

# DEFENCE AND SECURITY PROCUREMENT: NEW “RULES OF THE GAME”, OLD ISSUES

Author: Ana Đurnić; Assistants: Dragana Jaćimović, Svetozar Vukićević

It is difficult to improve the practice in the Montenegrin public procurement system when the “rules of the game” keep changing. The penultimate day of 2019 brought the new Public Procurement Law (PPL), which introduced a number of new rules, along with a timeline of only six months for the players to master those<sup>1</sup>.

The new rules impacted also the security sector; however, the Government Decree on the list of military equipment and products, procedure and method of conducting public procurement in the fields of defence and security limited the arbitrary actions of contracting authorities only to a certain extent.<sup>2</sup> The system of planning and reporting on these procurements was not significantly improved. Planning was not tied to the strategic objectives in the security and defence sector, while security procurements were envisaged to be reported only to the Ministry of Finance. Other oversight instances, such as the National Security Council, and in particular the Parliamentary Security and Defence Committee, were not integrated in the oversight system.

According to the publicly available annual reports on public procurement, four institutions, namely the Ministry of Interior (Mol), Police Administration (PA), Ministry of Defence (MoD) and National Security Agency (NSA), spent in aggregate close to €30 million on public procurement in 2018, while the Mol alone spent as much in 2019. The four institutions’ total spending on public procurement in 2019 amounted to close to €42.5 million. It usually remains unknown, however, what share of that amount referred to security procurement, or if any additional amounts were spent. No specific reports are prepared on this segment of spending. The Mol claimed to have conducted no security public procurement in 2018, 2019 and a part of 2020, while the Police Administration spent slightly over €300,000 over the period of two years (2019 and 2020.). The NSA did not share any data with us, explaining that neither the Law nor the Decree obliged it to comply with those regulations when conducting procurement or keeping records on procurement. Similar to the situation in 2018, when we first conducted a survey of this kind, the MoD did not provide any information on its spending on security procurement.

During the three-year legal vacuum brought about by the 2017 amendments to the PPL, due to the incomplete and ambiguous regulatory framework, the contracting authorities conducted procurement in a hybrid fashion: they applied the open procedure, while classifying some data, such as technical specifications, contracts and such. The contracting authorities continued to

1/ The Public Procurement Law (Official Gazette of Montenegro 074/19 of 30 December 2019) was adopted in the Parliament of Montenegro on 30 December 2019 and entered into force on the eighth day from its publication in the Official Gazette; its implementation commenced in July 2020.

2/ More information on security and defence procurement between 2013 and 2017 is available in the analysis titled *Confidential Procurement in Montenegro: Far from Public’s Control*, Đurnić, Ana, Bogojević Ivana, Institute Alternative, Podgorica, March 2018, available at: <https://bit.ly/31QiRnv>



conduct public procurement in such a manner even after the adoption of the new Law and Decree, which had a negative impact on the remedies system.

The NSA remains the most secretive institution in the security and defence system – not only was their spending on security procurement a secret, but so was also the relevant regulation. That leaves the State Audit Institution (SAI) as the only witness of any irregularities concerning the spending on security procurement. SAI's audits in the security sector are not frequent enough.

In order to improve the situation in this field, it is necessary to start from amending the Government Decree. The amendments should be directed towards strengthening the mechanisms of strategic planning of procurement and all levels of reporting; the oversight mechanisms also need to be strengthened. It is particularly necessary to strengthen the oversight role of the Parliamentary Security and Defence Committee in this regard. Due to the amount of funds being spent and risk for misuses, within its regular annual audit of the Final Statement of Accounts of the State Budget, the State Audit Institution should audit a sample of security and defence procurement every year. In the long-term perspective, it is necessary to consider adoption of a specific Law on Defence and Security Procurement, after the model applied in Slovenia, to systemically resolve the problems identified to date.

## NEW “RULES OF THE GAME”

The legislative framework on public procurement underwent three rounds of changes over the past six years.<sup>3</sup> Each round introduced novelties in the regulation of security and defence procurement. However, since both the 2015 and the 2017 legal provisions remained ambiguous, and the legal framework incomplete, there was a lengthy legal vacuum with regard to security procurement.<sup>4</sup>

The new legal provisions from late 2019 singled out three “types” or levels of security procurement:

- non-security public procurement for the security sector institutions (for instance, purchases of office paper supplies or staplers for the MoD), which is conducted in line with the procedures from the PPL;
- security procurement where the subject-matter is linked to the national defence and security objectives (for instance, firearms, ammunition, military vehicles etc.), which is conducted in line with the procedures contained in the Government Decree on the list of military equipment and products, procedure and method of conducting public procurement in the fields of defence and security;
- special security procurement, which is security-related and its subject-matter is linked to the national defence and security objectives, which is governed by specific regulations in conformity with international agreements, internal regulations of contracting authorities etc. (this includes, for instance, NSA procurement)<sup>5</sup>.

3/ The Public Procurement Law was amended in 2015 and 2017; the new PPL was adopted on the penultimate day of 2019.

4/ *Confidential Procurement in Montenegro: Far from Public's Control*, Đurnić, Ana, Bogojević Ivana, Institute Alternative, Podgorica, March 2018, available at: <https://bit.ly/31QiRnv>

5/ The complete list of procurements falling into this group is available in Annex 1.

The regulation of the system of planning and reporting, as well as the oversight system, loosens from the top category down. The procurement categorised under Group 2 is to be reported only to the Government, i.e. Ministry of Finance<sup>6</sup>, but not to the Parliament or its Security and Defence Committee. Special security procurement (Group 3) is in particular subject to the contracting authorities' arbitrary actions and discretionary spending. The Decree does not envisage even the minimum requirements concerning planning, reporting and supervision; instead, it is left entirely to the contracting authorities to regulate by means of internal regulations. Neither the PPL nor the Decree provide the time-limit for adopting such internal regulations for special security procurement, or any guidelines that contracting authorities would be obliged to comply with when developing the regulations. The internal regulations of the MoI and PA, the adoption of which is prescribed by the Government Decree<sup>7</sup>, have not been adopted to date<sup>8</sup>. The NSA thought that the Government Decree did not oblige them to adopt a new regulation or to update the old one, although the PPL and the Decree categorise any procurement for the purpose of intelligence activities as Group 3 – special security procurement<sup>9</sup>.

The MoD was the only one of the four security institutions to have adopted an internal regulation on the special security procurement in line with the Decree.<sup>10</sup> That Rulebook constitutes a small step forward with regard to planning special security procurement, since it recognises the Procurement Plan for Special Security and Defence Procurement. The Rulebook allows for a security procurement procedure to be launched if financial resources have been secured and if it has been included in the Procurement Plan for Special Security and Defence Procurement<sup>11</sup>. The Procurement Plan is to be prepared by the MoD Procurement Office, on the basis of the proposals shared by the individual organisational units. However, no detailed planning procedure is envisaged, or any deadline for the preparation of the Procurement Plan. No form has been prescribed for the Procurement Plan, or the categories of data it should include. The Rulebook does not bring any progress with regard to reporting – similar to the Government Decree, it envisages that the Statistical Report on the Special Security and Defence Procurement should be delivered only to the Ministry of Finance.

The Rulebook indicates a very limited competition and a broad discretion on the part of the MoD in conducting security procurement. Namely, a special security procurement is conducted by sending an invitation to tender to the addresses of the economic operators suggested by the MoD organisational unit for which the procurement is being organised. The provisions of the Rulebook suggest that, before sending the invitation to tenderers' addresses, the Intelligence-

---

6 / Article 7, paragraph 1 of the Decree on the list of military equipment and products, procedure and method of conducting public procurement in the fields of defence and security (Official Gazette of Montenegro 076/20 of 28 July 2020).

7 / *Ibid.*

8 / PA's response to the request for free access to information, Decision No: 10-037/20-UPI-1174, of 10 December 2020 and MoI response to the request for free access to information, Decision 39 No: UPI 037/20-4586/3, of 5 October 2020 and MoI staff comments.

9 / NSA Decision in the procedure following the IA request for free access to information No. 10-233/20-5491of 7 December 2020.

10 / Rulebook on conducting special procurement in the fields of security and defence No. 0705-426/20-5669/1 of 07 August 2020. The document was not publicly available before presentation of this analysis on 3 February 2021; subsequently, it was posted for a short while on the MoD website. However, ahead of finalisation of this analysis (5 March 2021), the link became invalid and the document inaccessible once again.

11 / Article 2, *Ibid.*

Security Directorate of the MoD should carry a security vetting. Specifically, the Rulebook allows for the invitation to be sent to a single tenderer “if the Directorate’s assessment is such that it suggests that invitation to tender be sent to a single address”<sup>12</sup>.

The discretion is even greater as tenders are opened in the absence of the tenderers and complaints against the outcome of the procedure are not allowed. This falls short of both the PPL and the Decree, which stipulates that remedies to security procurement are not only possible, but constitute a priority for the Commission for the Protection of Rights to act upon.

## HOW DID THE “LEGAL VACUUM” (2017-2020) WORK?

The three-year period prior to the adoption of the Government Decree in July 2020<sup>13</sup> was marked by an almost complete absence of any regulations concerning security and defence procurement. Namely, the amendments to the 2017 PPL envisaged adoption of a Government Decree and of individual contracting authorities’ regulations, which were subsequently never adopted<sup>14</sup>. The legal vacuum<sup>15</sup>, along with the anticipation of new regulations, resulted in a hybrid procurement model. The model implied that security procurements would be conducted mainly in line with the procedures from the PPL, which applied to non-security procurement, and that some data from the tender documentation (technical specifications) would be classified. A contracting authority would advertise on the Public Procurement Portal, with a note that tender specifications are classified as “INTERNAL” and with instructions on how to access them<sup>16</sup>.

In 2019, following its separation from the MoI, within which it used to be a subordinate authority, the PA adopted the Rulebook on the security procurement exempt from the Public Procurement Law<sup>17</sup>. The NSA has the 2015 Director’s Regulation on the procurement of sensitive equipment, official weaponry and premises, the contents of which are confidential. Still, on several occasions, police procurements and NSA procurements were conducted following the “hybrid model” described above.

---

12 / Article 8, *Ibid.*

13 / Since June 2017, when amendments to the PPL were adopted (Official Gazette of Montenegro 042/11 of 15 August 2011, 057/14 of 26 December 2014, 028/15 of 03 June 2015, 042/17 of 30 June 2017) that significantly amended the provisions on the defence and security sector and envisaged adoption of the Government Decree that never followed, until adoption of the new Government Decree in line with the new PPL in July 2020.

14 / More information available in the analysis *Confidential Procurement in Montenegro: Far from Public’s Control*, Đurčić, Ana, Bogojević Ivana, Institute Alternative, Podgorica, March 2018, available at: <https://bit.ly/31QiRnv>

15 / *Procurement for Security Sector in the Legal Vacuum Until 2020*, Institute Alternative, November 2018, available at: <https://bit.ly/3uoE04w>

16 / Mainly at the contracting authorities’ premises, by signing the Declaration of the Authorised Person committing to safeguard the segment of the tender dossier in line with the Data Secrecy Law and other regulations from the field, as per Article 10 of the PPL (Official Gazette of Montenegro 042/11 of 15 August 2011, 057/14 of 26 December 2014, 028/15 of 03 June 2015, 042/17 of 30 June 2017).

17 / Rulebook on conducting public procurement procedure in the fields of defence and security exempted from the application of the Public Procurement Law, 27 June 2019 and Amendments thereof of 7 November 2019, accessed following a request for free access to information, Decision No: 10-037/20-UPI-1174, of 10 December 2020.

The MoI procured ammunition and special-purpose vehicles with built-in extra equipment<sup>18</sup>. The PA resorted to this model in 2019 to purchase ammunition and weapons, as well as anti-riot gear for police officers and public order equipment, while the NSA replaced used passenger motor vehicles in this confidential manner. The MoD leads by the number of hybrid procedures of this kind, which it used to purchase various types of computers and other electronic equipment, motor vehicles, Battle Management System, services of transport of armoured vehicles etc.

Between January 2018 and the implementation of the new PPL in July 2020, the MoD advertised 32 procedures following this model; the NSA three; the PA two, and the MoI six. Out of the total number of 43 procedures, eight were suspended, and 35 of them, worth €25,967,007.23 were completed. Not all of the procurements conducted in this manner were security-related<sup>19</sup>.

## PROCUREMENT PLANNING NOT LINKED TO THE STRATEGIC OBJECTIVES; IMPLEMENTATION WITHOUT EXTERNAL OVERSIGHT

The Government Decree did not properly regulate either the oversight mechanisms or the planning and reporting ones. A systemic approach was lacking. No obligation was imposed concerning specific planning of security procurement that would be closely linked with the strategic objectives in the defence and security sector<sup>20</sup>, or concerning relevant reporting. For instance, the 2019-2028 Long-term Defence Development Plan envisaged implementation of a number of procurements to equip and modernise ground forces, air space surveillance, maritime control and surveillance and implementation of maritime interdiction operations, development of command, control, communication and intelligence capabilities etc. The same document included a projection of defence-related costs for the period 2019-2028, classified as “INTERNAL” and not publicly available. However, neither the Law nor the Decree governing the security-defence procurement bind the contracting authorities in any way to “tie” the planning, implementation and reporting on procurement with these strategic documents and the objectives set therein. Positive examples of planning of specific security procurement closely linked with defence strategic objectives are available in the region (North Macedonia) and in Estonia, Georgia and Ukraine<sup>21</sup>.

With regard to the procurement conducted in line with the Decree, the only reporting obligation laid down in the Decree is the one towards the Ministry of Finance. The contracting authorities in

---

18 / “The MoI adopted the Rulebook on conducting public procurement procedure in the fields of defence and security exempted from the application of the Public Procurement on 27 December 2018, 01 No. 011/18-89855, but the Rulebook was not applied by the MoI, as the PA was separated from the MoI on 01 January 2019 and became an independent authority under the Decree on the Organisation and Method of Operation of State Administration 01.01.2019”. This comment to the draft of this analysis was provided by an MoI staff member on 11 February 2021.

19 / The MoI applied this method in July 2019 to contract purchase of the system for personalised IDs and purchase of blank IDs worth €18,148,790.00. The MoI also purchased a video surveillance system for Montenegrin towns worth €5,000,000.00.

20 / In line with the 2019-2028 Long-term Defence Development Plan, National Security Strategy of Montenegro (Official Gazette of Montenegro 085/18 of 27 December 2018) and Defence Strategy of Montenegro with the Action Plan for the period 2019-2022 and other strategic documents and plans in the field, MoD, available at: <https://mod.gov.me/biblioteka/strategije>

21 / *Progress (Un)Made: Defence Government in Central and Eastern Europe*, Transparency International, December 2020., available at: <https://bit.ly/38gPiOU>

the security sector are thus not required, under the Decree, to deliver specific reports on security procurement to the Parliamentary Defence and Security Committee or to the Parliament as such. On the other hand, the Parliamentary Committee has several tools to carry out regular and ad hoc oversight of the institutions in the security sector. The Committee's competences include consideration of special reports and briefing notes on the execution of the budget of the institutions from the defence-security sector.<sup>22</sup> This means that it can ask for the same report that each of these institutions deliver to the Ministry of Finance, although that is not explicitly laid down in the Decree. The Committee may also ask for additional briefing notes and for reports to be drawn up for the purposes of its work and oversight<sup>23</sup>. However, the Committee has not yet exercised this competence specifically in relation to security procurement. This places Montenegro among the countries with heightened risk of corruption in the field of spending on security procurement, given the complete absence of any external oversight<sup>24</sup>.

The Decree does not lay down the obligation to report to the National Security Council or the Government. No specific reporting form is envisaged, in order to distinguish between the procurement and investment aimed at achieving the long-term and short-term defence-security objectives of Montenegro and the procurement conducted in line with the PPL.

## **REMEDIES AVAILABLE TO TENDERERS: THE LAW RECTIFIED THE INJUSTICE SUFFERED BY THE TENDERERS, BUT THE PROBLEM STILL PERSISTS IN PRACTICE**

Before 2017, the Commission for the Protection of Rights in Public Procurement Procedures, (formerly the Commission for the Control of Public Procurement Procedures, hereinafter the Commission) was not competent to handle any complaints related to the security and defence procurement in the narrow sense. Namely, the Law did not allow for complaints at any stage of the procedure. The 2017 amendments to the PPL<sup>25</sup> rectified this “injustice” towards the tenderers taking part in security procurement procedures.

The new PPL from 2019 retained this improvement concerning the remedies, while the Government Decree on security procurement stipulated that remedies in security procurement procedures constituted a priority for the actions of the Commission<sup>26</sup>.

However, between July and December 2020, only one complaint filed to the Commission concerned security procurement. That single example illustrates that the remedies system in security and defence procurement is still not operational, as a “side-effect” of the lengthy legal vacuum in the field of security procurement and the earlier mentioned “hybrid model” that the contracting authorities are still not ready to forsake.

---

22 / Article 7 of the Law on Parliamentary Oversight of Security and Defence Sector (Official Gazette of Montenegro 080/10 of 31 December 2010)

23 / Article 5 on ad hoc activities of Parliamentary oversight, *Ibid.*

24 / Together with Kosovo and Azerbaijan, *Ibid.*

25 / *Secretly on Public Procurement: Backsliding due to Controversial Amendments*, Institute Alternative, May 2017, available at: <https://bit.ly/3cQ0llv>

26 / Item 57 of Annex 1 to the Decree on the list of military equipment and products, procedure and method of conducting defence and security public procurement (Official Gazette of Montenegro 076/20 of 28 July 2020.)

## CASE STUDY ON THE REMEDIES AVAILABLE TO TENDERERS

The MoD launched an open procedure for further modernisation of the network-communication equipment and data centre<sup>27</sup>. The procurement was launched following the “hybrid model” described above – as an open procedure with confidential technical specifications.

### VI Additional information

The part of the tender documentation related to the technical specifications for the subject-matter of this public procurement contains confidential data; therefore, by means of Decision No. 0703-038/20-996 of 03 February 2020, it has been classified as INTERNAL and may be accessed between 08 a.m. and 2 p.m. at the MoD Procurement Department, at Vaka Djurovica 55, by any person who submits a written authorisation of the authorised person within the interested party authorising them to take over that segment of the tender documentation on behalf of the interested party, along with the declaration provided by the interested party that the segment of the tender documentation will be guarded and protected in line with the Data Secrecy Law.

One of the interested tenderers filed a complaint against the tender documentation to the Commission. However, the Commission declined jurisdiction in the matter. As one of the reasons, it stated that this was procurement of “military and police electronic equipment” from the List of military equipment and products that constitute the subject-matter of security procurement (integral part of the Government Decree), which was “exempted from the application of the Public Procurement Law, and was not conducted in line with the Decree regulating defence and security procurement”<sup>28</sup>. Thus, the Commission challenged the application of the open procedure under the PPL instead of one of the procedures from Article 6 of the Decree on the list of military equipment and products, procedure and method of conducting public procurement in the fields of defence and security.

Given the Commission’s Decision, the Ministry annulled the entire procedure and announced re-launch in line with the findings of the Commission and the applicable regulations. It remains unclear how the Commission could have declined jurisdiction, but also at the same time stated that the procurement was conducted in an unlawful manner. Still, this example shows that the lawfulness of other security procurements that were conducted following this same model from 2017 onwards was at least “borderline”.

27 / The complete procedure is available from the Public Procurement Portal: <http://bit.ly/3gVwd8V>

28 / Decision of the Commission for the Protection of Rights in Public Procurement Procedures: UP 0904-203/2020 of 23 October 2020, available at: <http://bit.ly/3nvYaq7>

## NATIONAL SECURITY AGENCY – THE UTMOST SECRET

Not only does the NSA keep its spending on procurement of special equipment, official weaponry and premises a secret, but it does the same with the regulations and procedures it follows when conducting procurements. The new Government Decree on security and defence procurement grants maximum discretion to contracting authorities with regard to development of internal regulations for special security procurement, including procurement for the purpose of intelligence work. Since the Decree does not stipulate any time-limits for adopting such internal regulations or any rules or guidelines that ensure minimum transparency, the NSA opted for keeping absolutely everything that has to do with such procurement a secret. Data on its spending on “confidential” procurement are not available; neither are any plans or reports on such procurement. The Director’s Regulation that stipulates the procedures for conducting such procurement is classified as “INTERNAL”. Such classification has been extended since 2015<sup>29</sup>, most recently on 5 July 2019<sup>30</sup>. Since anything to do with NSA’s procurement is a secret, it is not known whether it has aligned its internal regulation with the new Decree on security procurement.

## SAI – A RARE “WITNESS” OF IRREGULARITIES

The State Audit Institution is one of the few instances that have access to the confidential documents related to security procurement, which makes it one of the few “witnesses” of irregularities in conducting such procurement. However, it does not conduct any audits that would specifically address security procurement; instead, it addresses such procurement periodically, in the course of individual audits of the spending units from the security-defence sector.<sup>31</sup> The infrequent audits of the defence sector make Montenegro stand out, together with Azerbaijan, Hungary and Serbia, in the group of Central and Eastern European countries. This refers only to the MoD audits, which SAI has conducted only three times since 2005. For the sake of comparison, in Latvia, which stands out as a good example in terms of the frequency of security sector audits, only in 2020 the defence sector has been audited twice. Latvia also stands out for the effectiveness of sector audit with 84 points, compared with 41 point allocated to Montenegro for the same criteria. Namely, according to the Transparency International’s findings, along with Latvia, only in Bosnia (66p), Georgia (75p) and Lithuania (68) have the ministries shown a willingness to incorporate audit recommendations and, even then, this has not always been systematic or extensive. Montenegro, on the other hand, groups with the states that exhibit low levels of implementation of audit recommendations by the Ministry of Defence<sup>32</sup>.

---

29 / More information available in the analysis *Confidential Procurement in Montenegro: Far from Public’s Control*, Đurnić, Ana, Bogojević Ivana, Institute Alternative, Podgorica, March 2018, available at: <https://bit.ly/31QiRnv>

30 / National Security Agency Decision in the procedure upon Institute Alternative request for free access to information No.10-233/20-5491 of 7 December 2020.

31 / The State Audit Institution checks the regularity (legality), economy, effectiveness and efficiency of budget resources spending and management of state assets. It decides independently on the auditees, subject-matter, scope and type of audits. It is required to carry out annual audit of the Final Budget Account of the Republic.

32 / *Progress (Un)Made: Defence Government in Central and Eastern Europe*, Transparency International, December 2020, available at: <https://bit.ly/38gPIOU>



During the period covered by this analysis, SAI checked compliance with the recommendations from the Report on the Audit of the Annual Financial Report and Regularity of Operation of MoI for 2014<sup>33</sup> and on the Audit of the Annual Financial Report for 2019 and Regularity of Operation of the Police Administration<sup>34</sup>. With regard to the MoI, it established that some of the recommendations, in particular the ones related to adoption of internal regulations, had not been complied with. Still, given the several rounds of changes in the regulatory framework on procurement between 2014 and 2018, the question arises concerning the appropriateness of such audit of security (the term used is “confidential”) procurement. The Audit Report for the PA did not state whether the sample selected for the audit included any security procurement. The part of the Audit Report concerned with the system of internal financial controls noted the adoption of the Procedure on the procedure and method of procurement, requisitioning and issuance of weapons and ammunition in the PA’s depots<sup>35</sup>.

The most frequent irregularity noted by SAI in its previous reports on audits of the MoI (at the time when it included the PA), MoD and NSA concerned application of confidential procedures for procurements that were not of security-defence nature and that should be conducted in line with the public procurement procedures from the PPL.

---

33 / Report on the Follow-up Audit of the Ministry of Interior, State Audit Institution, July 2018, available at: <http://bit.ly/2KimYDD>

34 / Report on the Audit of Annual Financial Report for 2019 and Regularity of Operation of Police Administration, State Audit Institution, September 2020, available at: <http://bit.ly/3h04mnK>

35 / Page 39, *Ibid.*

## CONCLUSION AND RECOMMENDATIONS:

The new Public Procurement Law (PPL) and the Government Decree resolved only a small share of the issues related to security and defence procurement, in particular those related to defining the subject-matter of procurement and list of military equipment and products that constitute the subject-matter of security procurement. However, special security procurements, including the ones conducted by the NSA, remain out of reach of the PPL and the Government's rules. The opportunity to strengthen oversight mechanisms – in particular the Parliamentary Security and Defence Committee – by means of new regulations has been missed, along with the opportunity to link the planning and reporting on procurement in this sector with the strategic security-defence objectives. SAI does not conduct specific audits in the security and defence sector; instead, it controls such procurement only in the course of infrequent individual audits of the contracting authorities from the sector.

Since only non-security procurement in the security and defence sector is conducted in line with the PPL, with everything else governed by the Government Decree and further, on the basis of the Decree, by internal regulations of the contracting authorities, key changes should be implemented precisely with regard to the Decree. In the long-term, adoption of a specific Law on Security and Defence Procurement should be considered, in order to systemically resolve all the issues identified to date and the incompatibilities across individual provisions.

### 01

*The Ministry of Defence* should, in collaboration with the *Ministry of Finance*, initiate and prepare amendments to the Government Decree on the list of military equipment and products, procedure and method of conducting public procurement in the fields of defence and security. This initiative should be incorporated in the Government Work Plan for 2021 and in the respective Work Plans of the two Ministries for 2021;

### 02

Amendments to the Decree should *regulate planning and reporting on security and defence procurement* with a view to establishing a close link with the achievement of the strategic objectives in the security and defence sector;

### 03

*The Security and Defence Committee* should organise a consultative hearing on defence and security procurement and should include regular oversight of spending on security procurement in its annual plans going forward;

## 04

Amendments to the Decree should regulate *the oversight mechanisms* to ensure continuous oversight of defence and security procurement. The role of the Parliamentary Security and Defence Committee should be strengthened as a matter of priority, by stipulating the obligation of sharing the annual plan of security procurement and reports on conducted security procurements (both those conducted in line with the Decree and the special security procurements conducted in line with international agreements and internal regulations of contracting authorities) with that Committee, so as to brief it and obtain its opinion. Furthermore, the obligation should be laid down with regard to sharing those documents to brief the National Security Committee before they are forwarded to the Government for adoption;

## 05

Amendments to the Decree should *envisage adoption of binding Government Guidelines* which would stipulate the rules to be complied with by the contracting authorities when regulating special security procurement by means of internal regulations, in order to ensure the minimum transparency of the procedures deployed, and set a timeline for adopting the internal regulations for the special security procurement and scrutiny of the pace of their adoption;

## 06

*The National Security Agency* should align the Director's Regulation on special security procurement with the new PPL and the Decree on the list of military equipment and products, procedure and method of conducting public procurement in the fields of defence and security;

## 07

Within its regular annual audit of the Final Statement of Accounts of the State Budget, the *State Audit Institution* should audit a sample of security and defence procurement every year.

**Annex 1: Overview of the special defence and security public procurement under Article 176 of the current Public Procurement Law and regulated by the Government Decree:**

Special security and defence public procurement under the PPL include:	Regulated as per the Government Decree:
1) procurements governed by special procurement regulations in accordance with an international agreement or arrangement concluded between Montenegro and one or more countries;	“in line with a concluded international agreement, i.e. rules of an international organisation, concluded with prior consent of the Government of Montenegro”
2) procurements governed by special procurement regulations in accordance with an international agreement or arrangement relating to the stationing of troops and applying to business organizations in Montenegro, EU Member State or other country;	“in line with a concluded international agreement, i.e. rules of an international organisation, concluded with prior consent of the Government of Montenegro”
3) procurements which must be awarded by Montenegro under specific regulations of an international organisation;	“in line with a concluded international agreement, i.e. rules of an international organisation, concluded with prior consent of the Government of Montenegro”
4) procurements where the application of provisions of this Law would impose an obligation on Montenegro to provide information the disclosure of which is contrary to the vital interests of its security;	“in line with security assessments and/or contracting authority’s measures or contracting authority’s internal regulation”
5) for the purpose of intelligence activities;	“in line with security assessments and/or contracting authority’s measures or contracting authority’s internal regulation”
6) procurements within cooperation programmes between Montenegro and at least one EU Member State which are based on research and development, for the purpose of development of a new product and, where applicable, for later stages of all or part of the lifecycle of such product;	“in line with a concluded international agreement, i.e. rules of an international organisation, concluded with prior consent of the Government of Montenegro”
7) procurements awarded in a third country, including those for civilian purposes, carried out when forces are deployed outside the territory of the European Union where operational needs require such contracts to be concluded with the bidders located in the area of operations;	“in line with security assessments and/or contracting authority’s measures or contracting authority’s internal regulation”
8) procurements conducted by the state authorities of Montenegro with the state authorities of EU Member States or of a third country, and related to: a) purchase of military equipment or security-sensitive equipment; b) works and services directly connected to the equipment referred to in sub-item a herein; or c) works and services for explicit military purposes or security-sensitive works and security-sensitive services;	“in line with a concluded international agreement, i.e. rules of an international organisation, concluded with prior consent of the Government of Montenegro”
9) if protection of vital security interests of Montenegro cannot be ensured by setting requirements concerning the protection of secrecy of the data made available to the tenderers by the contracting authorities in the manner laid down by this Law;	“in line with security assessments and/or contracting authority’s measures or contracting authority’s internal regulation”
10) procurements that have been classified or that have to be accompanied by special security measures in line with the law or the competent authority regulation, or that refer to the security of persons protected by Montenegro, provided that Montenegro has established that vital security measures and interests cannot be protected by means of the measures referred to in item 9 herein.	“in line with security assessments and/or contracting authority’s measures or contracting authority’s internal regulation”
11) procurement of the goods and services referred to in Article 175 herein whose estimated value is up to €20,000.00, i.e. works of estimated value of up to €40,000.00.	“in line with the contracting authority’s internal regulation”

## ABOUT INSTITUTE ALTERNATIVE

[Institute Alternative](#) (IA) is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

Our mission is to contribute to strengthening of democracy and good governance through and policy analysis as well as monitoring of public institutions performance.

Our objectives are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.

The values we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

We function as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. The areas of our work and influence are structured around the following five main programmes: public administration; accountable public finance; parliamentary programme; security and defence, and social policy.

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups Public procurement (5), Judiciary and Fundamental rights (23) and Financial control (32). Our flagship project is the Public Policy School, which is organized since 2012, and in 2018 we organized the first Open Budget School.

So far we cooperated with over 40 organizations within regional networks in the Western Balkans and with over 100 organizations in Montenegro. Institute is actively engaged in regional networks: Think for Europe (TEN), Pointpulse, SELDI, WeBER, UNCAC Coalition, Global BTAP, PASOS and The Southeast Europe Coalition on Whistleblower Protection.

The results of our research are summarized in 127 studies, reports and analyses, and the decisionmakers were addressed 1036 recommendations. Over four thousand times we communicated our proposals and recommendation to the media for better quality public policies.

We started three internet pages. My town is a pioneer endeavour of visualization of budgetary data of local self-administrations. My Administration followed, which serves as an address for all those citizens that have encountered a problem when interacting with public administration and its service delivery system. The newest internet portal, My Money, provided national budget data visualization.

Institute Alternative regularly publishes information about finances, projects and donors that support the work of the organization. For this reason, the Institute have five-stars rating third year in a row, according to a survey conducted by the international non-profit organization Transparify, which evaluates transparency for over 200 research centers.

President of the Managing Board is Stevo Muk, and our organization currently has ten members.