სახელმწიფო შესყიდვების სააგენტო
STATE PROCUREMENT AGENCY

Roadmap and Action Plan

for the Implementation of the Public Procurement Chapter of the EU-Georgia Association Agreement

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1. INTRODUCTION

The Roadmap describes the planned gradual approximation process of the Georgian Public Procurement legislation to the EU public procurement directives. The efficient implementation view of this process, including activities to strengthen institutional capacities and improvement of the capacities of the stakeholders in the system, is presented through the eight-year period ranging from 2014 to 2022. Action plan for implementation of the Roadmap (including the relevant time schedules) is set out in Annex.

The Georgian state procurement system has undergone significant reforms over the last years. In December 2010 paper-based tenders were abolished and electronic procurement has become the single means of state procurement. Former paper-based tenders were challenged by a high risk of corruption, restricted competition, high compliance costs and lack of transparency. Through the introduction of electronic procurement platform the Georgian procurement system has become considerably more transparent and nondiscriminatory, encouraging free and fair competition and minimizing the risk of corruption.

The electronic system contributes to the fight against corruption by offering a high degree of transparency in the state procurement process from initiation and planning to the point of award:

- All procurement related information is open and available online (e.g. tender notices, tender documents, all decisions of tender commission, etc.). Price bids are also submitted through the Unified Electronic System as well as signed contracts;
- The effectiveness of monitoring the public budgeting process is increased. Procuring entities are required to publish an approved annual procurement plan at the start of the fiscal year on the electronic platform;
- It should be emphasized that all procurement related information is accessible even to unregistered guests (media or any other interested person) on the SPA website. Thus, the monitoring of the whole procurement process is not limited to public officials but can be carried out by visitors of the website as well;
- Introduction of electronic services in the public procurement system is an important step towards useful eGovernment services. The simplification of state procurement procedures, the minimization of the tender participation costs and elimination of geographical inequality resulted in increased competition and in significant reduction of government expenditures;
- Another decisive step in reducing the risk of corruption was the establishment of a Dispute Resolution Board (DRB) by the State Procurement Agency (SPA) with representatives of civil society, which gives any company the chance to appeal a tender award.

These achievements have been explicitly acknowledged by different international organizations:

- The Georgian eProcurement system was awarded the second place among 471 candidates from 71 countries in the United Nations' Public Service Annual Survey, Category: Preventing and Combating Corruption in the Public Service (citation: "the most prestigious international recognition in terms of public services around the world);
- EBRD Assessment of Public Procurement Law and Practice, 2011 "The key components of Public Procurement policy are introduced in South-European countries, however only Georgia has high Compliance rating, as Georgia has best complied with and implemented the efficient procurement instruments recommended by the international best practice;

- "The electronic, transparent system of State Procurement was successfully introduced in Georgia, what can be highly appreciated. It is very good, when the Government published various data online for its citizens and makes them publicly available, thus promoting the introduction of e-governance";
- "The eProcurement system implemented in Georgia may serve as a good example for Asia and other Pacific countries. The countries, which have not yet introduced the eProcurement system, are particularly interested in the reforms implemented in Georgia";
- Report of the European Parliament Committee on International Trade 2011/2306(INI): "The European Parliament Welcomes Georgia's new procurement system, Georgia should also serve as an example for the EU Member States in this area";
- Transparency International (TI) - In 2012 Georgia moved from 68th to 51st place in Corruption Perception Index, what was greatly promoted by the Georgian eProcurement system;
- OECD - Georgia was highly appraised amongst the Eastern Partnership Countries in the field of state procurement;
- UNPAN - The UN recognized the Georgian eProcurement system as one of the best worldwide;
- According to EBRD 2012 Regional Public Procurement Legislation Self-Assessment Georgia is on the 1-st place amongst EBRD Regional 26 countries;
- Transparency International (TI) – Georgia "Georgia's procurement system is state of the art and one of the most transparent and efficient systems in the world".

Importance of further development of the public procurement system of Georgia is recognized as one of the crucial processes in respect to overall economic development, especially in the context of EU-Georgia Association Agreement process.

It should be also mentioned that Georgian government is committed to work towards joining the World Trade Organization Agreement on Government Procurement (GPA).

In signing the Association Agreement with the European Union together with the planned accession of Georgia to the WTO/GPA, an adaptation of the Georgian system to EU and international standards has been recognized as the course to follow. In this way, the system will contribute concretely to:

- ensuring better value for money for the Georgian tax-payers in the public contracts awarded;
- improving public finance management, including an avoidance of excessive spending;
- enhancing the conditions for competition on the significant market for public contracts by increasing the fairness of the process of awarding public procurement contracts;
- reducing potential for corruption in public contracting by increasing integrity and accountability on the part of contracting authorities;
- advancing a competitiveness and export capacity of Georgian businesses in international markets, resulting from their capability to work with modern public contracting requirements;
- demonstrating an ability of Georgia to take on and comply with international obligations, thereby reinforcing the position of Georgia internationally.

2. REQUIREMENTS OF THE ASSOCIATION AGREEMENT

The EU-Georgia Association Agreement includes in the Title IV a dedicated Chapter 8 on public procurement, comprising Articles 141-149 and an associated Annex XVI. Essentially, the Agreement provides for effective, reciprocal and gradual opening of the public procurement markets of the EU and of Georgia. Opening of the public procurement markets is linked to gradual progress in the approximation of the Georgian public procurement legislation with the EU public procurement *acquis* accompanied by institutional reform and the creation of an efficient public procurement system based on the principles governing EU public procurement.

The scope of Chapter 8 of Title IV covers procurements and contracting entities covered by the Directives. This means that the scope of public procurement approximation covers procurements with an estimated value equal to or greater than the below listed thresholds:

- EUR 134,000 for public supply and service contracts awarded by central government authorities and design contests awarded by such authorities (see Art. 4 (b), 2014/24/EU, Public Procurement Directive);
- EUR 207,000 in the case of public supply and public service contracts not covered by above mentioned point (see Art. 4 (c), 2014/24/EU, Public Procurement Directive);
- EUR 5,186,000 in the case of public works contracts (see Art. 4 (a), 2014/24/EU, Public Procurement Directive);
- EUR 5,186,000 in the case of works contracts in the utilities sector (see Art. 15 (b), 2014/25/EU, Utilities Directive);
- EUR 414,000 in the case of supply and service contracts in the utilities sector (see Art. 15 (a), 2014/25/EU, Utilities Directive);
- EUR 750,000 for public service contracts for social and other specific services (see Art. 4 (d), 2014/24/EU, Public Procurement Directive);
- EUR 1,000,000 for service contracts for social and other specific services in the utilities sector (see Art. 15 (c), 2014/25/EU, Utilities Directive).

The abovementioned thresholds are adjusted every second year by the EU and therefore the adjusted thresholds will be adopted by the Georgian Government beginning in the year of entry into force of the Agreement to reflect the current thresholds then in place under the directives. The above figures are therefore subject to adjustment and serve as a base reference point of the scope of the directives in terms of contract value.

Under Article 143 of the Association Agreement "*an appropriate institutional framework*" for proper functioning of the public procurement system and the implementation of the principles must be ensured within *three years* from the entry into force of the Agreement comprising:

- *A policy body* – referred to as an executive body at central government level tasked with guaranteeing a coherent policy and its implementation in all areas related to public procurement. This body shall facilitate and coordinate the implementation Chapter 8 of Title IV of the Agreement and guide the process of gradual approximation; and
- *A review body* – referred to as an impartial and independent (i.e. separate from all contracting entities and economic operators) public body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts, whose decisions are also subject to judicial review.

Furthermore, under Article 144, "a *set of basic standards"* regulating the award of contracts, and reflecting core EU principles of non-discrimination, equal treatment, transparency and proportionality, must be ensured within *three years* from the entry into force of the Agreement.

More substantial challenges are posed by Articles 145 and 146 on the planning and implementation of gradual legislative approximation to EU standards.

Article 145 requires Georgia, prior to the commencement of gradual approximation, to develop a comprehensive *Roadmap* for the implementation of Chapter 8 of Title IV of the Agreement. The Roadmap is required to set out the time schedules (in line with time schedules contained in Annex XVI-B) and milestones which shall include all reforms in terms of legislative approximation and institutional capacity building. The Roadmap is to be put in place w*ithin three years of the entry into force of the Agreement* and within this period is to be approved by the Association Committee in Trade configuration which, thereafter, will evaluate and assess its effective implementation.

Article 146 concerns the process of the legislative approximation itself and establishes an obligation to ensure gradual approximation with EU public procurement acquis with reference to the consecutive phases as set out in Annex XVI-B, in particular the Annexes: XVI-C–XVI-F, XVI-H, XVI-I and XV-K. The obligation covers not only existing procurement directives but also any modifications of the Union's acquis. Within this process Georgia must also take due account of corresponding case law of the Court of Justice of the European Union (CJEU) and implementing measures taken by the European Commission.

Since the conclusion of the Association Agreement, the EU has adopted three new directives related to public procurement. The new Directives which came into force in 2014 reform the 2004 Public Sector and Utilities Procurement Directives and introduce new Directives on Concession Contracts. The new Directives will have to be transposed by EU Member States until April 2016 (with the exception of certain provisions on eProcurement to be transposed by October 2018).

Therefore, the EU Directives on Public Procurement covered by Chapter 8 of Title IV and the Annex XVI of the Association Agreement are:

- 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 O.J. L 94/65 (Public Sector Directive);
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing directive 2004/17/EC O.J. L 94/243 (Utilities Directive);
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts O.J. L 94/1 (Concessions Directive);
- Directive 89/665/EEC, on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, O.J. 1989 L395/33, as amended (Public Sector Remedies Directive);
- Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, O.J. 1992 L76/14, as amended (Utilities Remedies Directive);
- Directive 2007/66/EC of 11 December 2007, amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts O.J. L335.

Annex XVI-B is crucial for an understanding the timeline for gradual approximation progress. Georgia will undergo the following main phases of law approximation and implementation:

- **Phase 1** - 3 years after the entry into force of the Association Agreement[1] – Basic standards regulating the award of contracts and institutional background;
- **Phase 2** - 5 years after the entry into force of the Association Agreement – basic elements of the Public Sector Directive and the Public Sector Remedies Directive;
- **Phase 3** - 6 years after the entry into force of the Association Agreement – basic elements of the Utilities Procurement Directive and the Utilities Remedies Directive;
- **Phase 4** - 7 years after the entry into force of the Association Agreement – other (mandatory and non-mandatory) elements of the Public Sector Directive and the Public Sector Remedies Directive;
- **Phase 5** - 8 years after the entry into force of the Association Agreement – other (mandatory and non-mandatory) elements of the Utilities Procurement Directive and the Utilities Remedies Directive.

The strategic timeline of the reforms is eight years (from 01.09.2014). This will allow time for the follow-up institution and capacity building required to make the legislation work on the implementing level by both contracting entities and the economic operators.

Taking all this into account, it is clear that the future reform is much wider than simple approximation with the provisions of the EU public procurement Directives. While the legislation must be put in place Georgia must also ensure that the rules are properly implemented and enforced.

Therefore, a strategic approach is necessary to give coherence to reforms and to coordinate their achievement.

[1] The Association Agreement including the Deep and Comprehensive Free Trade Area (DCFTA) was ratified by the Parliament of Georgia on 18 July 2014. On 1 September 2014, provisional application of the Association Agreement started whereby 80% of the Association Agreement came into force, including the relevant provisions of the Agreement concerning public procurement.

3. LEGISLATIVE FRAMEWORK

3.1. PUBLIC PROCUREMENT IN GEORGIA

The public procurement system in Georgia has been in continuously developed over the past years.

The first Law on State Procurement in Georgia was enacted on 1 July 1999. This law was the first legal instrument that governed public procurement. The main purpose of the law was to ensure the efficient spending of state resources through a competitive process that was transparent and increased public confidence in the system.

The current Law on State Procurement (Law) came into force on 1 January 2006. Since its enactment, the Law has been amended 57 times.

The Law is structured as framework legislation with substantial parts of the procurement process put into secondary legislation.

The Law regulates the process from planning of procurement till the conclusion of contract.

The purpose of the Law is to:

- ensure rational expenditure of financial resources designated for state procurement;
- develop healthy competition in the areas of production of goods, supply of services and construction works necessary for the state needs; ensure fair and non-discriminatory approach towards participants of the procurement in the course of implementation of the state procurement;
- ensure publicity of the state procurement;
- establish uniform system of state procurement and to promote public confidence towards such system.

The scope of the Law covers purchases of goods, supply of services and construction works, made by contracting authorities which use funds from the state budget, Autonomous Republics' budgets and local budgets, funds of public bodies and grants or loans guaranteed by the state.

Since the amendment of the Law in 2010 there has been significant progress in reforming the Georgian public procurement system. As of 1 December 2010 the traditional paper-based tendering system was replaced in its entirety with a new eProcurement system - Unified Electronic System of State Procurement. The system was developed within nine months from inception to deployment from resources of State Procurement Agency (SPA). The eProcurement system reflects the commitment of the Georgian Government to reduce administrative costs and to eliminate as much as possible all manual intervention in the procurement process and strengthen the integrity of the entire procurement process.

3.2. COMPLIANCE WITH BASIC STANDARDS AND APPROXIMATION PHASES

Georgia recognises requirements on full acceptance of the public procurement acquis in the context of the EU-Georgia Association Agreement. This includes, first, ensuring compliance with basic standards regulating the award of contracts and then gradual approximation with the EU directives on public procurement.

The core legal problems identified in this Chapter, together with the overriding imperative of introducing the EU standards as required by the Association Agreement on a phased approach, provide the essential framework for the direction of the legislative reform. Corresponding institutional, capacity building and electronic procurement development measures are covered in Chapters 4 and 5.

The legislative approximation process will be focused on targeted amendments of the public procurement legislation[2] to accommodate legislative reforms in line with EU law in 2017, 2019, 2020, 2021 and 2022 as set out in the following paragraphs.

Georgia may decide to speed up legislative reforms in order to approximate its legislation with EU Directives before the time limits outlined by the respective approximation phase set forth in the Association Agreement.

In order to assess the scope and significance of legislative approximation process, it is crucial to identify areas within the current public procurement system which remain partly or fully unresolved when compared to the EU Directives. Those areas can be summarised as follows.

Scope and coverage

- The definition of contracting authorities is linked with the funding source (funds from the state budget, autonomous republics' and local budgets, funds of public bodies, and grants or loans guaranteed by the state), which is not necessarily an incorrect approach but can lead to some omissions or, in other cases, to inclusion of certain bodies within the scope of the Law which would normally not be covered. The definition of contracting authorities according to the EU Directives includes the state, regional or local authorities, including bodies governed by public law in a specific and defined meaning, and associations formed by one or several such authorities or one or several such bodies governed by public law. The concept of bodies governed by public law is used cover all public entities that should be made subject to the public procurement regime;
- Utilities are not specifically mentioned in the Law. The category of state-owned enterprises should be linked to performing of relevant activities in the utilities sector. Private enterprises operating in the utilities sector on the basis of special or exclusive rights are not included in the scope of the Law. That does not mean, however, that the rules must be identical; the utilities sector needs more flexibility compared with the classical sector;
- The definition of a public contract is missing. Such a definition is needed in order to decide whether the procurement legislation is applicable or not to a specific contract;
- The Law provides for a number of specific exclusions, but not all of them are consistent with EU Directives such as those dedicated to meetings and visits of the President of

[2] Amendments to the existing Law or adoption of the new Law will be carried out in each phase, as deemed appropriate.

Georgia, the government of Georgia and Tbilisi municipality and also those financed from the special reserve, etc;

— The Law treats all services (with the exception of those that are explicitly excluded from the Law) alike and does not include special rules for specific services, such as social services.

Procurement procedures

— The concept of two stage procedures as provided under the EU Directive such as restricted, negotiated and competitive dialogue procedure is not introduced in the Law. Two-stage public procurement is used only for purchases of objects specified by a subordinate act (Order №24 of the Chairman of the State Procurement Agency, 29 December 2011 "Approving rules about two-stage electronic tender and simplified electronic tender procedure") by way of a two-stage electronic tender or a two-stage simplified electronic tender. This method of procurement has not been implemented in practice. The possibility for the contracting authorities to limit the number of, otherwise, suitable candidates they will invite to tender (shortlist) is therefore in specific cases not available.

— There is no clear distinction between procedures and techniques as under the EU Directives, thereby making it difficult to introduce new procedures like the restricted procedure or competitive dialogue and for example framework agreements without conceptual change of the law.

— The main competitive procedures under the Law – electronic tender and simplified electronic tender are modelled on the concept of an open procedure combined with mandatory use of an electronic auction. According to the Directives, the use of electronic-auctions is not mandatory for contracting authorities. Furthermore, it can only be used in conjunction with open, restricted and competitive procedures with negotiations as well as on the reopening of competition among the parties to a framework agreement.

— In electronic tender and simplified electronic tender all requirements for qualification criteria and technical requirements through specifications are checked with the winning tenderer, only, after the completion of the e-auction. According to the EU Directives an electronic-auction is a repetitive electronic process for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

— The method of simplified procurement is relatively similar to a negotiated procedure without prior publication under EU Directives. However, circumstances where this procedure may be used are in most cases different from those allowed at European level. Therefore, the legal grounds for the use of this procedure should be revised and limited.

— The concept of framework agreements is not regulated in accordance with the EU law. The main advantage of developing a framework agreement is the flexibility it provides to purchase goods or services covered by that agreement. A framework agreement may be concluded by one or more contracting authorities with one or more economic operators, for a longer period of time, as a general rule, up to four years.

Time limits and notices

— The minimum time limits provided by the Law for submitting tenders are shorter than those envisaged by the EU Directives.

— Specific types of notices are not recognised by the Law, such as prior information and periodic indicative notice as provided in the Directives. Nevertheless the mandatory publication of the annual plans can be a good basis for the future development.

Tender documents

— The law does not explicitly underline that the contracting authorities have the possibility to define technical specifications in terms of performance or functional requirements. The rationale is to encourage the contracting authorities to describe a desired performance level or target to be achieved, rather than to make specific demands on how that level or target is reached.

— The Law does not contain any specific provisions regarding the possibility to lay down on environmental characteristics required of a works, service or supply within tender documentation.

— Lowest price is the single criterion for awarding all contracts except for those where design contest may be used, irrespective of their size, nature or complexity. Contracting authorities don't benefit from the possibility to identify award criteria on the basis of the price or cost or the best price-quality ratio, depending on what they consider to be the economically best solution in individual procurement.

— According to the law the procurement of homogeneous procurement objects may be conducted in phases during one budget (fiscal) year. This provision allows contracting authorities to take into consideration quantitative aspects for subdivision of the large contracts into lots. However, the possibility of qualitative subdivision (the content of the lots may correspond more closely to the specialised sector of the SME) remain unconsidered.

— The Law regulate abnormally low tenders not in detail. The LSP does not contain any specific provision that regulate abnormally low tenders in accordance with the EU Directives.

— The Law does not envisage rules for the mandatory and optional exclusion of economic operators in line with EU Directives.

— The system of Black list should be revised to ensure no automatic exclusion occurs beyond the grounds for exclusion which are allowed by EU law. The general principles of EU law and the case law of the Court of Justice of the European Union (CJEU) indicate that the use of official automatic exclusion lists is generally not permitted under EU law.

— The Law allows economic operators to participate in procurement procedures in group with other economic operators but does not contain any specific provisions that regulate the possibility for economic operators to rely on the economic and financial standing and technical capacity of other undertakings.

3.2.1. PHASE 1

3.2.1.1. Law on State Procurement[3] - 2017

Under Article 144 of the Association Agreement, a *set of basic standards* regulating the award of contracts and reflecting core EU principles of non-discrimination, equal treatment,

[3] As required by Phase 1 under the Association Agreement (Article 144).

transparency and proportionality, must be ensured within *three years* from the entry into force of the Agreement.

Existing procurement legislation has been reviewed against the basic standards and some of the issues of non-compliance have been identified.

Therefore, the Phase 1 will require review of the existing Law on State Procurement (Law) and relevant subordinate legislation to address the current non-compliance with the following basic standards, namely:

- The principles of equal treatment and proportionality are not expressly mentioned in the law;
- The use of general descriptions of performance and function for the description of the characteristics of the required work, supply or services is available to contracting authorities but is not mentioned in the law explicitly;
- The time-limits for submission of offers are not sufficiently long to allow economic operators from the other Party to make a meaningful assessment of the tender and prepare their offer;
- Contracting authorities do not have the possibility to use a procurement procedure with prequalification in which they may invite a limited number of applicants to submit an offer;
- Generally, contracting authorities do not have the freedom of choice between the assessment of economically most advantageous offer based on the best price- quality ratio or the lowest price.

3.2.1.2. Impact of the New Legislation

The goal of Phase 1 is to ensure that existing public procurement legislation is adjusted in order to adequately reflect the set of basic standards in line with Article 144 of the Association Agreement.

The impact of the legislative changes which will take place after the completion of Phase 1 is as follows:

- The Law will expressly mention the principles of equal treatment and proportionality, among other principles which are already listed. The principle of equal treatment will further ensure that contracting authorities treat identical situations in the same way and do not treat different situations in the same way. It will provide for an objective assessment of tenders and ensure that any considerations that are not relevant to the identification of the best tender is ignored. The principle of proportionality will further strengthen that any measure chosen be both necessary and appropriate in the light of the objectives sought. It will encourage contracting authorities to keep selection criteria related and proportionate to the subject-matter of the contract;
- The Law will explicitly allow contracting authorities to draw up specifications on the basis of performance and functional criteria which will allow submission of tenders that reflect the diversity of technical solutions in the marketplace;
- The minimum time-limits, at least for contracts with value equal or above the EU monetary thresholds, will be longer to allow economic operators from the other Party to make a meaningful assessment of the tender and prepare their offer;
- A new two stage procurement method with prequalification will be made available to contracting authorities in specific cases. By using this method, contracting authorities

will verify and evaluate qualification information (financial standing, technical and professional capacity of applicants) in the first stage, whereas the evaluation of the technical proposals and prices will be carried out in the second stage. The contracting authorities will have the option to limit (shortlist) the number of applicants in the first stage who will be invited to submit tenders in the second stage. The shortlisting will be carried out on the basis of objective criteria advertised in advance such as the experience of the applicants in the sector concerned, the size and infrastructure of their businesses or their technical and professional abilities. The number of applicants which will be invited to submit tenders in the second stage shall ensure adequate competition;

— The Law will generally allow contracting authorities the freedom of choice between using the price as the sole award criteria and the combination of non-price criteria together with price. This freedom of choice will not be restricted to certain methods only such as design contests as in present situation. Contracting authorities will therefore have the option to identify award criteria on the basis of the price or the best price-quality ratio, depending on what they consider to be the economically best solution in individual procurement as long as the chosen award criteria are linked to the subject-matter of the contract and they don't restrict the possibility of effective competition.

In addition, review of the Law will be accompanied with drawing up and/or amending necessary secondary legislation to give full effect to the Law. Also, legislative measures will be supported by other corresponding measures (*see chapters on institutional development and capacity building and electronic procurement*).

3.2.2. PHASE 2

3.2.2.1. Law on State Procurement[4] - 2019

Phase 2 of legislative approximation process will involve a fundamental review of the existing Law[5], including the introduction of new concepts, and will address the following elements of the Public Sector Directive and the Public Sector Remedies Directive:

— Scope and definitions, including subject-matter and basic definitions, contracting authorities, mixed procurement, thresholds, methods for calculating the estimated value of procurement, exclusions, subsidised contracts, R&D services, procurement involving defence and security aspects (Articles 1 – 5, 7 - 17 of the Public Sector Directive);

— General rules, including principles of procurement, rules on application of environmental/social criteria, economic operators, confidentiality, rules applicable to communication, nomenclatures (CPV), conflicts of interest (Articles 18, 19, 21 – 24 of the Public Sector Directive);

— Procedures, including choice of procedures, open procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure without prior publication (Articles 26 – 29, 32 of the Public Sector Directive);

— Conduct of the procedure including preliminary market consultations, prior involvement of candidates or tenderers, technical specifications, labels, test reports, certification

[4] As required by Phase 2 under the Association Agreement (Annexes XVI-C and XVI-D)

[5] Amendments to the existing Law or adoption of the new Law will be carried out, as deemed appropriate.

and other means of proof, variants, division of contracts into lots, time limits, PINs, contract notices, contract award notices, form and manner of publication, electronic availability of tender documents, invitations to candidates, informing candidates and tenderers, exclusion grounds, selection criteria, European Single Procurement Document - ESPD (*mutatis mutandis*), quality assurance standards and environmental management standards, reliance on capacities of other tenderers, shortlisting the candidates, reduction of number of tenders and solutions, contract award criteria, Life Cycle Costing (LCC), abnormally low tenders (Articles 40 – 51, 53 – 60, 62, 63, 65 – 69 of the Public Sector Directive);

— Contract performance, including conditions for performance of contracts, subcontracting, modification of contracts during their term, termination of contracts (Articles 70 – 73 of the Public Sector Directive);

— Particular procurement regimes including award of contracts for social and other specific services, publication of notices and principles (Articles 74 – 76 of the Public Sector Directive);

— Annexes II – V, VII, IX, X, XII, XIV of the Public Sector Directive

— remedies rules, including on the scope and availability of review procedures, requirements for review procedures, standstill period, derogation from the standstill period, time limits for applying for review, ineffectiveness, infringements and alternative penalties (Articles 1, 2, 2a – 2f of the Public Sector Remedies Directive).

3.2.2.2. Impact of the New Legislation

The goal of Phase 2 of approximation is to ensure that public procurement legislation is developed and enhanced in a way to create an efficient framework supportive of concluding and implementing public contracts in competitive environment in line with the EU public procurement a*cquis*.

The legislative changes at this stage will be driven by conceptual approximation of the Georgian Law with the Public Sector Directive.

The impact of the legislative changes which will take place after the completion of Phase 2 of approximation is as follows:

1. Alignment with definitions of contracting authorities and of public contract as a crucial starting point which will allow for the coherence of the Law with the EU Public Sector Directive;
2. The introduction of the EU thresholds which will divide the applicability of the main rules of the Public Sector Directive to the award of large contracts for which they are intended and the applicability of national rules to the award of contracts below the EU thresholds;
3. The introduction of the rules below the EU threshold is necessary to complement the rules for the award of contracts equal or above the EU thresholds. The rules below the EU threshold will introduce a simpler regime that would be more proportionate as regards low-value contracts but will not include deviations from the principles of transparency, non-discrimination and equal treatment;
4. Extra high threshold and the more flexible rules will be introduced for social and other specific services according to the Public Sector Directive;
5. Introduction of the rules on the calculation of the estimated value of procurement which are crucial for the proper estimation of the EU thresholds and the introduction

of the rules on mixed contracts which are important for determination which threshold and which set of rules to apply; such rules will make it more difficult to circumvent the Law;

6. Alignment with exclusions allowed by the Public Sector Directive will result with less contracts being excluded from the scope of the Law and thus more opportunities for economic operators;
7. The concept of conflict of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure; The new legal provision in the LSP regarding the conflict of interest will be in accordance with the Public Sector Directive;
8. Introduction of concepts of restricted, and competitive procedures with negotiation which will create more freedom and flexibility for contracting authorities when choosing an appropriate procedure for the award of the specific contract. The restricted and the competitive procedure with negotiation are vital components in a procurement legislation;
9. Alignment with the rules which govern the use of negotiated procedure without prior publication will replace the current simplified procurement and restrict its use to strictly defined cases and circumstances;
10. The option allowed for more flexibility in procurement at a sub-central (regional and local) level will be considered. If this option will be taken into account it will make the public procurement system more attractive for many contracting authorities;
11. The Law will contain an exhaustive list of exclusion grounds and qualification/selection criteria of economic operators in line with EU directive: suitability to pursue a professional activity, economic and financial standing, technical and/or professional ability, quality assurance and environmental management standards;
12. The possibility of an economic operator to rely on capacities of other entities in order to prove required minimum capacity levels will be introduced;
13. Alignment with the system of self-declaration introduced by the Public Sector Directive will further ease the paperwork for economic operators;
14. The introduction of obligation to communicate reasons to candidates and tenderers for any decision taken by contracting authorities including on termination or suspension of the procedure will bring more transparency prior to conclusion of the contract;
15. Technical specifications will be drawn up in such a way to allow submission of tenders that reflect the diversity of technical solutions in the marketplace, including those drawn up on the basis of performance and functional criteria and linked to the life cycle and the production process of the works, supplies and services;
16. Introduction of economically most advantageous tender as an overriding concept in respect of award criteria is crucial element that has high priority in the Association Agreement context; more focus will be put on the quality elements and less on the price as the sole award criteria;

17. The rules on life-cycle costing (LCC) as an additional award criteria will allow contracting authorities to take into account the costs over the whole life-cycle of a product, service or works including environmental externalities and not only the acquisition price; this approach will facilitate the future pursuit of green and sustainable policies in the procurement system;
18. The new legal provision in the LSP will equip contracting authorities with legal instruments to react against abnormally low prices in accordance to the EU Public Sector Directive;
19. The possibility of groups of economic operators, including temporary associations, to participate in procurement procedures will be explicitly allowed by the Law;
20. Minimum time-limits for submission of tenders and applications will be longer as compared to present case;
21. The rules on sub-contracting will allow contracting authorities to have more influence in relation to sub-contractors; some of the elements of the subcontracting rules in the Directive are optional and decisions will be taken as to whether and how such options should be used; this concerns for example rules on direct payments from contracting authorities to subcontractors;
22. Contracting authorities will be encouraged to divide contracts into lots which will improve access of SMEs to participate in tenders; contracting authorities will be obliged to justify their decision not to divide contracts into lots;
23. The rules on preliminary market consultations and prior involvement will allow contracting authorities to cooperate with the market to gather information from the market with a view to preparing the procurement, provided this does not distort any later competition;
24. Basic eProcurement requirements stemming from the Public Sector Directive should not impose additional difficulties taking into account the current high level of eProcurement implementation in Georgia. Considering this, the obligation envisaged under Phase 4 (year 2021) of the Association Agreement to approximate national legislation with Article 22 paragraph 1[6] of the Public Sector Directive will be complied with under Phase 2;
25. Similarly, an obligation to implement electronic auctions according to the Association Agreement is envisaged under Phase 4 (year 2021). The possibility to introduce electronic auctions in line with concept and requirements of the Public Sector Directive will be explored in Phase 2;
26. Rules on modification of contracts during their term will bring more clarity with regard to permitted modifications and those that require new procurement procedure;
27. The changes concerning remedies which relate to approximation with the Public Sector Remedies Directive will address the shortcomings described in Chapter 4.

In addition, the activities on drafting the Law will be accompanied with drawing up and/or amending necessary secondary legislation to give full effect to the Law. Also, legislative measures will be supported by other corresponding measures (*see chapters on institutional development and capacity building and electronic procurement*).

[6] Member States shall ensure that all communication and information exchange under this Directive, in particular electronic submission, are performed using electronic means of communication in accordance with the requirements of this Article. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure.

3.2.3. PHASE 3

3.2.3.1. Law on State Procurement[7] - 2020

Phase 3 of legislative approximation process will involve a fundamental review of the existing legal framework, including the introduction of new concepts, and will address the following elements of the Utilities Directive and the Utilities Remedies Directive:

- Scope, definitions and general principles including alignment with the definition of contracting entities, relevant activities, thresholds, mixed procurement, procurement covering several activities, exclusions and the introduction of additional flexibilities (Articles 1 – 16, 18 – 30, 32 of the Utilities Directive);
- General rules, including principles of procurement, economic operators, confidentiality, rules applicable to communication, nomenclatures (CPV), conflicts of interest (Articles 36, 37, 39 – 42 of the Utilities Directive);
- Procedures, including choice of procedures, open procedure, restricted procedure, negotiated procedure with prior call for competition, negotiated procedure without prior call for competition (Articles 44 – 47, 50 of the Utilities Directive);
- Conduct of the procedure including preliminary market consultations, prior involvement of candidates or tenderers, technical specifications, labels, test reports, certification and other means of proof, variants, division of contracts into lots, time limits, PINs, notices on existence of a qualification system[8], contract notices, contract award notices, form and manner of publication, electronic availability of tender documents, invitations to candidates, informing applicants for qualification, candidates and tenderers, criteria of qualitative selection, use of exclusion grounds and selection criteria, quality assurance and environmental management standards, reliance on capacities of other tenderers, contract award criteria, LCC, abnormally low tenders (Articles 58 – 71, 73 – 76, 78 - 84 of the Utilities Directive);
- Contract performance including conditions for performance of contracts, subcontracting, modification of contracts during their term, termination of contracts (Articles 87 – 90 of the Utilities Directive);
- Particular procurement regimes including award of contracts for social and other specific services, publication of notices and principles (Articles 91 – 93 of the Utilities Directive);
- Annexes I, V, VI A, VI B, VIII – XIV, XVI – XVIII of the Utilities Directive;
- Remedies rules, including on the scope and availability of review procedures, requirements for review procedures, standstill period, derogation from the standstill period, time limits for applying for review, ineffectiveness, infringements and alternative penalties (Articles 1, 2, 2a – 2f of the Utilities Remedies Directive).

3.2.3.2. Impact of the New Legislation

The goal of Phase 3 of approximation is to ensure that public procurement legislation is developed in a way to create an efficient framework supportive of concluding and implementing

[7] As required by Phase 3 under the Association Agreement (Annexes XVI-E and XVI-F)

[8] Introduction of qualification systems is envisaged under Phase 5 of approximation process in 2022. The relevant notices on existence of a qualification system can be implemented also in the Phase 5.

contracts in the water, energy, transport and postal services sector in line with the EU public procurement a*cquis*.

The legislative changes at this stage will be driven by conceptual approximation of the Georgian law with the Utilities Directive.

Before the approximation process in Phase 3 is commenced, the best approach for regulating procurement in the utility sector will be analysed. This is because of the fact that utilities rules are practically modelled on the public sector rules. Except for apparent differences between the Utilities and the Public Sector Directive, such as the definition of entities, thresholds, relevant activities, some exclusions, qualification systems, etc., other provisions are identical or very similar. Since many of the provisions that equally apply to utilities, at this stage, will already be regulated in the Law (after Phase 2), the approximation process will focus on the differences.

Therefore, logical approach to regulating the utilities sector at this stage of approximation would be to designate one chapter of the Law to regulate only those specific and different provisions applicable for utilities contracts. This practically means that the main body of the Law would implement the provisions of the Public Sector Directive which would also apply to awarding of contracts in utilities sector, unless there are specific provisions regulating a given utility issue differently. In other words, in case of divergent regulation, provisions of specific utility chapter will take precedence over general rules from the main part of the Law.

However, there are also other options which will be analysed. For example, all provisions dealing with utilities may be regulated in the special law. This means that one law on public procurement in public sector implements the provisions of the Public Sector Directive and the other law on public procurement in utilities sector implements the provisions of the Utilities Directive.

Notwithstanding the approach that will be chosen for regulating the procurement in the utilities sector the impact of the legislative changes which will take place after the completion of Phase 3 of approximation is as follows:

1. Introducing basic provisions of the Utilities Directive will create special more flexible procurement regime for contracting entities operating in the utilities sector as compared to the classical sector;
2. Alignment with definition of a contract is crucial as a starting point for the coherence of the Law (same definitions apply as in the Public Sector Directive);
3. Introduction of definition of contracting entities and relevant activities in the water, energy, transport and postal services will be crucial for identifying the scope of application of the Law. The Law will be applicable to all public undertakings in the utilities sector and they will no longer apply special procedure established by the Government;
4. The introduction of the EU thresholds (which are higher than in the Public Sector Directive) will reserve the main rules of the Utilities Directive for large contracts for which they are intended. Even higher thresholds and the flexible rules will be introduced for social and other specific services;
5. Rules on the calculation of the estimated values of procurement will be crucial for applying the thresholds and the rules on mixed contracts will determine which threshold and which set of rules is applicable (public sector or utilities); such rules will make it more difficult to circumvent the Law;
6. Some additional exclusions are allowed by the Utilities Directive when compared to Public Sector Directive, but still with the result less contracts being excluded from the scope of the Law and thus more opportunities for economic operators;

7. The concept of conflict of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure (same rules as in the case of Public Sector Directive but applicable only to contracting authorities);
8. EProcurement requirements stemming from the Utilities Directive should not impose additional difficulties taking into account the current high level of eProcurement implementation in Georgia.
9. Contracting entities will have access to the same procedures as under the Public Sector Directive, i.e. open, restricted, negotiated procedure without previous call for competition;
10. Alignment with the rules which govern the use of negotiated procedure without prior publication will replace the current simplified procurement and restrict its use to strictly defined cases and circumstances; (similar conditions apply as in the Public Sector Directive);
11. The possibility to use periodic indicative notices as the call for competition will allow for more flexibility and can make the public procurement system more attractive for contracting entities;
12. The introduction of obligation to communicate reasons to candidates and tenderers for any decision taken by contracting entities including on termination or suspension of the procedure will bring more transparency prior to conclusion of the contract;
13. Specifications will be drawn up in such a way to allow submission of tenders that reflect the diversity of technical solutions in the marketplace, including those drawn up on the basis of performance and functional criteria and linked to the life cycle and the production process of the works, supplies and services (the same applies as in the Public Sector Directive);
14. Assessment of economically most advantageous tenders based on the best price-quality ratio is crucial element; more focus will be put on the quality elements and less on the price as the sole award criteria (same rules as under Public Sector Directive);
15. The rules on life-cycle costing as an award criteria will allow taking into account the costs over the life cycle of a product, service or works including environmental externalities and not only the acquisition price; this approach may facilitate the future pursuit of green and sustainable policies in the procurement system (same rules apply);
16. Introduction of solutions for dealing with abnormally low prices will equip contracting entities with legal instruments to react against such prices, according to the requirements of the Directives;
17. It will be explicitly mentioned in the law that economic operator can rely on capacity of other entities in order to prove minimum capacity levels required (same as in the Public Sector Directive);
18. Minimum time-limits for submission of tenders and applications will be significantly longer but shorter in some cases when compared to the Public Sector Directive; there is an additional flexibility in two-stage procedures to set the time limit for receipt

of tenders by mutual agreement between contracting entity and the selected candidates;

19. The rules on sub-contracting will allow contracting entities to have more influence in relation to sub-contractors; some of the elements of the subcontracting rules in the Directive are optional and decisions must be taken as to whether and how such options should be used; this concerns for example rules on direct payments from procuring entities to subcontractors (the same as in Public Sector Directive);
20. Contracting entities are free to choose whether to divide procurement into lots or award one single contract; they are not obliged to justify this decision;
21. The rules on preliminary market consultations and prior involvement will allow contracting entities to cooperate with the market to gather information from the market with a view to preparing the procurement, provided they do not distort any later competition (the same as in Public Sector Directive);
22. Rules on modification of contracts during their term will bring more clarity with regard to permitted modifications and those that require new procurement procedure (the same as in Public Sector Directive);
23. The changes concerning remedies which relate to approximation with the Utilities Remedies Directive will address the gaps described in Chapter 4 (same requirements as under Public Sector Remedies Directive).

In addition, activities on the drafting of the Law will be accompanied with drawing up and/or amending necessary secondary legislation to give full effect to the Law. Also, legislative measures will be supported by other corresponding measures (*see chapters on institutional development and capacity building and electronic procurement*).

3.2.4. PHASE 4

3.2.4.1. Law on State Procurement[9] - 2021

Phase 4 of legislative approximation process will focus on:

- Approximation with further mandatory elements of the Public Sector Directive and the Public Sector Remedies Directive:
    - Introduction of competitive dialogue and innovation partnership (Articles 22, 26, 30, 31 of the Public Sector Directive);
    - Introduction of techniques and instruments for electronic and aggregated procurement including framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, occasional joint procurement (Articles 33 – 36, 38, 50 of the Public Sector Directive);
    - Rules on design contests (Articles 2, 78 - 82 of the Public Sector Directive);
    - Annexes V, VI of the Public Sector Directive;
    - Further remedies rules on derogation from the standstill period and on ineffectiveness of contracts (Articles 2b, 2d of the Public Sector Remedies Directive).

[9] As required by Phase 4 under the Association Agreement (Annexes XVI-G (I), XVI-H (I) and XVI-I)

- Optional[10] elements of the Public Sector Directive:
    - Definitions, instruments and techniques of centralised purchasing activity and central purchasing body (Articles 2, 37 of the Public Sector Directive);
    - Reserved contracts and reserved contracts for certain services (Articles 20, 77 of the Public Sector Directive);
    - Official lists of approved economic operators and certification (Article 64 of the Public Sector Directive).

3.2.4.2. Impact of the New Legislation

The goal of Phase 4 of approximation is to ensure that public procurement legislation is enhanced by introducing further mandatory elements of the Public Sector Directive and Public Sector Remedies Directive. Furthermore, there will be an opportunity for approximation with some optional elements of the Public Sector Directive which are not mandatory but recommended. Once this Phase is carried out, the approximation with public sector rules will be completed.

The impact of the legislative changes which will take place after the completion of Phase 4 of approximation is as follows:

1. Introduction of the competitive dialogue procedure will provide more possibilities to identify the solution or solutions which are capable of meeting the needs of contracting authority;
2. The innovation partnership procedure will enable public purchasers to select partners on a competitive basis and have them develop an innovative solution tailored to their requirements. The competitive phase will take place at the very beginning of the procedure, when the most suitable partner(s) are selected on the basis of their skills, abilities and price; the partner(s) will develop the new solution, as required, in collaboration with the contracting authority. This research and development phase can be divided into several stages, during which the number of partners may be gradually reduced, depending on whether they meet certain predetermined criteria; the partner will then provide the final solution (commercial phase);
3. Introduction of framework agreements will simplify the procurement and achieve savings both in terms of costs of procurement and time spent in the procurement process. At a general level framework agreement is an excellent instrument to use when a contracting authority has a repetitive or recurrent need over time and has difficulties to determine the exact amount or volume for the total contract;
4. Introduction of occasional (ad-hoc) joint procurement will result with more possibilities for co-ordination between contracting authorities; it can take many different forms - contracting authorities may jointly conduct one procurement procedure by acting together or by entrusting one contracting authority with the management of the procurement procedure on behalf of all contracting authorities;
5. Further development of eProcurement instruments and techniques (e-auction[11], dynamic purchasing system and e-catalogues) as a complementary tools to regular

[10] Those elements are not mandatory but recommended for approximation. A decision on this matter will be made according to the best interest of Georgia.

[11] Electronic auctions will be implemented in this Phase unless they were already implemented in Phase 2.

procedures should not impose additional difficulties taking into account the current high level of eProcurement implementation in Georgia;

6. Alignment of design contest rules should not impose additional difficulties since the variation of this procedure is already used under the current Law;
7. The changes concerning remedies which relate to approximation with the Public Sector Remedies Directive will address the shortcomings described in Chapter 4;
8. Central purchasing activities and central purchasing bodies are optional elements in the context of the approximation. Since those instruments can bring better services, increased purchasing power for the centralised agency and significant reductions in prices of goods and services and a model of consolidated tenders is already established in Georgia, further development and increased use of central purchasing activities and central purchasing bodies will be considered;
9. Reserved contracts are optional element for approximation; it will be determined how useful they would be in national context;
10. Official lists are optional element, but since there are many similarities with the current concept of White List, this element will be considered as the basis for the upgrade of White List.

3.2.5. PHASE 5

3.2.5.1. Law on State Procurement[12] - 2022

Phase 5 of legislative approximation process will focus on:

- Further mandatory elements of the Utilities Directive and the Utilities Remedies Directive
    - introduction of competitive dialogue and innovation partnership (Articles 16, 44, 48 - 50 of the Utilities Directive);
    - Introduction of techniques and instruments for electronic and aggregated procurement including framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, occasional joint procurement (Articles 51 – 54, 56, 70 of the Utilities Directive);
    - Rules on qualification systems (Articles 77, 79 of the Utilities Directive);
    - Rules on design contests (Articles 2, 95 - 98 of the Utilities Directive);
    - Annexes VII, XIX, XX of the Utilities Directive;
    - Further remedies rules on derogation from the standstill period and on ineffectiveness of contracts (Articles 2b, 2d of the Utilities Remedies Directive).
- Optional[13] elements of the Utilities Directive
    - Definitions, instruments and techniques of centralised purchasing activity and central purchasing body (Articles 2, 55 of the Utilities Directive);
    - Reserved contracts and reserved contracts for certain services (Articles 38, 94 of the Utilities Directive).

[12] As required by Phase 5 under the Association Agreement (Annexes XVI-J and XVI-K).

[13] Those elements are not mandatory but recommended for approximation.

3.2.5.2. Impact of the new legislation

The goal of the final Phase 5 of approximation is to ensure that public procurement legislation is enhanced by introducing further mandatory elements of the Utilities Directive and the Utilities Remedies Directive. Furthermore, there will be an opportunity for approximation with some optional elements of the Directive which are not mandatory but recommended. Once this Phase is carried out, the approximation with rules for utilities will be completed.

Since many of the provisions that equally apply to public authorities under the Public Sector Directive and utility entities under the Utilities Directive, at this stage, will already be regulated in the Law (after Phase 4), the approximation process will focus on the differences.

The impact of the legislative changes which will take place after the completion of Phase 5 of approximation is as follows:

1. Introduction of the competitive dialogue procedure will provide more possibilities for choosing the most suitable tender procedure in case of very complex contracts; the rules are identical as in the Public Sector Directive except there are no specific conditions for the use of competitive dialogue;
2. The innovation partnership procedure will enable contracting entities to select partners on a competitive basis and have them develop an innovative solution tailored to their requirements (the same rules apply as in the Public Sector Directive);
3. Introduction of framework agreements will simplify the procurement and achieve savings both in terms of costs of procurement and time spent in the procurement process; only basic principles of awarding contracts based on framework agreements are defined (no details of the procedure as in the Public Sector Directive); maximum duration of framework agreements is 8 years (4 years in the Public Sector Directive);
4. Introduction of qualification systems will enable additional flexibilities for utilities procurement operators, including the possibility for limiting tenders to bidders included in qualification system. A qualification system is a system in which economic operators interested in contracting with the contracting entity may apply to be registered as potential providers. The contracting entity then registers qualified economic operators in the system. The registered economic operators form a pool from which the contracting entity may draw those operators that are invited to bid or negotiate on contracts;
5. Introduction of occasional (ad-hoc) joint procurement will result with more possibilities for co-ordination between contracting entities (same rules as in the Public Sector Directive);
6. Further development of eProcurement instruments and techniques (e-auction[14], dynamic purchasing system and e-catalogues) as a complementary tools to regular procedures should not impose additional difficulties taking into account the current high level of eProcurement implementation in Georgia;
7. Alignment of design contest rules should not impose additional difficulties since the similar procedure is already used under the current Law;
8. The changes concerning remedies which relate to approximation with the Public Sector Remedies Directive will address the shortcomings described in Chapter 4;

[14] Electronic auctions will be implemented in this Phase unless they were already implemented in Phase 3.

9. Central purchasing activities and central purchasing bodies are optional elements in the context of the approximation. Since those instruments can bring better services, increased purchasing power for the centralised agency and significant reductions in prices of goods and services and a model of consolidated tenders is already established in Georgia, further development and increased use of central purchasing activities and central purchasing bodies in the utilities sector will be considered;
10. Reserved contracts are optional element for approximation; it will be determined how useful they would be in national context.

In addition, the activities on the drafting the Law will be accompanied with drawing up and/or amending necessary secondary legislation to give full effect to the Law. Also, legislative measures will be supported by other corresponding measures (*see chapters on institutional development and capacity building and electronic procurement*).

4. INSTITUTIONAL FRAMEWORK AND CAPACITY BUILDING

4.1. INSTITUTIONAL FRAMEWORK

Gaps

In Georgia, there is well established central institutional framework in respect to co-ordination, implementation and monitoring of public procurement, with leading role of the SPA.

The range of functions that the Law confers to the SPA covers the general requirements recommended in international practice for such institutions in order to support the improvement of the legal framework and to strengthen the operational capacity at the contracting authorities' level. Regulatory function, monitoring function, help-desk and training functions are adequately exercised by the SPA. However, the major gap arise in connection with the DRB activities. The DRB is independent in its activities according to the Order №1 (27 February 2015) of the Chairman of the SPA on the rules for the Dispute Resolution Board. The DRB is chaired by the Chairman of the SPA who also appoints two members of the DRB from among the SPA employees. Three other members represent the civil society (NGO representatives). To avoid a conflict of interest with the regulatory and advisory functions of the SPA it is important to have an independent review body as an external institution.

Future Development

Under Article 143 of the Association Agreement a policy body – referred to as an executive body at central government level has to guarantee a coherent policy in all areas related to public procurement and coordinate its implementation.

The central body responsible for co-ordinating and monitoring the public procurement system in Georgia is the State Procurement Agency (SPA). SPA is an independent legal entity under public law authorised to ensure compliance with and fulfilment of the provisions of the Law on State Procurement (Law).

The SPA has built strong reputation within the administration, as well as among procuring entities, for exercising its duties and responsibilities in an efficient and effective manner. The SPA has the capacity to effectively support the development of the public procurement system.

At the same time, further enhancing SPA's own capacity is required in order for it to be in a better position to manage and support the implementation of all the developments that will take place over the coming years. Increasing complexity of the public procurement system in the context of Association Agreement requirements will require adequate upgrade of support from the SPA.

Legal Approximation

The legal approximation process with EU directives will be the biggest and most comprehensive task for the SPA. The SPA's capacities will be focused on gradual legal approximation of Georgian public procurement legislation with EU Directives which must be put in place in phases as set out in the approximation schedule of the Association Agreement (see Chapter 3.3 and 4.1):

— **Phase 1** - 2017 – basic legal standards;

- **Phase 2** - 2019 – basic elements of the Public Sector Directive and the Public Sector Remedies Directive;
- **Phase 3** - 2020 – basic elements of the Utilities Procurement Directive and the Utilities Remedies Directive;
- **Phase 4** - 2021 – other (mandatory and non-mandatory) elements of the Public Sector Directive and the Public Sector Remedies Directive;
- **Phase 5** - 2022 – other (mandatory and non-mandatory) elements of the Utilities Procurement Directive and the Utilities Remedies Directive.

The approximation of the national legislation with EU legal acts is an even greater challenge. The process of approximation includes methods and techniques for transposing the EU legislation into the national law, its incorporation into the national legal system and the process of implementation.

Therefore, well before each legal approximation phase is commenced the SPA shall undertake a proper planning and division of tasks for drafting legal acts in line with EU law.

The Legal Department of the SPA will build its capacities in order to respond to the challenges ahead. Considering this, it is of very high importance that the Legal Department of the SPA gains sufficient knowledge of EU procurement legislation.

For this purpose, continuous trainings for the SPA staff will be organised mainly under available foreign donors' technical assistance programmes with focus on EU legislative framework and practice, covering ECJ rulings on public procurement as well.

Monitoring

Current capacities of the Monitoring Department are mostly consumed in the exercise of *ex post* verifying legal compliance by the contracting authorities. This has proven to be adequate approach in the current phase of the development. A comprehensive monitoring such as the one the SPA conducts now is possible only where the system is simple and straightforward and there is not a lot of flexibility built in the legislation for contracting authorities. Each step of the procedure is described and regulated in detail and, in general, a room for discretion by contracting authorities is reduced to the minimum. As a result, a legal certainty has been achieved which is a positive and desirable course of action in the early stage of the development of procurement. However, such a comprehensive monitoring will be hardly sustainable once the new and more complex instruments in line with EU Directives will be introduced in the national legislation. From that perspective, it will be necessary to gradually move away from monitoring of legal compliance only or to restrict it to grave violations of procurement rules such as procurement fraud, corruption, conflict of interest and other serious irregularities.

Alongside with the legislative reform, the Monitoring Department will gradually be upgraded, with first activities starting in 2019, in order to develop modern monitoring functions, with less emphasis on formal compliance checks, but with a greater focus on the performance and effectiveness of the public procurement system based on the value for money principle. The monitoring reports prepared by the Monitoring Department will be an analytical instrument to help both the SPA and the contracting authorities to identify the most frequent sources of wrong application or violations of procurement rules or existence of legal uncertainty.

Decision Review System

The Georgian review system covers a number of positive issues. Georgia has introduced an innovative approach by setting up a DRB with half of its members representing civil society. The SPA has started to foster greater confidence and build trust among the business community. This is demonstrated by the significant increase in complaints since the establishment of the DRB.

The main directions of the reform in the review and remedies system will be linked with the institutional set up and procedural questions as well.

The following gaps are identified and have to be removed to fulfill the requirements of the Agreement:

- Modern state administrative systems require a separation of powers within the administration in order to guarantee accountability, due process and probity. Those responsible for policymaking, interpretation, implementation and advice are, thus, not the same as those responsible for enforcement. There should be a clear difference between the SPA as the policymaker and the DRB as the review body. The separation of powers and competences within the public procurement system will generate and ensure an increase in trust levels of all stakeholders;
- Rules on the quorum and voting in the DRB shift balance in favour of the SPA members of the Board, in case if the Chairman of the SPA is sitting on the Board along with two other SPA members. This balance can be shifted further still if one or more of the civil society members does not take part in the DRB session. But till this day it is incontrovertible that the decisions of the DRB are extremely fair;
- Annual rotation of the NGO's members in the Board prevents building of institutional memory and experience;
- Since the work of the DRB members is not reimbursed, while facing a steadily increasing of workload, the current mechanism might not be sustainable with time.

The institutional gaps identified above will be addressed within the Phase 1 (2017) of the approximation schedule.

With regard to *procedural issues* the following gaps are observed:

- Currently the Law does not allow an economic operator to file a complaint against any action/decision of a contracting authority. A complaint is not allowed against the selection of the procurement method and the decision of the contracting authority to suspend or terminate procurement procedure. According to the EU Remedies Directives any decision taken by contracting authority as regards the covered contracts must be subject to effective and rapid review on the grounds that such decisions have infringed the EU procurement law or national rules transposing that law;
- Contracting authorities are not required to present to the participants of the procurement specific evidence or detailed information based on which decision on suspension or termination of the procurement procedure has been taken. According to the EU Remedies Directives the communication of any contracting authority's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons.
- The standstill period is much shorter than regulated in the Remedies Directives;
- Even though the time-limit for a review is 15 days from the day the final decision – invitation to sign the contract is uploaded in the Unified Electronic System, in practice, if the appeal is not submitted within three days, the contracting authority may conclude

the contract. Such a solution leaves the aggrieved tenderer without the legal instrument to protect its rights before the conclusion of the contract;

— The DRB does not have the power to take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority. For example, if before the beginning of the electronic reverse auction the appeal has been submitted against the discriminatory provisions in the tender documents the procurement procedure is not automatically suspended which is fine from the EU Directives perspective but the DRB does not have the power to suspend the procedure on its own motion or on the request of the appellant. In such a case, if the DRB establishes that tender documents contain discriminatory provisions the only remedy left is the cancellation of the whole procedure. The suspension of the procedure for the implementation of any decision taken by the contracting authority is only possible if the appeal was submitted within 15 days after such decision of the contracting authority was uploaded in the Unified Electronic System. But the suspension of the procedure for the award of a public contract is only possible if the appeal was submitted after the invitation to sign a public contract and before signing of the contract. According to the legal provisions in the LSP the contracting authority has generally for signing of a contract max. 5 working days (or max. 10 working days, justified in some cases) and max. 10 working days if contract performance guarantee or insurance is requested (or max. 15 working days, justified in some cases). The mandatory standstill period is only three days. The contracting authority can sign a contract only after this standstill period;

— There are no legal provisions in the LSP regarding the possibility of determining the ineffectiveness of a contract that has been awarded using an illegal direct purchasing method or when the standstill period, as well as other suspension periods provided by the LSP, were not observed. But the possibility of determining the ineffectiveness of a contract in the above mentioned cases is given. According to the Georgian legislation a bidder have a possibility to appeal a decision of the contracting authority directly to the court. According to the Art. 25^1 (1) of the Administrative Procedures of Georgia only the common courts decide the contract litigation cases. So the consequences of a contract being considered ineffective can be decided by the court. The court decides on the retroactive cancellation of all contractual obligations or limit the scope of the cancellation only to those obligations which still have to be performed. In the last case, taking all relevant factors into consideration – including the seriousness of the infringement – other alternative penalties should be decided by the court, such as the imposition of fines on the procuring entities, or shortening the duration of the contract;

— The consequences of a contract being considered ineffective shall be decided by the court. The court may decide on the retroactive cancellation of all contractual obligations or limit the scope of the cancellation only to those obligations which still have to be performed. In the last case, taking all relevant factors into consideration – including the seriousness of the infringement – other alternative penalties should be decided by the court, such as the imposition of fines on the procuring entities, or shortening the duration of the contract;

— When a bidder chooses to submit a complaint to the contracting authority, the procedure is suspended until the contracting authority issues a written decision on how to resolve such a complaint (within 10 days of receipt). If the decision of the contracting authority is to reject the complaint, the bidder may appeal this decision to DRB or the Court. But the Law does not prevent the contracting authority from signing the contract immediately after communicating its decision to the bidder. The contracting authority

may not itself be considered as review body, and therefore the effective protection of the complainant is not provided.

The procedural gaps identified above will be addressed in Phase 2 (2019), Phase 3 (2020), Phase 4 (2021) and Phase 5 (2020) of the legal approximation schedule.

Institutional and Procedural Development

Within three years from the entering into force of the Association Agreement[15], Georgia is obliged to designate an impartial and independent (i.e. separate from all contracting entities and economic operators) public body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts, whose decisions are also subject to judicial review.

The main objective of a public procurement review and remedies system is to enforce the practical application of public procurement legislation by ensuring that violations of this legislation and intentional or unintentional mistakes of contracting authorities can be corrected. A well-functioning review and remedies system is in the interest of all stakeholders – economic operators, contracting authorities as well as the general public. Such a system has to provide aggrieved tenderers and candidates with remedies, which must be rapid, effective, transparent and non-discriminatory.

The independence of the review body is considered a cornerstone for ensuring credible results of the remedy procedures against public procurement decisions.

With regard to the institution, it has to be (a) independent from the parties of the procurement procedures – contracting authorities and economic operators; and (b) functionally independent of the government.

The Dispute Resolution Board (DRB) is not an independent institution as requested by Article 143 of the Association Agreement and good international practice in the field of public procurement (see institutional gaps above).

The restructuring of the institutional set up of the Georgian review system will be undertaken in Phase 1 of the reform by 2017 in order to meet the key requirements regarding the status and independence of a review body.

The best option is the establishment of a permanent review body as a specialised, independent and autonomous national body with a legal identity responsible to the Parliament. This would be the main means of preserving its independence and neutrality.

A specialised review body has to be financially independent, with its own budget. Adequate funding is necessary to guarantee its independence and to ensure proper staffing (including administrative support staff) and other resources so as to provide services at the level of quality required. The best solution is to secure financing by means of a legal/regulatory framework.

With regard to the members, they should remain in their position professionally for a determined number of years.

One of the most important aspects is the set of rules regulating the procedures of appointment and dismissal of members. The possibility of dismissal of members, prior to the expiration of their mandate, has to be limited to only a few specific circumstances that have been defined in the law beforehand. The person or institution officially appointing members to the review body should be the same as the one with the power to dismiss them. The more independent the institution with the legal powers to appoint/dismiss members of the review body, the more secure their position will be and, hence, their independence.

[15] Article 143 paragraph 2 of the Association Agreement.

The members of the review body should deal exclusively with procurement cases. As a result, they will have the opportunity to very quickly gain specialised expertise and become familiar with contract award procedures and other related issues.

As a general rule, review body members should be forbidden to:

- Exercise any public or private function, except for activities in teaching, scientific research and/or literary and artistic creation.
- Perform commercial activities, including consultancy activities, directly or through intermediaries.
- Hold the function of member of a group of economic interest.
- Hold the function of member of a political party and perform or participate in political activities.

There are a number of different models for the establishment of an institutional framework for public procurement and different approaches for enforcement in EU Member States. It is difficult to affirm that one model is better than another. Before the decision on the model for the establishment of the national review body is taken, different models will be analysed and the proper solution that best fit Georgian legal and administrative tradition will be chosen.

The public procurement review and remedies systems of EU Member States have to be established and developed on the basis of the specific requirements of the EU Public Procurement Remedies Directives 89/665/EEC and 92/13/EEC, amended by Directive 2007/66/EC, the Treaty on the functioning of the European Union and the case law of the Court of Justice of the European Union (CJEU).

The approximation of the national legislation with Remedies directives which will address procedural gaps identified above will be gradually carried out in Phase 2 (2019), Phase 3 (2020), Phase 4 (2021) and Phase 5 (2020) of the legal and institutional approximation schedule.

4.2. CAPACITY BUILDING

The system of training established by the SPA in its initial phase has shown significant achievements. However, the need for continuous building capacity of all stakeholders in the Georgian procurement system will need to be addressed in the forthcoming period. The role of the Training Centre of the SPA will therefore play a significant role.

The current training system is on voluntary basis for contracting authorities, so there is a risk that a function of procurement specialists is not perceived as a professional and regular function in the public sector.

The current capacity of the Training centre is not adequate to respond to the all the needs of the system. There are few thousand procurement officers across Georgia and it is obvious that the SPA is not capable to provide training for all of them. In addition, due to lack of funds the training for economic operators is not given a priority.

The current system of training will need to be enhanced by engaging a larger number of trainers including experts and practitioners outside the SPA. The SPA will also explore the possibilities to deliver trainings outside its headquarters in order to enable better access to education to procurement officials and economic operators located in distant parts of the country.

Apart from initiatives focussed on training carried by SPA, specific action is envisaged to address some of the issues related to introduction of more professional approach in conduct of public procurement process. In particular, during 2018, the SPA will analyse the possibility to introduce the "procurement specialist" role and narrow the scope and responsibilities of tender committees. This will be followed in 2019 by appropriate legal amendments to cancel the obligatory requirement for the establishment of a tender committee for public procurement procedures.

At the same time, assessment of feasibility of introduction of mandatory training for procurement specialists will be carried out in 2019, supported with upgrade of training system, in line with results of assessment, in 2018.

As proper and effective application of the public procurement legislation is of fundamental importance for contracting authorities and economic operators, dynamics of introduction of new tailor made training programmes, development of required implementing tools (manuals, instructions, etc.) and assistance to different stakeholders will be correlated with legal approximation phases.

Therefore, the legislative changes will be supported by corresponding measures including:

- **Phase 1** - development of guidelines, instructions, manuals and other supporting tools and design and delivery of a specific training modules on:
  - how to conduct new two stage procurement method, including the possibility to limit the number of applicants who will be invited to submit tenders;
  - how to use the combination of non-price criteria together with price.
- **Phase 2** - development of guidelines, instructions, manuals and other supporting tools and design and delivery of a specific training modules on:
  - how to assess the estimate value of contracts and how to determine which rules to use in the case of mixed contracts;
  - how to interpret exclusions from the law, in particular "in house" exclusions;
  - different types of procurement procedure including conditions for their use;
  - environmental/social performance requirements and criteria and how to calculate various costs as part of a life-cycle approach;
  - modification of contracts during their term;
  - availability of review and remedies procedure.
- **Phase 3** – development of guidelines, instructions, manuals and other supporting tools and design and delivery of a specific training modules on:
  - Types of contracts and entities and procedures covered by the utilities procurement rules;
  - how to determine which rules to use in the case of mixed contracts (covering public sector and utility activity, for example);
  - how to interpret exclusions from the law, in particular contracts awarded to an affiliated undertaking and joint venture;
  - the conditions to use periodic indicative notices as the call for competition.
- **Phase 4** - development of guidelines, instructions, manuals and other supporting tools and design and delivery of a specific training modules on:
  - the use of competitive dialogue and innovation partnership procedures;

- how to use framework agreements;
- how to use dynamic purchasing system, electronic auctions, electronic catalogues.

— **Phase 5** - development of guidelines, instructions, manuals and other supporting tools and design and delivery of a specific training modules on:

- the use of competitive dialogue and innovation partnership procedures;
- how to use framework agreements;
- how to use dynamic purchasing system, electronic auction,[16] electronic catalogues;
- how to set up and use qualification systems;
- how to use design contests.

The SPA will also put continuous significant efforts on strengthening capacities of other institutions and stakeholders relevant for full and adequate implementation of public procurement rules. Focus will be given to further development of cooperation and coordination in respect to prevention and suppression of irregularities in public procurement procedures. Cooperation will be implemented through various training, exchange of experience, etc.

[16] Electronic auctions will be implemented in this Phase unless they were already implemented in Phase 2.

5. ePROCUREMENT

5.1. GAPS

Introduction of electronic public procurement and establishment of the Unified Electronic System has been based on good international practice, including EU public procurement legislation. Although it is to extent in line with the requirements of the EU law there are some discrepancies and shortcomings to be gradually tackled in forthcoming phases of legal approximation.

The following gaps when compared to EU requirements are identified:

- Even though the Law differentiates between electronic tender procedure and simplified electronic tender procedure, in practice, the electronic auction is the only procedure which is used. According to the EU rules electronic auction is only a special process which may be used in conjunction with open, restricted and other procedures but which is not a procurement procedure *per se* and cannot replace the other procurement procedures;
- Use of e-auctions under the EU Directives is not mandatory. Contracting authorities may use them if they wish;
- E-auction runs in a reverse logic when compared to the EU rules because the verification of financial and technical capabilities and examination of the technical proposal – how that proposal responds to the technical requirements provided in tender documentation – is done only for the winner of the e-auction phase. Alignment with European legislation will require that the electronic auction is placed at the final stage of the procedure. A full evaluation of the tenders should be done before the initiation of e-auction;
- Electronic tenders and simplified electronic tenders are, in line with the Law, exclusively based on the lowest price as a sole award criterion irrespective of the nature, size or complexity of the contract. Therefore, introduction of other criteria, first of all in the Law, enabling award of contracts on best price-quality ratio, should be the regular option in the System for any type of procurement procedure. Evaluation of other award criteria besides price will allow contracting authorities to award a contract considering also other quality based evaluation factors in addition to the price. Recent experience with introduction of design contests, where quality and price criteria are scored in order to identify the best bid, show that the capacity for introducing this approach in regular competitive procedures is in place;
- The Unified Electronic System and legal framework does not envisage non-disclosure of information, which are designated by economic operators as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

5.2. DEVELOPMENT OF ESERVICES

According to EU Directives, electronic means of information and communication should become the standard means of communication and information exchange in procurement procedures.

Electronic communication in public procurement, according to EU Directives, covers the following elements in the procurement process:

- transmission of notices in electronic form,
- electronic availability of the procurement documents and
- transmission of requests for participation and the transmission of the tenders (electronic submission).

The first two elements will become mandatory in EU Member States by 18 April 2016 and the third element by 18 October 2018.

EU Member States and contracting authorities should remain free to go further if they so wish. However, mandatory use of electronic means of communications pursuant to the Directives does not oblige contracting authorities to carry out electronic processing or evaluation of tenders. Furthermore, pursuant to the Directive, no elements of the public procurement process after the award of the contract or internal communication within the contracting authority is covered by the obligation to use electronic means of communication.

The requirement for Georgia to implement the first two elements of eProcurement is envisaged in Phase 2 of legislative approximation process to be carried out by 2019. The third element of eProcurement is envisaged in Phase 4 of legislative approximation process to be carried out by 2021.

Taking into consideration that current high level of eProcurement implementation in Georgia, basic eProcurement requirements stemming from the EU Directives are already met. The whole procurement system is designed to operate exclusively through electronic means.

The Unified Electronic System enables access to all information related to public procurement in Georgia: annual procurement plans, tender notices and documents, bids and bidding documents, decisions of tender evaluation commissions, all relevant correspondence, contracts and amendments to the contracts, and payments made through the Treasury.

Therefore, the obligation envisaged under Phase 2 (year 2019) and Phase 4 (year 2021) of the Association Agreement to introduce fully electronic communication in public procurement will be complied with ahead of the approximation schedule.

However, the Unified Electronic System will need to be gradually developed in order to accommodate the new legal developments in accordance with approximation schedule.

For a successful procurement reform process it is extremely important that development of legislation is not constrained or adapted to the technical limitations of the System but *vice versa* – the System must be adapted to new legal solutions and instruments which will be made available to contracting authorities. The design of the System must allow the assimilation of new procurement procedures and techniques – like restricted procedure, competitive procedure with negotiations, competitive dialogue and new procurement techniques - like framework agreements, dynamic purchasing systems, etc.

The most important new functionalities which will be gradually introduced in the Unified Electronic System according to each of the approximation phases are the following:

Phase 1 (2017)

- Introduction of two-stage procurement method with prequalification according to Article 144 of the Association Agreement;
- Introduction of other criteria, enabling award of contracts on best price-quality ratio as the regular option for any type of procurement procedure.

Phase 2 (2019)

- Introduction of Prior Information Notices;
- Introduction of open, restricted, and competitive procedure with negotiation;
- Introduction of negotiated procedure without prior publication;
- The possibility to introduce electronic auctions[17] in line with concept and requirements of the Public Sector Directive will be considered at this phase.

Phase 3 (2020)

- Introduction of Periodic Indicative Notices as the call for competition;
- Most of the provisions that equally apply to utilities, at this stage, will already be implemented in Phase 2.

Phase 4 (2021)

- Introduction of the competitive dialogue procedure;
- Introduction of the innovation partnership procedure;
- Introduction of framework agreements;
- Introduction of eProcurement instruments and techniques (e-auction[18], dynamic purchasing system and e-catalogues) as a complementary tools to regular procedures;
- Alignment with EU model of design contests.

Phase 5 (2022)

- Introduction of qualification systems;
- Most of the provisions that equally apply to utilities, at this stage, will already be implemented in Phase 4.

Key steps in development, redesign and upgrade of the Unified Electronic System in each of the approximation phases of legislative reform will cover:

- Drafting legislative amendments in adequate timeframe to enable synchronous design, development and upgrading of required functionalities of the Unified Electronic System;
- Carrying out of technical upgrade of the existing System in order to reflect all legislative amendments;

[17] Requirement to implement electronic auctions according to the Association Agreement is envisaged under Phase 4 (year 2021) but it will be considered in Phase 2.

[18] Electronic auctions will be implemented in this Phase unless they were already implemented in Phase 2.

— Preparation of new instructions for users of the upgraded System;

— Entering into force of new legal provisions will correspond with readiness of the System to be implemented by all users.

Annex – Action Plan for the Implementation of the Roadmap

ACTION PLAN FOR THE IMPLEMENTATION OF THE ROADMAP					
	TYPE OF ACTIVITIES	**ACTIVITY**	**SUB ACTIVITY**	**COMPETENT INSTITUTION**	**DEADLINE**
PHASE 1 **SEPTEMBER 2017** **(see Art. 143 and 144 of the Agreement)**	**Legislative** **(as described in paragraphs 3.2.1.1. and 3.2.1.2. of the Roadmap)**	Preparation of the legal changes/ Adoption of the reviewed Law on State Procurement	Drafting and adoption	SPA, Government, Parliament	2 Q 2017
		Adoption of new or amended secondary legislation	Drafting and adoption	SPA	3 Q 2017
	Institutional and capacity building **(as described in paragraph 4 of the Roadmap)**	Restructuring of the institutional set up of the procurement review body	Decision on new institutional set up (legal/regulatory framework)	Government, Parliament	2 Q 2017
			Activities on operational set up in order to establish fully functioning body (employees, infrastructure, etc.)	Government, Other institutions (if required)	3 Q 2017
		Training for employees of the institutions within public procurement system (SPA, etc.)	Training on the relevant EU acquis provisions as preparation for drafting process of new or amended legislation - implementation under various technical assistance projects	SPA	2016
			Internal training (workshops, seminars, etc.) on adopted new or amended legislation	SPA	2 – 3 Q 2017

		Training for contracting authorities, economic operators and other stakeholders	Preparation of tailor-made training curricula	SPA	2 Q 2017
			Beginning of Implementation of tailor-made training (continuous activity)	SPA	3 Q 2017
		Drafting of various implementing tools (instructions, manuals, guidelines) on legislative novelties	Drafting and on-line publication of instructions, manuals, guidelines	SPA	3 Q 2017
	EProcurement (as described in paragraph 5.2. of the Roadmap)	Upgrade of the Unified Electronic System	Drafting technical specifications for upgrade of the IT platform	SPA	2 Q 2017
			Upgrade of the IT platform	SPA	3 Q 2017
			Update of manual/instructions for use of the System	SPA	3 Q 2017
PHASE 2 SEPTEMBER 2019 (see XVI-C and XVI-D of the Agreement)	**Legislative (as described in paragraphs 3.2.2.1. and 3.2.2.2. of the Roadmap)**	Preparation of the legal changes/ Adoption of the reviewed Law on State Procurement	Drafting and adoption	SPA, Government, Parliament	2 Q 2019
		Adoption of new or amended secondary legislation	Drafting and adoption	SPA, Government	3 Q 2019
	Institutional and capacity building	Training for employees of the institutions within public procurement system (SPA, etc.)	Training on the relevant EU acquis provisions as preparation for drafting process of new or amended legislation - implementation under various technical assistance projects	SPA	2018

	(as described in paragraph 4 of the Roadmap)		Internal training (workshops, seminars, etc.) on adopted new or amended legislation	SPA	2 – 3 Q 2019
		Training for contracting authorities, economic operators and other stakeholders	Assessment of feasibility of introduction of mandatory training for procurement specialists	SPA	4 Q 2018
			Upgrade of the existing training system (in line with assessment carried out in 2017)	SPA	4 Q 2019
			Preparation of tailor-made training curricula	SPA	2 Q 2019
			Beginning of Implementation of tailor-made training (continuous activity)	SPA	3 Q 2019
		Drafting of various implementing tools (instructions, manuals, guidelines) on legislative novelties	Drafting and on-line publication of instructions, manuals, guidelines	SPA	3 Q 2019
		Upgrade of the monitoring system	Analysis of existing monitoring system and drafting proposal on its improvement	SPA	1 Q 2019
			Drafting of instructions and manuals	SPA	4 Q 2019
	EProcurement (as described in paragraph 5.2. of the Roadmap)	Upgrade of the Unified Electronic System	Drafting technical specifications for upgrade of the IT platform	SPA	2 Q 2019
			Upgrade of the IT platform	SPA	3 Q 2019
			Update of manual/instructions for use of the System	SPA	3 Q 2019

PHASE 3 **SEPTEMBER 2020** **(see XVI-E and XVI-F of the Agreement)**	**Legislative** **(as described in paragraphs 3.2.3.1 and 3.2.3.2. of the Roadmap)**	Preparation of the legal changes/ Adoption of the reviewed Law on State Procurement	Drafting and adoption	SPA Government, Parliament	2 Q 2020
		Adoption of new or amended secondary legislation	Drafting and adoption	SPA, Government	3 Q 2020
	Institutional and capacity building **(as described in paragraph 4 of the Roadmap)**	Training for employees of the institutions within public procurement system (SPA, etc.)	Training on the relevant EU acquis provisions as preparation for drafting process of new or amended legislation - implementation under various technical assistance projects	SPA	2019
			Internal training (workshops, seminars, etc.) on adopted new or amended legislation	SPA	2 – 3 Q 2020
		Training for contracting authorities, entities, economic operators and other stakeholders	Preparation of tailor-made training curricula	SPA	2 Q 2020
			Beginning of Implementation of tailor-made training (continuous activity)	SPA	3 Q 2020
		Drafting of various implementing tools (instructions, manuals, guidelines) on legislative novelties	Drafting and on-line publication of instructions, manuals, guidelines	SPA	3 Q 2020
	EProcurement **(as described in paragraph 5.2. of the Roadmap)**	Upgrade of the Unified Electronic System	Drafting technical specifications for upgrade of the IT platform	SPA	2 Q 2020
			Upgrade of the IT platform	SPA	3 Q 2020
			Update of manual/instructions for use of the System	SPA	3 Q 2020

PHASE 4 **SEPTEMBER 2021** **(see XVI-H (I) and XVI-I of the Agreement)**	**Legislative** **(as described in paragraphs 3.2.4.1. and 3.2.4.2. of the Roadmap)**	Preparation of the legal changes/ Adoption of the reviewed Law on State Procurement	Drafting and adoption	SPA Government, Parliament	2 Q 2021
		Adoption of new or amended secondary legislation	Drafting and adoption	SPA, Government	3 Q 2021
	Institutional and capacity building **(as described in paragraph 4 of the Roadmap)**	Setting up new institutional framework on centralized procurement	Removal of the SPA's function on in the organization and implementation of procurement procedures	Government	3 Q 2021
			Establishment of institution in charge for centralized procurement (new or as a part of some existing institution)	Government	3 Q 2021
		Training for employees of the institutions within public procurement system (SPA, etc.)	Training on the relevant EU acquis provisions as preparation for drafting process of new or amended legislation - implementation under various technical assistance projects	SPA	2020
			Internal training (workshops, seminars, etc.) on adopted new or amended legislation	SPA	2 – 3 Q 2021
		Training for contracting authorities, economic operators and other stakeholders	Preparation of tailor-made training curricula	SPA	2 Q 2021
			Beginning of Implementation of tailor-made training (continuous activity)	SPA	3 Q 2021

		Drafting of various implementing tools (instructions, manuals, guidelines) on legislative novelties	Drafting and on-line publication of instructions, manuals, guidelines	SPA	3 Q 2021
	EProcurement (as described in paragraph 5.2. of the Roadmap)	Upgrade of the Unified Electronic System	Drafting technical specifications for upgrade of the IT platform	SPA	2 Q 2021
			Upgrade of the IT platform	SPA	3 Q 2021
			Update of manual/instructions for use of the System	SPA	3 Q 2021
PHASE 5 SEPTEMBER 2022 (see XVI-J (II) and XVI-K of the Agreement)	**Legislative (as described in paragraphs 3.2.5.1. and 3.2.5.2. of the Roadmap)**	Preparation of the legal changes/ Adoption of the reviewed Law on State Procurement	Drafting and adoption	SPA, Government, Parliament	2 Q 2022
		Adoption of new or amended secondary legislation	Drafting and adoption	SPA, Government	3 Q 2022
	Institutional and capacity building (as described in paragraph 4 of the Roadmap)	Training for employees of the institutions within public procurement system (SPA, etc.)	Training on the relevant EU acquis provisions as preparation for drafting process of new or amended legislation - implementation under various technical assistance projects	SPA	2021
			Internal training (workshops, seminars, etc.) on adopted new or amended legislation	SPA	2 – 3 Q 2022
			Preparation of tailor-made training curricula	SPA	2 Q 2022

		Training for contracting authorities, entities, economic operators and other stakeholders	Beginning of Implementation of tailor-made training (continuous activity)	SPA	3 Q 2022
		Drafting of various implementing tools (instructions, manuals, guidelines) on legislative novelties	Drafting and on-line publication of instructions, manuals, guidelines	SPA	3 Q 2022
	EProcurement (as described in paragraph 5.2. of the Roadmap)	Upgrade of the Unified Electronic System	Drafting technical specifications for upgrade of the IT platform	SPA	2 Q 2022
			Upgrade of the IT platform	SPA	3 Q 2022
			Update of manual/instructions for use of the System	SPA	3 Q 2022