*ANALYSIS*

*OF PROCUREMENTS TO WHICH*

*THE LAW ON PUBLIC PROCUREMENTS*

*DOES NOT APPLY*

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**List of abbreviations used in the document:**

|  |  |
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| Abbreviations | |
| PPO | Public Procurement Office |
| Republic Commission | Republic Commission for Protection of Rights in Public Procurement Procedures |
| SAI | State Audit Institution |
| PPL | Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23) |
| LPP/2015 | Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 124/12, 14/15 and 68/15) |
| Portal | Public Procurement Portal |
| Exceptions | Procurements to which the Law does not apply |
| Annual reports | Reports in which contracting authorities publish data on procurements to which they did not apply the Public Procurement Law on the Portal |
| Contract Register | Section on the Portal within which data is published in accordance with Article 152a of the PPL |
| Special act | Special act adopted by each contracting authority in order to regulate the planning and implementation of procurements to which the PPL does not apply. |
| RPR | Rights Protection Request |

***Introductory notes***

The aim of the Analysis is to assist contracting authorities in the proper application of the provisions of the PPL regarding procurements to which the PPL does not apply.

The first part of the Analysis presents the method of drawing up a public procurement plan and procurements to which the provisions of the PPL do not apply. It is indicated that the contracting authority is obliged to conduct and document market research. Emphasis is also placed on the provisions of the PPL which prohibit the division of the subject-matter of public procurement into multiple procurements in order to avoid the application of the PPL.

The second part of the Analysis is dedicated to the grounds for exemption from the application of the PPL, with an explanation of the conditions for the application of each exception. Specific examples are also provided in order to help contracting authorities understand the cumulative conditions that need to be met for the application of the exception.

The third part of the Analysis refers to the publication of data on exempted procurements on the Portal, in the annual reports of contracting authorities, with special emphasis on the publication of data in the Register of Contracts regarding procurements conducted pursuant to Article 27 of the PPL.

The examples presented in the Analysis are real examples from the Portal and reports from competent institutions. The goal is to use practical examples to more easily recognize situations of improper conduct, so that they are not repeated.

# ANALYSIS OF THE METHOD OF CREATING A PUBLIC PROCUREMENT PLAN AND A PROCUREMENT PLAN TO WHICH THE PPL DOES NOT APPLY

## PLANNING PROCEDURE

The planning process is a prerequisite for the successful implementation of procurement. Proper and timely planning provides contracting authorities with sufficient time to conduct the public procurement procedure in a lawful manner and to satisfy the needs of end users, while respecting all deadlines and conditions prescribed by the provisions of the PPL. The same applies to the planning of procurements to which the PPL does not apply, although to a certain extent contracting authorities are more flexible in terms of implementing these procurements.[[1]](#footnote-1)

The planning process involves active cooperation between all organisational parts of the contracting authority. It is necessary for contracting authorities to realistically assess their needs and prepare realistic plans accordingly, with the aim of spending public funds in an appropriate manner.

The method of planning public procurement and procurement to which the PPL does not apply is regulated by the contracting authority in a special act[[2]](#footnote-2) (persons and organisational units participating in planning, planning procedure, planning deadlines, method of action and communication, planning criteria, method of expressing and determining needs, market research, determination of estimated value, etc.).

Examples of planning criteria, which contracting authorities particularly take into account when planning, are given in the *Model of a Special Act of the Contracting Authority referred to in Article 49, paragraph 2 of the Law on Public Procurement*, which the PPO published on its website: [[3]](#footnote-3) whether the subject-matter of the procurement is in the function of performing the activity and in accordance with the planned objectives defined in the relevant documents (regulations, standards, annual business program, adopted action plans and other planning documents, protocols, etc.); whether the technical specifications and quantities of a certain subject of procurement correspond to the actual needs of the contracting authority, i.e., the end user; whether the estimated value of the public procurement is appropriate considering the objectives of the procurement, and taking into account the technical specifications, necessary quantities and the market situation; whether additional costs are generated during the procurement, what is the amount and nature of these costs; whether there are other possible solutions to meet the same need and what are the advantages and disadvantages of these solutions compared to the existing ones; stock levels, monitoring and analysis of indicators related to the consumption of goods (daily, monthly, quarterly, annually, etc.); collection and analysis of existing information and databases on selected bidders and concluded contracts; monitoring and comparison of the costs of maintaining and using existing equipment in relation to the costs of purchasing new equipment, profitability of investment, profitability of overhauling existing equipment, etc.; environmental benefits of the subject of procurement, energy efficiency and life cycle costs (cost of procurement, costs of use and maintenance, as well as costs of disposal after use); risks and costs in the event of failure to implement the procurement procedure for goods, services or works, as well as the costs of alternative solutions.

## MARKET RESEARCH

Market research is a process, a set of actions that the contracting authority carries out in order to properly and objectively plan procurements. It is the way in which the contracting authority determines the estimated value of a public procurement, and estimates how many bids can be expected in the public procurement procedure.

At the same time, by conducting market research, the contracting authority reduces potential errors in procurement planning. A correctly determined estimated value also determines whether an exception to the application of the PPL (Article 27 of the PPL) will be applied, or whether the contracting authority will be obliged to conduct a public procurement procedure (if the estimated value is equal to or higher than the thresholds prescribed in Article 27 of the PPL). As a rule, the minimum deadlines for submitting bids in public procurement procedures, and therefore the approximate time for initiating the public procurement procedure, depend on the estimated value of the public procurement.

**Is it mandatory to conduct market research?**

Yes, it is. Article 29, paragraph 1 of the PPL regulates that the estimated value of the public procurement item must be objective, based on the conducted examination and market research of the public procurement item, which includes checking the price, quality, warranty period, maintenance, etc.[[4]](#footnote-4) and must be valid at the time the procedure is initiated.

**When is market research conducted?**

**- In the procurement planning phase.** This means that already at the moment of planning, the contracting authority should know what needs to be procured, in what quality, with what performance of the subject of procurement, whether the market can offer it, under what conditions, the warranty period that is required, what are the maintenance conditions, approximate quantities of the subject-matter of procurement, etc.

**- At the stage of initiating the procedure.** This is because several months may pass between the adoption of the public procurement plan (usually at the beginning of the current year) and the implementation of the specific public procurement procedure, and in the meantime (between the beginning of the current year and September, when, for example, the public procurement procedure is initiated) market prices may change. For this reason, the provision of Article 29, paragraph 1 of the PPL requires that the estimated value of the public procurement be valid at the time of initiating the procedure. If the estimated value of the public procurement increases by more than 10%, this requires a change to the public procurement plan before initiating the public procurement procedure.

**It may also be of importance in the phase of expert evaluation of bids**, if the contracting authority decides to apply the provision of Article 146, paragraph 2 of the PPL and award the contract to a bidder whose bid contains a bid price higher than the estimated value of the public procurement. If the bid price of the selected bidder corresponds to market prices, then this may be the reason why the contracting authority did not decide to implement a new procedure.

**- In the contract execution phase.** Market research is also related to contract amendments. For example, in the situation of contract amendments pursuant to Article 157 of the PPL (amendments regarding additional goods, services or works) or pursuant to Article 158 of the PPL (amendments due to unforeseen circumstances), the contracting authority must conduct market research in order to verify and document that the value of additional goods, services or works corresponds to market prices, i.e., that the price increase requested by the selected bidder due to unforeseen circumstances, truly corresponds to the changes that occurred after the conclusion of the contract due to those extraordinary and changed circumstances and that would affect each bidder.

**How is market research done?**

The ways of market research are different, such as:

- Data collection from available databases

- Analysis of previous experiences in procurement of the same item, examination of the experiences of other contracting authorities

- Collecting information via the Internet (by searching websites, catalogues of manufacturers and business entities, their price lists, searching for data from the websites of institutions responsible for collecting and publishing relevant data on market trends, etc.)

- Collection of information and data through the Portal

- Surveys and questionnaires that are submitted to economic entities that can perform the subject of the procurement (so-called informative offers)

- Organizing meetings with these business entities, etc.

**Is it necessary to document market research data?**

Yes, it is precisely through the documentation on the conducted market research that the contracting authority proves the manner in which it determined the estimated value of the public procurement. In accordance with Article 41, paragraph 1 of the PPL, the contracting authority is obliged to record and document in writing all activities during planning, which includes activities related to the conducted market research.

A record is drawn up of the conducted market research,[[5]](#footnote-5) which, depending on the subject of procurement, contains data on prices and their movements on the market, the availability of the necessary goods, services and works, their quality and warranty period, maintenance conditions, distribution channels, a list of potential suppliers for each subject of procurement with their characteristics, a description of the state of competition on the market of the subject of procurement and other relevant data. All documents created during the market research (documents and information collected using electronic means of communication, e-mails exchanged with market participants, other contracting authorities, minutes, etc.) are attached to the report on the conducted market research and are kept together with it.

**Is it necessary to keep documentation of market research conducted?**

Article 41, paragraphs 2 and 3 of the PPL prescribes the obligation of the contracting authority to keep all documentation related to public procurement, which includes, among other things, any document created during the planning of the public procurement.

The contracting authority is obliged to keep the documentation in accordance with the regulations governing the field of documentary material and archives, and for at least five years from the conclusion of an individual public procurement contract or framework agreement, or five years from the suspension or annulment of the public procurement procedure.

**Do the competent authorities require access to market research documentation?**

All authorities, in accordance with their competences and controls they perform in relation to public procurement, may request access to market research documentation. The presentation of written documents and records of market research and examination activities, the manner in which the estimated value for a specific procurement was determined is required (e.g., if it is indicated that previously concluded contracts, the Portal, internet searches were used, an explanation of how these sources were used is also required). One of the frequent recommendations of the SAI is to conduct market research and ensure documentation of the conducted market research.

## CONTENT OF THE PUBLIC PROCUREMENT PLAN AND PROCUREMENTS TO WHICH THE PPL DOES NOT APPLY

Planning of public procurement and exceptions from the application of the PPL is linked, the procurement plan to which the PPL does not apply is prepared in parallel with the preparation of the public procurement plan.

The contracting authority adopts an annual public procurement plan and a procurement plan to which the PPL does not apply.

The content of the public procurement plan is prescribed by Article 88 of the PPL, while the content of the procurement plan to which the PPL does not apply is regulated by the contracting authority in a separate act.

The procurement plan to which the PPL does not apply consists of all procurements based on the exceptions prescribed in Articles 11-21 of the PPL and procurements whose estimated value is less than the thresholds prescribed in Article 27, paragraph 1 of the PPL, the implementation of which is planned in the current year. Although the PPL does not explicitly contain data on the content of procurement plans to which the PPL does not apply, the provisions of Article 88 of the PPL regarding the public procurement plan can be applied analogously.[[6]](#footnote-6)

The content of these two plans is presented in the table below, with the elements of the public procurement plan being a combination of mandatory data from Article 88 of the PPL[[7]](#footnote-7) and data from the Portal.

|  |  |
| --- | --- |
| Public procurement plan | Procurement plan to which the PPL does not apply |
| No. | No. |
| Subject-matter of public procurement | Subject-matter of procurement |
| Subject-matter of public procurement[[8]](#footnote-8) | Type of procurement subject-matter: |
| Estimated value of public procurement | Estimated procurement value |
| Types of public procurements | **Basis for exemption** |
| CVP label | CVP label |
| NUTS[[9]](#footnote-9) |  |
| Technique[[10]](#footnote-10) | Technique[[11]](#footnote-11) |
| Approximate time of initiation of the procedure | Approximate time of initiation of the procedure |
| Conducting a specific procurement through a centralised public procurement body[[12]](#footnote-12) |  |
| Conducting joint public procurement[[13]](#footnote-13) |  |

The public procurement plan and the procurement plan to which the PPL does not apply may contain other data, if the contracting authority considers it useful,[[14]](#footnote-14) but in the case of the public procurement plan, such additional data cannot be published on the Portal.

* + 1. **Subject-matter of (public) procurement**

**Can the same procurement subject be found in both the public procurement plan and the procurement plan to which the PPL does not apply?**

As a rule, no. The subject-matter and value of the procurement is reviewed on an annual basis.

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| Example 1 - planning contrary to the provisions of the Public Procurement Law | | |
| Public procurement plan | Hygiene maintenance service | 7,000,000 dinars |
| Procurement plan to which the PPL does not apply | Hygiene maintenance service | 999.999 dinars |
| TOTAL VALUE: | | 7,999,999 dinars |
| Conclusion: The contracting authority was obliged to indicate a total value of 7,999,999 dinars in the public procurement plan for the hygiene maintenance service, taking into account Article 27, paragraph 1, item 1) of the PPL, which stipulates that the provisions of the PPL do not apply if the estimated value for the procurement of services is less than 1,000,000 dinars.  Violation under Article 236, paragraph 1, item 1) of the PPL: A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority if it divides the subject of the procurement into several procurements with the aim of avoiding the application of the provisions of this Law or the relevant rules of the public procurement procedure (Articles 29-35). The responsible person of the contracting authority shall also be fined 30,000 to 80,000 dinars for the above-mentioned violation. | | |

Article 29, paragraph 2 of the PPL stipulates that **determining the estimated value of the subject-matter of public procurement cannot be done in a way that aims to avoid the application of this law**, nor can the subject-matter of public procurement be divided into several procurements for that purpose. Additional clarification is provided in paragraph 3 of the same article, which stipulates that the contracting authority shall determine the subject of public procurement in such a way that it represents a technical, technological, functional and other objectively determinable whole.

To assess whether the contracting authority has divided the subject of the procurement into multiple procurements in order to avoid the application of the PPL, an inspection is carried out of the procurement plan to which the PPL does not apply, as well as the contracting authority’s public procurement plan.

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| Example 2 - planning contrary to the provisions of the PPL | | |
| Public procurement plan | Works on regular maintenance of public lighting in the city and populated areas | 22,500,000 dinars |
| Procurement plan to which the PPL does not apply | Works on regular maintenance of public lighting in the city and populated areas | 2,999,999 dinars |
| TOTAL VALUE: | | 25,499,999 dinars |
| Conclusion: The contracting authority was obliged to state in the public procurement plan the total value of the procurement of works on regular maintenance of public lighting in the city and populated areas of 25,499,999 dinars, taking into account Article 27, paragraph 1, item 1) of the PPL, which stipulates that the provisions of the PPL do not apply if the estimated value for the procurement of works is less than 3,000,000 dinars.  Violation under Article 236, paragraph 1, item 1) of the PPL | | |

When checking whether two or more procurement items form a whole, or whether the procurement item can be implemented as an exception, **attention should be paid not only to the name** (formulation) of the items, **but also** to their **technical specifications**.

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| Example 3 - planning contrary to the provisions of the PPL  – unauthorised division of the subject of procurement into multiple procurements | | |
| Procurement plan to which the PPL does not apply | **2022** | **2023** |
| **Subject-matter of procurement** | **Subject-matter of procurement** |
| Procurement of prefabricated metal shelves | Metal shelves |
| Office furniture | Office furniture |
| Total realised value: | 1,891,296 dinars with VAT[[15]](#footnote-15) | 1,784,916 dinars with VAT |
| Conclusion: The contracting authority, in the procurement plan to which the LPP does not apply, unfoundedly divided the procurement objects, by dividing office furniture into two procurement objects by procurement titles, referring to Article 27, paragraph 1, item 1) of the LPP (the technical specifications show that metal archive shelves are being procured, which also constitute office furniture). The above represents public procurement (the total value of the separated procurement items is above the threshold from Article 27 of the PPL) and the contracting authority was obliged to implement a public procurement procedure (e.g., an open procedure by lots). It is also noteworthy that all contracts, in both years, were concluded with the same bidder.  Violation under Article 236, paragraph 1, item 1) of the PPL | | |

**What should be done if the contracting authority planned and implemented the subject of procurement pursuant to Article 27, paragraph 1, item 1) of the PPL, and later during the year a need for the same subject-matter of procurement arises, and with that new need the threshold from Article 27 of the PPL is exceeded?**

***Example:*** The contracting authority carried out the subject of the procurement in February, the estimated value was 800,000 dinars, and subsequently, in November, a need arises for the same subject of the procurement in the amount of an estimated value of 300,000 dinars. It is necessary to be careful here, because among other things, it will be considered whether the contracting authority has properly planned and estimated the value, why the need for additional procurement arose, what the reasons were for this, whether the contracting authority could have previously determined/foreseen this, planned it, and immediately carried out the public procurement procedure with an estimated value of 1,100,000 dinars. In any case, the need for additional procurement for the same subject of an estimated value of 300,000 dinars means carrying out the public procurement procedure (with this second procurement, the threshold of 1,000,000 dinars is exceeded).

However, what would be additionally considered in this specific case is whether there is a violation of Article 29, paragraph 2 of the PPL,[[16]](#footnote-16) i.e., whether the contracting authority determined the estimated value of the procurement in such a way as to avoid the application of the PPL, which could further lead to a violation under Article 236, paragraph 1, item 1) of the PPL, or whether the need for additional procurement arose, for example, due to extraordinary circumstances/events that the contracting authority could not have foreseen, which did not depend on the actions/inaction of the contracting authority. The contracting authority’s error in planning, circumstances that it knew, could have known, but did not take into account, are not considered extraordinary circumstances.

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| Example 4 – influence of circumstances on planning | |
| First situation – circumstances that the contracting authority knew/could have known when planning, but did not take into account | **Second situation** – circumstances that the contracting authority did not know/could not have known when planning |
| The contracting authority planned a specific procurement of goods worth 950,000 dinars, although it knew and could have known that this would not be sufficient on an annual basis. | During the year, and after the procurement was carried out and the contract was concluded, a change in the regulations occurred (it was not known in advance, it was not known/could not have been known at the time of planning and conducting the procurement procedure) which resulted in an additional need for the same subject of procurement. With this new need, the threshold of 1,000,000 dinars is exceeded and a public procurement procedure is conducted. |
| In this case, the contracting authority already knew during planning that the quantities and value of the procurement would not be sufficient for the entire year/contract. | In this situation, the contracting authority did not know/could not have known that there would be a change in regulations, which would result in an additional need for the same subject of procurement. |

* + 1. **Type of subject-matter of (public) procurement**

When preparing the plan, care must also be taken to ensure that the type of procurement object (goods, services or works) is correctly determined. Incorrect planning may occur if the procurement subject-matter is classified as a procurement of works, when in fact it is a procurement of services. This is especially given that the threshold referred to in Article 27 of the PPL for services is less than 1,000,000 dinars (maximum 999,999 dinars), while for works it is less than 3,000,000 dinars (maximum 2,999,999 dinars).

***Example of planning contrary to the provisions of the PPL:*** In the procurement plan to which the PPL does not apply, the contracting authority classifies the subject of the procurement, “cutting of dense bushes and branches along the road belt”, in the value of 2,976,000 dinars, as a procurement of works, which are actually services and at that value, the services would constitute public procurement and an obligation for the contracting authority to conduct a public procurement procedure.

What is considered a public works contract is prescribed by Article 2, paragraph 1, item 4) of the PPL, which refers to the performance of works listed in Annex 1 of the PPL (List of activities in construction), which does not include the cutting of dense bushes and branches. According to the General Procurement Dictionary, the procurement in question constitutes a service (e.g., 77211300 - clearing services; 77211400 - tree cutting services).

* + 1. **Estimated value of (public) procurement**

In order for the contracting authority to clearly consider what constitutes public procurement, and for which procurement items it can apply Article 27, paragraph 1, item 1) of the PPL, it must have insight into all procurements it plans to carry out in the current year and their estimated values. Only in this way will it be able to see, based on the procurement items and their estimated values, which items meet the conditions for exemption under Article 27 of the PPL, and which items will be included in the public procurement plan.

In this regard, and in accordance with the previously mentioned provisions of Article 29, paragraphs 2 and 3 of the PPL, **the division of the subject of the procurement cannot be carried out with the aim of avoiding the application of the PPL**. The above leads to a violation of the principles of public procurement. As an example, we can take the principle of transparency. In the case of procurement to which the PPL does not apply, the contracting authority sends invitations to a certain number of potential bidders (most often to the addresses of three bidders), while by publishing a public invitation on the Portal through the public procurement procedure, that invitation would be sent to all potential bidders, and not only to those to whom the invitation was addressed by the contracting authority. The above also affects the violation of the principle of equality of bidders, and may also lead to a violation of the principle of economy in terms of the use of public funds, as well as the principle of competition.

Below are examples of the unauthorised division of a procurement object into multiple procurements.

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| Example 5 - planning contrary to the provisions of the PPL  – unauthorised division of the subject of procurement into multiple procurements | | |
| Procurement plan to which the PPL does not apply | **Subject-matter of procurement** | **Estimated value** |
| 64212000 - Mobile telephony services | 950,000 dinars |
| Fixed telephony services | 950,000 dinars |
| Total value: | | 1,900,000 dinars |
| Conclusion: The above procurement items are considered a whole within the meaning of Article 29, paragraph 3 of the PPL, the total value is 1,900,000 dinars, so the contracting authority cannot refer to the provisions of Article 27, paragraph 1, item 1) of the PPL, since the above represents a public procurement, for which there is an obligation to implement a public procurement procedure. For example, an open procedure can be implemented by lots, given that some economic entities provide only mobile telephony services, or some only fixed telephony services.  Violation under Article 236, paragraph 1, item 1) of the PPL | | |

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| Example 6 - planning contrary to the provisions of the PPL  – unauthorised division of the subject of procurement into multiple procurements | | |
| Procurement plan to which the PPL does not apply | **Subject-matter of procurement** | **Estimated value** |
| Installation services for removable rotating beacons for light freight trucks | 948,000 dinars |
| Installation services for removable rotating beacons for heavy freight trucks | 699,000 dinars |
| Total value: | | 1,647,000 dinars |
| Conclusion: The contracting authority, in the procurement plan to which the PPL does not apply, unfoundedly divided the subject of the procurement by providing for two procurements for the installation of assembly-dismantling rotating beacons, referring to Article 27, paragraph 1, item 1) of the PPL. The above constitutes a public procurement (total value is 1,647,000 dinars), which can be carried out in an open procedure by lots (the first lot for light freight vehicles, the second lot for heavy freight vehicles).  Violation under Article 236, paragraph 1, item 1) of the PPL | | |

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| Example 7 - planning contrary to the provisions of the PPL  – unauthorised division of the subject of procurement into multiple procurements | | |
| Procurement plan to which the PPL does not apply | **Subject-matter of procurement** | **Estimated value** |
| Procurement of works for the rehabilitation and adaptation of toilets in the City Administration Presidency | 833,333 dinars |
| Procurement of works for the rehabilitation and adaptation of toilets on the second and third floors of the City Administration | 1,666,667 dinars |
| Procurement of works on the toilet at office number 214 - 2nd floor, for the needs of the City Administration | 775,000 dinars |
| Procurement of works for the rehabilitation and adaptation of toilets on the second and third floors of the City Administration | 1,584,000 dinars |
| Total value: | | 7,999,999 dinars |
| Conclusion: The contracting authority, in the procurement plan to which the PPL does not apply, unfoundedly divided the subject-matter of the procurement, by planning four procurement procedures for the rehabilitation and adaptation of toilets/wet facilities within the same facility, contrary to the value threshold for works (less than 3,000,000 dinars), referring to Article 27, paragraph 1, item 1) of the PPL. The above constitutes a public procurement (total value is 4,859,000 dinars), for which a public procurement procedure is being conducted.  Violation under Article 236, paragraph 1, item 1) of the PPL | | |

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| Example 8 - planning contrary to the provisions of the PPL  – unauthorised division of the subject of procurement into multiple procurements | | |
|  | **Subject-matter of procurement** | **Estimated value** |
| Public procurement plan | Work footwear for employees | 1,144,800 dinars |
| Procurement plan to which the PPL does not apply | Work clothes for employees | 948,684 dinars |
|  | **Total value:** | 2,093,484 dinars |
| Conclusion: The contracting authority unjustifiably divided the subject of the procurement, which constitutes a whole within the meaning of Article 29, paragraph 3 of the PPL, into several procurements. It planned the work footwear for employees as a public procurement, while it planned the work clothing for employees as a procurement to which the PPL does not apply, when in fact it should have been carried out in a public procurement procedure (e.g. in an open procedure, formed in two lots). As soon as the value of the work footwear for employees as a subject of the procurement is above the threshold for the application of Article 27, paragraph 1, item 1) of the PPL, this means that each subject of the procurement that constitutes a whole with the previous one will also be a public procurement. Moreover, in this specific case, the same bidder was selected, which further confirms the fact that it is a whole, and not two subjects of procurement that can be viewed separately.  Violation under Article 236, paragraph 1, item 1) of the PPL | | |

**When applying Article 27, paragraph 1, item 1) of the PPL, the total value of the executed contract is also important.**

If the procurement is carried out without applying the PPL based on Article 27 of the PPL, the contracting authority must take into account not only the estimated value of the specific subject of procurement, i.e., the value of the concluded contract, but also whether there have been any annexes and amendments to that contract, and how much the value of the contract is after the increase, because all together must not exceed the threshold from Article 27 of the PPL.

In practice, such cases have been observed. The contracting authorities conducted the procurement procedure within the limits of Article 27, paragraph 1, item 1) of the PPL, but the implementation showed that the value of the contract exceeded the permitted threshold from the aforementioned article.

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| Example 9 - unauthorised reference to the application of Article 27, paragraph 1, item 1) of the PPL | | | |
| Subject-matter of procurement | **Estimated value** | **Basis for exemption** | **Realised value** |
| Motor vehicle mechanic | 833,333.33 | Article 1, paragraph 1, item 1) | 1,497,914 |
| Mobile telephony services | 900,000.00 | Article 1, paragraph 1, item 1) | 1,445,500 |

The Contract Register on the Portal also records changes to contracts concluded on the basis of Article 27 of the PPL, and there is an obligation to publish them within 10 days of the change being made. The legal basis for the change is exclusively Article 27 of the PPL, which indicates the need to take into account the total values ​​(of both the basic contract and the amended one). As a type of change, one of the options offered[[17]](#footnote-17) is the change of the contracted amount and the Portal will ask to enter the amount of the increase. The Portal adds this increase amount to the previous value (e.g., if the value of the basic contract was 500,000 dinars, and the value of the increase was 100,000 dinars, the total value of the contract on the Portal will automatically increase to 600,000 dinars). The contracting authority needs to monitor this and not allow any changes/annexes to the contract that would exceed the value threshold from Article 27, paragraph 1 of the PPL. [[18]](#footnote-18)

**Estimated value for framework agreement and dynamic purchasing system**

According to Article 31, paragraph 1 of the PPL, in the case of a framework agreement and a dynamic procurement system, the estimated value of the subject of public procurement is determined as the maximum value of all contracts envisaged for the duration of that framework agreement or dynamic procurement system.

In this regard, if, for example, a framework agreement is concluded for two years, the total estimated value is considered and accordingly it is determined whether it is a public procurement or whether there is a basis for the application of Article 27, paragraph 1, item 1) of the PPL.

For example, if the contracting authority has concluded a framework agreement for the procurement of mobile and fixed telephony services for two years in a value of over 1,000,000 dinars, this is public procurement, and not the application of Article 27, paragraph 1, item 1) of the PPL.

**Estimated value for permanent contracts**

In the event that the contracting authority potentially concludes a contract for an indefinite period, it should take into account the relevant provisions of the PPL on determining the estimated value of public procurement. Taking the procurement of services as an example, Article 33, paragraph 3 of the PPL stipulates that in the case of public procurement contracts for services in which the total price will not be determined, the calculation of the estimated value is based on:

1) the total estimated value for the duration of the contract, if the contract is concluded for a fixed period of up to 48 months

2) the monthly estimated value of the contract multiplied by 48, when the contract is concluded for an indefinite period or the term is longer than 48 months

The total estimated value, in accordance with the contract duration, will determine whether the procurement is based on Article 27 of the PPL, or whether the contracting authority is obliged to conduct a public procurement procedure due to the estimated value.

**The calculation of the estimated value of public works procurement is based on the total value of the works as well as the goods and services necessary for the execution of the works.**

The provision of Article 34, paragraph 2 of the PPL stipulates that the calculation of the estimated value of a public procurement of works is based on the total value of the works as well as the goods and services necessary for the performance of the works. In the example shown in the table, the competent authority indicated that the procurement of works was accompanied by two additional procurements of services, which are necessary for the performance of the works in question, and the contracting authority carried out all three procurements without applying the PPL, which is contrary to the provisions of the PPL.

|  |  |
| --- | --- |
| Subject-matter of procurement | Estimated value |
| Procurement of works on installation of bulk material | 2,999,200 dinars |
| Bulk material transportation service | 999,900 dinars |
| Bulk material deposit service | 998,800 dinars |
| Total value: | 4,997,900 dinars |

* + 1. **Type of public procurement procedure in the public procurement plan, i.e., grounds for exemption in the procurement plan to which the PPL does not apply**

**Types of public procurement procedure**

If the contracting authority has unreasonably divided the subject of the procurement into several procurements pursuant to Article 27, paragraph 1 of the PPL, it has in fact unreasonably avoided conducting the appropriate type of public procurement procedure.

When drawing up the annual public procurement plan, the appropriate type of procedure is selected. Pursuant to Article 51 of the PPL, open and restricted public procurement procedures are the rule,[[19]](#footnote-19) in the sense that the contracting authority (both public and sectoral) may always apply them, i.e., the existence of any special legally prescribed conditions for their application does not have to be established. For all other public procurement procedures, it is important that certain prescribed conditions are met so that the contracting authority can apply them. Therefore, it is important when planning to properly assess the fulfilment of the conditions for implementing a certain type of public procurement procedure.

**Basis for exemption**

The basis for exemption is one of the most important data in the procurement plan to which the PPL does not apply. It provides greater security:

* That the contracting authority has verified the fulfilment of the conditions for the application of a specific exception – e.g. if the contracting authority has cited Article 12, paragraph 1, item 11) of the PPL as the basis for the exemption,[[20]](#footnote-20) that it has previously verified the fulfilment of the conditions regarding the existence of the exclusive right prescribed by that article (regulations, documentation confirming the exclusive right). If the basis for the exemption is Article 27 of the PPL, this should mean that the contracting authority has verified the value of all planned procurements, both in the public procurement plan and in the procurement plan to which the PPL does not apply.
* That the contracting authority will know which procurements it is obliged to record in the Contract Register – all contracts are recorded[[21]](#footnote-21) pursuant to Article 27 of the PPL.
* That the contracting authority will properly prepare the annual report under Article 181, paragraphs 3 and 4 of the PPL - the appropriate article, item, and sub-item from the PPL are selected from the drop-down menu on the Portal.[[22]](#footnote-22)
  + 1. **CVP code**

The importance of the CPV code, which additionally describes the subject-matter of the procurement,[[23]](#footnote-23) can be seen through the following:

* From the point of view of procurement planning - it can also affect the assessment of whether two or more procurement items form a whole within the meaning of Article 29, paragraph 3 of the PPL (technical, technological, functional and other objectively determinable whole).
* It is important for the planning and implementation of social and other special services, both exempted under Article 27, paragraph 1, item 3) of the PPL, and for the implementation of social and other special services under the special regime under Article 75 of the PPL, if their value represents public procurement.
* CPV is one of the data required for entry in the Contract Register for procurements pursuant to Article 27 of the PPL.[[24]](#footnote-24)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Example 10 - planning contrary to the provisions of the PPL  – unauthorised division of the subject of procurement into multiple procurements | | | | |
| Procurement plan to which the PPL does not apply | **Subject-matter of procurement** | **CVP code** | **Estimated value** | **Realised value** |
| Execution of works - repair of toilets in one of the contracting authority’s facilities | 45330000-9[[25]](#footnote-25) | 2,000,000 dinars | 1,993,500 dinars |
| Execution of works - repair of toilets in another facility of the contracting authority | 45330000-9 | 1,000,000 dinars | 1,195,100 dinars |
| **Total value:** | | 3,000,000 dinars | 3,188,600 dinars |
| Conclusion: In this case, the same subject matter of the procurement is involved, as confirmed by the CPV code. The fact that these are two different objects of the contracting authority does not change the determination of what is considered a whole within the meaning of Article 29, paragraph 3 of the PPL, so that the contracting authority has unfoundedly divided the subject matter of the procurement into two procurements and thus avoided the application of the PPL. In addition, the total estimated value of both procurements is exactly 3,000,000 dinars, which already constitutes a public procurement (the threshold for an exception under Article 27, paragraph 1, item 1) of the PPL for works is less than 3,000,000 dinars). At the same time, the implementation is higher than the threshold prescribed for the application of Article 27, paragraph 1, item 1) of the PPL. All of the above speaks of planning and acting contrary to the provisions of the PPL.  Violation under Article 236, paragraph 1, item 1) of the PPL | | | | |

* + 1. **Approximate time of initiation of the procedure**

When implementing public procurement, information on the approximate time for initiating the procedure is very important information, so that the contracting authority, in accordance with the expected duration of the procedure and taking into account all deadlines for implementing individual phases of the procedure,[[26]](#footnote-26) can see what is considered a timely initiation of the procedure in order to conclude the public procurement contract on time.

If the public procurement procedure is not initiated in a timely manner, procurement may be conducted without applying the PPL, in order to “bridge” the period until the contract is concluded, which may constitute unfounded procurement and a potential violation under Article 236, paragraph 1, item 2) of the PPL.[[27]](#footnote-27)

This situation can also occur if a request for protection of rights is submitted in the public procurement procedure, and the contracting authority does not have the legal option to extend the previous contract. For each of the contracts concluded in this way (in the public procurement procedure and outside the public procurement procedure), there would be an obligation to record it in the Contract Register and it could indicate potential irregularities.

The approximate time for initiating the procedure is also important information when conducting procurement procedures to which the PPL does not apply, regardless of the fact that this procedure lasts shorter (the contracting authority determines the deadlines for submitting bids, etc.), because it may happen that the procedure is started late, and the subject of the procurement is not secured on time.

## CONTENT OF THE PUBLIC PROCUREMENT PLAN AND PROCUREMENTS TO WHICH THE PPL DOES NOT APPLY

The obligation to publish the public procurement plan, as well as all amendments and supplements to that plan, is prescribed by Article 88 of the PPL, while the possible publication of the procurement plan to which the PPL does not apply depends on the provisions set out in a separate act of the contracting authority.

|  |  |  |  |
| --- | --- | --- | --- |
|  | Publication | What is published | Deadline for publication |
| Public procurement plan | On the Portal and the website of the contracting authority | Plan  Amendments and supplements to the plan | 10 days from the day of adopting/changing and supplementing the plan[[28]](#footnote-28) |
| Procurement plan to which the PPL does not apply | On the internet page of the contracting authority if envisaged by special act | Regulated by special act | Regulated by special act |

The procurement plan to which the PPL does not apply is not published on the Portal. There is no legal obligation to publish it on the contracting authority’s website either. However, there are contracting authorities that have published the procurement plan to which the LPP does not apply on their website, thereby making all procurements they conduct on an annual basis transparent, which is an example of good practice. *The Model of the Special Act of the Contracting Authority* referred to in Article 49, paragraph 2 of the Law on Public Procurement, which the PPO published on its website, also states that the contracting authority shall publish the procurement plan to which the PPL does not apply on its website.

# ANALYSIS OF EXCLUSION GROUNDS

## EXCEPTIONS FROM THE APPLICATION OF PPL

An exception from the application of the PPL represents a legal basis that entitles the contracting authority to conduct a certain procurement subject not in the public procurement procedure on the Portal, but in accordance with the procedures provided for by a separate act.

The PPL recognizes two groups of exceptions:

1. Pursuant to Article 27 of the PPL - exceptions because of threshold values
2. Exceptions prescribed in Articles 11-21 of the PPL – are not exceptions due to value thresholds, but due to other reasons that lead to the exception (e.g., exclusive right, procurement between related entities)

The second division refers to the exceptions from Articles 11-21 of the PPL, in a way that distinguishes who can apply a specific basis for exemption, i.e., whether the exception applies to all contracting authorities, or only to public, or only to sectoral contracting authorities. Thus, the PPL distinguishes:

* General exceptions – exceptions based on Articles 11-13 of the PPL, which apply to all contracting authorities
* Special exceptions for public contracting authorities - pursuant to Article 14 of the PPL
* Special exceptions for sectoral contracting authorities – exceptions based on Articles 16-19 of the PPL
* Exceptions in the field of defence and security – exceptions based on Articles 20 and 21 of the PPL

In connection with the above, contracting authorities should take care when preparing and publishing annual reports on exempted procurements on the Portal when indicating the grounds for exemption.

## RESTRICTIVE APPLICATION OF EXCEPTIONS

The rule for all exceptions is that they can only be applied if all the prescribed conditions are met. Otherwise, the contracting authority commits an offence.

***Violation under Article 236, paragraph 1, item 2) of the PPL:*** A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority if it procures goods, services or works without a previously conducted public procurement procedure, except when permitted by this law (Article 51). The responsible person of the contracting authority shall also be fined 30,000 to 80,000 dinars for the above-mentioned violation.[[29]](#footnote-29)

**Who can file a request to initiate misdemeanour proceedings?**

According to the provisions of Article 238 of the PPL, a request to initiate misdemeanour proceedings may be submitted by all state bodies competent for controlling the legality of spending public funds, when, acting within their jurisdiction, they determine that a violation of this law has been committed that may be the basis for misdemeanour liability.

The statute of limitations for initiating and conducting misdemeanour proceedings begins three years after the offense was committed.

**Annulation of contract**

The Republic Commission, pursuant to Article 233, paragraph 1, item 6) of the PPL, has the authority to **annul a contract** concluded by the contracting authority without a previously conducted public procurement procedure, and which the contracting authority was obliged to implement in accordance with the provisions of this Law.

A request for cancellation of the contract, pursuant to paragraph 2 of the same article, may be submitted within 60 days from the date of learning of the reason for cancellation, and no later than six months from the date of conclusion of the contract.

From the date of the decision on annulment, the contract shall cease to be valid and the contracting authority shall be imposed a fine in the amount of up to 30% of the value of the concluded contract, and not less than the amount prescribed in Article 231 of the PPL.[[30]](#footnote-30) Exceptionally, the Republic Commission may impose a fine instead of annulling the contract.

Below is an overview of all exceptions individually, by articles.[[31]](#footnote-31)

## Article 27 of the PPL

These exemptions apply to procurements whose estimated values ​​are below the thresholds prescribed by the provisions of Article 27 of the PPL.

Presented in a table, it would look like this:

|  |  |  |
| --- | --- | --- |
| For all contracting authorities | For diplomatic consular representative offices | For social and other special services - Annex 7 |
| Goods and services  ˂ 1,000,000 dinars | **Goods and services**  ˂ 15,000,000 dinars | **For public contracting authorities**  ˂ 15,000,000 dinars |
| Works  < 3,000,000 dinars | **Works**  < 650,000,000 dinars | **For sectoral contracting authorities**  < 20,000,000 dinars |

The rule for these procurements is that they will be recorded in the Contract Register, by entering the required data on the Portal, from 1 January 2024. When implementing these procurements, the principles of the PPL are applied in a manner appropriate to the circumstances of the specific procurement.

**Article 1, paragraph 1, item 1) of the PPL**

The provisions of the PPL do not apply to the procurement of **goods, services** and the implementation of design competitions, the estimated value of which is **less than 1,000,000 dinars**, and the procurement of works, the estimated value of which is **less than 3,000,000 dinars**.

The application of this exception can be seen through the data in the following table:

|  |  |  |
| --- | --- | --- |
| Type of procurement subject-matter: | Estimated value | Who implements it |
| Goods | Maximum  999,999 dinars | Both public and sectoral contracting authorities |
| Services |
| Works | Maximum  2,999,999 dinars |
| Contracts concluded on the basis of this exemption are recorded in the Contract Register. | | |

|  |  |
| --- | --- |
| Incorrect application of this exception | |
| Example 1 | **Example 2** |
| Procurement plan to which the PPL does not apply | Procurement plan to which the PPL does not apply |
| Planned procurement of goods/services of estimated value  ≥ 1,000,000 dinars | Three separate procedures are planned for vehicle maintenance services, namely:   1. Škoda vehicle in the amount of 250,000 dinars 2. Mercedes vehicle in the amount of 800,000 dinars 3. Dacia vehicle in the amount of 500,000 dinars |
| Planned procurement of works of estimated value  ≥ 3,000,000 dinars |
| Conclusion: The stated amounts of estimated value represent public procurement, and not an exception from Article 27, paragraph 1, item 1) of the PPL.[[32]](#footnote-32) | **Conclusion:** The action is contrary to Article 29, paragraphs 2 and 3 of the PPL and Article 27, paragraph 1, item 1) of the PPL:   * Vehicle maintenance services constitute a whole within the meaning of Article 29, paragraph 3 of the PPL * The contracting authority unreasonably divided the subject of the procurement into three procedures without applying the PPL (contrary to Article 29, paragraph 2 of the PPL), instead of conducting an open public procurement procedure structured in three lots * The total value is greater than 1,000,000 dinars, i.e., 1,550,000 dinars, which is contrary to Article 27, paragraph 1, item 1) of the PPL |

**Article 1, paragraph 2, item 1) of the PPL**

The provisions of the PPL do not apply to the procurement of **goods, services** and the implementation of design competitions, the estimated value of which is **less than 15,000,000 dinars, for the needs of diplomatic missions, diplomatic and consular missions and the performance of other activities of the Republic of Serbia abroad**, as well as to the procurement of works for these needs, the estimated value of which is **less than 650,000,000 dinars**.

The cumulative conditions for the application of the exception are:

1. Procurement of goods, services or works is for the needs of diplomatic missions, diplomatic and consular representations and the performance of other activities of the Republic of Serbia abroad

Procurement for these needs has its own specificities, in addition to being carried out abroad, there are also other requirements (e.g., when performing work for the needs of diplomatic and consular missions, if it is a so-called restricted space, it is most often considered confidential and must be in a special regime of use and protection).

1. Value thresholds of maximum 14,999,999 dinars for the procurement of goods or services, or maximum 649,999,999 dinars for the procurement of works

Contracts concluded on the basis of this exemption are recorded in the Contract Register.

**Article 1, paragraph 3, item 1) of the PPL**

The provisions of the PPL do not apply to the **procurement of social and other special services** referred to in Article 75 of the PPL whose estimated value is **less than 15,000,000 dinars** when the procurement is **carried out by a public contracting authority**, or **less than 20,000,000 dinars** when the procurement is carried out by a **sectoral contracting authority**.

Social and other special services are provided for in Article 75 of the PPL and Annex 7, and refer to services with precisely defined CPV codes.

The most common social and other special services used in practice are:

* **Health and social services** - from 85000000-9 to 85323000-9, with detailed services. For example, if the contracting authority were to carry out systematic examination services, and if these services consist of services from Annex 7, and the total values ​​are below the prescribed ones (below 15,000,000 dinars for a public contracting authority, or below 20,000,000 dinars for a sectoral contracting authority), the contracting authority has grounds for applying Article 27, paragraph 1, item 3) of the PPL, or to carry out the procurement without applying the PPL.
* Of the **social services**, the most common procurements are carried out for: home help (for children with disabilities; for the elderly; procurement of housekeeping and caregiving services for the elderly (CPV 98513310 - Home help services); for day care for children with disabilities/for adults with disabilities (CPV 85312100 Community Day services).
* **Hotel and restaurant services** – what needs to be taken into account is if a CPV code from Annex 7 is combined with a service that does not belong to that annex. For example, contracting authorities often carry out the procurement of air transport and hotel accommodation services as a single procurement. Hotel accommodation services belong to Annex 7 (CPV 55110000), while air transport services (CPV 60400000) do not belong there (different rules apply to them and a threshold of less than 1,000,000 dinars is required for the procurement to be considered exempt under Article 27, paragraph 1, item 1) of the PPL).

By merging contracts to which different procurement rules apply, this becomes a mixed procurement, to which the rules of Article 24, paragraph 1 of the PPL applies,[[33]](#footnote-33) so that it will be a public procurement if the value of the air transport service is 1,000,000 dinars or more. This is because these are parts of the contract that are objectively separable (the contracting authority can separately conclude a contract for air transport in a public procurement procedure if, for example, the estimated value is 1,500,000 dinars, and separately a contract for hotel accommodation in a procurement procedure to which the PPL does not apply, if, for example, the estimated value is 7,000,000 dinars), because these are procurement items to which different procurement rules apply. However, if both services are merged into one contract, then it is not enough to just look at which type of service has the higher estimated value (whether air transport or hotel accommodation). This is because the merger of contracts that include different procurement items and the purpose of awarding a single contract cannot be carried out in order to avoid the application of the PPL. [[34]](#footnote-34)

* **Legal services**, if not exempted, in accordance with Article 12, paragraph 1, item 4) of the PPL – see more in the explanation of the aforementioned exception from Article 12 of the PPL.
* **Security services** (79710000-4) – a service provided by the majority of contracting authorities. Based on data from the Portal and the Register of Contracts, it can be concluded that many contracting authorities implement this service through public procurement procedures, even though the estimated value of the procurement is below the threshold referred to in Article 27, paragraph 1, item 3) of the PPL.

Social and other special services can be applied by both public and sectoral contracting authorities, with different value thresholds, for a public contracting authority it is a procurement with an estimated value of a maximum of 14,999,999 dinars, while for a sectoral contracting authority it is an estimated value of a maximum of 19,999,999 dinars. If this service is above these thresholds, then the public procurement procedure is carried out in accordance with Article 75 of the PPL, which allows for a more lenient regime (e.g., to set a shorter deadline for submitting bids), all in accordance with a special act.

|  |  |
| --- | --- |
| Example 11 – Procurement of a systematic review service, which includes the services from Annex 7  The procurement is carried out by the public contracting authority | |
| Estimated value of the service  5,500,000 dinars | Estimated value of the service  **16,000,000 dinars** |
| It is not a public procurement procedure | **It is a public procurement procedure** |
| The public contracting authority shall conduct the procurement in accordance with Article 27, paragraph 1, item 3) of the PPL, or in accordance with the procedure prescribed by a special act (without application of the PPL). | The public contracting authority shall be obliged to conduct the public procurement procedure.  The contracting authority may set a shorter deadline for submitting a bid (e.g., 10 days if so, provided by a special act and if that deadline is appropriate).[[35]](#footnote-35) Otherwise, the procedure is carried out entirely on the Portal in accordance with the provisions of the PPL. |

Contracts concluded on the basis of this exemption are recorded in the Contract Register, provided that they should be recorded on this basis (Article 27, paragraph 1, item 3) of the PPL), and in the case when the value of the specific service is below 1,000,000 dinars (and not on the basis of Article 27, paragraph 1, item 1) of the PPL).

## Article 11 of the PPL

These exemptions fall under the group of general exceptions, so they can be applied to both public and sectoral contracting authorities.

Article 11 of the PPL distinguishes three bases, and the division can be made according to the procurement rules and procedures that apply instead of the provisions of the PPL:

1. Article 11, paragraph 1, item 1) of the PPL – procurement rules and procedures **provided for by an international agreement**
2. Article 11, paragraph 1, item 2) of the PPL – procurement rules and procedures **provided for by an international organisation**
3. Article 11, paragraphs 2 and 3 of the PPL – procurement rules and procedures determined **by an international organisation or financial institution** that fully finances the aforementioned procurements and design contests, or does so for the greater part

Contracts concluded pursuant to Article 11 of the PPL are not recorded in the Contract Register, and in the annual reports of contracting authorities they are shown collectively in total value.

**Article 1, paragraph 1, item 1) of the PPL**

The provisions of the PPL do not apply to procurement and design contests that the **contracting authority is obliged to carry out**, in accordance with procurement procedures established by an **international treaty or other act on the basis of which an international obligation arose**, which the **Republic of Serbia** has concluded **with** one or more **third countries** or its **narrower political-territorial units** and which relate to goods, services or works **intended for joint implementation** or **use by the signatories**.

For the application of this exception, it is necessary that the following conditions are **cumulatively** met:

**1)** The procurement rules/procurement are established by an international treaty[[36]](#footnote-36) (e.g., the conclusion of direct interstate credit agreements, in which the contractor is also contracted at the same time) or by another act on the basis of which an international obligation arose

**2)** The Republic of Serbia is a contracting party to an international agreement[[37]](#footnote-37) or other act, while the other contracting party is one or more third countries[[38]](#footnote-38) or its narrower political-territorial units

**3)** Procurement of goods, services or works is intended for joint implementation or use by the signatories (e.g., joint project)

When implementing this exception, the **application of public procurement principles** is indicated.

**Article 1, paragraph 2, item 1) of the PPL**

The provisions of the PPL do not apply to procurement and design contests that the **contracting authority is obliged to conduct in accordance with procurement procedures established by international organisations**.

This exception applies to the **procurement procedure established by an international organisation**. Most often, the contracting authority is a member of that organisation, and the obligation arises from the founding and other acts of that organisation.

**Article 11, paragraphs 2 and 3 of the PPL**

According to paragraphs 2 and 3 of Article 11, the provisions of the PPL do not apply to procurement and design contests conducted **in accordance with procurement rules determined by an international organisation or financial institution, if that organisation or institution**

1. **fully finance the above procurements** and design competitions
2. **largely co-finances** the aforementioned procurements and design competitions and if the application of these rules has been agreed upon

Based on the above, we can distinguish three situations, depending on the method of financing a specific procurement:

1. If an international organisation or financial institution[[39]](#footnote-39) **fully finances the procurement**, the rules determined by that international organisation or financial institution shall apply[[40]](#footnote-40) (this exception applies)
2. If an international organisation or financial institution is **financing the procurement for the most part** (co-financing more than 50%), the agreed rules will apply. Therefore, in this situation, there is a possibility to agree on the application of the provisions of the PPL and in that case this exception will not apply.
3. If an international organisation or financial institution **finances the procurement exactly 50% or less**, then the provisions of the PPL apply and there is no basis for the application of this exception.

When preparing the annual report, the basis from Article 11, paragraph 2 of the PPL (fully financed) is separately distinguished from the basis from paragraph 3 of the same article (largely financed), and contracting authorities should pay attention to this when selecting the basis from the drop-down menu on the Portal.

## Article 12 of the PPL

These exemptions fall under the group of general exceptions, so they can be applied to both public and sectoral contracting authorities. When implementing these procurement procedures, the application of public procurement principles is envisaged in a manner appropriate to the circumstances of the specific procurement.

Data on contracts concluded on this basis are not published in the Contract Register.

**Article 12, paragraph 1, item 1) of the PPL**

The provisions of the PPL do not apply to the **purchase and lease** of land, existing buildings and other **real estate**, as well as rights related to them.

A common example of the application of this exception[[41]](#footnote-41) is the lease of business premises. The exception also applies to the purchase or lease of an existing building (other facility). However, if a specific building (other facility) has yet to be constructed, the contracting authority is obliged to conduct a public procurement procedure for the execution of the works.

**Article 12, paragraph 1, item 2) of the PPL**

The provisions of the PPL do not apply to the **purchase of time for television** or **radio broadcasting**, or time for broadcasting program content, from **media service providers**.

From the above it follows that two cumulative conditions are necessary for the application of this exception, namely:

1. Subject-matter of procurement - represents time for television or radio broadcasting, or time for broadcasting program content
2. Other contracting party – the economic entity to which the contract is awarded is the media service provider

Media service providers are defined by the Law on Electronic Media.[[42]](#footnote-42) Data on media service providers is available in the Register of Media Services.[[43]](#footnote-43)

In practice, this exception is often used for broadcasting the session of the assembly. It is important to emphasize that this exception does not include the recording and editing of program content, but only its broadcasting on radio or television. If, for example, the contract also includes the recording of a show, spot, video, advertisement, etc., then this exception cannot be applied. This means that this exception cannot be applied to the procurement of programme content, but only to the time for broadcasting that program content.

**Article 12, paragraph 1, item 3) of the PPL**

The provisions of the PPL do not apply to **arbitration and amicable dispute resolution services**.

Arbitration is a specific, out-of-court method of resolving disputes. It is negotiated based on the agreement of the parties.[[44]](#footnote-44) It is similar to mediation as an intermediary in resolving disputes.[[45]](#footnote-45)

**Article 12, paragraph 4, item 1)**

Item 4) exempts certain legal services from the application of the PPL, which are classified into five categories (each of which is recorded separately in the contracting authority’s annual report). The first three relate to situations in which a lawyer is hired for representation services, or certain legal advice services provided by a lawyer.

These services should be distinguished from legal services referred to in Article 27, paragraph 1, item 3) of the Public Procurement Law (In Annex 7, for these legal services,[[46]](#footnote-46) it is indicated - **legal services, if not exempted, in accordance with Article 12, item 4) of this Law**).

1. **subitem (1)**

The provisions of the PPL do not apply to legal services of representation of the contracting authority by **lawyers in arbitration proceedings** or **amicable dispute resolution** in the country or abroad, as well as before international arbitration or an international body for amicable dispute resolution.

This legal basis is related to the previous exception from Article 12, paragraph 1, item 3) of the PPL, provided that the contracting authority is represented by a lawyer in the arbitration or amicable dispute resolution procedure.

1. **subitem (2)**

The provisions of the PPL do not apply to legal services of **representation** of the contracting authority **by lawyers in judicial and other proceedings before courts or other public authorities** in the country and abroad or before international courts, tribunals or institutions.

If the contracting authority needs to hire a lawyer to represent it in the aforementioned procedures and before the aforementioned bodies and courts, it is not obliged to conduct a public procurement procedure when selecting one.

1. **subitem (3)**

The provisions of the PPL do not apply to **legal advice services** provided by **lawyers during the preparation for representation** in the proceedings referred to in Article 12, paragraph 1, item 4), sub-items (1) and (2) of the PPL or if there is a clear indication or high probability that the matter to which the advice relates will become the subject of those proceedings.

The contracting authority is not obliged to conduct a public procurement procedure in cases where it engages a lawyer to provide legal advice in preparation for representation in the aforementioned procedures (e.g. engages a lawyer in preparation for representation in court proceedings), or when there is a clear indication or a high probability that the matter to which the advice relates will become the subject of such procedures. These are situations where court or other proceedings have been initiated, or the given procedure has not yet been initiated, but there is a high probability that such proceedings will occur.

1. **subitem (4)**

The provisions of the LPP do not apply to **legal services** provided by **legal representatives** or **guardians** or other legal services whose **executives have been selected by the court** or are designated by law to perform certain tasks **under the supervision of the court**.

E.g., bankruptcy trustee appointed by the court.

1. **subitem (5)**

The provisions of the PPL do not apply to **legal services** that are **connected**, even occasionally, **with the exercise of public authority**.

In practice, executor services are recognised under this exception.

**Article 12, paragraph 1, item 5) of the PPL**

The provisions of the PPL do not apply to the **services of document verification and certification provided by notaries public**.

The above exception means that contracting authorities who use the services of notaries are not obliged to conduct a public procurement procedure (e.g., for services of certification and authentication of documents provided by notaries).

**Article 12, paragraph 1, item 6) of the PPL**

The provisions of the PPL do not apply to **financial services** related to the issuance, sale, purchase or transfer of **securities** or **other financial instruments** within the meaning of the law regulating the **capital market**, as well as activities carried out within the framework of the European Financial Stability Facility and the European Stability Mechanism.

These are precisely defined financial services related to the capital market. The meaning of the terms securities and other financial instruments, to whose transactions this exception applies, is regulated by the Law on the Capital Market (“Official Gazette of the Republic of Serbia”, No. 129/21). Financial services in other cases, such as insurance services, banking services, are the subject of public procurement of services in accordance with Article 2, paragraph 1, item 6) of the PPL.[[47]](#footnote-47)

**Article 12, paragraph 1, item 7) of the PPL**

The provisions of the PPL do not apply to loans and **credits**, regardless of whether they are related to the sale, purchase or transfer of securities or other financial instruments.

An example of this exception is any type of loan (e.g., the purchase of a loan service to maintain current liquidity), with the exception that so-called credit products (e.g., revolving, overdraft) also fall under this exception.

**Article 12, paragraph 1, item 8) of the PPL**

The provisions of the PPL do not apply to **contracts** concluded in accordance with the provisions of the law governing rights, obligations and responsibilities arising **from employment**, or **based on work other than contracts for services**.

The exception refers to work outside the employment relationship in the sense of the Labor Law (temporary and casual jobs, additional work, contract on professional training and development),[[48]](#footnote-48) except for the work contract.[[49]](#footnote-49)

This means that if the contracting authority, for example, needs to conclude for the provision of a certain service:

1. Contract for temporary and occasional work (e.g., for seasonal work, which does not last longer than 120 working days in a calendar year) – does not involve a public procurement procedure
2. Contract on additional work (e.g., with an employee who works full-time for another employer, and the contracting authority engages him for a maximum of one third of full-time work) – does not conduct a public procurement procedure
3. Contract for professional development (e.g., for performing specialisation, for the period specified in the specialisation programme) – does not involve a public procurement procedure

The contracting authority is obliged to record and publish data on the above contracts in the annual report, as well as enter data on other grounds for exemption from Articles 11-21 of the PPL.

However, if the contracting authority needs to conclude a contract for work in order to provide a certain service (e.g., for the purpose of providing a certain service that is outside the contracting authority’s activities, or for tasks that are not systematised), the conclusion of that contract must be preceded by the implementation of a public procurement procedure (except if the given procurement is below the thresholds prescribed in Article 27, paragraph 1 of the PPL, taking into account the provisions of Article 29, paragraphs 2 and 3 of the PPL). The contracting authority shall record data on concluded contracts for work in the Register of Contracts, in the section for public procurement if this contract was concluded in the public procurement procedure, or in the section of exemptions with a reference to Article 27 of the PPL if the given procurement is below the thresholds prescribed in that article.

**Article 12, paragraph 1, item 9) of the PPL**

The provisions of the PPL do not apply to **civil defence, civil protection and hazard prevention services provided by non-profit organisations**, i.e., associations covered by **CPV codes** 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, **except for the service of transporting patients by ambulance**.

Based on the above, several cumulative conditions arise for the application of this exception:

1. Exempted services – civil defence services, civil protection and hazard prevention services
2. These are services with precisely defined CPV codes:

* 75250000-3 - fire service and rescue services
* 75251000-0 - fire service services
* 75251100-1 - fire-fighting services
* 75251110-4 - fire prevention services
* 75251120-7 - forest fire-fighting services
* 75252000-7 - rescue services
* 75222000-8 - civil defence services
* 98113100-9 - nuclear safety services
* 85143000-3 - ambulance services[[50]](#footnote-50)

1. Providers of these services are non-profit organisations or associations

**Article 12, paragraph 1, item 10) of the PPL**

The provisions of the PPL do not apply to **passenger transport services by rail or metro**.

This is an exception that applies to (public) passenger transport services by rail or metro.

**Article 12, paragraph 1, item 11) of the PPL**

The provisions of the PPL do not apply to procurement **by contracting authorities** or groups of contracting authorities that **hold an exclusive right** under which they alone may perform a specific activity in a specific geographical area and which is **granted to them or arises from a law, sub-legal act or individual act**.

The application of this exception requires the fulfilment of the following cumulative conditions:

1. A bidder in a specific procurement is a person or organisation that, according to the provisions of Art. 3 or 4 of the PPL, has the status of a contracting authority.

Therefore, the bidder in this case is not a business entity from the private sector.

1. It is necessary that the contracting authority, which in this specific case acts as a bidder, **holds the exclusive right[[51]](#footnote-51)** to perform the activity that is the subject of the public procurement.

This means that that person can only perform a certain activity in a certain geographical area.

1. The exclusive right is granted or arises from a law, a by-law or an individual act.

An explanation of the fulfilment of the above conditions can be seen in the example of a procurement for the provision of a **reserved postal service**:[[52]](#footnote-52)

1. The Public Enterprise Pošta Srbije (“Post of Serbia”) appears as a bidder

It has the status of a contracting authority according to the provisions of the PPL (when it conducts procurement for its own needs, it applies the provisions of the PPL), and in this specific case it appears as a bidder.

1. The exclusive right relates to the reserved postal service as part of the universal postal service

The reserved postal service cannot be provided by another business entity.

1. The exclusive right arises from the provision of Article 24 of the Law on Postal Services (“Official Gazette of the Republic of Serbia”, No. 77/19), which stipulates that reserved postal services as part of the universal postal service are entrusted to the public postal operator, which is precisely the Public Enterprise Pošta Srbije (“Post of Serbia”).

It follows from the above that the exclusive right of the Public Enterprise “Post of Serbia” to provide reserved postal services is granted, i.e., it arises from the Law on Postal Services, and that contracting authorities who need to procure the aforementioned services from the Public Enterprise “Post of Serbia” are not obliged to apply the PPL in accordance with Article 12, paragraph 1, item 11) of the PPL.

An example of the procurement of goods, based on exclusive rights, is the procurement of the edition of the “Official Gazette”, namely the basic and special editions within the meaning of the Law on the Publication of Laws and Other Regulations and Acts (“Official Gazette of the Republic of Serbia”, No. 45/13 and 10/23). This law stipulates in Article 1 that the “Official Gazette of the Republic of Serbia” is the republic’s official gazette, that the publication of the Official Gazette is an activity of general interest, carried out by a public enterprise founded by the Republic of Serbia. Article 2 of the same law stipulates which acts are mandatory published in the “Official Gazette”, while Article 18 further stipulates the basic and special editions of the “Official Gazette”.

Since the Public Enterprise “Official Gazette” is the only one that carries out the activity of publishing the republic’s official gazette, this means that there is no competition in the Republic of Serbia for the performance of the activity in question, and when purchasing the gazette in question, both basic and special editions, there is no obligation to apply the PPL, in accordance with Article 12, paragraph 1, item 11) of the PPL.

Utilities are also a common example of exempted procurement on this basis (e.g., procurement of thermal energy from a public utility company that performs the utility activity of producing and distributing thermal energy).

Exclusive right implies that the contracting authority, which appears as a bidder due to exclusive right, actually performs the subject of the procurement itself, using its own capacities. Otherwise, involving other entities (e.g., private companies) in the execution of the work would mean an abuse of this legal basis.

**Article 12, paragraph 1, item 12) of the PPL**

The provisions of the PPL do not apply to **research and development services**, except when the subject of public procurement is research and development services covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 if both of the following conditions are met: (1) the benefit accrues exclusively to the contracting authority, i.e., they are intended exclusively for its use and performance of its tasks, and (2) the contracting authority fully finances those services.

This exception encourages co-financing of research and development services in situations where the benefit is not exclusively realised by a specific contracting authority and if the said services are not intended for its use only, i.e., when it is not financed independently.

Contrary to the above, if the contracting authority independently finances the aforementioned services (with the indicated CPV codes) in their entirety, and they are intended exclusively for its use, the contracting authority is obliged to apply the provisions of the PPL when procuring them.

Therefore, there are three cumulative conditions that imply the application of the PPL and the implementation of the public procurement procedure:

1. the subject-matter of procurement is covered by one of the mentioned CPV codes

- 73000000 - Research and development services and related advisory services

- 73100000 - Services in the field of research and experimental development

- 73110000 - Research services

- 73111000 - Research laboratory services

- 73112000 - Marine research services

- 73120000 - Experimental development services

- 73300000 - Planning and implementation of research and development

- 73420000 - Preliminary feasibility study and technological presentation

- 73430000 - Testing and evaluation

2) the benefit from these research and development services is realised exclusively by the contracting authority, i.e., they are intended exclusively for his use and the performance of his business.

3) the contracting authority fully finances these services

In other situations, contracting authorities are not obliged to apply the provisions of the PPL. In essence, all research and development services are exempt from the application of the LPP, except for those that are specifically designated by CPV codes (indicated under point 1)), which are paid for in their entirety by the contracting authority and which serve exclusively its needs (three cumulative conditions for the application of the PPL and the implementation of the public procurement procedure).

## Article 13 of the PPL

These exemptions apply to contracts between related entities (so-called in-house procurement). They can be applied to both public and sectoral contracting authorities.

This exception includes three grounds, which are thus reported through the contracting authorities’ annual reports.

**Article 13, paragraph 1 of the PPL**

The provisions of the PPL do not apply to contracts concluded by a contracting authority with another legal entity if all of the following conditions are met: **1) the contracting authority exercises control** over that legal entity **similar to the control it exercises over its own organisational units; 2) the legal entity** over which the contracting authority exercises control carries out **more than 80% of its activities in the Republic of Serbia for the purpose of performing tasks entrusted to it** by the contracting authority or entrusted to it by other legal entities over which that contracting authority exercises control; 3) there is **no participation of private capital** in the controlled legal entity that has a decisive influence on decision-making, or prevention of decision-making, in accordance with applicable regulations.

What is considered a method of performing control, within the meaning of item 1), is specified in paragraph 2 of Article 13 of the PPL, while paragraph 7 of the same article regulates in more detail the method of determining the required percentage amount.

Accordingly, the cumulative conditions for the application of the exception require that:

1. There is control of the contracting authority over the supervised (controlled) legal entity, as well as over its organisational parts, which means that the contracting authority has a decisive influence on the strategic goals and important decisions of the supervised entity

Determining whether the above conditions are met requires access to appropriate documentation in order to establish whether there is actual control, as well as whether it has a decisive influence on the strategic goals and important decisions of the supervised entity (e.g., whether prior approval of the contracting authority is required for making important decisions by the supervised legal entity).

1. A supervised (controlled) legal entity carries out more than 80% of its activities in the Republic of Serbia for the contracting authority or for other legal entities over which the contracting authority exercises control

This means that the controlled legal entity essentially operates for the contracting authority (more than 80% of the revenue is generated from the work entrusted to it by the controlling contracting authority or by other legal entities over which that contracting authority exercises control). To determine the percentage amount (whether more than 80% is met), the average of total revenue in the Republic of Serbia for the period of the previous three years or a shorter period (taking into account the date of establishment and commencement of the activities of the controlled entity) is taken into account. It is necessary to specifically determine the existence of the required percentage amount.

1. There is no participation of private capital in the controlled legal entity that has a decisive influence on decision-making or prevention of decision-making.

The fulfilment of the above condition should also be verified and determined: whether there is any private capital participation in the controlled legal entity; if so, whether it has a decisive influence on decision-making.

**Note:** All of the above in relation to the application of paragraph 1 of this Article, pursuant to paragraph 3, also applies in the reverse situation, when a controlled legal entity awards a contract to a contracting authority that exercises control over it, or awards a contract to another legal entity over which the contracting authority exercises control. This is the situation when a controlled legal entity carries out the procurement.

An example of the application of the exception on this basis can be seen between the Municipality as the founder and the Public Enterprise (or Public Utility Enterprise), with regard to the tasks entrusted to that Public Enterprise by the founder. The first condition with regard to the exercise of control by the Municipality over the Public Enterprise would exist if, for example, the founder, among other things, appoints and dismisses the members of the Supervisory Board and the Director of the Public Enterprise, has the right to manage and participate in the distribution of the Public Enterprise’s profits, the right to be informed about its operations, as well as the right to participate in the distribution of the liquidation or bankruptcy estate after the termination of the Public Enterprise. When assessing the fulfilment of the second condition (the required percentage of 80%), the average of total revenues for the period of the previous three years from the performance of the entrusted activities performed by the Public Enterprise would be considered, regardless of whether these tasks were entrusted by the Municipality as the founder, or whether these tasks were entrusted to other persons over whom the Municipality exercises control. The third condition would be considered in relation to the possible existence of private capital in the Public Enterprise as a controlled legal entity (whether or not there is a participation of private capital that has a decisive influence on decision-making, or prevents decision-making in accordance with applicable regulations).

**Article 13, paragraph 4 of the** **PPL**

The provisions of the PPL do not apply to contracts concluded by a contracting authority with another legal entity over which the contracting authority does not exercise control if all of the following conditions are met: **1) the contracting authority, together with other contracting authorities, exercises control** over that legal entity similar to that which they exercise over their own organisational units; **2)** the legal entity over which those contracting authorities exercise control carries out **more than 80% of its activities** in the Republic of Serbia for the purpose of performing tasks entrusted to it by those contracting authorities or entrusted to it by other legal entities over which those contracting authorities exercise control; **3) there is no participation of private capital** in the controlled legal entity that has a decisive influence on decision-making, or the prevention of decision-making, in accordance with applicable regulations.

The cumulative conditions for the application of the exception from paragraph 4 are the same as in paragraph 1 of this Article. The difference is that control is exercised by several contracting authorities (**joint control**) and the existence of more than 80% of the supervised entity’s activities in the Republic of Serbia is considered in relation to the performance of tasks entrusted to it by those contracting authorities (which exercise joint control), or entrusted to it by other legal entities over which those contracting authorities exercise control.

The existence of joint control exists under the following cumulative conditions:

1. the bodies of a controlled legal entity, competent for decision-making, are composed of representatives of all contracting authorities that exercise control over that legal entity (individual representatives may represent some or all contracting authorities)
2. the contracting authorities may jointly exercise decisive influence on the strategic objectives and important decisions of the controlled legal entity
3. the controlled legal entity does not have interests different from the interests of the contracting authorities that exercise control over it

The application of the exception on this basis (joint control) can be seen in the example of the National Council of National Minorities, together with the Municipality, establishing a Cultural Institution with the aim of achieving the general interest in culture, i.e., preserving and presenting Serbian culture and the culture of national minorities in the Republic of Serbia. All conditions are required as with the previous basis for the exception (80% of the activity, no private capital participation). The only difference is the existence of joint control by several contracting authorities.

**Article 13, paragraph 6 of the** **PPL**

The provisions of the PPL do not apply to **contracts concluded by two or more contracting authorities** if all of the following conditions are met: 1) the contract establishes or determines **cooperation between the contracting authorities in order to** ensure the **provision of public services** that they are obliged to perform, in order to achieve common objectives; 2) the implementation of such cooperation is carried out exclusively for **needs related to the general interest; 3) the contracting authorities carry out less than 20% of the activities** to which the cooperation relates on the open market.

For the application of this exception (so-called public-public cooperation) to be justified, three conditions must be met:

1. Mutual cooperation between contracting authorities is established or determined by contract, with the aim of ensuring the provision of a public service that contracting authorities are obliged to perform, in order to achieve objectives that are common to them.

This form of cooperation between multiple contracting authorities does not imply the formation of a separate entity (legal entity) that would be under joint control, but rather the cooperation is defined by contract, with the aim of jointly providing public services that they are obliged to perform.

1. Cooperation is carried out exclusively for needs related to the general interest

Cooperation in the form of joint decisions and activities should provide benefits to all citizens or groups of citizens in a local, regional, state or national community.

1. Contracting authorities carry out less than 20% of the activities to which the cooperation relates on the open market

From the above condition it follows that the cooperation carried out by the contracting authorities is not market-oriented, but is primarily aimed at satisfying needs of public importance.

The fulfilment of this condition (less than 20% of the market activity to which the cooperation relates) also needs to be determined, and for this purpose the average of the total revenue generated in the Republic of Serbia for the previous three years or a shorter period (if this is related to the date of establishment, start of activity, etc.) is taken into account.

As an example of the application of the exception on this basis, we can take the case where two public utility companies from the territory of two neighbouring municipalities were to contractually connect for the purpose of jointly collecting garbage to a joint regional landfill. These are public services that these public utility companies are obliged to provide, and which also serve the general interest.

## Article 14 of the PPL

These exceptions apply **only to public contracting authorities**. When conducting procurements, there is an obligation to apply public procurement principles in a manner appropriate to the circumstances of the specific procurement.

**Article 14, paragraph 1, item 1) of the PPL**

The provisions of the PPL shall not be applied by public contracting authorities to procurements whose exclusive and direct purpose is to **enable** the public contracting authority **to provide or exploit a public communications network** or **to provide the public** with one or more **electronic communications services** within the meaning of the law governing electronic communications.

The above exception is intended for public contracting authorities that provide electronic communications services on the market. The exception is related to the implementation of the Law on Electronic Communications[[53]](#footnote-53) and the full liberalisation of the electronic communications services market and the existence of competition in this area.

The purpose of the subject of procurement (goods, services or works), which are exempt from the application of the PPL, is exclusively and directly to:

1. Enable the contracting authority to provide or use a public communications network

A public electronic communications network, according to the Law on Electronic Communications, is an electronic communications network that is used, in its entirety or predominantly, for the provision of publicly available electronic communications services and enables the transfer of data between network terminal points.

b) Enable the contracting authority to provide one or more electronic communications services to the public

An electronic communications service, within the meaning of the aforementioned law, is a service that is generally provided for a fee via electronic communications networks and includes an internet access service, a communication service between persons and a service that consists entirely or mainly of the transmission of signals, including a media content distribution service and a machine-to-machine communication service, but does not include a service of producing media content or exercising editorial control over media content transmitted via electronic communications networks and services.

This exception should be distinguished from the procurement of electronic communications services by other contracting authorities, given that electronic communications services are subject to public procurement of services (such as mobile and fixed telephony services, Internet services, etc.).

A register of operators of public communications networks and services is available on the RATEL (Regulatory Body for Electronic Communications and Postal Services) website.[[54]](#footnote-54)

**Article 14, paragraph 1, item 2) of the PPL**

The provisions of the PPL do not apply to the procurement of **central bank services**.

These are services that are under the exclusive jurisdiction of the National Bank of Serbia as the central bank, and therefore procurement of services from the NBS (forced collection services, etc.) are exempt from the PPL.[[55]](#footnote-55)

**Article 14, paragraph 1, item 3) of the PPL**

The provisions of the PPL shall not be applied by public contracting authorities to procurements **intended for processing and sale**, resale or rental to third parties on the market, provided that the **public contracting authority does not have the exclusive or special right to sell** or rent the subject of the procurement and that other entities may sell, resell or rent the subject of the procurement to third parties under equal conditions.

The PPO has provided clarification on its website, in the section *Expert Assistance/Opinions and Explanations of the PPL/2019*, for the actions of public contracting authorities regarding the application of this ground for exemption.[[56]](#footnote-56)

In this regard:

* The difference in the scope of application of this exception compared to the same exemption under the PPL/2015 has been clarified,[[57]](#footnote-57) that the aforementioned exception no longer applies to procurement for the purpose of providing services or performing works on the market, but only if the contracting authority procures the subject of procurement for the purpose of processing and sale, resale or rental to third parties on the market (purpose of the subject-matter of procurement).
* That the exception applies to public contracting authorities that perform certain activities in conditions of real market competition, and procure procurement items intended exclusively for their participation in the market.

Specific examples show the difference in the possibility of applying this exception.

***Example:***

The contracting authority, as an additional activity, also engages in retail trade within its stores, as well as in the provision of catering services, i.e., services of serving and preparing food for third parties in restaurant premises. The contracting authority does not have the exclusive or special right to sell or rent the subject-matter of the procurement to third parties.

1. **First situation:** Procurement for resale in retail stores - general merchandise stores offering various products (fruit, vegetables, dairy products, tobacco and similar products) for resale. The stores are open, meaning that any interested third party is able to make a purchase in them.
2. **Second situation:** Procurement of goods for the purpose of providing catering services, i.e., services of serving and preparing food for third parties within a commercial restaurant, which is open, i.e., accessible to all interested third parties.

From the examples presented, it follows that the contracting authority has the position of a market participant, that there are conditions of market competition (the buyer chooses which store or restaurant to go to). However, since the scope of application of this exception is narrowed in comparison to the PPL/2015, that it is not intended for the provision of services or the performance of works, but only for processing and sale, resale or rental to third parties on the market, the contracting authority can apply the exception only for the situation under 1), i.e., for the procurement of goods that it procures for the purpose of resale in stores. For the situation under 2), where the goods are procured for the purpose of providing catering services, i.e., services of serving and preparing food for third parties within a restaurant, this exception cannot be applied (it is intended for the provision of services that are not covered by this exception).

***Example:*** The contracting authority is a public utility company established to perform utility activities - cemetery management and burial, as well as funeral services. It has the option to apply this exception to the procurement of funeral equipment, which it purchases for resale.

Pursuant to Article 244 of the PPL, the application of this exception for public contracting authorities is limited until the date of accession of the Republic of Serbia to the EU, which indicates that EU directives do not recognize such an exception for public contracting authorities.

**Article 14, paragraph 1, item 4) of the PPL**

The provisions of the PPL do not apply to procurement of goods and services related to security inks for the production of **banknotes, identification documents and excise stamps**, procurement of protected paper for the production of banknotes, OVD security elements for the production of banknotes, identification documents, polycarbonate foil and chips for the production of identification documents, retroreflective foil for **licence plates**, discs for the production of **coins** and procurement of **money transport services**, as well as **securing the transport of money**, shipments of cash and foreign currency.

This exception applies to the procurement of goods and services related to the production of banknotes, coins, excise stamps, identification documents and license plates.

The purpose of the above exception is to enable a public contracting authority engaged in the production of banknotes, coins, excise stamps, identification documents and license plates to procure the goods and services listed in this basis without applying the PPL, due to reasons related to security risks and the need to ensure the safety of the production of these goods.

At the same time, this exception applies to the procurement of services for securing the transport of money and cash shipments.

The essence of these exceptions is in the confidentiality and security of data (prevention of counterfeiting of banknotes and identification documents, security of money transport).

This legal basis, like the previous one, has limited application, pursuant to Article 244 of the PPL, until the date of accession of the Republic of Serbia to the EU.

**Article 14, paragraph 1, item 5) of the PPL**

The provisions of the PPL shall not be applied by public contracting authorities to the **purchase, development, production or co-production of programme content** intended for audiovisual media services or radio media services **procured by a public contracting authority that is a media service provider**.

This exception can only be applied by public contracting authorities that are also media service providers within the meaning of the regulations governing electronic media. These are, for example, the Public Media Institution Radio Television of Serbia, the Public Media Institution Radio Television of Vojvodina.

At the same time, the Law on Electronic Media (“Official Gazette of the Republic of Serbia”, No. 92/23) also defines other terms indicated in this basis for exception (audiovisual media services, co-production, radio media service, program content, media service provider).

**Article 14, paragraph 1, item 6) of the PPL**

The exceptions referred to in item 6) of this Article, sub-items (1)-(4) apply to the Public Enterprise “Post of Serbia”, as a public contracting authority providing postal services within the meaning of Article 170, paragraph 2, item 2) of the PPL. These are postal services that include the receipt, sorting, forwarding and delivery of postal items, universal postal services and services that do not fall within the scope of the universal postal service, as defined in the Law on Postal Services (“Official Gazette of the Republic of Serba”, No. 77/19).

The exception is related to the fact that these services are also performed by other entities on the market, so the Public Enterprise Pošta Srbije (“Post of Serbia”) is allowed to have equal treatment in the performance of market activities as the private sector, which is not obliged to conduct public procurement procedures.

The services subject to this exception are classified into four sub-items, each of which is recorded separately in the annual report.

1. **subitem (1)**

This exception applies to procedures carried out by a contracting authority providing postal services (Public Enterprise “Post of Serbia”) for the performance of **value-added service** activities that are linked to electronic means and **provided entirely by electronic means** are (including the secure sending of encrypted documents by electronic means, address management services and sending registered e-mail).

Value-added services, according to Article 27 of the Law on Postal Services, are postal services that have special requirements regarding the quality and manner of reception, processing, transport and delivery. For example, one of them is the service of electronic tracking from reception to delivery of a postal item.

1. **subitem (2)**

This exception applies to procedures carried out by a contracting authority providing postal services (Public Enterprise “Post of Serbia”) for the **performance of financial services activities covered by CPV codes** from 66100000-1 to 66720000-3 and Article 12, paragraph 1, item 6) of the PPL, including **postal money orders and postal giro orders** (money transfers without opening payment accounts in banks).

It should be noted here that these are financial services with precisely defined CPV codes. One of the services, within the scope of the indicated ones, is the service of exchange operations (66180000-5), which is also provided by the Public Enterprise “Post of Serbia”. At the same time, one of the financial services in connection with Article 12, paragraph 1, item 6) of the PPL, which is also mentioned in this exception, is the service of brokerage in securities transactions (66131000-7).

1. **subitem (3)**

This exception applies to procedures carried out by a public contracting authority providing postal services (Public Enterprise “Post of Serbia”) for the performance of the activity of **providing philatelic services.**

Thus, Article 75, paragraph 1, item 7) of the Law on Postal Services defines that the public postal operator issues catalogues and other philatelic products.

1. **subitem (4)**

This exception applies to procedures carried out by a contracting authority providing postal services (Public Enterprise “Post of Serbia”) for the performance of the activity of **providing logistics services** (services that are a combination of physical delivery or storage and other non-postal functions).

From the above, we can conclude that the exception in question refers to procurements carried out by the Public Enterprise “Post of Serbia” for the purpose of providing the aforementioned services.

## Article 16 of the PPL

These exceptions apply only to **sectoral contracting authorities** and there is an obligation to apply public procurement principles in a manner appropriate to the circumstances of the specific procurement.

**Article 16, paragraph 1, item 1) of the PPL**

The provisions of the PPL do not apply to procurements carried out by sectoral contracting authorities **for purposes that do not include the performance of their sectoral activities or for the performance of sectoral activities abroad**, provided that this does not involve the use of a network or territory within the Republic of Serbia and the European Union.

The first case of application of this exception is when the sectoral contracting authority does not carry out the procurement for the purpose of carrying out its sectoral activities, but for the purpose of carrying out some other activity. For example, this may be a sectoral contracting authority referred to in Article 4, paragraph 1, item 3) of the PPL, which carries out the sectoral activity on the basis of an exclusive right, provided that it is not also a public contracting authority. In such a case, the sectoral contracting authority is obliged to apply the provisions of the PPL only when carrying out procurement for the purposes of carrying out the sectoral activity for which an exclusive or special right has been granted, while for the purposes of carrying out its other activities it will not apply the PPL, provided that it is otherwise not considered to be a public or sectoral contracting authority.

In the second case of application of this exception, the sectoral contracting authority carries out the procurement for the purpose of carrying out sectoral activities abroad. The condition is that this does not include the use of a network or territory within the Republic of Serbia and the European Union.

**Article 16, paragraph 1, item 2) of the PPL**

The provisions of the PPL do not apply to the procurement of drinking water by a sectoral contracting authority that carries out activities referred to in Article 167, paragraph 1 of the PPL

This exception applies to a sectoral contracting authority carrying out activities in the field of water management (providing or managing the operation of fixed networks for the purpose of providing services to the public in connection with the production, transport or distribution of drinking water, as well as supplying those networks with drinking water). The aforementioned activity is carried out by public utility companies responsible for water supply. The supply of drinking water, which they procure as an exception in this case, is intended for the population, in the event of failures in the water supply network, malfunctions, etc.

**Article 16, paragraph 1, item 3) of the PPL**

The provisions of the PPL do not apply to the procurement of **energy or fuel for energy production by a sectoral contracting authority** that carries out activities referred to in Article 165, paragraph 1, Article 166, paragraph 1 and Article 171 of the PPL.

This exception applies to the procurement of energy or fuel for energy production by a sectoral contracting authority, which carries out activities in the field of:

- **gas and heat energy** - provision or management of fixed networks for the purpose of providing services to the public in connection with the production, transport or distribution of gas or heat, as well as the supply of gas or heat to such networks

- **electricity** - the provision or management of fixed networks for the purpose of providing services to the public in connection with the production, transmission or distribution of electricity, as well as the supply of electricity to networks

- **oil and gas extraction and exploration or extraction of coal or other solid fuels** - exploration of a geographical area for the purpose of extracting oil or gas; exploration or extraction of coal or other solid fuels

For example, a sectoral contracting authority operating in the field of electricity will not apply the provisions of the Public Procurement Law when purchasing electricity or when purchasing fuel intended for the production of electricity (e.g., coal, fuel oil, natural gas as energy sources for generating electricity).

**Article 16, paragraph 1, item 4) of the PPL**

The provisions of the PPL do not apply to procurement intended for **further sale** or rental to third parties on the market, provided that the **sectoral contracting authority does not have the exclusive or special right to sell** or rent the subject of the procurement and that other entities may sell or rent the subject of the procurement to third parties under equal conditions.

In the case of application of this exception,[[58]](#footnote-58) it is necessary that the following conditions are cumulatively met:

1. That the sectoral contracting authority undertakes the procurement for the purpose of resale (e.g., procurement of electricity, natural gas for the purpose of resale) or rental to third parties on the market
2. That the sectoral contracting authority does not have the exclusive or special right to sell or rent the subject-matter of the procurement

This means that other entities can sell or rent the procurement items to third parties under equal conditions.

The reason for this exception is the fact that certain sectoral activities are becoming market competitive, i.e., that liberalisation is occurring in these areas. In relation to the similar exception for public contracting authorities from Article 14, paragraph 1, item 3) of the PPL, this exception for sectoral contracting authorities is not time-limited until the accession of the Republic of Serbia to the European Union.

## Article 17 of the PPL

These exceptions apply **only to sectoral contracting authorities**. These are actually contracts between sectoral contracting authorities and affiliated companies, or between several sectoral contracting authorities and a company affiliated with one of these sectoral contracting authorities, all for the purpose of carrying out sectoral activities.

The difference in the bases by item is whether the contracts relate to the procurement of services (item 1), goods (item 2) or works (item 3). Each basis is recorded separately in the annual report.

The conditions for all three points are the same, i.e., the exception is that the provisions of the PPL do not apply to contracts that a **sectoral contracting authority concludes with an affiliated company** or that a **joint venture[[59]](#footnote-59)** organised by several sectoral contracting authorities for the purpose of carrying out sectoral activities assigns to a company affiliated with one of those sectoral contracting authorities, for the procurement of:

* goods/services/works
* provided that **at least 80% of the average total revenue of the affiliated company** generated from the provision of all services/deliveries of all goods/performance of works in the Republic of Serbia **during the previous three years**, originates from the provision of services/deliveries of goods/performance of works to the sectoral contracting authority or other companies with which it is affiliated.

From the above, several cumulative conditions arise:

1. The first condition refers to who the contracting parties are

Two situations are possible. The first is that the contract is concluded by a sectoral contracting authority with an affiliated company. The second is that the contract is concluded by a joint venture, i.e., several sectoral contracting authorities with a company affiliated with one of those sectoral contracting authorities.

Therefore, a joint venture is organised by several sectoral contracting authorities for the purpose of performing sectoral activities.

1. The second condition is that the contract is concluded for the purpose of carrying out sectoral activities
2. The third condition is related to income

The condition that at least 80% of the average total revenue of the affiliated company is generated from the delivery of all goods in the Republic of Serbia (if goods are the subject of procurement), or from the provision of all services (if services are the subject of procurement), or from the performance of works (if works are the subject of procurement), to the sectoral contracting authority or other companies with which it is affiliated.

It is further specified **what is considered an affiliated company** for the purposes of this exception. This is any company whose annual financial statements are consolidated with the annual financial statements of the sector contracting authority, in accordance with the regulations governing accounting. According to Article 2, paragraph 1, item 7) of the Accounting Law (“Official Gazette of the Republic of Serbia”, Nos. 73/19 and 44/21 - as amended), a consolidated annual financial statement is a financial statement of an economic entity (group) consisting of the parent and all dependent legal entities.

If this is not the case (the financial statements of the affiliated company are not consolidated with the annual financial statements of the sector contracting authority), the company will be considered affiliated if one of the following conditions is alternatively met:

- the affiliated company may be directly or indirectly subject to the prevailing influence of the sectoral contracting authority

- a related company may have a predominant influence on a sectoral contracting authority

- the affiliated company is, together with the sectoral contracting authority, under the predominant influence of another company by virtue of ownership, financial share or the rules on the basis of which those companies are regulated

**Prevailing influence** is understood in any of the following cases where the sectoral contracting authority, directly or indirectly:

1. has a majority of the subscribed capital of the company;
2. control the majority of votes related to shares issued by the company;
3. may appoint more than half of the members of the supervisory body, i.e., the management body of the company.

If, due to the date of its establishment or commencement of operations, there is no revenue data for the previous three years for that affiliated company, it is sufficient for that company to make it probable (particularly through business projections) that it will achieve 80% revenue.

If two or more companies affiliated with a sectoral contracting authority, with which they form an economic group, provide the same or similar services, goods or works, the percentage is calculated taking into account the total revenue derived from the provision of services, delivery of goods or performance of works of those affiliated companies. Therefore, it follows from the above that in that case the revenue of two or more companies affiliated with the sectoral contracting authority is practically added up, provided that in that case it is indicated that the same or similar goods/services/works are involved.

## Article 18 of the PPL

These exceptions apply **only to sectoral contracting authorities**. These are contracts awarded to a joint venture or a sectoral contracting authority that is an integral part of a joint venture. They are differentiated on this basis and are reported individually in the contracting authority’s annual report.

1. **item 1)**

A contract awarded by a **joint venture to one of the sectoral contracting authorities** if several sectoral contracting authorities have organised a joint venture for the purpose of carrying out sectoral activities for a period of at least three years and if the act by which the joint venture was organised provides that the sectoral contracting authorities forming the joint venture shall be an integral part of it for at least the same period.

1. **item 2)**

A contract awarded by a **sectoral contracting authority to a joint venture of which it is an integral part** if several sectoral contracting authorities have organised a joint venture for the purpose of carrying out sectoral activities for a period of at least three years and if the act by which the joint venture was organised provides that the sectoral contracting authorities forming the joint venture shall be an integral part thereof for at least the same period.

It follows from the above that the cumulative conditions for the application of the exception in both cases (both points) are identical, namely:

1) several sectoral contracting authorities have organised a joint venture

2) the aim of organizing a joint venture is to carry out sectoral activities for a period of at least three years

3) the act by which the joint venture is organised provides that the sectoral contracting authorities, which form the joint venture, shall be an integral part of it for at least the same period of time (three years)

The only difference is who awards the contract:

1) a joint venture with one of these sectoral contracting authorities (first item)

2) sectoral contracting authority to a joint venture of which it is an integral part (second item)

The key differences from the point of view of the contracting parties between whom a contract is concluded based on the exception from Article 17 of the PPL, or Article 18 of the PPL, are presented in the table below:

|  |  |
| --- | --- |
| Article 17 of the PPL | Article 18 of the PPL |
| Contract between sectoral contracting authorities and an affiliated company | The contract is awarded by a joint venture to a sectoral contracting authority that is an integral part of the joint venture |
| Contract between sectoral contracting authorities and an affiliated company | The contract is awarded by the sector contracting authority to a joint venture of which it is an integral part |

## Article 20 of the PPL

The exceptions from Article 20 of the PPL are **specific exceptions in the field of defence and security**. Due to their specificity, the application of these exceptions does not indicate that the principles of public procurement apply.

**Article 20, paragraph 1, item 1) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to the award of procurement contracts and design contests **in the field of defence and security to which special procurement rules apply, in accordance with an international agreement** or arrangement relating to the deployment of forces and concerning the activities of the Republic of Serbia, a Member State of the European Union or a third country.

This exception applies to procurement and design contests in the field of defence and security, to which special procurement rules provided for by an international treaty or other act (e.g., an appropriate arrangement) apply, which relates to the deployment of forces and concerns the activities of the Republic of Serbia, an EU Member State or a third country.

**Article 20, paragraph 1, item 2) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to the award of procurement contracts and design competitions **in the field of defence and security** where the application of the provisions of the PPL would oblige the Republic of Serbia to disclose data whose disclosure is contrary to the essential interests of its security, **based on a decision of the Government**.

This exception applies to procurement and design competitions in the field of defence and security. The application of the exception requires a decision of the Government, as well as the condition that the implementation of the public procurement procedure would lead to the disclosure of data that is contrary to the essential security interests of the Republic of Serbia.

**Article 20, paragraph 1, item 3) of the PPL**

The provisions of the PPL are not applied by contracting authorities to the award of procurement contracts and design competitions **in the field of defence and security for the purposes of intelligence activities**.

This exception applies to procurement and design competitions that are necessary in the field of defence and security and directed towards the needs of intelligence activities, which by the nature of these activities requires the exclusion of the public.

**Article 20, paragraph 1, item 4) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to the award of procurement contracts and design contests **in the field of defence and security** within the framework of a **cooperation programme based on research and development of a new product**, jointly implemented by the Republic of Serbia and one or more Member States of the European Union, when applicable to the subsequent phases of the entire or part of the life cycle of that product.

This exception applies to procurement and design competitions in the field of defence and security, which are based on research and development of a new product within the framework of a cooperation program jointly implemented by the Republic of Serbia and one or more Member States of the European Union.

**Article 20, paragraph 1, item 5) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to the award of procurement contracts and design contests **in the field of defence and security concluded in a third country, including procurement for civilian purposes**, when forces are deployed outside the territory of the Republic of Serbia and the European Union, if operational needs require that the contract be concluded with economic operators in the territory of the activity.

This exception applies to procurement and design competitions in the field of defence and security, provided that the contracts are concluded in a third country, when the forces are deployed outside the territory of the Republic of Serbia and the European Union. In this case, the contracts are concluded with economic entities in the territory of the activities (operations). This exception also includes procurement for civilian needs.

**Article 20, paragraph 1, item 6) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to the award of procurement contracts and design contests **in the field of defence and security** concluded by the Republic of Serbia with state, regional or local self-government bodies of other countries, and relating to: (1) the procurement of military equipment or security-sensitive equipment; (2) works and services directly related to such equipment or (3) works and services exclusively for military needs or security-sensitive works and security-sensitive services.

This exception applies to procurement contracts and design competitions concluded by the Republic of Serbia in the field of defence and security. The subject-matter of the procurement relates to:

* Military equipment or security-sensitive equipment

Military equipment, according to Article 2, paragraph 1, item 25) of the PPL, is defined as equipment that is specially manufactured or adapted for military purposes and intended for use as weapons, ammunition or military material, and in particular military equipment from Annex 2 of the PPL (I. List of Military Equipment).

Security-sensitive equipment, services and works, according to item 26) of the same article of the PPL, are defined as goods, services and works for security purposes, which include, require and/or contain secret data.

* Works and services directly related to military equipment or security-sensitive equipment
* Works and services exclusively for military purposes or security-sensitive works and security-sensitive services

## Article 21 of the PPL

These are special exceptions for procurements **in the field of defence and security that have defence or security aspects** (essential security interests of the Republic of Serbia), for which, among other things, a government decision is required. When implementing these exceptions, due to their specificity, it is not indicated that the principles of public procurement apply.

**Article 21, paragraph 1, item 1) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to procurement contracts and design contests not exempted by Article 20, paragraph 1 of the PPL, if the Republic of Serbia, by applying the PPL, would be obliged to provide information the disclosure of which it considers would **harm the essential interests** of its **security**.

The cumulative conditions for the application of the exception are:

* The procurement or design competition is not exempt from any of the exceptions from Article 20 of the PPL
* The exception is implemented because by implementing the public procurement procedure, the Republic of Serbia would be obliged to provide information the disclosure of which it considers would harm the essential interests of its security.
* There is a government decision to implement the above exception

**Article 21, paragraph 1, item 2) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities to procurement contracts and design contests not exempted by Article 20, paragraph 1 of the PPL, **unless the protection of essential security interests of the Republic of Serbia cannot be guaranteed by other measures**, such as specifying requirements for the purpose of protecting the confidentiality of data that the contracting authority makes available in the public procurement procedure, in accordance with the PPL.

The cumulative conditions for the application of the exception are:

* The procurement or design competition is not exempt from any of the exceptions from Article 20 of the PPL
* The exception is being implemented because the protection of essential security interests of the Republic of Serbia cannot be guaranteed by other measures

This means that the provisions and measures of the PPL,[[60]](#footnote-60) which aim to protect the confidentiality of data, cannot guarantee the protection of essential security interests of the Republic of Serbia.

* There is a government decision to implement the above exception

**Article 21, paragraph 1, item 3) of the PPL**

The provisions of the PPL shall not be applied by contracting authorities if the **procurement and execution of procurement contracts and design contests have been declared secret** or must be accompanied by special security measures, in accordance with laws, by-laws or administrative acts, provided that the Republic of Serbia has determined that essential security interests cannot be protected by other measures, such as the measures referred to in point 2) of this paragraph.[[61]](#footnote-61)

The cumulative conditions for the application of the exception are:

* The procurement contract and the execution of the contract are declared secret and must be accompanied by special security measures
* The exception is being implemented because the protection of essential security interests of the Republic of Serbia cannot be guaranteed by other measures

As indicated in the previous exception, the measures provided for by the PPL regarding the protection of data confidentiality cannot guarantee the protection of essential security interests of the Republic of Serbia.

* There is a government decision to implement the above exception

# ANALYSIS OF THE METHOD OF PUBLISHING DATA ON EXEMPT PROCUREMENT ON THE PORTAL

## ANNUAL REPORTS ON EXEMPT PROCUREMENT

**Publication of data in annual reports**

The contracting authority is obliged to record and publish on the Portal by 31 January of the current year for the previous year the data on all exemptions it has implemented during one calendar year, both exemptions pursuant to Article 27 of the PPL and exemptions pursuant to Articles 11-21 of the PPL, in accordance with Article 181, paragraphs 3 and 4 of the PPL. Otherwise, the contracting authority commits an offence.

***Violation under Article 236, paragraph 1, item 16) of the PPL****:* A fine of 100,000 to 1,000,000 dinars shall be imposed on the contracting authority if it fails to record data on the value and type of public procurement or fails to publish them on the Portal within the prescribed period (Article 181).

Data in the annual reports of contracting authorities are published on the Portal **collectively for each exemption basis separately**, as stipulated in the *Instructions for the Publication of Data on Public Procurement Exempted from the Application of the Law*. The data required for each exemption basis are:

* Specific legal basis for exemption - from the drop-down menu on the Portal, the appropriate article, item and sub-item from the PPL is selected.[[62]](#footnote-62)
* Type of subject of procurement - goods, services or works
* Total contracted value without VAT
* Total contracted value with VAT

**Publication of data related to Article 27 of the PPL in the annual report**

Given that data on contracts concluded pursuant to Article 27 of the PPL are published individually on the Portal through the Register of Contracts as of January 1, 2024, a new functionality has been introduced in such a way that the Portal automatically calculates and retrieves data on contracts from Article 27, paragraph 1 of the PPL that have been entered into the Register of Contracts pursuant to the obligation under Article 152a of the PPL.

In the event that the contracting authority determines that the total value of the contract is incorrect, it is necessary to adjust and correct the individual contract that is already recorded in the Contract Register.

This makes it easier for contracting authorities to prepare data for the annual report in accordance with Article 27 of the PPL.

**Errors in publishing data in annual reports**

When publishing data in annual reports on the Portal, contracting authorities should take into account the following:

* To publish complete data on implemented exemptions

In practice, there have been cases of omissions where data on all implemented exceptions were not recorded and published in annual reports (e.g., a certain exception was implemented but not published at all in the annual report), as well as where values ​​did not match (e.g., data on a specific exception was published, but the published value was lower or higher than the recorded data and documentation of the contracting authority on the given exception).

* To correctly indicate the basis for exemption in the annual report

In practice, a certain number of cases of incorrect designation of grounds for exemption have been recorded (e.g., an exemption from the application of the PPL exists, but on a different basis than the one that was recorded and published).

For example, an exception exists under Article 12, paragraph 1, item 11) of the PPL (exclusive right) (the subject of the procurement is reserved postal services), and the contracting authority has recorded the exception under Article 14, paragraph 1, item 6) of the PPL (an exception that can only be applied by a public contracting authority that provides postal services).[[63]](#footnote-63)

In order to avoid these errors, contracting authorities should state the full legal basis for the exemption as data in the procurement plan to which the PPL does not apply. For example, if it concerns exempted legal services of representation by lawyers, it should be clearly indicated whether it concerns the application of Article 14, paragraph 1, item 4, subitem (1) or (2), because this is how the data is recorded in the annual reports.

At the same time, another type of incorrect recording was observed (e.g., the exception only applies to services, but is recorded for the procurement of goods).

## CONTRACT REGISTER

**Data published in the Register of Contracts**

From 1 January 2024, contracting authorities are obliged to record on the Portal data on contracts they have concluded on the basis of Article 27 of the PPL. Data relating to exceptions from Articles 11-21 of the PPL are not published in the Register (e.g., exclusive rights, notaries, contracts for the performance of temporary and occasional work).[[64]](#footnote-64)

In the public data review in the Register of Contracts, the following data can be used as criteria for different types of searches:

* contracting authority,
* subject-matter of procurement,
* type of subject-matter (goods, services or works)
* name of the contracting party (selected bidder)
* date of conclusion of the contract
* contract value excluding and including VAT, as well as the realised value
* contract status (concluded, amended, executed, terminated, annulled, unilaterally cancelled)
* the date of publication of the data, as well as the date of the last modification

By reviewing the data of the specifically published contract, data on:

* legal ground for exemption (Article 27, paragraph 1, items 1), 2) or 3) of the PPL)
* whether a contract, framework agreement or purchase order is being concluded[[65]](#footnote-65)
* whether the bidder uses a subcontractor
* duration of the contract
* review the history of changes – when each announcement was published and what exactly it refers to (e.g., the first announcement is a concluded contract, the second announcement is data on the execution of the contract)

**Deadlines for publication of data in the Register of Contracts**

Deadlines for publishing data depend on the type of publication and are prescribed by Article 152a of the PPL and the Rulebook on the manner of publishing and type of data on contracts and contract amendments that contracting authorities publish on the Public Procurement Portal.

|  |  |
| --- | --- |
| Type of publication | Deadline for publication |
| Conclusion of contract/framework agreement or issuance of purchase order | 30 days from the date of conclusion / issuance of purchase order |
| Amendment to the contract | 10 days from the date of amendment |
| Enforcement | 45 days from the date of enforcement |

***Violation referred to in Article 236, paragraph 1, item 19) of the PPL:*** The contracting authority shall be fined from 100,000 to 1,000,000 dinars for the violation if it fails to act in accordance with Article 152a of the PPL.

Based on the data published in the Contract Register, it can be seen whether the announcements were made within the prescribed deadlines. For example, based on a comparison of the date of contract conclusion and the date of publication of the data in the Contract Register (whether the announcement was made within the prescribed 30-day deadline or after that deadline).

**Examples of erroneous postings in the Register of Contracts**

* **Incorrectly entered contract values**

Contracting authorities should be careful when entering the contract value. There are noticeable cases of publishing data with errors, in the sense that, for example, the contract value excluding VAT is published three digits too high (this can be determined by comparing the contract value excluding VAT and including VAT).

Before publishing the data, a check should be performed to ensure that the data is not published with errors. If the publication has been made, it is possible to correct it (cancel the published publication/correct an individual contract that has already been recorded in the Contract Register), but in order to notice the same, it is necessary for each contracting authority to periodically check its published publications.

* **Type of procurement subject-matter:**

When publishing data in the Contract Register, contracting authorities should ensure that the subject-matter of the procurement and the type of subject matter of the procurement are aligned. For example, if security services are the subject matter of the procurement, then services, not goods, are recorded as the type of subject matter. This is also important because social and other special services have higher thresholds than services that do not fall into this category.

Or examples where telephony services (fixed and mobile) are recorded as a purchase of goods.

* **A contract concluded after a public procurement procedure has been carried out, recorded in the Contract Register as an exception**

Cases have been observed where the subject of the procurement was carried out in a public procurement procedure, but the recording was made in the wrong place in the Contract Register.

***Example:*** A contract from a public procurement procedure, which was first recorded in the Contract Register as part of that public procurement procedure, then the publication was cancelled and a new publication was made in the Contract Register with a call for exemption. The subject-matter of the procurement is the works on equipping sports fields in an elementary school.

- A contract concluded on the basis of centralised public procurement and instead of being recorded in the designated fields on the Portal (the section relating to centralised public procurement) was published as an exception

***Example:*** A contracting authority in the healthcare sector incorrectly stated the subject of the procurement as electricity, pursuant to Article 27, paragraph 1, item 3) of the PPL, for the amount of 20,000,000 dinars. When looking at the more detailed data on the contract, the note shows that the contract was concluded on the basis of centralised public procurement and a signed framework agreement. Therefore, it is clear that this is an incorrect announcement and that it is not an exemption, but a contract from the public procurement procedure.[[66]](#footnote-66)

***Example:*** With reference to the grounds from Article 27, paragraph 1, item 2) of the PPL,[[67]](#footnote-67) the contracting authority has announced the procurement of electricity in the amount of 87,000,000 dinars. Further checking on the Portal shows that the contract in question is part of a centralised public procurement.

* **Duplicate data publication**

- Case of incorrect publication, given that the contract for the same procurement subject was recorded both through the public procurement procedure and as an exception.

***Example:*** The contracting authority published data on a contract for the procurement of a passenger car, with a call for an exemption, in the value of 2,685,266.67 dinars, and in fact, a further search of the data on the Portal shows that it conducted a public procurement procedure, but did not properly record the concluded contract in the Register of Public Procurement Contracts, but rather recorded it as an exemption.

If the contract was concluded in the public procurement procedure, it is recorded in the Register of Contracts within the workspace of the procedure itself (in the upper right corner is the field Contracts).

The contracting authority subsequently published the same contract in the Register of Public Procurement Contracts, so the publication was duplicated.

* **Announcements of procurement subjects regarding the application of Articles 11-21 of the PPL for which publication is not made in the Register**

These are contracts that are not recorded in the Register of Contracts, because they do not relate to the exceptions from Article 27 of the PPL, but to the exceptions from Articles 11-21 of the PPL.

It is also noteworthy that the announcement of the Public Utility Company does not represent a procurement under Article 27, paragraph 1, item 1) of the PPL. The subject-matter of the procurement is fuel oil - heating oil in the amount of 76,350,000 dinars. The same contracting authority, with a reference to the same basis, also published data for the procurement of gas in the amount of 206,703,090 dinars (the announcement was cancelled). Given that this is a sectoral contracting authority, the aforementioned announcements may indicate exceptions under Article 16 of the PPL. When looking at the annual report of that contracting authority for 2023, it can be seen that only Article 27, paragraph 1, item 1) of the PPL is recorded among the exceptions, for goods in the total amount of 421,246.335 dinars, i.e., there are no other exceptions, e.g. based on Article 16 of the PPL, which could potentially indicate incorrect recording of exceptions in the annual report.

**Examples of announcements in the Contract Register that may indicate incorrect application of the PPL**

* **Contract values ​​that do not comply with the exceptions from Article 27 of the** **PPL**

Noticeable are announcements in the Register of contracts with values ​​above the thresholds prescribed in Article 27 of the PPL, i.e., announcements that are recorded as exceptions, and the values ​​indicate that in that case a public procurement procedure would be conducted.

* For example, if goods are the subject of procurement, with a reference to the application of Article 27 of the PPL, then the value of the contract excluding VAT cannot be 1,000,000 dinars or more.

***Example:*** The contracting authority recorded a contract for a used cargo van for exactly 1,000,000 dinars, which was stated to have been realised for that amount.

The above shows that care should be taken, even when planning procurements, because the procurement of goods and services with an estimated value of 1,000,000 dinars is already public procurement, not an exception. Therefore, if the contracting authority determines in the procurement plan that the estimated value of the goods (or services) is 1,000,000 dinars,[[68]](#footnote-68) this cannot be considered an exception under Article 27 of the PPL, but rather it is public procurement and should be included in the public procurement plan.

***Example:*** For the procurement of heating oil – fuel oil, the contracting authority stated an exemption in the contract value of 1,781,750.00 dinars. It was announced that this value was realised.

***Example:*** The contracting authority has a registered contract for employee and property insurance, in the amount of 29,198,513 dinars, and it is indicated that this is an exemption based on Article 27, paragraph 1, item 1) of the PPL.

* If it is a procurement of works, with a call for the application of Article 27 of the PPL, the value of the contract excluding VAT cannot be 3,000,000 dinars or more.

***Example:*** Painting the men’s pavilion, the contracted amount stated was 3,477,909.48 dinars, the legal basis being Article 27, paragraph 1, item 1) of the PPL. It was announced that this value was realised.

* In order for the contract to be in accordance with the application of Article 27 of the PPL, it should remain within these value thresholds even after execution. Announcements were found in the Register of Contracts for all three types of procurement objects (goods, services, works) where data on the values ​​of concluded contracts were within the permitted value thresholds (below 1,000,000 dinars for goods and services, or below 3,000,000 dinars for works), but the contracting authorities increased the scope during the execution of the contract, so that with the amendments to the contract, the value threshold exceeded the threshold of 1,000,000 or 3,000,000 dinars.

***Example:*** The subject-matter of procurement: technical materials, contract concluded for the value of 576,737 dinars, contract amendment increased the value to 1,403,474 dinars. The reason for the amendment was an increase in the scope of the contract due to the increased scope of work and increased consumption of technical materials.

***Example:*** The subject-matter of procurement of cleaning services for business premises, contract concluded for the value of 990,000 dinars, after amendment of the contract the value was increased to 1,240,000 dinars. The reason for the amendment was stated to be that additional cleaning services had subsequently appeared.

***Example:*** The subject-matter of procurement: electrical works, contract concluded for the value of 2,600,000 dinars, contract amendment increased the value to 3,899,000 dinars. Circumstances that the contracting authority could not have foreseen were cited as the reason for the amendment.

* **Announcements that may indicate an unfounded division of the subject-matter of procurement into multiple procurements**

As stated in the previous part of the Analysis, the determination of the estimated value of the subject-matter of public procurement, according to Article 29, paragraph 1 of the PPL, cannot be done in a way that aims to avoid the application of this law, nor can the subject matter of public procurement be divided into several procurements for that purpose. Paragraph 3 of the same Article stipulates that the contracting authority determines the subject of public procurement in such a way that it represents a technical, technological, functional and other objectively determinable whole.

***Example:*** The school as the contracting authority has announcements for two contracts, both based on Article 27 of the PPL, for the procurement items brown coal and firewood, both with values ​​above 900,000 dinars excluding VAT (total above 1,800,000 dinars), which indicates the obligation to implement a public procurement procedure (the possibility of implementing an open procedure structured by lots).

***Example:*** A preschool institution conducted a public procurement procedure for food preparation supplies, with an estimated value of over 3,000,000 dinars, divided into several lots:

Lot 1 – meat and meat products

Lot 2 - consumer goods - food products

Lot 3 – fruits and vegetables

Lot 4 – bread

Lot 5 – milk and dairy products

In a specific example on the Portal, the contracting authority published a Decision on the award of the contract (contract value 527,000 dinars) for lot 3 - fruits and vegetables (estimated value 794,765.45 dinars). The aforementioned contract was recorded in the Contract Register (public procurement section) with the date of conclusion on 15.04.2024, with a contract duration of 12 months. The given contract was subsequently cancelled in the Contract Register (without a note regarding the cancellation), so that on 4 October 2024 information about a new contract for the procurement of fruits and vegetables in the value of 647,825.45 dinars was published, with a call for the application of Article 27, paragraph 1, item 1) of the PPL, and the note “until the public procurement announcement in 2025, i.e., the completion of the public procurement procedure”. If we compare the data on the bidders who submitted bids in this lot in the public procurement procedure, it can be seen that the bidder who has now been selected (in the exempted procurement) did not submit a bid in that public procurement procedure.

Regardless of the reasons for cancelling the public procurement contract (e.g., whether the contract with the bidder from the public procurement procedure was terminated, for which there is a possibility of recording a note in the Contract Register), the contracting authority was obliged to conduct a new public procurement procedure for the procurement of fruit and vegetables, and not to invoke the application of Article 27, paragraph 1, item 1) of the PPL. Although the value of that lot is below 1,000,000 dinars, in accordance with Article 29, paragraph 3 of the PPL, the subject of the procurement is viewed from the perspective of the whole, and the value of that whole (all lots) is over 3,000,000 dinars.

**Examples of insufficiently clear announcements in the Register of Contracts**

By searching the published data in this register, the following can be noted:

* Publication of names of items that do not allow a clear conclusion as to what the actual procurement items are

For example, various announcements regarding fees (traffic fee or just fee; other services and fees; telephone fee...).

The above points to the need to clearly and precisely define the procurement items when drawing up the procurement plan. This is also an opportunity to consider whether contracting authorities may be publishing announcements for items (payments) that do not actually constitute procurement (e.g., the Contract Register also records data on various fees, such as administrative, residence and other fees).

1. These procurements are carried out in accordance with a special act and the principles of public procurement. [↑](#footnote-ref-1)
2. Article 49, paragraph 2 of the PPL. [↑](#footnote-ref-2)
3. Rubric *Expert help / Document models PPL/2019*

   https://www.ujn.gov.rs/wp-content/uploads/2022/11/Model-internog-akta.pdf [↑](#footnote-ref-3)
4. Depending on the subject of procurement, these are all costs that affect the final amount of the estimated value (e.g. longer warranty period, better quality). [↑](#footnote-ref-4)
5. Report or other type of record. [↑](#footnote-ref-5)
6. For contracting authorities that do not have their own form of a procurement plan to which the PPL does not apply, the Form for filling out the public procurement plan, which is available on the Portal, can be used, with certain sections adjusted to the procurement plan to which the PPL does not apply (e.g., replacing the type of procedure with the basis for exemption). See the form at the link: https://gizsr.visualstudio.com/Uputstva/\_wiki/wikis/Uputstva/3778/Obrasci [↑](#footnote-ref-6)
7. Data bolded in blue. [↑](#footnote-ref-7)
8. Goods, services or works. [↑](#footnote-ref-8)
9. NUTS refers to the place of performance of the contract (place of delivery or provision of services, i.e., place of performance of works). [↑](#footnote-ref-9)
10. Will a framework agreement or a dynamic procurement system possibly be applied in the public procurement procedure, with the fact that these data do not represent the mandatory content of the public procurement plan, i.e., the contracting authority can start the procedure with these techniques (e.g., a framework agreement), even though he did not previously indicate in the public procurement plan that he will implement a framework agreement. [↑](#footnote-ref-10)
11. There is no objection to using a framework agreement for procurements to which the PPL does not apply, as confirmed by the provisions of the Rulebook on the manner of publication and the type of data on contracts and amendments to contracts that contracting authorities publish on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, no. 115/23). [↑](#footnote-ref-11)
12. Employers for which certain items of procurement are carried out by centralised bodies, such as the Directorate for Joint Affairs of the Republic Bodies (UZZPRO), should take care whether they still have to announce the specific procurement in the public procurement plan, regardless of the estimated value. For example, the contracting authority listed in Article 3 of the *Decree on the Organisation and Method of Performing Centralised Public Procurement at the Republic Level* (“Official Gazette of the Republic of Serbia”, No. 25/23), as a contracting authority whose needs are provided through UZZPRO, needs the item of procurement listed in Article 4 of this Regulation (e.g., office supplies) in the value of 400,000 dinars. According to the provisions of Article 27 of the PPL, that contracting authority would not have the obligation to conduct a public procurement procedure for this procurement and it would be listed in the procurement plan to which the PPL does not apply. However, considering that it is indicated in Article 4 of the Regulation regardless of the estimated value of the procurement, this means that the procurement of office supplies must still be included in the public procurement plan, in accordance with Article 88, paragraph 2 of the PPL. [↑](#footnote-ref-12)
13. If the contracting authority conducts a joint public procurement, in the sense of Article 80 of the PPL, in the public procurement plan on the Portal, it states information about the contracting authority that will conduct the joint procurement. See more about the above in the instructions on the Portal <https://gizsr.visualstudio.com/Uputstva/_wiki/wikis/Uputstva/3829/Povremene-zajedni%C4%8Dke-nabavke> [↑](#footnote-ref-13)
14. For example, organisational unit in charge of initiating procurement; the financial position from which the payment is made. [↑](#footnote-ref-14)
15. The values ​​in the Analysis are shown excluding VAT, except in this case, where it is indicated that the realised value is VAT inclusive. [↑](#footnote-ref-15)
16. Determination of the estimated value of the subject matter of public procurement cannot be done in a way that aims to avoid the application of this law, nor can the subject matter of public procurement be divided into several procurements for that purpose. [↑](#footnote-ref-16)
17. Other options are: change duration; change of contracting party; change/replacement of subcontractors; other changes to the contract. [↑](#footnote-ref-17)
18. In practice, there are cases where contracting authorities plan procurement items, referencing the application of Article 27, paragraph 1, items 1) and 3) of the PPL, up to the maximum thresholds (e.g., for goods and services 990,000 dinars, 999,999 dinars, for social services from Annex 7 for a public contracting authority - 14,999,999 dinars). Such behaviour is not prohibited (provided it meets the needs and market research), but the contract must remain within these limits in terms of execution. In the mentioned examples, the contracting authority would not be able to modify the contract to increase its value, as it would exceed the threshold that requires the implementation of a public procurement procedure. [↑](#footnote-ref-18)
19. The sectoral contracting authority can conduct both a negotiation procedure with publication and a competitive dialogue. [↑](#footnote-ref-19)
20. Procurements from contracting authorities or a group of contracting authorities who hold an exclusive right based on which they are the only ones allowed to perform a certain activity in a specific geographic area, granted to them or arising from a law, bylaw, or individual act. [↑](#footnote-ref-20)
21. Framework agreements, purchase orders, invoices. [↑](#footnote-ref-21)
22. For example, Article 12, paragraph 1, item 4) sub-item (2) of the PPL. [↑](#footnote-ref-22)
23. At the same time, it enables the identification of purchases in any country of the European Union and facilitates the search. [↑](#footnote-ref-23)
24. The persons who enter this data in the Register of Contracts with the ordering party, if they are not also the persons who carried out the procurement to which the Public Procurement Act does not apply, must receive clear instructions about the applied CPV mark. [↑](#footnote-ref-24)
25. Plumbing and sanitary works. [↑](#footnote-ref-25)
26. We should not rule out the possibility of submitting a RPR, which will stop the implementation of the procedure and last for a certain period of time. [↑](#footnote-ref-26)
27. If the contracting authority acquires goods, services or works without previously conducting a public procurement procedure, except when this is permitted by this law (Article 51). [↑](#footnote-ref-27)
28. According to the provisions of the Instructions for the use of the Public Procurement Portal ("Official Gazette of the RS", no. 93/20 and 96/23), the public procurement plan and all its amendments and supplements are published on the Portal the day after the day of sending. According to Article 88, paragraph 4 of the Public Procurement Law, planning a new public procurement, changing the subject of a public procurement and increasing the estimated value of a public procurement by more than 10% are considered amendments to the public procurement plan. [↑](#footnote-ref-28)
29. Every violation for the contracting authority also means a violation for the responsible person. [↑](#footnote-ref-29)
30. The amount from 80,000 to 1,000,000 dinars for the contracting authority and from 20,000 to 80,000 dinars for the responsible person of the contracting authority. [↑](#footnote-ref-30)
31. The overview corresponds to the list of legal bases from the Portal, which are related to the publication of the annual reports of the contracting authorities. [↑](#footnote-ref-31)
32. According to Article 28, paragraph 1 of the PPL, the contracting authority is obliged to apply the provisions of this law to the procurement of works, goods, services and the implementation of design contests whose estimated value is equal to or greater than the thresholds specified in Article 27 of this law. [↑](#footnote-ref-32)
33. If the subject-matter of the contract is a procurement to which the rules on public procurement procedures prescribed by this law are applied and a procurement to which the provisions of this law are not applied, and the different parts of the contract are objectively separable, separate contracts may be awarded in accordance with the rules relating to separate parts or one contract in which case the rules on public procurement procedures are applied, except when the subject-matter of the procurement is also procurement in the field of defence and security, in which case the contract is awarded in accordance with Article 26 of this law. [↑](#footnote-ref-33)
34. This is the reason why the provision from Article 23, paragraph 3 of the PPL does not apply in this specific case, but rather the provision from Article 24, paragraph 1 of the PPL. [↑](#footnote-ref-34)
35. Due to the estimated value of the procurement for the public contracting authority, this term would otherwise (for some other procurement subject) amount to a minimum of 20 days, considering the provisions of Article 52 of the PPL. [↑](#footnote-ref-35)
36. International agreements, ratified or confirmed by the National Assembly, are published on the website of the National Assembly and in the Official Gazette. By legal force, they are above the law. [↑](#footnote-ref-36)
37. And not for example local self-government units or other state bodies or institutions. [↑](#footnote-ref-37)
38. Until the accession of the Republic of Serbia to the EU, it can be any country, and after accession only a country that is not a member of the EU. [↑](#footnote-ref-38)
39. Membership in that international organisation/financial institution is not required. [↑](#footnote-ref-39)
40. These are usually the rules given by the international organisation/financial institution or some generally accepted international procurement rules. [↑](#footnote-ref-40)
41. Before the Republic Commission, there was one case challenging the leasing of real estate, which was rejected by the decision of this body. See more in the Decision of the Republic Commission, number 4-00-564/2022 of 13 September 2022. [↑](#footnote-ref-41)
42. Official Gazette of the Republic of Serbia, No. 92/23. [↑](#footnote-ref-42)
43. https://rem.rs/sr/registar-pruzalaca-medijskih-usluga#gsc.tab=0 [↑](#footnote-ref-43)
44. You can see more about arbitration on the website of the Serbian Chamber of Commerce

    https://pks.rs/strana/resavanje-sporova [↑](#footnote-ref-44)
45. More about mediation https://www.mpravde.gov.rs/sekcija/15868/medijacija.php [↑](#footnote-ref-45)
46. Annex 7 lists services with CPV codes 79100000-5 to 79140000-7, namely: 79100000-5 Legal services; 79110000-8 Legal advice and representation; 79111000-5 Legal advice; 79112000-2 Legal representation; 79112100-3 Shareholder representation services; 79120000-1 Patent and copyright advisory services; 79121000-8 Copyright advisory services 79121100-9 Software copyright advisory services; 79130000-4 Legal documentation and authentication services 79131000-1 Documentation services; 79132000-8 Authentication services; 79132100-9 Electronic signature authentication services 79140000-7 Legal advice and information services; 75231100-5 Administrative services in courts. [↑](#footnote-ref-46)
47. Article 33, paragraph 2, item 1) and 2) PPL prescribes what the client takes into account when calculating the estimated value of these services. [↑](#footnote-ref-47)
48. The provisions of Art. 197-202. of the Labour Law. [↑](#footnote-ref-48)
49. The employer can conclude a work contract with a certain person, for the purpose of performing tasks that are outside the employer's activities, and which have as their subject the independent production or repair of a certain thing, the independent execution of a certain physical or intellectual work. [↑](#footnote-ref-49)
50. Schedule 7 also contains CPV code 85143000-3 - ambulance services, as the need for this service may arise outside of this exception relating to civil defence, civil protection and hazard prevention services. [↑](#footnote-ref-50)
51. One case of exclusive right ended up before the Republic Commission, but in such a way that the contracting authority initiated a public procurement procedure for the procurement of chemical water testing – control of the quality of drinking water and waste water, so the holder of the exclusive right disputed the implementation of such a procedure, with the explanation that the selected private company does not have the right to perform such a service according to the regulations. The above resulted in the annulment of the public procurement procedure as a whole. See more in the Decision of the Republic Commission no. 4-00-342/2023 of 9 June 2023. [↑](#footnote-ref-51)
52. It includes the reception and/or processing and/or transportation and/or delivery of postal items weighing up to 50 grams; receipt and/or processing and/or transportation and/or delivery of documents in court, administrative and misdemeanour proceedings, as registered mail items, regardless of limits; receipt and/or transfer and/or payment of money orders. [↑](#footnote-ref-52)
53. “Official Gazette of the Republic of Serba”, No. 35/23 [↑](#footnote-ref-53)
54. JP ETV Beograd is a public contracting authority that is in the records of operators of public communication networks and services

    https://registar.ratel.rs/cyr/reg201?action=table-details&filterNaziv=&filterSediste=&datumAktivniOd=&datumAktivniDo=&filterPodrucje=&vrstaMreze=&vrstaUsluge=&vazecaDozvolaZaUslugu=1&datumIzdavanjaOd=&datumIzdavanjaDo=&format=&page=5&operatorId=1870 [↑](#footnote-ref-54)
55. Article 3 of the Rulebook on the method and procedure for performing payment transactions within the system of the consolidated treasury account for foreign currency ("Official Gazette of the Republic of Serbia", No. 13/17, 51/19, 26/23) - Through the system account of the consolidated treasury account for foreign currency, the National Bank of Serbia receives foreign currency payments and makes foreign currency payments on the basis of foreign currency orders that direct users of budget funds of the Republic of Serbia and branches of the Treasury Administration enter into the System for Foreign Exchange payments, and the Treasury Administration submits it to the National Bank of Serbia. [↑](#footnote-ref-55)
56. https://www.ujn.gov.rs/?page\_id=1189 [↑](#footnote-ref-56)
57. Article 7, paragraph 1, item 6) of the PPL/2015. [↑](#footnote-ref-57)
58. This exception should be distinguished from the exception for public contracting authorities from Article 14, paragraph 1, item 3) of the PPL, which includes procurements intended for processing and sale, while this exception only provides for procurements intended for further sale or rental to third parties. [↑](#footnote-ref-58)
59. Article 19 of the PPL defines that the term joint venture, which is used in Art. 17 and 18 of the PPL implies an act on the basis of which several sectoral contracting authorities were organised for the purpose of performing sectoral activities. [↑](#footnote-ref-59)
60. The PPL contains several provisions aimed at protecting the confidentiality of data. Article 39 of the PPL stipulates that the contracting authority may request protection of the confidentiality of the data it makes available to business entities, if that data constitutes a trade secret in the sense of the law governing the protection of trade secrets or constitutes secret data in the sense of the law governing the confidentiality of data. The contracting authority can condition the taking over of tender documentation or a particular part of tender documentation, in accordance with Article 45, paragraph 6 of the PPL. Article 140, paragraph 3 of the PPL stipulates that the contracting authority shall exclude the public in the process of opening bids if it is necessary for the protection of data that constitutes a business secret in the sense of the law governing the protection of trade secrets or constitutes secret data in the sense of the law governing the confidentiality of data, with the fact that in that case he is obliged to make a decision determining the reasons for the exclusion of the public and whether the exclusion of the public also applies to the bidder's representatives. [↑](#footnote-ref-60)
61. Such as the determination of requirements in order to protect the confidentiality of data that the contracting authority makes available in the public procurement procedure, in accordance with the PPL. [↑](#footnote-ref-61)
62. For example, Article 12, paragraph 1, item 4) sub-item (2) of the PPL. This shows that, according to the annual report, the basis in the procurement plan to which the PPL does not apply should be indicated. [↑](#footnote-ref-62)
63. What unites both exceptions is the Public Enterprise Pošta Srbije (“Post of Serbia”), with the fact that when applying Article 12, paragraph 1, item 11) it appears as a bidder (the holder of the exclusive right for a regulated postal service), and when applying Article 14, paragraph 1, item 6), the PPL is the contracting authority that can apply and record that exception, as a public contracting authority that provides postal services. Therefore, if the public contracting authority does not provide postal services, it cannot invoke the exception from Article 14, paragraph 1, item 6) of the PPL. [↑](#footnote-ref-63)
64. These data are published only in aggregate, on each basis for exemption, in the annual reports of the contracting authorities. [↑](#footnote-ref-64)
65. If it is an account that changes the contract/purchase order, it will be recorded as a purchase order. [↑](#footnote-ref-65)
66. There is a procedure for recording contracts in the Register of Contracts based on centralised public procurement. [↑](#footnote-ref-66)
67. Article 27, item 2) of the PPL refers to other grounds. [↑](#footnote-ref-67)
68. Unless it is about social and other special services from Schedule 7. [↑](#footnote-ref-68)