

## Chapter 16.

### Public services in South East Europe

*This chapter on public services assesses the policy settings, strategies, processes and institutions in six South East European (SEE) economies. Drawing on the SIGMA (Support for Improvement in Governance and Management) Principles of Public Administration, this chapter uses five sub-dimensions to assess progress in public administration reform in the six SEE economies. The first sub-dimension, policy development and co-ordination, examines the policy-making system, policy planning, and transparency of government decisions and legislation. The second, human resources, assesses the merit-based recruitment and integrity of civil servants. The third, accountability, considers administrative judicial dispute mechanisms and public liability regimes, including the appropriate legislative frameworks. The fourth, service delivery, examines citizens' and businesses' experience of public services. Finally, the public procurement sub-dimension examines the legal and institutional public procurement framework and operations as well as the system for handling complaints. The chapter includes suggestions for enhancing key elements of public administration from across these areas which are critical to economic competitiveness.*

## Main findings

Effective public governance is characterised by accountability, transparency and responsiveness to the rule of law, and lays the foundation for economic growth and competitiveness. Well-functioning public institutions and services create incentives for businesses to invest. Additionally, a transparent, predictable and coherent regulatory approach strengthens the business environment. These characteristics rest on effective policy-making processes and a competent civil service.

The six South East Europe (SEE) economies assessed in the chapter – Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo,\* Montenegro and Serbia – have established the critical elements of public administration. However, their progress is uneven across different areas and from economy to economy. Generally, the six SEE economies have made the most progress in the areas of accountability and public procurement, although shortcomings persist. While they have established the key principles and functions for policy development and co-ordination, the SEE economies have the most room to improve in this area. In particular, their use of evidence-based approaches and public consultations in policy making are less well developed.

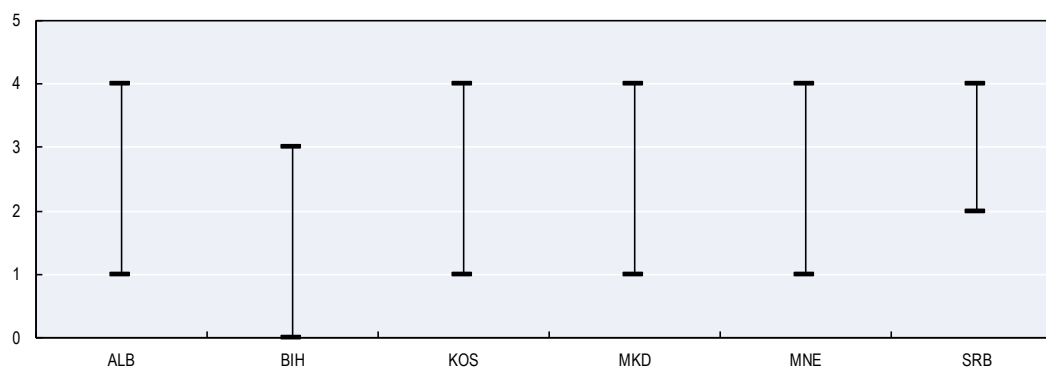
Across the 13 indicators assessed in this chapter, most of the SEE economies score a minimum of 1 and a maximum 4 – out of a possible top score of 5 – while Serbia ranges from 2 to 4 and Bosnia and Herzegovina from 0 to 3 (Figure 16.1). Montenegro leads its regional peers in the public availability of government reports, transparency and legal compliance of government decision making, and the functioning of its public liability regime. Serbia has basic elements in place across all areas and leads in public procurement. Bosnia and Herzegovina lags behind its SEE peers due to its complex constitutional arrangements and organisational structure.<sup>1</sup> The public service system in Bosnia and Herzegovina remains seriously fragmented.

### *Comparison with the 2016 assessment*

Over the past two years, despite several positive steps, there has been no major improvement in incorporating evidence and public participation into policy development in the six SEE economies overall, and there has even been some deterioration in Kosovo and the Former Yugoslav Republic of Macedonia. Although the economies have adopted new laws and regulations on regulatory impact assessments (RIAs) and public consultation, they have yet to fully implement them in a consistent way. In Kosovo and the Former Yugoslav Republic of Macedonia, the consistency with which public consultation procedures are enforced has deteriorated. Some progress has been achieved in the legal frameworks for public procurement in four of the SEE economies, while in Albania and the Former Yugoslav Republic of Macedonia no major developments have been observed. Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo and Montenegro have continued to improve their e-procurement platforms (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

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\* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Figure 16.1. **Public services: Indicator score range**

Note: The score range is for the 13 indicators included in this chapter as listed in Figure 16.2.

Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: the Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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## ***Achievements***

**The six SEE economies show increasing commitment to improving their standards of economic governance.** In recent years, the SEE economies have strengthened their efforts to improve their economic governance, supported by initiatives such as the Economic Reform Programmes (ERPs) and the *Competitiveness Outlook* assessment.

**The SEE economies have well-developed legislative frameworks for public procurement, including systems to handle complaints.** The frameworks are largely aligned with the European Union *acquis*, though some inconsistencies remain. The scope of their review and remedy systems are also to a large extent in line with the requirements of the *acquis*. However, one challenge to their implementation is the focus on procedural compliance rather than good outcomes.

**Most of the SEE economies have established legislative frameworks for merit-based recruitment of civil servants.** Key elements in place include the principle of merit, defined professional categories for civil service staff and legislated competition for positions. However, they are not fully reflected in practice.

**The six SEE economies have legal frameworks to guide procedures for government sessions** – i.e. formal, regular meetings of ministers. The legal frameworks set out procedures to prepare for, follow-up and communicate on government sessions. They also define the roles and responsibilities of the centre-of-government institutions which ensure legal compliance and conformity with procedures, and policy coherence.

### *Remaining challenges and key recommendations*

- **Strengthen the use of evidence in policy making.** Regulatory impact assessments (RIAs) should be conducted for all draft legislation and policies which require them, and should include basic elements such as a problem analysis and a comparison of the options, grounded in evidence. Furthermore, the RIA process and the financial impact assessment should be linked. Additional capacity building for line ministries should support this.
- **Further develop the public consultation legal framework and its implementation.** Requirements for public consultation should be more systematically enforced. Central portals for public consultation should be used more consistently.
- **Strengthen recruitment procedures for the civil service.** Objective selection methods should be reinforced by developing and using common standards to design written exams and structured interviews. The SEE economies should also enhance the capacity and professionalism of selection panels.
- **Reduce the backlogs in administrative courts of appeals.** Albania, Bosnia and Herzegovina, Kosovo and Serbia should develop and implement a corresponding action plan, including measures to increase the number of judges and legal assistants in the administrative courts and to establish a mechanism to regularly monitor the courts' workload. Albania and Kosovo should establish case-management systems, and Serbia should enhance its existing one.
- **Continue to modernise and digitalise public services.** The SEE economies should continue to implement their strategies and build political support for these reforms. They should provide digital skills training and awareness raising for the general public.
- **Further develop laws and implementing regulations on public procurement** by harmonising them with recent EU procurement directives. This includes abolishing preferences for domestic bidders and goods of domestic origin, and reducing the use of the lowest price as the only criterion for awarding contracts. Secondary legislation should be reoriented away from formal procedures and focus on transparency and value for money.
- **Enhance e-procurement systems and expand their use.** Montenegro should start implementing e-procurement, while the remaining economies should increase its use. Their e-procurement systems should be expanded to include monitoring functions and modern purchasing tools such as e-auctions, e-catalogues and dynamic purchasing systems.
- **Improve the procedures of public procurement review bodies.** Review procedures should be clarified and simplified to improve the quality of complaint processing. Electronic case-management systems should be made fully operational and mechanisms put in place to ensure the consistency of review bodies' decisions, especially by making past decisions fully searchable.

### **Context**

Effective public governance – which covers all aspects of the design and delivery of policy measures – is critical to creating a competitive business environment. Furthermore, it plays an important role in implementing crucial reforms, including those related to

accession to the European Union. All six of the SEE economies have committed to improving economic governance practices.

This chapter draws directly from the SIGMA (Support for Improvement in Governance and Management) *Principles of Public Administration* and its corresponding *Methodological Framework* to assess the public administration of economies seeking EU accession. SIGMA is a joint initiative of the OECD and the EU whose key objective is to support socio-economic development by strengthening the foundations for improved public governance. SIGMA has been providing tools and methodologies to countries in transition to bring them closer to the European Union for 25 years. Its Principles are based on universal good governance criteria tailored to the EU *acquis*, guidelines and instructions. As such, its monitoring framework defines a coherent set of requirements for successful EU accession (OECD, 2017g, 2017h).

This chapter considers a subset of the SIGMA public administration reform areas and indicators which are most directly related to competitiveness. Each of this chapter's sub-dimensions directly corresponds to a SIGMA area. The exceptions are the human resource management sub-dimension, which corresponds to the SIGMA public service and human resource management area, and the public procurement sub-dimension, which corresponds to the SIGMA public financial management area.

As the quality of public services determines a government's ability to deliver services and implement reforms, it cuts across government institutions and policy areas. This chapter is therefore inter-related with all chapters in the *Competitiveness Outlook*, and more particularly to the following chapters:

- **Chapter 1. Investment policy and promotion** benefit from effective public administration. Lighter administrative burdens on businesses and a more transparent, predictable and coherent regulatory environment can help attract more foreign investment (OECD, 2015).
- **Chapter 10. Digital society** aims to develop an economy's use of information and communications technology (ICT). Digitalisation has great potential for making public administration more inclusive, transparent and innovative. For example, ICT can make government data more accessible and usable as well as offer new ways to engage citizens in the reform process.
- **Chapter 17. Anti-corruption policy** is instrumental in building a public administration system with public officials who promote integrity and fight corruption – especially in public procurement and public service delivery. In corrupt environments, the competitiveness of markets is hampered by preferential treatment which may be given to those who pay bribes or have a personal connection.

### ***Public services assessment framework***

The public services dimension in the 2018 *Competitiveness Outlook* examines the extent to which governments have established policies to support effective public governance. Without seeking to be exhaustive, it considers five broad sub-dimensions:

1. Policy development and co-ordination: do government policy monitoring and reporting systems feed strategic information into the decision-making process? Are government decisions prepared in a transparent manner? Is the policy process evidence-based? Does public participation inform policy design? Is legislation accessible?

2. Human resource management: do governments ensure a competitive merit-based recruitment process for civil servants? Are candidates anonymously assessed? Do governments abstain from intervening in independent selection committees? Are legislative frameworks established to ensure the integrity of public servants?
3. Accountability: do governments ensure that state institutions are held accountable for their actions? Does a public liability regime exist? Does it hold individuals who wield public authority accountable for their behaviour? Do administrative courts offer the right of appeal to an independent authority? Are payments made to entitled plaintiffs in a timely manner?
4. Service delivery: do governments deliver public services in an accessible, competent and expedient manner? Are undue burdens to services removed? Do governments streamline processes whenever possible? Do governments offer performance feedback and monitoring of services? Are they responsive to citizen feedback?
5. Public procurement: how effective is the legal and institutional public procurement framework? Is the complaints handling system independent, transparent and efficient? Do public procurement operations make efficient use of public funds? Are modern procurement techniques and methods used?

The indicator scoring model and data collection methodology in this chapter are different from the standard *Competitiveness Outlook* approach. The five sub-dimensions listed above and the 13 indicators included in this assessment are a subset of the SIGMA public administration reform areas and indicators most related to economic competitiveness (Figure 16.2).

Figure 16.2. Public services assessment framework

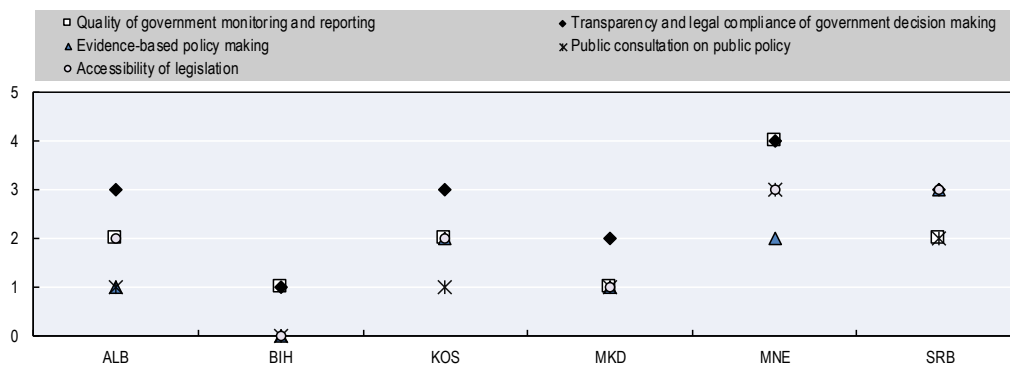
Public services dimension				
Sub-dimension 1 Policy development and co-ordination	Sub-dimension 2 Human resource management	Sub-dimension 3 Accountability	Sub-dimension 4 Service delivery	Sub-dimension 5 Public procurement
<b>Indicators</b> 1. Quality of government monitoring and reporting 2. Transparency and legal compliance of government decision making 3. Evidence-based policy making 4. Public consultation on public policy 5. Accessibility of legislation	<b>Indicators</b> 6. Meritocracy and effectiveness of recruitment of civil servants 7. Integrity of public servants	<b>Indicators</b> 8. Fairness in handling of administrative judicial disputes 9. Functionality of public liability regime	<b>Indicators</b> 10. Citizen-oriented service delivery	<b>Indicators</b> 11. Quality of legislative framework for public procurement and PPP/concessions 12. Independence, timeliness and competence of the complaint-handling system 13. Efficiency, non-discrimination, transparency and equal treatment practised in public procurement operations

Each of the 13 indicators comprises several sub-indicators which can either be qualitative, based on information such as legal reviews or expert interviews, or quantitative, based on administrative data and surveys. The quantitative sub-indicators encompass both output and outcome measures. This mixed method approach, combining information and data from a variety of sources and multiple methods, strengthens the findings. Each sub-indicator is scored according to the number of criteria that are met. For each indicator, the total number of criteria met from across the sub-indicators is converted into a value on a scale of 0 to 5; 0 being the lowest and 5 being the highest (see Annex 16.A1 for a summary of the scores).<sup>2</sup> For detailed information on the SIGMA assessment framework and indicators, see SIGMA's *Methodological Framework for the Principles of Public Administration* (OECD, 2017g). Based on this *Methodological Framework*, SIGMA assessed each indicator according to the information and data it collected. For the full analysis of the 13 indicators summarised in this chapter, as well as the full suite of indicators analysed, see SIGMA's individual economy reports (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

### Policy development and co-ordination

Transparent and effective democratic governance depends on a well-functioning policy-making system. Efficiently designed policies and services better enable governments to improve their citizens' well-being and their economy's competitiveness. Furthermore, policy development and co-ordination are critical to managing the reforms needed to prepare for EU accession. The policy development and co-ordination sub-dimension concentrates on the centre-of-government institutions that directly support the head of the government and the council of ministers, such as the head of the prime minister's office, cabinet secretaries and secretaries-general of the government. It also covers policy proposals such as draft laws and regulations or tax and spending measures. Five indicators assess the development and implementation of: 1) quality of government monitoring and reporting; 2) transparency and legal compliance of government decision making; 3) evidence-based policy making; 4) public consultation on public policy; and 5) accessibility of legislation.

Figure 16.3. Policy development and co-ordination: Sub-dimension indicator scores



Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: the Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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The six SEE economies have made the most progress in setting up and implementing key features of transparency and legal compliance of government decision making. Accordingly, each economy scores the highest for this indicator (Figure 16.3). In contrast, although the SEE economies have largely put in place requirements for public consultation on public policy, they are not consistently enforced – as reflected by the generally low scores for that indicator. Montenegro leads the SEE economies in almost all indicators, especially the quality of government monitoring and reporting. Bosnia and Herzegovina has the most room for improvement across all indicators.

***Government monitoring and reporting frameworks are in place, but quality could be improved***

Monitoring and reporting systems feed strategic information on the performance of public interventions into the decision-making process, which helps governments to adjust policy measures to meet their goals. Sound monitoring and reporting also fosters transparency and accountability by providing stakeholders with information on the government’s performance. As SIGMA Principle 5 in the policy development and co-ordination area states: “Regular monitoring of the government’s performance enables public scrutiny and supports the government in achieving its objectives” (OECD, 2017h).

The legal framework in the Former Yugoslav Republic of Macedonia stipulates regular monitoring and reporting of the implementation of key horizontal central planning documents, but not of sector strategies. Furthermore, the regulations do not require any of these reports to be made public except for the annual financial report on the budget. Consequently, except for the budget report, none of the monitoring reports are publicly available. Government reporting focuses on outputs and does not discuss outcomes (OECD, 2017e).

In Albania, a fragmented regulatory framework consisting of several legal instruments foresees the monitoring of central planning documents, as well as sectoral ones. However, the regulations do not require all of the reports on central planning documents to be published. Several institutions are involved in monitoring and reporting activities, using various reporting tools, templates and standards, but their roles are not clearly established. The reports prepared for planning documents vary significantly in quality (OECD, 2017a).

Kosovo has a legal framework for monitoring government annual work plans and budgets but no established legislative framework or procedures for monitoring and reporting sectoral strategies or the European integration programme. As a result, these strategies are not consistently reported on or reports are not published. Furthermore, most reports lack clear information about the achievement of the majority of outputs and outcomes (OECD, 2017c).

In Serbia, the legal framework for monitoring government annual work plans, budgets, the multi-annual action plan and the plan to adopt the EU *acquis* are in place. It has not established any legislative framework or procedures for monitoring and reporting on sectoral strategies. Serbia’s reports on strategy implementation are not comprehensively available for 2015 and 2016 because of regulatory gaps and inconsistencies in following the existing rules (OECD, 2017f). Serbia leads the region by having defined specific performance indicators in its annual mid-term strategy, the Economic Reform Programme (ERP), to monitor implementation progress. These indicators assess both outputs and outcomes, and are reported on, but could be more strategic in some cases (OECD, 2017i).



Montenegro’s legal framework stipulates regular monitoring and reporting of the implementation of key horizontal central planning documents, while individual sector strategies establish their own monitoring and reporting mechanisms and frequencies. There is a general requirement to publish materials which have been considered in government meetings, and in practice all reports are publicly available. The reports track implementation and outputs, but as the strategies themselves generally lack outcomes, these are also missing from the reports (OECD, 2017e). However, Montenegro is beginning to design and report on performance indicators which include outcomes in its ERP (OECD, 2017i).

In Bosnia and Herzegovina, the relevant legal frameworks at the state and entity levels define the requirements for annual reporting on the implementation of government annual work programmes, legislative plans and budget plans. However, there are no requirements or procedures to report on the implementation of sectoral strategies or the EU Action Plan, or to publish regular reports on the government annual work programmes at any administrative level. Although the State administration publishes reports on its work programme and legislative plan, the entities do not publish the reports on their work programmes, EU Action Plans or sectoral strategies. Overall, the quality of reporting documents in Bosnia and Herzegovina is weak (OECD, 2017b).

The findings from across the policy areas in this *Competitiveness Outlook* and the *SME Policy Index* (OECD et al., 2016) support this assessment. In general, monitoring and reporting activities are basic but are growing stronger. In some cases, donors’ project monitoring activities have provided a model for governments to follow.

### ***Regulations enforce the transparency and legal compliance of government decision making, but gaps remain***

A strong government decision-making system underpins effective policy development and implementation. Formal rules and common guidelines about how decisions are made, including how they will be co-ordinated across institutions, smooth the decision-making process. This supports the efficient and transparent use of public resources. To that end, SIGMA Principle 6 in the policy development and co-ordination area states: “Government decisions are prepared in a transparent manner and based on the administration’s professional judgement; the legal conformity of the decisions is ensured” (OECD, 2017h).

The legal frameworks in all six of the SEE economies set out procedures for the preparation, follow-up and communication of government sessions – formal, regular meetings of centre-of-government institutions to discuss and adopt various draft policy proposals. All assessed economies except Bosnia and Herzegovina have defined the roles and responsibilities of the centre-of-government institutions for ensuring legal compliance and conformity, and the policy coherence of policy proposals including draft laws and spending measures. In Bosnia and Herzegovina, no government institution has been designated to review the quality or policy coherence of policy proposals. In the Former Yugoslav Republic of Macedonia, the rules of procedure do not clearly state how to ensure the policy coherence of policy proposals and the institutions responsible for developing policy proposals, such as ministries, only partially fulfil their role – leaving gaps in the required documentation and sometimes formal legal scrutiny and financial-affordability checks are even missing. In Albania, consistency and coherency checks of policy proposals are not yet systematically carried out; instead, the focus is on legal compliance and the quality of legal drafting. Similarly, in Kosovo, the checks focus on compliance with procedural requirements. In contrast, draft laws in Serbia undergo legal and financial scrutiny, and RIAs are checked for coherence with existing policies but not

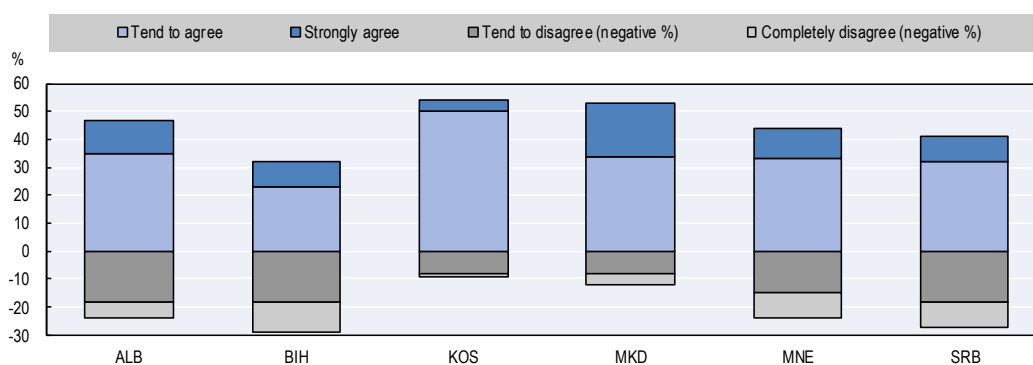
government priorities. In Montenegro, the content and coherence of policy proposals are checked, legal and financial scrutiny is carried out, and the quality of RIAs is checked, although negative opinions are rarely given (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

In Albania, the Former Yugoslav Republic of Macedonia and Kosovo, centre-of-government institutions have the authority to return a policy proposal to the lead ministry if it has flaws in its substance or form. However, in Bosnia and Herzegovina, and Serbia, centre-of-government institutions are not authorised to return proposals on the basis of flawed content. In Montenegro, items can only be returned to ministries in cases where the procedures have not been followed (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

In Montenegro, 96% of regular agenda items for government sessions were submitted on time (in the last quarter of 2016), 70% in Kosovo (in 2016), and 28% in Albania (in the last quarter of 2016) and in the Former Yugoslav Republic of Macedonia (in 2015). Serbia's legal framework does not set clear deadlines for the preparation and submission of draft proposals to government sessions. In Montenegro, the agenda must be published after it is approved and before the meeting is held, but this requirement is not consistently fulfilled. Decisions are made available online. In Albania, all administrative levels of Bosnia and Herzegovina, Kosovo and Serbia, government decisions are published, but agendas are not made public prior to the sessions, except in the Federation of Bosnia and Herzegovina, where agendas are published a few hours before the session. However, ensuring all decisions are publicly available in practice is a challenge for all levels of administration in Bosnia and Herzegovina. In the Former Yugoslav Republic of Macedonia, neither the agendas nor the decisions were publicly available until May 2017 (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Of the six SEE economies assessed, the Former Yugoslav Republic of Macedonia and Kosovo were the only two in which more than half the businesses polled by the 2017 *Balkan Barometer* survey found laws and regulations affecting their companies to be clearly written, free of contradictions and not changed too often (Figure 16.4).

Figure 16.4. Degree to which businesses agree relevant laws are written clearly (2017)



Note: Full question: To what extent do you agree with the following statement - Laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently?

Source: Regional Cooperation Council (2017a), *Balkan Barometer 2017: Business Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_BusinessOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_BusinessOpinion_2017.pdf).

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### ***Evidence-based policy making is still a challenge***

Basing policy making on high-quality evidence is critical if public interventions are to be effective. To ensure evidence is consistently and appropriately used in the policy-making process, key requirements and standards for analytical processes and budgetary impact analysis are needed. This reflects SIGMA Principle 10 in the policy development and co-ordination area, which states: “The policy-making and legal-drafting process is evidence-based, and impact assessment is consistently used across ministries” (OECD, 2017h).

All the SEE economies still face challenges in basing their policies on evidence. For example, although the SEE economies have made substantial improvements to their annual mid-term ERPs in the assessment of their economic environments, and in defining and prioritising measures to meet their policy objectives, their impact assessments and costing estimations are basic, if they exist at all (OECD, 2017i). Assessments in other policy areas of this *Competitiveness Outlook* are consistent with this finding.

Legal frameworks define requirements and procedures for submitting policy proposals to the government for approval in all six SEE economies. These include requirements to accompany policy proposals with basic analytical tools to assess its potential impacts and fiscal effects.

In Bosnia and Herzegovina, despite RIA requirements in the policy-making system and guidelines at the entity level, the overall quality of the analyses supporting policy proposals is very poor at all administrative levels. Institutions at the entity level – the General Secretariat in the Federation of Bosnia and Herzegovina, and the Ministry of Economic Relations and Regional Co-operation in the Republika Srpska – are responsible for quality control at the entity level, but they do not have the power to return low-quality RIAs to the originating ministry. At the state level, an amendment requiring RIAs has been drafted, but preparation to implement it is inadequate. At all levels, the financial implications of policy proposals are required to be assessed but they are not consistently conducted (OECD, 2017b).

In Albania and the Former Yugoslav Republic of Macedonia, even though it is required, the financial impacts of policy proposals are not consistently assessed, and when they are they are not conducted properly. The overall quality of RIAs supporting new policy proposals in these two economies is low as they often lack basic information: they do not properly define problems, fully consider or compare options, identify the impact on the budget, describe implementation aspects, or present any monitoring activities. In the Former Yugoslav Republic of Macedonia, the Ministry for Information Society and Administration, which conducts quality controls of RIAs, lacks the mandate to perform the task effectively as it does not necessarily receive other relevant documents and does not have the formal right to return RIAs to line ministries (OECD, 2017a, 2017d).

Policy-making systems in Kosovo, Montenegro and Serbia include elements of broad RIAs accompanied by guidance documents and quality control of impact assessments. Despite this, in Kosovo, only a minority of draft laws are accompanied by the mandated background analytical document. Therefore, the resulting analysis accompanying draft laws is poor – often not including any problem analysis or justification for government intervention. On the other hand, in Serbia, nearly all relevant draft laws were supported by at least a partial RIA. While these do define problems and compare options, their overall quality is poor and not sufficiently evidence based. Quality assessments of the RIAs are limited to the analysis of the opinions given by the Public Policy Secretariat

which are listed in a specific chapter but are not compared using any systematic approach. In Montenegro, RIA reports are prepared and analysed consistently by two departments of the Ministry of Finance: the Directorate for Budget and the Directorate for Financial System and Improvement of Business Environment. However, the quality of analysis is basic, budget impact assessments are very formal as they only refer to the cost provided for in the budget and there is no comprehensive training programme on RIAs (OECD, 2017c, 2017e, 2017f).

***Legal frameworks for public consultation on public policy are in place, but not consistently followed***

Meaningful public consultation results in better public policy, as citizens' input can improve policy design and implementation. The resulting public engagement and awareness also create greater acceptance of government programmes. Greater transparency in the policy-design process increases trust in government institutions. Finally, more active citizenship strengthens democracies (OECD, 2001). To that end, SIGMA Principle 11 under the policy development and co-ordination area states: "Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordinating perspectives within the government" (OECD, 2017h).

All six SEE economies have legal and regulatory frameworks that define the general principles and procedures for public consultation. Nearly all of them require ministries to report the outcomes of public consultation and to publish reports – with the exception of the state level and the Republika Srpska in Bosnia and Herzegovina. All the SEE economies except Albania require public consultation for all draft primary and secondary legislation and define minimum durations for public consultation activities. Only Kosovo, the Former Yugoslav Republic of Macedonia and Serbia require other relevant policy documents, such as the RIA report, to be published for public consultation. All the economies mandate all public consultation to be organised through a central portal and each economy has a functioning portal, although Bosnia and Herzegovina only has a state-level central portal. No economy uses its portal consistently, however. For example, Albania's electronic platform only became functional in 2017, and not all ministries are using it yet (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Kosovo is the only economy with an institution responsible for checking the execution and outcomes of the public consultation process – the Office on Good Governance of the Office of the Prime Minister. It took on this role in 2017 and is required to prepare an annual report on the functioning of the public consultation process (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Many of the mandated requirements for public consultation have not yet been implemented. This is particularly the case in Bosnia and Herzegovina, where implementation of existing practices at both the state and entity levels is poor and inconsistent, and there is little evidence that public consultation is being used. In the Former Yugoslav Republic of Macedonia, draft laws are not regularly published online and RIAs do not include basic references to public consultation processes (OECD, 2017b, 2017d). Furthermore, the European Commission Joint Conclusion highlighted an unpredictable regulatory environment without due stakeholder consultations (EC, 2017). The 2016 ERP consultation process only received two written comments, perhaps because of the limited time available for the process (OECD, 2017i). In Albania, the quality of public consultations varies significantly from ministry to ministry and activities are fragmented. In Kosovo, draft proposals for public consultation are not consistently published. In

Serbia, public debates are organised, but not for all laws, and consultation reports focus on procedural aspects and do not systematically record stakeholder suggestions or how they are addressed (OECD, 2017a, 2017c, 2017f). However, Serbia held two rounds of public consultations on the 2016 ERP and prepared a detailed table of all comments received and how they were addressed (OECD, 2017i). In Montenegro, the sample of draft laws analysed showed that the way key steps in the public consultation process are followed varies from ministry to ministry. For example, only just over half of the reports on the consultation process included any of the comments received (OECD, 2017e).

The assessments across the policy areas in this *Competitiveness Outlook* and the *SME Policy Index* (OECD et al., 2016) are consistent with the finding that despite the existence of legal frameworks for public consultation, consultations are not conducted consistently and lack the required follow-up documentation of the comments received and how they were addressed. For example, Chapter 1, on investment policy and promotion, finds that dialogue and online consultations were not conducted systematically and Chapter 2, on trade policy and facilitation, shows that formal consultation mechanisms are in place but consultation summaries are rarely published.

### ***Legislation is largely made accessible online***

Readily accessible legislation is fundamental to the rule of law. If citizens and business can easily access and understand legislation and regulation, it may be more difficult for government officials to impose arbitrary requirements. Accordingly, SIGMA Principle 12 in the policy development and co-ordination area states: “Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available” (OECD, 2017h).

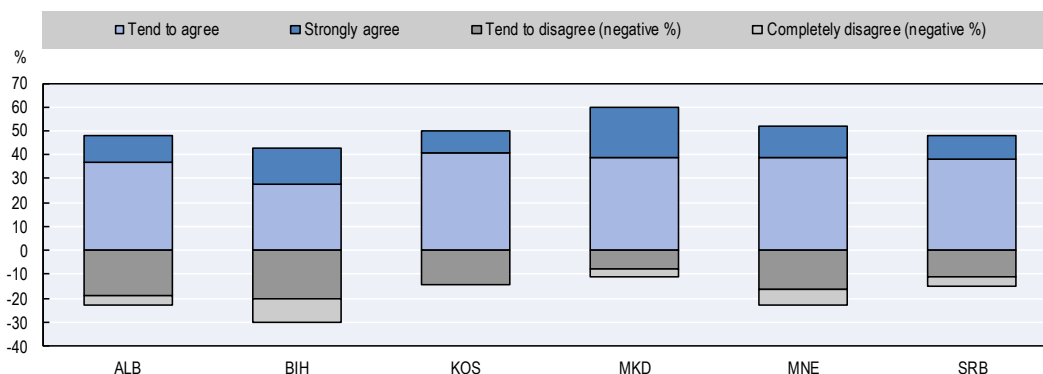
Legal frameworks for the accessibility of legislation are well established in all six SEE economies. In most of the economies these cover key elements such as procedures to make legislation accessible to the public, a competent body to publish legislation, deadlines for publishing legislation, and clarity on what types of legislation must be published and the responsibilities of bodies to submit adopted legislation and consolidated versions of legal texts. The exceptions are Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia where many fewer elements are in place. In the Former Yugoslav Republic of Macedonia, the rules do not define procedures and deadlines for publication, or the responsibilities of bodies submitting the adopted legislation for publication. In Albania and the Former Yugoslav Republic of Macedonia, consolidated versions of laws – bringing together the original act and all subsequent amendments – have no official status. In Bosnia and Herzegovina, at both the state and entity levels, the regulations do not outline the process for publication in the Official Gazette, they only identify the bodies responsible for publication. Basic requirements such as which documents need to be published, deadlines for publication after submission and the responsibilities of the bodies submitting legislation to the Official Gazette are yet to be defined (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

All six SEE economies have legally mandated central registries for legislation and they are all available online. Despite this, the extent to which legislation is available through these portals varies from economy to economy. In Montenegro and Serbia, primary and secondary legislation is widely available. However, in Montenegro there is no obligation to publish consolidated versions of legal texts, while in Serbia official consolidation can only be done if a law explicitly requires it. In Kosovo, all primary legislation is available online, but secondary legislation is only available online when

specifically requested by the Prime Minister and there is no obligation to publish consolidated versions of legal text. In Albania, significant efforts to make legislation available are underway, but not all laws are available online. In the Former Yugoslav Republic of Macedonia, all primary and secondary legislation is available electronically in the Official Gazette, but legislation adopted during the current year is only available for a fee; older legislation is available without charge. Finally, in Bosnia and Herzegovina, primary and secondary legislation is available in central registries at the state and entity levels, but at the state level and the Federation of Bosnia and Herzegovina, only legislation adopted after 2009 is available in electronic form and legislation adopted before 2009 is only available for a fee. There are no procedures for consolidating legislation at the state or entity levels, so consolidated versions are not comprehensively available (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

In most of the SEE economies, about half of the businesses polled by the 2017 *Balkan Barometer* survey found it is easy to obtain information about laws and regulations affecting their companies (Figure 16.5).

Figure 16.5. Degree to which businesses agree relevant laws are easy to obtain (2017)



Note: Full question: To what extent do you agree with the following statement - Information on the laws and regulations affecting my company is easy to obtain from the authorities?

Source: Regional Cooperation Council (2017a), *Balkan Barometer 2017: Business Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_BusinessOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_BusinessOpinion_2017.pdf).

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### *The way forward for policy development and co-ordination*

**Half of the SEE economies should amend their legal frameworks for policy implementation reports.** In Bosnia and Herzegovina, the entities should formally require the preparation and publication of regular implementation reports for government annual work plans and sectoral strategies. Albania should adopt a new methodology for monitoring and reporting cross-cutting and sectoral strategies, and provide guidance to ministries on using it. Ministries should also be required to report annually on the implementation of the analytical programme, supported by guidance. Kosovo should launch a system to report on sector strategy implementation (OECD, 2017a, 2017b, 2017c).

**Four of the SEE economies should strengthen policy monitoring and reporting activities.** The Former Yugoslav Republic of Macedonia should prepare and publish an annual report on the government annual work plan. Serbia should develop and publish monitoring reports on its cross-cutting strategies. The Kosovo government annual work

plan should contain concise and precise information on the implementation of planned activities by ministry. Albania should review its existing monitoring and evaluation practices to streamline procedures and integrate its monitoring systems into a single central system (OECD, 2017a, 2017c, 2017d, 2017f).

**Four of the SEE economies should include information about the outcomes of policies in their monitoring reports.** At the state and entity levels in Bosnia and Herzegovina, monitoring and reporting requirements should include information on progress towards policy objectives. Implementation reports in Kosovo and Montenegro should include an assessment of the impact of policies, not just outputs such as activities that took place. Serbia should include information on achievements of agreed policy objectives in its monitoring of central planning documents (OECD, 2017b, 2017c, 2017e, 2017f).

**The Former Yugoslav Republic of Macedonia and Kosovo should make all policy monitoring reports publicly available immediately after they are approved.** The Former Yugoslav Republic of Macedonia should also include sector strategies. Kosovo should publish its implementation reports for the National Programme for the Implementation of the Stabilisation and Association Agreement (OECD, 2017c, 2017d).

**Serbia should strengthen its legal framework for government session procedures.** The rules and procedures should define the timeframe for submitting proposals for government deliberation. Relevant regulations should be amended to allow material submitted for government sessions to be returned to the ministries if it doesn't meet quality standards. An institution should be appointed to review the content of all policy proposals (OECD, 2017f).

**Five of the SEE economies should strengthen quality controls of policy proposals submitted to government sessions,** covering their affordability and coherence with government priorities and European integration commitments. In Albania, Bosnia and Herzegovina, Kosovo and Montenegro, proposals which do not meet mandated criteria or contain flaws should be returned to originating ministries. In the Former Yugoslav Republic of Macedonia, the Secretariat for Legislation should only scrutinise legislative proposals for deliberation in a government session, while the legal departments of the General Secretariat should handle other non-regulatory and non-priority items (OECD, 2017a, 2017b, 2017c, 2017d, 2017e).

**Four of the SEE economies should make the government decision-making process more transparent.** In the Former Yugoslav Republic of Macedonia, all government session agendas and decisions, except those containing confidential information, should be made publicly available and in Kosovo and Serbia, government session agendas should be published in advance. Serbia should also review its approach to publishing all types of government decisions, including government conclusions, and widen publication to include all government decisions unless they are purely administrative or would jeopardise the national interest. In Bosnia and Herzegovina, the entities should make all decisions publicly available and should review their regulatory frameworks and procedures governing decision-making systems (i.e. making government decisions and government session agendas publicly available) and make them more transparent (OECD, 2017b, 2017c, 2017d, 2017f).

**All six SEE economies should improve the quality of their impact assessments in the policy-making process.** Albania should develop a clear plan for RIA implementation within its policy-making system, including costing policy proposals, after the pilots are

complete. In Albania and Serbia, RIAs should be submitted alongside draft proposals to parliament. Serbia and the Former Yugoslav Republic of Macedonia should align the processes for developing financial impact assessments and RIAs. The Former Yugoslav Republic of Macedonia should also develop detailed guidance for costing draft laws and strategies. All administrative levels in Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo and Montenegro should rigorously enforce requirements to conduct RIAs, and enable those of insufficient quality to be returned to the originating ministry. Kosovo should improve the analytical quality of budgetary impact assessments so the reasons for selecting preferred options are clear. Montenegro should evaluate its RIA system, including which proposals need an RIA and how the RIA relates to the overall draft proposal explanation (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

**Four of the SEE economies should strengthen the legal framework for and the implementation of public consultation activities.** In Bosnia and Herzegovina at all administrative levels, the legal framework for public consultation and its implementation should be enhanced and public consultation reports in policy proposals should be checked against the consultation requirements. Montenegro should amend its legislation to provide supporting documents alongside draft laws under consultation. The Former Yugoslav Republic of Macedonia should enforce requirements for public consultations. Albania should develop its public consultation guidelines to help ministries meet all the requirements, and ensure all ministries consistently use the electronic portal for public consultations (OECD, 2017a, 2017b, 2017d, 2017e).

**All six SEE economies should make all primary and secondary legislation available online.** Bosnia and Herzegovina, and Montenegro should make all legislation, including consolidated versions, available for free while the Former Yugoslav Republic of Macedonia should ensure recent legislation is freely accessible. Bosnia and Herzegovina should also establish rules and procedures for preparing the consolidated texts of major laws. Kosovo should establish a mechanism to publish all secondary legislation in the Official Gazette, as well as consolidated versions of normative acts. Serbia should move towards routinely compiling consolidated texts of legislation, as should the Former Yugoslav Republic of Macedonia once it has implemented a legal solution to do so. Albania should make all primary and secondary legislation available in an officially consolidated form in an online database (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

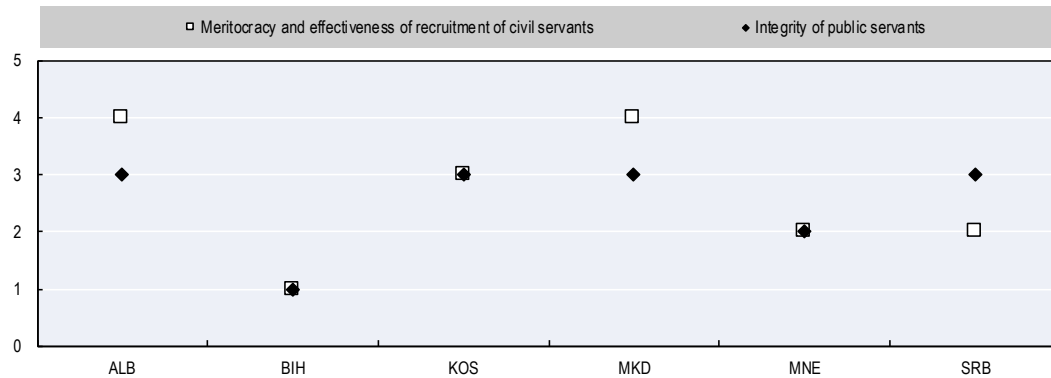
## Human resource management

Effective human resource management ensures the right people are in position to achieve public policy objectives. Merit-based recruitment entails the competitive, fair and non-discriminatory selection of people to public-sector jobs. The recruitment of competent officials helps ensure outcomes can be efficiently delivered by skilled professionals and, crucially, establishes a degree of reliability in public services. What is more, selecting and retaining a professional civil service improves the perception of the public sector, and inspires qualified individuals to join their ranks. Likewise, high levels of integrity among civil servants ensure that state employees act in the best interests of the citizen, forgoing opportunities for personal gain and upholding high professional standards. Public-sector integrity is linked to a more honest service delivery culture and as a direct consequence, a better-managed and well-functioning state administration. Two indicators assess the legal frameworks and practice of: 1) meritocracy and effectiveness of recruitment of civil servants; and 2) integrity of public servants.



All six assessed SEE economies have frameworks in place for the merit-based recruitment of public servants and guidelines on integrity for civil servants, although gaps remain in both areas (Figure 16.6). The Former Yugoslav Republic of Macedonia and Albania lead overall, particularly in merit-based recruitment, where they both score 4. However, the Former Yugoslav Republic of Macedonia held a very limited number of recruitment procedures during the assessment period, which means its score on this indicator should be interpreted with caution. Bosnia and Herzegovina has the most room for improvement for both indicators.

Figure 16.6. **Human resource management: Sub-dimension indicator scores**



Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: The Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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### ***Merit-based recruitment procedures are in place, but gaps remain***

A merit-based recruitment process means that the best candidate is hired through an open, fair and competitive selection process. Appointing the most eligible candidate enhances the performance of the public sector by increasing staff competence and thus boosting the overall attractiveness of public-sector work. A merit-based selection process represents the first step in establishing a more responsive civil service and ultimately leads to public-sector savings and greater economic gains. Accordingly, SIGMA Principle 3 in the public service and human resource management area states: “The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit” (OECD, 2017h).

Although all six SEE economies have legal frameworks for recruitment procedures for civil servants based on the principle of merit, there are shortcomings in the regulations and practices which challenge this principle. Albania, the Former Yugoslav Republic of Macedonia and Kosovo all prepare annual staffing plans, which facilitate more timely procedures. Albania has improved its selection method for external recruitment by introducing anonymous and electronically graded multiple-choice questionnaires for the written test. However, limited capacity for staff planning and shortcomings in job

descriptions contribute to delays in the organisation of pooled recruitment. In the Former Yugoslav Republic of Macedonia, the Agency of Administration provides effective management of the selection processes. In Kosovo, selection panels have wide discretion to formulate written and oral test questions, which compromises the objectivity of the selection process. In Bosnia and Herzegovina (at all administrative levels), Kosovo and Montenegro, ad hoc selection committees formally provide impartiality during recruitment, but in practice the majority of committee members come from the recruiting institution and are not sufficiently trained, which reduces the level of professionalism. In Bosnia and Herzegovina, especially at the state level and in the Federation of Bosnia and Herzegovina, application procedures continue to be quite bureaucratic and time consuming, with no evidence to show how they support merit-based selection. The entrance examinations differ between the state and entity levels and they are not systematically recognised across administrative levels, creating obstacles for candidates. In Montenegro, a legal provision allows candidates to be assessed with alternative methods without needing to specify a reason for such an exception, and the lack of uniform standards for designing written tests challenges the principle of equal opportunity for all candidates. In Serbia, institution heads have discretionary power to select candidates from a closed list, and temporary personnel are exempted from the standard recruitment process, challenging the principle of merit (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The recruitment process took less than three months in at least four of the five institutions assessed in Albania and Kosovo, as well as in the very limited number of recruitment procedures in the Former Yugoslav Republic of Macedonia. Data were unavailable in the remaining three SEE economies (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

A lack of eligible candidates is a challenge in Bosnia and Herzegovina, Montenegro and the Former Yugoslav Republic of Macedonia. In the latter, new language and computer skill certification requirements that may not be relevant to the work may pose barriers to otherwise suitable candidates. In Albania, the number of eligible candidates per vacancy fell significantly from 10.9 in 2015 to 7.4 in 2016. The retention rate of newly hired civil servants is an indicator of the effectiveness of recruitment procedures. Over 90% of civil servants appointed in the year before the assessment had stayed in the civil service for at least one year in Albania, the Former Yugoslav Republic of Macedonia and Kosovo. Data were unavailable for the other three SEE economies (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

***Policies and frameworks to promote the integrity of public servants are in place but enforcement could be strengthened***

The integrity of public servants entails their respect for legal codes of conduct and personal ethics to act in the best interest of citizens, and forgo opportunities for personal gain. The degree to which institutions and their representatives act in good faith is a measure of civic culture, and informs how individuals perceive and trust their government. For example, instances of bribery not only undermine the rule of law – they corrode the moral authority of the state and its public institutions. The integrity of public servants is an important pillar of human resource management as it facilitates a more reliable civil administration and helps fight corruption by holding public servants to account. This is reflected in SIGMA Principle 7 in the area of public service and human resource management, which states: “Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place” (OECD, 2017h).

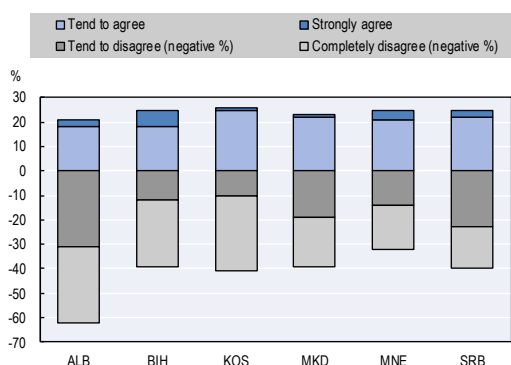
Apart from Bosnia and Herzegovina, all of the SEE economies have legal frameworks that contain the key elements for public-sector integrity. Albania's, however, is complex and highly fragmented, while Kosovo's framework has shortcomings in the areas of conflicts of interest and whistleblower protection. Bosnia and Herzegovina does have some relevant laws and institutions. The Agency for the Prevention of Corruption and the Co-ordination of the Fight against Corruption has powers to promote integrity, but only among state-level institutions, and it has no investigative powers. It has a law on whistleblower protection at the state level and in the Republika Srpska, although the latter has yet to be implemented (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f). For more information see Chapter 17 on anti-corruption policy.

Apart from Bosnia and Herzegovina, and Montenegro, the remaining SEE economies also have comprehensive public-sector integrity policies accompanied by action plans. In Montenegro, in the absence of a multi-year anti-corruption policy, the Agency for the Prevention of Corruption works on the basis of annual operational plans. In Bosnia and Herzegovina, the State and each entity have a strategy in place, and those of the State and the Federation of Bosnia and Herzegovina are accompanied by action plans. In the Former Yugoslav Republic of Macedonia, the programme's narrative section is quite complete and based on international reports, and its action plan outlines measures and timelines, though it lacks cost estimates. In Kosovo, instead of a diagnosis of the current situation, its strategy generally references the previous one and does not specify how implementation is to be funded. Albania, the Former Yugoslav Republic of Macedonia, Kosovo and Serbia all have resources to monitor public-sector integrity policy implementation (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Montenegro's anti-corruption agency seems well established, and its decisions and opinions have led to the resignation and dismissal of public officials. In Albania on the other hand, a high proportion of investigative cases against public servants that were referred to the prosecutor remain unanswered. In Kosovo, the number of cases referred to the prosecutor fell by about 70% between 2015 and 2016 for unknown reasons. In Bosnia and Herzegovina, legislated sanctions and procedures are rarely used in practice. Data on the use of integrity investigations were unavailable in the Former Yugoslav Republic of Macedonia and Serbia (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

According to the 2017 *Balkan Barometer* survey, citizens and businesses perceive corruption in the public sector to be rather high across the six SEE economies. About one-quarter of them agree that it is common for firms to have to pay some irregular "additional payments" or "gifts" to "get things done" (Figure 16.7). However, less than one-tenth of citizens reported paying a bribe in the past 12 months for any government service (Figure 16.8).

Figure 16.7. Degree to which businesses agree paying bribes to public officials is common (2017)

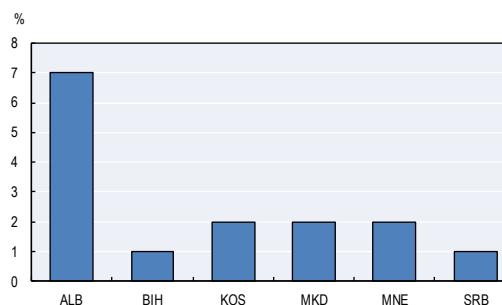


Note: Full question: Thinking about officials, to what extent would you agree with the following statements - It is common for companies in my line of business to have to pay some irregular “additional payments/gifts” to “get things done”?

Source: Regional Cooperation Council (2017a), *Balkan Barometer 2017: Business Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_BusinessOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_BusinessOpinion_2017.pdf).

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Figure 16.8. Share of citizens reporting to have paid a bribe for any government service (2017)



Note: Full question: In your contact or contacts with the institutions, have you or anyone living in your household paid a bribe in any form in the past 12 months - Any government services?

Source: Regional Cooperation Council (2017b), *Balkan Barometer 2017: Public Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2017.pdf).

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### *The way forward for human resource management*

**Half of the SEE economies should improve the civil service recruitment process.** Albania should enhance the quality of job descriptions and speed up the organisation of recruitment from the date of publication to reduce delays in filling vacancies, while Serbia should simplify its application process. Bosnia and Herzegovina, at the state and entity levels, should amend recruitment regulations to reduce the cost and formalities involved for candidates in applying for civil service positions (OECD, 2017a, 2017b, 2017f).

**Four of the SEE economies should strengthen their merit-based recruitment procedures for the civil service.** Serbia should fill temporary positions on the basis of competition. In Bosnia and Herzegovina, all responsible institutions should propose unified rules to recognise entrance exams across all levels of administration. Montenegro should change the underlying principles of selection panels to increase the stability of their composition, develop common standards for the design and administration of the practical part of the written test across the civil service, and apply unified candidate assessment methods. For both internal and external competitions Kosovo should enhance the capacity of selection panels to use objective selection methods and standards, ensure the anonymity of written tests, and support the use of structured selection interviews (OECD, 2017b, 2017c, 2017e, 2017f).

**Albania and the Former Yugoslav Republic of Macedonia should aim to increase the number of candidates in public competitions.** The Former Yugoslav Republic of Macedonia should conduct communication campaigns to promote employment opportunities and Albania should investigate why the number of applicants is falling, and seek an effective solution (OECD, 2017a, 2017d).

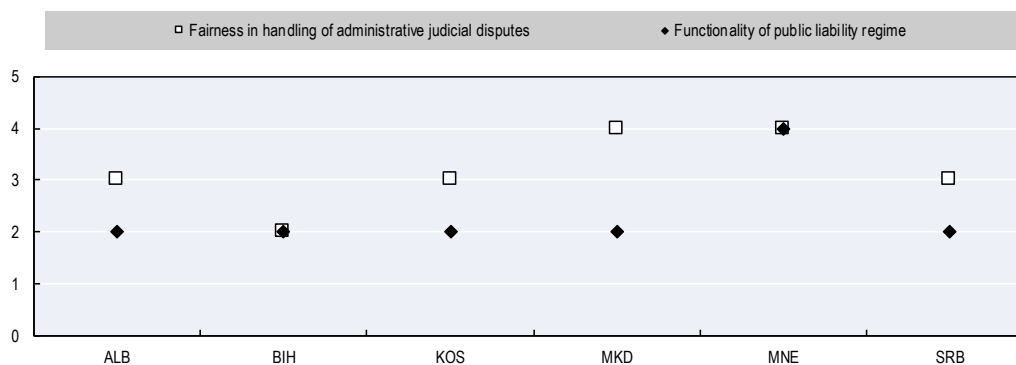
**Bosnia and Herzegovina, and Montenegro should take further steps to promote integrity across the public services.** At the state and entity levels, Bosnia and Herzegovina should ensure adequate political support and resources for promoting integrity and preventing corruption. Montenegro should prepare a multi-annual plan for the prevention of corruption and for promoting integrity in public service (OECD, 2017b, 2017e).

## Accountability

For a government to function effectively it should be answerable to the public it serves. Without mechanisms for redress, states are free to act unlawfully. Among the elements supporting public accountability, administrative judicial dispute mechanisms and public liability regimes provide important checks on government power, including those affecting economic activities, and are therefore particularly relevant for a strong business environment. Administrative judicial dispute mechanisms ensure that state institutions are held accountable for their actions, including personal transgressions or the omission of services. Similarly, a public liability regime holds individuals who wield public authority accountable for their behaviour towards the public. Two indicators assess the development and implementation of: 1) fairness in handling administrative judicial disputes; and 2) the functionality of the public liability regime.

All six of the SEE economies have frameworks to govern administrative judicial disputes and public liability, but the consistency of their application varies (Figure 16.9). None of the economies could provide data on payments made in public liability court cases, which limits the analysis. With a score of 4, Montenegro is the highest performer of the SEE economies for the functionality of its public liability regime, in part because it is the only the economy to provide data on the application of its public liability mechanism by the courts. Montenegro also scores 4 for administrative judicial disputes, as does the Former Yugoslav Republic of Macedonia – in these two economies cases are handled reasonably quickly and backlogs are not a problem. Bosnia and Herzegovina has the most room for improvement across both areas.

Figure 16.9. **Accountability: Sub-dimension indicator scores**



Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: The Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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***Legal mechanisms support the right to fair treatment in administrative courts, but long delays can be a barrier to justice***

The accessible and uniform application of justice ensures plaintiffs have equal opportunity for redress – including administrative disputes which involve the exercise of public power as classified by the country’s legal regime. Fair and accessible administrative justice reduces the risk of arbitrary power over economic matters and levels the playing field for individual actors. For example, if an application for a building permit is denied, the decision can be appealed in an administrative court, which is a generally faster and cheaper process than in the general courts. This is reflected in SIGMA Principle 4 in the area of accountability: “Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews” (OECD, 2017h).

The six SEE economies all have legislative frameworks for administrative justice, giving individuals the right to challenge the lawfulness of administrative acts, including those related to the regulation of economic activity. In Bosnia and Herzegovina, the legal regime for judicial review of administrative acts is decentralised, with separate laws on administrative disputes at the state and entity levels (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

In Albania, Montenegro and Serbia, accessibility to administrative justice is strengthened through legal assistance programmes and fee waivers to those in need. In the Former Yugoslav Republic of Macedonia court fees are not so high as to restrict access, and a number of exemptions from fees are also available. In Kosovo, court fees in administrative cases are fairly low and low-income applicants may be exempt from paying them. However, in Bosnia and Herzegovina, the basic fee for filing an administrative case is significant, amounting to 8% of the average monthly salary. In the SEE economies, parties are generally responsible for their own expenses and successful plaintiffs do not receive compensation for costs, which may discourage parties from using the courts. In Montenegro, the court costs incurred by successful plaintiffs may only be covered by the other party when there has been an oral hearing, which may encourage unnecessary oral hearings (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

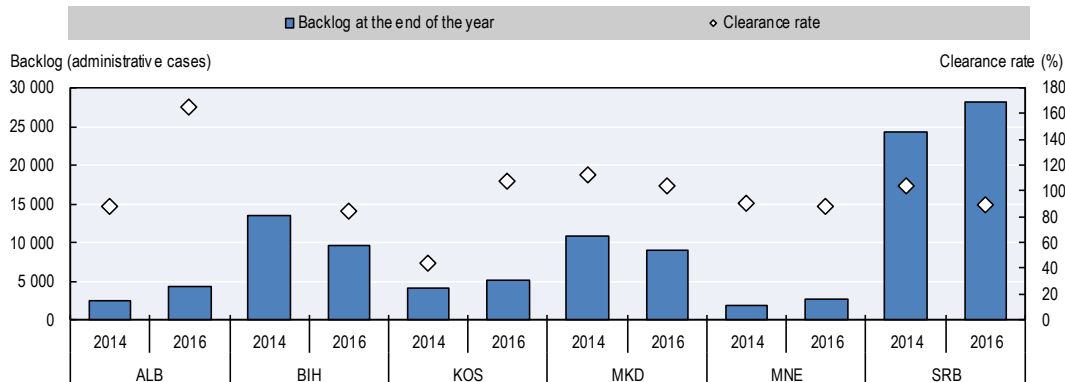
Drawn-out proceedings are a powerful disincentive for seeking redress, and ultimately undermine the integrity of the process by eroding public trust in judicial institutions. Legislation provides remedies against excessively long proceedings in administrative cases – such as the right to compensation for delays in access to justice – in the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, but have only been implemented in the latter two economies. However, they do not exist in Albania, Bosnia and Herzegovina, or Kosovo (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Effective electronic case-management systems can accelerate case adjudication and better manage case information. Albania and Kosovo are the only assessed economies without an electronic case-management system which can register documents and record events and results. In Albania, Bosnia and Herzegovina, Montenegro and Serbia court rulings are accessible online. For example, in Bosnia and Herzegovina real-time monitoring using an advanced case-management system makes it possible to electronically register cases, digitalise documents, search files and decisions, and generate statistical reports about judicial performance (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Case flow, or the rate at which cases make their way through the court system, can be described by the clearance rate (number of resolved cases divided by number of incoming cases) and backlog. In Montenegro, the clearance rate in 2016 dropped to 88%, indicating

a growing backlog, but the court has no cases which have been pending in proceedings for more than two years (Figure 16.10). The Former Yugoslav Republic of Macedonia has had a clearance rate of over 100% since 2012 and its backlog of cases is falling (OECD, 2017d, 2017e).

Figure 16.10. **Backlog of administrative cases and clearance rates of administrative courts (2014 and 2016)**



Note: Data for Bosnia and Herzegovina are for the court at the state level. The 2014 clearance rate for Bosnia and Herzegovina is unavailable.

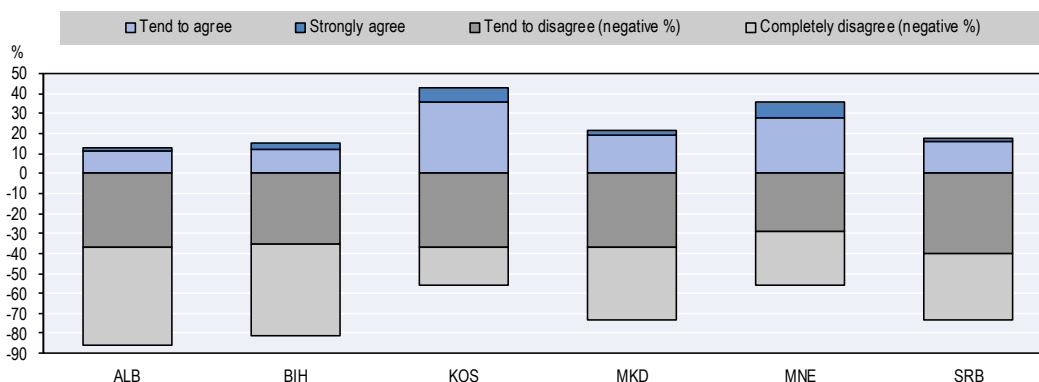
Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: The Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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On the other hand, clearing the backlogs in Albania, Bosnia and Herzegovina, Kosovo, and Serbia is unlikely in the foreseeable future unless extraordinary measures are taken. Despite the clearance rate in Albania improving to 165%, the number of unresolved cases at the beginning of 2017 was more than twice the total number of cases resolved in 2016 (Figure 16.11). Kosovo's clearance rate in 2016 was 108%, but the number of new cases is greater, increasing the backlog. In Bosnia and Herzegovina, the efficiency of courts dealing with administrative cases varies across the economy. Compared to 2014, all first instance courts in Bosnia and Herzegovina have managed to reduce the calculated disposition time by more than 100 days. Nevertheless, obtaining a ruling in the courts of the Federation of Bosnia and Herzegovina takes over 16 months, with the average case pending for over 2 years. Despite having mechanisms to submit a complaint against excessive lengths of proceedings, Serbia has a significant backlog of unresolved cases. In 2016, the clearance rate dropped below 90% (OECD, 2017a, 2017b, 2017c, 2017f).

Across all six of the SEE economies, public perception of the independence of courts from political influence is low, with less than half the individuals polled agreeing that they are independent (Figure 16.11).

Figure 16.11. Degree to which the public agrees the judicial system is independent (2017)



Note: Full question: Do you agree that judicial system is independent of political influence?

Source: Regional Cooperation Council (2017b), *Balkan Barometer 2017: Public Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2017.pdf).

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### ***Public liability is enshrined in legal frameworks, but information on their application is lacking***

A public liability regime ensures that individuals or legal entities have the right to seek remedial compensation against any unlawful and/or improper act by the state administration. An unlawful act is defined in this context as a personal transgression or administrative omission by a state body affecting an individual's rights, properties and privileges. An effective public liability regime depends on a clear legal framework of transparent procedures to check the power of state institutions and associated bodies. Accordingly, SIGMA Principle 5 in the area of accountability states: "The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation" (OECD, 2017h).

Legal frameworks enshrine the principle of public liability in all the SEE economies except Kosovo, where there is no conceptually clear legal regulation on public liability. All six of the SEE economies have laws which cover damage caused by the activities and omissions of state administration bodies and private bodies performing public functions. The scope of compensation is broad, as it covers both direct losses and profits forgone. The right to compensation is guaranteed to everyone. The time limit for submitting a public liability request is reasonable – not less than a year in Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, and Montenegro, and three years in the remaining SEE economies (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

There are no data on the practical implementation of the right to seek compensation, making it impossible to assess how the current systems are functioning in practice. Montenegro is the only SEE economy to provide statistical data on the practical application of the public liability mechanism in the form of court rulings. These data show that the procedural framework for public liability is used – in 2016, first instance courts resolved 201 public liability cases, awarding a total of nearly EUR 300 000 in compensation. However, there are no data on actual payments made in Montenegro nor in any of the other economies. In Serbia, according to the State Attorney's Office, the public liability mechanism is also widely applied in practice. However, it is rarely used in the



Former Yugoslav Republic of Macedonia, according to the Ministry of Information Society and Administration. Its draft strategy on public administration does contain a plan to develop new legislation on public liability, however (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

### *The way forward for accountability*

**Four of the SEE economies should reduce the backlogs in their administrative court of appeals.** In Albania, Bosnia and Herzegovina, Kosovo and Serbia, authorities should develop and implement an action plan to address backlogs by increasing the number of judges and legal assistants in the court, and by establishing a mechanism to regularly monitor court workloads. Albania should establish a new case-management system. Kosovo should also modernise its courts by introducing a digital court information system (OECD, 2017a, 2017b, 2017c, 2017f).

**The Former Yugoslav Republic of Macedonia and Montenegro should improve their administrative case flow and enforcement of court rulings.** Montenegro should analyse the reasons for the considerable increase in administrative cases and implement measures to address them. The Former Yugoslav Republic of Macedonia should review its current system of administrative appeals to find out why they take so long. The Former Yugoslav Republic of Macedonia and Montenegro should both strengthen the enforcement of court rulings (OECD, 2017d, 2017e).

**Half of the SEE economies should improve the accessibility of administrative justice.** New laws on legal aid are needed in the Former Yugoslav Republic of Macedonia and Serbia. Kosovo should amend its legislation so that successful plaintiffs in administrative cases have their expenses compensated (OECD, 2017c, 2017d, 2017f).

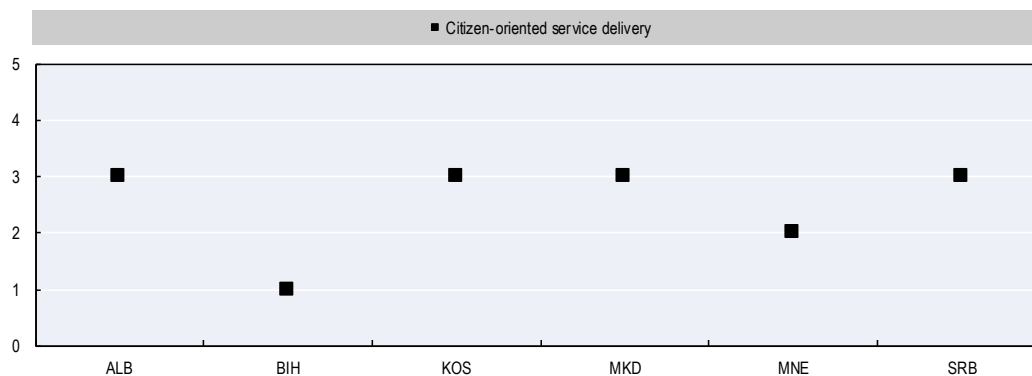
**All six SEE economies should improve their public liability administrative procedures and decisions.** To improve policies and administrative practices to reduce public liability cases in the long run, they should introduce a mechanism to monitor court cases that result in the liability of public bodies. Kosovo should prepare and implement legislation on non-contractual liability (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

## Service delivery

Representatives of the state provide individuals and businesses with services ranging from routine tasks – such as renewing a driver’s licence – to more complex bureaucratic interactions, such as applying for a construction permit or opening a small business. Public services are often the first point of contact between the state and citizens. Inefficient and unreliable public services diminish trust in government institutions and, crucially, encourage informality in private citizens’ affairs, such as personal income tax, and in wider economic activity, including registering a business. Effective service delivery requires a high degree of professionalism, predictability and customer service orientation. The advent of digitalisation and new electronic management tools offers the potential to organise service management better. A single indicator assesses citizen-oriented service delivery.

Four of the SEE economies score 3 on this indicator, while Montenegro, with a score of 2, and Bosnia and Herzegovina, with a score of 1, have the most ground to make up in this area (Figure 16.12). Apart from the Former Yugoslav Republic of Macedonia, the SEE economies all have policy frameworks for citizen-oriented services in place.

Figure 16.12. Service delivery: Sub-dimension indicator scores



Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: The Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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However, the quality of service delivery is inconsistent in all the economies, resulting in the perception of public services being inefficient and unreliable. All the SEE economies except Bosnia and Herzegovina have established policies to simplify administration, but full implementation remains a challenge. Bosnia and Herzegovina has a common service delivery strategy at all administrative levels, but its implementation is behind schedule and service delivery arrangements are incoherent.

### ***Efforts to digitalise public services and to reduce administrative burdens for businesses should continue***

Citizen-oriented service delivery is an approach that puts the citizen at the centre of administrative procedures. Service delivery that prioritises users' experience is characterised by customer-friendly and expedient transactions. This is accomplished by identifying and removing undue burdens when using services, often by streamlining processes whenever possible and linking administrative databases across government institutions. When services are efficient, less time is spent on basic bureaucratic tasks and can be dedicated to more productive uses. Services which are not easily accessible or inefficient give greater licence to non-compliance and can facilitate the growth of the informal sector. SIGMA Principle 1 in the service delivery area states: "Policy for citizen-oriented state administration is in place and applied" (OECD, 2017h).

All of the SEE economies except the Former Yugoslav Republic of Macedonia have a strategic service-delivery framework, including digital service delivery. Albania's and Kosovo's strategic frameworks for public service delivery and digital service delivery include government-wide objectives, explicit actions to achieve those objectives, clearly assigned responsibilities to specific institutions and a monitoring mechanism. However, the two strategies in Kosovo are poorly synchronised. In Bosnia and Herzegovina, the overarching Public Administration Reform Strategy has formally expired but continues to be implemented at the state and entity levels. Serbia has multiple strategies, which pose

challenges for co-ordination and efficient resource allocation. In Montenegro, service delivery and digital service delivery activities are well aligned across two strategies. In the Former Yugoslav Republic of Macedonia, the public administration reform strategy encompassing service delivery is outdated and the new draft strategy is yet to be finalised. A strategic plan includes some digital service delivery activities but there is no government-wide strategy (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f). For more information on digital strategies see Chapter 10 on the digital society.

In Albania, central co-ordination of service delivery reform is split between two bodies for the delivery of physical and digital services; this does not always result in the optimal selection of service delivery method. Central co-ordination for service delivery reform in Kosovo is insufficient, leaving other public institutions waiting for guidance or implementing their own solutions. Montenegro's Ministry of Public Administration has the responsibility to assist service delivery improvements and monitor their implementation, but monitoring is hindered in practice by the lack of mechanisms to measure performance. In the Former Yugoslav Republic of Macedonia, the central co-ordination of service delivery reform is hampered by limited resources and power. Serbia provides central assistance for digital government but there is no central authority to review or monitor information technology (IT) projects, creating a high risk of overlapping or duplicated digital investments. Central co-ordination of digital government projects in Bosnia and Herzegovina is at an early stage (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

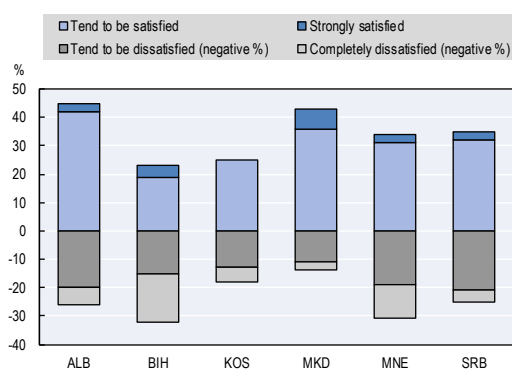
All the SEE economies have put key elements in place to simplify administration procedures, increase their cost efficiency and reduce the burden they pose on citizens and business, albeit to a lesser extent in Bosnia and Herzegovina. Key measures to achieve these objectives include *ex ante* and *ex post* assessments of regulations (for example, regulatory impact assessments and regulatory guillotine procedures<sup>3</sup>). Montenegro launched a regulatory guillotine programme in 2012 with most activities implemented by 2015, but in the absence of monitoring it is difficult to assess the results. A positive development in the Former Yugoslav Republic of Macedonia is the Law on General Administrative Procedures which came into effect in 2016. This unifies administrative procedures across government structures. The Former Yugoslav Republic of Macedonia, Montenegro and Serbia have had guidelines for mandatory RIAs in place for some time, but they have not been applied effectively. Kosovo's Better Regulation Strategy 2017-2021 is in place, but RIAs are at an early stage of development and implementation has been problematic. Albania aims to reduce administrative burdens – particularly the time spent complying with administrative procedures – but does not use RIAs or other tools to systematically evaluate these burdens. Bosnia and Herzegovina recently introduced RIAs but they are still too inconsistently applied and uneven in quality to detect administrative burdens in all new legislation effectively. In Bosnia and Herzegovina, the Republika Srpska conducted a regulatory guillotine from 2005 to 2006 and it did reduce some bureaucracy, but has not conducted a follow-up since. The Federation of Bosnia and Herzegovina implemented a strategy for regulatory reform between 2013 and 2016, but it did not significantly reduce administrative burdens (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

In general, it is not burdensome to start a business in any of the SEE economies except the Federation of Bosnia and Herzegovina, where business registration has become more burdensome and complex: 65 days to complete 12 procedures in 2017, compared to 35 days in 2015 (World Bank, 2017). The Former Yugoslav Republic of Macedonia, Montenegro and Serbia have taken some steps to digitalise land registrations

and construction permits. In fact, the Former Yugoslav Republic of Macedonia has fully digitalised the whole application process for construction permits and no longer accepts paper-based applications. However, closing companies remains burdensome and time-consuming in the Former Yugoslav Republic of Macedonia, usually taking more than 600 days (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Across all six SEE economies, less than half the businesses polled by the 2017 *Balkan Barometer* survey were satisfied with public services for businesses (Figure 16.13). However, more than half of the citizens polled in three SEE economies indicated that public administrative procedures were efficient (Figure 16.14).

Figure 16.13. **Business satisfaction with public services for businesses (2017)**

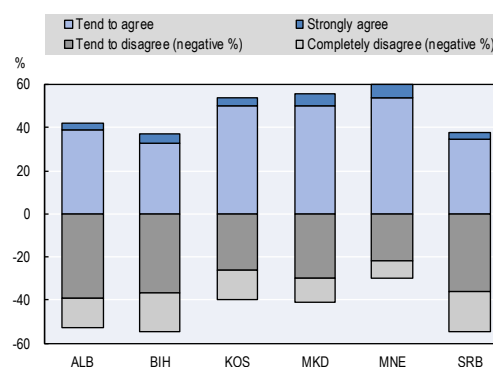


Note: Full question: Could you please tell me how satisfied you are with public services for businesses?

Source: Regional Cooperation Council (2017a), *Balkan Barometer 2017: Business Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_BusinessOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_BusinessOpinion_2017.pdf).

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Figure 16.14. **Degree to which citizens agree that public administrative procedures are efficient (2017)**



Note: Full question: Do you agree that the administrative procedures in public institutions are efficient?

Source: Regional Cooperation Council (2017b), *Balkan Barometer 2017: Public Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2017.pdf).

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### The way forward for service delivery

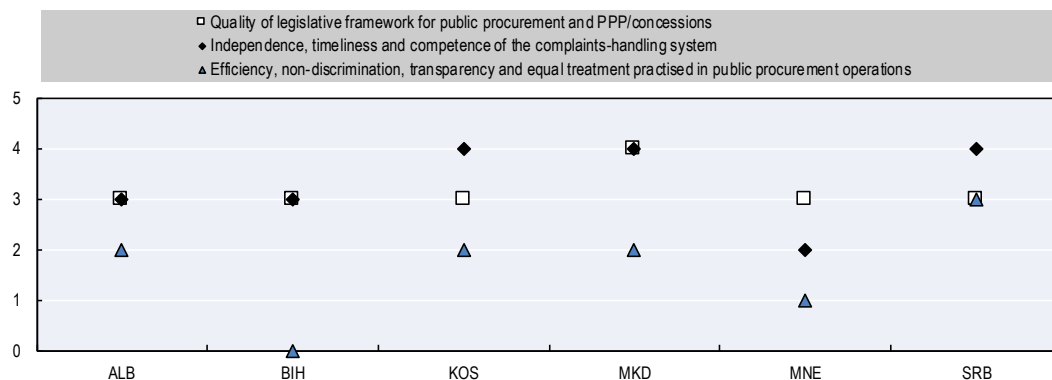
**Four of the SEE economies should continue to modernise and digitalise their public services.** Bosnia and Herzegovina should continue to implement its Strategy for Public Service Delivery and Digitalisation (part of the Public Administration Reform Strategy) and should pursue ways to depoliticise and defragment reforms at all administrative levels. In the Former Yugoslav Republic of Macedonia, the Ministry of Information Society and Administration should assign a specialised unit to improve administrative service delivery. Kosovo should prioritise and support the digitalisation of services. It should use its public services inventory to provide standardised information about public services to inform decisions on future digitalisation. Albania should reinforce its “digital first” principle through a holistic approach to digitalisation, including digital skills training and awareness raising among the general population (OECD, 2017a, 2017b, 2017c, 2017d).

**The Former Yugoslav Republic of Macedonia and Montenegro should further strengthen centralised approaches to reduce administrative burdens facing businesses and citizens.** The Former Yugoslav Republic of Macedonia should develop a comprehensive service delivery strategy, linked to a government-wide ICT strategy, within an overarching framework for administrative simplification. Montenegro should continue to systematically collect feedback from businesses and citizens for creating and implementing a government-wide road map for simplification. It should scrutinise its RIAs to ensure that proposed legislation does not impose additional administrative burdens (OECD, 2017d, 2017e).

## Public procurement

Public procurement is the way governments purchase goods, services and works; as such, it is a critical element of public financial management. A substantial proportion of taxpayers' money is spent through public procurement, including public-private partnerships (PPPs) and concessions. It significantly affects the delivery of public services, such as the provision of infrastructure and educational facilities, and also creates business opportunities for the private sector. It also has the potential to advance socio-economic and environmental objectives. To ensure high-quality service delivery, governments must design an effective public procurement framework and implement public procurement efficiently, employing high standards of conduct. Three indicators assess public procurement performance: 1) the quality of the legislative framework for public procurement and PPP/concessions; 2) the independence, timeliness and competence of the complaint-handling system; and 3) the efficiency, non-discrimination, transparency and equal treatment practised in public procurement operations.

In 2016, public procurement amounted to a significant share of gross domestic product (GDP) in the SEE economies: 7.4% in Albania, 13.7% in Kosovo and 8.0% in Serbia (OECD, 2017a, 2017c, 2017f). The six economies largely have legislative frameworks for public procurement and systems for handling complaints and correspondingly score the highest in these indicators (Figure 16.15). Practising their public procurement operations efficiently and transparently is more of a challenge as reflected in the indicator's lower scores. Across all areas, the Former Yugoslav Republic of Macedonia and Serbia perform best: Serbia is the strongest of the six economies for its public procurement operations, while the Former Yugoslav Republic of Macedonia performs particularly well in its legal framework for public procurement. Bosnia and Herzegovina has the most room for improvement, especially in public procurement operations.

Figure 16.15. **Public procurement: Sub-dimension indicator scores**

Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: The Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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### ***Legislative frameworks for public procurement are becoming more aligned with EU directives, but gaps remain***

Sound legislative frameworks for public procurement lay the foundations for efficient and transparent public procurement operations and high-quality public service delivery. Given the six SEE economies' objective of European integration, the EU *acquis* is a good guide for legislation. SIGMA Principle 10 in the area of public financial management is as follows: “Public procurement regulations including public-private partnerships and concessions are aligned with the European Union *acquis*, include additional areas not covered by the *acquis*, are harmonised with corresponding regulations in other fields and are duly enforced” (OECD, 2017h).

In all six of the SEE economies, legal frameworks for public procurement are largely aligned with the EU *acquis*. However, no SEE economy has fully aligned the scope of their public procurement legislation with the *acquis* – encompassing the procurement directives on classic (2014/24/EU), utilities (2014/25/EU) and defence (2009/81/EC) fields. Legislation for procurement in the classic and utilities sectors in Albania, the Former Yugoslav Republic of Macedonia, Kosovo and Serbia is largely harmonised with the 2004 EU public procurement directives. In Bosnia and Herzegovina, and Serbia the application of domestic preferences is incompatible with the *acquis*. Serbia's national rules largely cover the provisions of the Defence Directive, while Albania has not implemented the Defence Directive. In Montenegro, defence procurement is no longer regulated by the law on public procurement and does not follow the basic principles set out in the Treaty on the Functioning of the European Union. Kosovo and the Former Yugoslav Republic of Macedonia have not transposed the Defence Directive into national law. None of the six assessed economies has fully transposed all the provisions of the 2014 EU public procurement directives on classic and utility fields, although Serbia has set up a working group to develop new legislation to address this. The personal and

material scope of public procurement legislation in the SEE economies is also not fully aligned with the EU *acquis*. While Bosnia and Herzegovina leads its SEE neighbours in this area, it has exemptions for natural and legal monopolies, which are not in line with the *acquis*. In Montenegro, because the definitions of public works contracts and public services contracts do not fully reflect the terms in the *acquis* it lags behind its peers in this area (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The SEE economies, particularly Albania, Kosovo and Serbia, have not fully aligned key criteria for public procurement procedures – including open, restricted, competitive and negotiated – with EU directives. For example, the regulatory framework in Albania deviates over thresholds, time limits, selection criteria and award methodologies. Most of the main elements on publication and transparency, such as publication of contract notices and awards, are in place in the SEE economies, but Kosovo lacks clear and detailed guidance on how to avoid conflicts of interest in public procurement operations (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The SEE economies are beginning to put key elements in place over the choice of participants and awarding of contracts, with Montenegro and Serbia leading the way. The Former Yugoslav Republic of Macedonia, Montenegro and Serbia have the most developed choice of procedural options for contracting authorities although some of the procedures provided in the EU directives are not yet available (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The SEE economies mostly meet the key criteria for advertising public procurement procedures: contract notices with essential details are published in the national official journal or public procurement portal, and exceptions are only allowed in specifically defined situations. Their procedures for awarding contracts are largely aligned with the EU *acquis*, although some points still do not comply with EU law (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

All six SEE economies have legislative frameworks which facilitate the participation of small and medium-sized enterprises (SMEs) in public procurement to some degree, though less so in the Former Yugoslav Republic of Macedonia, Kosovo and Montenegro. For greater detail on the factors which facilitate SME participation in public procurement in the SEE economies, see the *SME Policy Index* (OECD et al., 2016).

Albania, Kosovo and Serbia have mostly aligned their legal frameworks for the procurement of concessions and PPPs with the EU *acquis* although gaps remain with the new Concessions Directive (2014/23/EU). Notably, the PPP law in Kosovo includes a procedure to allow the initial request for proposals to be changed, which may lead to violations of the principle of equal treatment. The legal framework for concessions and PPPs in the Former Yugoslav Republic of Macedonia covers works and services in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition. However, provisions on the award of PPPs are not aligned with the Concessions Directive. The current legal framework for concessions and PPPs in Bosnia and Herzegovina is highly fragmented and not in line with the *acquis*. Montenegro has developed a draft PPP law but has not adopted it yet (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

### ***Complaint-handling systems are in place, but implementation remains weak***

Access to justice through an independent, transparent and efficient remedies system allows aggrieved parties to address alleged breaches in public procurement processes. Legislated mechanisms for handling complaints in line with EU directives and the

institutional set up are fundamental for the performance of the review system. SIGMA Principle 12 in the area of public financial management is as follows: “The remedies system is aligned with the European Union *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions” (OECD, 2017h).

The SEE economies’ review and remedies systems for public procurement are largely in line with the requirements of the *acquis* but a few provisions have not been transposed. Time limits for challenging procurement decisions are in line with the *acquis* requirements in four of the SEE economies, but in Bosnia and Herzegovina, and the Former Yugoslav Republic of Macedonia they are too short. Mechanisms to avoid ineffectiveness of contracts are also mostly in place, although only Bosnia and Herzegovina has provisions for alternative penalties that are fully aligned with the *acquis*. Only Albania and Kosovo lack legal provisions to ensure effective and timely implementation of the review body’s resolutions. In all the SEE economies except Serbia, the decisions of the review body can be challenged in court (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Review bodies – institutions that resolve public procurement procedure disputes in the first instance – in the six SEE economies are largely independent and only accountable to the assembly and parliament. The laws and amendments on public procurement which define their responsibilities and composition have elements which facilitate their independence. In Albania, this is a recent change, as the review body was previously responsible to the prime minister. The SEE economies also have mechanisms in place to ensure the independence of members of the review body. In Kosovo however, members of the review body board may be removed if they act in a way that is contrary to professional ethics. Such a vague provision risks being used inappropriately (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The SEE economies largely have the review bodies’ organisational structure and procedures in place, though less so in Montenegro. However, Bosnia and Herzegovina has no formal co-ordination mechanisms to ensure coherent decision making across its three review body offices. In Serbia, the review body uses specialised software to automate case-file management. In the second half of 2016, Kosovo created an internal document management system, which aids the preparation of annual reports and improves the tracking of active cases (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Apart from Bosnia and Herzegovina, all of the SEE economies publish the decisions of their review bodies and information about formal requirements for lodging a complaint without delay. In Bosnia and Herzegovina only decisions are published, and then months after they are adopted. In all the SEE economies except Montenegro the databases of review body decisions on procurement cases have some search functions. However, they mostly lack a free text search option. This hinders their effective use by limiting the type of analysis possible (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

An economic operator with a legal interest in the public procurement award procedure, who has or may suffer damage as a consequence of a possible violation of the public procurement law, may initiate a case appealing against the procedure. However, the associated fees are set at levels which do not facilitate access to justice in the assessed economies but to a lesser extent in the Former Yugoslav Republic of Macedonia. In Kosovo and Serbia, recent fee increases were followed by a reduction in the number of complaints submitted. Despite the higher fee level, the number of complaints filed in Albania has been increasing steadily – which is a serious issue. Albania has issued a



guidance note to attempt to address about 60% of complaints which concern tenders for security (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The median length of time to resolve a complaint in all but two of the SEE economies falls between one and three months. In Bosnia and Herzegovina, the median length was under a month, but the shortage of staff and technical resources combined with an increased number of complaints is likely to reduce the quality and efficiency of the review bodies' decisions. In the Former Yugoslav Republic of Macedonia, in most cases, a decision needs to be made within 15 days of the receipt of the dossier – in practice, the average time taken is 10 days (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

A SIGMA analysis of a sample of decisions by the review bodies found that they were based on the applicable law(s) and reflected the principles of transparency, competition and equal treatment in all the SEE economies except Bosnia and Herzegovina. However, in Kosovo the decisions do not always contain a clear rationale, as they tend to concentrate on the arguments expressed by the parties rather than explaining the reasoning behind the decision. In Albania, the sample of decisions varied more widely in quality (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Tenders and awards for concessions and PPPs are subject to the same review and remedies systems as public procurement in most of the SEE economies. The exceptions are Bosnia and Herzegovina – where there are laws addressing concessions at the state and entity levels – and Montenegro – where there is no system for concessions or PPPs. The laws at all administrative levels in Bosnia and Herzegovina do not include certain provisions, such as the deadlines for lodging complaints, the time limits for deciding disputes and whether the procedure allows for or obliges the decision-making body to take “rapid and effective” decisions (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

### ***Public procurement operations require strengthening***

To deliver high-quality services from a competitive supply market, contracting authorities need to be adequately staffed and resourced, and work according to regulations and good practice. Key elements of public procurement procedure performance include planning, transparency, modern methods, contract management and integrity. Accordingly, SIGMA Principle 13 in the area of public financial management states: “Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods” (OECD, 2017h).

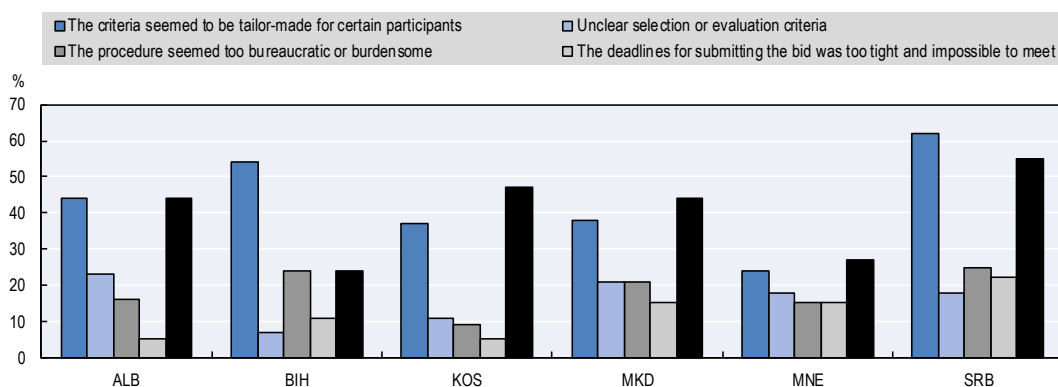
The SEE economies lack the key elements in the planning process for public procurement described above, especially Bosnia and Herzegovina, and Serbia. In Bosnia and Herzegovina, the public procurement law requires procurement plans to be published on the contracting authorities' websites, but in practice not all contracting authorities have a website. In the Former Yugoslav Republic of Macedonia and Kosovo, the contracting authorities are obliged to draft an annual procurement plan, but because these plans do not have to be published, they are not. As a result, economic operators do not have access to these plans and cannot benefit from them. In Albania, Montenegro and Serbia contracting authorities are required to adopt an annual procurement plan and to publish it, and this is usually done. However, in Bosnia and Herzegovina, Montenegro and Serbia, the provisions of the 2014 EU Public Contracts Directive (2014/24/EU) and Utilities Directive (2014/25/EU) concerning preliminary market consultations are not provided in

the legislation nor are they reflected in practice (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The contracting authorities in the SEE economies generally use the cost estimation methods set out in their legislation and they launch procedures after ensuring that funding can reasonably be expected, albeit to a lesser degree in Bosnia and Herzegovina, and Serbia. However, their use could be improved across the assessed economies. For example, Kosovo has comprehensive public procurement rules on determining estimated values which comply with the *acquis*. Even so, Kosovo still has significant problems with budgeting in practice; for example, budget allocations and the estimated values of a contract are often determined by using outdated budgetary forecasts instead of realistic market prices (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Across all six SEE economies, businesses polled by the 2017 *Balkan Barometer* survey reported that their reasons for not taking part in public procurement related to the quality of the tender and fairness of the procedure (Figure 16.16). The most popular reasons given were “the criteria seemed to be tailor-made for certain participants” and “the deal seemed to have been sealed before the tender was published”.

Figure 16.16. Reasons businesses did not take part in public procurement (2017)



Note: Full question: In the past three years, has your company decided not to take part in a public tender or a public procurement procedure? If yes, why?

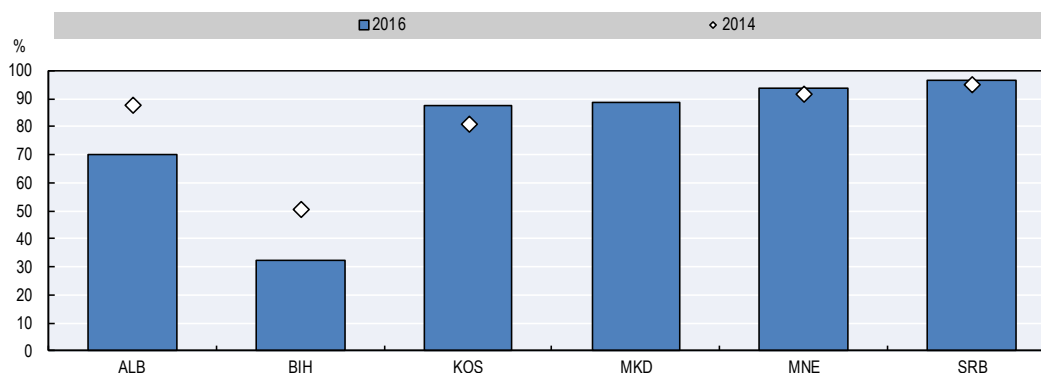
Source: Regional Cooperation Council (2017a), *Balkan Barometer 2017: Business Opinion Survey*, [www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_BusinessOpinion\\_2017.pdf](http://www.rcc.int/seeds/files/RCC_BalkanBarometer_BusinessOpinion_2017.pdf).

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Five of the assessed SEE economies, with the exception being Bosnia and Herzegovina, awarded most of their public procurement contracts through competitive procedures in 2016 (Figure 16.17). All six economies use open procedures, and these make up the largest proportion of competitive procedures in Kosovo, Montenegro and Serbia. In Albania, proposal requests are the most common competitive procedure. The number of participants in competitive procurement procedures remained fairly high in Kosovo and Albania, averaging 5.4 and 4 per procedure respectively in 2016. Meanwhile, in Serbia only 2.9 tenders were submitted for each competitive procedure on average, and just 2.2 in Montenegro. A large share of procedures only received a single tender: more than 35% in Bosnia and Herzegovina, Kosovo, Montenegro and Serbia (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

In all six SEE economies the contracting authorities overwhelmingly awarded contracts based solely on the “lowest-price” criterion: 98% in Albania, 99% in Kosovo, over 90% in Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia, 87% in Serbia and over 60% in Montenegro. The “most economically advantageous” tender criterion is hardly ever used, even though the laws on public procurement in the SEE economies contain no limitations or restrictions on its use (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Figure 16.17. Share of contracts awarded by competitive procedures (2014 and 2016)



Note: Data for the Former Yugoslav Republic of Macedonia in 2014 are unavailable.

Source: OECD (2017a), *Monitoring Report: Albania*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf); OECD (2017b), *Monitoring Report: Bosnia and Herzegovina*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf); OECD (2017c), *Monitoring Report: Kosovo*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf); OECD (2017d), *Monitoring Report: The Former Yugoslav Republic of Macedonia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia.pdf); OECD (2017e), *Monitoring Report: Montenegro*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Montenegro.pdf); OECD (2017f), *Monitoring Report: Serbia*, [www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf](http://www.sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf).

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Among the SEE economies Serbia has the most advanced regulatory framework and makes the most use of framework agreements – agreements between one or more contracting authorities and one or more economic operators to establish the terms governing contracts to be awarded during a given period. In 2016, it concluded a total of 2 199 framework agreements to a total value of RSD 42.7 billion (Serbian dinars, approximately EUR 340 million). While the Former Yugoslav Republic of Macedonia’s law on public procurement provides for the use of framework agreements, their use has fallen following a new requirement to obtain prior approval for agreements involving fewer than seven economic operators. Albania and Serbia have regulations in place for centralised purchasing, which is in use. The remaining four economies have legislation for centralised purchasing, but rarely use it (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

The Former Yugoslav Republic of Macedonia has a comprehensive e-procurement system to facilitate the use of modern procurement techniques. In 2016, almost half of all procedures were conducted through e-procurement. In Albania, the e-procurement system is a web-based platform in Albanian and English that enables the electronic processing of public procurement and concession procedures, including the publication of contract notices, downloading and uploading of tender documentation and tender submissions, and

e-archiving. The platform has benefitted the public procurement system in many ways, most visibly through increased transparency, easier access, simplification, lower transactions costs, and improved data collection and monitoring. All contracting authorities are mandated to use the system for all transactions above ALL 100 000 (Albanian lek, EUR 740). The development of e-procurement systems is less advanced in the other SEE economies. In Serbia, e-noticing and e-tender documentation are in place but contracting authorities rarely accept the e-submission of tenders. Kosovo has introduced an e-procurement platform and its mandatory use is being phased in over several years. However, it has faced significant challenges, including the need to train staff at government institutions and economic operators in its use, to adopt supporting secondary decrees, and to prevent sudden technical defects (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Contract management is a weak part of the procurement process in all six SEE economies. The contracting authorities generally do not use contract management systems and do not review the results of previous contract executions when preparing the next procurement procedures (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

Montenegro and Serbia conduct integrity training programmes for procurement staff in the public sector and have adapted general public-sector integrity tools to the specific risks of the procurement cycle. The other four SEE economies have less well-developed integrity training and tools tailored to public procurement (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

### *The way forward for public procurement*

**All six of the SEE economies should further develop laws and implementing regulations on public procurement** by harmonising them with recent EU procurement directives. Bosnia and Herzegovina, and Serbia should abolish any preference system for domestic bidders and goods of domestic origin. Several economies should reorient their legislation and practices towards value for money: Bosnia and Herzegovina should amend the public procurement law and secondary legislation to remove provisions on using the lowest price as the only criterion when awarding public contracts, Albania should reorient secondary legislation from focusing on procedures, and the Former Yugoslav Republic of Macedonia should also amend the law on public procurement to remove or reduce the penalties for procurement officials for non-compliance with procedural and other requirements. When appropriate, grant contracting entities in Albania should be given more flexibility and discretion to manage procurement operations. Albania, the Former Yugoslav Republic of Macedonia and Kosovo should transpose and implement the provisions of the Defence Procurement Directive (2009/81/EC; OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

**Five of the SEE economies should further develop their concession and PPP procurement laws** by harmonising them with the EU Concessions Directive (2014/23/EU). Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia should adopt a PPP law aligned with the Concessions Directive. Bosnia and Herzegovina should harmonise and eliminate overlaps and inconsistencies in the legal framework for public procurement across all administrative levels. Montenegro should establish a review and remedies system for concessions and PPPs (OECD, 2017b, 2017c, 2017d, 2017e, 2017f).

**Half of the SEE economies should strengthen their legislation on remedies for public procurement** by fully aligning it with the EU Remedies Directive (2007/66/EC). Serbia and the Former Yugoslav Republic of Macedonia should amend their public

procurement laws. Albania should align its review mechanism and explicit standstill period (time between the award and signature of a public contract) (OECD, 2017a, 2017d, 2017f).

**Four of the SEE economies should build the capacity of their review bodies** and, in two economies, their administrative courts. Albania and Montenegro should ensure that their review bodies have the necessary resources including staff, premises and equipment. Albania, Bosnia and Herzegovina, Kosovo, and Montenegro should build the capacity of their review body staff. The Former Yugoslav Republic of Macedonia and Montenegro should increase specific public procurement trainings for administrative court staff. Montenegro should also build the capacity of its review body and administrative court to implement EU practices for concessions and PPPs (OECD, 2017a, 2017b, 2017c, 2017d, 2017e).

**All six SEE economies should improve their review bodies' procedures.** In the Former Yugoslav Republic of Macedonia, the review body should improve its IT system to permit the electronic submission and handling of complaints. Bosnia and Herzegovina should introduce a formal co-ordination mechanism to facilitate uniform and coherent decision making across the three review bodies and the competent decision-making bodies should establish a review system for decisions on the award of concessions and PPPs. In Albania, review procedures should be clarified and simplified, particularly around the time limits and stages in the process. Serbia's review body should finalise and implement measures in its action plan to speed up complaint processing. Kosovo's review body should make its electronic case-management system fully operational and establish a mechanism to ensure the consistency of its decisions. It should also fully integrate its website into the e-procurement system, making it possible to make changes in normative acts or in the needs of system users. The review body of Montenegro should analyse the types of errors made by contracting authorities and give feedback to them and policy makers. It should also look at why its decisions are being reversed by the administrative court and update its approach accordingly (OECD, 2017a, 2017b, 2017c, 2017d, 2017e, 2017f).

**Bosnia and Herzegovina, and Serbia should make the procurement decisions of their review bodies and administrative courts available.** Bosnia and Herzegovina should publish decisions taken by the review body before 2015. Serbia should make administrative court decisions on procurement more accessible, initially giving contracting authorities access to judicial reviews of procurement decisions and ultimately publishing the administrative court's decisions (OECD, 2017b, 2017f).

**Four of the SEE economies should strengthen their web-supported search engines of review-body procurement decisions.** Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo and Montenegro should enable users to browse by the type of problem and to run free text searches (OECD, 2017b, 2017c, 2017d, 2017e).

**Half of the SEE economies should make their procurement plans available.** In the Former Yugoslav Republic of Macedonia and Kosovo, contracting authorities should be required to publish annual procurement plans on their websites. In Bosnia and Herzegovina, procurement plans and contract modifications should be published in the central public procurement portal (OECD, 2017b, 2017c, 2017d).

**Albania and Montenegro should improve the efficiency of various components of public procurement operations.** Albania should review its procurement system operations to improve their efficiency and revise or abolish the system for low-value

purchases. Montenegro should reduce the number of contracting authorities to improve procurement management in the remaining authorities (OECD, 2017a, 2017e).

**Albania and Serbia should clarify their legislation related to the budget for procurement contracts.** Albania should revise its limited fund rules and the approval procedures under the Budget Law for the control and authorisation of procurement transactions. In Serbia, secondary legislation should be clarified to allow participation requests to be issued before the corresponding contract budget has been adopted, without affecting the stipulation that contacts can only be concluded if the budget provides enough funds (OECD, 2017a, 2017f).

**Four of the SEE economies should strengthen and expand the use of their e-procurement systems.** Albania should continue to develop its e-procurement system to prepare it for e-auctions and a dynamic purchasing system. Montenegro should start implementing e-procurement. Kosovo should assess the legal framework and operations of e-procurement to identify areas of improvement and introduce monitoring functionality in its e-procurement system. Over time it should use e-procurement more widely and further develop the system to include modern purchasing tools such as e-auctions and dynamic purchasing. Serbia should also expand its e-procurement system to include more e-tools such as e-auctions, e-catalogues and dynamic purchasing systems (OECD, 2017a, 2017c, 2017e, 2017f).

**Half of the SEE economies should improve procurement procedures and promote the greater use of modern procurement methods** such as centralised purchasing and framework agreements. Serbia should analyse why so few economic operators are taking part in public procurement procedures, and develop sector-specific operational tools including model tender documents, standard technical specifications and methods for evaluating tenders. Albania should review its centralised purchasing to consider options outside the Ministry of Interior and should strengthen support for the wider use of framework agreements. Montenegro should promote and introduce joint procurement and centralised purchasing (OECD, 2017a, 2017e, 2017f).

## Conclusions

All six SEE economies have made progress in establishing the legal public governance frameworks which are key to laying the foundation for economic growth. They have largely aligned their legal frameworks for public procurement, including the remedies system, with the EU *acquis*. The basic elements for merit-based recruitment of civil servants are in place and procedures to prepare, follow up and communicate government sessions have been set out. However, legislative gaps remain and the full, consistent implementation of existing legal frameworks is a challenge.

All six SEE economies have room to improve important elements of public governance. They still do not consistently base policy making on evidence, which is of a sufficiently high level of quality. As impact assessments and costing estimations are key to designing effective public interventions, the six SEE economies should redouble their efforts in this area. They need to make their public consultations more systematic and rigorous to improve policy design and implementation, as well as to build trust among citizens and businesses. They should reinforce objective recruitment procedures for the civil service with common standards for exams and improve the capacity of selection panels. Most of the SEE economies need an action plan to reduce backlogs in the administrative court of appeals, including an increase in the number of judges and/or legal assistants. All six SEE

economies should continue their efforts to modernise and digitalise public services. As public procurement directly affects service delivery and creates business opportunities, they should continue their plans to improve it and harmonise their corresponding legal frameworks with new EU directives. E-procurement should be further enhanced and the remedies system for public procurement should be strengthened.

## Notes

1. There are four main administrative levels in Bosnia and Herzegovina: the State, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District. The administrative levels of the State, the Federation of Bosnia and Herzegovina and the Republika Srpska are taken into account in the *Competitiveness Outlook 2018* assessment, when relevant. The Brčko District is not assessed separately.
2. For indicators which have corresponding competences at more than one level of administration in Bosnia and Herzegovina, the assessment assigns the lowest score earned by the relevant level of administration. While the SIGMA assessment for Bosnia and Herzegovina includes Brčko District and levels of administration below the entity level, these levels are not described in this chapter.
3. This involves a systematic cataloguing of all existing regulation in which only those that are justified are retained.

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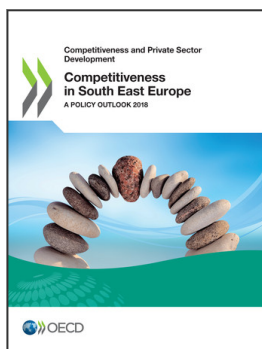
## *Annex 16.A1.*

### Public services: Indicator scores

Table 16.A1.1. **Public services: Indicator scores**

	ALB	BIH	KOS	MKD	MNE	SRB
<b>Policy development and co-ordination</b>						
Quality of government monitoring and reporting	2	1	2	1	4	2
Transparency and legal compliance of government decision making	3	1	3	2	4	3
Evidence-based policy making	1	0	2	1	2	3
Public consultation on public policy	1	0	1	1	3	2
Accessibility of legislation	2	0	2	1	3	3
<b>Human resource management</b>						
Meritocracy and effectiveness of recruitment of civil servants	4	1	3	4	2	2
Integrity of public servants	3	1	3	3	2	3
<b>Accountability</b>						
Fairness in handling of administrative judicial disputes	3	2	3	4	4	3
Functionality of public liability regime	2	2	2	2	4	2
<b>Service delivery</b>						
Citizen-oriented service delivery	3	1	3	3	2	3
<b>Public procurement</b>						
Quality of legislative framework for public procurement and PPP/concessions	3	3	3	4	3	3
Independence, timeliness and competence of the complaints-handling system	3	3	4	4	2	4
Efficiency, non-discrimination, transparency and equal treatment practised in public procurement operations	2	0	2	2	1	3

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