

**CHAPTER 23**  
**Innovation in Public Procurement**  
**Process in Armenia:**  
**A Strategy for EU Integration**

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**1. Introduction**

The ‘2018 Armenian Revolution’(1) marked a dramatic change in the political system of Armenia with a new Government that came into power through a democratic and peaceful (non-violent)(2) revolution, and, thereafter, proclaimed the launch of wide-ranging fundamental reforms. As a major step in Armenia’s history towards a more democratic society, this revolution created a favorable atmosphere that gave fresh impetus to reforms and provided momentum for drastic transformations. The enhancement of democracy, efficient and effective governance, an increased level of transparency and accountability in public governance, the fight against corruption, free economic competition, protection of investors’ rights, and the rule of law and human rights all became high priorities of the new Government. All in all, the aim was to achieve real changes that would ensure freedom, happiness and prosperity for the citizens of Armenia.

Armenia is now in the process of designing the ‘Armenia Development Strategy 2030’ (ADS)(3) as an overarching strategy for growth of employment, development of human capital, improvement of social protection systems and institutional modernization of the public administration and governance.

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(1) The 2018 Armenian revolution (most commonly known in Armenia as #MerzhirSerzhin (Armenian: ՄերժիրՍերժին, meaning “#RejectSerzh”) was a series of anti-government protests in Armenia from April to May 2018 staged by various political and civil groups led by member of Parliament Nikol Pashinyan (head of the Civil Contract party). Protests and marches took place initially in response to Serzh Sargsyan’s third term as the prime minister of Armenia and later against the Republican Party-controlled government in general. Pashinyan declared it a Velvet Revolution (*Թաւելյան հեղափոխություն*).

(2) A non-violent revolution is a revolution using mostly campaigns with civil resistance, including various forms of non-violent protest, to bring about the departure of governments seen as entrenched and authoritarian.

(3) [policy.asiapacificenergy.org/node/1492](http://policy.asiapacificenergy.org/node/1492).

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Through ADS, Armenia plans to provide a comprehensive set of targets and indicators that are necessary for the effective planning and monitoring of its development objectives in various areas such as economic development, culture and national identity, environmental protection and natural resources, *public and territorial administration*, education, science and innovation, human rights, rule of law and justice, defense and security, infrastructure, and social services.

This paper focuses on ADS institutional reforms in public administration, more particularly, in its attempt to exceed the 2006 benchmarks of the European countries and Baltic States, *i.e.*, the Estonian Model,(4) by the year 2012. In doing so, this paper evaluates the structural and functional reforms in Armenia's public administration system, and, identifies significant progress on transparency, accountability and efficiency in its procurement legislation. It is worth noting that the Armenian procurement legislation has been largely revised to adapt to the European Union standards.(5)

## ***2. Public Procurement System of Armenia in the context of Eurasian Economic Union***

### **2.1. Public Procurement System of Soviet Armenia**

The Union of Soviet Socialist Republics (USSR) (Russian: экономика Советского Союза),(6) commonly known as the Soviet Union, was a socialist State in Eurasia that existed from 30 December 1922 to 26 December 1991.(7) Its economy was based on a system of State ownership of the means of production, collective farming, industrial manufacturing *and* centralized admini-

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(4) The Estonian model of e-procurement might serve as one of several possible examples. Estonia has been moving towards a fully electronic public procurement environment since 2001, with 92% of procurement procedures conducted electronically in 2016. *See* chapter 18 by M. BORODINA in this book.

(5) [ec.europa.eu/growth/single-market/public-procurement\\_en](http://ec.europa.eu/growth/single-market/public-procurement_en).

(6) As part of the Soviet Union, the Armenian SSR transformed from a largely agricultural hinterland to an important industrial production center, while its population almost quadrupled from around 880,000 in 1926 to 3.3 million in 1989 due to natural growth and large-scale influx of Armenian Genocide survivors and their descendants. On 23 August 1990, it was renamed the Republic of Armenia after its sovereignty was declared, but it remained in the Soviet Union until its official proclamation of independence on 21 September 1991.

(7) The countries forming the USSR were Armenia, Azerbaijan Byelorussia, Estonia, Georgia, Kazakhstan, Kirghizia, Latvia, Lithuania, Moldavia, Russian SFSR, Tajikistan, Turkmenia, Ukraine, Uzbekistan. The Armenian Soviet Socialist Republic, also commonly referred to as Soviet Armenia, was one of the constituent republics of the Soviet Union in December 1922 located in the South Caucasus region of Eurasia. It was established in December 1920, when the Soviets took over control of the short-lived First Republic of Armenia, and lasted until 1991. It is sometimes called the Second Republic of Armenia, following the First Republic of Armenia's demise.

strative planning. State control of investment, public ownership of industrial assets, macroeconomic stability, negligible unemployment and high(8) job security characterized the Soviet Union economy.

After gaining independence,(9) Armenia ‘inherited’ an absolutely unviable economy from the Soviet system and found itself in the most difficult situation of all the countries of Transcaucasia. From the agrarian-industrial country with developed metal working, mechanical engineering, chemical, light, and food-processing industries, Armenia turned into a small state which could boast neither rich natural resources nor a favorable geographical position(10) or fertile soils.

*Until 20 years ago, Armenia’s economy was centrally planned.* It was planned in relation to the requirements of the constellation of regions and semi-autonomous Republics that made up the Soviet Union. *Armenia was an important supplier of manufactured inputs – notably machine tools – to the rest of the Soviet bloc economy and particularly to Russia itself.* This market disappeared overnight, both because the absence of competition had left key parts of what was essentially a highly protected manufacturing economy chronically unable to compete in suddenly liberalized markets, and because the precipitous decline of the Russian economy had significantly reduced the demand side of the market.(11)

*State procurement was performed by direct financing of public entities without competitive bidding, and the levels of fraud and corruption were extremely high.*(12) In 1992, the Presidential Decree “on measures for the formation of the Federal contracting system” initiated the establishment of procurement process on a competitive basis.(13) In 1997, the next Presidential Decree on the “urgent measures to eliminate corruption and budget cuts in the organization of the

(8) H. PHILIP, *The Rise and Fall of the Soviet Economy*, London, Routledge, 2003, pp. 1-8.

(9) On 23 August 1990, it was renamed the Republic of Armenia after its sovereignty was declared, but remained in the Soviet Union until its official proclamation of independence on 21 September 1991. Its independence was recognized on 26 December 1991 when the Soviet Union ceased to exist. After the dissolution of the Soviet Union, the state of the post-Soviet Republic of Armenia existed until the adoption of the new constitution in 1995.

(10) For much of its history, Armenia has been a prisoner of its difficult geography. Situated at a strategic crossroads, it has lost out in competition with much larger regional powers and empires, and was the victim of the first genocide of the 20<sup>th</sup> century. Armenia is now at a crucial political crossroads yet again, this time with the fate of the country’s strategic orientation and domestic stability in the balance. The challenges facing Armenia are daunting, and go well beyond its dangerous over-dependence on Russia, the burden of the unresolved Nagorno-Karabakh conflict, and the enduring legacy of the Genocide. In fact, the most serious threat to Armenia is not just external but domestic. Entrenched corruption and the democratic deficit impede sustainable economic policy and sound political reform. This means that the solution is also less external, and must address deeper domestic deficiencies.

(11) UNCTAD, “Voluntary peer review of competition policy: Armenia”, United Nations, New York/Geneva, 2010.

(12) N. PAKHARUKOVA, *Public procurement system in Russia in the process of transition: Guidelines for EU suppliers*, Helsinki, Metropolia, 2014.

(13) Decr. 826 from 7 August 1992.

procurement of products for State needs,” (which was based on UNCITRAL principles) was issued.(14)

## 2.2. Innovations in Public Procurement System of Post-Soviet Armenia

The Republic of Armenia is a sovereign, democratic, social, and rule of law State. Since the breakup of the Soviet Union in 1991, Armenia has made great progress towards the liberalisation of its economy.(15) Armenia is one of approximately 80 nations that has launched its competition systems since 2000,(16) although it remains strongly dependent on the economic health of *the Russian economy and of the EU*.(17)

To date, Armenia’s economy is characterized by a high level of market concentration, most probably due to the limited points of entry and exit for the import and export of goods, which is accompanied by *a weak customs service that leads to a significant underreporting of trade*. The geopolitical tensions have already closed two of landlocked Armenia’s most likely routes to the sea, namely, the borders with Turkey and Azerbaijan. Thus, Armenia has only one reliable and economically viable route to the sea, that is, through its border with Georgia. In addition, Armenia struggles with what is called the ‘shadow economy’,(18) which is predominantly controlled by unreported informal sector activities, most of which are done through traders or producers that are trying to evade payment of taxes and import duties.

(14) Decr. 305 from 8 April 1997.

(15) The economy of Armenia is based on 5 regions which differ in natural and economic-geographical conditions and industrial specializations. Ararat (electric power, mechanical engineering, chemical industries, manufacture of building materials, and agriculture), Shirak (textile industry, mechanical engineering; livestock), Pridebed (copper, chemical industry; agriculture, mechanical engineering), Sevan-Agstevi (electric power, livestock, grains and tobacco), and Syunig (mining industry, agriculture, hydroelectric power industry and mechanical engineering). The main industrial centre of Armenia is Yerevan, followed by Gyumri and Vanadzor.

(16) The Law of the Republic of Armenia on Protection of Economic Competition (‘the Act’) was passed on 6 November 2000. On 13 January of the following year, the State Commission for the Protection of Economic Competition of the Republic of Armenia (SCPEC) was established.

(17) Several critical background facts and circumstances affect every aspect of Armenian life. Each significantly influences the character and practice of competition law and policy and the challenges to be confronted. There are two fundamental facts of Armenia’s economic and political life. The first is its status for approximately 70 years as a Republic of the former Soviet Union. The second fundamental feature underpinning Armenia’s political and economic life is the geopolitical situation in the South Caucasus region, specifically the conflict-ridden relationship between Armenia and its eastern neighbour, Azerbaijan, and between Armenia and its western neighbour, Turkey.

(18) ‘Shadow economy’, also known as ‘informal sector’, ‘black economy’, ‘underground economy’, or ‘gray economy’, refers to activities and business transactions that occur ‘below the radar’ or economic activities that are not recorded; hence, no taxes were collected from these activities. When economists calculate the GDP (gross domestic product) of a country, they do not include the value of the transactions in the shadow economy. See, e.g. B. TUNYAN, “The Shadow Economy of Armenia: Size, Causes and Consequences”, Working Paper No. 05/02, Armenian International Policy Research Group, 2005.

Armenia's procurement legislation<sup>(19)</sup> consists of the 2005 Constitution, as amended by a 2015 referendum,<sup>(20)</sup> the 1998 Civil Code,<sup>(21)</sup> the public procurement law and other legal acts. Interestingly, public procurement in Armenia is *decentralized*, that is, the procurement of goods, works and services is delegated to procuring entities at the central, the provincial, and the local levels of government.

In 1991, Armenia had independently launched its public procurement system with transition from a centralized to a market economy. After the adoption of its new Law on Procurement (LoP),<sup>(22)</sup> *Armenia has transferred its semi-centralized procurement system<sup>(23)</sup> into a decentralized one.*<sup>(24)</sup> At the same time, Armenia has adopted a strategy of developing a unified Armenian Electronic Procurement System (ARMEPS).<sup>(25)</sup> The creation of possibilities for electronic administration,<sup>(26)</sup> particularly electronic document circulation and exchange, significantly decreases the paperwork load and saves working hours, optimizes the number of public servants and enhances their qualifications. The e-procurement system of Armenia, the 'Armenian Electronic

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(19) Law on procurement RA, 16 December 2016, Art. 3, Purpose and scope of the law. "1. The purpose of the law is to ensure: a) organization of competitive, efficient, transparent, open and indiscriminate procurement process; b) formulation of unified rules for the procurement process and legal grounds for the supervision of application thereof; c) regulation and cooperation of the procurement process; d) equal rights for any person, regardless of his being a foreign physical person, organization or stateless person to participate in the procurement process, except in cases prescribed by law. e) broadening of the circle of participants and encouragement of competition between them for the purpose of signing a procurement contract. 2. The scope of this law extends to procurements made in the RA by the procuring entity. The procurement procedure outside of the RA is formulated by the RA government".

(20) Adopted through a referendum on 5 July 1995. Amendments to the Constitution of the Republic of Armenia were introduced through a referendum on 27 November 2005. Amendments to the Constitution of the Republic of Armenia were introduced through a referendum on 6 December 2015.

(21) Adopted by the National Assembly on 5 May 1998. The civil legislation of the Republic of Armenia consists of this Code and other laws containing norms of civil law. Norms of civil law contained in other laws must comply with this Code.

(22) Adopted on 22 December 2010 and effective from 1 January 2011.

(23) Per the old LoP only State government bodies or community institutions had the ability to participate in the centralized procurement system.

(24) The decentralization of procurement has substantially increased the number of stakeholders in public procurement. The private sector has continued to grow. Small, medium and large enterprises have been participating in providing thousands of items of goods, works and services under government procurement contracts.

(25) Armenia: Case Study on e-Government Procurement Development, ADB Technical Assistance consultant's report, May 2011.

(26) Armenia reported numerous e-portals introduced since the last monitoring round, including: e-civil system; e-petition; e-bankruptcy; [www.azdarar.am](http://www.azdarar.am); e-court; e-hotline; [www.e-license.am](http://www.e-license.am); e-penitentiary; e-visa; e-consul; e-request.am; e-drafts and others. Most of these Web sites are linked to the e-government Web site [e-gov.am](http://e-gov.am). In addition, as discussed below, most of the tax services have been digitalized and the same process is ongoing for customs. See OECD report on 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, *Anti-corruption reforms in Armenia*, pp. 91-93.

Procurement System (ARMEPS)' is an affiliated system with the Ministry of Finance (MOF).(27)

The introduction of an electronic system for services provided by the State has improved the openness, accountability and transparency of the activities of the public system, while reducing the corruption risks(28) through a significant reduction of direct and personal contacts between public servants and economic operators. As a result, administration operations become more controllable by citizens, as e-procurement creates the opportunity for citizens to participate in the administration process. *The announcements on international tenders can be found on the central procurement website by following the appropriate prompts.*(29)

Despite the significant progress recorded in the sphere of electronic administration, Armenia is still far behind the European Union countries with respect to public electronic services.(30) In 2013, Armenia adopted the proposed roadmap provided in the EBRD-UNCITRAL Initiative's "Road Map for Finalizing e-Procurement Reform in the Republic of Armenia 2013-2015".(31) The purpose of the roadmap was to achieve full implementation of e-GP in Armenia by 2015. Four years thereafter, the roadmap has yet to achieve its full realization. Updates are being made from time to time.

*Considerable work has been done to bring the procurement legislation of Armenia in conformity with the UNCITRAL Model Law, GPA (WTO General Procurement Agreement) and EC Public Procurement Directives.* Despite the solid steps towards the modernization of the procurement legislation and public administration system, there are still many gaps to identify and resolve. The obvious problems, for example, which need to be primarily addressed are: *foreign bidders' lack of participation in Government tenders,*(32) *capacity building strategies,*(33) *and application*

(27) The PSC supports the ARMEPS functionally; and EKENG CJSC (e-Governance Infrastructure Implementation Unit) supports it technically.

(28) Introduction of the concept of beneficial ownership and registration of beneficial owners and restrictions imposed on the latter (unfortunately this concept is not extended to other areas, for example, tax and customs, which decreases the impact of its introduction) is one of the major novelties of the law. See OECD report on 3rd round of monitoring of the Istanbul Anti-Corruption Action Plan, *Armenia progress update*, pp. 88-98.

(29) [www.procurement.am/hy/page/otarerkraya\\_petutyunneri\\_koghmic\\_kazmakerpvogh\\_gnumner/](http://www.procurement.am/hy/page/otarerkraya_petutyunneri_koghmic_kazmakerpvogh_gnumner/).

(30) Armenia Development Strategy for 2014-2025 to RA Government Decree # 442 - N On 27 March 2014.

(31) [www.ppi-ebd-uncitral.com/images/stories/pdf/RA\\_Armenia\\_eGP\\_roadmap\\_6\\_March\\_2013.pdf](http://www.ppi-ebd-uncitral.com/images/stories/pdf/RA_Armenia_eGP_roadmap_6_March_2013.pdf).

(32) Recommendations: To ensure the availability of all the tender information and documents in English (tender notices, regulations, guidelines, award and etc.), keep the information updated on the official Web site.

(33) Recommendations: To create and adopt public procurement capacity building strategies by applying local resources. The adoption of the institutionalized and sustainable strategies (professional development programs, education and trainings) should start from the needs analysis,

of e-procurement.(34) The current procurement public awareness-raising and capacity-building arrangements are inadequate. Although some procurement manuals exist, they are not suitable for all procuring entities. There are a large number of procuring entities whose staff need to acquire procurement skills.(35)

SIGMA supports ongoing public administration reform in Armenia and is aimed at enhancing Armenia's capacities to comply with the requirements of EU integration and to effectively use EU support as a potential candidate(36) for EU membership.(37) The Armenian public procurement system is in the course of modernization and standardization in accordance with OECD principles. According to this vision, the main aspects of reform to be addressed are in transparency and accountability in public administration to avoid the risks of corruption and bid rigging.(38)

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identification of the targeted stakeholders, the reporting of the knowledge gap and mapping the skills needed.

(34) It is highly suggested to invest in creation and maintenance of procurement e-learning platforms aimed at enhancing the awareness of public procurement policies and procedures among all stakeholders, and improved procurement competencies of public officials. After the adoption of the strategies a comprehensive dissemination and awareness raising plan will be appropriate.

(35) The RA Government Decr. No. 99-N dated 12 February 2015 approved regulations for the qualification of procurement coordinators and continuous professional development of qualified procurement coordinators. It is envisaged that every procurement official should take the training at least once every three years. The head of the contracting authority should submit to the Procurement Support Center (PSC) a list of its employees who need to be trained. PSC then comprises groups and schedule for the trainings for that year. See OECD report on the 3rd round of monitoring of the Istanbul Anti-Corruption Action Plan, *Anti-corruption reforms in Armenia*, pp. 87-88.

(36) Despite the fact that Armenia works hard to improve its public procurement system there are still obvious problems which need to be addressed; without facing these core issues it will be impossible to prepare healthy foundation for the system's reforms:

1. Design and launch capacity building programs for procurement specialists (training on legislation procedures and the donors IFIs guidelines, FIDIC procedures, contract negotiation and management, proposal writing);
2. Establish a network of professionals from different markets and different procuring entities; create a platform for data sharing, practice sharing, exchange of skills, training on case studies, interactive studies;
3. Raising awareness on EU Programmes (European Structural and Investment Funds and Horizon 2020) and offers of funding opportunities to promote joint innovation public procurement – including both Public Procurement of Innovation (PPI) and Pre-Commercial Procurement (PCP) through forums, seminars, media, etc.;
4. Design and launch procurement e-learning modules via establishing an electronic training center;
5. Identify the reasons for foreign bidders' lack of interest (such as difficulty of access to procurement documents in English) in government tenders and improve conditions for their participation;
6. Require procuring entities not to use price as the only selection criterion for standard procurement items (update the calculation methods to include both quality and price in the selection of consultants);
7. Establish off-line and on-line means to create a bridge between post-Soviet Union countries (mainly three post-Soviet countries; Georgia, Moldova and Ukraine can serve as a case study), and learn from their experience, share knowledge and skills.

(37) SIGMA and Armenia: [www.sigmaxweb.org/document/26/0,3746,en\\_33638100\\_33638200\\_44395930\\_1\\_1\\_1\\_1,00.html](http://www.sigmaxweb.org/document/26/0,3746,en_33638100_33638200_44395930_1_1_1_1,00.html).

(38) See Recom. 17 from the Third Round of Monitoring on Armenia: Transparency and discretion in public administration, OECD report, aforesaid, pp. 88-90.

### ***3. Capacity for Innovation in Armenian Procurement Processes through Strategic Application of Organizational Models***

#### **3.1. Trials for establishment of a partially centralized procurement system**

In February 2017, the then-Minister of Finance<sup>(39)</sup> presented to the government a program to establish a partially centralized procurement system for public procurement.<sup>(40)</sup> The Minister justified the necessity to adopt a “partially centralized procurement system” to enhance the delivery of electronic procurements and comply with the requirements on regional economic development.<sup>(41)</sup>

As already discussed, the current public procurement legislation supports a decentralized approach in public procurement;<sup>(42)</sup> that is, the procuring entities themselves arrange the procurement procedures. While the laws promote the use of the electronic procurement system, this does not include the process of contract execution as this is still done through the traditional paper-trail procurement system.

The proposed centralization encourages the use of framework agreements for goods and services with similar technical characteristics that are included in the approved list by the Government of the Republic of Armenia. The proposed centralized procurement will be done through either the Ministry of Finance or any of the State-owned institutions or a legal entity assigned by the Ministry of Finance in cooperation with all central executive bodies.<sup>(43)</sup> Like most framework agreements, the proposed framework agreement has a validity period that will be used as the basis for the determination of the prevailing market price for the goods and services covered therein. There will be a mechanism for reviewing and/or revising the active contract price to ensure that the determination of the cost estimates in the framework agreements has a positive impact in the budgets.

(39) V. Aramyan appointed as Minister of Finance by president S. Sargsyan on 20 September 2016 in Yerevan.

(40) The Minister's speech available at <https://iravaban.net/152241.html>.

(41) Government's Resol. No. 110-A, “Action Plan for the Improvement of Armenia's Business Environment in 2016”, 11 February 2016.

(42) Art. 17 of the Law of RA on Public Procurement: Implementation of centralized procurement for the needs of customers or their separate groups may be carried out in a centralized manner according to the prescribed rules by the Government of the Republic of Armenia. Purchases by a centralized manner shall be made by the entity or legal body assigned by the Government of the Republic of Armenia, [www.arlis.am/documentview.aspx?docID=110820](http://www.arlis.am/documentview.aspx?docID=110820).

(43) According to the RA Government executive order N526 Chapter XV the organization of the procedure of the centralized procurement could be done for the needs of the State and Non-Commercial Communities, state (communal) non-commercial organizations and organizations with more than 15% of the state (ownerships are to be included) in a centralized procurement plan.



At the same time, the draft of the program suggests that in case of any procurement with an approximate value of up to 70 million drams, the 15% price preference for products from the Eurasian Economic Union will not apply due to its price implications, i.e., the procurement will have a relatively expensive price.<sup>(44)</sup> Nonetheless, the program recommends the promotion of domestic production by allowing the RA Prime Minister to authorize the adjustment of the technical specifications at the time of the procurement in order to give preference to local products.

According to the RA Government decision N526 made on May 2017, Chapter XIV on the Organization of centralized procurement for the State needs, the list of goods and services to be procured centrally is to be approved by the Government of the Republic of Armenia. Accordingly, the head of the body should approve the technical specifications, including the terms and conditions of the purchase, subject to centralized procurement, within 35 working days from the date of the formulation of the said conditions and before coordinating with all the republican executive bodies. In fact, the law likewise requires the formulation of an evaluation commission for every centralized procurement, composed of representatives from different contracting authorities that want to participated in the specific centralized procurement. The principal contract shall be valid for a period of six months, and all subsequent contracts shall be valid for a period of one year. The invitation to bid/tender must include a request to interested bidders to submit a statement declaring that they have properly executed at least one similar contract during the past three years.

In addition, decision N526 Chapter XV on the organization of the procedure for centralized procurement requires that procurements by State and Non-Commercial Communities States (communal), non-commercial organizations and organizations with more than fifty percent State ownership must be included in the centralized procurement plan.

Prior to November 1 of the preceding year, the head of the organization should submit to the authorized body (hereinafter referred to as the lead contracting authority), the purchase orders approved in accordance with the procedure defined in the technical specification of the subject matter, the maximum price per unit, the place and time of payment, the payment terms, and, where appropriate, the price to be supplied, the work to be performed, or the quality of the service to be provided and an expert opinion, including a written agreement authorizing the lead contracting authority to sign the contract award after the

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(44) According to the provisions of the Treaty on EAEU, the freedom of movement of goods, services, capital and labor, as well as implementation of coordinated or united policy in various branches of economy is provided within the Union. From 1 April 2015 in case of purchases with the volume up to 70 million AMD, the EAEU countries are given a 15% price preference while participating in public procurements of Armenia.

completion of the procurement process. The candidates for the composition of the evaluation committee must likewise be presented.

The lead contracting authority, on the basis of applications received by 1 December, prepares a procurement plan to be implemented in a centralized way. If there are five or more participating contracting authorities, each contracting authority must present one candidate in the evaluation committee, which is composed of candidates from the five organizations with the largest shares in the scope of the subject procurement. In case there are less than five participating organizations, each organization can nominate three candidates, and the evaluation committee must include candidates from all participating organizations subject to the restrictions on the maximum number of members for evaluation committee.

The representative of the organization with the largest share shall be appointed as the chairman of the evaluation committee.

Whenever possible, the procurement of goods, services and works of organizations in an administrative unit must be consolidated into a single lot, provided that all needs of the individual organizations are taken into account.

The selection of the procurement procedures shall be carried out by the lead contracting authority subject to compliance with procurement laws and procedures. In case of e-procurement, the procedures within the centralized procurement process must also be done through electronic system.

Contracts concluded as a result of centralized procurement can be found on the website of the Ministry of Labour and Social Issues of the Republic of Armenia (MLSA).(45) Currently the documents are available only in the Armenian language.

### 3.2. Possibilities for joint cross-border innovation and the EU-Armenia enhanced partnership and cooperation agreement

Taking into account Armenia's intention to accelerate its EU integration process, which in its turn includes also the current public procurement legislation and system revision, it is important to first of all analyse and evaluate the possibilities on how Armenia can benefit from the opportunities(46) on joint

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(45) Including information on the completed tenders.

(46) The main development in Armenia in the area of procurement was the adoption of the Law on Procurement (PPL) by the National Assembly of the Republic of Armenia (RA) in December 2016. The PPL is based on the UNCITRAL model law and had been drafted with the support of EU SIGMA and the European Bank for Reconstruction and Development (EBRD). According to the Government of Armenia and civil society representatives, NGOs (including Transparency International) were consulted during the drafting process and their comments were reflected in the PPL. Important features of the PPL were reviewed in the OECD report on 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, Anti-corruption reforms in Armenia.

cross-border procurement under the EU 2014 Directives. The legal perspectives and Armenia's commitments and limitations as a member of the Eurasian Economic Union (EAEU) should be taken into account.

After Russia pressured Armenia to give up its potential Association Agreement and Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU in 2013, Armenia took a surprise decision to join the Eurasian Economic Union,<sup>(47)</sup> which put the relationship between the EU and Armenia into a period of 'strategic pause'. Since joining the Eurasian Economic Union, Armenia has steadily and stealthily sought to regain and restore relations with the EU, and to deepen its ties to the West more broadly. For example, the EU and Armenia re-opened negotiations on a revised and revamped EU-Armenia framework agreement in December 2015, after the launch of a so-called "scoping exercise" in October 2014 that sought to identify areas for such an agreement.<sup>(48)</sup>

The European Union's relations with Armenia are based on the EU-Armenia Partnership and Cooperation Agreement (1999), and moving forward on the new Comprehensive and Enhanced Partnership Agreement, completed in February 2017, which will create the framework for even stronger cooperation.<sup>(49)</sup> Launched in May 2009 in Prague, the Eastern Partnership (hereinafter EaP)<sup>(50)</sup> aimed at enhancing the relations between the European Union

(47) The Eurasian Economic Union is an international organization of regional economic integration. It has an international legal personality and was established by the Treaty on the Eurasian Economic Union signed on 29 May 2014 in Astana. The Eurasian Economic Union was created on the basis of the Customs Union and the Common Economic Space of Belarus, Kazakhstan and Russia. The Customs Union has been launched since January 2010. A decision on entry into force of international agreements forming the Common Economic Space was made in December 2011. This defined the usage of the Agreements forming the Common Economic Space from January 2012 to 2015 targeting the creation of the Eurasian Economic Union. On 3 September 2013, the President of the Republic of Armenia Serzh Sargsyan declared the decision of the Republic of Armenia to join the Customs Union. The Republic of Armenia joined the Treaty on the Eurasian Economic Union signed on 10 October and the treaty entered into force on 2 January 2015.

(48) H. KOSTANYAN and R. GIRAGOSIAN, "EU-Armenian Relations: Seizing the Second Chance", CEPS Commentary Policy paper, 31 October 2016.

(49) The European Union is the leading trading partner of Armenia, with close to 30% of exports going to the EU, and is also the biggest donor in Armenia, providing an average €1 million per week, with the objective of having a clear impact on the life of citizens. Cooperation aims at supporting the country's resilience and economic development, strengthening good governance and the rule of law, improving Armenia's transport and energy links with the EU and the region, and developing stronger links between the labor market and the education system.

(50) The main goal of the EU was to create a stable, prosperous and secure eastern neighborhood, providing the eastern partners with the objective of political association and economic integration with the EU. Since the last Eastern Partnership (EaP) Summit, which took place in Riga in 2015, significant progress has been achieved in relations between the EU and its six partner countries. Association agreements, including Deep and Comprehensive Free Trade Areas with Georgia, Moldova and Ukraine, have now fully entered into force, opening new opportunities for closer cooperation on tackling key challenges, as well as economic integration and trade. Trade between the three associated partner countries and the EU has significantly increased. The implementation of these Agreements will be guided by the recently updated Association Agendas. Following a set of demanding reforms, visa-free travel to the Schengen

and the six countries participating in the initiative: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova (hereinafter Moldova) and Ukraine.

The 5th Eastern Partnership Summit<sup>(51)</sup> with the slogan “Stronger together” was a moment to celebrate the achievements of the last two years in the EU’s relationships with its six Eastern partners and to look forward to implementing 20 deliverables by 2020 that will bring tangible benefits to citizens. In the margins of the Summit, a number of agreements were taken forward, including a new bilateral agreement between the European Union and Armenia; a Common Aviation Area Agreement with Armenia; and the extension of the EU’s Trans-European Transport (TEN-T) network to Eastern partners. This new agreement will enable the European Union and Armenia to work more closely together in order to address the challenges faced and to make the most of the opportunities available.

Negotiations for Armenia’s participation in the EU’s biggest Research and Innovation Programme Horizon 2020 were concluded in 2015 and Armenia signed the Association Agreement in May 2016. Armenian legal entities can participate in all Horizon 2020 actions funded from the 2016 budget (calls for proposals, calls for tenders, contests, JRC activities etc.) with the status of entities from an Associated Country as of the entry into force of the Association Agreement. On 21 February 2018, the European Union and Armenia signed Partnership Priorities in Bruxelles. This sets the joint policy priorities for the coming years, in line with the new EU-Armenia Comprehensive and Enhanced Partnership Agreement. The four main areas of cooperation are: Strengthening institutions and good governance; Economic development and market opportunities; Connectivity, energy efficiency, environment and climate action; Mobility and people-to-people contacts.

#### ***4. What Armenia Can Learn from other Post-Soviet Union Countries***

##### **4.1. Innovations in Georgia’s public procurement system**

Since the first Law on Public Procurement was adopted in December 1998 (N1721), Georgia’s public procurement system and legislation have been continuously developing. The current public procurement framework – the Law on State Procurement (LSP) – was adopted in 2005 and came into force on 1 January 2006. Since its enactment, the LSP has been streamlined and has

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area was put in place for the biometric passport holders of Georgia and Ukraine, in addition to that with the Republic of Moldova, in place since 2014.

(51) Took place on 24 November, 2017 in Brussels.

undergone a series of amendments. The main aims of the LSP are to ensure the rational use of financial resources; develop healthy competition in the production of goods, supply of services and construction works necessary for the State's needs; ensure a fair and non-discriminatory approach towards participants in the procurement process; assure the publicity of the process; create a unified electronic system of public procurement, and build public confidence in it. The scope of the LSP covers purchases of goods and the supply of services and construction works by contracting authorities, using funds from the State, autonomous republics or local budgets, funds of public bodies and grants or loans guaranteed by the State. Substantial parts of the procurement process are regulated by secondary legislation. Provisions regarding avoidance of conflict of interest are stipulated in the LSP.

The main responsible agency is the State Procurement Agency (SPA), an independent legal entity under public law. Between 2012 and 2014, the SPA was merged with the Free Trade and Competition Agency, based on the Swedish model and with the assistance of Swedish experts, and was renamed the Competition and State Procurement Agency. Yet later (in 2014), this agency was split again into the Competition Agency and the SPA.

Up until the end of 2010, Georgia had a highly inefficient, bureaucratic and completely opaque procurement system and the public was not able to access any government procurement documents. This was mainly because in many cases, documents were not even properly archived. Today, Georgians and others interested in government procurement can find information online including tender documentation, documents submitted by bidders, participating bidders, their bids and all signed and amended contracts. Also included on the platform is information on all whitelisted companies that have been reliable in the past, and on those that have been blacklisted and barred from bidding for public contracts for a year. The website also allows interested bidders to request clarification on tender documents. These requests are usually answered by a procurement officer on the website before any bidding starts.

The introduction of e-procurement (October 2010) through the Georgian electronic Government Procurement (Ge-GP) system is a good example of how strong political will and commitment can be critical in the context of reforming public procurement. Within a year, the State Procurement Agency of Georgia (SPA) designed, developed, and tested the e-procurement system and eventually moved to the *mandatory use* of e-procurement, fully replacing paper-based tenders. The e-procurement system, which is broadly consistent with good public procurement practices, has increased competition among suppliers. In addition, by bringing processes online, it has made the procurement system more transparent, less bureaucratic, and less discriminatory. As a result, the

system has significantly minimized corruption risks and brought substantial savings to the government and Georgia's citizens. Now Georgia is one of the few countries in the world where the need for paper-based tenders has been fully eliminated, and 100% electronic tenders were introduced within less than one year.

The reform of e-procurement is clearly one of the most effective and efficient reforms undertaken in the last decade in Georgia. The remarkable achievements of SPA have been explicitly acknowledged by different international organizations<sup>(52)</sup> including the OECD, the United Nations and Transparency International, the latter ranking Georgia as the best country among the 19 countries of Eastern Europe and Central Asia in its 2014 Corruption Perceptions Index.<sup>(53)</sup>

Transparency International (TI)<sup>(54)</sup> Georgia also launched *tendermonitorge*, a new Web site which allows the public to search, explore and monitor public procurement, and which is based on electronic data from the electronic procurement platform of the Georgian Competition and State Procurement Agency (CSPA). Anybody who detects a potential violation of the law in an electronic tender process can file a direct complaint on the official procurement website, which is then reviewed by a Dispute Resolution Board, in which TI Georgia is represented, within ten working days. This online reporting mechanism is a very innovative approach that allows the public to scrutinize public contracts and to act to stop a process, if members of the public find violations of the law.<sup>(55)</sup>

#### 4.2. Georgia's successful example for EU integration

The Association Agreement (AA) between the European Union (EU) and Georgia is a comprehensive treaty covering Georgia's political and economic

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(52) The European Parliament welcomed Georgia's new procurement system, and noted that Georgia should also serve as an example for the EU Member States in this area – The e-Procurement system implemented in Georgia may serve as a good example for Asia and other Pacific countries. The countries, which have not yet introduced the e-Procurement system, are particularly interested in the reforms implemented in Georgia as the ADB has noted. In 2012, the Ge – GP was awarded with the United Nations Public Service Award (UNPSA) in the category of "Preventing and Combating Corruption in Public Service". According to a recent survey published by the EBRD (EBRD 2012 Regional Public Procurement Legislation Self – assessment), the Ge – GP was recognized as the most advanced e – procurement platform among the Bank's 26 client countries.

(53) The World Bank, Georgia: An E-Procurement Success.

(54) A large amount of the taxpayers' money is spent on public procurement. Finances used for public procurement are in essence the taxpayers money spent on effective governance. Therefore, the system and policy for public procurement should be transparent, economically purposeful and efficient. As a result, they will provide high quality goods and services for effective functioning of State institutions, as Transparency International has noted.

(55) Georgia's E-procurement platform, 14 June 2013.

relationship with the EU. The trade-related content establishes a Deep and Comprehensive Free Trade Area (DCFTA), which is an important part of the overall Agreement.

The Agreement was signed on 27 June 2014, and has subsequently been ratified by Georgia, the European Parliament and all 28 EU Member States. While most of the economic content of the Agreement has been provisionally in force since 1 September 2014, its definitive and complete entry into force took place on 1 July 2016.

The political and economic objectives of the Agreement are fundamental for the future of Georgia as an independent and secure European State.

The political purpose is to deepen the realisation of Georgia's 'European choice' and its relations with the EU. Membership in the EU is not pre-figured in the Agreement, but neither is it excluded in the longer run.

The EU-Georgia Association Agreement includes in Title IV a dedicated Chapter 8 on public procurement, comprising Articles 141-149 and an associated Annex XVI. Essentially, the Agreement provides for effective, reciprocal and gradual opening of the public procurement markets of the EU and of Georgia.

Public procurement in the EU and Georgia is of great economic importance. It accounts for around 18% of GDP in the EU and offers an enormous potential market for Georgian companies. The *Deep and Comprehensive Free Trade Areas (DCFTA)* (56) provides for the gradual and reciprocal liberalisation of the parties' public procurement markets under the strict condition that Georgia implement the EU's key public procurement rules. The EU and Georgia envisage mutual access to their respective public procurement markets on the basis of the principle of national treatment at the national, regional and local levels for public contracts and concessions in the traditional sectors as well as in the utilities sector.

Opening of public procurement markets is linked to gradual progress in the approximation of the Georgian public procurement legislation with the EU public procurement *acquis* accompanied by institutional reform and the creation of an efficient public procurement system based on the principles governing EU public procurement. The process of approximation includes methods and techniques for transposing the EU legislation into national law, its incorporation into the national legal system and the process of implementation.

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(56) The Deep and Comprehensive Free Trade Areas (DCFTA) are three free trade areas established between the European Union, and Georgia, Moldova and Ukraine respectively. The DCFTAs are part of each country's EU Association Agreement. They allow Georgia, Moldova and Ukraine access to the European Single Market in selected sectors and grant EU investors in those sectors the same regulatory environment in the associated country as in the EU.

The EU envisaged the ‘indicative time schedule’ for institutional reform, legislative approximation and market access. This time schedule foresees five phases for Georgia to implement the provisions of the EU’s public procurement directives, and the specific market access that Georgia and the EU will grant to each other. The market access provided in each phase will imply that the EU shall grant access to contract award procedures to Georgian companies – whether or not established in the EU – pursuant to EU public procurement rules under treatment no less favourable than that accorded to EU companies, and vice versa.

Although this schedule envisages a simultaneous market opening, it has to be noted that Georgia’s public procurement market was already open for EU companies before the DCFTA entered into force, and that EU companies can therefore already participate in Georgia’s procurement market.

On the EU’s side, the indicative time schedule foresees that each phase shall be evaluated by the Trade Committee and the EU’s market access will take place only after a positive assessment by this Committee, which will take into account the quality of Georgia’s legislation as well as its practical implementation.

Prior to the beginning of legislative approximation, Georgia must submit to the Trade Committee a comprehensive roadmap for the implementation of the requirements of the procurement chapter (hereafter referred to as the ‘public procurement roadmap’), covering all reforms in terms of legislative approximation and institutional capacity building.

The EU public procurement directives included in the DCFTA have meanwhile been replaced in the EU by a new legislative package. In 2011, the European Commission proposed the revision of Directive 2004/17/EC(57) and 2004/18/EC,(58) as well as the adoption of a directive on concession contracts. This legislative package was adopted in February 2014 and the Member States had to transpose the new rules into their national laws by April 2016 (Dir. 2014/24/EU(59) on public procurement; Dir. 2014/25/EU(60) on procurement by entities operating in the water, energy, transport and postal services sectors;

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(57) Dir. 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

(58) Dir. 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

(59) Dir. 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Dir. 2004/18/EC Text with EEA relevance.

(60) Dir. 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 Dir. 2004/17/EC Text with EEA relevance.



Dir. 2014/23/EU(61) on the *award of concession contracts*). These new public procurement rules should also be covered in Georgia's public procurement roadmap. Whereas these new directives did not change the basic framework of the EU's public procurement system, which is mainly covered in phase 1 of the DCFTA's indicative time schedule, the numerous new elements need to be transposed into the DCFTA.

Phase 4 of the legislative approximation process will focus on: Introduction of techniques and instruments for electronic and aggregated procurement including *framework agreements, dynamic purchasing systems, electronic auctions, electronic catalogues, occasional joint procurement*.(62) Introduction of occasional (*ad hoc*) joint procurement will result with more possibilities for co-ordination between contracting authorities; it could take many different forms – contracting authorities may jointly conduct one procurement procedure by acting together or by entrusting one contracting authority with the management of the procurement procedure on behalf of all contracting authorities.

## 5. Conclusions

Armenia has already demonstrated its willingness to implement innovative approaches in public procurement, *i.e.*, the establishment of a partially centralized procurement system. Its current law on public procurement has evolved to pave the way for the promotion of aggregation as a more efficient mechanism to address the common needs for goods and services by various government agencies. Like most countries that adhere to innovative measures, Armenia requires time to overcome uncertainties, estimate the risks and threats in establishing a fully centralized procurement system, one that continuously influences the current practices in its public procurement.

In doing so, Armenia can take advantage of the current opportunities provided by the EU-Armenia Partnership and Cooperation Agreement. While Armenia has not yet experienced joint cross-border procurement with the EU or participated in any PCP/PPI projects (*see* Horizon 2020 for details), its inclusion in the Horizon 2020 project can be a crucial step towards public procurement reforms that may eventually boost its on-going application for EU integration. Armenia's participation(63) in the above-mentioned PPI and

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(61) Dir. 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

(62) Art. 33-36, 38, 50 of the Public-Sector Directive.

(63) Despite the fact that the participation requirements are a minimum of two public procurers from different EU Member States or countries associated to Horizon 2020, the results show less involvement and participation from associated countries. These results are the cause of many factors and barriers associated countries face. Among these factors, the strongest to be addressed first are: the visibility of

PPC projects can be a strong tool to unlock its potential for more innovation in public procurement, and maintain its compliance with rules for its membership in the Eurasian Economic Union.

Armenia's participation in EU-funded projects opens various opportunities for the improvement of its local innovation ecosystem that will promote a stronger local public-sector demand for innovative solutions, which will eventually attract additional financial investments, and, hopefully, encourage the relocation of innovative companies into the region. The government of Armenia has supported various initiatives for international public procurement participation. One of its recently announced initiatives is the call for tenders for the procurement of medical equipment in Armenia under the framework of the EU-CoE joint-project penitentiary reform – strengthening the health care and human rights protection in prisons in Armenia.

Armenia has been doing its part to facilitate its EU integration, and the EU should do the same by increasing its support by promoting its programs, projects and activities in Armenia. Moreover, the EU and EaP countries<sup>(64)</sup> should address the communication and visibility gap about the EaP countries within the EU itself. The examination of the EU tools and their impact in Armenia can help to further the policies, recommendations and strategies needed for efficient implementation.

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the programs and opportunities, the national professional capacities and lack of experience, and national laws, regulations and decentralized system.

(64) The Eastern Partnership (EaP) is a joint policy initiative which aims to deepen and strengthen relations between the European Union (EU), its Member States and its six Eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.