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Annex I Guidance Note

Prevention of corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

1. The Secretariat has produced this Guidance Note to assist States parties in providing information on initiatives and practices they have implemented regarding the topics under consideration at the fifteenth session of the Working Group on the Prevention of Corruption taking place from 28 August to 6 September 2024.
2. The Secretariat wishes to recall paragraph 12 of the report of the Working Group on Prevention on its second intersessional meeting, which noted that in advance of each meeting, States parties and signatories should be invited to share their experiences of implementing the provisions of the Convention under consideration, preferably by using the self-assessment checklist.
3. In furtherance of this, the Secretariat outlines a set of questions, based on those in the self-assessment checklist, which States parties and signatories may wish to use as a guide when providing information regarding the two topics under consideration. States parties and signatories are encouraged to view the questions below only as guidance and are free to provide any information believed to be relevant to the topics under consideration.

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;

Answer: Latvia as a Member State of the European Union has transposed the laws and regulations of the European Union in the field of public procurement, thereby ensuring the establishment of a procurement system based on transparency, fair competition among market participants and objective criteria for decision-making. The legal framework for public

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procurement is appropriate and not in conflict with the standards of the UNCITRAL Model Law on Procurement of Goods, Construction and Services (2011).

In general, the public procurement system consists of the following procurement procedures: 1) open procedure; 2) restricted procedure; 3) competitive procedure with negotiation; 4) competitive dialogue; 5) innovation partnership procedure; 6) negotiated procedure. In addition, contracting authority can organize a design contest or form a Dynamic Purchasing System. The regulatory enactments shall specify the special procedures by which health, social and related services may be procured, as well as the award of privileged contracts. All procurement procedures shall be applied according to contract price thresholds. For example, Section 8, Section 10, 12 and Section 16 of Public Procurement Law, Regulation of the Cabinet of Ministers No 107 of February 28, 2017 Tendering Procedures for Procurement Procedures and Design Contests and Regulation of the Cabinet of Ministers No 105 of February 28, 2017 Provisions on thresholds for public procurement contracts.

In addition, the public procurement system also consists of so-called “small procurements”, which has been regulated more easily. For example, Section 9 of Public Procurement Law.

At the same time to prevent corruption risks in procurement, “Public Procurement Law” provides a framework to ensure principles of transparency and equal treatment of suppliers in procurement. For example, “Public Procurement Law” provides obligation of the contracting authority to ensure accessibility and transparency of procurement documentation, the use of an electronic system for the submission of tenders, the prohibition to modify bids during the procurement procedure, limitations to the contract amendments, the right of tenderers to challenge the complaints to the Procurement Monitoring Bureau.

For example, Section 42, paragraph 2, point 1, subparagraph b) of “Public Procurement Law” provides that the contracting authority shall exclude a candidate or tenderer from participation in a procurement procedure in case of accepting of bribes, giving of bribes, misappropriation of a bribe, intermediation in bribery, unlawful participation in property transactions, unauthorised receipt of benefits, commercial bribery, unlawful requesting, receiving, or giving of benefit, trading with influence.

But if the procurement to be performed conforms to the fields referred to in the Law on the Procurement of Public Service Providers and the estimated contract price does not reach the thresholds specified by the Cabinet of Ministers, contracting authority has the right to order public procurement in accordance with the Procurement Guidelines developed by Procurement Monitoring Bureau for public service providers. Such procurement gives contracting authority the right to publish a formal statement of procurement at the Procurement Monitoring Bureau website, thereby also promoting as much competition as possible in this type of procurement. The application of the guidelines shall be mandatory if it is stated so in a contract for the execution of a foreign-financed project.

In order to reduce corruption risks in public procurements, on March 1st, 2017 the new “Public Procurement Law” came into force, and by this law Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC was transposed. In the same way Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC was transposed in national legislation by law “On the Procurement of Public Service Providers”

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which came into force on April 1st, 2017. Also Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of supply contracts (Text with EEA relevance) has been transposed by “Law on Public - Private Partnership” and Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of proceeds for award of certain works, contracts concession and service contracts by authorities entities or contracting in the fields of defence and security, and amending Directives 2004/18/EC and 2004/17/EC (Text with EEA relevance) has been transposed by law “On Procurement in Fields of Defence and Security”. The regulatory framework for public procurement also consists of a number of Regulations of the Cabinet of Ministers. All those legislative acts include the same public procurement principles.

- Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;

Answer: Application or tender may be rejected only on the basis of the conditions laid down in the public procurement framework and in the procurement documentation. The grounds for rejection may cover both qualifications and technical and financial offers and exclusion conditions defined in the framework of public procurement (e.g., fraud, corruption, tax debts, professional misconduct). The non-compliance must be objectively identifiable and justified. The public procurement framework provides that the award of a procurement contract may be granted only to a tenderer who has submitted a fully relevant tender. In addition, it should be noted that the qualification requirements, technical requirements and the criteria for selection of tenders must already be specified in the procurement documentation in particular, proportionate, reasoned and related to the procurement object.

In addition, regulations regarding public procurement prevent contracting authorities from making changes to the procurement documentation after the opening of tenders. Regarding the determination of requirements, Public Procurement Law, Latvian Cabinet Regulation No. 107, adopted 28 February 2017 “Tendering Procedures for Procurement Procedures and Design Contests” and accordingly contracting authorities shall be guided by the principle of equal treatment, namely, all tenderers must have access to equal information regarding the requirements of the specific procurement and if the contracting authorities wishes (or is necessary) to make amendments to the procurement documentation, must be respected the minimum time periods for submission of tenders specified in the Law or Cabinet Regulations after making amendments.

- Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;

Answer: The regulatory enactments lay down specific conditions for the setting of minimum time limits for the submission of applications and tenders (depending on the number of stages of the procurement procedure), depending on the procedure chosen, the estimated contract price, the public activities previously carried out by contracting authority in relation to this procurement (published periodic information notice), the objective urgency conditions, the possibility of submitting electronic tenders. In addition to this, when setting the deadline for the submission of applications and tenders, the contracting authority must, on a case-by-case basis, assess the complexity and extent of the procurement in order to be appropriate/proportionate. Similarly, the

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contracting authority should provide for a minimum period of time specified in the regulatory framework for amendments to the procurement documentation and also the conditions for the period for which tenders/applications may be extended. In all procurement procedures, it is possible to make amendments which are not considered relevant until the opening of applications and tenders.

For example, Public Procurement Law section 9 and section 10, Latvian Cabinet Regulation No. 107, adopted 28 February 2017 “Tendering Procedures for Procurement Procedures and Design Contests” set minimum time limits for the submission of tenders/applications, taking into account the specificities of each procurement procedure.

- Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;

Answer: It is mandatory for Latvian contracting authorities and contracting entities to publish public procurement notices on the Procurement Monitoring Bureau’s official website www.iub.gov.lv, which is the official public procurement database in Latvia. Procurement tenders in Latvia are conducted electronically via the Electronic Procurement System (<https://www.eis.gov.lv>) starting from October 2017.

According to data from the Procurement Monitoring Bureau, 39 609 procurement notices were published in the System in **2023**, 33 050 procurement notices - in **2022**, 31 582 procurement notices - in **2021** and 29 264 procurement notices - in **2020**.

- Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;

Answer: Regarding the procedures, rules and regulations for review of the procurement process it should be noted that the Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts has been transposed.

In addition, Suppliers who want to participate in a public procurement procedure and find that the requirements unreasonably restrict the competition or who have participated in the public procurement procedure but have not been granted the rights to conclude the contract (tender was rejected or another tenderer was declared the winner, or tender was discontinued) can submit a complaint to the Procurement Monitoring Bureau in accordance with the Section 66 of the Public Procurement Law. The Procurement Monitoring Bureau as the first instance review body within the meaning of the Directives 2007/66/EC, 89/665/EEC and 92/13/EEC may forbid contracting authority to sign the procurement contract.

- Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;

Answer: Contracting authority is responsible for setting up a competent procurement commission which can also attract industry experts in its work. The members of the specific procurement

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commission and the expert, if such is attached, shall sign the non-interest attestation and assume responsibility for its veracity. See Section 24 and Section 25 of Public Procurement Law.

Latvia has transposed all European Union directives¹ in the field of public procurement, which stipulates that contracting authorities should use all possible means at their disposal in accordance with national legislation to prevent distortions of public procurement procedures resulting from conflicts of interest. Accordingly, the national regulation provides for a clear obligation to disclose possible conflicts of interest of officials involved in the procurement procedure. Paragraph (1), (2) and (3) of Section 25 of Public Procurement Law² (available: <https://likumi.lv/ta/en/en/id/287760-public-procurement-law>) provides that a person preparing the procurement procedure documents (an official or employee of the contracting authority), members of the procurement commission, a secretary of the procurement commission, and experts may not represent interests of a candidate or tenderer, including they may not have a direct or indirect financial, economic, or other personal interest which can affect impartiality and independence of the person in respect of the particular procurement, and also they may not be connected to a candidate or tenderer.

Also, according to Paragraph (3) of Section 25 of Public Procurement Law these persons shall sign a confirmation that there are no such circumstances due to which it might be regarded that they are interested in selecting or activities of a particular candidate or tenderer or that they are connected to a particular candidate or tenderer, and that they will not disclose the information obtained within the scope of the procurement which is non-disclosable in accordance with laws and regulations.

Consequently, Paragraph (2), Clause 11) of Section 42 of Public Procurement Law also determines the obligation to exclude a candidate or tenderer from further participation in the procurement procedure when a person preparing the procurement procedure documents (an official or employee of the contracting authority), a member of the procurement commission, an expert, or a secretary of the procurement commission is connected to the candidate or tenderer within the meaning of Section 25, Paragraph (1) or (2) of Public Procurement Law or is interested in the selection of one candidate or tenderer and the contracting authority has no possibility to prevent this situation by less restrictive measures with respect to the candidate or tenderer.

Also, Section 85 of Public Procurement Law includes regulation on administrative offences and penalties applied when there is a failure to comply with the provisions for the prevention of a conflict of interests according to Section 25 of Public Procurement Law. According to Section 89 of Public Procurement Law administrative offence proceedings for the offences referred to in Section 85 of this Law shall be conducted by the Procurement Monitoring Bureau.

¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC,

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC,

Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC,

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

² Here and in the following, the reference to the Public Procurement Law also means the reference to the relevant (analogous) regulation in Law on the Procurements of Public Service Providers (available: <https://likumi.lv/ta/en/en/id/288730-law-on-the-procurements-of-public-service-providers>),

Law on Procurements in the Field of Defence and Security (available: <https://likumi.lv/ta/en/en/id/238803-law-on-procurements-in-the-field-of-defence-and-security>),

Law on Public-Private Partnership (available: <https://likumi.lv/ta/en/en/id/194597-law-on-public-private-partnership>).

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Procurement Monitoring Bureau in close cooperation with other institutions has developed guidelines “Topical issues of conflict of interest in public procurement”³. The guidelines also stress the importance of necessity to incorporate the order of prevention and identification of the conflict of interest in the internal procedures for all contracting authorities.

- Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).

Answer: In order to increase and disseminate knowledge of prevention of corruption risks in procurement, the Bureau offers diverse types of support and tools to contracting authorities and economic operators. The Bureau provides methodological assistance and consultations, organizes training for contracting authorities and economic operators, and drafts guidelines. In accordance with Section 66, paragraph 1, point 4 of Public Procurement Law, the Bureau examines administrative violation cases in the field of public procurements and public and private partnership and impose administrative sanctions.

Moreover, the Bureau’s website has a separate section “Corruption and fraud prevention in procurement”. This specific section contains information where and how to report corruption cases, at the same time the Bureau has published “Information Note on signs of fraud relating to ERDF (European Regional Development Fund), ESF (European Structural Fund) and CF (Cohesion Fund)”.

The state institutions adopt Codes of Ethics which purpose is to identify and strengthen the principles of professional ethics for all the officials and employees to improve work culture and increase public confidence. The state direct administration authorities and municipalities develop inner plans of anti-corruption activities and inner terms of procurement procedures.

For example, regarding guidelines in order to promote integrity on procurement, the Procurement Monitoring Bureau provides on a regular basis recommendations and explanations regarding the application of the laws and regulations governing public procurement. All the information is available at the Procurement Monitoring Bureau website. For example, recently the Procurement Monitoring Bureau updated and maintained explanation “Current issues of conflict of interest in public procurement”⁴, where the main focus is on giving and providing recommendations for contracting authorities on identifying and handling conflicts of interests.

Regarding activities undertaken with business and professional organizations in order to prevent corruption, in **2020** the Procurement Monitoring Bureau in cooperation with the Competition Council of the Republic of Latvia and Corruption Prevention and Combating Bureau organized 2 workshops “On Fair Entrepreneurship”, in **2021** – 3 workshops, in **2022** – 2 workshops and in **2023** – 5 workshops.

In 2022 the School of Public Administration in cooperation with the Procurement Monitoring Bureau developed a training program for procurement officers.

The training program consists of two levels - the basic level, in which a total of 14 learning modules can be learned in 7 competencies, including the module “Conflict of interest and prohibited agreements in public procurement” (each consists of learning material and a test) and the advanced level, which provides for current affairs, problem issues and learning practical lessons. After completing both levels, the participant is included in the expert bank.

Until the end of 2023 491 participant obtained the basic level learning certificate, 94 participants obtained the advanced level learning certificate and 69 participants are included in the

³ Available (in Latvian): <https://www.iub.gov.lv/lv/skaidrojumus-interesu-konflikta-aktualie-jautajumi-publikajos-iepirkumos>

⁴ Available (in Latvian): <https://www.iub.gov.lv/lv/2-iepirkuma-komisija#2.1>



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expert bank.

In addition, amendments to the Public Procurement Law that entered into force on 1 January 2023, changed the procedure for setting up and reviewing the procurement commission by stipulating that the procurement commission shall be set up for each procurement individually or for a specified period of time, thereby ensuring that the composition of the procurement commission is regularly reviewed.

Additionally, on 11 April 2023, the Cabinet of Ministers approved the Corruption Prevention and Combating Action Plan 2023–2025⁵. The overarching objective of the corruption prevention and combating policy is to ensure the credible functioning of any authority or organisation in compliance with the principle of good governance and effective human resources management. In order to achieve the objective, the Corruption Prevention and Combating Action Plan identifies five sub-objectives, 13 action directions, and a total of 49 measures with consequential tasks. The Corruption Prevention and Combating Action Plan sets out a time schedule for fulfilling the tasks and also defines the expected results. It contains procurement related actions aimed at ensuring the transparency and openness of information about all acquisitions and written public construction works, supply and service contracts by institutions of a public person in ‘sub-threshold’ procurements, and ensuring awareness of private sector representatives about the signs of possible illegal activities in public procurement procedures.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

States parties and signatories may wish to provide information on measures that:

- Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.

Answer: Since 2009, the Procurement Monitoring Bureau ensures the availability of the Publication Management System to Latvian contracting authorities and contracting entities to facilitate electronic process of filling in public procurement notices (since 25 October 2023 also eForms) and publishing them on the website of the Procurement Monitoring Bureau, as well as sending them for publication in the Official Journal of the European Union. It is mandatory for Latvian contracting authorities and contracting entities to publish public procurement notices on the Bureau’s website announcing the tenders (including the links to the Electronic Procurement System where documents are available and offers must be submitted electronically), amendments to the tender documentation, results of the tenders, concluded contracts and also the fulfilment of the contracts (tender documentation (including selection and award criteria) and contracts are freely available on the buyer’s profile in the Electronic Procurement System). Moreover, the website of the Procurement Monitoring Bureau ensures transparency, openness and accessibility to information about the procurement procedures as well as provides access to the public procurement data, decision data of reviewing complaints on public procurement procedures, data on the decided

⁵ <https://www.knab.gov.lv/en/media/3900/download?attachment>

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administrative penalties, statistical data on public procurement in Latvia, data on the concluded contracts and their amendments and fulfilment, as well as guidelines on application of the laws and regulations, frequently asked questions, recordings of online video seminars, red flags and data visualisation. Public procurement data is also published on the Latvian Open Data Portal, Statistics Portal and is freely available in the machine-readable open data format (XML and JSON), which is highly appreciated and used by the controlling authorities, public organisations and data enthusiasts. The Publication Management System reuses data from the Electronic Procurement System and the Enterprise Register and is integrated with the unified authentication module and the Official Journal of the European Union (Procurement Monitoring Bureau is the single eSender in Latvia).

At the end of 2024, the modernised Publication Management System will be launched financed by the Recovery and Resilience Facility offering better user experience, improved support of the business processes of the Procurement Monitoring Bureau and facilitate the decision-making based on public procurement data and ranking of contracting authorities (powered by the Power BI data analysis tool).

Latvia follows a centralised approach to eProcurement. The State Regional Development Agency organises and manages the national Electronic Procurement System (EPS), which is the first eProcurement system in the Baltic States. The EPS offers faster procurement processes, the possibility to organise the procurement activities of State and municipal institutions, the possibility to combine orders and save State budget resources while ensuring transparency, openness and accessibility to information about the procurement process.

In 2014, the eCertificate was added to the system to allow Latvian businesses to participate in foreign procurement procedures and enhance their competitiveness.

The EPS was modified in 2015 and its third enhanced version was launched with the aim of further simplifying and reducing the administrative burden for entrepreneurs.

At the end of 2020, an integrated ESPD solution and a Dynamic Procurement System were introduced into the EPS.

All contracting authorities in Latvia according to the national regulation⁶ are obliged to use the Electronic procurement system for announcement of the procurement procedures, as well as to receive bids and publish related documents including results of procurement, public contract, its amendments and report on the concluded procurement procedure. Use of Electronic procurement system is free of charge and it is publicly available (<https://www.eis.gov.lv/EIS/>).

Especially for the prevention of conflict of interest and corruption the EPS e-tenders subsystem provides technical obligation to sign a two-stage self-certification (declaration) of the absence of conflict of interest, where the first self-certification is signed by the member of the commission when starting work in the commission, and the second one is signed after the opening of bids/offer/proposals already in relation to specific economical operators. Without signing such self-certificates, the member of the commission technically does not have access to the documentation of the procurement procedure or to the submitted bids/offers/proposals in the EPS e-tenders subsystem. The EPS also provides for the accumulation of user activity audiation data, which is required for analysis by the controlling authorities investigating corrupt activities and prohibited market agreements as necessary. As far as public awareness is concerned, EPS also ensures the transfer of procurement data to Latvia's open data portal.

In addition, we are currently working on expanding functionality of the EPS e-certificates subsystem, which will allow the contracting authorities and the controlling authorities to obtain

⁶ General regulation that provides that contracting authorities use the Electronic procurement system is stipulated in Public Procurement Law (Paragraph (1) Section 36, Section 39, Paragraph (10), (11) of Section 60) and Cabinet of Ministers regulation No.816 (20.12.2022.) "Regulations Regarding Public Electronic Procurements".

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data from the state registers about the previous jobs of the commission members at economical operators, as well as information about the relatives of the commission members, in order to check whether there is any connection with the work of these relatives in economical operators' boards, councils, etc.

The legal regulation and the technical solution within EPS e-certificates subsystem are planned to be available within the framework of 2024/2025.

Additionally, considering that corruption is a latent crime, and the majority of corruption offences remain undiscovered because the persons involved, i.e., givers and receivers of bribes, do not report their actions, the Corruption Prevention and Combating Bureau has initiated a project to implement an automated data analysis tool, which would allow to identify signs indicating cases of corruption. The Bureau has concluded that laundering of proceed from corruption has indications that can be identified by profiling data from various state registries. Therefore, parameters (scenarios) can be defined which would allow an automated monitoring system to identify suspicious cases (anomalies). Currently, the technical specification has been developed for the project, and a call for tenders has been announced for developing the analytical platform.

Information sought may, in particular, include the following:

- Description of any electronic system of public procurement, including, for example:
 - The means by which tender invitations are published;
 - The inclusion of all pertinent information on the award of contracts;
 - Ways in which applications may be submitted (including the use of electronic procurement platforms); and
 - Ways in which the criteria to be used for selection and award are publicized.
 - Any other ways, in which technology is used in the procurement process
 - Any other ways, in which technology is used to detect corruption or identify irregularities.

When providing information on the use of technology to prevent, detect, deter and counter corruption in procurement, States parties and signatories may wish to refer to their submissions for the sixth meeting of the Working Group, held in 2015.

3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

Answer: Additional actions are not required and any specific challenges have not been identified.

Examples of the types of challenges States parties and signatories may have faced include:

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- Challenges in developing the proper legislative framework;
- Coordination challenges between government agencies responsible for integrity in procurement and other bodies;
- Communication challenges between government bodies, agencies responsible for integrity in procurement, and business community representatives;
- Other implementation challenges; and
- Financial challenges with respect to maintaining sufficient and consistent funding for government bodies and other government agencies responsible for integrity in procurement and management of public finances.

4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

Answer: Latvia do not require technical assistance in relation to the measures described above. Procurement Monitoring Bureau receives technical assistance of EU funds for supervision of public procurement financed by EU funds (for ensuring selective ex-ante controls).

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