясно сътрудничество със своите колеги от ЕС за създаване на общност, базирана на добри практики. Решенията на регулаторите трябва да се съобразяват с най-високите стандарти за публично оповестяване на информация.
- Правителствата също така следва да се въздържат от участие в мащабни двустранни енергийни проекти без подходящи гаранции, които като минимум биха могли да включват участието на международни публични финансови институции, като ЕИБ, ЕБВР или Световната банка. Такива проекти по правило трябва да включват система за разкриване на информация с по-високи стандарти от обичайно преобладаващите в страните от Югоизточна Европа. Така например, трябва своевременно да се предоставя информация относно мащабни проекти за енергийна инфраструктура, включително подробен анализ на разходите и ползите.
- Правителствата от Югоизточна Европа трябва да си сътрудничат с Европейската комисия, държавите – членки на ЕС и ЕИП и САЩ за въвеждане на по-добра защита на икономиките им от незаконни или корозивни фондове, свързани с авторитарни държави. Тази защита следва да включва въвеждането на по-добри институции и разпоредби по отношение на механизмите за проверка на инвестициите и мониторинг на санкциите.
- Правителствата и техните партньори от ЕС/ЕИП и САЩ трябва да изградят устойчиви модели на взаимодействие с националното и местното гражданско общество и разследващите медии, за да засилят наблюдението на обществените поръчки и държавните енергийни предприятия. Опитът на платформата R2G4P<sup>333</sup> може да даде информация за тези усилия на регионално равнище. В региона вече съществуват модели на публична подкрепа за организациите на гражданското общество, но те или са в начален стадий на развитие, или често предизвикват опасения сред НПО и медиите за компрометиране на тяхната независимост.

<sup>333</sup> Регионалната платформа за публично-частно партньорство за добро управление (R2G4P) е тригодишна пилотна инициатива, подкрепена от ЕЕА и Норвежкия фонд за регионално сътрудничество, която обединява усилията на тринадесет организации от десет държави и има за цел да предостави общи антикорупционни решения за повишаване на отчетността на държавните институции и укрепване на гражданското общество и върховенството на закона в Югоизточна Европа.

# PROŠIRENI SAŽETAK

Načela dobrog upravljanja (*governance*) i nadalje se suočavaju sa sve većim brojem izazova u regiji jugoistočne Europe. Rat u Ukrajini jasno je pokazao kako izazovi vladavine prava u regiji potkopavaju ne samo njezin gospodarski razvoj nego i jedinstvo i otpornost EU-a u odnosu na vanjske autoritarne prijetnje. Nove zemlje članice EU-a iz regije među najvećim su neto primateljima sredstava EU-a. Ipak, nazadovanje demokracije i jačanje korupcije i nadalje ozbiljno muče njihova društva, unatoč konstantnomu negodovanju javnosti i prosvjedima te uvođenju konkretnih koraka EU-a i SAD-a za rješavanje ovih izazova. Navedeni koraci uključivali su Mehanizam suradnje i provjere za praćenje antikorupcijskih i pravosudnih reformi u Bugarskoj i Rumunjskoj nakon njihova pristupanja EU-u 2007., mnogo oštrije zahtjeve vladavine prava za pristupanje Hrvatske 2013., američke sankcije prema Globalnome zakonu Magnitskoga u Bugarskoj u 2021. te pokretanje novoosmišljenih kaznenih procesa za zamrzavanje fondova EU-a za Mađarsku 2022. Zemlje zapadnoga Balkana, koje se nastoje pridružiti EU-u, izložene su još većim izazovima upravljanja. Zajedno s određenim zamorom od proširenja EU-a, to je rezultiralo stalnim odgađanjem izgleda za njihovo pristupanje, naraslim nezadovoljstvom građana u njihovim društvenim i nedemokratskim tendencijama koje se iznova javljaju. Trajni nedostaci u upravljanju diljem jugoistočne Europe dodatno su pogoršani pandemijom COVID-19 i ruskim napadom na Ukrajinu<sup>334</sup>. Izvještaj o dobrom upravljanju u jugoistočnoj Europi (*SEE Good Governance Report*) nastoji omogućiti dublje razumijevanje ovih izazova i utrti put učinkovitim antikorupcijskim reformama u devet zemalja – četirima državama članicama i pet koje teže članstvu u EU-u – Bugarskoj, Hrvatskoj, Mađarskoj, Rumunjskoj te Albaniji, Bosni i Hercegovini, Sjevernoj Makedoniji, Crnoj Gori i Srbiji. Ovogodišnje izvješće usredotočuje se na dva oblika ranjivosti upravljanja koja se u regiji najviše ističu: javnu nabavu i upravljanje državnim poduzećima u energetske sektoru.

<sup>334</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in South-east Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

## Integritet javne nabave

Javna nabava ima značajan udio u BDP-u u zemljama i niskoga i visokoga dohotka. U svijetu ona čini 15 do 30 % BDP-a. Ako se učinkovito alocira, takav veliki opseg javne potrošnje može imati ključnu ulogu u gospodarskome i društvenome napretku. Ipak, to je i jedna od aktivnosti vlasti koje su najviše podložne korupciji.<sup>335</sup> Prema Uredu za droge i kriminal Ujedinjenih naroda (*United Nations Office on Drugs and Crime*), 10 do 25 % ukupne vrijednosti ugovora javnih nabava vjerojatno je izgubljeno zbog sumnjive prakse.<sup>336</sup> Iako korupcija u javnoj nabavi može imati različite oblike, postoji jasno definiran skup koruptivnih tehnika koje se aktivno koriste u jugoistočnoj Europi za izvlačenje javnoga novca za privatnu dobit.

- **Favoriziranje i klijentelizam.** Jedan od najčešćih oblika nepravilnosti u nabavi u regiji jest povlašteni tretman poduzeća zbog dobrih političkih veza njihovih vlasnika. Primjerice, u Hrvatskoj oko polovine ukupne vrijednosti ugovora osvoje ponuđači koji nisu privatni subjekti, već su poduzeća u djelomičnome ili potpunome vlasništvu države.<sup>337</sup> Mnoga privatna poduzeća diljem regije čiji su vlasnici usko povezani s visokopozicioniranim političarima pobjeđuju na javnim nabavama koje su gotovo isključivo kreirane za njih. Na primjer, u Mađarskoj je tijekom posljednjih 11 godina vladajuća stranka stvorila novu gospodarsku elitu čije korporacije primaju velike subvencije u sektorima poput turizma.<sup>338</sup>

<sup>335</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for - a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>336</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>337</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>338</sup> András, B., „Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát”, *valaszonline.hu*, 26. veljače 2021.



- **Precijenjena vrijednost ugovora.** Previsoke cijene ugovorâ još su jedan prevladavajući oblik prijevare u javnoj nabavi koja se temelji na favoriziranju. Taj oblik uključuje širi spektar naručitelja i dobavljača. U Mađarskoj je 90 % projekata javne nabave u prosjeku precijenjeno za 25 %.<sup>339</sup> Slično, u Sjevernoj Makedoniji istražni izvještaji otkrili su velike razlike između tržišnih cijena i ugovornih cijena nekih proizvoda s identičnim specifikacijama.<sup>340</sup>
- **Prilagođene specifikacije natječaja.** Česti je oblik korupcijske tehnike određivanje pretjerano specifičnih uvjeta javnoga natječaja koji odgovaraju isključivo obilježjima te stručnostima i znanjima jednog određenog poduzeća.
- **Sukob interesa u postupku javne nabave.** Slučajevi sukoba interesa „visoke razine” bili su česti proteklih godina u Srbiji, a postali su još učestaliji od početka pandemije COVID-19.<sup>341</sup> U Bugarskoj se sukob interesa očituje u internim procedurama (*in-house procedures*)<sup>342</sup>, u kojima su proračunska sredstva za državno poduzeće osigurana bez natječaja. Potonje, umjesto da sve aktivnosti obavlja interno, kako je predviđeno zakonom, podugovara s privatnim poduzećem koje je prije bilo odabrano u postupku koji nije vezan uz ovaj natječaj. Takvo lažno interno ugovaranje doseglo je 4,4 milijarde eura ili više od 42 % vrijednosti svih državnih ugovora ostvarenih javnom nabavom u razdoblju od 2019. do 2020.<sup>343</sup>
- **Visoki udio zatvorenih postupaka.** Postoji nekoliko vjerodostojnih razloga za korištenje zatvorenih ili ograničenih postupaka nabave, na primjer ako bi otkrivanje sadržaja natječaja predstavljalo rizik za nacionalnu sigurnost ili ako je vrijednost ponude dovoljno mala da ne stvara znatan rizik od korupcije.

Unatoč tome, naručitelji u jugoistočnoj Europi često se prekomjerno koriste ograničenim postupcima u slučajevima kada oni nisu potrebni.

- **Izmjena ugovora u fazi provedbe.** Organizacije civilnoga društva iz regije prijavljuju zlonamjernu praksu naknadnih izmjena ugovora, što rezultira znatno višom cijenom od početnih očekivanja. Te je izmjene teško pratiti zbog ograničenih informacija na većini službenih mrežnih stranica o javnoj nabavi.<sup>344</sup>

## Promjene u javnoj nabavi i pretjerana upotreba ubrzanih postupaka zbog COVID-19

Pandemija je povećala broj inherentno ograničenih „hitnih” postupaka koji zaobilaze uobičajeno zakonsko određenje javne nabave. Kvantitativna procjena slučajeva javnih nabava pokazuje da je takvo stanje uzrokovalo sveukupni pad integriteta toga postupka, posebice na najugroženijim tržištima – u zdravstvenoj zaštiti i proizvodima povezanim s COVID-om. Ovi su problemi jasno pokazani zloglasnom aferom „Respiratori” u Bosni i Hercegovini.<sup>345</sup> U Hrvatskoj je spisak dobara i usluga za koje bi se mogli koristiti ugovori o izravnoj nabavi čuvan u tajnosti do prosinca 2020. Popis je objavljen samo zbog znatnoga pritiska javnosti.<sup>346</sup> U Mađarskoj tijekom izvanrednoga stanja premijer je imao ovlast odlučivanja o tome koji su postupci povezani s pandemijom COVID-19, te se stoga moglo kupovati izravnim dogovaranjem.<sup>347</sup>

## Korupcijski rizik u sektoru zdravstvene zaštite vezan uz javnu nabavu

Analiza velikih skupova podataka (*big data analysis*) napravljena za ovaj izvještaj pokazala je da je između

<sup>339</sup> Ligeti, M. et al., *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben*, TI Hungary, 2019.

<sup>340</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>341</sup> Centar za primjenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine*, CPES, November 2020.

<sup>342</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>343</sup> Sokolova, T., „Службеният кабинет спира харченето на милиарди без обществени поръчки”, *Mediapool.bg*, 30. lipnja 2021.

<sup>344</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data - An Implementer's Guide*, 2015.

<sup>345</sup> Katavić, I., „Afera 'Respiratori': Premijer FBiH Fadil Novalić zadržan u SIPA-i,” *Slobodnaevropa.org*, 28. svibnja 2020; Radiosarajevo.ba, „Afera Respiratori: Novalić i drugi optuženi stigli na novo ročište”, 17. studenoga 2021.

<sup>346</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave”, 9. prosinca 2020; Croatian Government, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, Ministry of Economy and Sustainable Development Directorate for Commodity Stocks, 2020.

<sup>347</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben*, 2020.

prvoga tromjesečja 2017. i drugoga tromjesečja 2021. godine indeks korupcijskoga rizika (*Corruption Risk Index – CRI*)<sup>348</sup> na tržištu proizvoda i usluga vezanih uz COVID-19 povećan za oko 10 postotnih bodova u Rumunjskoj i Hrvatskoj.<sup>349</sup> Povećanje je bilo privremeno, a slijedio ga je polagan, ali stalan pad. Analiza velikih skupova podataka također otkriva da je u posljednjih godinu i pol dana prosječna ovisnost kupca (*average buyer dependence*) u zdravstvenome sektoru znatno porasla u Mađarskoj i neznatno u Hrvatskoj u odnosu na razdoblje od 2017. do 2020. Štoviše, *zarobljeni* naručitelji ne samo da su svojim favoriziranim dobavljačima osigurali veći udio nego i veću vrijednost javnih sredstava.

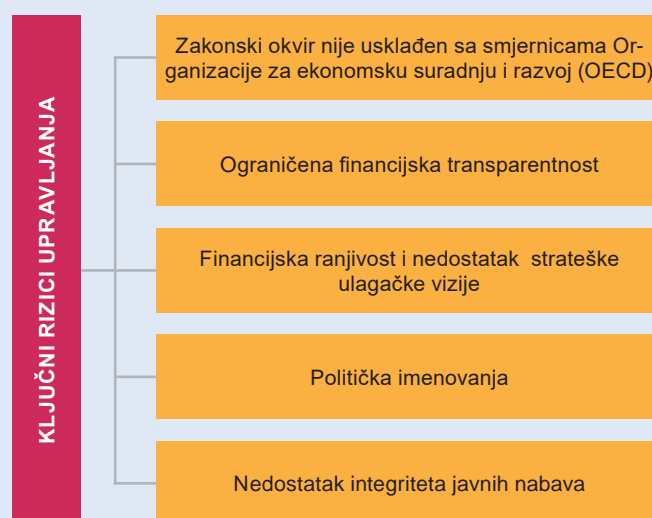
## Upravljanje državnim poduzećima u energetske sektoru

Energetski sektor jedan je od glavnih problema sustava upravljanja koji dovode do znatnih gubitaka općega bogatstva<sup>350</sup> te pružaju prilike za nezakonito financiranje i stvaranje utjecaja stranih autoritarnih vlasti u regiji.<sup>351</sup> Energetski sektor od presudne je važnosti za jugoistočnu Europu, zbog svojega statusa prirodnoga monopola (često u vlasništvu države), društvene osjetljivosti ljudi na povećanje cijena (kao što su pokazali prosvjedi diljem regije tijekom protekloga desetljeća) te velikih ulaganja i financijskih interesa. Dijagnostička procjena zarobljenosti države (*State Capture Assessment Diagnostics – SCAD*) identificira taj sektor kao jako podložan nastanku monopola.<sup>352</sup> Zemlje jugoistočne Europe više su puta optužene za navodno blokiranje liberalizacije tržišta plina u korist lokalnih oligarhijskih korporativnih mreža i u korist

dobavljača plina pod nadzorom ruske vlasti. Stoga, osim ako se njime pravilno ne upravlja, navedeni sektor može potkopati neovisnost i razvoj zemalja jugoistočne Europe.

Deficit javne odgovornosti (*public accountability*) u energetskim poduzećima u državnome vlasništvu vidljiv je u brojnim slučajevima otkrivenima u istraživačkim medijskim izvješćima, izvješćima organizacija civilnoga društva ili provedenim nadzorima državnih revizija u cijeloj regiji jugoistočne Europe. Ovi problemi pridonose društveno-političkomu okruženju u kojemu se dopušta narasla pojava lošega financijskog upravljanja u državnim poduzećima i provođenje neučinkovitih ili štetnih odluka o ulaganju. Nepostojanje čvrstoga zakonskog okvira ključni je čimbenik koji omogućava ograničenu financijsku transparentnost i široko rasprostranjeno političko miješanje u svakodnevno upravljanje državnim poduzećima.

### Ključni rizici upravljanja u energetske sektoru u poduzećima u državnome vlasništvu



Izvor: Center for the Study of Democracy, 2022.

## Transparentnost

U promatranoj regiji još uvijek je nedovoljno razvijen zakonodavni okvir korporativnoga upravljanja iako je bilo nekih poboljšanja zadnjih nekoliko godina. Zakonodavni okvir koji određuje upravljanje energetskim poduzećima u državnome vlasništvu u zemljama zapadnoga Balkana nije usklađen sa smjernicama Organizacije za ekonomsku suradnju i razvoj (*OECD Guidelines on Corporate Governance*

<sup>348</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>349</sup> See GTI's *Global Government Contracts database*, 19. srpnja 2021.

<sup>350</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>351</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy, 2018.

<sup>352</sup> Temelji se na podacima iz Bugarske, Rumunjske, Italije i Španjolske. Za više informacija pogledati Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019. Vidjeti također Shentov, O., Stefanov, R., and Todorov, B. (eds.) *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.



of State-Owned Enterprises).<sup>353</sup> Zemlje iz regije koje su članice EU-a uspješnije su u provedbi zakonâ iako njihova primjena ostaje ograničena i spora.<sup>354</sup> Poduzeća u lošijem financijskom stanju uglavnom su manje transparentna. Jedan od načina za poboljšanje njihove transparentnosti jest provedba inicijalne javne ponude (*initial public offering*), kao što je to bio slučaj s *Romgazom* i *Hidroelectricom* u Rumunjskoj. U drugome pozitivnom primjeru *MOL Grupa*, poduzeće koje kotira na burzi u Mađarskoj, objavljuje svoje financijske izvještaje i obznanjuje iznos dionica koje ima svaki član uprave.<sup>355</sup> Transparentnost financijskih podataka na zapadne Balkanu ostaje izuzetno loša.<sup>356</sup>

### Financijska ranjivost

Energetska poduzeća u državnome vlasništvu u devet zemalja obuhvaćenih ovom studijom pokazuju različite razine financijske ranjivosti, koja se prije svega očituje u njihovoj velikoj izloženosti zaduženosti i visokim omjerima duga kao i niskoj likvidnosti i opadajućim omjerima raspoložive gotovine. Te su financijske poteškoće bile posebno izražene u poduzećima čije se poslovanje temelji na fosilnim gorivima, a koja su imala poteškoća zbog stalnoga porasta cijena CO<sub>2</sub>, ugljena i prirodnoga plina. Napori vlada da održe cijene energije umjetno niskima kako bi se izbjegle društvene trzavice bili su na štetu financijskoga zdravlja i političke neovisnosti energetske poduzeća u državnome vlasništvu kao i nepristranosti nadležnih regulatornih tijela. Niska kakvoća financijskoga upravljanja često se očituje u: a) prevelikome broju zaposlenih; b) previsokome nagrađivanju zaposlenih; c) lošem upravljanju javnom nabavom. Kriza cijena energije koja se očituje u Europi od druge polovine 2021., započeta

nestašicom plina i nastavljena zbog Rata u Ukrajini, vjerojatno će dodatno pogoršati ranjivost, unatoč neočekivanim financijskim dobitcima za neka poduzeća.

Dugo prisutna ovisnost jugoistočne Europe o uvozu fosilnih goriva iz Rusije zajedno s tradicionalnom vlasničkom strukturom, ovisnošću o tehnološkome i upravljačkome nasljeđu i dubokim (i često vrlo mutnim) financijskim vezama dodatno je pogoršala ranjivost energetske sektora u državnome vlasništvu. U praksi, neki od najvećih investicijskih projekata u jugoistočnoj Europi rezultat su međudržavnih ugovora sa zemljama koje nisu članice EU-a, posebice s Rusijom. Ponajbolji primjer je „TurkStream”, projekt pod ruskim pokroviteljstvom.<sup>357</sup> Taj projekt, koji pogađa izravno Bugarsku, Srbiju i Mađarsku te neizravno cijelu regiju i Europu, pridonio je daljnjemu slabljenju državnih ustanova zaduženih za reguliranje energetske sektora i jačanju mreže oligarhijskoga utjecaja ruskih i lokalnih privatnih interesa i uskih veza s nositeljima. Kina, iako je novopridošlica, stvorila je vlastiti investicijski okvir u regiji, posebice na zapadne Balkanu, u Hrvatskoj i u Mađarskoj, stvarajući preduvjete za dodatne napetosti u daljnjoj integraciji ovih zemalja u EU. Kineska ulaganja, iako su dobrodošla što se tiče pokrivanja troškova, često nisu u skladu s tehničkim standardima EU-a i/ili s pravnom stečevinom EU-a o tržišnome natjecanju i javnoj nabavi. Ta su ulaganja zbog svoje tajne i mutne prirode također, slično kao i ruska, dovela do narušavanja demokratskih i tržišnih standarda. U mnogim slučajevima takvi projekti omogućavaju jačanje nacionalne industrije ugljena, zanemaruju odredbe o zaštiti čovjekove okoline ili nisu u skladu s ukupnom politikom dekarbonizacije i održivoga razvoja.<sup>358</sup>

<sup>353</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>354</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 58.

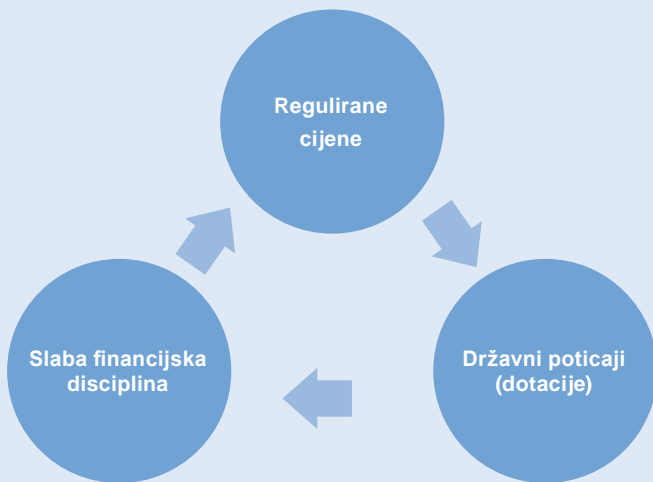
<sup>355</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

<sup>356</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>357</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.

<sup>358</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

**Uobičajena ovisnost o prijedenoj putu koja utječe na poslovanje poduzeća u državnome vlasništvu**



Izvor: Center for the Study of Democracy, 2022.

**Imenovanja najviših rukovoditelja i članova upravnih odbora**

Pravila za imenovanja najviših rukovoditelja i članova upravnih odbora energetskih poduzeća u državnome vlasništvu u jugoistočnoj Europi često su nejasna, posebice pri određivanju mogućega političkog utjecaja. Postoje brojni primjeri političkoga uplitanja u imenovanja članova upravnih odbora energetskih poduzeća u državnome vlasništvu u jugoistočnoj Europi i regulatornih tijela, što podriva profesionalnu ekspertizu u planiranju i provođenju složenih odluka u energetske sektoru. Stoga su poslovne aktivnosti poduzeća u državnome vlasništvu često pod utjecajem

poduzeća ili pojedinaca sa snažnim političkim vezama ili čak mogu služiti njihovim interesima, što je nauštrb financijskih pokazatelja poduzeća u državnome vlasništvu.

**Upravljački deficiti energetskoga sektora u javnoj nabavi**

Energetski sektor pokazuje posebno snažan upravljački deficit u javnoj nabavi. Neki od tih nedostataka podudaraju se s općim rizicima nabave o kojima se već raspravljalo prije, no neki su još izraženiji i/ili jedinstveni za navedeni sektor, zbog njegove veličine, statusa prirodnoga monopola i tehničke složenosti.

**Prijedlozi za poboljšanje**

Unatoč kontinuiranom, ali neujednačenom napretku, zemlje jugoistočne Europe suočavaju se sa znatnim izazovima dobrog upravljanja, koji su otežani unutarnjim i vanjskim prijetnjama autoritarnih režima. Regija će i dalje imati koristi od rastuće znatne financijske i tehničke potpore demokratske zajednice zemalja unutar EU-a, Europskoga gospodarskog prostora (*European Economic Area – EEA*) i SAD-a. Način na koji će se svaka zemlja koristiti takvom potporom za napredak na putu demokratizacije i borbe protiv korupcije naposljetku ovisi o naporima njezinih građana, poslovne zajednice i vlada. Članice EU-a u jugoistočnoj Europi moraju pomno pratiti svoje obveze u okviru Mehanizma vladavine prava (*Rule of Law Mechanism*)

**Uočene nepravilnosti energetskoga sektora u javnoj nabavi**

| Prije postupka odabira  | Za vrijeme postupka odabira  | Nakon postupka odabira   |
|---|--|--|
| <ul style="list-style-type: none"> <li>• poduzeće stvoreno isključivo za pobjedu na određenome natječaju (bez prethodnoga iskustva)</li> <li>• natječajne specifikacije „krojene” za konkretno poduzeće</li> <li>• pružanje unutarnjih informacija</li> <li>• nerealno kratki rokovi</li> <li>• stvaranje umjetne konkurencije (podnošenje ponuda lažnih konkurenata)</li> <li>• dodjeljivanje sredstava za neutemeljena ulaganja</li> <li>• precijenjena vrijednost ugovora</li> </ul> | <ul style="list-style-type: none"> <li>• sukob interesa, politički utjecaj ili podmićivanje ocjenjivačkoga povjerenstva</li> <li>• izbjegavanje korištenja postupaka nabave:                         <ul style="list-style-type: none"> <li>• izravni pregovori</li> <li>• spuštanje cijene ispod praga</li> <li>• korištenje hitnih postupaka</li> </ul> </li> <li>• navođenje određenih projekata kao unaprijed zacrtanih za financiranje u nacionalnim planskim dokumentima</li> <li>• korištenje okvirnih sporazuma koji pogoduju velikim tržišnim igračima</li> </ul> | <ul style="list-style-type: none"> <li>• poništavanje natječaja i diskvalificiranje natjecatelja</li> <li>• izmjene uvjeta natječaja s pomoću aneksa</li> <li>• plaćanje usluga ili opreme koje ne zadovoljavaju minimalne zahtjeve</li> <li>• nema istrage visokih dužnosnika i poslovnih ljudi povezanih s određenim ugovorom</li> </ul> |

Izvor: Center for the Study of Democracy, 2022.

kao i Europskoga semestra te u skladu s time ulagati znatne fiskalne poticaje koje omogućavaju Instrument za oporavak i otpornost (*Recovery and Resilience Facility*) i Višegodišnji financijski okvir za razdoblje od 2021. do 2027. Sve četiri države članice EU-a moraju prevladati prepreke u upravljanju, ali posebno Bugarska i Mađarska trebaju raditi na povećanju učinkovitosti pravosuđa i dekoncentraciji odlučivanja u izvršnoj vlasti. Zemlje zapadnoga Balkana moraju jednostrano raditi na provođenju reformi potrebnih u okviru pregovaračkih poglavlja EU-a čak i ako je formalno proces proširenja mogao biti blokiran, kao u slučaju Albanije i Sjeverne Makedonije. Srbija se suočava s posebnim izazovima s obzirom na svoje bliske veze i ovisnost o autoritarnim režimima.

Opći izazovi dobrog upravljanja često se svode na rješavanje dvaju međusobno povezanih sustava u nacionalnim gospodarstvima jugoistočne Europe: postupka javne nabave i upravljanja energetske poduzećima u državnome vlasništvu. Na temelju dubinskoga pregleda sadržanoga u ovome izvješću, za navedena dva područja mogu se iznijeti sljedeći ključni prijedlozi potrebnih mjera:

- EU i njegovi partneri iz Europskoga gospodarskog prostora i SAD-a trebaju nastaviti pružati tehničku pomoć za uključivanje dobrih praksi EU-a u postupke javne nabave kako u upravljanju fondovima EU-a za regiju tako i u upravljanju nacionalnim resursima. Posebnu pozornost potrebno je posvetiti povećanju kombiniranoga kapaciteta i zajedničkomu radu regulatornih tijela za borbu protiv korupcije i provedbu javne nabave u izvršnoj vlasti, državnome odvjetništvu i sudovima.
- Vlade zemalja jugoistočne Europe moraju očuvati integritet postupka javne nabave, jačanjem odgovarajućega nadzora (kao što su *Open Tender* ili *SCAD* alat), povećanjem institucionalne učinkovitosti, smanjivanjem udjela zatvorenih postupaka javne nabave i poboljšanjem mehanizama dodjele ugovora. Zemlje zapadnoga Balkana trebaju obznaniti svoje podatke o javnoj nabavi kako bi omogućile bolje dijagnosticiranje i nadzor, dok države članice EU-a iz jugoistočne Europe trebaju nastaviti graditi kapacitete za utvrđivanje i rješavanje akutnih slučajeva korupcije u javnoj nabavi.
- Nacionalne vlade trebale bi opozvati pravila o izvanrednoj nabavi vezana uz COVID-19 tako što će se vratiti na primjenu izvornoga zakonodavstva o javnoj nabavi. Javna potrošnja u hitnim slučajevima u budućnosti trebala bi biti popraćena ugrađenim modelima jačega naknadnog praćenja i ocjenom učinkovitosti.
- Vlade zemalja jugoistočne Europe, poduzeća u državnome vlasništvu i poslovna udruženja trebali bi prihvatiti i provoditi najbolje međunarodne i europske standarde korporacijskoga upravljanja poduzećima u državnome vlasništvu u energetske sektoru, kao što su oni koje je razvio OECD. Poduzeća u državnome vlasništvu jugoistočne Europe trebala bi težiti izvještavanju u skladu sa sličnim ili višim standardima od onih koje provode slična javna poduzeća u EU-u pri obznajivanju poslovnih podataka.
- Parlamenti i vlade zemalja jugoistočne Europe trebaju poboljšati nezavisnost nacionalnih tijela zaduženih za regulaciju energetske sektora i tržišno natjecanje povećanjem njihovih administrativnih i financijskih kapaciteta kao i uklanjanjem političkih imenovanja. Također bi trebalo skratiti trajanje mandata članova upravnih odbora. Tijela zadužena za regulaciju energetske sektora trebaju usko surađivati sa sličnim tijelima iz EU-a na uspostavljanju zajedničke prakse. Odluke tih tijela trebaju uvažavati najviše standarde o javnome pravu na pristup informacijama.
- Vlade zemalja jugoistočne Europe trebale bi se suzdržati od ulaska u velike bilateralne energetske projekte bez odgovarajućega osiguranja, što kao minimum može uključiti sudjelovanje međunarodnih javnih financijskih institucija poput Europske investicijske banke, Europske banke za obnovu i razvoj ili Svjetske banke. Takvi projekti trebaju u pravilu uključiti sustave obznajivanja informacija koji imaju standarde koji su viši od onih koji uobičajeno prevladavaju u zemljama jugoistočne Europe. Takvi sustavi trebaju uključiti obvezu pravodobnoga objavljivanja i pružanja informacija o velikim energetske infrastrukturnim projektima, uključujući detaljnu analizu troškova i koristi.

- Nacionalne vlade zemalja jugoistočne Europe moraju surađivati s Europskom komisijom, državama članicama EU-a i Europskoga gospodarskog prostora te sa SAD-om kako bi uvele bolju zaštitu svojih gospodarstava od nezakonitih ili korozivnih fondova povezanih s autoritarnim vladama. Ova zaštitna mjera trebala bi uključivati uvođenje boljih institucija i propisa u vezi s mehanizmima provjere ulaganja i nadzora sankcija.
- Vlade zemalja jugoistočne Europe i njihovi partneri iz EU-a i Europskoga gospodarskog prostora te

SAD-a trebaju razviti održive modele suradnje s organizacijama nacionalnoga i lokalnoga civilnog društva i istraživačkim medijima u pogledu povećanja kapaciteta praćenja javnih nabava i državnih poduzeća u energetske sektoru. Iskustvo platforme R2G4P<sup>359</sup> može pružiti potrebne informacije o takvim naporima na regionalnoj razini. Već sada u cijeloj regiji postoje modeli javne potpore organizacijama civilnoga društva, ali oni su ili u prvim fazama razvoja ili među organizacijama civilnoga društva i medijima često izazivaju strah od kompromitiranja njihove neovisnosti.

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<sup>359</sup> Regionalna platforma dobrog javnog upravljanja i javno-privatnog partnerstva (*Regional Good Governance Public-Private Partnership Platform – R2G4P*) trogodišnja je pilot-inicijativa koju podržava Fond Europskoga gospodarskog prostora i Norveške za regionalnu suradnju (*EEA and Norway Grants Fund for Regional Cooperation*). Platforma okuplja trinaest organizacija iz deset zemalja i ima kao cilj ponuditi zajednička antikorupcijska rješenja za povećanje odgovornosti državnih institucija i jačanje civilnoga društva i vladavine prava u jugoistočnoj Europi.

# ÖSSZEFOGLALÓ

A „jó kormányzás” (good governance) elvei továbbra is egyre több kihívással szembesülnek a délkelet-európai régióban. Az ukrajnai háború egyértelműen megmutatta, hogy a jogállamisággal kapcsolatos kihívások a régióban nemcsak a gazdasági fejlődést, hanem az EU egységét és ellenálló képességét is aláássák az autokraták rendszerek kívülről irányuló fenyegetéseivel szemben. A régió új uniós tagállamai az uniós finanszírozás legnagyobb nettó kedvezményezettjei közé tartoznak. A demokratikus visszafejlődés és a korrupció azonban továbbra is kísérti társadalmait, annak ellenére, hogy a civil szféra és néhány esetben a tágabb közvélemény is továbbra is erőteljesen tiltakozik, és hogy az EU és az USA konkrét lépéseket tett a kihívások kezelésére. Ilyen lépések közé tartozott a Bulgáriában és Romániában a 2007-es csatlakozásukat követően a korrupcióellenes és igazságügyi reformok nyomán követésére szolgáló együttműködési és ellenőrzési mechanizmus, a Horvátország 2013-as csatlakozásakor sokkal szigorúbb jogállamisági követelmények, a Global Magnitsky-törvény szerinti amerikai szankciók Bulgáriában 2021-ben, valamint az uniós források befagyasztására irányuló, újonnan kidolgozott büntetési eljárások beindítása Magyarországon esetében 2022-ben. A nyugat-balkáni országok, amelyek mindannyian az EU-hoz való csatlakozásra törekuszenek, még nagyobb kormányzási kihívásokkal néznek szembe. Az EU bővítéssel kapcsolatos kimerültséggel párosulva ezek az uniós csatlakozási kilátások folyamatos késedelmet, a társadalmakban növekvő frusztrációt és visszatérő antidemokratikus tendenciákat eredményeztek. A Délkelet-Európában továbbra is fennálló kormányzási hiányosságokat tovább súlyosbította a COVID-19 járvány és a Kreml ukrajnai háborúja.<sup>360</sup> A *SEE Good Governance Report* célja, hogy mélyebb betekintést nyújtson ezekről a kihívásokról, és előkészítse az utat a hatékony korrupcióellenes reformok számára kilenc országban - négy tagállamban és öt uniós tagságra törekvő országban: Bulgáriában, Horvátországban, Magyarországon, Romániában, Albániában, Bosznia-Hercegovinában, Észak-Macedóniában, Montenegróban és Szerbiában.

<sup>360</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in Southeast Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

Az idei jelentés a régió két legszéleskörűbben vizsgált kormányzási gyengeségére összpontosít: a közbeszerzésekre, valamint az állami tulajdonú vállalatok irányítására az energiaszektorban.

## A közbeszerzés integritása

A közbeszerzések a GDP jelentős részét teszik ki mind a magas, mind az alacsony jövedelmű gazdaságokban. Világszerte a GDP 15-30%-át teszi ki. A közkiadások e hatalmas volumene hatékony elosztás esetén döntő szerepet játszhatna a gazdasági és társadalmi fejlődésben, ugyanakkor ez az egyik legmagasabb korrupciós kockázattal járó kormányzati tevékenység is egyben.<sup>361</sup> Az ENSZ Kábítószer- és Bűnügyi Hivatala szerint egy közbeszerzési szerződés teljes értékének átlagosan 10-25%-a veszt el kétes gyakorlatok miatt.<sup>362</sup> Bár a korrupció a közbeszerzésekben sokféle formát ölthet, a Délkelet-Európában gyakran alkalmazott korrupciós technikáknak van egy jól körülhatárolható csoportja, amelyek célja a közpénzek magánjövedelemmé való alakítása.

- **Favoritizmus és klientelizmus.** A közbeszerzési szabálytalanságok egyik legelterjedtebb formája a régióban, hogy a jó politikai kapcsolatokkal rendelkező vállalatvezetők vállalatait előnyben részesítik. Horvátországban a szerződések összértékének mintegy felét olyan ajánlattevők nyerik el, akik nem magánvállalkozások, hanem részben vagy teljesen állami tulajdonban lévő vállalatok<sup>363</sup>. A régióban számos olyan magáncég van, amelyek tulajdonosai szoros kapcsolatban állnak magas rangú politikusokkal, így gyakran olyan közbeszerzéseket

<sup>361</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for - a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>362</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>363</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.



nyernek el, amelyeket szinte kizárólag ezekre a cégekre szabtak. Magyarországon az elmúlt 11 évben a kormánypárt egy új gazdasági elitet hozott létre, melynek tagjai számos nagy összegű támogatást nyernek a turisztikai<sup>364</sup> és más szektorokban is.

- **A szerződések túlárazása.** A szerződések túlárazása a közbeszerzési csalás másik elterjedt formája, amely szintén a kivételezésen alapul. Ugyanakkor a favoritizmushoz képest az ajánlatkérő szervek és a szállítók szélesebb körét is érinti. Magyarországon a közbeszerzések 90%-a átlagosan 25%-kal túlárazott.<sup>365</sup> Hasonlóképpen, Észak-Macedóniában tényfeltáró tanulmányok nagy különbségeket találtak a piaci árak és a szerződéses árak között azonos termék esetében.<sup>366</sup>
- **Személyre szabott pályázati előírások.** Gyakori korrupciós technika továbbá a túlzottan specifikus pályázati követelmények megszabása is, melyeknek gyakran csak egy előre kiválasztott cég tud megfelelni.
- **Összeférhetetlenség a pályázati eljárás során.** Szerbiában a „magas szintű” összeférhetetlenséggel kapcsolatos esetek gyakoriak voltak az elmúlt években, és a COVID-19 járvány csak rontott a helyzeten.<sup>367</sup> Bulgáriában az összeférhetetlenség házon belüli eljárásokban merült fel,<sup>368</sup> amelyekben a költségvetési forrásokat pályázatás nélkül bocsátották egy állami tulajdonú vállalat rendelkezésére. Ez utóbbi ahelyett, hogy a törvényben előírtaknak megfelelően minden tevékenységet házon belül végzett volna el, alvállalkozóként olyan magánvállalkozásokat szerződtetett, amelyeket hirdetmény nélküli eljárásokban előzetesen választottak ki. Az ilyen csalárd házon belüli szerződéskötések 2019-2020-

ban 4,4 milliárd eurót, azaz az összes kormányzati közbeszerzési szerződés értékének több mint 42%-át tették ki.<sup>369</sup>

- **A nem nyílt eljárások magas aránya.** A zárt vagy meghívásos közbeszerzési eljárások alkalmazásának néhány kielégítő oka lehet, például, ha a pályázat tartalmának felfedése nemzetbiztonsági kockázatot jelentene, vagy ha a pályázat értéke elég kicsi ahhoz, hogy ne jelentsen jelentős korrupciós kockázatot. Ennek ellenére a dél-európai ajánlatkérő szervek gyakran túlzásba viszik a meghívásos eljárások alkalmazását olyan esetekben, amikor ezekre nem lenne szükség.
- **Szerződésmódosítás a végrehajtási szakaszban.** A régió civil szervezetei a szerződés utólagos módosításának ártalmas gyakorlatáról számolnak be, ami az eredeti várakozásoknál jóval magasabb árat eredményez. Ezeket a módosításokat nehéz nyomon követni, mivel a legtöbb hivatalos közbeszerzési weboldalon csak korlátozott információ található róluk.<sup>370</sup>

### A COVID-19 járvány miatt a közbeszerzésben bekövetkezett változások és a gyorsított eljárások túlzott alkalmazásának következményei

A világjárvány megnövelte az eleve korlátozott, a szokásos közbeszerzési jogszabályokat megkerülő „gyorsított” (urgent) eljárások számát. A közbeszerzési piac kvantitatív vizsgálata alapján a járvány a közbeszerzés integritásának általános csökkenését eredményezte, különösen a leginkább érintett - egészségügyi és egyéb COVID-hoz kapcsolódó termékek - piacokon. Ezeket a problémákat jól példázza a hírhedt bosznia-hercegovinai „légzőkészülék-ügy”.<sup>371</sup> A közbeszerzési piacok integritása más régiós országokban is sérült. Horvátországban például 2020 decemberéig titokban tartották azon árak és szolgáltatások listáját, amelyekre eljárás

<sup>364</sup> András, B., „Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát,” valaszonline.hu, 2021. február 26.

<sup>365</sup> Ligeti, M. et al., *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben*, A Transparency International Magyarország Alapítvány jelentése, TI Magyarország, 2019.

<sup>366</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>367</sup> Centar za primenjenu evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine*, CPES, November 2020.

<sup>368</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Program, Brief 39, 2016.

<sup>369</sup> Sokolova, T., „Службеният кабинет спира харченето на милиарди без обществени поръчки”, 2021. június 30.

<sup>370</sup> Mendes, M. és Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data - An Implementer's Guide*, 2015.

<sup>371</sup> Katavić, I., „Afera ‚Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i,” *Slobodnaevropa.org*, 2020. május 28; Radiosarajevo.ba, „Afera Respiratori: Novalić i drugi optuženi stigli na novo ročište,” 2021. november 17.

nélküli közbeszerzési megállapodásokat lehetett alkalmazni. A listát csak a nyilvánosság nyomására tették elérhetővé.<sup>372</sup> Magyarországon a szükségállapot idején közvetlenül a miniszterelnöknek állt jogában eldönteni, hogy mely eljárások kapcsolódnak a COVID-19 világjárványhoz, és ezért azokat eljárás nélkül lehetett beszerezni.<sup>373</sup>

### Beszerezésekkel kapcsolatos korrupciós kockázat az egészségügyben

A jelentéshez készített nagy közbeszerzési adatbázisok felhasználásával készített elemzés megmutatja, hogy 2017 első negyedéve és 2021 második negyedéve között a COVID piaci *korrupciós kockázati index (CRI)*<sup>374</sup> mintegy 10 százalékponttal nőtt Romániában és Horvátországban.<sup>375</sup> A növekedés mindkét országban átmeneti volt, így a kockázatnövekedést lassú, de folyamatos csökkenés követte. Az elemzésből az is kiderül, hogy az elmúlt másfél évben az egészségügyi ágazatok átlagos vevőfüggősége a 2017-2020-as időszakhoz képest jelentősen nőtt Magyarországon, valamint kismértékben Horvátországban. Ráadásul bizonyos ajánlatkérők nemcsak nagyobb arányban, hanem nagyobb értékben is juttattak közpénzeket a preferált beszállítóiknak.

### Az állami tulajdonú vállalatok irányítása az energiaszektorban

Az energiaágazat az egyik legnagyobb rendszer-szintű kormányzási probléma, amely a közvagyon jelentős pazarlásához vezethet<sup>376</sup>, valamint poten-

ciálisan teret ad az illegális finanszírozásnak és a külföldi önkényuralmi befolyásnak a régióban.<sup>377</sup> Az energiaágazat kulcsfontosságú Délkelet-Európa számára, mivel természetes monopóliumként működik (így gyakran állami tulajdonban van). Továbbá, a régió lakosságának kiemelt érzékenysége az energiaár-emelkedésekre (amint azt az elmúlt évtizedben az egész régióban zajló tiltakozások is jól illusztráltak), valamint a nagy beruházásokhoz köthető közvetlen pénzügyi érdekek is növelik a jelentőségét. A *State Capture Assessment Diagnostics (SCAD)* az ágazatot a monopolizációval szemben rendkívül sérülékenynek minősíti.<sup>378</sup> A délkelet-európai országokat többszörösen vádolták azzal, hogy a helyi oligarchikus vállalati hálózatok és a Kreml által ellenőrzött gázszolgáltatók javára blokkolják a gázpiac liberalizációját. Így az ágazat megfelelő szabályozás hiányában alááshatja a délkelet-európai országok függetlenségét és fejlődését.

Az állami tulajdonú energetikai vállalatok elszámoltathatóságának hiányosságai számos esetben bizonyíthatóak, amelyeket a helyi média oknyomozó riportjai, a civil társadalom beszámolóí, illetve az érintett hatóságok ellenőrzései tártak fel. Ezek a problémák hozzájárulnak egy olyan társadalmpolitikai környezet kialakulásához, amelyben az állami tulajdonú energetikai vállalatoknál a rossz pénzügyi gazdálkodás gyakorlata és a hatékonytalan vagy egyenesen káros beruházási döntések gyakoriak. A szilárd jogi keret hiánya kulcsfontosságú tényező, amely lehetővé teszi a korlátozott pénzügyi átláthatóságot és a széleskörű politikai beavatkozást az állami tulajdonú energetikai vállalatok napi irányításába.

<sup>372</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave,” 2020. december 9; Horvát kormány, Izvješće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa, Gazdasági és Fenntartható Fejlesztési Minisztérium Árutartalékok Igazgatósága, 2020.

<sup>373</sup> Közbeszerzési Hatóság, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben*, 2020.

<sup>374</sup> Fazekas, M. és Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>375</sup> Lásd a GTI Globális Kormányzati Szerződések adatbázisát, 2021. július 19.

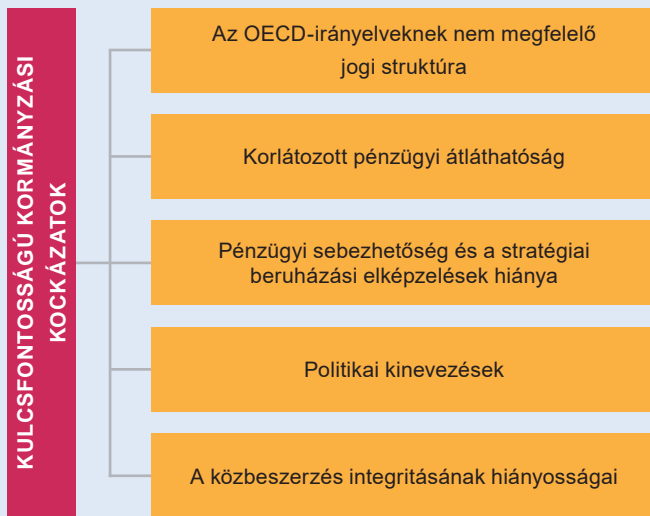
<sup>376</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>377</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Szófia: Center for the Study of Democracy, 2018.

<sup>378</sup> Based on data for Bulgaria, Romania, Italy and Spain. For more information: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Szófia: Center for the Study of Democracy, 2019. Lásd még: Shentov, O., Stefanov, R., and Todorov, B. (szerk.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.



### Az energiaszektor állami tulajdonú vállalatainak irányításával kapcsolatos fő irányítási kockázatok



Forrás: Center for the Study of Democracy, 2022.

### Átláthatóság

A vállalatirányítási szabályozási keretrendszer kialakítása még mindig folyamatban van a régióban, bár az elmúlt években történt némi előrelépés. A nyugat-balkáni állami tulajdonú energiaipari vállalatok irányítását szabályozó jogi keretrendszer továbbra sem felel meg az *OECD állami tulajdonú vállalatok vállalatirányításáról szóló iránymutatásainak*.<sup>379</sup> Az EU-tagállamok jobban teljesítenek az alkalmazandó jogszabályok tekintetében, azonban azok végrehajtása továbbra is korlátozott és lassú.<sup>380</sup> A rosszabb pénzügyi helyzetben lévő vállalatok általában továbbra is kevésbé átláthatóak. Az átláthatóságuk javításának egyik módja, hogy a vállalatok tőzsdére mennek, ami Romániában a Romgaz és a Hidroelectrica esetében meg is történt. Egy másik pozitív példa, a magyarországi tőzsdén jegyzett MOL-csoport, mely rendszeresen közzéteszi pénzügyi kimutatásait, és nyilvánosságra hozza az egyes igazgatósági tagok tulajdonában lévő részvények mennyiségét.<sup>381</sup> Mindazonáltal, a pénzügyi

adatok átláthatósága továbbra is különösen gyenge a Nyugat-Balkánon.<sup>382</sup>

### Pénzügyi sebezhetőség

A kilenc vizsgált ország állami kézben lévő energiaipari vállalatai különböző mértékű pénzügyi sérülékenységgel rendelkeznek, amit az eladósodottságuk és adóssághányaduk mértéke, valamint a likviditásuk és folyószámlamérlegeik egyenlege szemléltet. Jelentősebb pénzügyi nehézségek különösen a fosszilis tüzelőanyag-alapú vállalatoknál jelentkeztek, melyeknek nehézséget jelentett a folyamatosan emelkedő CO<sub>2</sub>-, szén- és földgázárakkal való megbirkózás. A kormányoknak az energiaárak mesterségesen alacsonyan tartására irányuló erőfeszítései az osztársadalmi elégedetlenség elkerülése érdekében az állami vállalatok pénzügyi egészségének és politikai függetlenségének, valamint a szabályozó hatóságok pártatlanságának rovására mennek. A pénzügyi irányítás alacsony minősége leggyakrabban a következőkkel függ össze: a) a személyzet túlzott létszáma; b) a túlságosan nagyvonalú javadalmazás; és c) a közbeszerzések rossz irányítása. A 2021 második felétől kibontakozó európai energiaár-válság, amely a gázhiánnyal kezdődött és az ukrajnai háborúval folytatódott, valószínűleg tovább súlyosbítja a sebezhetőséget, annak ellenére, hogy egyes vállalatok számára váratlan nyereséget jelenthet.

A délkelet-európai országok Oroszországból származó fosszilis tüzelőanyag-behozataltól való hosszú távú függősége, valamint a történelmi tulajdonosi, technológiai és vezetői függőség és a mély (és gyakran nagyon átláthatatlan) pénzügyi kapcsolatok tovább fokozták az állami tulajdonban lévő energiaágazatok sebezhetőségét. A gyakorlatban a délkelet-európai régió néhány legnagyobb beruházási projektje nem uniós államokkal, hanem elsősorban Oroszországgal kötött kormányközi megállapodások eredménye. Az Oroszország által vezetett TurkStream projekt<sup>383</sup> kitűnő példa erre. A projekt közvetlenül Bulgáriát, Szerbiát és Magyarországot, közvetve pedig az egész régiót és Európát érinti, és az energiapolitikai döntéshozó

<sup>379</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

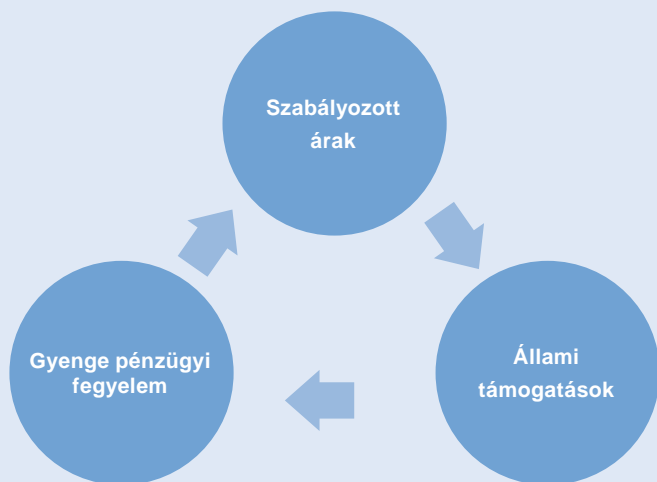
<sup>380</sup> Európai Bizottság, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, 60. o.; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, 58. o.

<sup>381</sup> MOL Group (S.A.), *Menedzsment és műveletek*; MOL Publications (S.A.), *Éves jelentések* (1999-2020).

<sup>382</sup> Shentov, O., Stefanov, R., and Todorov, B. (szerk.), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>383</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Szófia: CSD, 2020.

### Az állami vállalatok működését befolyásoló gyakori függőségi viszonyok



Forrás: Center for the Study of Democracy, 2022.

intézmények további gyengüléséhez, valamint az orosz- és a régiós kormányokhoz szorosan kötődő helyi magánérdekeltségek oligarchikus befolyási hálózatainak megerősödéséhez járult hozzá. Újabbán Kína is saját beruházási keretet hozott létre a régióban, különösen a Nyugat-Balkánon, Horvátországban és Magyarországon, ami további feszültségeket okozhat ezen országok további EU-integrációjában. A kínai beruházások, bár a költségek szempontjából

kedvezőek, gyakran nem felelnek meg az EU műszaki szabályozásainak és/vagy a versenyre és a közbeszerzésre vonatkozó uniós eljárásoknak. Továbbá, a Kreml által finanszírozott projektekhez hasonlóan titkos és átláthatatlan jellegükkel a demokratikus és piaci normák erózióját is előidézik. Az ilyen projektek sok esetben megerősítik a nemzeti széniparágakat, figyelmen kívül hagyják a környezetvédelmi előírásokat, valamint nem felelnek meg a dekarbonizáció és a fenntartható növekedés általános politikájának sem.<sup>384</sup>

### A vezérigazgatók és igazgatósági tagok kinevezése

A délkelet-európai állami energetikai vállalatok igazgatósági tagjainak és más vállalatvezetőknek kinevezésére vonatkozó szabályok szintén nem egyértelműek, különösen a lehetséges politikai befolyás tekintetében. Számos példa van arra, hogy a régió állami vállalatainak és szabályozó hatóságainak igazgatótanácsainak kinevezése politikai beavatkozással történt, ami aláásta a szakértelmet a komplex energetikai döntések megtervezésében és végrehajtásában is. Ezért az állami vállalatok üzleti tevékenysége gyakran jelentős politikai befolyás alatt áll és bizonyos pénzügyi döntések akár erős politikai kapcsolatokkal rendelkező vállalatok vagy személyek

### Az energiaágazatban megfigyelt közbeszerzési szabálytalanságok

| A kiválasztási eljárás előtt  | A kiválasztási eljárás során  | A kiválasztási eljárás után  |
|---|---|--|
| <ul style="list-style-type: none"> <li>• kizárólag egy adott pályázat elnyerésére létrehozott vállalkozás (korábbi tapasztalat nélkül)</li> <li>• egy adott vállalatra "szabott" ajánlattételi felhívás</li> <li>• bennfentes információk szolgáltatása</li> <li>• irreálisan rövid határidők</li> <li>• mesterséges verseny létrehozása (hamis versenytársak ajánlatainak benyújtása)</li> <li>• megalapozatlan befektetések finanszírozása</li> <li>• a szerződés túlárázása</li> </ul> | <ul style="list-style-type: none"> <li>• összeférhetlenség, politikai befolyásolás vagy az értékelőbizottság megvesztegetése</li> <li>• a közbeszerzési eljárások alkalmazásának elkerülése az alábbiak révén:               <ul style="list-style-type: none"> <li>• közvetlen tárgyalások</li> <li>• az ár küszöbértékek alá való csökkentése</li> <li>• gyorsított eljárások alkalmazása</li> </ul> </li> <li>• a nemzeti gazdaságtervezési dokumentumokban előre meghatározott, finanszírozásra szánt konkrét projektek felsorolása</li> <li>• a nagy piaci szereplőknek kedvező keretmegállapodások alkalmazása</li> </ul> | <ul style="list-style-type: none"> <li>• az ajánlatok megsemmisítése és a pályázók kizárása</li> <li>• a pályázati feltételek módosítása mellékletekben</li> <li>• a minimumkövetelményeknek nem megfelelő szolgáltatások/eszközök kifizetése</li> <li>• egy adott szerződéshez kapcsolódó magas rangú tisztviselők és üzletemberek vizsgálatának mellőzése</li> </ul> |

Forrás: Center for the Study of Democracy, 2022.

<sup>384</sup> Gerganov, A. és Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Szófia: Center for the Study of Democracy, 2021.

érdekeit is szolgálhatják akár az állami vállalatok pénzügyi teljesítményének rovására.

### **Az energiaágazati közbeszerzés irányítási hiányosságai**

Az energiaágazat különösen nagy irányítási hiányosságokat mutat a közbeszerzések terén. E hiányosságok némelyike egybeesik a fent tárgyalt általános közbeszerzési kockázatokkal, némelyik azonban még hangsúlyosabb és csak az ágazatra jellemző, annak mérete, természetes monopolhelyzete és műszaki összetettsége miatt.

### **Az előre vezető út**

A jó kormányzáshoz kapcsolható tevékenységek lassú, de folyamatos terjedésének ellenére a délkelet-európai országok jelentős kihívásokkal néznek szembe, amelyeket a belső és külső autokratikus jellegű fenyegetések tovább súlyosbítanak. A régió továbbra is élvezheti az EU, az Európai Gazdasági Térség (EGT) és az USA demokratikus országainak közösségből származó jelentős pénzügyi és technikai támogatásainak előnyeit. Az, hogy az egyes országok hogyan használják fel ezt a támogatást a demokratizálódás és a korrupció elleni küzdelem útján való előre lépéshez, végső soron a polgárok, a vállalkozások és a kormányok erőfeszítéseitől függ. A délkelet-európai uniós országoknak szorosan követniük kell a Jogállamisági Mechanizmus és az Európai Szemeszter keretében vállalt kötelezettségeiket, és ennek megfelelően kell befektetniük a Helyreállítási és Reziliencia építési Eszköz és a 2021-2027-es többéves pénzügyi keret által biztosított hatalmas költségvetési ösztönzőket. Mind a négy uniós országnak le kell küzdenie a kormányzási akadályait, de különösen Bulgáriának és Magyarországnak kell dolgoznia az igazságszolgáltatás hatékonyságának növelésén, illetve a hatalomnak a végrehajtó hatalomba való politikai befolyásolásának csökkentésén. A nyugat-balkáni országoknak együtt kell működniük az EU csatlakozás tárgyalási szakaszához szükséges reformok végrehajtásában, még akkor is, ha a bővítési folyamat formálisan esetleg megakadt, mint Albánia és Észak-Macedónia esetében. Szerbia különösen nagy kihívásokkal néz szembe, mivel szoros kapcsolatai vannak és jelentős függősége van autoriter rezsimektől.

A délkelet-európai nemzetgazdaságok számos jó kormányzással kapcsolatos kihívásának megoldása két, egymással összefüggő probléma megfelelő kezelésében merül ki: a közbeszerzések és az állami energiapiaci vállalatok irányítása. A jelentésben szereplő részletes áttekintés alapján e két területre vonatkozóan több kulcsfontosságú szakpolitikai ajánlás is megfogalmazható:

- Az EU-nak, valamint EGT- és USA-partnereinek továbbra is technikai segítséget kell nyújtaniuk az uniós közbeszerzési bevált gyakorlatok érvényesítéséhez mind a régióknak szánt uniós források kezelése, mind a nemzeti források irányítása terén. Különös figyelmet kell fordítani a végrehajtó hatalom, az ügyészség és a bíróságok korrupcióellenes és közbeszerzési szabályozó hatóságainak általános kapacitásainak és közös munkájának eredményességére.
- A délkelet-európai kormányoknak a közbeszerzések integritását fokozott közbeszerzési monitoring (például a nyílt pályázatok), az intézményi hatékonyság növelése, a nem nyílt eljárások arányának csökkentése és a szerződéskötési mechanizmusok javítása révén kell biztosítaniuk. A nyugat-balkáni országoknak a jobb diagnosztika és ellenőrzés érdekében közzé kell tenniük a közbeszerzési adataikat, míg a délkelet-európai uniós tagállamoknak folytatniuk kell a közbeszerzési korrupciót jelző indikátorok azonosítására és kezelésére irányuló kapacitásépítést.
- A nemzeti kormányoknak vissza kell vonniuk a Covid-19 gyorsított közbeszerzési szabályait az eredeti közbeszerzési jogszabályokhoz való visszatéréssel. A jövőben a sürgősségi kiadásokat a hatékonyság beépített, erősebb utólagos nyomon követésével és értékelésével kell kísérni.
- A délkelet-európai kormányoknak, az állami tulajdonú vállalatoknak és az üzleti szövetségeknek el kell fogadniuk és alkalmazniuk kell az állami tulajdonú vállalatok vállalatirányítására vonatkozó legjobb nemzetközi szabványokat (például az OECD által kidolgozottak). A délkelet-európai állami vállalatoknak törekedniük kell arra, hogy legalább olyan minőségben és gyakorisággal számoljanak be pénzügyi és stratégiai eredményeikről és céljaikról, mint az EU-ban működő magán kézben lévő versenytársaik.

- A délkelet-európai parlamenteknek és kormányoknak növelniük kell a nemzeti energia- és versenyszabályozók függetlenségét azáltal, hogy kiterjesztik adminisztratív és pénzügyi kapacitásukat, és megszüntetik a politikai kinevezéseket. Továbbá, sok esetben a testületi tagok mandátumának rövidítése is szükséges lehet. A délkelet-európai energiaszabályozóknak szorosan együtt kell működniük uniós társaikkal a közös gyakorlatok létrehozásában. A szabályozó hatóságok döntéseinek a nyilvánosságra hozatal legmagasabb szintű normáinak kell megfelelniük.
- A délkelet-európai kormányoknak tartózkodniuk kell attól, hogy nagyszabású kétoldalú energiaprojektekbe kezdjenek megfelelő biztosítékok nélkül, amelyeket a nemzetközi közfinanszírozási intézmények, például az Európai Befektetési Bank, az Európai Újjáépítési és Fejlesztési Bank vagy a Világbank bevonása is jelentheti. Az ilyen projekteknek általában a délkelet-európai országokban jellemzően érvényesülőnél magasabb színvonalú információszolgáltatási rendszert kell magukban foglalniuk. Ezt a rendszert időben nyilvánosságra kell hozni, és a nagyszabású energiainfrastruktúra-projektekre vonatkozó információkat, beleértve a részletes költség-haszon elemzést is közzé kell tenni.
- A délkelet-európai nemzeti kormányoknak együtt kell működniük az Európai Bizottsággal, az EU és az EGT tagállamaival, valamint az Egyesült Államokkal annak érdekében, hogy gazdaságukat jobban megvédjék az önkényuralmi rendszerekhez kapcsolódó illegális vagy korrupciós pénzeszközökkel szemben. Ennek a védelemnek magában kell foglalnia a befektetések átvilágítására és a szankciókat ellenőrző mechanizmusokra vonatkozó jobb intézmények és szabályozások létrehozását.
- A délkelet-európai kormányoknak és EU/EGT- és USA-partnereiknek fenntartható együttműködési rendszereket kell kialakítani a nemzeti és helyi civil társadalommal és az oknyomozó médiával a közbeszerzések és az állami energiaipari vállalatok fokozott ellenőrzése érdekében. Az R2G4P platform<sup>385</sup> tapasztalatai regionális szinten hasznos információkkal szolgálhatnak az ilyen jellegű erőfeszítésekhez. A civil szervezetek állami támogatására már léteznek modellek a régióban, de ezek még gyerekcipőben járnak és gyakran félelmet keltenek az érintettek körében, hogy a támogatások elfogadása a függetlenségük elvesztésével járna.

<sup>385</sup> A [regionális jó kormányzati köz-magán partnerségi platform \(R2G4P\)](#) egy hároméves kezdeményezés, amelyet az EEA és a Norvég Alap a Regionális Együttműködésért támogat, és amely tíz ország tizenhárom szervezetének erőfeszítéseit fogja össze, és célja, hogy közös korrupcióellenes megoldásokat kínáljon az állami intézmények elszámoltathatóságának növelése, valamint a civil társadalom és a jogállamiság megerősítése érdekében Délkelet-Európában.

# SAŽETAK

Principi dobrog upravljanja i dalje se suočavaju sa narastajućim brojem izazova u regionu jugoistočne Evrope. Rat u Ukrajini jasno je pokazao kako izazovi u pogledu vladavine prava podrivaju ne samo ekonomski razvoj ovog regiona, već i jedinstvo i otpornost EU u odnosu na spoljne autoritarne prijetnje. Nove države članice EU iz ovog regiona među najvećim su neto korisnicima sredstava EU. Ipak, demokratsko nazadovanje i korupcija nastavljaju da opterećuju njihova društva, uprkos kontinuiranom snažnom negodovanju javnosti i protestima, kao i uvođenju konkretnih mjera EU i SAD za prevazilaženje ovih izazova. Neke od takvih mjera uključivale su Mehanizam za saradnju i verifikaciju za praćenje antikorupcijskih i pravosudnih reformi u Bugarskoj i Rumuniji nakon njihovog pristupanja 2007. godine, mnogo oštrije zahtjeve u pogledu vladavine prava za pristupanje Hrvatske 2013. godine, američke sankcije u skladu s Globalnim zakonom Magnicki u Bugarskoj 2021. godine i pokretanje novih kaznenih procesa čiji je cilj zamrzavanje fondova EU namijenjenih Mađarskoj 2022. godine. Države zapadnog Balkana, koje bez izuzetka teže pridruživanju EU, suočavaju se sa još ozbiljnijim izazovima u pogledu upravljanja. Zajedno sa zamorom EU od proširenja, ovo je rezultiralo kontinuiranim odgađanjem izgleda za pristupanje EU, rastućim frustracijama građana u pomenutim i ponavljajućim nedemokratskim tendencijama. Dugotrajne nedostatnosti u pogledu upravljanja širom jugoistočne Evrope dodatno su pogoršane pandemijom kovida-19 i ratom koji Kremlj vodi u Ukrajini.<sup>386</sup> Cilj *Izveštaja o dobrom upravljanju u JIE* je da omogući bolje razumijevanje ovih izazova i da utre put učinkovitim antikorupcijskim reformama u devet zemalja – četiri države članice EU i pet koje teže članstvu u Uniji – Bugarskoj, Hrvatskoj, Mađarskoj, Rumuniji, Albaniji, Bosni i Hercegovini. Sjevernoj Makedoniji, Crnoj Gori i Srbiji. Ovogodišnji izvještaj fokus stavlja se na dva najosjetljivija aspekta upravljanja u regionu: javne nabavke i upravljanje državnim preduzećima u energetsom sektoru.

<sup>386</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in Southeast Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

## Integritet javnih nabavki

Javne nabavke predstavljaju značajan udio BDP-a i u ekonomijama sa visokim i niskim prihodima. Globalno, javne nabavke predstavljaju 15% do 30% BDP-a. Ova-ko ogroman obim javne potrošnje mogao bi igrati ključnu ulogu u ekonomskom i društvenom napretku ako bi se sredstva za ovu vrstu potrošnje opredjeljivala na efikasan način. Međutim, riječ je i o jednoj od aktivnosti vlade koja je najosjetljivija na korupciju.<sup>387</sup> Prema podacima Kancelarije Ujedinjenih nacija za borbu protiv droge i kriminala, 10% do 25% ukupne ugovorne vrijednosti javnih nabavki može biti izgubljeno zbog sumnjivih praksi.<sup>388</sup> Iako korupcija u javnim nabavkama može imati različite oblike, postoji jasno definisan skup koruptivnih tehnika koje se aktivno koriste u jugoistočnoj Evropi za isisavanje javnih sredstava u cilju ostvarivanja privatne dobiti.

- **Favorizovanje i klijentelizam.** Jedan od najčešćih vidova neregularnosti u nabavkama u regionu je preferencijalni tretman određenih kompanija zbog dobrih političkih veza njihovih vlasnika. Na primjer, u Hrvatskoj oko polovina ukupne vrijednosti ugovora pripadne ponuđačima koji nisu privatna lica, već kompanije u djelimičnom ili potpunom vlasništvu države<sup>389</sup>. Mnoge privatne kompanije širom ove regije, čiji su vlasnici blisko povezani s visokopozicioniranim političarima, pobjeđuju na pozivima za javne nabavke koji su gotovo uvijek kreirani upravo za njih. Na primjer, u Mađarskoj je tokom posljednjih 11 godina vladajuća stranka stvorila novu ekonomsku elitu čije korporacije dobijaju izdašne subvencije u sektorima poput turizma<sup>390</sup>.

<sup>387</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for - a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>388</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>389</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>390</sup> András, B., "Sokkoló: a kormány az igénylők fél százalékanak adta a turisztikai támogatások kétharmadát," *valaszonline.hu*, 26 February 2021.



- **Previsoke vrijednosti ugovora.** Određivanje pre-visoke vrijednosti ugovora predstavlja još jedan dominantan oblik prevare u javnim nabavkama koji se zasniva na favorizovanju i uključuje širi spektar naručilaca i dobavljača/pružalaca usluga. U Mađarskoj je 90% projekata javnih nabavki u prosjeku precijenjeno za 25%.<sup>391</sup> Slično tome, u Sjevernoj Makedoniji, istraživačke aktivnosti rezultirale su otkrivanjem velike razlike između tržišnih cijena i ugovornih cijena proizvoda sa identičnim specifikacijama.<sup>392</sup>
- **Prilagođavanje specifikacija za tenderski postupak.** Jedna od čestih koruptivnih tehnika je i definisanje isuviše specifičnih zahtjeva za tender koji odgovaraju isključivo kvalifikacijama i stručnosti određene firme.
- **Sukob interesa u tenderskom postupku.** Slučajevi sukoba interesa „na visokom nivou“ nisu bili rijetka pojava proteklih godina u Srbiji, a postali su još češća od početka pandemije kovida-19.<sup>393</sup> U Bugarskoj se sukob interesa materijalizovao u internim procedurama,<sup>394</sup> u kojima se budžetska sredstva bez tendera opredjeljuju za državna preduzeća, koja umjesto da sve aktivnosti realizuju interno, tj. sama, kako je predviđeno zakonom – angažuju podugovarače, tj. privatne kompanije, koje su prethodno odabrane u nepovezanim procedurama. Ovakvo fiktivno interno ugovaranje dostiglo je razmjeru od 4,4 milijarde eura ili preko 42% vrijednosti svih ugovora o javnim nabavkama u državni u periodu 2019-2020.<sup>395</sup>
- **Visok udio zatvorenih postupaka.** Postoji nekoliko kredibilnih razloga za korišćenje zatvorenih ili ograničenih postupaka nabavki – na primjer ako bi otkrivanje sadržaja tendera predstavljalo rizik za nacionalnu bezbjednost ili ako je vrijednost ponude

dovoljno mala da ne predstavlja ozbiljniji rizik od korupcije. Ipak, ugovarači u JIE često koriste ograničene postupke u slučajevima kada oni i nisu neophodni.

- **Izmjena ugovora u fazi implementacije.** Organizacije civilnog društva iz regije ukazuju na malicioznu praksu naknadnih izmjena ugovora koja rezultira znatno višom cijenom u odnosu na očekivanu. Ovakve izmjene teško je pratiti zbog ograničenih informacija na većini zvaničnih veb-stranica koje se tiču nabavki.<sup>396</sup>

### Promjene u javnim nabavkama kao posljedica kovida-19 i pretjerana upotreba hitnih postupaka

Pandemija je povećala broj inherentno ograničenih „hitnih“ postupaka nabavke koji zaobilaze uobičajena zakonska rješenja u vezi s nabavkama. Kvantitativna procjena tržišta nabavke ukazuje na to da je došlo do opšteg pada integriteta javnih nabavki, naročito na najugroženijim tržištima – zdravstvene zaštite i drugih proizvoda povezanih s kovidom. Ovi problemi očitovali su se u zloglasnoj „ aferi ‘Respiratori’“ u Bosni i Hercegovini.<sup>397</sup> U Hrvatskoj je lista roba i usluga za koje se mogu koristiti direktni ugovori o nabavci čuvana u tajnosti do decembra 2020. godine. Lista je objavljena isključivo zbog velikog pritiska javnosti.<sup>398</sup> U Mađarskoj je, tokom vanrednog stanja, premijer imao ovlašćenje da odlučuje o tome koje su procedure u vezi s pandemijom kovida-19, i kao takve podliježu direktnom ugovaranju.<sup>399</sup>

<sup>391</sup> Ligeti, M. et al. *Korruptió, gazdasági teljesítmény és jogállamiság Magyarországon: A Korruptió Érzékelési Index eredményei 2019-ben*, TI Hungary, 2019.

<sup>392</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>393</sup> Centar za primenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine*, CPES, November 2020.

<sup>394</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>395</sup> Sokolova, T., „Служебният кабинет спира харченето на милиарди без обществени поръчки,” *Mediapool.bg*, 30. jun 2021.

<sup>396</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data - An Implementer's Guide*, 2015.

<sup>397</sup> Katavić, I., „Afera ‘Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i,” *Slobodnaevropa.org*, 28. maj 2020; *Radiosarajevo.ba*, „Afera Respiratori: Novalić i drugi optuženi stigli na novo ročište,” 17. novembar 2021.

<sup>398</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave,” 9. decembar 2020; Vlada Republike Hrvatske, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, Ministarstvo gospodarstva i održivog razvoja - Ravnateljstvo za robne zalihe, 2020.

<sup>399</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben*, 2020.



## Rizik od korupcije u oblasti javnih nabavki u zdravstvenom sektoru

Analiza velikih podataka prikupljenih za potrebe predmetnog izvještaja pokazuje da je između prvog kvartala 2017. i drugog kvartala 2021, *Indeks rizika od korupcije (CRI)*<sup>400</sup> na tržištu povezanom s kovidom-19 u Rumuniji i Hrvatskoj porastao za oko 10 procenata.<sup>401</sup> Povećanje je bilo privremeno, nakon čega je uslijedio spor, ali postojan pad. Analiza velikih podataka otkriva i da je u posljednjih godinu i po dana prosječna zavisnost kupca iz zdravstvenog sektora značajno porasla u Mađarskoj, a neznatno i u Hrvatskoj, u odnosu na period 2017–2020. Štaviše, analizirani naručiocci su svojim favorizovanim dobavljačima obezbijedili ne samo veći udio, već i veću vrijednost javnih sredstava.

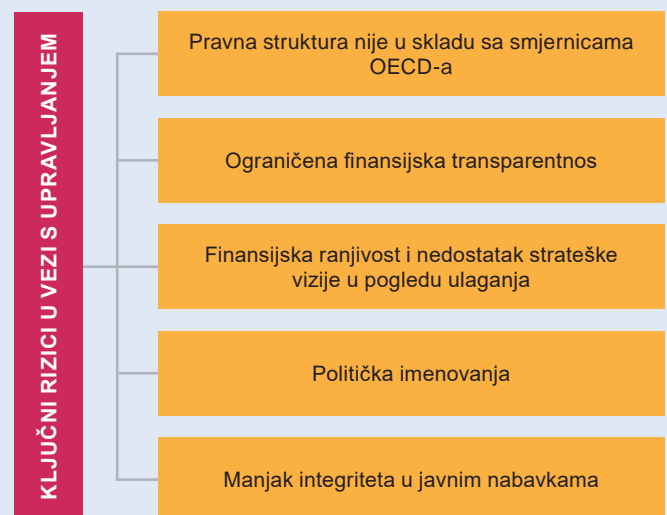
## Upravljanje državnim preduzećima u energetskom sektoru

Energetski sektor jedan je od izvora glavnih i sistemskih problema sistematskog upravljanja koji dovodi do značajnih gubitaka javnog bogatstva<sup>402</sup> i omogućava prodor nezakonitog finansiranja i stranog autoritarnog uticaja u regionu.<sup>403</sup> Energetski sektor je od ključnog značaja za jugoistočnu Evropu, zbog svog statusa prirodnog monopola (često je u vlasništvu države), socijalne osjetljivosti građana na povećanje cijena (kao što se moglo vidjeti iz protesta širom ovog regiona tokom protekle decenije), kao i velikog uloga u pogledu ozbiljnih investicija i finansijskih interesa. *Alat za procjenu stepena zarobljenosti države (State Capture Assessment Diagnostics – SCAD)* ovaj sektor prepoznaje kao veoma ranjiv u smislu

monopolizacije.<sup>404</sup> Države JIE suočavaju su se s brojnim optužbama za blokiranje liberalizacije tržišta gasa u korist lokalnih oligarhijskih korporativnih mreža i u korist dobavljača gasa koji su pod kontrolom Kremlja. Stoga, ukoliko se njime ne bude upravljalo na adekvatan način, ovaj sektor može narušiti nezavisnost i razvoj država JIE.

Nedostaci u pogledu javne odgovornosti u energetskim preduzećima koja su u vlasništvu države vidljivi su u brojnim slučajevima, a dodatno ih otkrivaju izvještaji istraživačkih medija, izvještaji organizacija civilnog društva ili revizije relevantnih nadležnih organa širom regiona jugoistočne Evrope. Ovi problemi doprinose društveno-političkim okolnostima koje praksama lošeg finansijskog upravljanja u državnim preduzećima omogućavaju da opstanu i u kojima se donose i sprovede neefikasne ili štetne odluke o ulaganjima. Nepostojanje čvrstog zakonskog okvira ključni je faktor koji omogućava ograničenu finansijsku transparentnost i rasprostranjenu pojavu uplitanja politike u svakodnevno upravljanje državnim preduzećima.

### KLJUČNI RIZICI U VEZI S UPRAVLJANJEM preduzećima u energetskom sektoru



Izvor: Center for the Study of Democracy, 2022.

<sup>400</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>401</sup> Vidjeti: GTI's *Global Government Contracts database*, 19. jul 2021.

<sup>402</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

<sup>403</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy, 2018.

<sup>404</sup> Na osnovu podataka za Bugarsku, Rumuniju, Italiju i Španiju. Za više informacija, vidjeti: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019. Vidjeti i: Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.

## Transparentnost

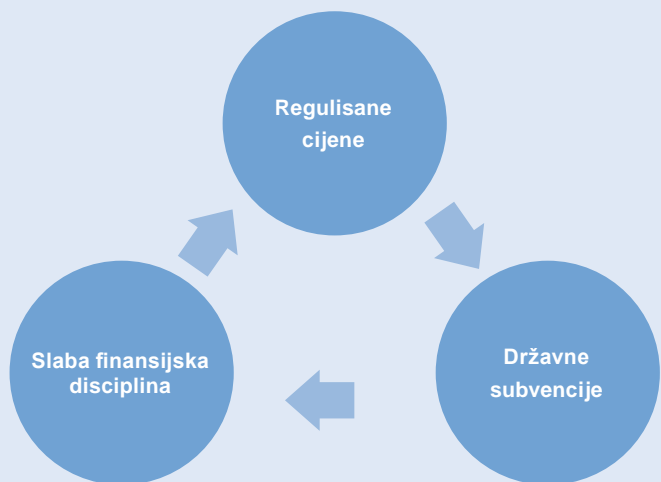
Regulatorni okvir korporativnog upravljanja još uvijek u povelju kad je riječ o regionu, iako su u posljednjih nekoliko godina napravljeni određeni iskoraci. Pravni okvir koji reguliše upravljanje državnim preduzećima zaduženim za energetiku na Zapadnom Balkanu nije usklađen sa *Smjernicama OECD-a za korporativno upravljanje u preduzećima u državnom vlasništvu*.<sup>405</sup> Države članice EU stoje bolje u pogledu zakona koji se primjenjuju, ali i u njihovom slučaju primjena ostaje ograničena i spora.<sup>406</sup> Kompanije lošijeg finansijskoj statusa obično su manje transparentne. Jedan od načina da se njihova transparentnost poboljša jeste izlazak na berzu, što je bio slučaj sa Romgazom i Hidroelectricom u Rumuniji. Još jedan pozitivan primjer, MOL Grupa, kompanija koja se kotira na berzi u Mađarskoj, objavljuje svoje finansijske izvještaje i broj dionica koje ima svaki od članova Upravnog odbora.<sup>407</sup> Transparentnost finansijskih podataka ostaje naročito loša na Zapadnom Balkanu.<sup>408</sup>

## Finansijska ranjivost

Energetska preduzeća u vlasništvu države, u devet analiziranih zemalja, pokazuju različit stepen finansijske ranjivosti, što se otkriva kroz njihovu veliku izloženost dugu i visoke koeficijente duga, kao i nisku likvidnost i pad tekućih indikatora. Ove finansijske poteškoće bile su posebno izražene u kompanijama koje svoje poslovanje zasnivaju na fosilnim gorivima, koje su se suočavale s problemom stalnog rasta cijena CO<sub>2</sub>, uglja i prirodnog gasa. Napori vlada da cijene energije vještački zadrže niskima kako bi se izbjegla reakcija društva, na štetu su finansijskog zdravlja i političke nezavisnosti preduzeća u državnom vlasništvu, kao i nepristrasnosti regulatornih tijela. Nizak kvalitet finansijskog upravljanja često je povezan sa: a) prevelikim

brojem zaposlenih; b) pretjerano izdašnim finansijskim naknadama i zaradama; i c) loše upravljanje javnim nabavkama. Kriza cijena energenata koja je u Evropi u porastu od druge polovine 2021. godine, i koja je započela nestašicom gasa i nastavila se ratom u Ukrajini, vjerovatno će dodatno povećati stepen ranjivosti, uprkos tome što neke kompanije ostvaruju neočekivan profit.

### Uobičajene putanje zavisnosti koje utiču na rad preduzeća u državnom vlasništvu



Izvor: Centar za proučavanje demokratije, 2022.

Dugogodišnja zavisnost jugoistočne Evrope od uvoza fosilnih goriva iz Rusije, u kombinaciji s istorijskom međuzavisnošću vlasničke, tehnološke i upravljačke strukture i dubokim (i često veoma netransparentnim) finansijskim vezama, dodatno je pogoršala ranjivost energetske sektora u državama ovog regiona. U praksi, neki od najvećih investicionih projekata u regionu jugoistočne Evrope rezultat su međuvladinih sporazuma sa državama koje nisu članice EU, prije svega s Rusijom. Projekat<sup>409</sup> Turski tok kao projekat koji predvodi Rusija odličan je primjer za to. Utičući direktno na Bugarsku, Srbiju i Mađarsku, a indirektno na cijeli region i Evropu, ovaj projekat je imao koristi od i doprinio daljem slabljenju institucija za kreiranje energetske politike i učvršćivanju oligarhijskih mreža uticaja kako ruskih tako i lokalnih privatnih interesa koji imaju bliske veze s vladama. Iako nov igrač, Kina je izgradila sopstveni

<sup>405</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>406</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 58.

<sup>407</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

<sup>408</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>409</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.

investicioni okvir u regionu, posebno na Zapadnom Balkanu, Hrvatskoj i Mađarskoj, čime se stvara prostor za dodatne tenzije u daljoj integraciji ovih zemalja u EU. Kineske investicije, iako dobrodošle u pogledu ekonomske vrijednosti, često nisu u skladu s tehničkim standardima EU i/ili sa pravnom tekovinom EU u vezi s konkurencijom i javnim nabavkama. Pomenuta ulaganja, nalik aktivnostima Kremlja, izazivaju urušavanje demokratskih i tržišnih standarda svojom tajnovitom i netransparentnom prirodom. U mnogim slučajevima takvi projekti jačaju nacionalnu industriju uglja, ignorišu ekološke propise ili nisu u skladu sa sveukupnom politikom dekarbonizacije i održivog rasta.<sup>410</sup>

### Imenovanje izvršnih direktora i članova odbora

Pravila o imenovanju članova odbora i drugih čelnika kompanija u energetske preduzećima u državnom vlasništvu u jugoistočnoj Evropi takođe su nejasna, naročito kad se ima u vidu potencijalni politički uticaj. Brojni su primjeri političkog uplitanja u imenovanja članova upravnih odbora u državnim preduzećima u jugoistočnoj Evropi i regulatornim tijelima, što je narušilo profesionalnu stručnost u planiranju i izvršavanju teških odluka u energetske sektoru. Poslovne aktivnosti državnih preduzeća često pod uticajem ili bi čak mogle da služe interesima kompanija ili pojedinaca s jakim političkim vezama, na štetu sopstvenog finansijskog učinka.

### Nedostaci u upravljanju javnim nabavkama u energetske sektoru

Energetske sektor pokazuje posebno izražene deficite u pogledu upravljanja javnim nabavkama. Neki od ovih deficita poklapaju se s opštim rizicima u domenu nabavke o kojima je gore diskutovano, međutim neki su još izraženiji i/ili karakteristični za sektor, zbog njegove veličine, statusa prirodnog monopola i tehničke kompleksnosti.

### Pogled u budućnost

Uprkos kontinuiranom neujednačenom napretku, zemlje JIE suočavaju se sa značajnim izazovima u pogledu dobrog upravljanja, koji su pojačani unutrašnjim i eksternim autoritarnim pretnjama. Region će i dalje imati koristi od rastuće značajne finansijske i tehničke podrške demokratske zajednice zemalja unutar EU, Evropskog ekonomskog prostora (EEA) i SAD. Kako će svaka zemlja koristiti takvu podršku za napredovanje na putu ka demokratizaciji i borbi protiv korupcije, na kraju, zavisi od napora njenih građana, preduzeća i vlada. Države JIE koje su članice EU moraju pomno pratiti svoje obaveze u okviru Mehanizma vladavine prava, kao i Evropskog semestra i u skladu s tim uložiti ogromne fiskalne podsticaje koje obezbjeđuje Instrument za oporavak i otpornost i Višegodišnji finansijski

### Uočene nepravilnosti u javnim nabavkama u sektoru energetike

| Prije postupka selekcije   | Tokom postupka selekcije  | Nakon postupka selekcije   |
|--|---|--|
| <ul style="list-style-type: none"> <li>kompanija osnovana isključivo da dobije određeni tender (bez prethodnog iskustva)</li> <li>tenderske specifikacije "skrojene" po mjeri određene kompanije</li> <li>pružanje insajderskih informacija</li> <li>nerealno kratki rokovi</li> <li>stvaranje vještačke konkurencije (podnošenje ponuda od strane fiktivnih konkurenata)</li> <li>izdvajanje sredstava za neutemeljene investicije</li> <li>precjenjivanje vrijednosti ugovora</li> </ul> | <ul style="list-style-type: none"> <li>sukob interesa, politički uticaj ili podmićivanje komisije za ocjenu</li> <li>izbjegavanje korišćenja procedura nabavke putem: <ul style="list-style-type: none"> <li>direktnih pregovora</li> <li>snižavanje cijene ispod određenih pragova</li> <li>korišćenje procedura za hitne slučajeve/vanredne okolnosti</li> </ul> </li> <li>navođenje konkretnih projekata kao unaprijed određenih za finansiranje u nacionalnim planskim dokumentima</li> <li>korišćenje okvirnih sporazuma koji favorizuju velike igrače na tržištu</li> </ul> | <ul style="list-style-type: none"> <li>poništanje tendera i diskvalifikovanje konkurenata</li> <li>izmjene uslova tendera kroz anekse</li> <li>plaćanje usluga/opreme koja ne ispunjava minimalne uslove</li> <li>nepostojanje istraga o visokim zvaničnicima i poslovnim ljudima koji se vezuju za određeni ugovor</li> </ul> |

Izvor: Center for the Study of Democracy, 2022.

<sup>410</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

okvir 2021–2027. Sve četiri države koje su članice EU treba da prevaziđu prepreke u upravljanju, ali posebno Bugarska i Mađarska moraju da rade na povećanju efikasnosti pravosuđa i smanjenju koncentracije moći u izvršnoj vlasti. Zemlje Zapadnog Balkana, kao dio jugoistočne Evrope, moraju jednostrano da rade na sprovođenju reformi neophodnih u okviru pregovaračkih poglavlja EU čak i ako je formalno proces proširenja možda bio blokiran, kao u slučaju Albanije i Sjeverne Makedonije. Srbija se suočava s posebnim izazovima s obzirom na njene bliske veze sa i zavisnost od autoritarnih režima.

Opšti izazovi u pogledu dobrog upravljanja često se svode na rješavanje dva međusobno povezana sistema u nacionalnim ekonomijama JIE: javne nabavke i upravljanje energetske preduzećima u državnom vlasništvu. Na osnovu detaljnog pregleda datog u ovom izvještaju, moglo bi se dati nekoliko ključnih preporuka na nivou praktične politike za ova dva domena:

- EU i njeni partneri iz EEA i SAD treba da nastave da pružaju tehničku pomoć u uvođenju dobrih praksi EU u oblasti javnih nabavki, kako u upravljanju fondovima EU namijenjenih ovom regionu tako i u upravljanju nacionalnim resursima. Posebnu pažnju potrebno je posvetiti povećanju kombinovanog kapaciteta i zajedničkom radu regulatornih tijela za borbu protiv korupcije i javne nabavke u izvršnoj vlasti, javnom tužilaštvu i sudovima.
- Vlade država JIE trebalo bi da uvedu mjere za očuvanje integriteta javnih nabavki, i to kroz pojačano praćenje nabavki (kao što su Open Tender ili SCAD alat), povećanu institucionalnu efikasnost, smanjen udio zatvorenih procedura i poboljšane mehanizme za dodjelu ugovora. Zemlje zapadnog Balkana treba da otvore svoje podatke o nabavkama kako bi omogućile bolju dijagnostiku i kontrolu, dok zemlje članice EU iz JIE treba da nastave sa izgradnjom kapaciteta za identifikaciju i borbu protiv znakova koji ukazuju za korupciju u javnim nabavkama.
- Nacionalne vlade bi trebalo da povuku pravila o hitnim nabavkama povezanim s kovidom-19 tako što će se vratiti na primjenu izvornih zakonskih rješenja o nabavkama. Izdvajanja za hitne nabavke u budućnosti treba da budu praćene integrisanim snažnijim expost monitoringom i evaluacijom efikasnosti.
- Vlade država JIE, državna preduzeća i poslovna udruženja treba da usvoje i primenjuju najbolje međunarodne standarde o korporativnom upravljanju državnim preduzećima u energetske sektoru, poput onih koje je razvio OECD. Državna preduzeća u JIE treba da nastoje da izvještavaju u skladu sa sličnim ili višim standardima korporativnog objelodanjivanja informacija nalik privatnim podacima kojima se javno trguje u EU.
- Parlamenti i vlade država JIE treba da poboljšaju nezavisnost nacionalnih regulatora za energetiku i konkurenciju povećanjem sopstvenih administrativnih i finansijskih kapaciteta i ukidanjem prakse političkih imenovanja. Trebalo bi i skratiti mandate članova upravnih odbora. Energetski regulatori u državama JIE moraju blisko sarađivati sa svojim kolegama iz EU na uspostavljanju zajednice praksi. Odluke regulatora moraju biti u skladu sa najvišim standardima javnog objavljivanja informacija.
- Vlade država JIE treba da se uzdrže od ulaska u krupne bilateralne energetske projekte bez odgovarajućih zaštitnih mjera, koje bi, u najmanju ruku, podrazumijevale uključivanje međunarodnih javnih finansijskih institucija, kao što su EIB, EBRD ili Svjetska banka. Takvi projekti po pravilu moraju uključivati sistem otkrivanja informacija koji je višeg standarda od onih koji prevladavaju u zemljama JIE. Takav sistem bi takođe trebalo da bude blagovremeno predstavljen javnosti, i pruža informacije o krupnim energetske infrastrukturalnim projektima, uz detaljnu analizu troškova i koristi.
- Vlade država JIE treba da sarađuju s Evropskom komisijom, državama članicama EU i EEA i SAD kako bi uvele bolju zaštitu svojih ekonomija od ilegalnih ili tzv. korozivnih fondova povezanih s autoritarnim zemljama. Ova zaštitna mjera trebalo bi da uključuje uspostavljanje snažnijih institucija i propisa koji se tiču skринinga investicija i mehanizama za praćenje sankcija.
- Vlade država JIE i njihovi partneri iz EU/EEA i SAD treba da izgrade održive modele interakcije sa nacionalnim i lokalnim civilnim društvom i istraživačkim medijima u pogledu povećanja praćenja javnih nabavki i energetske preduzeća u državnom

vlasništvu. Iskustvo s platformom R2G4P<sup>411</sup> može poslužiti za usmjeravanje napora na regionalnom nivou. Modeli javne podrške organizacijama civilnog društva već postoje širom regiona, ali oni su ili u po-voju ili često izazivaju strah među OCD i medijima od toga da može doći do kompromitovanja njihove nezavisnosti.

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<sup>411</sup> [Regional Good Governance Public-Private Partnership Platform \(R2G4P\)](#), odnosno Regionalna platforma javno-privatnog partnerstva za dobro upravljanje trogodišnja je pilot inicijativa, podržana od strane EEA i Norveškog fonda za grantove za regionalnu saradnju, koja objedinjuje napore trinaest organizacija iz deset zemalja i čiji je cilj da ponudi zajednička antikorupcijska rješenja za povećanje odgovornosti državnih institucija i ojača civilno društvo i vladavinu prava u jugoistočnoj Evropi.

# ИЗВРШНО РЕЗИМЕ

Принципите на добро владеење во регионот на Југоисточна Европа и понатаму се соочуваат со повеќе предизвици. Војната во Украина јасно покажа на кој начин предизвиците во однос на владеењето на правото во регионот го поткопуваат не само неговиот економски развој, туку и единството и отпорноста на ЕУ кога станува збор за авторитарни закани кои доаѓаат однадвор. Новите земји членки на ЕУ од овој регион се меѓу најголемите нето корисници на финансиски средства од ЕУ. Сепак, демократското назадување и корупцијата и понатаму се составен дел од нивните општества, и покрај континуираните јавни и силни негодувања и протести, и воведувањето конкретни чекори од страна на ЕУ и САД за справување со овие предизвици. Станува збор, меѓу другото, за Механизмот за соработка и верификација со цел следење на антикорупциските и судските реформи во Бугарија и Романија по нивното пристапување кон ЕУ во 2007 година. Земјите од Западен Балкан, кои сите заедно претендираат да станат членки на ЕУ, се соочуваат со уште поголеми предизвици во однос на владеењето. Ако кон сето тоа го додадеме и заморот од проширувањето на ЕУ, ова доведе до континуирано одложување на изгледите за зачленување во ЕУ, до зголемена фрустрација на народите во овие земји и до постојани недемократски тенденции. Недостатоците во владеењето кои се постојано присутни во земјите од Југоисточна Европа дополнително се влошија поради пандемијата со Ковид-19 и војната во Украина.<sup>412</sup> Извештајот за добро владеење на ЈИЕ има за цел да овозможи потемелно разбирање на овие предизвици и да го отвори патот за ефективни антикорупциски реформи во вкупно девет земји, од кои четири се земји членки а пет се аспиранти за членство во ЕУ - Бугарија, Хрватска, Унгарија, Романија, Албанија, Босна и Херцеговина, Северна Македонија, Црна Гора и Србија. Овогодинашниот извештај се фокусира на две ранливости кај управувањето кои постојат во регионот а кои најчесто беа предмет на внимание:

<sup>412</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in Southeast Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

јавните набавки и управувањето со државните претпријатија кои работат во енергетскиот сектор.

## Интегритет на јавните набавки

Јавните набавки сочинуваат значителен дел од БДП-то во економиите кои имаат високи приходи и во оние кои имаат ниски приходи. На светско ниво, тие учествуваат со 15% до 30% од бруто домашниот производ. Овој огромен обем на јавна потрошувачка би можел да има клучна улога во економскиот и социјалниот напредок доколку се направи негово ефикасно распределување, но тоа е и една од оние активности на владите кои се најподложни на корупција.<sup>413</sup> Според Канцеларијата на Обединетите нации за дрога и криминал, помеѓу 10% и 25% од вкупната вредност на договорот за јавни набавки може да значи загуба поради сомнителни практики.<sup>414</sup> Иако корупцијата во јавните набавки може да има повеќе појавни форми, постои јасно дефиниран сет на коруптивни техники кои активно се користат во Југоисточна Европа а со цел јавните пари да се искористат за приватна корист.

- **Фаворитизам и клиентелизам.** Една од најчестите форми на неправилност кога станува збор за набавките кои се прават во регионот е повластениот третман на компаниите поради добрите врски кои нивните сопственици ги имаат со политиката. На пример, во Хрватска, околу половина од вкупната вредност на договорите ја добиваат понудувачи кои не се приватни субјекти, туку компании кои се делумно или целосно во сопственост на

<sup>413</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for - a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>414</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.



државата.<sup>415</sup> Голем број на приватни компании во регионот чии сопственици се тесно поврзани со високи политичари добиваат јавни набавки кои се речиси исклучиво креирани по нивен терк. На пример, во Унгарија во последниве 11 години, владејачката партија создаде нова економска елита чии фирми добиваат големи субвенции во сектори како што е, на пример, туризмот<sup>416</sup>.

- **Превисоки цени во договорите.** Превисоките цени на договорите се уште една главна присутна форма на измама во набавките, која е заснована на фаворизирање. Таа опфаќа поширок спектар на договорни органи и добавувачи. Во Унгарија, 90% од проектите за јавни набавки имаат повисоки цени во просек за 25%.<sup>417</sup> Слично на тоа, во Северна Македонија извештаите исто така констатираа големи разлики помеѓу пазарните цени и цените во договорите на некои производи кои имаат идентични спецификации.<sup>418</sup>
- **Прилагодени тендерски спецификации.** Честа техника на корупција е тендерските барања да бидат направени така да одговараат само на квалификациите и експертизата на одредена фирма.
- **Конфликт на интереси во тендерскиот процес.** Случаите на конфликт на интереси на „високо ниво“ не беа ретки во изминативе години во Србија, и станаа уште почести откако започна пандемијата со Кодив-19.<sup>419</sup> Во Бугарија, на пример, конфликтот на интереси се

материјализира во интерните процедури<sup>420</sup> во кои буџетски средства му се обезбедуваат на државното претпријатие без да биде распишан тендер. Овие претпријатија, наместо да ги извршуваат сите активности интерно, како што е предвидено со законот, склучуваат договори за подизведување со приватни фирми кои биле претходно избрани во постапки кои немале поврзаност со конкретните потреби. Ваквото „одметнато“ склучување на интерни договори достигна 4,4 милијарди евра или над 42% од вредноста на сите државни договори за јавни набавки во периодот 2019 - 2020 година.<sup>421</sup>

- **Високо учество на постапки од затворен тип.** Има неколку кредибилни причини зошто би се користеле процедури за набавки од ограничен или затворен тип, на пример, ако откривањето на содржината на тендерот би претставувало ризик за националната безбедност или ако вредноста на понудата е доволно мала за да не претставува значителен ризик од корупција. Сепак, договорните органи во земјите од Југоисточна Европа прекумерно и често користат ограничени постапки и тоа во случаи кога тие не би биле неопходни.
- **Менување на договорот во фазата на имплементација.** Граѓанските организации од регионот известуваат исто така и за злонамерната практика на дополнителни измени на договорот, што резултира со цена во договорот која била многу повисока од онаа која првично била очекувана. Овие модификации е тешко да се следат поради ограничените информации кои се достапни на повеќето официјални веб-страници за набавки.<sup>422</sup>

<sup>415</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>416</sup> András, B., „Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát” [Shocking: the government has provided two-thirds of tourism subsidies to half of those claiming], valaszonline.hu, 26 February 2021.

<sup>417</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Erzékelési Index eredményei 2019-ben* [Corruption, Economic Performance and the Rule of Law in Hungary: Corruption Perceptions Index Results in 2019], TI Hungary, 2019.

<sup>418</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>419</sup> Centar za primenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine* [ALARM REPORT on the situation in public procurement in Serbia in 2020], CPES, November 2020.

<sup>420</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>421</sup> Sokolova, T., „Службеният кабинет спира харченето на милиарди без обществени поръчки” [The cabinet stops spending billions without public procurement], Mediapool.bg, 30 June 2021.

<sup>422</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data - An Implementer's Guide*, 2015.

## Ковид-19 доведе до промени во јавните набавки и до прекумерна употреба на итни постапки за набавки

Пандемијата го зголеми бројот на ограничени „итни“ постапки за набавки со кои се заобиколува стандардната законска процедурар за набавки. Квантитативната проценка на пазарот за набавки покажува дека се забележува севкупен пад на интегритетот на јавните набавки, особено кај оние пазари кои се најзасегнати (здравството и другите производи поврзани со Ковид-19). Овие проблеми можат да се видат преку многу добро познатиот озлогласен пример на „Аферата со респиратори“ во Босна и Херцеговина.<sup>423</sup> Во Хрватска, списокот на добра и услуги за кои може да се користат директни договори за набавки се чуваше во тајност сè до декември 2020 година и беше објавен само поради значителен притисок од пошироката јавност.<sup>424</sup> Во Унгарија, за време на вонредната состојба, премиерот имал овластување да одлучи кои процедури имаат врска со Ковид-19 и да може да спроведе набавки преку директно склучување на договори.<sup>425</sup>

## Ризик од корупција во однос на набавките во здравствениот сектор

Анализата на големите податоци за потребите на овој извештај покажува дека во периодот помеѓу првиот квартал од 2017 година и вториот квартал од 2021 година, Индексот на ризик за корупција (CRI)<sup>426</sup>

<sup>423</sup> Katavić, I., „Afera 'Respiratori': Premijer FBiH Fadil Novalić zadržan u SIPA-i“ [‘Respirators’ affair: FBiH Prime Minister Fadil Novalić detained at SIPA ], *Slobodnaevropa.org*, 28 May 2020; Radiosarajevo.ba, „Afera Respiratori: Novalić i drugi optuženi stigili na novo ročište“ [Respirators affair: Novalić and other indictes arrive for new hearing], 17 November 2021.

<sup>424</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave“ [The Bridge requires that medical equipment is procured through a public procurement procedure], 9 December 2020; Хрватска Влада, *Izvjешće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, [Report on purchases of protective equipment for the purpose of health protection measures implementation and strengthening supervision over the spread of coronavirus], Министерство за економија и одржлив развој, Управа за трговски резерви, 2020.

<sup>425</sup> Орган за јавни набавки, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben* [Opinion of the Public Procurement Authority on certain public procurement issues related to the emergency situation in view of the spread of the coronavirus], 2020.

<sup>426</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

на пазарот на производи поврзано со Ковид-19 пандемијата е зголемен за околу 10 процентни поени во Романија и Хрватска.<sup>427</sup> Ваквото зголемување беше од привремен карактер и по него следеше бавен, но сепак постојан пад. Анализата на големите податоци, исто така, открива дека во последните една и пол година просечната зависност на здравствените сектори од набавките значително се зголемила во Унгарија, и донекаде во Хрватска, ако се спореди со периодот 2017-2020 година. Дополнително, заробените договорни органи не само што им обезбедија поголемо учество на своите фаворизирани добавувачи туку исто така и поголема вредност на јавни средства.

## Управување со државните претпријатија во енергетскиот сектор

Енергетскиот сектор е еден од главните систематски проблеми кога станува збор за управувањето а кој доведува до значителни загуби на јавното богатство<sup>428</sup> и обезбедува можности за „упад“ на недозволените финансии и странско авторитарно влијание во регионот.<sup>429</sup> Енергетскиот сектор е од суштинско значење за Југоисточна Европа, поради неговиот статус на природен монопол (честопати е во сопственост на државата), социјалната чувствителност кај луѓето во случаи на поскапување (како што, впрочем, го покажаа и протестите кои се случуваа во целиот регион во изминатава деценија) и големите инвестиции и финансиски интереси поврзани со овие претпријатија. Дијагностиката за проценка на заробеност на државата (SCAD) го идентификува овој сектор како сектор е исклучително ранлив на монополизација.<sup>430</sup> Земјите од Југоисточна Европа беа предмет на повеќе обвинувања за блокирање

<sup>427</sup> Види GTI's *Global Government Contracts database*, 19 July 2021.

<sup>428</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

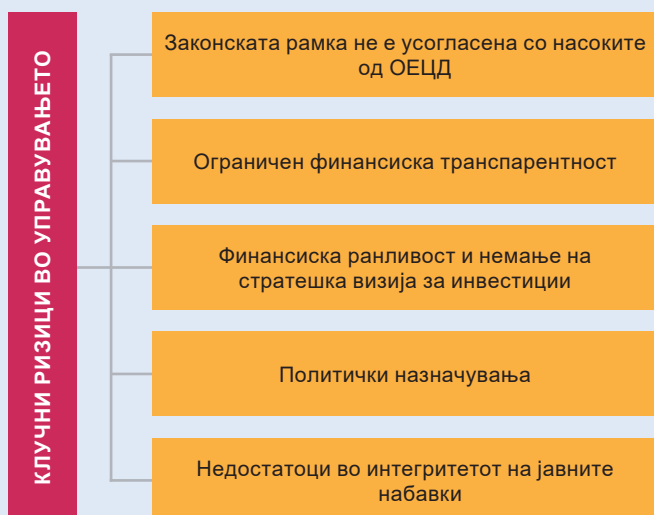
<sup>429</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy, 2018.

<sup>430</sup> Врз основа на податоци за Бугарија, Романија, Италија и Шпанија. За повеќе информации: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019. Види, Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.

на либерализацијата на пазарот на гас во корист на локалните олигархиски корпоративни мрежи а во полза на добавувачите на гас кои се контролирани од Кремљ. Во таа смисла, доколку со овој сектор не се управува на соодветен начин, тој би можел да ја поткопа независноста и развојот на земјите од Југоисточна Европа.

Дефицитите во јавната одговорност кај државните претпријатија во енергетскиот сектор можат да се видат во повеќе случаи, кои беа констатирани со истражувачки медиумски извештаи, извештаите на граѓанското општество или преку ревизиите направени од релевантните јавни органи во регионот на Југоисточна Европа. Овие прашања придонесуваат за постоење на општествено-политичко опкружување каде што е дозволено да напредуваат практиките на лошо финансиско управување во државните претпријатија и носењето на неефикасни или штетни инвестициски одлуки. Отсуството на солидна законска рамка е клучен фактор поради што постои ограничена финансиска транспарентност и широко распространето политичко мешање во секојдневното управување со државните претпријатија.

#### Клучни ризици во однос на управувањето со државните претпријатија во енергетскиот сектор



Извор: Центар за проучување на демократијата, 2022 година.

### Транспарентност

Регулаторната рамка за корпоративно управување во регионот сè уште е во фаза на развој, иако во по-

следниве години беа направени одредени подобрувања. Правната рамка што го регулира управувањето со енергетските претпријатија во земјите од Западен Балкан не е усогласена со насоките на ОЕЦД за корпоративно управување со претпријатијата во државна сопственост.<sup>431</sup> Земјите членки на ЕУ имаат подобри резултати кога зборуваме за важечките закони, но имплементацијата на тие закони и понатаму е ограничена и бавна.<sup>432</sup> Компаниите кои се во положа финансиска состојба имаат тенденција да бидат помалку транспарентни. Еден начин да се подобри нивната транспарентност е тие да котираат на берза, што беше случај со Ромгаз и Хидроелектрика во Романија. Има уште еден позитивен пример, MOL Групацјата, која е компанија од Унгарија која котира на берзата и која ги објавува своите финансиски извештаи и го обелоденува бројот на акции што ги поседува секој член на Одборот.<sup>433</sup> Транспарентноста на финансиските податоци во земјите од Западен Балкан и понатаму е особено слаба.<sup>434</sup>

### Финансиска ранливост

Државните претпријатија од енергетскиот сектор во деветте земји кои беа опфатени со истражувањето покажуваат различен степен на финансиска ранливост, која може да се забележи преку нивната голема изложеност на долг и високите коефициенти на долг, како и ниската ликвидност и намалувањето на тековните коефициенти. Овие финансиски тешкотии се особено изразени кај компаниите кои користат фосилни горива и кои се соочуваат со проблеми во обидите да фатат чекор со постојано растечките цени на CO<sub>2</sub>, јагленот и природниот гас. Напорите на владата вештачки да ги задржи цените на енергијата на ниско ниво за да се избегнат социјални последици се на сметка на финансиската состојба и политичката независност на претпријатијата во

<sup>431</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>432</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

<sup>433</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

<sup>434</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

државна сопственост, како и на непристрасноста на регулаторните органи. Нискиот квалитет на финансиско управување често се доведува во врска со: а) преголемиот број на вработени; б) мошне дарезжливиот наградување преку надоместоци; и в) лошото управување со јавните набавки. Растечката енергетска криза во Европа која се случува од втората половина на 2021 година а која започна со недостаток на природен гас и продолжи со војната во Украина, е веројатно дека дополнително ќе влијае негативно на ранливоста, и покрај неочекуваните добивки кај некои од претпријатијата.

Долготрајната зависност на Југоисточна Европа од увозот на фосилни горива од Русија, заедно со историјатот на сопственичка, технолошка и менаџерска зависност, вклучително и длабоките (и често мошне нејасни) финансиски врски, дополнително ја влошија ранливоста на енергетските сектори во Европа кои се во сопственост на државата. Во пракса, некои од најголемите инвестициски проекти во регионот на Југоисточна Европа се резултат на договори склучени со држави кои не се членки на ЕУ, особено со Русија. Дobar пример за тоа е проектот TurkStream кој е предводен од Русија<sup>435</sup>. Овој проект ги засега директно Бугарија, Србија и Унгарија, а индиректно и целиот регион и Европа и придонесе за натамошно ослабување на институциите кои ги креираат енергетските политика и за инсталирање на олигархиските мрежи на влијание на руските и на локалните приватни интереси кои имаат блиски врски со владата. Кина, иако е нов играч, креираше своја инвестициска рамка во регионот, особено во Западен Балкан, Хрватска и Унгарија, така што ги постави основите за дополнителни тензии во понатамошната интеграција на овие земји во ЕУ. Кинеските инвестиции, иако се добре дојдени од аспект на нивните трошоци, честопати не се во согласност со техничката стандардизација на ЕУ и/ или со правото на ЕУ кое се однесува на конкуренцијата и јавните набавки. Слично како и со Кремљ, овие инвестиции доведуваат до ерозија на демократските и пазарните стандарди поради тоа што се тајни по природа. Во многу случаи, ваквите

проекти ги зајакнуваат националните индустрии за јаглен, ги игнорираат еколошките регулативи или не се во согласност со севкупната политика за декарбонизација и одржлив раст.<sup>436</sup>

#### Заедничка патека на зависност која влијае на работењето на државните претпријатија



Извор: Центар за проучување на демократијата, 2022 година.

#### Назначување на извршни директори и членови на одбори

Правилата за назначување на членови на одбори и на други раководители на компании во енергетските претпријатија во земјите од Југоисточна Европа се исто така нејасни, особено ако го земеме предвид потенцијалното политичко влијание. Бројни се примерите на мешање на политиката во земјите од Југоисточна Европа кога станува збор за назначување на лица во управните одбори во државните претпријатија и во регулаторните органи, што значеше поткопување на професионалната стручна експертиза во планирањето и извршувањето на тешките одлуки во енергетскиот сектор. Во таа смисла, деловните активности на јавните претпријатија честопати се под влијание, или дури и им служат, на интересите на компании или поединци кои имаат силни врски со политиката, на сметка на финансискиот учинок на јавните претпријатија во државна сопственост.

<sup>435</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.

<sup>436</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

**Констатирани неправилности кај јавните набавки во енергетскиот сектор**

| Пред постапката на селекција   | За време на постапката на селекција   | По завршување на постапката на селекција  |
|--|---|---|
| <ul style="list-style-type: none"> <li>• фирма формирана исклучиво за да победи на одреден тендер (без претходно искуство)</li> <li>• тендерски спецификации „прилагодени“ на конкретна фирма</li> <li>• давање инсајдерски информации</li> <li>• нереално кратки рокови</li> <li>• создавање вештачка конкуренција (доставување понуди од лажни конкуренти)</li> <li>• доделување финансии за неосновани инвестиции</li> <li>• превисоки цени во договорот</li> </ul> | <ul style="list-style-type: none"> <li>• судир на интереси, политичко влијание или поткупување на комисијата за евалуација</li> <li>• избегнување на постапите за набавка преку:                     <ul style="list-style-type: none"> <li>• директни преговори</li> <li>• намалување на цената под праговите</li> <li>• користење на итни постапки</li> </ul> </li> <li>• наведување конкретни проекти во националните плански документи како однапред определени за финансирање</li> <li>• користење рамковни договори кои фаворизираат големи пазарни играчи</li> </ul> | <ul style="list-style-type: none"> <li>• поништување на тендери и дисквалификување на конкурентите</li> <li>• менување на тендерските услови преку анекси</li> <li>• плаќање за услуги/ опрема кои не ги исполнуваат минималните барања</li> <li>• немање истрага за високи функционери и деловни лица поврзани со одреден договор</li> </ul> |

*Извор: Центар за проучување на демократијата, 2022 година.*

**Недостатоци во управувањето со јавните набавки во енергетскиот сектор**

Енергетскиот сектор покажува особено голем дефицит кога станува збор за управување со јавните набавки. Некои од овие недостатоци се совпаѓаат со општите ризици кај набавките кои ги споменавме претходно, но некои се уште поизразени и/или единствени за овој сектор, поради неговата големина, статусот на природен монопол и техничката сложеност.

**Како понатаму**

Без разлика на континуираниот нерамномерен напредок, земјите од Југоисточна Европа и понатаму се соочуваат со значителни предизвици кога станува збор за доброто владеење, кои се надополнети со интерни и екстерни авторитарни закани. Регионот и понатаму ќе добива значителна финансиска и техничка поддршка од демократската заедница на земјите во ЕУ, Европската економска област (ЕЕА) и САД. Начинот на кој секоја земја ќе ја користи таквата поддршка за да напредува на патот на демократизација и антикорупција, на крајот од краиштата ќе зависи од напорите кои ги прават нејзините граѓани, бизнисите и владите. Членките на ЕУ од Југоисточна Европа треба внимателно да ги следат своите заложби во

рамките на Механизмот за владеење на правото, како и Европскиот семестар и соодветно да инвестираат значителни фискални стимулации кои се обезбедени од Инструментот за опоравување и отпорност и Повеќегодишната финансиска рамка 2021-2027 година. Сите четири земји членки на ЕУ треба да ги надминат пречките на патот на доброто владеење, но особено Бугарија и Унгарија треба соодветно да работат на зголемување на ефикасноста на судството и на деконцентрирање на моќта во извршната власт. Секоја од земјите од Западен Балкан во Југоисточна Европа треба да работи во насока на спроведување на реформите кои се потребни според поглавјата предвидени со преговорите за членство во ЕУ, дури и ако од формален аспект процесот на проширување можеби е блокиран, како што е случајот со Албанија и Северна Македонија. Србија се соочува со посебни предизвици со оглед на нејзините блиски врски и зависности од авторитарни режими.

Општите предизвици на доброто владеење честопати се сведуваат на решавање на два меѓусебно поврзани системи во националните економии на земјите од Југоисточна Европа: јавните набавки и управувањето со јавните претпријатија во државна сопственост во енергетскиот сектор. Врз основа на темелниот преглед содржан во овој извештај, може да се наведат неколку клучни препораки во врска со политиките во овие два домени:



- ЕУ и нејзините партнери од ЕЕА и од САД треба и понатаму да обезбедуваат техничка помош во вклучувањето на добрите практики за јавни набавки на ЕУ – како во управувањето со фондовите на ЕУ за регионот така и во управувањето со националните ресурси. Посебно внимание треба да се посвети на зголемување на комбинираниот капацитет и заедничка работа на антикорупциските и регулаторни органи за јавни набавки кои се дел од извршната власт, јавното обвинителство и судовите.
- Владите на земјите од Југоисточна Европа треба да го штитат интегритетот на јавните набавки, преку унапреден мониторинг на набавките (како што е Open Tender или SCAD алатката), зголемена институционална ефикасност, намален број на затворени постапки и подобрени механизми за доделување договори за јавни набавки. Земјите од Западен Балкан треба да ги отворат своите податоци кои се однесуваат на набавките за да се овозможи подобра дијагностика и контрола, додека земјите членки на ЕУ од Југоисточна Европа треба и понатаму да градат капацитет за целите на идентификување и постапување со индикациите за корупција во јавните набавки.
- Националните влади треба да ги повлечат од употреба правилата за итни набавки поврзани со Ковид-19 и да го вратат првичното законодавство за јавни набавки. Во иднина, трошењата поврзани со итни случаи треба да бидат придружени со интегриран засилен *ex-post* мониторинг и евалуација на ефикасноста.
- Владите на земјите од Југоисточна Европа, државните претпријатија и бизнис асоцијациите треба да ги усвојат и применат најдобрите меѓународни стандарди за корпоративно управување со државни претпријатија во енергетскиот сектор, како што се оние развиени од ОЕЦД. Јавните претпријатија од земјите од Југоисточна Европа треба да се стремат кон тоа да известуваат согласно слични или повисоки стандарди за корпоративно обелоденување во споредба со нивните колеги кои се јавно котирали на берзите во ЕУ.
- Парламентите и владите на земјите од Југоисточна Европа треба да ја подобрат независноста на националните регулатори за енергетика и конкуренција преку унапредување на нивниот административен и финансиски капацитет и отстранување на политичките пречки. Потребно е да се воведат и пократки мандати на членовите на одборите. Регулаторите за енергетика во Југоисточна Европа треба тесно да соработуваат со своите колеги од ЕУ со цел воспоставување заедница на практики. Одлуките на регулаторите треба да се придржуваат до највисоките стандарди за јавно објавување на информации.
- Владите на земјите од Југоисточна Европа треба да се воздржат од зафаќање со големи билатерални енергетски проекти без притоа да имаат соодветни заштитни мерки, кои како минимум би можеле да опфаќаат вклучување на јавни меѓународни финансиски институции, како што се ЕИБ, ЕБОР или Светска банка. Ваквите проекти треба по правило да вклучуваат систем за обелоденување информации со стандарди кои се повисоки од оние што вообичаено преовладуваат во земјите од Југоисточна Европа. Таквиот систем, исто така, треба навремено да биде објавен јавно, да обезбедува информации за големи енергетски инфраструктурни проекти и да вклучува и детална анализа на трошоците.
- Националните влади на земјите од Југоисточна Европа треба да соработуваат со Европската комисија, земјите членки на ЕУ и ЕЕА, како и со САД, за да воведат подобри заштитни механизми за нивните економии од недозволен или штетни фондови кои се поврзани со авторитарни земји. Овие механизми треба да вклучуваат воведување подобри институции и регулативи со кои ќе се овозможи следење (скрининг) на инвестициите и санкции.
- Владите на земјите од Југоисточна Европа и нивните партнери од ЕУ/ЕЕА и САД треба да изградат модели на одржлива интеракција со националното и локално граѓанско општество и со истражувачките медиуми во смисла на поголем мониторинг на јавните набавки и на јавните претпријатија во државна сопственост во енер-



гетскиот сектор. Искуството на платформата R2G4P<sup>437</sup> може да биде основа за информирање на ваквите активности на регионално ниво. Во регионот веќе има модели на јавна поддршка за граѓанските организации, но тие се или во подем или често предизвикуваат страв кај граѓанските организации и медиумите од аспект на загрозување на нивната независност.

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<sup>437</sup> Регионалната платформа за јавно-приватно партнерство за добро владеење (R2G4P) е тригодишна пилот иницијатива, поддржана од ЕЕА и Норвешкиот грантов фонд за регионална соработка, која ги обединува напорите на тринаесет организации од десет земји и има за цел да испорача заеднички антикорупциски решенија за зголемување на одговорноста на државните институции и зајакнување на граѓанското општество и владеење на правото во Југоисточна Европа.

# REZUMAT EXECUTIV

Principiile buneii guvernări se confruntă în continuare cu provocări din ce în ce mai numeroase în regiunea de sud-est a Europei. Războiul din Ucraina a demonstrat în mod evident modul în care provocările la adresa statului de drept subminează nu numai dezvoltarea economică a acestui stat, dar și unitatea și rezistența UE în fața amenințărilor autoritare externe. Statele membre noi ale UE din regiune sunt incontestabil printre cele mai mari destinatari ale finanțării UE. Cu toate acestea, regresul democratic și corupția continuă să bântuie aceste societăți, în pofida protestelor și revoltelor publice masive și a introducerii de măsuri europene și americane specifice pentru a remedia aceste provocări. Printre aceste măsuri se numără și Mecanismul de Cooperare și Verificare pentru monitorizarea reformelor judiciare și de combatere a corupției din Bulgaria și România după aderarea lor în anul 2007, precum și cerințele mult mai aspre privind statul de drept, în vederea aderării Croației în anul 2013, sancțiunile Statelor Unite impuse Bulgariei în anul 2021 prin Legea Globală Magnițki și declanșarea unor proceduri de sancțiuni nou concepute în vederea înghețării fondurilor europene pentru Ungaria, în anul 2022. Țările balcanice din regiunea de Vest, care aspiră să adere la UE, se confruntă cu probleme de guvernare chiar mai drastice. Toate acestea combinate cu lentoarea UE de a se extinde au avut drept rezultat o continuă întârziere a perspectivelor de aderare la UE, ceea ce a condus la frustrarea populației și la apariția unor tendințe nedemocratice recurente. Lacunele constante de guvernare din Europa de sud-est au fost amplificate și mai mult de pandemia de COVID-19 și de războiul dus de Kremlin în Ucraina.<sup>438</sup> *Raportul buneii guvernante în SEE* își propune să asigure o înțelegere mai profundă a acestor probleme și să netezească drumul pentru reforme eficiente de combatere a corupției în nouă state – patru state membre și cinci țări care își dorească să devină membre ale UE – Bulgaria, Croația, Ungaria, România, Albania, Bosnia și Herțegovina, Macedonia de Nord, Muntenegru și Serbia. Raportul de anul acesta se concentrează asupra a două dintre cele mai greu încercate vulnerabilități din regiune: achizițiile

<sup>438</sup> Stefanov, R. and Vladimirov, M., *The Kremlin Playbook in South-east Europe: Economic Influence and Sharp Power*, Sofia: Centrul pentru Studiul Democrației, 2020.

publice și guvernarea întreprinderilor deținute de stat în sectorul energiei.

## Integritatea achizițiilor publice

Achizițiile publice constituie o componentă substanțială a PIB atât în economiile cu venituri mari, cât și în cele cu venituri reduse. La nivel mondial, achizițiile publice reprezintă între 15% și 30% din PIB. Acest volum enorm de cheltuieli publice ar putea juca un rol crucial în progresul economic și social dacă ar fi alocat eficient. Cu toate acestea, însă, domeniul achizițiilor publice este și una dintre activitățile guvernamentale cele mai vulnerabile în fața corupției.<sup>439</sup> Potrivit Biroului Organizației Națiunilor Unite privind Drogurile și Criminalitatea, între 10% și 25% din valoarea totală a unui contract public se poate pierde din cauza practicilor dubioase.<sup>440</sup> În timp ce corupția în domeniul achizițiilor publice poate lua numeroase forme, există un set de tehnici de corupție clar definite care sunt utilizate în mod activ în Europa de sud-est pentru sifonarea banilor publici în scopul câștigului propriu.

- **Favoritism și clientelism** Una dintre cele mai uzuale forme de nereguli în ceea ce privește achizițiile publice din regiune este tratamentul preferențial al companiilor ca urmare a conexiunilor politice favorabile pe care le au proprietarii acestora. De exemplu, în Croația, aproximativ jumătate din valoarea totală a contractelor este câștigată de ofertanți care nu sunt entități private, ci companii deținute parțial sau integral de stat.<sup>441</sup> Numeroase companii private din întreaga regiune, ai căror proprietari au legături apropiate cu politicieni de la nivel înalt, câștigă licitații publice care sunt organizate aproape exclusiv pen-

<sup>439</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; Banca Mondială, *Fraud and Corruption Awareness Handbook*, Washington, D.C.: World Bank Group, 2013/2013.

<sup>440</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>441</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

tru acestea. De exemplu, în Ungaria, pe parcursul ultimilor 11 ani, partidul de la guvernare a creat o nouă elită economică din cadrul căreia fac parte corporații care primesc subvenții considerabile, în sectoare ca turismul.<sup>442</sup>

- **Supraevaluarea prețurilor contractelor** Supraevaluarea prețurilor contractelor este o altă formă preponderentă de fraudă în achiziții care se bazează pe favoritism. Aceasta implică un spectru mai larg de autorități contractante și de furnizori. În Ungaria, 90% din proiectele de achiziții publice sunt supraevaluate în medie cu 25%.<sup>443</sup> În mod asemănător, în Macedonia de Nord rapoartele de investigații au găsit mari diferențe între prețurile de piață și prețurile contractelor la unele produse cu specificații identice.<sup>444</sup>
- **Caiete de sarcini adaptate** O tehnică de corupție frecvent întâlnită este aceea de a crea cerințe mult prea specifice în caietele de sarcini, care să se potrivească expertizei și calificării unei anumite firme.
- **Conflictul de interese în procesul de licitație.** În ultimii ani, cazurile de conflict de interese „la nivel înalt” nu au fost deloc rare în Serbia, ci au devenit chiar mult mai frecvente după debutul pandemiei de COVID-19.<sup>445</sup> În Bulgaria, conflictul de interese s-a materializat în proceduri interne,<sup>446</sup> în care fonduri de la buget au fost alocate fără licitație unei întreprinderi deținute de stat. Aceasta din urmă, în loc să deruleze intern toate activitățile, așa cum prevede legea, a subcontractat ulterior companii private care fuseseră preselecțate în cadrul unor proceduri fără legătură cu aceasta. Aceste contractări necinstite organizate intern au atins valoarea de 4.4 miliarde

de Euro sau peste 42% din valoarea tuturor contractelor de achiziții publice angajate de guvern în perioada 2019-2020.<sup>447</sup>

- **Incidență mare a procedurilor închise** Există câteva motive credibile pentru utilizarea procedurilor de achiziții închise sau restrânse, de exemplu atunci când dezvăluirea conținutului licitației ar reprezenta un risc pentru securitatea națională sau dacă valoarea licitației este suficient de mică încât să nu prezinte riscuri de corupție semnificative. Cu toate acestea, autoritățile contractante din SEE fac uz în mod exagerat de procedurile restrânse în cazuri în care acestea nu s-ar impune.
- **Modificarea contractelor în faza de implementare** CSO-urile din regiune raportează rele practici cu privire la modificări ex-post ale contractelor, având drept rezultat prețuri mult mai mari decât erau așteptate inițial. Aceste modificări sunt greu de urmărit din cauza lipsei de informații de pe cele mai multe website-uri oficiale de achiziții.<sup>448</sup>

### Pandemia de COVID-19 a indus modificări cu privire la achizițiile publice și o utilizare exagerată a procedurilor de urgență

Pandemia a mărit numărul de proceduri restrânse „de urgență” inerente care eludează legislația comună a achizițiilor. Evaluarea cantitativă a pieței achizițiilor demonstrează că a determinat un declin general al integrității achizițiilor publice, în special pe cele mai afectate piețe – sănătatea și alte produse conexe COVID. Aceste probleme au fost exemplificate prin scandalul „Afaceri respirator” din Bosnia și Herțegovina.<sup>449</sup> În Croația, lista bunurilor și serviciilor pentru care puteau fi utilizate proceduri de achiziție directă a fost ținută confidențială până în decembrie 2020. Lista a fost făcută publică numai ca urmare a presiunii masive venite din

<sup>442</sup> András, B., „Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát,” valaszonline.hu, 26 February 2021.

<sup>443</sup> Ligeti, M. et al. *Korrupció, gazdasági teljesítmény és jogállamiság Magyarországon: A Korrupció Érzékelési Index eredményei 2019-ben* [Corruption, Economic Performance and the Rule of Law in Hungary: Corruption Perceptions Index Results in 2019], TI Hungary, 2019.

<sup>444</sup> Centar za primenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine* [ALARM REPORT on the situation in public procurement in Serbia in 2020], CPES, November 2020.

<sup>445</sup> Centar za primenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine* [ALARM REPORT on the situation in public procurement in Serbia in 2020], CPES, November 2020.

<sup>446</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>447</sup> Sokolova, T., „Служебният кабинет спира харченето на милиарди без обществени поръчки” [The cabinet stops spending billions without public procurement], Mediapool.bg, 30 June 2021.

<sup>448</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data – An Implementer’s Guide*, 2015.

<sup>449</sup> Katavić, I., „Afera ‚Respiratori’: Premijer FBiH Fadil Novalić zadržan u SIPA-i,” Slobodnaevropa.org, 28 May 2020; Radiosarajevo.ba, „Afera Respiratori: Novalić i drugi optuženi stigli na novo ročište,” 17 noiembrie 2021.

partea publicului larg.<sup>450</sup> În Ungaria, pe durata stării de urgență, Prim-Ministrul a avut puterea de a decide care proceduri aveau legătură cu pandemia de COVID-19, și astfel ce anume putea fi achiziționat prin atribuire directă.<sup>451</sup>

### Risc de corupție asociat achizițiilor publice din sectorul sănătății

Analiza amplă a datelor pentru raportul actual demonstrează că între primul trimestru din anul 2017 și cel deal doilea trimestru din 2021, *Indicele Riscului de Corupție (IRC) pe piața COVID*<sup>452</sup> a crescut cu aproximativ 10 puncte procentuale în România și Croația.<sup>453</sup> Creșterea a fost temporară și a fost urmată de o scădere lentă, dar constantă. Analiza datelor scoate la iveală și faptul că în ultimul an și jumătate a crescut considerabil dependența consumatorului mediu de sectorul de sănătate în Ungaria. Și în Croația s-a înregistrat o creștere ușoară, comparativ cu perioada 2017-2020. Mai mult decât atât, autoritățile contractante capturate au alocat nu doar o cotă mai mare, ci și o valoare mai mare din fondurile publice către furnizorii lor agreați.

### Guvernarea întreprinderilor deținute de stat din sectorul energiei

Sectorul energiei reprezintă una dintre principalele probleme sistematice de guvernare care conduce la pierderi semnificative din avutul public<sup>454</sup> și care asigură

<sup>450</sup> Nacionalno.hr, "Most traži da se medicinska oprema nabavlja kroz postupak javne nabave" [The Bridge requires that medical equipment is procured through a public procurement procedure], 9 December 2020; Croatian Government, *Izvršene nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, [Report on purchases of protective equipment for the purpose of health protection measures implementation and strengthening supervision over the spread of coronavirus], Ministry of Economy and Sustainable Development, Directorate for Commodity Stocks, 2020.

<sup>451</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben* [Opinion of the Public Procurement Authority on certain public procurement issues related to the emergency situation in view of the spread of the coronavirus], 2020.

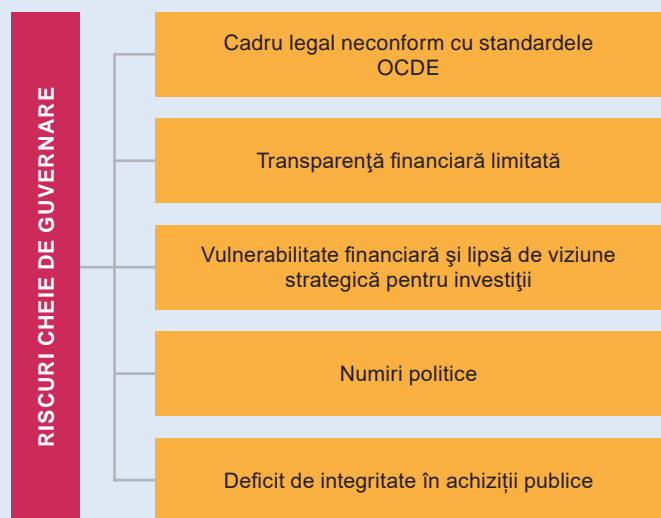
<sup>452</sup> Fazekas, M., and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>453</sup> See GTI's *Global Government Contracts database*, 19 iulie 2021.

<sup>454</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

căi pentru finanțări ilicite și influență autoritară străină în regiune.<sup>455</sup> Sectorul energiei este de importanță crucială pentru Europa de sud-est, datorită statutului său de monopol natural (adesea deținut de stat), sensibilității sociale a oamenilor cu privire la creșterile de prețuri (după cum au demonstrat-o protestele desfășurate în întreaga regiune pe parcursul ultimilor zece ani), precum și marilor investiții și interese financiare care sunt la mijloc. *Diagnosticul de Evaluare a Capturării Statului (SCAD)* identifică sectorul ca fiind unul extrem de vulnerabil în fața fenomenului de monopolizare.<sup>456</sup> Țările din SEE s-au confruntat cu numeroase acuzații privind blocarea liberalizării pieței gazului în favoarea rețelelor corporatiste oligarhice locale și în beneficiul furnizorilor de gaz controlați de la Kremlin. Astfel, dacă nu este guvernat corespunzător, sectorul energiei poate submina independența și dezvoltarea țărilor din SEE.

### Riscurile cheie de guvernare pentru managementul întreprinderilor de stat din sectorului energiei



Sursa: Centrul pentru Studiul Democrației, 2022.

Lipsa răspunderii publice de la nivelul întreprinderilor energetice deținute de stat (SOE) este vizibilă în numeroase cazuri dezvăluite de reportajele presei de investigație, de rapoartele societății civile sau de au-

<sup>455</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Centrul pentru Studiul Democrației, 2018.

<sup>456</sup> Bazat pe date disponibile pentru Bulgaria, România, Italia și Spania Pentru mai multe informații, consultați: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Centrul pentru Studiul Democrației, 2019. De asemenea, a se vedea și Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.

diturile autorităților publice competente de pe teritoriul regiunii SEE. Aceste probleme contribuie la un mediu socio-politic în care practicile de management financiar deficitar din cadrul întreprinderilor de stat sunt lăsate să prospere și sunt puse în aplicare decizii ineficiente sau se realizează investiții păguboase. Lipsa unui cadru legal solid este un factor cheie care permite o transparență financiară limitată și o un amestec la scară mare a politicului în administrarea curentă a întreprinderilor de stat.

## Transparență

Cadrul de reglementare pentru guvernarea corporativă este încă în proces de dezvoltare în regiune, deși s-au înregistrat unele îmbunătățiri în ultimii ani. Cadrul legal care reglementează managementul întreprinderilor de stat din domeniul energiei din Balcanii Occidentali nu este conform cu *Linii directoare privind guvernarea corporativă a întreprinderilor de stat, elaborate de OCDE*.<sup>457</sup> Statele membre UE au rezultate mai bune în privința legislației aplicabile, însă cu toate acestea implementarea rămâne lentă și limitată.<sup>458</sup> Companiile cu o stare financiară precară tind să fie mai puțin transparente. O modalitate de îmbunătățire a transparenței acestora este să își deschidă capitalul, așa cum a fost cazul întreprinderilor Romgaz și Hidroelectrica din România. Un alt exemplu pozitiv este MOL Group, o companie listată la Bursă în Ungaria, care își publică declarațiile financiare și dezvăluie cota de acțiuni deținută de fiecare Membru al Consiliului de Administrație.<sup>459</sup> Transparența datelor financiare rămâne redusă în Balcanii Occidentali.<sup>460</sup>

## Vulnerabilitate financiară

Întreprinderile de stat din domeniul energiei din cele nouă țări studiate demonstrează un nivel variabil de vul-

nerabilitate financiară, evidențiat printr-o mare expunere la îndatorare și ponderi ridicare ale datorii, precum și niveluri scăzute de lichidități și cote de cont curent în scădere. Aceste dificultăți financiare au fost pronunțate în special în întreprinderile pe bază de combustibil fosil care au făcut eforturi să reziste în fața prețurilor mereu în creștere la emisiile de CO<sub>2</sub>, cărbune și gaze naturale. Eforturile guvernelor de a păstra în mod artificial prețurile scăzute la energie pentru a evita un colaps social se fac cu prețul sănătății financiare și independenței politice a întreprinderilor de stat, precum și al imparțialității autorităților de reglementare. Calitatea scăzută a managementului financiar are adesea legătură cu: a) numărul excesiv de angajați, b) salariile extrem de generoase și c) proasta gestionare a achizițiilor publice. Criza prețurilor la energie, care este în plină derulare în Europa din a doua jumătate a anului 2021 și care a debutat cu sistarea furnizării gazului și a continuat cu războiul din Ucraina, cel mai probabil va accentua și mai mult vulnerabilitățile, în pofida profiturilor neașteptate ale unor companii.

Dependența îndelungată a statelor din SEE de importurile de combustibil fosil din Rusia, combinată cu proprietatea istorică, dependența de calea tehnologică și managerială, precum și legăturile financiare profunde (și adesea foarte opace) au adâncit și mai mult vulnerabilitatea sectoarelor de energie deținute de stat. În practică, unele dintre cele mai mari proiecte de investiții din regiunea SEE sunt rezultatul acordurilor interguvernamentale cu state non-UE, în special cu Rusia. Proiectul TurkStream<sup>461</sup> în care Rusia este lider este un prim exemplu. Afectând în mod direct Bulgaria, Serbia și Ungaria, iar, indirect, întreaga regiune și Europa, a beneficiat și a contribuit la slăbirea și mai mult a instituțiilor care elaborează politici în domeniul energiei și la consolidarea rețelelor oligarhice de influență ale Rusiei, precum și a intereselor private locale cu legături apropiate la nivelul guvernului. China, deși este nou-venită, și-a creat propriul cadru de investiții în regiune, în special în Balcanii Occidentali, în Croația și Ungaria, stabilind premisele unor tensiuni în plus pentru integrarea acestor țări în UE. Investițiile Chinei, deși sunt binevenite din punctul de vedere al costurilor, sunt deseori neconforme cu standardizările tehnice ale UE și/sau cu aquis-ul UE

<sup>457</sup> OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>458</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, p. 58.

<sup>459</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999-2020).

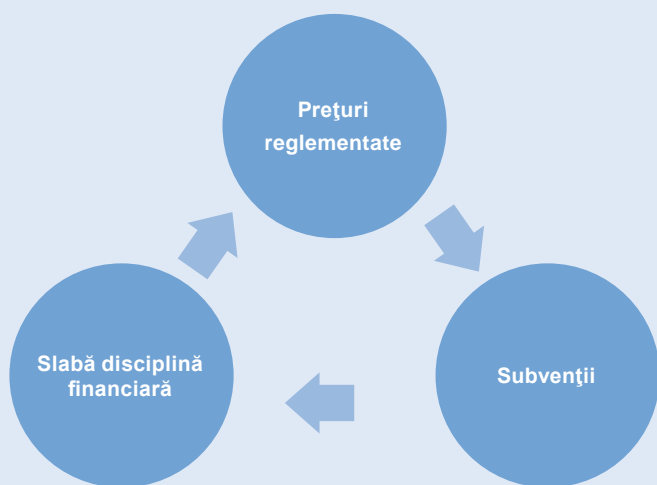
<sup>460</sup> Shentov, O., Stefanov, R., and Todorov, B., *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

<sup>461</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.



privind concurența și achizițiile publice. De asemenea, la fel ca în cazul Kremlinului, acestea creează o eroziune a standardelor democratice și de piață prin natura lor secretă și netransparentă. În multe cazuri, astfel de proiecte consolidează industriile naționale de cărbune, ignoră reglementările de mediu sau nu sunt conforme cu politica generală de decarbonizare și creștere durabilă.<sup>462</sup>

**Dependențele de căile obișnuite care afectează funcționarea întreprinderilor de stat**



Sursa: Centrul pentru Studiul Democrației, 2022.

**Desemnarea Directorilor Executivi și a membrilor consiliilor de administrație**

Regulile privind desemnarea membrilor consiliilor de administrație și a altor șefi de companii din cadrul întreprinderilor de stat din domeniul energiei din SEE sunt, de asemenea, neclare, în special dacă luăm în considerare posibilele influențe politice. Au existat numeroase exemple de amestecuri politice în numirea consiliilor de conducere în întreprinderile deținute de stat și autoritățile de reglementare din Spațiul Economic European, fapt care a subminat expertiza specialiștilor în planificarea și punerea în aplicare a deciziilor dificile în sectorul energiei. Drept urmare, activitățile comerciale ale întreprinderilor deținute de stat sunt deseori influențate sau chiar ar putea servi intereselor companiilor sau persoanelor fizice cu legături politice puternice, în detrimentul performanței financiare a întreprinderilor de stat.

**Lacune de guvernare în achizițiile publice din sectorul energiei**

Sectorul energiei prezintă mari lacune de guvernare în special în domeniul achizițiilor publice. Unele dintre aceste lacune coincid cu riscurile generale privind achizițiile, discutate anterior. Totuși, unele dintre ele sunt mult mai pronunțate și/sau proprii sectorului, având în vedere dimensiunea acestuia, statutului de monopol natural și complexitatea tehnică.

**Nereguli privind achizițiile publice constatate în sectorul energiei**

| Înainte de procedura de selecție   | În timpul procedurii de selecție  | După procedura de selecție  |
|--|---|---|
| <ul style="list-style-type: none"> <li>o firmă creată special să câștige o achiziție anume (fără experiență anterioară)</li> <li>caiet de sarcini "croit" pentru o firmă anume</li> <li>furnizarea de informații din interior</li> <li>termene nerealist de scurte</li> <li>crearea de competiție artificială (trimiterea de oferte de la firme inexistente)</li> <li>alocare de fonduri pentru investiții inutile</li> <li>contracte la supra-preț</li> </ul> | <ul style="list-style-type: none"> <li>conflict de interese, influențarea politică sau mituirea comitetului de evaluare</li> <li>evitarea procedurilor competitive prin:                             <ul style="list-style-type: none"> <li>negocieri directe</li> <li>scăderea prețului sub prag</li> <li>folosirea procedurilor de urgență</li> </ul> </li> <li>pre-determinarea că anumite proiecte vor primi finanțare în documente naționale de planificare</li> <li>folosirea de acorduri-cadru care favorizează marii jucători de pe piața de achiziții</li> </ul> | <ul style="list-style-type: none"> <li>anularea procedurilor și descalificarea competitorilor</li> <li>schimbarea cerințelor prin anexe la oferta inițială</li> <li>plata pentru servicii/echipamente care nu îndeplinesc cerințele minime</li> <li>lipsa investigațiilor pentru oficiali de rang înalt și oameni de afaceri conectați la un anumit contract</li> </ul> |

Sursa: Centrul pentru Studiul Democrației, 2022.

<sup>462</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Centrul pentru Studiul Democrației, 2021.



## Calea de urmat

În pofida progresului constant inegal, țările din SEE se confruntă cu provocări majore privind buna guvernare, care sunt agravate de amenințări autoritare interne și externe. Regiunea va continua să beneficieze de pe urma sprijinului substanțial de natură financiară și tehnică furnizat de comunitatea democratică a țărilor din cadrul UE, din cadrul Spațiului Economic European (SEE) și din partea Statelor Unite. Modul în care fiecare țară utilizează acest sprijin pentru progresul pe calea democratizării și combaterii corupției depinde, în ultimă instanță, de eforturile cetățenilor săi, ale mediului de afaceri și ale guvernelor. Țările UE din SEE trebuie să respecte îndeaproape angajamentele asumate prin Mecanismul Statului de Drept și în contextul semestrului european și să investească în mod corespunzător stimulentele financiar uriaș asigurat prin instrumentul de Redresare și Reziliență și prin Cadrul Financiar Multianual 2021-2027. Toate cele patru țări membre ale UE trebuie să depășească blocajele de guvernare, dar în mod special Bulgaria și Ungaria trebuie să lucreze la sporirea eficacității sistemului judiciar, respectiv la deconcentrarea puterii la nivel executiv. Țările balcanice occidentale din SEE trebuie să lucreze unilateral pentru realizarea reformelor impuse prin capitolele de negociere, chiar dacă, în mod formal, procesul de extindere se poate să fie blocat, așa cum este cazul Albaniei și Macedoniei de Nord. Serbia se confruntă cu dificultăți deosebite ca urmare a legăturilor sale strânse și a dependenței de regimuri autoritare.

Provocările generale privind buna guvernare se reduc adesea la modul de abordare a două sisteme interconectate din cadrul economiilor naționale din SEE: achizițiile publice și managementul întreprinderilor de stat din sectorul energiei. Pe baza analizei amănunțite furnizate în raportul de față, pot fi evidențiate câteva recomandări de politici cheie pentru aceste două domenii:

- UE și partenerii săi din SEE și din SUA trebuie să continue să furnizeze asistență tehnică pentru integrarea bunelor practici europene în domeniul achizițiilor publice atât în ceea ce privește managementul fondurilor europene în regiune, cât și în ceea ce privește guvernarea resurselor naționale. Trebuie să se acorde atenție în mod special creșterii capacității combinate și activității comune a autorităților de

combaterii a corupției și a autorităților de reglementare a achizițiilor publice, a procuraturii și curții de justiție.

- Guvernele din SEE trebuie să asigure integritatea achizițiilor publice prin consolidarea monitorizării achizițiilor (de exemplu, licitație deschisă sau instrumentul SCAD), prin creșterea eficacității instituționale, reducerea procedurilor închise și îmbunătățirea mecanismelor de atribuire a contractelor. Țările balcanice occidentale trebuie să-și deschidă datele de achiziții pentru a permite o diagnosticare mai bună și control, iar statele membre ale UE din SEE trebuie să continue procesul de construire a capacității de identificare și rezolvare a semnalelor de alertă (red-flags) privind corupția în achizițiile publice.
- Guvernele naționale trebuie să retragă regulile de achiziții publice instituite în starea de urgență impusă de pandemia de COVID-19 și să revină la legislația inițială din domeniul achizițiilor. Pe viitor, cheltuielile de urgență vor fi însoțite de o monitorizare integrată ex-post mai puternică și de o evaluare a eficienței.
- Guvernele din SEE, întreprinderile de stat și asociațiile de afaceri trebuie să adopte și să pună în aplicare cele mai bune standarde internaționale privind guvernarea corporativă a întreprinderilor de stat din sectorul energiei, cum sunt cele elaborate de OCDE. Întreprinderile de stat din SEE trebuie să facă eforturi pentru a se raporta la standarde similare sau chiar mai înalte cu privire la prezentarea de informații decât cele ale societăților private cotate la bursă, din UE.
- Parlamentele și guvernele din SEE trebuie să-și îmbunătățească independența energiei naționale și autoritățile de reglementare a concurenței prin sporirea capacității administrative și financiare a acestora și prin eliminarea numirilor politice. De asemenea, ar trebui introduse mandate de durată mai scurtă pentru membrii consiliilor de administrație. Autoritățile de reglementare din domeniul energiei din SEE trebuie să lucreze îndeaproape cu omologii lor din UE în vederea înființării unei comunități de practică. Deciziile autorităților de reglementare trebuie să se supună celor mai înalte standarde privind prezentarea de informații către publicul larg.

- Guvernele din SEE ar trebui să se abțină de la a intra în proiecte bilaterale de energie la scară largă fără a avea măsuri de siguranță corespunzătoare care ar putea să cuprindă cel puțin, implicarea instituțiilor financiare publice internaționale, cum ar fi BEI, BERD sau Banca Mondială. Asemenea proiecte trebuie să includă, ca regulă, un sistem de prezentare publică a informațiilor la standarde superioare față de cele existente în mod uzual în țările din SEE. De asemenea, un astfel de sistem ar trebui făcut public din timp, furnizând informații cu privire la proiectele de infrastructură energetică la scară largă, inclusiv o analiză detaliată a costurilor și beneficiilor.
- Guvernele statelor din SEE trebuie să conlucreze cu Comisia Europeană, cu UE, cu statele membre din SEE, precum și cu Statele Unite pentru a introduce măsuri mai bune de protecție a economiilor lor împotriva finanțărilor ilicite sau corozive care au legătură cu țările autoritare. Printre aceste măsuri de securitate ar trebui să se regăsească și introducerea unor instituții sau reglementări mai bune cu privire la pre-verificarea investițiilor și mecanisme de monitorizare a sancțiunilor.
- Guvernele din SEE și partenerii din UE/SEE și SUA trebuie să construiască modele sustenabile de interacțiune cu societatea civilă de la nivel național și local și cu presa de investigații cu privire la sporirea monitorizării achizițiilor publice și întreprinderile de stat din domeniul energiei. Experiența acumulată prin platforma R2G4P<sup>463</sup> poate documenta astfel de demersuri la nivel regional. Există deja modele curente de sprijin public acordat organizațiilor societății civile în întreaga regiune, dar acestea fie sunt în stadiu incipient, fie invocă temeri în rândul OSC și în presă cu privire la compromiterea independenței lor.

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<sup>463</sup> [Regional Good Governance Public-Private Partnership Platform \(R2G4P\)](#) este o inițiativă pilot cu durata de trei ani, sprijinită de Granturile Spațiului Economic European (SEE) și Norvegiei pentru Cooperare Regională care reunește eforturile a treisprezece organizații din zece țări și are ca scop furnizarea de soluții anti-corupție comune pentru creșterea gradului de răspundere a instituțiilor de stat și consolidarea societății civile și a statului de drept în Europa de Sud-Est.

# SAŽETAK

Principi dobrog upravljanja i dalje se suočavaju sa narastajućim brojem izazova u regionu jugoistočne Evrope. Rat u Ukrajini jasno je pokazao kako izazovi u pogledu vladavine prava podrivaju ne samo ekonomski razvoj ovog regiona, već i jedinstvo i otpornost EU u odnosu na spoljne autoritarne pretnje. Nove države članice EU iz ovog regiona među najvećim su neto korisnicama sredstava EU. Ipak, demokratsko nazadovanje i korupcija nastavljaju da opterećuju njihova društva, uprkos kontinuiranom snažnom otporu javnosti i protestima, kao i uvođenju konkretnih mera EU i SAD za prevazilaženje ovih izazova. Neke od takvih mera uključivale su Mehanizam za saradnju i verifikaciju za praćenje antikorupcijskih i pravosudnih reformi u Bugarskoj i Rumuniji nakon njihovog pristupanja 2007. godine, mnogo oštrije zahteve u pogledu vladavine prava za pristupanje Hrvatske 2013. godine, američke sankcije u skladu s Globalnim zakonom Magnicki u Bugarskoj 2021. godine i pokretanje novih kaznenih procesa čiji je cilj zamrzavanje fondova EU namenjenih Mađarskoj 2022. godine. Države Zapadnog Balkana, koje bez izuzetka teže da pristupe EU, suočavaju se sa još ozbiljnijim izazovima u pogledu dobrog upravljanja. Zajedno sa zamorom EU od proširenja, ovo je rezultiralo kontinuiranom odlaganju izgleda za pristupanje EU, rastućim frustracijama građana i nedemokratskim tendencijama. Dugotrajni nedostaci u pogledu dobrog upravljanja širom jugoistočne Evrope dodatno su pogoršane pandemijom kovida-19 i ratom koji Kremlj vodi u Ukrajini.<sup>464</sup> Cilj *Izveštaja o dobrom upravljanju u JIE* je da omogući bolje razumevanje ovih izazova i da utre put učinkovitim antikorupcijskim reformama u devet zemalja – četiri države članice EU i pet koje teže članstvu u Uniji – Bugarskoj, Hrvatskoj, Mađarskoj, Rumuniji, Albaniji, Bosni i Hercegovini, Severnoj Makedoniji, Crnoj Gori i Srbiji. Ovogodišnji izveštaj stavlja fokus na dva najosetljivija aspekta upravljanja u regionu: javne nabavke i upravljanje državnim preduzećima u energetsom sektoru.

<sup>464</sup> Stefanov, R. et al., *The Kremlin Playbook in Southeast Europe: Economic Influence and Sharp Power*, Sofia: Center for the Study of Democracy, 2020.

## Integritet javnih nabavki

Javne nabavke predstavljaju značajan udeo BDP-a u ekonomijama i sa visokim i sa niskim prihodima. Globalno, javne nabavke predstavljaju 15% do 30% BDP-a. Ovako veliki obim javne potrošnje mogao bi igrati ključnu ulogu u ekonomskom i društvenom napretku ako bi se sredstva za ovu vrstu potrošnje opredeljivala na efikasan način. Međutim, reč je o jednoj od aktivnosti vlade koja je najosetljivija na korupciju.<sup>465</sup> Prema podacima Kancelarije Ujedinjenih nacija za borbu protiv droge i kriminala, 10% do 25% ukupne ugovorne vrednosti javnih nabavki može biti izgubljeno zbog sumnjivih praksi.<sup>466</sup> Iako korupcija u javnim nabavkama može imati različite oblike, postoji jasno definisan skup koruptivnih tehnika koje se aktivno koriste u jugoistočnoj Evropi za isisavanje javnih sredstava u cilju ostvarivanja privatne dobiti.

- **Favorizovanje i klijentelizam.** Jedan od najčešćih vidova neregularnosti u nabavkama u regionu je preferencijalni tretman određenih kompanija zbog dobrih političkih veza njihovih vlasnika. Na primer, u Hrvatskoj oko polovina ukupne vrednosti ugovora pripadne ponuđačima koji nisu privatna lica, već kompanije u delimičnom ili potpunom vlasništvu države.<sup>467</sup> Mnoge privatne kompanije širom ove regije, čiji su vlasnici blisko povezani s visokopozicioniranim političarima, pobeđuju na pozivima za javne nabavke koji su gotovo uvek kreirani upravo za njih. Na primer, u Mađarskoj je tokom poslednjih 11 godina vladajuća stranka stvorila novu ekonomsku elitu čije korporacije dobijaju izdašne subvencije u sektorima poput turizma.<sup>468</sup>

<sup>465</sup> OECD, *Preventing Corruption in Public Procurement*, 2016; World Bank, *Fraud and corruption awareness handbook: how it works and what to look for – a handbook for staff*, Washington, D.C.: World Bank Group, 2013.

<sup>466</sup> UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances: Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

<sup>467</sup> OECD, *OECD Review of the Corporate Governance of State-Owned Enterprises in Croatia*, 2021.

<sup>468</sup> András, B., "Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát," [valaszonline.hu](http://valaszonline.hu), 26 February 2021.

- **Previsoke vrednosti ugovora.** Određivanje previsoke vrednosti ugovora predstavlja još jedan dominantan oblik prevare u javnim nabavkama koji se zasniva na favorizovanju i uključuje širi spektar naručilaca i dobavljača/pružalaca usluga. U Mađarskoj je 90% projekata javnih nabavki u proseku precenjeno za 25%.<sup>469</sup> Slično tome, u Severnoj Makedoniji, istraživačke aktivnosti rezultirale su otkrivanjem velike razlike između tržišnih cena i ugovornih cena proizvoda sa identičnim specifikacijama.<sup>470</sup>
- **Prilagođavanje specifikacija za tenderski postupak.** Jedna od čestih koruptivnih tehnika je i definisanje isuviše specifičnih zahteva za tender koji odgovaraju isključivo kvalifikacijama i stručnosti određene firme.
- **Sukob interesa u tenderskom postupku.** Slučajevi sukoba interesa „na visokom nivou“ nisu bili retka pojava proteklih godina u Srbiji, a postali su još češća od početka pandemije kovida-19.<sup>471</sup> U Bugarskoj se sukob interesa materijalizovao u internim procedurama,<sup>472</sup> u kojima se budžetska sredstva bez tendera opredeljuju za državna preduzeća, koja umesto da sve aktivnosti realizuju interno, tj. sama, kako je predviđeno zakonom – angažuju podugovarače, tj. privatne kompanije, koje su prethodno odabrane u nepovezanim procedurama. Ovakvo fiktivno interno ugovaranje dostiglo je razmeru od 4,4 milijarde evra ili preko 42% vrednosti svih ugovora o javnim nabavkama u državi u periodu 2019-2020.<sup>473</sup>
- **Visok udeo zatvorenih postupaka.** Postoji nekoliko kredibilnih razloga za korišćenje zatvorenih ili ograničenih postupaka nabavki – na primer ako

bi otkrivanje sadržaja tendera predstavljalo rizik za nacionalnu bezbednost ili ako je vrednost ponude dovoljno mala da ne predstavlja ozbiljniji rizik od korupcije. Ipak, ugovarači u JIE često koriste ograničene postupke u slučajevima kada oni i nisu neophodni.

- **Izmena ugovora u fazi implementacije.** Organizacije civilnog društva iz regije ukazuju na malicioznu praksu naknadnih izmena ugovora koja rezultira znatno višom cenom u odnosu na očekivanu. Ovakve izmene teško je pratiti zbog ograničenih informacija na većini zvaničnih veb-stranica koje se tiču nabavki.<sup>474</sup>

### Promene u javnim nabavkama kao posledica kovida-19 i preterana upotreba hitnih postupaka

Pandemija je povećala broj inherentno ograničenih „hitnih“ postupaka nabavke koji zaobilaze uobičajena zakonska rešenja u vezi s nabavkama. Kvantitativna procena tržišta nabavki ukazuje na to da je došlo do opšteg pada integriteta javnih nabavki, naročito na najugroženijim tržištima – zdravstvene zaštite i drugih proizvoda povezanih sa kovidom. Ovi problemi očitovali su se u zloglasnoj „ aferi Respiratori“ u Bosni i Hercegovini.<sup>475</sup> U Hrvatskoj je lista roba i usluga za koje se mogu koristiti direktni ugovori o nabavci čuvana u tajnosti do decembra 2020. godine. Lista je objavljena isključivo zbog velikog pritiska javnosti.<sup>476</sup> U Mađarskoj je, tokom vanrednog stanja, premijer imao ovlašćenje da odlučuje o tome koje su procedure u vezi sa pandemijom kovida-19, i kao takve podležu direktnom ugovaranju.<sup>477</sup>

<sup>469</sup> Ligeti, M. et al., *Korruptió, gazdasági teljesítmény és jogállamiság Magyarországon: A Korruptió Érzékelési Index eredményei 2019-ben*, A Transparency International Magyarország Alapítvány jelentése, TI Hungary, 2019.

<sup>470</sup> Center for Civil Communications, *Public procurements in North Macedonia at times of corona: How it was and what can be done in the future?*, Skopje: CCC, 2020.

<sup>471</sup> Centar za primenjene evropske studije, *ALARM IZVEŠTAJ o stanju u oblasti javnih nabavki u Srbiji 2020. godine*, CPES, November 2020

<sup>472</sup> SIGMA, *In-house Procurement and Public/Public Co-operation*, Sigma Programme, Brief 39, 2016.

<sup>473</sup> Sokolova, T., „Служебният кабинет спира харченето на милиарди без обществени поръчки“, Mediapool.bg, 30 June 2021.

<sup>474</sup> Mendes, M. and Fazekas, M., *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data – An Implementer's Guide*, 2015.

<sup>475</sup> Katavić, I., „Afera 'Respiratori': Premijer FBiH Fadil Novalić zadržan u SIPA-i,“ Slobodnaevropa.org, 28. maj 2020; Radiosarajevo.ba, „Afera Respiratori: Novalić i drugi optuženi stigli na novo ročište,“ 17. novembar 2021.

<sup>476</sup> Nacionalno.hr, „Most traži da se medicinska oprema nabavlja kroz postupak javne nabave,“ 9. decembar 2020; Vlada Republike Hrvatske, *Izvešće o izvršenim nabavama zaštitne opreme u svrhu provedbe mjera zaštite zdravlja i jačanja nadzora nad širenjem koronavirusa*, Ministarstvo gospodarstva i održivog razvoja – Ravnateljstvo za robne zalihe, 2020.

<sup>477</sup> Public Procurement Authority, *A Közbeszerzési Hatóság véleménye a koronavírus terjedésére tekintettel elrendelt veszélyhelyzettel kapcsolatban felmerülő egyes közbeszerzési kérdésekkel összefüggésben*, 2020.

## Rizik od korupcije u oblasti javnih nabavki u zdravstvenom sektoru

Analiza velikih podataka prikupljenih za potrebe predmetnog izveštaja pokazuje da je između prvog kvartala 2017. i drugog kvartala 2021. godine, *Indeks rizika od korupcije* (CRI)<sup>478</sup> na tržištu povezanom s kovidom-19 u Rumuniji i Hrvatskoj porastao za oko 10 procenata.<sup>479</sup> Povećanje je bilo privremeno, nakon čega je usledio spor, ali postojan pad. Analiza velikih podataka otkriva da je u poslednjih godinu i po dana prosečna zavisnost kupca u zdravstvenom sektoru značajno porasla u Mađarskoj, a neznatno i u Hrvatskoj, u odnosu na period 2017-2020. Štaviše, analizirani naručioci su svojim favorizovanim dobavljačima obezbedili ne samo veći udeo, već i veću vrednost javnih sredstava.

## Upravljanje državnim preduzećima u energetskom sektoru

Energetski sektor jedan je od izvora glavnih i sistematskih problema upravljanja koji dovodi do značajnih gubitaka javnih sredstava<sup>480</sup> i omogućava prodor nezakonitog finansiranja i stranog autoritarnog uticaja u regionu.<sup>481</sup> Energetski sektor je od ključnog značaja za jugoistočnu Evropu, zbog svog statusa prirodnog monopola (često je u vlasništvu države), socijalne osetljivosti građana na povećanje cena (kao što se moglo videti iz protesta širom ovog regiona tokom protekle decenije), kao i velikog uloga u pogledu ozbiljnih investicija i finansijskih interesa. *Alat za procenu stepena zarobljenosti države (State Capture Assessment Diagnostics – SCAD)* ovaj sektor prepoznaje kao veoma ranjiv u smislu monopolizacije.<sup>482</sup> Države JIE suočavaju se s brojnim

<sup>478</sup> Fazekas, M. and Kocsis, G., *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data*, Working Paper series: GTI-WP/2015:02, Budapest: Government Transparency Institute, 2015.

<sup>479</sup> Videti: GTI's *Global Government Contracts database*, 19. jul 2021.

<sup>480</sup> Southeast European Leadership for Development and Integrity, *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*, SELDI, 2016.

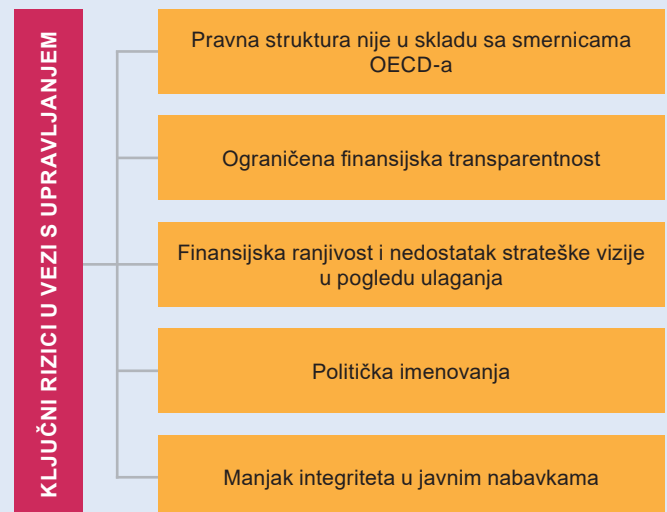
<sup>481</sup> Vladimirov, M. et al., *Russian Economic Footprint in the Western Balkans: Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy, 2018.

<sup>482</sup> Na osnovu podataka za Bugarsku, Rumuniju, Italiju i Španiju. Za više informacija, videti: Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019. Vidjeti i: Shentov, O., Stefanov, R., and Todorov, B. (eds.), *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2021.

optužbama za blokiranje liberalizacije tržišta gasa u korist lokalnih oligarhijskih korporativnih mreža i u korist dobavljača gasa koji su pod kontrolom Kremlja. Stoga, ukoliko se njime ne bude upravljalo na adekvatan način, ovaj sektor može narušiti nezavisnost i razvoj država JIE.

Nedostaci u pogledu javne odgovornosti u energetskim preduzećima koja su u vlasništvu države vidljivi su u brojnim slučajevima, a dodatno ih otkrivaju izveštaji istraživačkih medija, izveštaji organizacija civilnog društva ili revizije relevantnih nadležnih organa širom regiona jugoistočne Evrope. Ovi problemi doprinose društveno-političkim okolnostima koje omogućavaju opstanak praksama lošeg finansijskog upravljanja u državnim preduzećima i putem kojih se donose i sprovode neefikasne ili štetne odluke o ulaganjima. Nepostojanje čvrstog zakonskog okvira ključni je faktor koji omogućava ograničenu finansijsku transparentnost i rasprostranjenu pojavu uplitanja politike u svakodnevno upravljanje državnim preduzećima.

### Ključni rizici u vezi s upravljanjem državnim preduzećima u energetskom sektoru



Izvor: Centar za studije demokratije, 2022.

## Transparentnost

Regulatorni okvir korporativnog upravljanja još uvek je u povoju kad je reč o regionu, iako su u poslednjih nekoliko godina napravljeni određeni iskoraci. Pravni okvir koji reguliše upravljanje državnim preduzećima zaduženim za energetiku na Zapadnom Balkanu nije



usklađen sa *Smernicama OECD-a za korporativno upravljanje u preduzećima u državnom vlasništvu*.<sup>483</sup> Države članice EU stoje bolje u pogledu zakona koji se primenjuju, ali i u njihovom slučaju primena ostaje ograničena i spora.<sup>484</sup> Kompanije lošijeg finansijskog statusa obično su manje transparentne. Jedan od načina da se njihova transparentnost poboljša jeste izlazak na berzu, što je bio slučaj sa Romgazom i Hidroelectricom u Rumuniji. Još jedan pozitivan primer, MOL Grupa, kompanija koja se kotira na berzi u Mađarskoj, objavljuje svoje finansijske izveštaje i broj deonica koje ima svaki od članova Upravnog odbora.<sup>485</sup> Transparentnost finansijskih podataka ostaje naročito loša na Zapadnom Balkanu.<sup>486</sup>

## Finansijska ranjivost

Energetska preduzeća u vlasništvu države, u devet analiziranih zemalja, pokazuju različit stepen finansijske ranjivosti što se otkriva kroz njihovu veliku izloženost dugu i visoke koeficijente duga, kao i nisku likvidnost i pad tekućih indikatora. Ove finansijske poteškoće bile su posebno izražene u kompanijama koje svoje poslovanje zasnivaju na fosilnim gorivima, koje su se suočavale s problemom stalnog rasta cena CO<sub>2</sub>, uglja i prirodnog gasa. Napori vlada da cene energije veštački zadrže niskima kako bi se izbegla reakcija društva, na štetu su finansijskog zdravlja i političke nezavisnosti preduzeća u državnom vlasništvu, kao i nepristrasnosti regulatornih tela. Nizak kvalitet finansijskog upravljanja često je povezan sa: a) prevelikim brojem zaposlenih; b) preterano izdašnim finansijskim naknadama i zaradama; i c) lošim upravljanjem javnim nabavkama. Kriza cena energenata koja je u Evropi u porastu od druge polovine 2021. godine i koja je započela nestašicom gasa i nastavila se ratom u Ukrajini, verovatno će dodatno povećati stepen ranjivosti, uprkos tome što neke kompanije ostvaruju neočekivan profit.

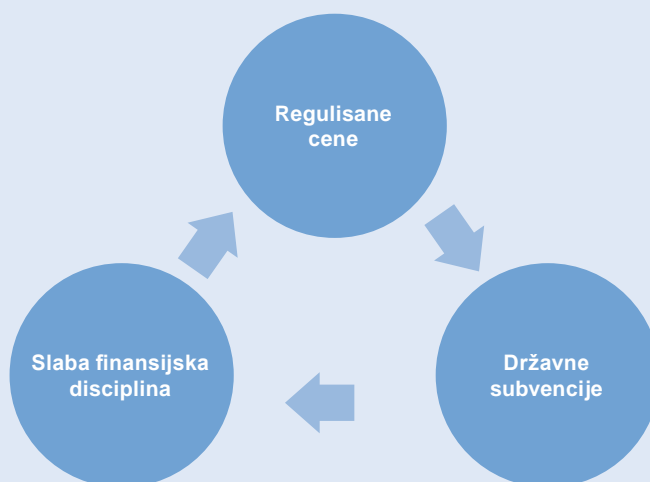
<sup>483</sup> OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, Paris: OECD Publishing.

<sup>484</sup> European Commission, *2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 60; *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews*, str. 58.

<sup>485</sup> MOL Group (S.A.), *Management and Operations*; MOL Publications (S.A.), *Annual Reports* (1999–2020).

<sup>486</sup> Shentov, O., Stefanov, R., and Todorov, B. (eds), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*, SELDI, 2016.

## Uobičajene putanje zavisnosti koje utiču na rad preduzeća u državnom vlasništvu



Izvor: Centar za studije demokratije, 2022.

Dugogodišnja zavisnost jugoistočne Evrope od uvoza fosilnih goriva iz Rusije, u kombinaciji s istorijskom međuzavisnošću vlasničke, tehnološke i upravljačke strukture i dubokim (i često veoma netransparentnim) finansijskim vezama, dodatno je pogoršala ranjivost energetskih sektora u državama ovog regiona. U praksi, neki od najvećih investicionih projekata u regionu jugoistočne Evrope rezultat su međuvladinih sporazuma sa državama koje nisu članice EU, pre svega s Rusijom. Projekat Turski tok<sup>487</sup> kao projekat koji predvodi Rusija odličan je primer za to. Utičući direktno na Bugarsku, Srbiju i Mađarsku, a indirektno na celi region i Evropu, ovaj projekat je doprineo i imao koristi od daljeg slabljenja institucija za kreiranje energetske politike i učvršćivanja oligarhijskih mreža uticaja kako ruskih tako i lokalnih privatnih interesa koji imaju bliske veze s vladama. Iako nov igrač, Kina je izgradila sopstveni investicioni okvir u regionu, posebno na Zapadnom Balkanu, Hrvatskoj i Mađarskoj, čime se stvara prostor za dodatne tenzije u daljoj integraciji ovih zemalja u EU. Kineske investicije, iako dobrodošle u pogledu ekonomske vrednosti, često nisu u skladu s tehničkim standardima EU i/ili sa pravnom tekovinom EU u vezi s konkurencijom i javnim nabavkama. Pomenuta ulaganja, nalik aktivnostima Kremlja, izazivaju urušavanje demokratskih i tržišnih standarda svojom tajnovitom i netransparentnom prirodom. U mnogim slučajevima takvi projekti jačaju nacionalnu industriju uglja, ignorišu ekološke propise ili

<sup>487</sup> Stefanov and Vladimirov, *The Kremlin Playbook in South East Europe: Economic Influence and Sharp Power*, Sofia: CSD, 2020.



nisu u skladu sa sveukupnom politikom dekarbonizacije i održivog rasta.<sup>488</sup>

### Imenovanje izvršnih direktora i članova odbora

Pravila o imenovanju članova odbora i drugih čelnika kompanija u energetske preduzećima u državnom vlasništvu u jugoistočnoj Evropi takođe su nejasna, naročito kad se ima u vidu potencijalni politički uticaj. Brojni su primeri političkog uplitanja u imenovanja članova upravnih odbora u državnim preduzećima u jugoistočnoj Evropi i regulatornim telima, što je narušilo profesionalnu stručnost u planiranju i izvršavanju teških odluka u energetske sektoru. Poslovne aktivnosti državnih preduzeća često su pod uticajem ili bi čak mogle da služe interesima kompanija ili pojedinaca s jakim političkim vezama, na štetu sopstvenog finansijskog učinka.

### Nedostaci u upravljanju javnim nabavkama u energetske sektoru

Energetski sektor pokazuje posebno izražene deficite u pogledu upravljanja javnim nabavkama. Neki od ovih deficita poklapaju se s opštim rizicima u domenu nabavke o kojima je gore diskutovano, međutim neki su još izraženiji i/ili karakteristični za sektor, zbog njegove veličine, statusa prirodnog monopola i tehničke kompleksnosti.

#### Uočene nepravilnosti u javnim nabavkama u sektoru energetike



Izvor: Centar za studije demokratije, 2022.

<sup>488</sup> Gerganov, A. and Vladimirov, M., *Chinese Economic Influence in Europe: The Governance and Climate Conundrum*, Sofia: Center for the Study of Democracy, 2021.

## Pogled u budućnost

Uprkos kontinuiranom neujednačenom napretku, zemlje JIE suočavaju se sa značajnim izazovima u pogledu dobrog upravljanja, koji su pojačani unutrašnjim i eksternim autoritarnim pretnjama. Region će i dalje imati koristi od rastuće značajne finansijske i tehničke podrške demokratske zajednice zemalja unutar EU, Evropskog ekonomskog prostora (EEA) i SAD. Kako će svaka zemlja koristiti takvu podršku za napredovanje na putu ka demokratizaciji i borbi protiv korupcije, na kraju, zavisi od napora njenih građana, preduzeća i vlada. Države JIE koje su članice EU moraju pomno pratiti svoje obaveze u okviru Mehanizma vladavine prava, kao i Evropskog semestra i u skladu s tim uložiti ogromne fiskalne podsticaje koje obezbeđuje Instrument za oporavak i otpornost i Višegodišnji finansijski okvir 2021–2027. Sve četiri države koje su članice EU treba da prevaziđu prepreke u upravljanju, ali posebno Bugarska i Mađarska moraju da rade na povećanju efikasnosti pravosuđa i smanjenju koncentracije moći u izvršnoj vlasti. Zemlje Zapadnog Balkana, kao deo jugoistočne Evrope, moraju jednostrano da rade na sprovođenju reformi neophodnih u okviru pregovaračkih poglavlja EU čak i ako je možda proces proširenja formalno bio blokiran, kao u slučaju Albanije i Severne Makedonije. Srbija se suočava s posebnim izazovima s obzirom na njene bliske veze i zavisnost od autoritarnih režima.

Opšti izazovi u pogledu dobrog upravljanja često se svode na rešavanje dva međusobno povezana sistema u nacionalnim ekonomijama JIE: javne nabavke i upravljanje energetske preduzećima u državnom vlasništvu. Na osnovu detaljnog pregleda datog u ovom izveštaju, moglo bi se dati nekoliko ključnih preporuka na nivou praktične politike za ova dva domena:

- EU i njeni partneri iz EEA i SAD treba da nastave da pružaju tehničku pomoć u uvođenju dobrih praksi EU u oblasti javnih nabavki, kako u upravljanju fondovima EU namenjenih ovom regionu tako i u upravljanju nacionalnim resursima. Posebnu pažnju potrebno je posvetiti povećanju kombinovanog kapaciteta i zajedničkom radu regulatornih tela za borbu protiv korupcije i javne nabavke u izvršnoj vlasti, javnom tužilaštvu i sudovima.
- Vlade država JIE trebalo bi da uvedu mere za očuvanje integriteta javnih nabavki, i to kroz pojačano praćenje nabavki (kao što su Open Tender ili SCAD alat), povećanu institucionalnu efikasnost, smanjenje zatvorenih procedura i poboljšane mehanizme za dodelu ugovora. Zemlje zapadnog Balkana treba da otvore svoje podatke o nabavkama kako bi omogućile bolju dijagnostiku i kontrolu, dok zemlje članice EU iz JIE treba da nastave sa izgradnjom kapaciteta za identifikaciju i borbu protiv znakova koji ukazuju za korupciju u javnim nabavkama.
- Nacionalne vlade bi trebalo da povuku pravila o hitnim nabavkama povezanim s kovidom-19 tako što će se vratiti na primenu izvornih zakonskih rešenja o javnim nabavkama. Izdvajanja za hitne nabavke u budućnosti treba da budu praćena integrisanim snažnijim ex-post monitoringom i evaluacijom efikasnosti.
- Vlade država JIE, državna preduzeća i poslovna udruženja treba da usvoje i primenjuju najbolje međunarodne standarde o korporativnom upravljanju državnim preduzećima u energetske sektoru, poput onih koje je razvio OECD. Državna preduzeća u JIE treba da nastoje da izveštavaju u skladu sa sličnim ili višim standardima korporativnog obelodanjivanja informacija nalik privatnim kompanijama koje se javno trguje u EU.
- Parlamenti i vlade država JIE treba da poboljšaju nezavisnost nacionalnih regulatora za energetiku i konkurenciju povećanjem sopstvenih administrativnih i finansijskih kapaciteta i ukidanjem prakse političkih imenovanja. Trebalo bi i skratiti mandate članova upravnih odbora. Energetski regulatori u državama JIE moraju blisko saradivati sa svojim kolegama iz EU na uspostavljanju zajednice praksi. Odluke regulatora moraju biti u skladu sa najvišim standardima javnog objavljivanja informacija.
- Vlade država JIE treba da se uzdrže od ulaska u krupne bilateralne energetske projekte bez odgovarajućih zaštitnih mera, koje bi, u najmanju ruku, podrazumevale uključivanje međunarodnih javnih finansijskih institucija, kao što su EIB, EBRD ili Svetska banka. Takvi projekti po pravilu moraju uključivati sistem otkrivanja informacija koji je višeg standarda od onih koji prevladavaju u zemljama JIE. Takav sistem bi takođe trebalo da bude blagovremeno predstavljen javnosti i pruži informacije o krupnim energetske infrastrukturnim projektima uz detaljnu analizu troškova i koristi.
- Vlade država JIE treba da saraduju s Evropskom komisijom, državama članicama EU/EEA i SAD kako bi uvele bolju zaštitu svojih ekonomija od ilegalnih ili tzv. korozivnih fondova povezanih s autoritarnim zemljama. Ova zaštitna mera trebalo bi da uključuje uspostavljanje snažnijih institucija i propisa koji se tiču skrininga investicija i mehanizama za praćenje sankcija.
- Vlade država JIE i njihovi partneri iz EU/EEA i SAD treba da izgrade održive modele interakcije sa nacionalnim i lokalnim civilnim društvom i istraživačkim medijima u pogledu povećanja praćenja javnih nabavki i energetske preduzeća u državnom vlasništvu. Iskustvo s platformom R2G4P<sup>489</sup> može poslužiti za usmeravanje napora na regionalnom nivou. Modeli javne podrške organizacijama civilnog društva već postoje širom regiona, ali oni su ili u povoju ili često izazivaju strah među OCD i medijima od toga da može doći do kompromitovanja njihove nezavisnosti.

<sup>489</sup> [Regional Good Governance Public-Private Partnership Platform \(R2G4P\)](#), odnosno Regionalna platforma javno-privatnog partnerstva za dobro upravljanje trogodišnja je pilot inicijativa, podržana od strane EEA i Norveškog fonda za grantove za regionalnu saradnju, koja objedinjuje napore trinaest organizacija iz deset zemalja i čiji je cilj da ponudi zajednička antikorupcijska rešenja za povećanje odgovornosti državnih institucija i ojača civilno društvo i vladavinu prava u jugoistočnoj Evropi.



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