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Name	IS	IS	IS	IS	IS
US Treasury Active Curve	US	10Y	US Treasury	10Y	10Y
US Dollar Swap (30/30)	US	10Y	US Treasury	10Y	10Y
US Dollar Swap (30/30) -	US	10Y	US Treasury	10Y	10Y
US Treasury Bond & Note M...	US	10Y	US Treasury	10Y	10Y
US Agency Curve	US	10Y	US Treasury	10Y	10Y
US 100% Floating Curve	US	10Y	US Treasury	10Y	10Y
US Real General Obligation M...	US	10Y	US Treasury	10Y	10Y
US Treasury Inflation Index	US	10Y	US Treasury	10Y	10Y
US 48CP (ALPS) Curve	US	10Y	US Treasury	10Y	10Y
US Dollar CP (30/30) Curve	US	10Y	US Treasury	10Y	10Y
US 100-100 Non-Financial CP	US	10Y	US Treasury	10Y	10Y
US Sovereign Strip Curve	US	10Y	US Treasury	10Y	10Y
US Swap Rate Act/360 Curve	US	10Y	US Treasury	10Y	10Y
US Dollar Swap (30/30) Act/360	US	10Y	US Treasury	10Y	10Y
US 100-100 Curve	US	10Y	US Treasury	10Y	10Y
US Real General Obligation M...	US	10Y	US Treasury	10Y	10Y
US Government Agency MFC Co...	US	10Y	US Treasury	10Y	10Y
US T-Bills Curve	US	10Y	US Treasury	10Y	10Y
US Real General Obligation M...	US	10Y	US Treasury	10Y	10Y

435 PFI 14:41 Naha Govt staff wants five-day week
434 PFI 14:41 CANAN COAL Positive Outlook
BR 14:41 +HENTZEN TO TAKE ROLE IN US
433 PFI 14:41 Diewker Has Injury Leaves
432 NSI 14:41 Stockton Record: Quarantine

**Measuring
success
in public
procurement
reform**

Measuring success in public procurement reform

Eliza Niewiadomska
Sarah Weiner

In 2010 the EBRD conducted its first assessment of the public procurement sector in its countries of operations. A similar research project was completed between 2011-12, for the southern and eastern Mediterranean (SEMED) region – Egypt, Jordan, Morocco and Tunisia – upon these countries' inclusion in the Bank's mandate.

The public procurement sector assessments, which review the quality of public procurement laws and local procurement practice, are conducted periodically to gauge progress in the region, and to guide future reform projects. While the new regional sector assessment that covers all EBRD countries of operations will be initiated in 2014, in 2012 the EBRD's Legal Transition Team (LTT) returned to the EBRD's countries of operations, conducting an interim self-assessment of the national public procurement legislation, in order to gather data on the reform progress made since the 2010 regional sector assessment.

In this research exercise – which was limited to reviewing national public procurement laws – national regulatory authorities were interviewed in relation to the latest developments in their public procurement policies (self-assessment). This article aims to compare the results of the self-assessment of public procurement laws in the EBRD region with the situation in 2010, for countries of operations that were covered by the 2010 assessment and which also participated in the 2012 research: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Former Yugoslav Republic of Macedonia (FYR Macedonia), Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Tajikistan, Turkey and Ukraine.

Why public procurement reform has become so important

Public procurement laws regulate the interaction between the public sector and the commercial market, and, in an era of fiscal austerity, governments are keener to ensure that procurement policies deliver “value for money” in public spending. In addition, public procurement regulations determine how a government's purchasing power is exercised over private sector enterprises, and how it influences private sector development. Therefore, the efficient and effective regulation of public procurement is an essential component of a public finance management system, encouraging transparency and competition in public contracts. Public procurement is a sensitive element of a country's commercial laws, as procurement and related regulation greatly influence access to business opportunities for private sector suppliers and contractors, in particular small and medium sized enterprises (SMEs). Consequently, as a part of its mandate to foster the development of the private sector, the EBRD seeks to promote healthy and modern procurement policies, to provide a full picture of the public procurement sector in its countries of operations, and to evaluate public procurement law and practice from a commercial perspective.

Assessment benchmark

There are several legal instruments in use in the area of public procurement across the EBRD region: the 2004-7 European Union Public Procurement Legislative Package (EU Directives), the World Trade Organisation (WTO) Agreement on Government Procurement (GPA) in its latest 2012 version, and the United Nations Commission on International Trade Law (UNCITRAL) 2011 Model Law on Public Procurement. To create the EBRD Core Principles for an Efficient Public Procurement Framework benchmark (the Core Principles benchmark), the assessment drew on the principles of these various instruments, supplemented when necessary by the procurement policies and rules of international organisations. The Core Principles benchmark indicators focus on the quality of the public procurement process, while using principles and requirements that have gained broad international recognition and which remain policy-neutral. Moreover, the assessment does not evaluate the compliance of national laws and practice against any of these specific international legal standards. Consequently, the Core Principles benchmark indicators:

- provide an impartial, uniform basis for regulatory comparisons across the EBRD region
- can be applied without considering the individual political objectives of governments
- can be used to assess legal frameworks which are in the process of development.

The assessment model comprised five key stages, in accordance with the EBRD approach to evaluating and analysing commercial laws and practice:

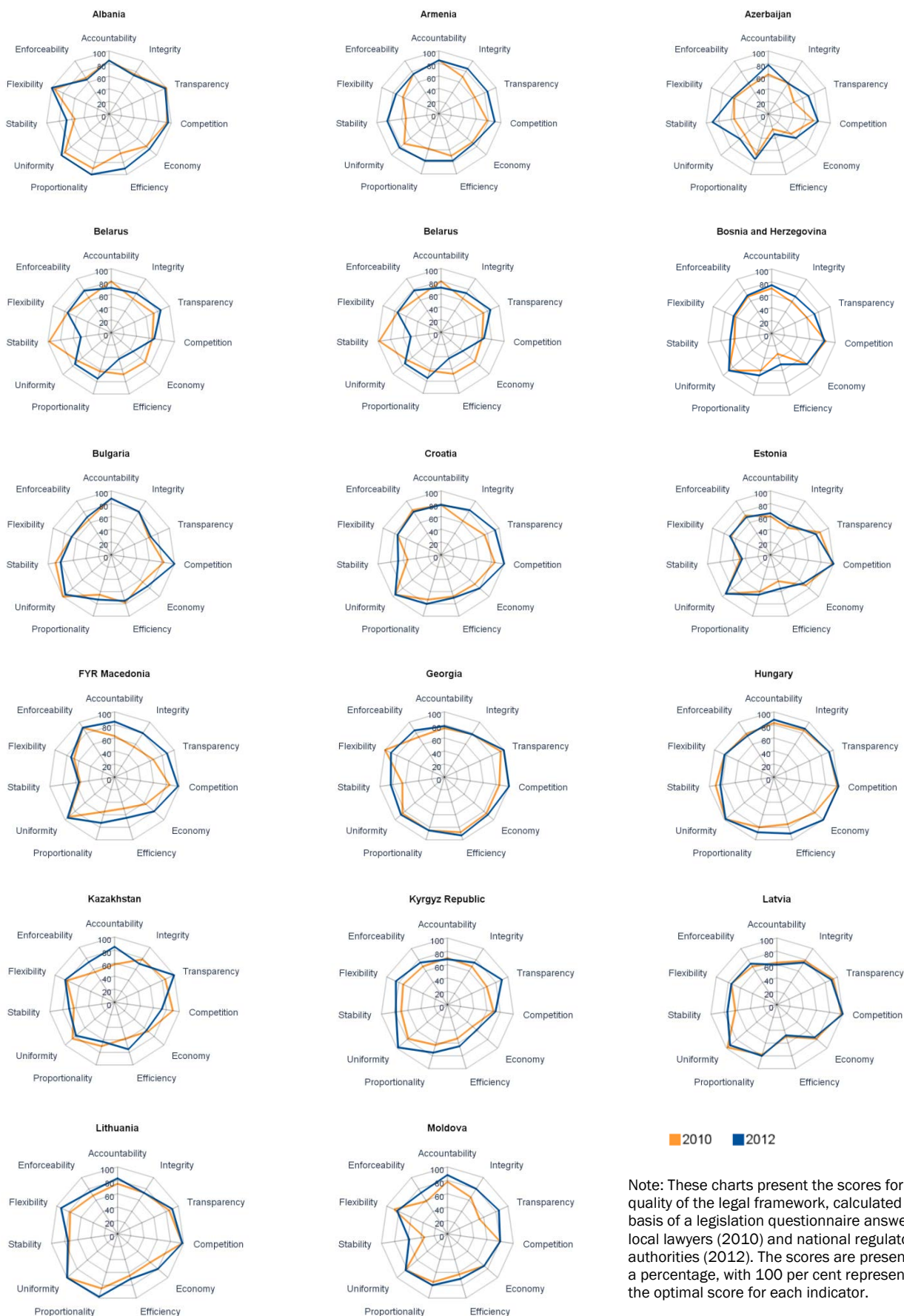
- establish best practices;
- produce a benchmark;
- develop and calibrate questionnaires;
- collect responses; and
- score, evaluate and analyse the data collected.

The assessment data provided compliance ratings (categorised by the score achieved) for each indicator: very high compliance (> 90 per cent of the benchmark); medium compliance (60-75 per cent of the benchmark); and very low compliance (< 50 per cent of the benchmark). The data were collected, processed and analysed through a dedicated online assessment database. Three types of charts – spider graphs, pie charts and bar charts – are used to present the assessment results. The complete results of the self-assessment will be presented and analysed in individual country profiles, which are planned to be published online, in English and Russian, on the EBRD web site later this year.

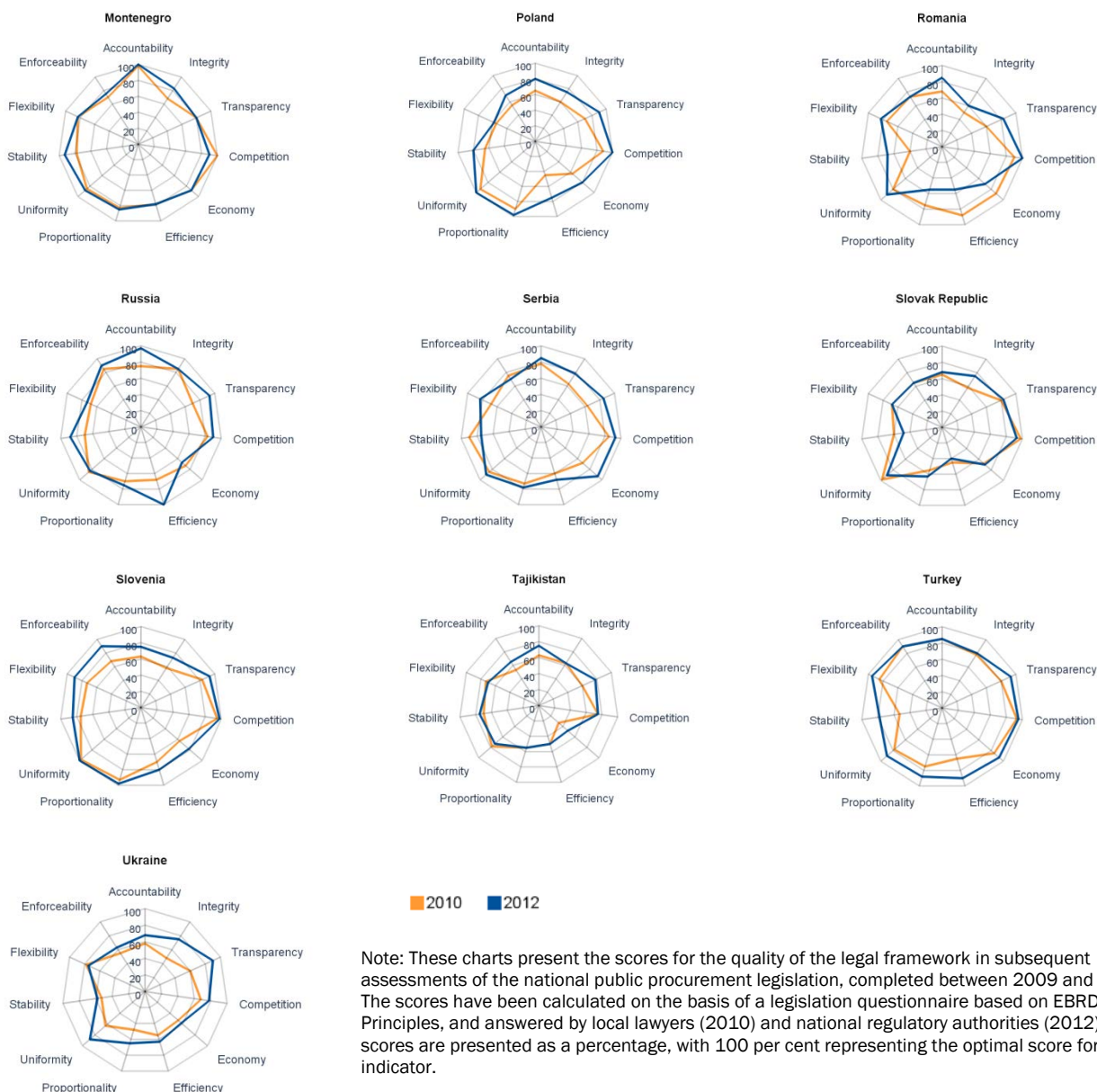
Monitoring reform progress: the objective of the self-assessment

The objective of the 2012 research was to review changes in basic policy concepts (scope, coverage, completeness, regulatory efficiency) in national laws, and to enable a comparative analysis of the quality of public procurement legislation, in terms of transparency safeguards, efficiency instruments and institutional and enforcement measures. Because it represents the first region-wide review since 2010, the results reveal which countries in the region have recently enacted the most comprehensive reforms. The 2012 assessment was conducted as a self-assessment, meaning that the data were collected through online interviews with representatives from the national regulatory authorities in each country. This process began in 2012, and the data review was finalised in 2013. Notably, the assessment does not include feedback from other procurement process stakeholders, such as contracting entities or procurement professionals, nor does it attempt to assess the law in practice. This article presents the initial results of the review of the region's reform progress, and comments on the elements of successful reform in the public procurement arena.

Chart 1: Reform progress in public procurement in the EBRD region, as identified by 2010 and 2012 research conducted by the Bank



Note: These charts present the scores for the quality of the legal framework, calculated on the basis of a legislation questionnaire answered by local lawyers (2010) and national regulatory authorities (2012). The scores are presented as a percentage, with 100 per cent representing the optimal score for each indicator.



Sources: EBRD 2010 Regional Public Procurement Sector Assessment, EBRD 2012 Regional Public Procurement Legislation Self-Assessment

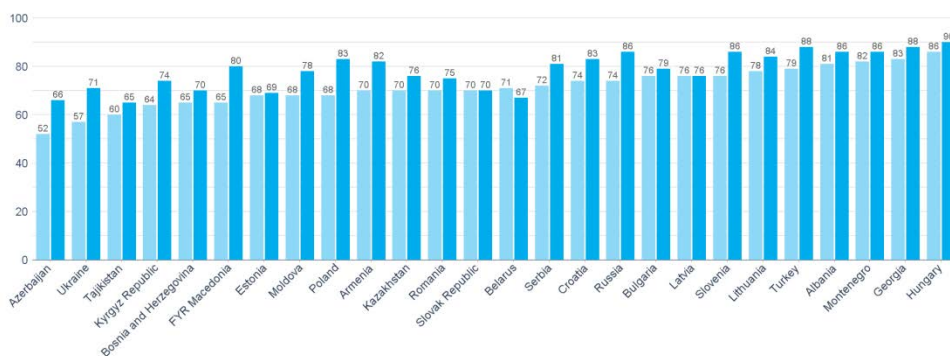
The spider diagrams above reflect the quality of the public procurement legal framework in each country, in both 2010 (orange) and 2012 (blue). Each graphic presents the scores for each of the 11 Core Principles benchmark indicators. Total scores are presented as a percentage, with 100 per cent representing the maximum score for each Core Principles benchmark indicator. The scores begin at zero at the centre of the chart, and reach 100 at the outside, so that, in the overall chart, a wider line represents a better score in the assessment. The amount of reform efforts in each country can be assessed by observing the width of the gap between the two lines.

Analysing the EBRD region as a whole, over the past three years certain countries stand out as reform leaders, while others have maintained more conservative legal frameworks.

The 2012 research data show that the countries that have previously been reform leaders – Hungary, Turkey and Georgia – continue to score well. Across the region the scores have improved, from an average of 71 per cent in 2010, to 78 per cent in 2012 – an overall increase of seven percentage points. None of the countries for which data are available for 2012 remain in low compliance, and the progress made indicates that, on average, countries in the region are in high compliance, compared to medium compliance in 2010.

The countries exhibiting the highest percentage increases in their overall score were Azerbaijan (20 per cent), Ukraine (20 per cent) and FYR Macedonia (19 per cent). Both Azerbaijan and Ukraine moved from low compliance with the benchmark to medium compliance, while FYR Macedonia progressed from medium to high compliance. The countries showing either a decrease in their score or no overall improvement were Belarus, Latvia and Slovak Republic. However, it should be noted that despite the tremendous progress made in Azerbaijan, the country's score remains below average for the EBRD region, and below all three of the countries showing no improvement at all.

Chart 2: Progress in national public procurement legislation development in transition countries from 2010 to 2013



Note: This chart presents the scores from 2010 and 2012 for the quality of the national legal framework (law on the books) for transition countries. The scores have been calculated on the basis of a legislation questionnaire, based on EBRD Core Principles and answered by local legal advisors (2010) and national regulatory authorities (2012). Total scores are presented as a percentage, with 100 per cent representing the highest performance.

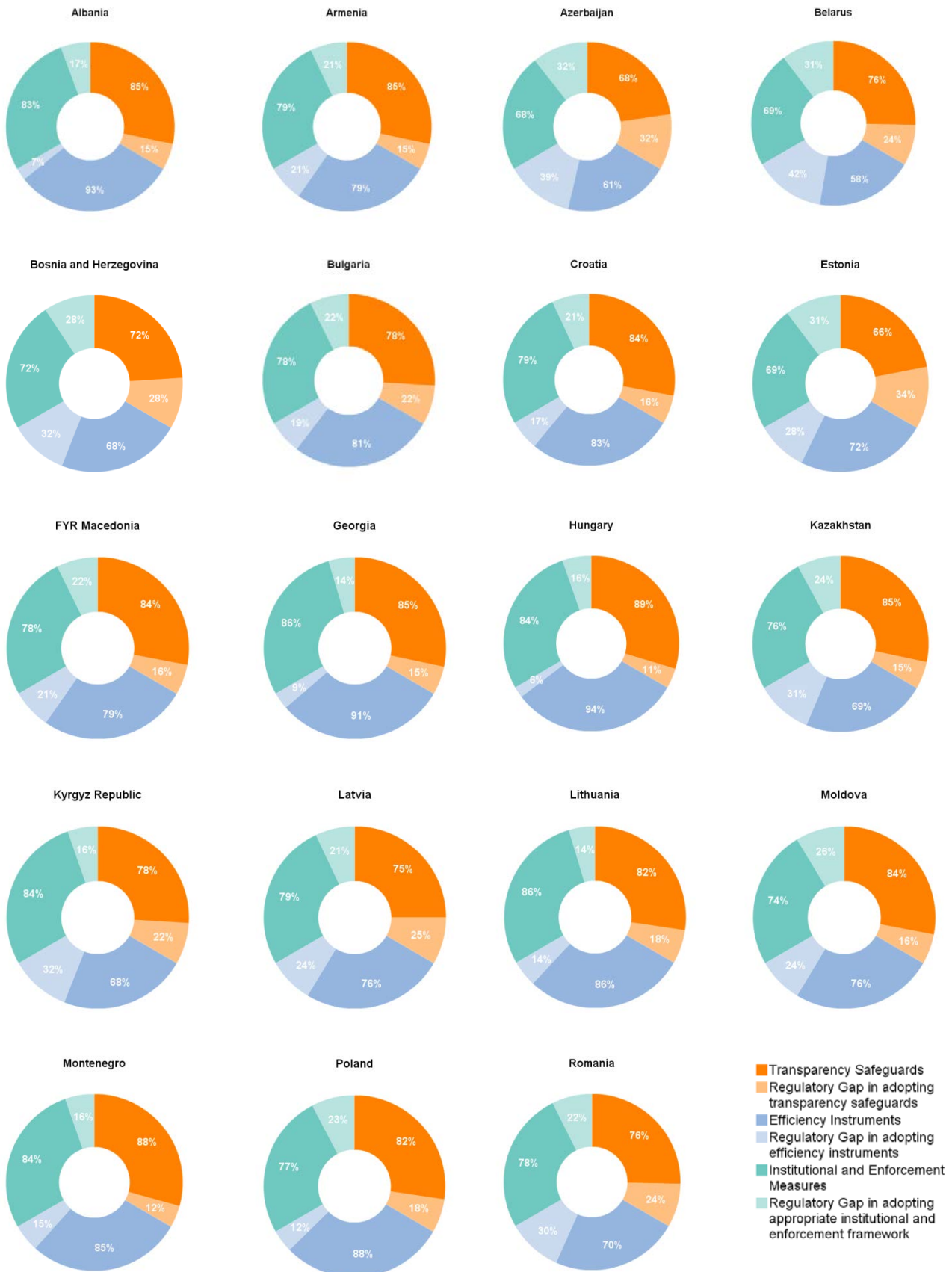
Sources: EBRD 2010 Regional Public Procurement Assessment, EBRD 2012 Regional Public Procurement Legislation Self-Assessment

Adequacy of policy-making: aligning public procurement laws with local market and business culture challenges

To review the countries' key public procurement policy decisions, and to assess the strength of their national regulatory institutions, the benchmark indicators were grouped into three key evaluation categories: transparency safeguards (an average of the scores for the accountability, integrity and transparency indicators); efficiency instruments in the national regulatory framework (an average of the scores for the competition, economy, efficiency and proportionality indicators); and institutional and enforcement measures (an average of the scores for the quality of the enforceability, uniformity, flexibility and stability indicators).

Each of the three evaluation categories in the individual country pie charts presents the scores as a percentage of the maximum available for each category. The lighter shaded area in the pie chart represents the regulatory gap (the difference between the maximum possible score in a category and the achieved score) for the individual evaluation category.

Chart 3: Public procurement policy development: transparency safeguards, efficiency instruments and institutional and enforcement measures





Note: These charts present the results of the assessment of public procurement policies on the books in three fundamental evaluation categories: transparency safeguards, efficiency instruments, and institutional and enforcement measures. The scores have been calculated on the basis of a legislation questionnaire, based on EBRD Core Principles, and answered by the national regulatory authority. Total scores are presented as a percentage, with 100 per cent (one-third of the pie chart) representing the optimal score for each evaluation category. Regulatory gaps – the difference between the assessment results and the benchmark – are marked in light orange, light blue and light green, respectively.

Source: EBRD 2012 Regional Public Procurement Legislation Self-Assessment

The Core Principles benchmark indicators described above can be grouped into three basic policy categories: anti-corruption and transparency safeguards (accountability, integrity and transparency); efficiency instruments (competition, economy, efficiency and proportionality); and institutional and enforcement measures (uniformity, stability, flexibility and enforceability). Historically, transparency safeguards have always been a major element in procurement policy-making, and should still be considered of paramount importance as a regulatory factor, especially for countries where corruption is perceived to be a problem. The incorporation of efficiency instruments in public procurement regulation is the product of valid concerns about value for money in public spending, and expanding opportunities for business, but can typically only be a dominant policy feature in countries in which legal and business cultures are relatively well-developed, and which are less affected by corruption. Lastly, the development of appropriate institutional and enforcement measures enables the crucial step in implementing the procurement policy in practice, and which protects private sector suppliers and contractors from arbitrary decisions of government officials.

Viewing the scores together for these three basic policy evaluation categories provides a window through which to assess whether the national procurement policies have struck an appropriate balance between them. Reforms should focus on closing these three regulatory gaps in parallel, as this approach ensures that progress in some policies is not undermined by deficiencies in others. In general, the results show that few of the countries in the EBRD region have struck this balance well. Of the three reform leaders above, Azerbaijan and FYR Macedonia have been more successful with this approach than Ukraine. Croatia, Serbia and Turkey have made reform progress relatively evenly across the three categories.

The average regulatory gap for countries in the EBRD region in enacting transparency safeguards is 20 per cent. Although this represents an increase of nine per cent over the average in 2010, it is important to note that countries in the region still need to focus on integrating these anti-corruption protections into their procurement legislative frameworks. The largest improvements in this evaluation category were made by FYR Macedonia (28 per cent increase), Ukraine (28 per cent increase) and Moldova (22 per cent increase). Such large increases were possible because of low starting bases – these three countries were previously considered to be in low to medium compliance. All three countries have succeeded in achieving high compliance as a result of their reforms; however their regulatory gaps remain at over 15 per cent, signifying that more reform is still needed. Countries that showed a lower compliance in this category since 2010 were Albania, Bulgaria, Estonia and Latvia.

The average regulatory gap for countries in the EBRD region in the efficiency instruments category is 23 per cent, which is higher than the regulatory gap for transparency safeguards. At 77 per cent, the average score across the region has increased by six per cent since 2010. Leading reformers in this category are FYR Macedonia (20 per cent increase), Poland (18 per cent) and Ukraine (14 per cent). However, in the category of transparency safeguards all three countries have room to make more reforms to improve the efficiency of their legislative frameworks, particularly Ukraine, where the regulatory gap remains above 30 per cent. To put these scores in perspective, none of these three countries has surpassed the scores achieved by Georgia, Hungary and Turkey, which are overall leaders in the region in this category. The most significant decreases in this category were observed for Belarus, Kazakhstan and Romania.

Chart 4: Best score in EBRD assessment rankings of quality of public procurement laws (2010 and 2012)

2010 EBRD Assessment		2012 EBRD Assessment	
1	Hungary	1	Hungary
2	Montenegro	2	Turkey
3	Georgia	3	Georgia
4	Albania	4	Slovenia
5	Turkey	5	Russia
6	Lithuania	6	Montenegro
7	Bulgaria	7	Albania
8	Latvia	8	Lithuania
9	Croatia	9	Poland
10	Slovenia	10	Croatia

Note: This chart presents the summary rankings of the two EBRD assessments. The ranking of the countries of the EBRD region is based on the result for the quality of the national legislative framework ('law on the books'). The scores have been calculated on the basis of a legislation questionnaire and answered by local lawyers in 2010 and the national regulatory authorities in 2012.

Sources: EBRD 2010 Regional Public Procurement Assessment, EBRD 2012 Regional Public Procurement Legislation Self-Assessment

In terms of developing institutional and enforcement measures, the average regulatory gap for countries in the EBRD region is 22 per cent. This is also the category showing the least reform progress: the overall average score – 78 per cent – is up only five per cent from the 2010 average of 73 per cent. Countries that were able to demonstrate the most progress were Azerbaijan (19 per cent increase), Armenia (17 per cent), Romania (14 per cent) and Slovenia (14 per cent). Slovenia made particularly good progress; it achieved very high compliance with the benchmark and had the highest score in the region in this

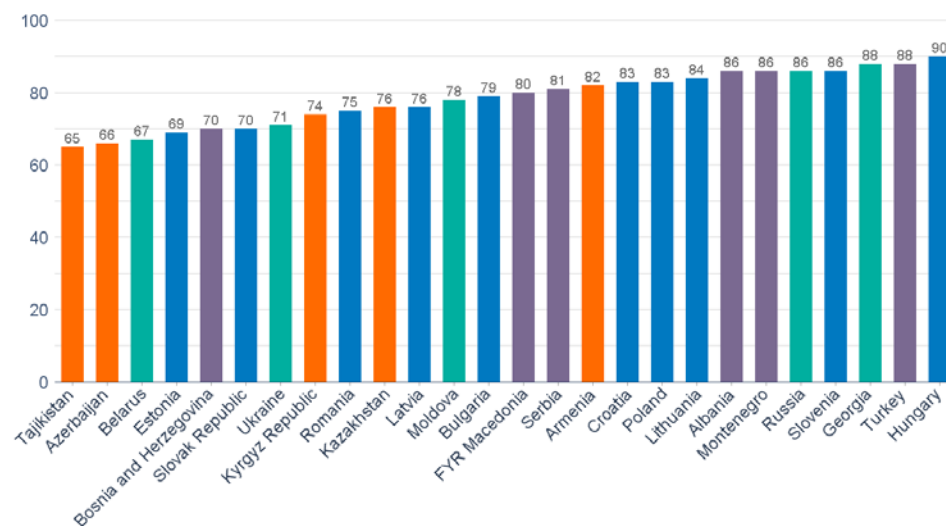
category. Countries showing the largest decreases (lower compliance) in this category were Belarus, Hungary and Slovak Republic. However, Hungary's score in this category remains high, and, overall, it is ranked in the top quartile of countries in the EBRD region.

In looking at overall reform progress in public procurement policies, it is evident that progress in the EBRD region over the last three years has focused on transparency safeguards, with less effort being put into developing efficiency instruments, and an inconsistent approach taken towards developing institutional and enforcement measures. While it is promising that the regulatory gaps in all three categories have begun to close, it is perhaps surprising that more progress was made regarding transparency safeguards than efficiency instruments, given the timing of these reforms in the wake of the global financial crisis. A greater focus on efficiency instruments would be a more cost-effective strategy for countries to pursue, while a greater emphasis on institutional and enforcement measures would ensure that countries would be able to enact their new policies, and benefit from improvements to their legislation. The fact that more progress has not been made regarding efficiency signifies that, unfortunately, countries in the EBRD region still do not consider procurement policy reforms as a means of achieving greater efficiency in the public sector. It also suggests that the link that should exist between the treasury and public finance management, and procurement regulatory agencies, has not been fully developed.

Motivations for reform

Examining the list of the top 10 countries in the EBRD region reveals the main political motivations behind recent reform progress in the region. Five of the top 10 countries in the ranking are either harmonising, or have harmonised, their policies with the EU *acquis communautaire* (EU Member States in the EBRD region or EU candidate countries Croatia, Hungary, Lithuania, Poland and Slovenia), while a further three countries (Albania, Montenegro and Turkey) are completing this same exercise.

Chart 5. Quality of public procurement laws in transition countries in the EBRD region as reported by national regulatory authorities in 2012



- EU Member States in the EBRD region
- Central Asian Republic and Mongolia
- Western Balkans and Turkey
- Eastern Europe, Caucasus and Russian Federation

Note: This chart presents the current scores for the quality of the national legal framework (law on the books) for transition countries. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles, and answered by the national regulatory authority. Total scores are presented as a percentage, with 100 per cent representing the highest performance.

Source: EBRD 2012 Regional Public Procurement Legislation Self-Assessment

Economic concerns, and a desire to achieve value for money in procurement spending, were the primary factors driving reform in Georgia and Turkey, while Russia's impetus for reform was due to a need to address deficiencies in the previous procurement regime. Beyond EU-influenced countries (including EU member states, candidate countries and European Neighbourhood and Partnership Instrument countries), the most significant progress was made by Azerbaijan and Kyrgyz Republic. Another major political motivation for reform is accession to the WTO GPA. The GPA text that was adopted in 2012, which provides greater flexibility for transition countries, has led to an increased interest in the GPA among the EBRD countries of operations. In fact, a number of countries in the EBRD region are currently in the GPA accession process: Georgia, Jordan, Kyrgyz Republic, Moldova, Montenegro, Tajikistan and Ukraine.



Scope of regulation in national laws

The assessment also revealed a number of findings on general system features. One of the most important of these was the scope of application of public procurement legislation. The scope of the law can be thought of in two ways: (1) the extent to which the regulatory framework covers all public sector procurement; and (2) the extent to which the regulatory framework covers the three main phases of the procurement process in the public sector.

First, the Core Principles benchmark encourages procurement policy to extend to national and local government procurement, utilities sector procurement, and publicly owned institutions procurement. While in 2010, in a number of countries, the legislative framework only covered government procurement, by 2012 more countries had moved towards not only regulating utilities sector procurement, but also towards providing specific procurement rules for this sector. Less progress has been made in terms of extending coverage to publicly owned institutions. In 2012, in general, as in 2010, the EU member states in the region, as well as the EU candidate countries, demonstrated the most comprehensive and consistent approach. However, several countries did not cover the entire public sector, while Kazakhstan and Ukraine included extensive exceptions from coverage in their laws. Chart 6 also includes an indication of whether countries have established a central procurement body (CPB). Although some international standards promote CPBs for economic reasons, this tool has still not been fully incorporated by countries in the EBRD region. For example, countries shaded in light blue have a provision in their laws regarding a CPB, but have yet to establish one in order to gain the potential economic benefits.

Chart 6: Regulating public sector procurement - extent of coverage of national laws

	Does the public procurement law cover central government and local government procurement?	Does the public procurement law contain specific procurement rules for the procurement of the contracting entities in the utilities sector?	Does the public procurement law contain specific procurement rules for procurement of public law institutions?	Does the PPL or sPPL establish a Central Purchasing Body?
Albania	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Armenia	Dark Blue	Dark Blue	Dark Blue	Red
Azerbaijan	Dark Blue	Red	Red	Dark Blue
Belarus	Dark Blue	Dark Blue	Light Blue	Light Blue
Bosnia and Herzegovina	Dark Blue	Light Blue	Light Blue	Red
Bulgaria	Dark Blue	Dark Blue	Light Blue	Dark Blue
Croatia	Dark Blue	Dark Blue	Dark Blue	Light Blue
Estonia	Dark Blue	Dark Blue	Dark Blue	Dark Blue
FYR Macedonia	Dark Blue	Dark Blue	Dark Blue	Light Blue
Georgia	Dark Blue	Light Blue	Light Blue	Light Blue
Hungary	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Kazakhstan	Dark Blue	Light Blue	Light Blue	Light Blue
Kyrgyz Republic	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Latvia	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Lithuania	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Moldova	Dark Blue	Light Blue	Light Blue	Dark Blue
Montenegro	Dark Blue	Dark Blue	Red	Light Blue
Poland	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Romania	Dark Blue	Dark Blue	Dark Blue	Light Blue
Russia	Dark Blue	Dark Blue	Red	Dark Blue
Serbia	Dark Blue	Dark Blue	Dark Blue	Red
Slovak Republic	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Slovenia	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Tajikistan	Dark Blue	Red	Red	Dark Blue
Turkey	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Ukraine	Dark Blue	Light Blue	Dark Blue	Red

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

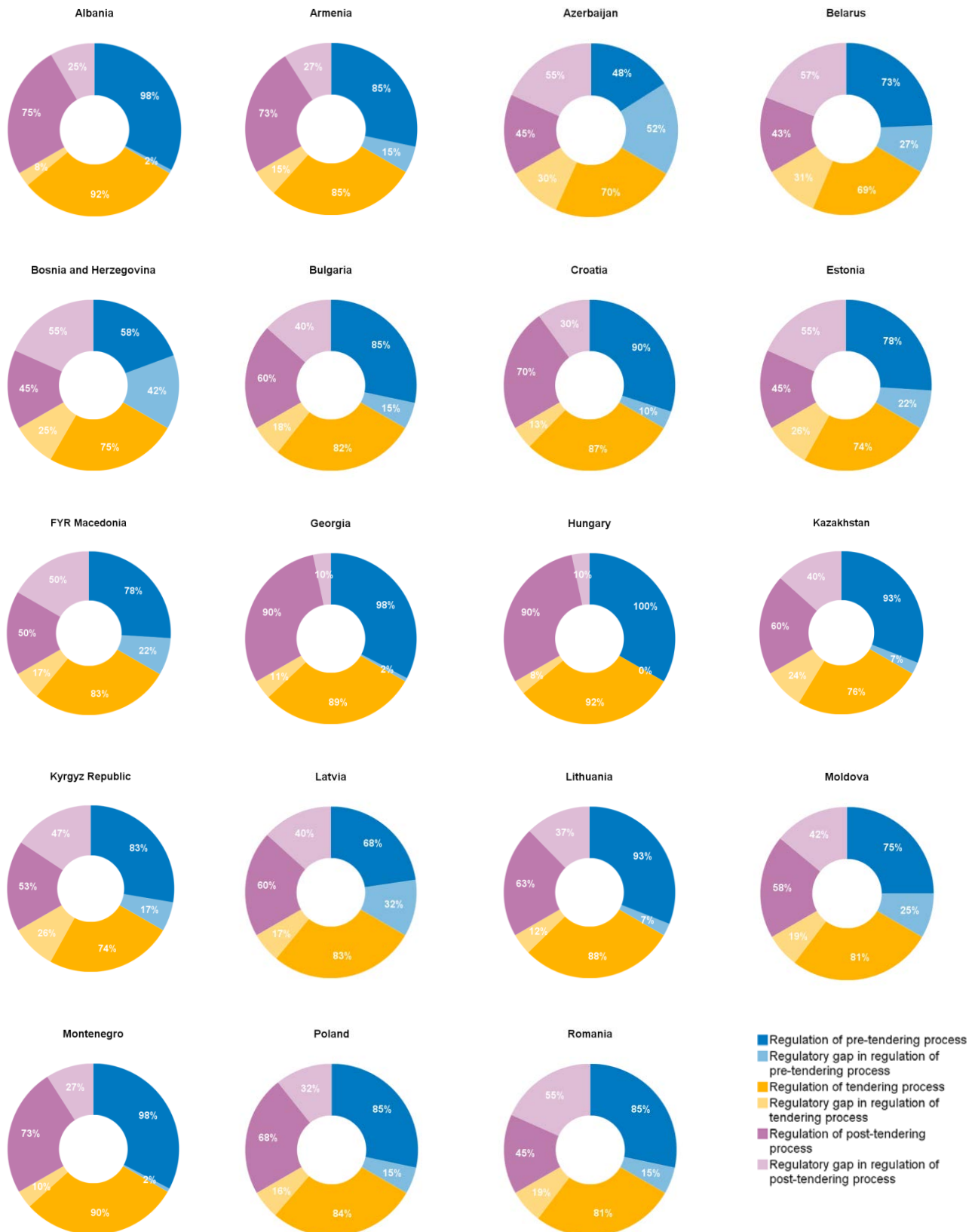
Note: This table presents desirable features of public procurement legislation for each country in the region. Marks have been allocated on the basis of a legislation questionnaire and answered by the national regulatory authority. The scores are graded from what is considered to be the least satisfactory (marked in red), to the most satisfactory (marked in dark blue); the latter representing optimum quality of public procurement laws.

Source: EBRD 2012 Regional Public Procurement Legislation Self-Assessment

Second, the Core Principles benchmark measures the extent to which the national legislation covers the three main phases of the procurement process: pre-tendering, tendering and post-tendering. Traditionally, the tendering phase is the best regulated of these phases, while planning and preparation of procurement, and public contract management, are less well-regulated, allowing contracting entities more freedom and discretion.

The 2012 assessment revealed that several countries have done very well in terms of regulating the pre-tendering process, which involves requiring procurement planning and appropriate budgetary authorisation. Both Hungary and Turkey achieved a 100 per cent score on their regulation of the pre-tendering process. Albania, Georgia, Montenegro and Russia are close behind, at 98 per cent. Several countries lack provisions to address the pre-tendering process; notably Azerbaijan (48 per cent), Bosnia and Herzegovina (58 per cent), Slovakia (58 per cent) and Tajikistan (58 per cent). Well-developed regulation of the pre-tendering phase is frequently linked to successful implementation of electronic procurement (eProcurement) tools supporting these processes; Albania, Georgia and Montenegro are presently implementing comprehensive eProcurement reforms.

Chart 7: Regulation of public procurement phases: pre-tendering, tendering and post-tendering





Note: These charts show the scores for the quality of the regulation of the three main phases of the public procurement process: pre-tendering, tendering and post-tendering. The scores have been calculated on the basis of a legislation questionnaire and answered by the national regulatory authority. Total scores are presented as a percentage, with 100 per cent (one-third of the pie chart) representing the optimal score for each procurement phase. Regulatory gaps – the difference between the assessment results and the benchmark – are marked in light blue, light yellow and light pink, respectively.

Source: EBRD 2012 Regional Public Procurement Legislation Self-Assessment

Countries placed at the top of the region for their regulation of the tendering process were Hungary (92 per cent), Albania (92 per cent), Montenegro (90 per cent) and Turkey (90 per cent). Given their focus on the competition and fairness in tendering, the EU Directives did not have as significant an impact on regulation of the tendering process in the reviewed countries as would be expected. The maximum regulatory gap of 10 per cent would be expected among the EU Member States in the EBRD region, but in fact the gap identified in these countries is wider - between 15 and 20 per cent of the benchmark. Countries in which laws contained the least extensive regulation of the tendering process were Tajikistan (66 per cent), Belarus (69 per cent) and Azerbaijan (70 per cent).

Lastly, of the three procurement phases, the least regulated phase among countries in the EBRD region is the post-tendering phase. This means that, in general, countries do not provide for contract management, or enact provisions related to the public contract after the tendering phase is completed. Moreover, compared to the results of the 2010 assessment, little reform progress has been made overall in terms of regulating this phase.

In the 2012 self-assessment Russia is a leader in regulating the post-tendering phase (94 per cent), followed by Georgia (87 per cent) and Hungary (87 per cent). Six countries – Belarus, Bosnia and Herzegovina, Estonia, FYR Macedonia, Serbia and Slovak Republic – demonstrated very low compliance rate with regard to their regulation of this procurement phase.

Flexibility of procurement procedures

The assessment also measured the flexibility of the public procurement legislative framework, in order to gauge the extent to which the law offers procurement procedures that are suitable for application to different types of contracts. From an efficiency viewpoint, it is appropriate to use a different procurement method for standard purchases than for complex projects. The law should also ensure that specialised and transparent negotiating procedures are available to the country's contracting entities for contracting complex projects.

Although some progress has been made in this area, the legal frameworks in countries such as Belarus, Kazakhstan and Russia remain inflexible. Other countries, such as Georgia and Kyrgyz Republic, rely too heavily on reverse auctions, which are not appropriate for every public contract, complex infrastructure projects, in particular. Bosnia and Herzegovina, Tajikistan and Ukraine also need to enact further reforms to better align the procurement methods provided for by national laws with different project types.



Availability of review and remedies procedures

Another crucial regulatory issue is enforceability of public procurement regulations. As public procurement systems are located at the intersection of the public and private sectors, impartial and robust review mechanisms are essential in order to ensure the enforceability of the public procurement regime. Consequently, the EBRD assessment considered issues of enforceability of public procurement regulation, in terms of adequate public procurement review and remedies systems. Significant progress has been made in the region regarding this element of the assessment, with a majority of countries achieving good compliance. The 2012 self-assessment revealed that future reforms in Azerbaijan, Belarus, Georgia, Kazakhstan, Tajikistan and Ukraine should include improving review and remedies procedures and aim to increase private sector trust in the impartiality of national remedies bodies.

Development of eProcurement tools

Several countries in the EBRD region are attempting to implement eProcurement solutions for their public procurement sector. Presently, in the EBRD region, only Albania and Georgia have adopted regulations and eProcurement tools to cover all tenders in public

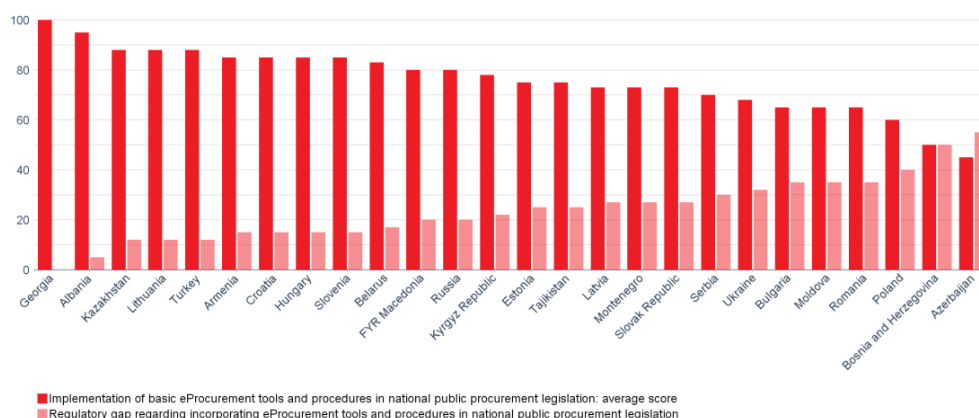
sector, although a number of other countries, such as Armenia, Russia and Turkey, are gradually moving towards comprehensive electronic public procurement systems.

Many countries in the EBRD region require the online publication of contract notices, including all EU Member States in the EBRD region, while some require communication between public client and private suppliers and contractors to be exchanged electronically, in a transparent and traceable way. However, in a majority of countries in the EBRD region it is still left to the individual decision of each contracting entity to decide whether to make use of eProcurement tools.

In the 2012 self-assessment a review of the availability of the eProcurement solutions for public sector has been based on the assumption that the eProcurement is the replacement of paper-based public procurement procedures with online procedures (e-notices, e-communication, e-tenders, e-procedures, e-records, e-reporting) and may also include incorporation of the special ITC procurement tools in the public procurement procedures, such as e-auctions and e-purchasing.

The legal questionnaire covered access to basic online procedures: electronically published contract notices, tender documents and records of procurement decisions as well as access to online proposal submissions and tender documents clarification. The assessment questionnaire did not discuss implementation of specific eProcurement tools such as e-auctions, e-catalogues for framework agreements, or dynamic purchase systems.

Chart 8: Implementation of eProcurement in national public procurement regulatory framework



Note: This chart shows the scores for the development and incorporation of the eProcurement tools in the EBRD region. The scores have been calculated on the basis of a legislation questionnaire answered by the national regulatory authority. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each procurement phase. Regulatory gap marked in light colour underlines the difference between the assessment results and the Core Principles benchmark.

Source: EBRD 2012 Regional Public Procurement Legislation Self-Assessment

Conclusion

In evaluating reform progress in the EBRD region, the fundamental question is: *When is regulatory reform considered to be successful?* In evaluating public procurement reform progress, we have analysed at pie charts summarising assessment results and regulatory gaps identified in national legislation. We believe that the review results for key policy evaluation categories – transparency safeguards, efficiency instruments and institutional and enforcement measures – are fundamental in answering this key question.

In modern public procurement policies transparency and anti-corruption safeguards must be balanced with instruments ensuring efficiency and economy of procurement procedures. Both of these considerations must be supported by an institutional framework that is capable of putting the legal framework effectively into practice. This last element –

incorporating institutional and enforcement measures – is an increasingly important element of reform success. New, revised laws, even if they incorporate all transparency safeguards and efficiency instruments recommended by international best practice, will remain ineffective if an adequate institutional framework – including regulatory authorities that provide professional capacity-building for procurement officers, and enforcement measures, such as monitoring procedures and complains mechanisms – is not in place. As a result of progress in procurement practices, building a modern procurement system now requires that national public procurement institutional frameworks include central purchasing agencies and eProcurement platform operators – in addition to having appropriate regulatory authorities, monitoring units, and remedies bodies for hearing complaints from suppliers and contractors.

Based on the EBRD assessments completed in 2010 and 2012, it is clear that a key to reform success is keeping a good balance between new modern procedures introduced by law, and institutional measures established to have them implemented in practice. In this respect, countries in the EBRD region with small regulatory gaps, and with similar regulatory gaps in each evaluation category, are more successful with their reform efforts, compared to countries scoring very well in one category while having substantial regulatory gaps in the other two categories. In other words, adopting laws which provide for new and better purchasing practices, aimed at improving the efficiency of procurement, will not, in themselves, make these purchasing practices readily accepted by and therefore popular with contracting entities, unless secondary legislation, standard documents and training facilities are also provided to contracting entities.

Another key aspect in assessing reform is whether it establishes a modern procurement system that enables the public sector to benefit from market best practice. With new procurement practices developing rapidly, planning reforms in the public procurement sector designed to bring the framework into line with international best practice is a challenging exercise – in particular when the reform plan encompasses implementing eProcurement tools and modern purchasing techniques (framework agreements and e-catalogues). While limited data is available regarding the efficiency of framework agreements in the EBRD region, the results for implementing electronic tendering are promising, considering the progress made in Albania, Georgia, FYR Macedonia and Turkey. Thus, future reforms should focus on developing eProcurement instruments in order to close or balance the regulatory gaps that were identified in the 2010 EBRD assessment, and which were still evident in the results of the 2012 review.

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