



EU Grant Agreement number: 290529
Project acronym: ANTICORRP
Project title: Anti-Corruption Policies Revisited

Work Package: WP8, Corruption, assistance and development

**Title of deliverable: D8.1.1 The Bulgarian public procurement market:
Corruption risks and dynamics in the construction sector**

Due date of deliverable: 28 February 2015

Actual submission date: 30 March 2015

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Organization name of lead beneficiary for this deliverable: Hertie School of Governance

Project co-funded by the European Commission within the Seventh Framework Programme		
Dissemination Level		
PU	Public	X
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission	
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ACCRONYMS

CF	Cohesion Fund
CPV	Common Procurement Vocabulary
CSD	Center for the Study of Democracy
EC	European Commission
EPC	Engineering, Procurement and Construction
ESIF	European Structural and Investments Funds
EU	European Union
GBS	Glavbolgarstroy (large Bulgarian construction firm)
GDP	Gross Domestic Product
GVA	Gross Value Added
HPP	Hydro Power Plant
LPP	Law on Public Procurement
MA	Managing Authorities
NAO	National Audit Office
NPP	Nuclear Power Plant
NSI	National Statistical Institute
OP	Operational Programme
PFIA	Public Financial Inspection Agency
PHARE	Programme of Community aid to the countries of Central and Eastern Europe
PP	Public procurement
PPA	Bulgarian Public Procurement Agency
PPR	Public Procurement Registry
RIA	Road Infrastructure Agency
RSPP	Regulation on Small-Scale Public Procurement
SAPARD	Special accession programme for agriculture and rural development

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I. INTRODUCTION

Bulgaria has been repeatedly defined as a high corruption risk country, in which the resources and opportunities for corruption are high, while deterrents and constraints remain low (Mungiu-Pippidi, et. al, 2011, pp. 40-41). Its governance regime has been described as moving gradually from patrimonialism to open access order, with most of its features still in the competitive particularism stage (Mungiu-Pippidi, et.al. 2014, p. 25). Hence, if the normative ideal of good governance is equated with open access order,¹ Bulgaria is still far from achieving good governance. Widespread corruption persists in the country (CSD, 2014), and the allocation of public resources remains particularistic and unpredictable, though EU membership has produced more transparency and accountability. As one of the main channels for transferring public resources to the private sector, studying the functioning of the public procurement market in Bulgaria and focusing on construction can provide important insights into the opportunities and constraints to corruption or favouritism in Bulgaria.

II. MATERIAL STAKE: THE BULGARIAN PUBLIC PROCUREMENT MARKET

1. General public procurement market

In order to assess the corruption risk in this sphere, the term “public procurement market” is defined in this paper as the supply of goods, services and construction works² for the public sector and the utilities, for which the legislation prescribes following specific procurement procedures. This definition excludes the supply of goods, services, and works below certain (minimum) threshold values³, which according to Bulgarian laws do not require such specific procedures. In this context, the public procurement market includes most of the current and investment consumption of the central and local government bodies and institutions, as well as the legal entities they finance and/or manage. These are the so-called “conventional” contracting authorities in the public procurement sphere. The public procurement market also covers current and investment consumption of the so-called “sectoral” contracting authorities. These are the network suppliers of public services or utilities in the energy sector, water supply, transportation, and postal services. Regardless of whether they are publicly or privately owned, due to being

¹ For a detailed discussion on how good governance relates to a taxonomy of governance regimes and to corruption and anti-corruption, please see Mungiu-Pippidi, et.al. (2011), *Contextual Choices in Fighting Corruption: Lessons Learnt*, Hertie School of Governance and NORAD, Berlin, 2011.

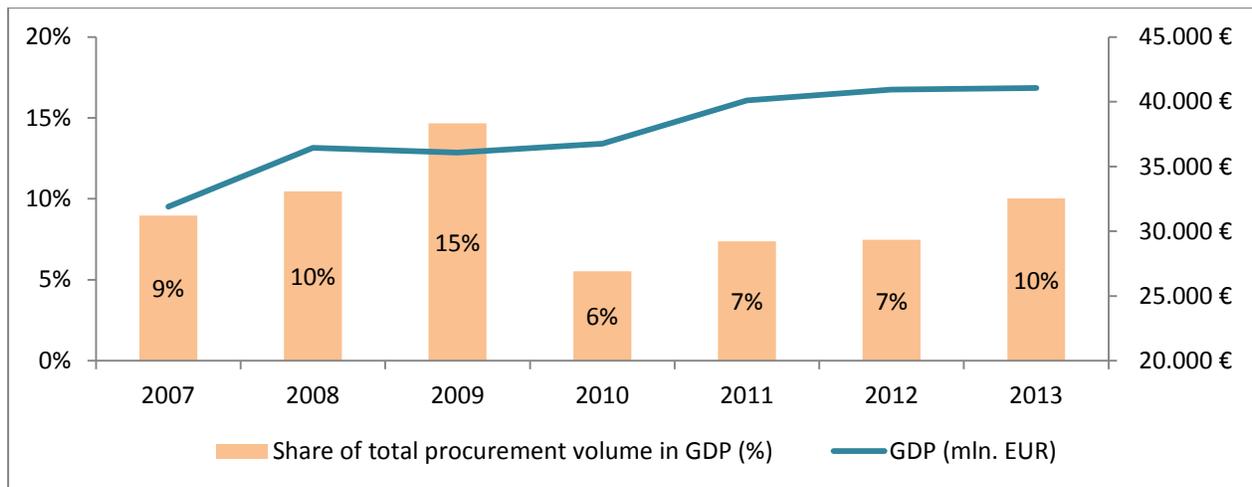
² There are different terms in the literature describing “construction works”, such as “public works” or just “works”. In this paper, we have chosen to use the term “construction works” as this is the term the Public Procurement Agency of Bulgaria uses, and it most closely describes the nature of the works carried out – construction and repairs. We have assumed that the construction sector has carried out the total value of the contracts under “construction works”.

³ As of January 2015 the minimum thresholds, under which the application of the public procurement procedures prescribed by the *Law on Public Procurement* is not obligatory, are: BGN 264,000 (approx. € 142,254) for works and BGN 66,000 (approx. € 35,564) for goods and services, exclusive of VAT. When the public procurement is carried out outside the country these thresholds are BGN 1,650,000, and BGN 132,000, respectively.

natural monopolies and due to the fact that their (in)efficiency is of high importance for society and the economy, their current and investment consumption is covered by the legal framework regulating public procurement.

On average, public procurement made up 9% of Bulgaria’s gross domestic product (GDP) from 2007 – 2013 (Figure 1)⁴. While remaining small by EU standards, public procurement grew steadily from €1 billion in the early 2000s to a peak of just above €5 billion in 2009 before dropping to €3 billion in 2010 in the wake of the Eurozone economic crisis (Figure 2). It should be noted that both peak years of public procurement contracting since Bulgaria’s EU accession – 2009 and 2013 coincided with parliamentary elections, which could be an indication of heightened risk of favouritism or corruption. The rise in public procurement contracts on an annual basis was not trivial and amounted to 5 percentage points of GDP in 2009 and 3 percentage points in 2013. Such increases in public procurement contracts in election years have been documented also before EU accession during the 2001 and 2005 parliamentary elections (CSD, 2006). This provides evidence that public procurement has been used by incumbent governments for winning electoral support in election years, which other things being equal, increases the risks of corruption.

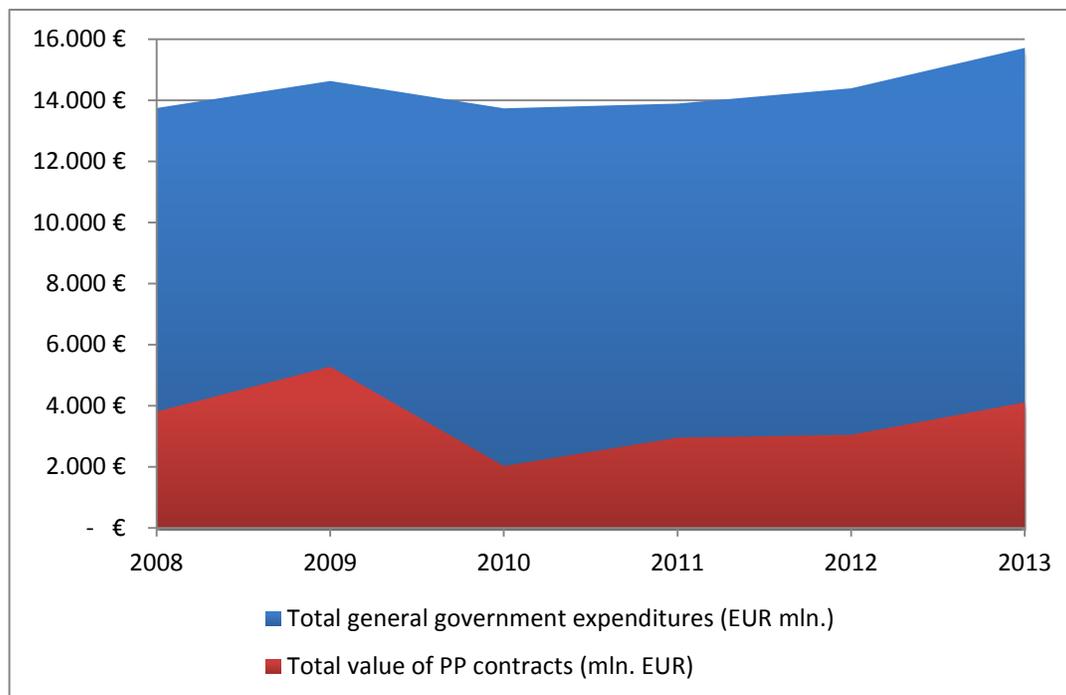
Figure 1. Share of total public procurement volume in GDP for the 2007 - 2013 period (%)



Source: NPA, NSI, 2014

⁴ The authors have taken all due care to ensure that the provided data is comparable across years. We have not detected any changes in the reporting system or legislation, which might bias the comparability of the data over time. If not mentioned otherwise explicitly all public procurement data in this paper refers to values exclusive of VAT.

Figure 2. Share of the total value of public procurement (PP) contracts in total general governmental expenditures (2008-2013)



Source: Eurostat, PPA, 2014

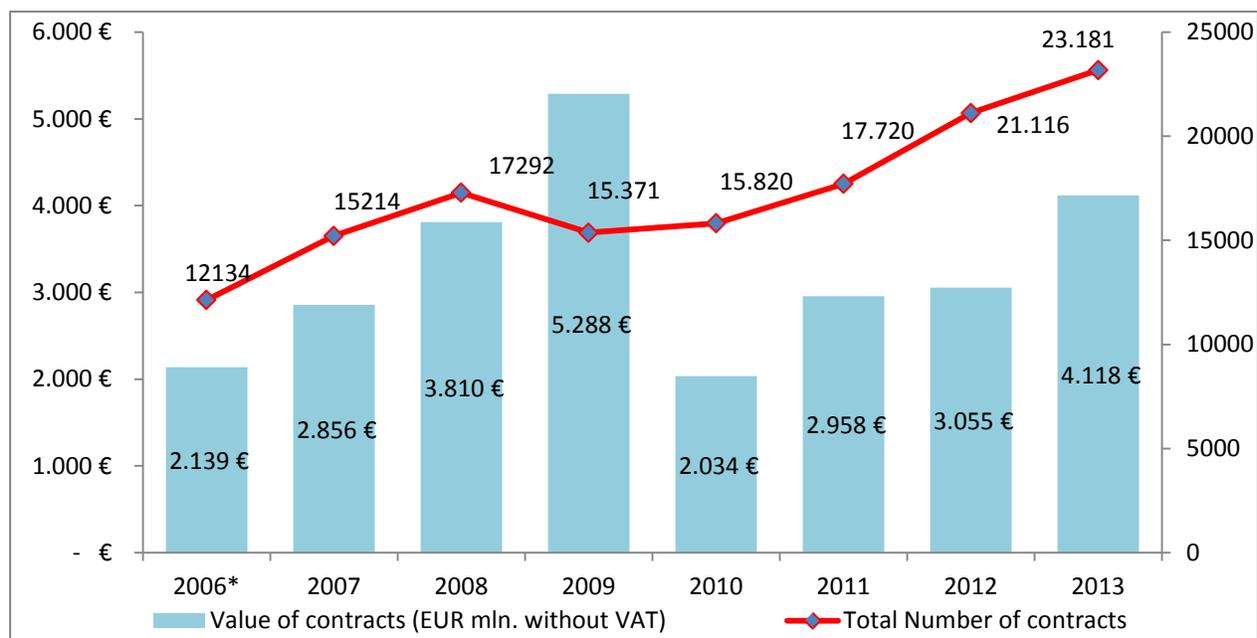
The lack of capacity on the part of the Bulgarian authorities to absorb European Structural and Investments Funds (ESIF), initially pre-accession and later on, has further contributed to the uneven dynamics of the Bulgarian public procurement market⁵. This has added pressure on the authorities to spend at any cost or decommission funds towards the end of the funds' contractual (2006 for pre-accession and 2013 for post-accession), and payment (2008 and 2015 respectively) periods⁶. The numerous irregularities in the management of the Programme of Community aid to the countries of Central and Eastern Europe (PHARE) and the Special accession programme for agriculture and rural development (SAPARD) pre-accession funds exposed by European Commission (EC) units, coupled with the lack of adequate systems of ex-ante (preliminary) and ex-post (follow-up) controls, and the tenuous response of the Bulgarian government to those findings, led to the forfeiture of EUR 220 million from the national PHARE programme, as well as to the freezing of EU funds earmarked for road infrastructure development in 2008 (Vachudova, 2009). Notably for the subject matter of this paper, the 2008

⁵ Report from The Commission to the European Parliament and the Council On the Management of EU-funds in Bulgaria Brussels, 23.7.2008 COM(2008) 496 final.

⁶ EU Funds for catching up countries and regions are disbursed in 7 year budget cycles, with the current one encompassing 2014 – 2020, and the previous one – 2007 – 2013. The money designated for a particular budget cycle is spent under the so-called “n+2” rule, meaning that money has to be contracted at the latest by the year n (2013) and invoiced by the year n+2 (2015).

measures taken by the EC against Bulgaria were triggered by the uncovered blatant conflicts of interest in the road infrastructure fund, which had provided tenders to relatives of the then executive director⁷. Thus, the Bulgarian government was forced to spend the money designated for the years 2007 and 2008 in 2009 (an election year) (CSD, 2009). A similar or even higher peak of EU funds-related spending is expected to occur in 2014 – 2015, as funds have been frozen and unfrozen again in 2013 - 2014⁸, and 2015 is the last year, for which invoicing is allowed for the EU's 2007 – 2013 budget period.

Figure 3. Number and value of public procurement contracts in Bulgaria (2007-2013)



Source: PPA, 2014

The case of 2009 is of particular interest as the increase in volume has come on the backdrop of stagnant (and even declining from 2008 to 2009) numbers of public procurement contracts, indicating a rise in the value of individual public procurement contracts⁹ (Figure 3). Since then, the number of public procurement contracts has increased by some 50%, reaching 23,181 in 2013, which might signify some opening up of the market and stricter adherence to public procurement rules with the increase of the share of EU funds-related public procurement spending. EU funds have been playing an increasingly important role in the public procurement

⁷ Mediapool.bg. (11 June 2014). *After five years of delays the case "Brother and Mate" is about to be solved (След пет години точене делото "Батко и братко" е на път да приключи)*. [WWW]. Available from: <http://www.mediapool.bg/sled-pet-godini-tochene-deloto-batko-i-bratko-e-na-pat-da-prikluychi-news221362.html> [Accessed 21 March 2015].

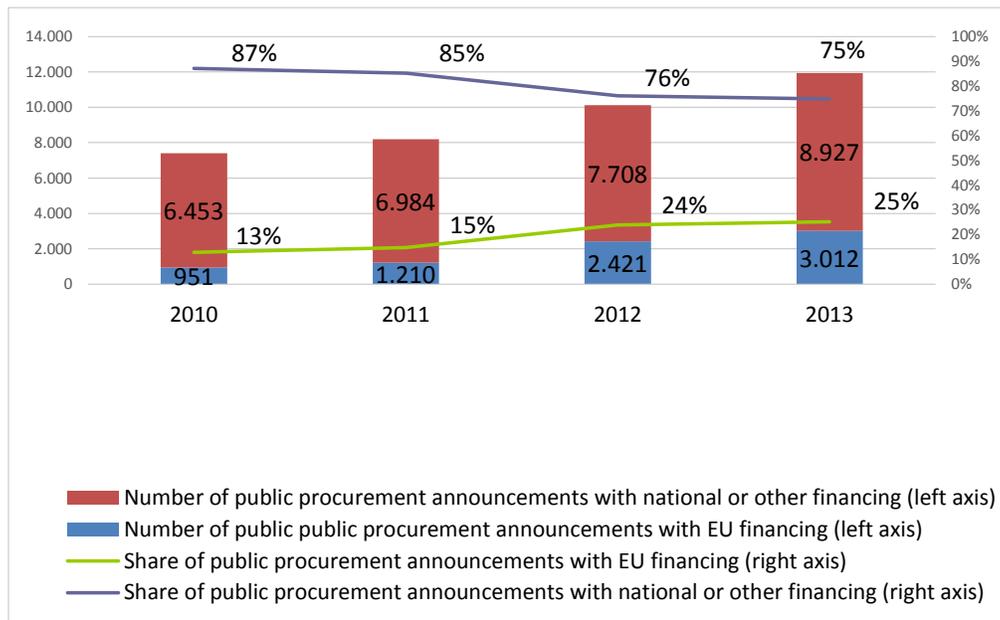
⁸ Novinite.com. (4 December 2014), *EU Unfreezes Bulgaria's Blocked Funds for Regional Development*, [WWW]. Available at: <http://www.novinite.com/articles/165213/EU+Unfreezes+Bulgaria%27s+Blocked+Funds+for+Regional+Development> [Accesses 20 March 2015].

⁹ The data refers to actual public procurement contracts and thus excludes the possibility of any increase or decreasing being the result of the signature of framework agreements. The latter are still very rarely used by the Bulgarian authorities.

market, providing for roughly a quarter of all public procurement announcements¹⁰ in 2013 (Figure 4).

The substantial financial EU assistance to Bulgaria in the 2007 – 2013 period coupled with the increased social pressure on the national budget expenditures due to the economic crisis have made it critical to the Bulgarian government to do its best to spend the available EU funds in their entirety. However, as the budget cycle drew to an end in 2013, and financial penalties and corrections imposed by the European Commission started to increase, the government has resorted to two practices, which have increased corruption risks in this domain: covering withdrawn EU funds because of penalties and/or freezes, and over-contracting the available EU funds' budgets (Table 1). In this manner the government wants to guarantee that the whole amount of EU funds available to the country will be invoiced by 2015 even if some of the projects are not approved or delayed, or altogether scrapped by the EC (43rd National Assembly of the Republic of Bulgaria, 2014)¹¹. This practice puts additional discretionary power in the hands of the government and the public administration as they get to decide, which projects receive national budget funds replacement for lost EU subsidies, and which not. Other things being equal, this additional discretion increases corruption risks.

Figure 4. Number of public procurement announcements by source of financing: national vs. EU (2010-2013)



Source: PPA, 2014

¹⁰ Public procurement announcements are fewer than the actual public procurement contracts signed as many announcements contain lots, each requiring the signing of contracts, and/or foresee a framework contract with more than one entity.

¹¹ See also media reports in Bulgaria, such as: BGNES. (11 March 2015). *The risky Europrojects in ecology and road construction will be financed through national budget funds also in the new programming period* (Рисковите европроекти в екологията и пътищата ще се финансират със средства от бюджета и новия програмен период), Available from: <http://news.bgnes.com/view/1220883> [Accessed March 20, 2015]

Table 1. EU Structural Funds (over)contracting ¹² (December 2014)

Operational Programme	Programme budget		Contracted amount
	EU funding (EUR mln.)	Number of contracts	EU funding (EUR mln.)
OP Transport	1 624	116	1 628
OP Environment	1 466	524	2 322
OP Regional Development	1 361	1 187	1 421
OP Competitiveness	988	3 153	1 018
OP Technical Assistance	48	120	51
OP Human Resources	1 032	5 213	1 076
OP Administrative Capacity	154	1 446	175
TOTAL	6 674	11 759	7 692

Source: Information System for Management and Monitoring of EU Structural Instruments in Bulgaria - public module, December 2014

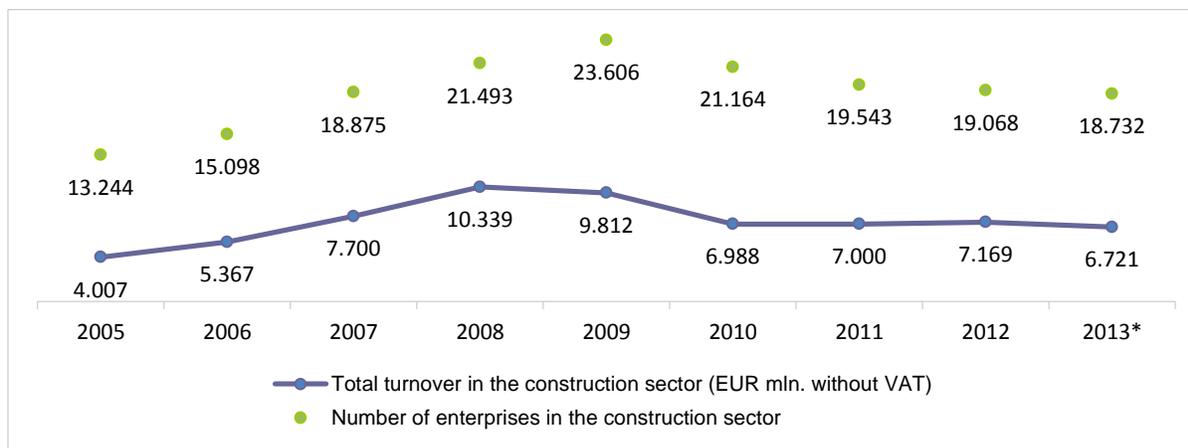
2. Key indicators of the Bulgarian construction sector

The share of the construction sector in the gross value added (GVA) of the Bulgarian economy amounted to an average of 7% in the 2007-2013 period. However, following the onset of the European economic crisis, its turnover has slumped by more than 30%, compared to its peak in 2008, reducing the share of the sector in total GVA to 5% in 2013.¹³ This has increased the dependence of construction companies, in particular larger ones, on public procurement contracts. Construction has been among the most affected sectors of the economy during the recent crisis following the bust of the real estate market in Bulgaria. By 2013 the number of active enterprises in the sector decreased by a fifth from its peak in 2009 (Figure 5).

¹² Over-contracting occurs when the contracted amount is higher than the programmed budget.

¹³ Based on PPA and NSI data for the period 2007-2013

Figure 5. Total turnover and number of enterprises in the construction sector (2005-2013)



Source: Eurostat, 2014; *the number of enterprises for 2013 is provisional

The sector has developed dynamically with the top 100 construction companies¹⁴ concentrating on average 31%¹⁵ of the total turnover of the whole sector during the 2008-2013 period (Figure 6). Less than one percent of the construction companies in Bulgaria have a combined average turnover of EUR 2.5 billion¹⁶. The firm level analysis, based on a sample of the top 40 construction companies (see Methodological note, section 4.1), showed that they controlled 15% of the total turnover of the sector in 2013. While this does not seem like a high concentration rate, it certainly implies that there are not many construction companies in Bulgaria that can handle larger public procurement contracts. It should also be noted that the sector is highly regulated, with its main sub-industries having their own industrial associations, which lobby openly both for legislative changes and for specific construction projects. For example in 2014 the Bulgarian Construction Chamber and the Bulgarian Branch Chamber “Roads” opposed the decision of the Bulgarian government to build a 15 km tunnel on one of the EU transport corridors in Southwest Bulgaria, while the Bulgarian Association for Geotechnical and Tunnel Construction lobbied in favour of such a solution¹⁷.

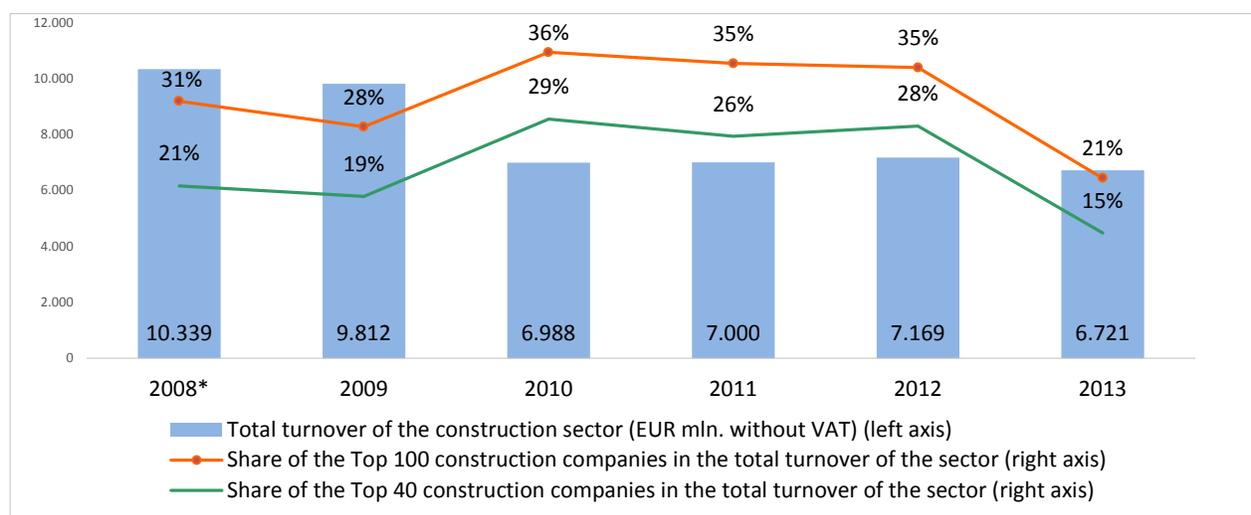
¹⁴ According to the official National Classification of Economic Activities

¹⁵ Excluding a single company which reported an annual turnover of EUR 1,731 million for 2008, with no reference values for 2009-2013

¹⁶ *ibid*

¹⁷ The Bulgarian Construction Chamber is by far the largest industrial association in the sector. It was created by a special law adopted on the last day before Bulgaria’s EU Accession (*Law on the Chamber of Construction Companies (Закон за камарата на строителите)*), promulgated in State Gazette 108/29.12.2006.). As of 2015 it assembles 1689 companies, 16 education organisations, and 7 non-governmental organisations. The chamber has 27 regional representations in the country. The

Figure 6. Share of the Top 100 and Top 40 construction companies by turnover in the total turnover of the construction sector (2008 - 2013)



Source: Eurostat, APIS, 2014; CSD calculations; *excluding a single company which mistakenly reported an annual turnover of EUR 1,731 million instead of 1.731 million for 2008.

3. Public procurement trends in the Bulgarian construction sector¹⁸

Both the number and value of public procurement contracts for construction works marked a significant increase between 2010 and 2013 (Figure 7)¹⁹. The very low volume of public procurement of construction works in 2010 is attributable to the aftermath of the economic recession in Bulgaria of 2009, and the subsequent tightening of fiscal policy. But even in 2011 and 2012, there has been a significant (for the Bulgarian market) rise in construction works public procurement contracts in 2013. As discussed previously, this is almost entirely related to the rush for absorption of EU funds, since 2013 was the last year for contracting. In addition, 2013 was also an election year, which led to higher pre-election spending and a fiscal loosening

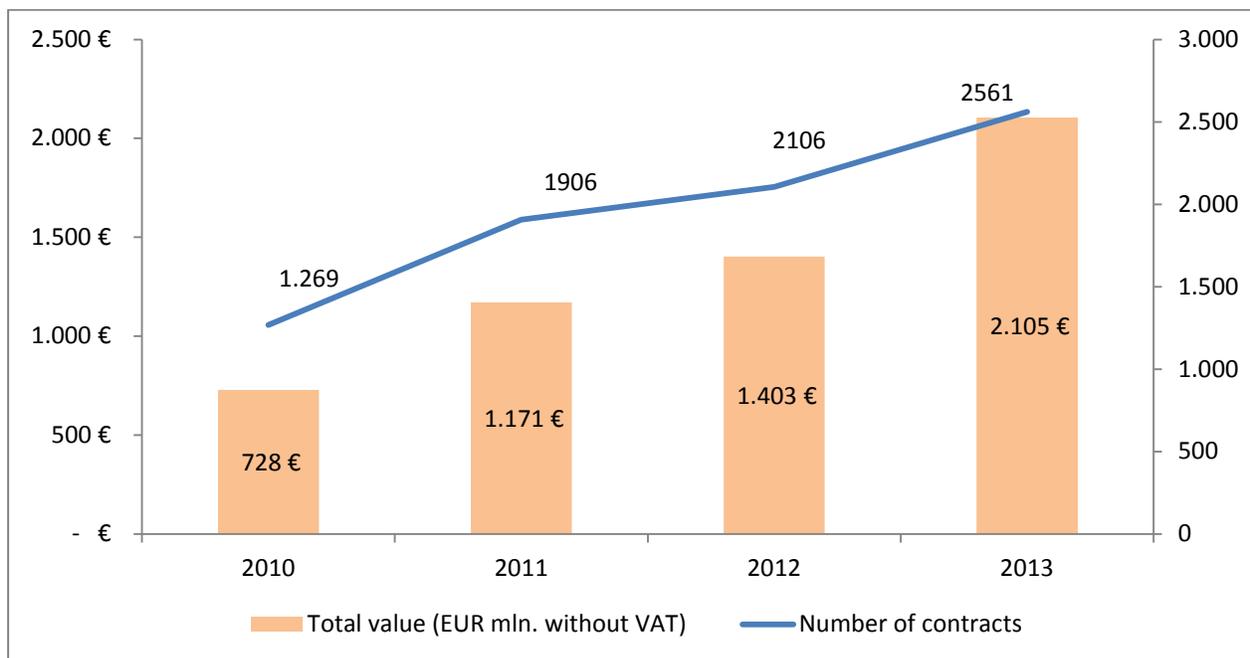
chamber acts as a gatekeeper to the sector as it runs the Central Professional Registry. Among its main activities are: aiding the development of industry standards on health and safety; developing a Code of Professional Ethics; participating in the trilateral cooperation at branch and national level, and signs the collective labour contract; etc.

¹⁸ The Bulgarian Public Procurement Agency assesses the functioning of the public procurement market by reporting several major indicators. The PPA groups public procurement according to its subject - goods, services and construction works. We used the data for “construction works” for the purposes of the current analysis of the general public procurement market in construction.

¹⁹ Publicly available data on construction works contracts is available only for the past four years at the web-site of the Public Procurement Agency. The Annual Reports of the Agency for the 2008 and 2009 years do not provide comparable data to the one available online on construction works.

by the newly elected majority in parliament. The data analysis shows that the increase in the number of contracts, on the one hand, and in their value on the other, is asymmetrical, signifying an increase in the value of individual contracts. In the four-year period construction works public procurement contracts increased their total value by close to 300%, while the number of contracts went up by 200% from 1,269 in 2010 to 2,561 in 2013.

Figure 7. Number and value of public procurement contracts for construction works (2010-2013)



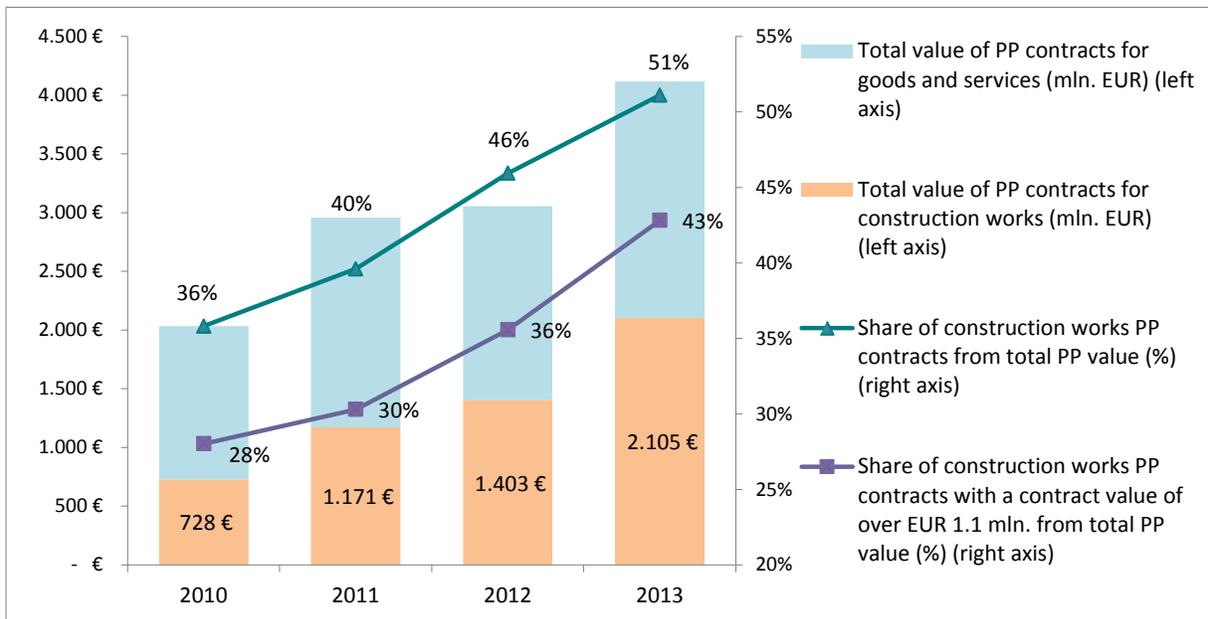
Source: PPA, 2014; CSD calculations

In 2010 – 2013, there was a clear trend of concentration of public procurement contracts in construction works vis-à-vis the supply of goods and services, and in larger value contracts within construction works. While in terms of numbers the share of the construction works contracts has remained relatively stable, their share in the total value of public procurement contracts has increased steadily to over 50% in 2013 (Figure 8). In 2013, the 2,561 construction works contracts represented 11% of all public procurement contracts and 51% of their total value. This rising concentration of public procurement in construction works has been attributable entirely to the rise of large-scale public procurement contracts²⁰. Large-scale contracts for construction works, with a single value above €1.1 million have risen to 43% of the

²⁰ The PPA uses the following thresholds for classifying the size of public procurement contracts in goods, services, and construction works: EUR 0 - EUR 102,258; EUR 102,258 - EUR 1.1 mln.; above EUR 1.1 mln. The latter are considered large contracts and undergo a specific pre-screening by the PPA.

total public procurement value in Bulgaria. The total value of all large-scale contracts for construction works increased to EUR 1,763 million in 2013, with the average value of a single contract exceeding EUR 6 million.

Figure 8. Share of total public procurement contracts for construction works and public procurement contracts for construction works over EUR 1.1 m. from total public procurement value (2010 - 2013)

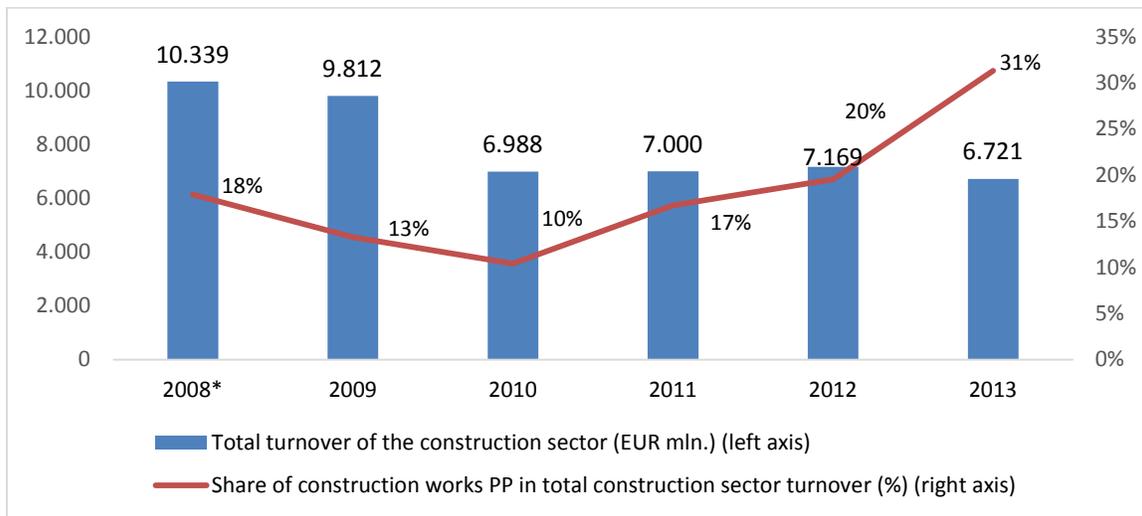


Source: PPA, 2014; CSD calculations

The concentration in large-scale construction works on the public procurement side, coupled with falling overall turnover and value-added in the construction sector, following the onset of the European economic crisis, has resulted in a substantial increase in the importance of public procurement for the construction sector in the 2010 – 2013 period. In 2013 the total public procurement value for construction works reached 31% of the total construction sector turnover, making the public administration effectively the key customer and decision maker in the survival of construction companies (Figure 9). The leverage power of the public administration over the resources available to construction companies has increased substantially, which in the absence of rising deterrence on corruption, implies rising risks of corruption or favouritism. There have been numerous media reports showing a concentration of public procurement among larger

companies²¹, and different practices the public administration uses to channel specific public procurement contracts to specific companies besides wide interest among many competitors²².

Figure 9. Share of construction works public procurement in total construction sector turnover (2008 - 2013)



Source: PPA, 2014; CSD calculations

The concentration in the public procurement of construction works in recent years seems to contradict a trend of opening up of the public procurement market in terms of number of contractors and awarding entities. Although more in-depth analysis is needed to validate this statement, the macro level data shows that the number of awarding entities doubled in the period 2009 – 2013, while the number of contractors increased by 25 to 30% (Table 2), which is normally associated with a rising and vibrant market and competition. While this has improved the value for money proposition in competitive markets, it has also made it more difficult for compliance and control authorities to check for irregularities (CSD, 2014). One should also take into account legislative changes, which have increased the requirements for open tendering among private recipients of EU funds, without any direct effect on the transparency and accountability of public sector contracting.

Table 2. Public Procurement Contractors, Announcements and Contracts in Bulgaria (2010-2013)

²¹ See for example Koycheva, Maria. *Eight companies have split among themselves public procurement construction contracts for 1.4 billion leva (Осем фирми са си поделили поръчки за 1,4 млрд лв. в строителството)*. Sega daily online edition. Available from: http://www.segabg.com/article.php?id=663140&utm_source=flip.bg [Accessed on 20 March 2015]. The article quotes a Bulgarian MP noting that in 2013, eight companies won public procurement contracts worth 1.35 billion Bulgarian lev from a total of 2 billion lev available for the construction sector.

²² See for example Georgiev, Ognian. (20 February 2015). *Theory and Practice of Manipulation (Теория и практика на манипулацията)*. Capital Weekly online edition. Available from: http://www.capital.bg/politika_i_ikonomika/bulgaria/2015/02/20/2476819_teoriia_i_praktika_na_manipulaciata/ [Accessed 20 March 2015].

	2010	2011	2012	2013
Number of awarding entities	2 585	3 217	4 662	5 302
Number of contractors	14 700	16 347	18 257	20 490
Total number of public procurement announcements	7 404	8 194	10 129	11 939
From this sum: above the EU threshold	1 599	2 022	2 570	3 653
From this sum: with EU funding	951	1 210	2 421	3 012
Public procurement announcements in construction works	1 056	1 177	1 552	1 791
Public procurement announcements in supplies	3 463	4 025	4 679	5 162
Public procurement announcements in services	2 877	2 989	3 888	4 986
Number of contracts	15 755	17 579	20 813	22 779

Source: PPA, 2014

Municipalities, predominantly through ESIF financing, have become some of the biggest contracting authorities for construction works. Naturally, among them, Sofia municipality, also acting through Metropolitan EAD, which is the public company in charge of the Sofia metro construction, redistributes the largest number and value of public procurement contracts in the construction sector. Highly ranked in terms of number and value of awarded contracts are also public entities, specializing in construction, such as the National Railway Infrastructure Company and the Road Infrastructure Agency (RIA). The dependency on EU funding for public procurement in the construction sector is further evidenced by the fact that the above mentioned four public entities alone are the largest ESIF beneficiaries with a total of 152 projects amounting to EUR 3.7 billion.²³ The distribution of ESIF projects among public bodies, in particular municipalities, to further contract them out to the private sector has created risks for favouritism – picking up only contracting authorities, which fall in line with the political majority of the day.

²³ The data is for all ESIF programmes in Bulgaria, as of 14 December 2014. More information is available from: <http://umispublic.government.bg/> [Accessed 14 December 2014].

4. Firm level analysis of public procurement in the construction sector

4.1. Methodological note

The firm-level analysis presented in this paper is based on a manually constructed database using a sample of the top 40 construction companies, ranked according to their total turnover for the period of 2008 - 2013²⁴. The database includes information on the number of public procurement contracts for construction works, awarded to the selected companies, based on Common Procurement Vocabulary (CPV) classification codes 44, 45 and 71²⁵. For each contract the database contains the following variables: forecast value; contract value; year of award; type of procedure; type of funding (national vs EU); information on subcontracting; number of received offers; name of contractor; and type of awarding body (conventional or sectoral).

For the purposes of simplification of calculations, we have assumed that the contract value has been paid in full during the respective year of the award. Although this is a strong assumption, it ensures the comparability of data within the investigation period. This assumption would certainly affect the calculation of the actual turnover of the companies implying that the contracts, which have longer implementation times, contribute lower shares to a company's annual turnover, other things being equal. However, it does not impact the core interest of the analysis that lies in the timing of the decision on committing public funds and their volume, which happens in the year of the signing of a public procurement contract. In very rare cases, where there is no information on the contract value but there is data available on the amount of funds actually paid out during the respective year, the latter is included instead. Public procurement, not referring to the selected CPV codes is excluded from the analysis. Some of the companies included in the top 40 of the construction sector have much high turnover from work unrelated to construction activities, such as utilities, etc. Data on these companies includes only procurement contracts for construction.²⁶ Such companies include sectoral operators in the energy sector, water supply, transportation, and postal services, which bid for procurement contracts for construction works but primarily operate in procurement within their specific sub-sectors.

For a more comprehensive analysis, the firm level data encompasses the construction procurement contracts awarded to third companies (hereafter referred to as linked companies), in which the selected sample of top 40 has equity ownership. The value of each public procurement contract, awarded to a linked company is recalculated depending on the percentage of ownership of the respective primary company, included in the sample. Other (softer) types of dependency between top 40 construction companies and third parties (e.g.

²⁴ Despite repeated requests under the Access to Public Information Act and the sending of several official letters for obtaining specific indicators for all public procurement contracts in the construction sector, the Bulgarian Public Procurement Agency (PPA) has not responded, and has effectively refused to provide the requested information.

²⁵ These three CPV codes relate most closely to construction. They have been used also in other ANTICORRP analyses, e.g. see Fazekas, M., Toth, 2014.

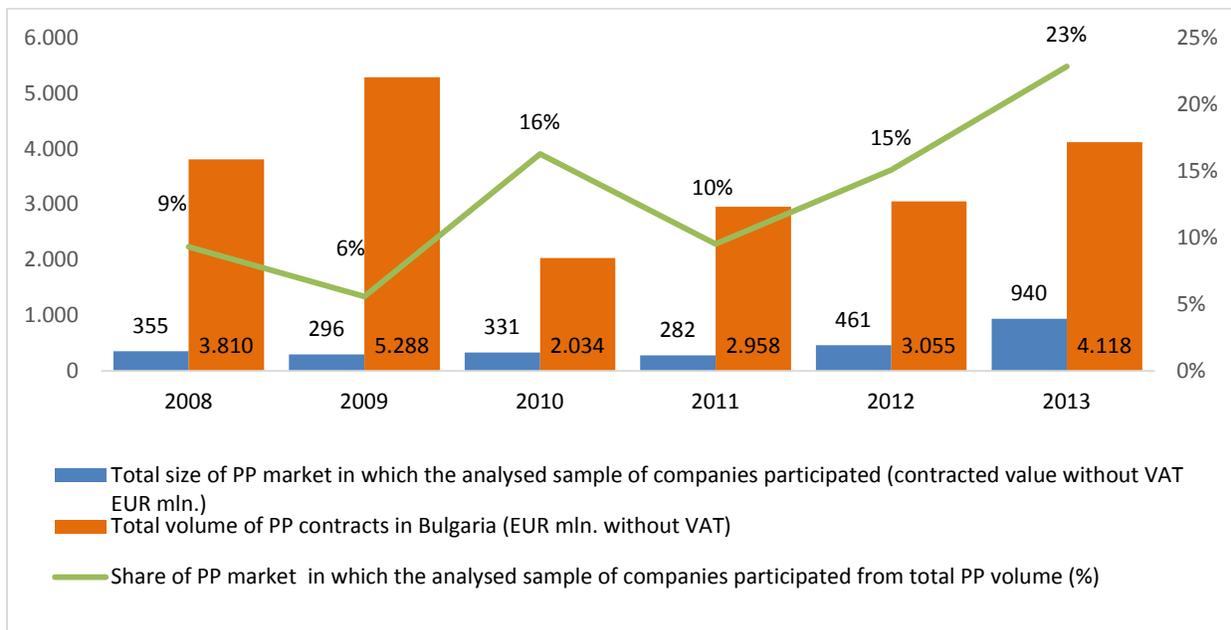
²⁶ Using CPV classification codes 44, 45 and 71

participation in the board of directors or similar governance structures) is not considered, and as a result, public procurement contracts, awarded to such related companies are excluded from the analysis.

4.2. State of play – public procurement dynamics of the top 40 construction companies

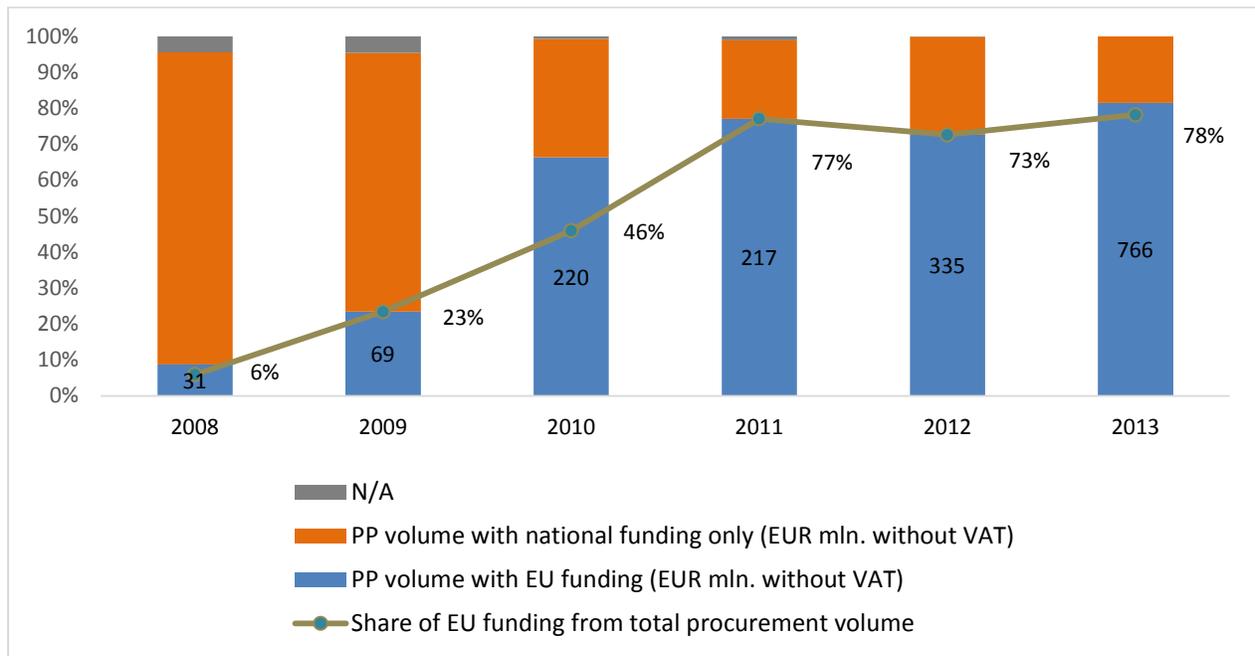
In 2013 the top 40 construction companies controlled 23% of the total value of the public procurement market in Bulgaria, which is more than double their share in the last pre-crisis year 2008 (Figure 10). The total value of the public procurement market of the top 40 construction companies amounted to EUR 2.7 billion for the 2008 – 2013 period. The rapid rise in the volume of the market in 2012 and 2013 can be explained with the accelerated absorption of ESIF financing, a considerable part of which was dedicated to construction and infrastructure projects (Figure 11). After the economic crisis, EU funding clearly displaced national funding in large-scale public procurement of construction works, which theoretically should have improved the quality of procurement and control. However, as it is unlikely that institutions or the governance regime can change dramatically in only three years' time, and research has demonstrated they have not (CSD, 2014), one can expect that this rise of the EU funding share has led to the transfer of inherent public procurement corruption risk to the EU funds realm. This has likely been exacerbated by the fact that municipalities have become the main contracting authorities for the top 40 construction companies (Figure 12). Financial corrections on EU funded projects imposed by the EC and/or delays in reimbursement of funds have led to the deterioration of the financial viability of municipalities. This in turn has made them more and more dependent on central budget subsidies, which is particularly true for smaller municipalities with no or insufficient funding base of their own.

Figure 10. Value of the public procurement market of the top 40 construction companies*



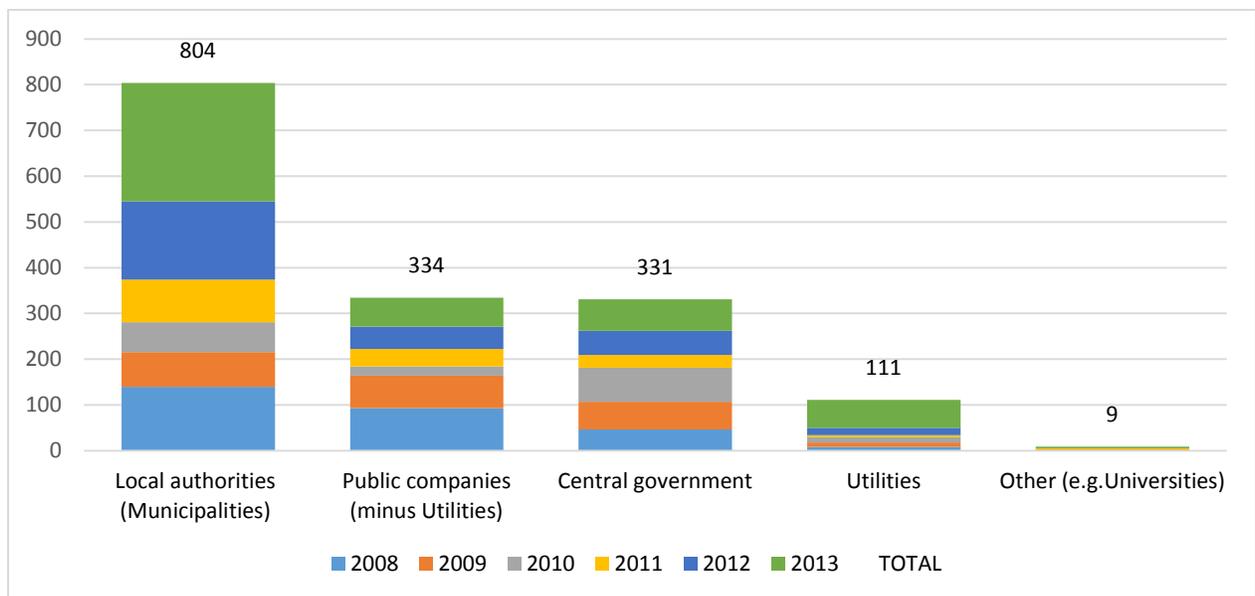
Source: PPA, CSD calculations; * excluding duplicates, i.e. large scale public procurement contracts, in which two companies from the selected sample took part.

Figure 11. Weight of the EU funding in the public procurement market value of the top 40 construction companies*



Source: PPA, CSD calculations; * excluding duplicates, i.e. large scale public procurement contracts, in which two companies from the selected sample took part.

Figure 12. Type of contracting authorities, which have awarded public procurement contracts to the top 40 construction companies (EUR million without VAT)



Source: PPA, CSD calculations.

III. NATIONAL PROCUREMENT LEGISLATION AND PRACTICE

1. Evolution of the Bulgarian legal framework: legislative efforts for increased transparency versus corruption practices

The Law on Public Procurement in Bulgaria identifies three major principles underlying the legal framework of public procurement, all related to anti-corruption and elements of the good governance regime: openness and transparency; free and fair competition; equal treatment and non-discrimination. These criteria serve as a point of departure in the evaluation of the corruption risk level, as well as in the identification of the most vulnerable aspects of the legal framework in the public procurement sphere.

After 1999 the legal framework of public procurement in Bulgaria has been mostly influenced by harmonization with the changing European legislation. The Law on Public Procurement (LPP) from 1999 has been replaced by a new one from 2004 following the adoption of two new directives on public procurement in the EU in 2004.²⁷ Upon EU accession Bulgaria had to repeatedly adjust its legislation to the developing *acquis communautaire*. The public procurement regime of Bulgaria was considerably liberalized. For instance, the scope of application of the LPP was narrowed and the value thresholds, above which the law's prescriptions became obligatory, were almost trebled. The contracts below the thresholds became subject to easier procedural rules set out in the Regulation on Small-Scale Public Procurement (RSPP), which was later abolished in 2012.²⁸ In 2006 Bulgaria embarked on a major overhaul of the main control mechanism over public procurement – the public internal financial control. The then existing unitary centralised body for inspecting public procurement of all state institutions and companies has been decentralised, with a much smaller central authority – the Public Financial Inspections Agency, and many independent internal audit units within the respective state authorities, e.g. municipalities. The reform has considerably weakened oversight in the short-term but has laid the ground for a more modern, risk-based approach to uncovering public procurement irregularities.

On 11 February 2014 the European Parliament and the Council adopted a revision of Directives 2004/17/EC and 2004/18/EC, as well as a directive on concession contracts²⁹. The Member States have until April 2016 to transpose the new rules into national law. In 2014 Bulgaria

²⁷ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (often referred to as “the Public Sector Directive”) and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procedures of entities operating in the water, energy, transport and postal services sector (often referred to as “the Public Services Directive”).

²⁸ Regulation on Small-Scale Public Procurement. (Prom. SG. No. 84 of 27 September 2004, repealed SG. No 17 of 28 February 2012). Available from: <http://lex.bg/bg/laws/ldoc/2135492182>

²⁹ Official Journal of the European Union L 94/1. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023&from=EN> [Accessed 10 December 2014].

amended the LPP, with several of the changes claiming to address particular corruption risks. A key role in the new legislative texts is attributed to the development of electronic platforms for e-public procurement. For instance, contracting authorities are now required to maintain a full electronic dossier on their websites, including tender documentation, but also records of the meetings of the tender commission, contract and annexes.³⁰

Several of the 2014 legislative amendments more directly affect the public procurement practice in the construction sector. Actions have been undertaken to restrict the weight of the “lowest price” criteria in awarding contracts³¹, as selection will be based on indicators for comprehensive assessment, publicly available in the announcement of the public procurement procedure (Boneva, K., 2014). Lowest price criteria is completely prohibited for certain design and construction public procurement.³² Requirement for publication of forecasted value in the public procurement announcements³³ is a complementary transparency measure against operators bidding with artificially lowered prices. Changes also affect the format of the evaluation committees, which, in the case of public procurement for construction works equal or above the threshold of EUR 5 million, will include one external expert, randomly selected from a list of pre-approved experts.³⁴ Measures were also taken with regard to the vicious practice of companies suspending contracts with their sub-contractors close to the end of the project, in order to avoid payments. The amendments provide guarantees that the contractual agreements between the parties involved will be kept.

The Bulgarian Construction Chamber has publicly voiced disagreement with the enacted changes, which the chamber will seek to overturn in a new drive for LPP changes in 2015³⁵. The Bulgarian Construction Chamber has sent an official letter to the Deputy Prime Minister in charge of the economy and EU matters, in particular objecting to the law’s requirements not to change sub-contractors and contract clauses in the implementation phase. Both changes to the law have been enacted in 2014 to preclude the use of what has been seen as two major venues for legal corruption (Kaufmann and Vicente, 2005) in public procurement. Before the enactment of the changes, administrations often awarded construction works based on the lowest price offered only but then changed the contract *post factum* during the implementation phase by signing addendums, and effectively increasing the cost of the works. The risks of legal corruption seem to be confirmed by the very high number of legislative changes introduced to the Bulgarian public procurement legislation citing EU legal approximation. Although the EU has enacted only two major changes in public procurement in the past decade, Bulgarian lawmakers have introduced a total of 27 sets of amendments to the public procurement law since 2005.

³⁰ Chapter II, Art. 22(b) LPP

³¹ Art. 37 LPP

³² Art. 37 (2) LPP

³³ Art. 25(2) and Art. 25(3) LPP

³⁴ Art. 34(2) and Art. 34(b) LPP

³⁵ The letter is available in electronic format on the web-site of the Bulgarian Construction Chamber here:

<http://www.ksb.bg/images/NOVO1/PredlojeniaKSB.pdf>

2. Control Mechanisms

Checks by the PPA, the National Audit Office (NAO) and the Public Financial Inspection Agency (PFIA) are the key instruments in ensuring transparency in public procurement. The violations of the public procurement law and procedures uncovered by the PFIA remain very high, signifying high corruption risks (Table 3). The capacity of the Agency to tackle problematic public procurement increases, but its deterrence and prevention effects are very limited and violations continue to be widespread. One reason is the constant political interference in the work of the agency, in particular in bigger public procurement contracts. In addition, it remains unclear what the role and impact of the decentralised internal financial control bodies is, which have inherited 9/10ths of the personnel of the former centralised stated internal financial control after the 2006 reform (see above). The NAO has sweeping audit authority but lacks investigative powers (Stoyanov A., Stefanov R., Velcheva, B., 2014).

Table 3. Inspection results of the Public Financial Inspection Agency (2007-2013)

Year	Volume of the inspected public procurement contracts (EUR million.)	Number of public procurement contracts with discovered violations	Volume of the public procurement contracts with discovered violations (EUR million.)
2013	2 333	1 376	918
2012	1 045	1 235	761
2011	746	821	54
2010	1 126	807	609
2009	554	724	337
2008	325	706	156
2007	527	776	307

Source: PPA Annual Reports; PFIA Annual Reports, 2013.

The ex-ante control performed by the PPA shows similarly high number of violations as in the PFIA case. Some 30% of the checked procedures were not fully compliant with the law (Table 4). After the recent LPP amendments, the ex-ante control performed by the PPA encompasses not only ESIF-funded procedures over EUR 1.3 million but also nationally financed public procurement for construction works equal to or above the threshold of EUR 5 million. Additionally, though not required by European legislation, contracting authorities in Bulgaria have been obliged to publish the notifications for opening negotiated procedures without notice, another major corruption risk area. The electronic Public Procurement Registry (PPR) makes

these documents available for public scrutiny.³⁶ In parallel, the PPA is required to perform ex-ante control of the documentation in all cases of public procurement involving negotiated procedures without notice.³⁷

Table 4. Results from PPA's ex-ante control of documents from negotiated public procurement procedures without notice

	Number of procurement documents
The selected procedure is fully compliant with the law	2513
The selected procedure could be considered compliant with the law if the Contractor presents sufficient additional evidence	695
The selected procedure cannot be considered compliant with the law or the evidence is not sufficient	461
The selected procedure is not compliant with the law	159
No position available (suspended procedure)	127
Total	4351

Source: PPA, 2014.

The new legislative provisions from 2014 establish two distinct platforms with a view of facilitating full access to information necessary for carrying out control activities on the part of the competent authorities. An "E-Monitoring"³⁸ platform will collect, archive and ensure online access to the protocols from all committees related to carrying out of public procurements, the framework agreements, the contracts between the contractors and the service providers, the additional agreements annexed to the contracts, and the subcontracting documents. An "E-Audit"³⁹ platform will allow physical persons and institutions to present in a structured way signals for deviation from the legal procedures of the PPL and the implementation of the contracts (Markov M., Dimova E., Aleksandrov A., 2014).

From a policy perspective, the 2014 Co-operation and Verification Mechanism report of the European Commission (EC COM(2014) 36 final) notes that in the area of public procurement, a complex and ever changing legislative framework has made it even more difficult to create a culture of objectivity and rigour. The e-procurement system still has limited functionalities. Some business voices are losing confidence that the tide of manipulation of tenders can be stemmed. The report also underlines that the ex-ante checks by the Public Procurement Agency are limited

³⁶ National Strategy for Development of Procurement 2014 – 2020, available from <http://www.strategy.bg/FileHandler.ashx?fileId=4826>

³⁷ Art. 20(b) LPP

³⁸ Art. 126(a) LPP

³⁹ Art. 126(b) LPP

in scope, which raises questions as to their effectiveness. More importantly, however, there are doubts about the effective enforcement of rules and the application of sanctions. At the same time companies and industrial associations complain of job losses and bankruptcies (for example in the construction sector) due to rigged public procurement contracts that leave no work for the smaller or law-abiding companies.

To address these challenges, a governmental strategy for the development of the public procurement sector for the 2014-2020 period foresees centralized procurement for central and municipal public structures and electronic procurement in various spheres.⁴⁰ A new framework law on public procurement, expected in the first half of 2015, is also in preparation with the aim of fully reflecting the newly adopted EU requirements.⁴¹

IV. DETECTING CORRUPTION RISKS

So far the analysis of corruption risks in public procurement in Bulgaria have been based primarily on two supplementing traditional economic models: (a) the principal-agent model; and (b) the classical individual behavioural model. The former explains the opportunities for gaining private benefit by disposing of taxpayers' money. Within the framework of this conceptual construct, the measures to counteract abuses in the management of budget spending are primarily related to making the mandate more specific, i.e. providing the details with regard to the responsibilities of contracting authorities in the public procurement process and reducing the scope of administrative discretionary powers in the contract awarding process. The classical individual behavioural model stems from the expected personal benefit and the individual price that the perpetrator expects to pay, depending on the likelihood of detection and punishment. Hence, counteracting measures are most likely to be effective if implemented at the level of individual incentives and disincentives concerning the corrupt interaction between the bribing party and the bribed party (Pashev. K., Dyulgerov A., Kaschiev A., 2006).

These traditional models regard corruption as an individual trait, and as a deviation from the norm, which is typical for well-established western democracies. They are less helpful in guiding anti-corruption reform policies in societies, in which corruption is still so widely spread that individuals believe it is the norm, which is the case in most new EU member-states, and in particular in Bulgaria (Mungiu-Pippidi, 2011). In this case, governance-based models seem more appropriate for detecting corruption risks. These analyse corruption risks as stemming from a set of institutional characteristics, which either provide resources/opportunities for corruption (e.g. more and larger public procurement contracts awarded through non-competitive procedures to a small set of pre-determined winners, with no independent oversight, nor proper judicial or civil control, etc.) or constraints/control of corruption (e.g. well-functioning system of competitive public procurement with many competing bidders, with systematic oversight and punishment of

⁴⁰ National Strategy for Development of Procurement 2014 – 2020, available from <http://www.strategy.bg/FileHandler.ashx?fileId=4826>

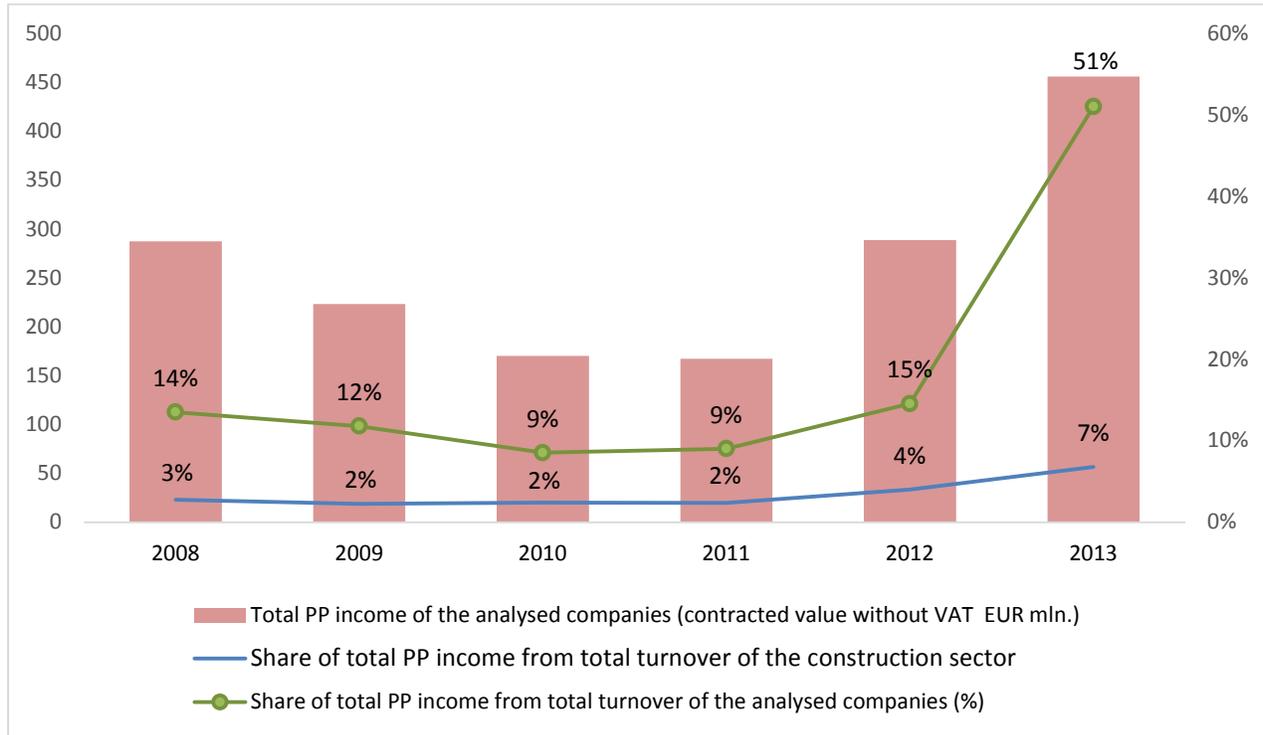
⁴¹ Action plan for the implementation of the National Strategy for Development of Procurement 2014 – 2020, available from http://www.aop.bg/fckedit2/user/File/bg/novini/Plan_OP.pdf

corrupt behaviour and preventive measures, etc.) (Mungiu-Pippidi, 2013). With its EU membership Bulgaria seems to have embarked on a course towards open access order (or a good governance model), which EU funds and peer pressure from other EU members are supposed to help bring along faster. But the majority of international and local assessments concur that Bulgaria's distribution of resources remains particularistic, with citizens perceiving corruption as the norm, which has impacted the very mechanisms meant to stem it, such as EU funds' management. (Stoyanov, Stefanov, and Velcheva, 2014).

1. Economic dependencies and corruption risks in the Bulgarian construction sector

Bulgarian construction firms have grown increasingly dependent on national and European public funds for revenues and growth, making them vulnerable to corruption pressure. As described above, the decline in the private sector opportunities related to the continuing economic stagnation following the European economic crisis of 2009 has led to the flocking of construction companies to public sector contracts. This coincided with the end of the first full EU budget cycle (2007 – 2013), in which Bulgaria took part, which necessitated an acceleration of EU fund absorption. As the importance of public procurement for construction companies grew, increasing their motivation to engage in non-market advantage seeking, the size of the individual public procurement contracts grew, providing the public administration with control over larger resources. Public procurement contracts have grown even larger for the top 40 construction companies. In 2013 public procurement awarded to the top 40 construction companies made up half of their total annual turnover (Figure 12). Hence, companies' success in achieving growth hinged to a very high degree on their ability to secure public procurement contracts. This in turn increases their sales officers' motivation to apply corruption pressure on the administration to secure public procurement contracts. The stagnation in the private construction market has on the other hand empowered the public administration to influence profits in the private infrastructure construction sector, which has provided it with additional leverage to extract illicit payments. While arriving at specific cases of particularistic distribution of public resources would require deeper case-study analysis, the review of the data derived from CSD's database on awarded public procurement contracts to the top 40 construction companies by turnover for the 2008 – 2013 period has allowed us to show that corruption risks in the public procurement in construction in Bulgaria have risen in the 2008 – 2013 period. From the available data though we cannot ascertain whether these risks materialised in higher corruption.

Figure 13. Share of public procurement revenue from construction works in the total turnover of the top 40 construction companies (2008 - 2013)

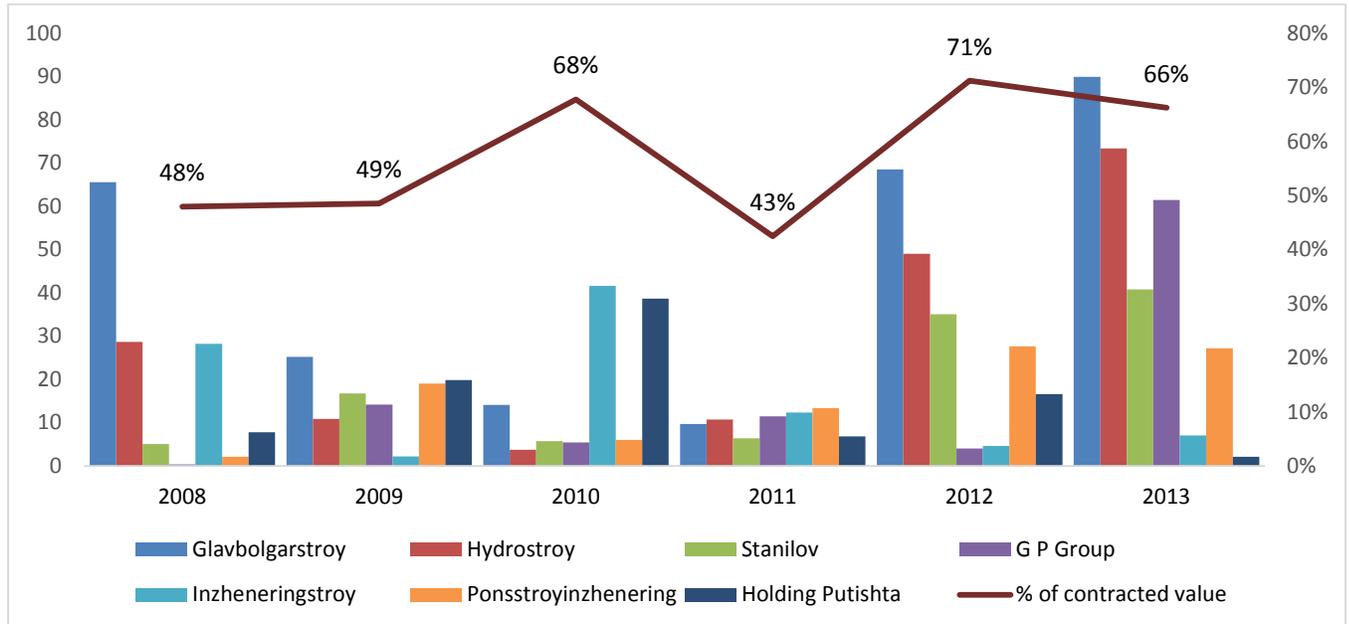


Source, PPR, Commercial registry, CSD calculations

Despite some progress noted, the overall inefficiency of administrative control over the implementation of mushrooming infrastructure projects could allow companies to more easily lower quality standards, thus both saving money and creating artificial demand for their future services, as badly built infrastructure deteriorates at faster rates. Savings stashed through lowering infrastructure quality could later be used to ensure support from the public administration by means of bribes for further projects of the same company. The country might in this manner drag itself into an infrastructure trap, maintaining high infrastructure expenditures as a share of GDP, yet continuously lagging behind average European levels in terms of both quality and quantity (CSD, 2009).

The analysis of the top 40 construction companies participating in the public procurement market demonstrates that few big companies controlled a significant portion of the market during the last five years. The top 7 construction companies in terms of awarded public procurement contracts commanded more than 2/3 of the public procurement contracts for construction works awarded to the top 40 companies. The top seven companies move significantly above the average sample values, both in terms of number of contracts and, especially, with regard to overall contracted value (Figure 13).

Figure 14. Public procurement revenue from construction works of the top 7 construction companies (EUR million left axis) and their share in top 40 construction companies' public procurement revenue (right axis) (2008 - 2013)



Source: PPR, Commercial registry, CSD calculations

The slightly lowered average ratio between forecasted and contracted prices, coupled with the limited number of restricted tenders and the competitive number of offers (5 on average) indicate high levels of competition among companies for winning public procurement contracts, which is also associated with higher leverage on the side of the public administration, as its monopsony power rises. Hence, one would assume that other things being equal, the opportunities for rent seeking have increased on the part of the administration, while they have decreased on the part of the participating companies, potentially producing a better overall outcome for society compared to the situation prior to the economic crisis. This would hold true if the quality of the implemented contracts remained constant or improved too, which cannot be ascertained at this point from the available data.

Previous studies have shown that companies tend to learn their lessons from participating in unsuccessful public procurement by withdrawing from subsequent bidding. With time fewer and fewer companies take part, and the market becomes monopolised by few players taking turns in winning public procurement contracts (CSD, 2007). Forms of corruption, which are more subtle and difficult to detect and counteract, such as favouritism, replace bribery in ensuring allocation of public procurement (Mungiu-Pippidi, 2011). Similar concentration of public procurement in such more subtle forms of influence seems to have taken place in the construction sector in Bulgaria. The top 7 largest enterprises have come to dominate the construction works market. Two of the companies (Glavbolgarsroy and Hydrostroy) have emerged as clear leaders in this respect, with the former winning contracts worth 20% of the total public procurement contracts value of the top 40 construction companies. All seven top construction companies have seen relatively stable performance or resilience vis-à-vis government changes (Figure 14). However, market concentration has been visible even among the top 40 construction companies with three

of the top 7 (Hydrostroy, GP Group, and Stanilov in this order) being the biggest in 2010 – 2013 political period (GERB right of centre minority government) compared to the 2008 – 2009 period (BSP centre-left coalition government). The first two companies added almost 5 pp to their shares in total top 40 public procurement contracts value, and the third one added almost 4 pp, while at the same time winning more and larger contracts. While, it is not possible to draw conclusive arguments from the available data, research has shown that cases of big road and energy infrastructure development projects have demonstrated that political patronage continues to play a role in winning larger public procurement contracts in Bulgaria (CSD, 2012).

2. Public procurement in the Bulgarian energy sector: corruption and state capture risks

Public procurement plays a substantial role in a number of activities related to energy – from building new power plants and purchasing materials and consumables to awarding consultancy and financial services. In public procurement energy enterprises act as contracting authorities in two cases: when they are public undertakings, i.e. when they are controlled by state authorities, or when they operate on the basis of special or exclusive rights related to natural gas, heat and energy, with a number of exceptions.⁴² In both cases they are considered to be sectoral contracting authorities.⁴³

The Bulgarian energy sector, a non-liberalized market with few large privatised electric distribution companies, weak regulatory authority, inherent secrecy and technological complexity presents an example of high corruption risk area. Considerable economic interests are at stake in the sector, with strong political lobbies and substantial national and international financial resources involved (CSD, 2007 & 2009). The high concentration of public funds (of state-owned enterprises) in large-scale complex public procurement in energy generates a persistent risk of corruption, fraud and abuse of public financial resources, which has been well documented throughout the years. Most big energy projects (e.g. Belene NPP, Tsankov Kamak HPP, SouthStream pipeline and the rehabilitation of coal facilities) can serve as examples of the recurring misuse of public procurement mechanisms. The lack of genuine competition and strong monopolization of individual segments in the energy sector; the high volume of energy exported via intermediaries; lack of transparency, public awareness and independent expert assessment; the restricted access to information on national security grounds; the technical complexity of the energy sector; and the critically low inspectorates' capacity are additional major factors contributing to heightened corruption risks in the energy sector. In a nutshell, the large energy infrastructure project initiated in Bulgaria between 1998 and 2008 all display the

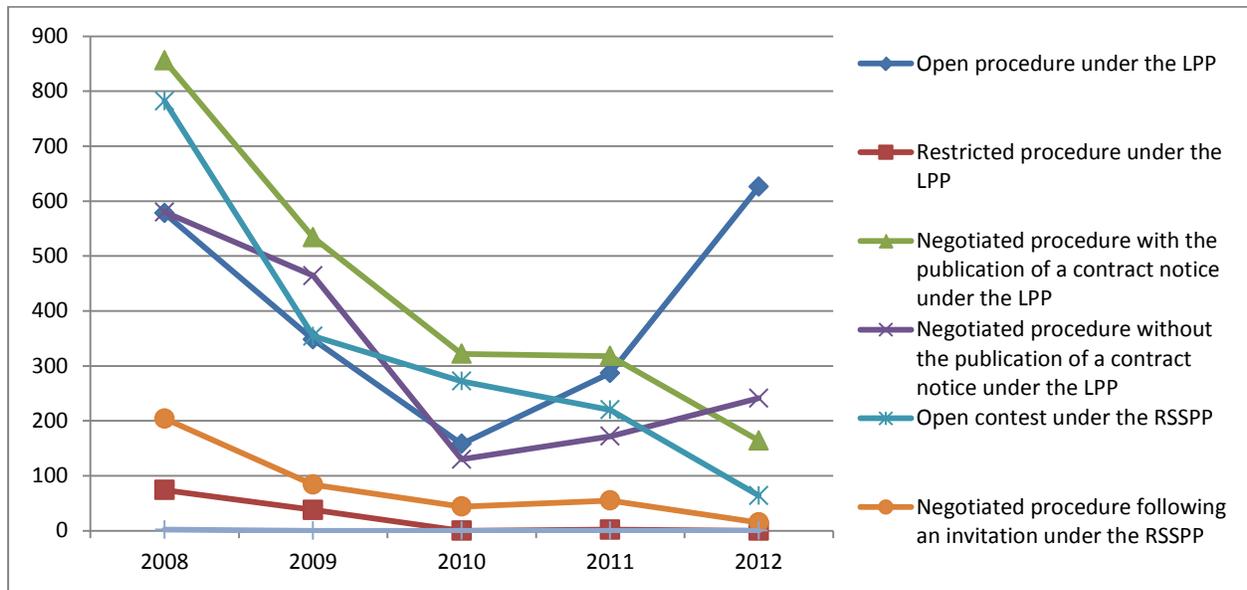
⁴² Article 7, items 5 and 6 read in combination with Article 7a of the Law on Public Procurement.

⁴³ The reasons why special procedures for the award of contracts apply to these entities are set forth in paras 2 and 3 of the preamble of Directive 2004/17/EC and fall in two groups: (a) the variety of ways in which national authorities can influence the behavior of these entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies and (b) the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the service concerned.

characteristics of a particularistic distribution of public resources – with concentration of considerable resources in time and place, and the lack of adequate deterrence mechanisms.

Non-competitive public procurement procedures⁴⁴ are generally considered an instrument particularly exposed to corruption. In the period 2008 – 2010, the period of the highest public procurement budgets, the share of non-competitive public procedures in the energy sector was systematically higher than the share of competitive contracts (Figure 15). Even after the exposure of the huge irregularities in the case of Belene HPP the share of non-competitive public procurement procedures remained higher in the energy sector than in the rest of the economy in the period 2010 – 2012. It should be noted that in 2012 the percentage of contracts awarded on a competitive basis in the energy sector increased to 62%, compared to 48.1% in 2011 and 46.4% in 2010. This improvement could be interpreted as the result of increased public scrutiny and ex-post controls by the relevant public institutions. However, in the beginning of 2014 Bulgarian authorities replicated in the South Stream case the worst practice from the now defunct Belene HPP project by awarding a multi-billion euro contract through a single public procurement procedure to a consortium, which media reports had named as the predetermined winner for constructing the pipeline in Bulgaria. In both cases these single public procurement procedures were comparable in size to the total value of the public procurement market in the country at the time of the awarding.

Figure 15. Number of Public Procurement Procedures Carried Out in the Energy Sector by Type (2008-2012)



Source: PPA, CSD calculations

⁴⁴ Non-competitive procedures include a limited number of interested parties submitting a tender, followed by negotiations. This category includes the negotiated procedure with and without publication of a contract notice under the LPP, the competitive dialogue, and the negotiated procedure following an invitation, as well as the selection among three submitted tenders, both under the RSSPP fall under this category.

2.1. Case study: The South Stream project

The implementation of the [momentarily suspended] South Stream project so far has revealed a number of management deficiencies in Bulgarian energy governance, which hint at high corruption risks. At the time of the award of the pipeline contract, many details of the project's implementation had been left unspecified and sensitive issues among the shareholders had not been resolved which could result in future conflicts affecting Bulgaria. The concerns about the management of the project were further substantiated by the lack of transparency in public procurement procedures for the choice of an Engineering, Procurement and Construction (EPC) contractor. As of 2015 the project has been suspended from the Russian side, with Bulgaria saddled with the risks of bad governance, and with no clear perspective of when the invested public money will be recovered.

Even before the EPC tender, the procedure for choosing a contractor to carry out the feasibility study preceded the signing of the statutes of the joint project company, thus blurring the separation of management responsibilities of the shareholders and the joint venture, and riddling the project with many corruption risk red flags (CSD, 2011). In principle, the joint venture is responsible for the organization and the financing of the feasibility study, and should ensure a competitive procedure for the choice of a contractor but has in effect been left to pick up the costs of someone else's decision. Moreover, South Stream Bulgaria has extended the deadline for document submission several times. The last extension was only for several hours implying either bad organisation of the procedure or purposeful tailoring of the tender offer for a specific applicant. In addition, providing only six working days for applications for a contract of such magnitude and levels of technical detail is clearly inadequate, especially in the absence of a prior indicative announcement. This practice is among the most commonly used methods of limiting competition in public procurement in Bulgaria, and is a clear sign of high corruption risk.

The public procurement procedure for a choice of an EPC contractor did not make much of a difference in the overall management of the project. South Stream Bulgaria issued an EPC tender on 31 October 2013 giving only two weeks for companies to submit the necessary documents⁴⁵. In addition, it was surprising that the whole execution of the project has been tendered in one procedure without clear division of the tasks in the respective stages. This immediately raised doubts that the outcome of the tender is pre-determined (Stefanov, R., Vladimirov, M., 2014). On 19 November 2013 the project company cancelled the tender without providing clear argumentation except the explanation that a large number of foreign companies had submitted requests to bid (CSD, 2014).

The second tender competition was announced in a similar fashion right after Christmas 2013 with a deadline for tendering of no more than 10 working days for companies to prepare their tender documentation. The tender specifications revealed extraordinarily strict requirements for the bidders including a proof of EUR 750 million in revenues from gas pipeline EPC contracts for the 2008-2012 period. The bidders had been asked to prove that they had access to EUR 250

⁴⁵ According to a Press Release by the Bulgarian Energy Holding from 31 October 2013

million in credit financing or their own capital. Most importantly, the bidders had to prove that in the last three years they had participated in pipeline projects with similar size and capacity⁴⁶. With tailored specification in place it was not surprising that the winner of the tender was a Russian-Bulgarian consortium led on both sides by companies seen as intimately close to the ruling elites in the two countries. The Bulgarian companies in particular have not had any prior experience with pipeline construction, indicating they were included in the bid on non-market considerations. The organization of the tender, its requirements, and the ultimate winner have all pointed to the presence of pre-existing preferences on the winning combination violating free and fair competition.

The irregularities related to the project's public procurement were further aggravated by the worsening geopolitical confrontation between Russia and the EU. In August 2014, the Russian side had to withdraw the leading company from the project as its manager was included in the US and EU sanctions list against Russia for its participation in the Ukrainian conflict⁴⁷. Instead of opening a new tender procedure the lead company was simply replaced by a Gazprom subsidiary, which further worsened Bulgaria's control on the project. Thus the Bulgarian authorities have, contrary to common sense, continued to uphold the country's stake in the project as the risks for its realisation have continuously increased while the control over the project outcomes has further slipped away from the Bulgarian side (Stefanov, R., Vladimirov, M., 2014).

V. CONCLUSION

Bulgaria has continuously modernized and improved its public procurement management and control institutions in line with its EU accession and membership. But public procurement remains trapped in the wider governance problems of the country, which still display the main features of a particularistic regime, far from being aligned to good governance or open access order norms. Recent developments have increased corruption risks in public procurement. Declining private sector opportunities and rising pressures for EU fund absorption by the end of the EU funding cycle in 2013 have led to both concentration of public procurement resources and market leverage in the public administration. Construction projects have increased as a share of total public procurement of the country, while its importance has also spiked for private, construction company turnover. EU financing has also risen steadily in construction works public procurement signifying that corruption risks inherent for the national public procurement system have unavoidably been transferred into the EU funds' realm.

The firm level analysis of public procurement contracts awarded to the top 40 construction sector companies introduced in this paper confirms the trend of concentration of the public procurement contracts to the top 7 companies in the construction sector, as well as the

⁴⁶ Data from the Public Procurement Registry, available from: www.aop.bg

⁴⁷ Petkova, Delyana. (4 August 2014). *Stroytransgaz leaves the South Stream project in Bulgaria ("Стройтрансгаз" напуска проекта "Южен поток" в България)*. Investor.bg. [WWW]. Available from: <http://www.investor.bg/ikonomika-i-politika/332/a/stroitransgaz-napuska-proekta-iujen-potok-v-bylgariia--177475/> [Accessed 8 December 2014].

increasing reliance of the sector on public procurement for its survival. The data does not confidently project specific type of favouritism but does hint that some companies' public procurement performance seems linked more to the government in office than to past or future performance. Corruption risks however are detected in specific cases, especially involving large-scale infrastructure projects in the construction and energy sectors.

The Bulgarian public procurement framework is largely in line with EU legislation but its implementation remains haphazard and riddled with corruption risks, as changes in the legislation continue to be too frequent to be explained only with EU approximation efforts. Recent amendments, introduced in 2014 have succeeded in addressing some particular corruption risks, such as lowering the weight of the lowest price criteria in award decisions, introducing additional ex-ante controls, and increasing overall transparency. Nevertheless, important limitations exist in terms of capacity of the controlling authorities and effectiveness of the procurement system, while detected violations remain high, hinting at the lack of proper preventive capacity.

The public procurement process cannot be decoupled from the overall progress in the transition from a particularistic to an open access or good governance regime. First and foremost, Bulgaria needs to tackle its endemic lack of trust of citizens in public institutions through strengthened law enforcement in particular as concerns higher-level, political corruption. Simultaneously, the government and its European partners can work to reduce opportunities and increase constraints to corruption in public procurement in the construction/infrastructure sector by adopting several groups of tools:

- Discontinuing the practice of awarding single public procurement contracts worth more than a certain threshold, which is aligned with the current management capacity of contracting authorities; a reasonable approach would be to limit single tender procedures to 5% of the average annual total public procurement market value for the past three years;
- Optimization of the legal framework towards increased transparency and competition in public procurement through the more aggressive introduction of e-tools;
- Enhancement of the effectiveness of legal remedy and control mechanisms, as well as more active prevention of market concentration;
- Strengthening the administrative capacity and more stringent requirements to the professional ethics of the responsible officials in the contracting authorities;
- Increasing the effectiveness of criminal prosecution, in particular in cases involving larger public financial resources;
- Introducing effective control over the property and income affidavits submitted by senior officials but also over conflicts of interest, which might hint at more subtle forms of corruption such as favouritism;
- Optimization of the legal framework regulating the financing of political parties and election campaigns, including independent candidates and lobbying to include non-monetary contributions such as employment, hidden subsidies, etc.

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This project is co-funded by the Seventh
Framework Programme for Research
and Technological Development of the
European Union



Project profile

ANTICORRP is a large-scale research project funded by the European Commission's Seventh Framework Programme. The full name of the project is "Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption". The project started in March 2012 and will last for five years. The research is conducted by 20 research groups in fifteen countries.

The fundamental purpose of ANTICORRP is to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue is how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP seeks to advance the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis is laid on the agency of different state and non-state actors to contribute to building good governance.

Project acronym: ANTICORRP

Project full title: Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption

Project duration: March 2012 – February 2017

EU funding: Approx. 8 million Euros

Theme: FP7-SSH.2011.5.1-1

Grant agreement number: 290529

Project website: <http://anticorpp.eu/>