# Procurement Monitoring Report Template

**In view of the Member States' reporting process
under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU**

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| **General information** |
| In 2017, a total of 11691 public procurement procedures were launched in Hungary, resulting in 8811 contracts awarded. In this field the whole number of launched public procurement procedures and the number of awarded contracts are presented.Number of procurement procedures launched:* 3020 public procurement procedures were launched in EU regime
* 8671 public procurement procedures were launched in national regime

**Number of awarded contracts:**

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| Regime | Number of procedures | Proportion compared to all procedures (%) | Aggregate value of procedures (HUF bn) | Proportion compared to all procedures (%) |
| EU | 1 965 | 22,30% | 3 061,58 | 84,34% |
| National | 6 846 | 77,70% | 568,37 | 15,66% |
| Total | **8 811** | **100,00%** | **3 629,95** | **100,00%** |

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| I**nformation on monitoring and reporting bodies** |
| The most important monitoring and reporting bodies in Hungary:1. Control of public procurement procedures:
* Prime Minister’s Office:
* Control of public procurements to be realised using EU funds: Department of Public Procurement Control
* Control of public procurements to be realised using national funds: Public Procurement Supervision Department
* Managing Authorities
1. Legislation preparation:
* Prime Minister’s Office: Public Procurement Regulatory Department
1. Control of the performance and the modification of contracts, control of notices, legal control of negotiated procedures without prior publication of a contract notice, making official statistics on all public procurement procedures:
* Public Procurement Authority
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## I. Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds

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| **Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds** |  In Hungary the Act CXLIII on Public Procurement[[1]](#footnote-2) (hereinafter: PPA) should be used for public procurements reaching or exceeding specified thresholds; consequently only such data and statistics can be collected which are connected to public procurement procedures being under the PPA. Regarding procurements under the national thresholds aggregated data are not available. Statistical data on public procurement procedures are officially collected by the Public Procurement Authority above national thresholds and also above EU thresholds.National public procurement thresholds are laid down annually in the Budget Act. For 2017, national public procurement thresholds were the following:* For the purposes of Part Three of the PPA (procedures below EU thresholds) – except for procedures of entities operating in the water, energy, transport and postal services sectors:
* In the case of public supplies: HUF 15 million (approx. EUR 48 000),
* In the case of public works: HUF 25 million (approx. EUR 80 000),
* In the case of public services: HUF 15 million (approx. EUR 48 000),
* For the purposes of procedures of entities operating in the water, energy, transport and postal services sectors:
* In the case of public supplies: HUF 50 million (approx. EUR 160 000),
* In the case of public works: HUF 100 million (approx. EUR 320 000),
* In the case of public services: HUF 50 million (approx. EUR 160 000).
* For the purposes of Part Four of the PPA (concessions) – except for procedures of entities operating in the water, energy, transport and postal services sectors:
* In the case of public works concessions: HUF 100 million (approx. EUR 320 000),
* In the case of public service concessions: HUF 30 million (approx. EUR 96 000).
* For the purposes of Part Four (concessions) in the case of procedures of entities operating in the water, energy, transport and postal services sectors:
* In the case of public works concessions: HUF 200 million (approx. EUR 640 000),
* In the case of public service concessions: HUF 100 million (approx. EUR 320 000).

**Data on public procurement procedures above national – and below EU – thresholds are summarised in the following table:**

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| National regime |
| Type of procedures | **Number of procedures** | **(%)** | **Value of procedures (HUF bn)** | **(%)** |
| Open procedure | 193 | 2,82% | 80,68 | 14,20% |
| Restricted procedure | 11 | 0,16% | 8,70 | 1,53% |
| Negotiated procedure | 22 | 0,32% | 21,37 | 3,76% |
| Negotiated procedures without prior publication | 145 | 2,12% | 14,16 | 2,49% |
| Procedure based on Art. 117 of the PPA | 162  | 2,37% | 30,34 | 5,34% |
| Open procedure based on Art. 113 of the PPA | 2 141 | 31,27% | 128,07 | 22,53% |
| Restricted procedure based on Art. 113 of the PPA | 27 | 0,39% | 2,22 | 0,39% |
| Negotiated procedure based on Art. 113 of the PPA | 107 | 1,56% | 8,11 | 1,43% |
| Open procedure based on Art. 115 of the PPA | 3 650  | 53,32% | 250,48 | 44,07% |
| Negotiated procedures without prior publication based on Art. 115 of the PPA  | 370 | 5,40% | 23,68 | 4,17% |
| Procedure based on Art. 122/A of the PPA of 2011 | 13 | 0,19% | 0,36 | 0,06% |
| Concession procurement procedures | 5 | 0,07% | 0,16 | 0,03% |
| Total | 6 846 | **100,00%** | **568,33** | **100,00%** |

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## II. Most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules

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| **II.1.** **Qualitative reporting on application of public procurement rules** |  |
| Main sources of wrong application or of legal uncertainty | 1. ESPD:

Hungary has transposed the new Directives and the Implementing Regulation on ESPD among the first Member States, when the ESPD data module hadn’t been developed by the Commission, therefore the paper format of the ESPD has become the primary application form in the Hungarian public procurement procedures. Besides that the ESPD document meant a significant change in the verification of exclusion and selection criteria, filling in the document – especially of the paper format – was difficult for the contracting authorities and also for the economic operators.The most frequent problems with the filling in the ESPD:* doesn’t contain the national exclusion grounds
* contracting authorities and economic operators write extra information into the ESPD document beside the information required by the Implementing Regulation of ESPD: for instance the national exclusion grounds
1. Negotiated procedure:
* Art. 26 (4) of the Directive only allows contracting authorities to choose competitive procedure with negotiation in certain cases listed therein. This does not allow for the additional flexibility and a more widespread use of this procedure – which would facilitate an increased cross-border trade – as paragraph (42) of the recital suggests, and the fact that the contracting authority negotiates in the procedure does not reduce competition.
* We suggest an objective deadline for closing negotiations in negotiated procedures starting from the launch of the procedure or the expiration of the deadline for submitting a request to participate (for example 1 year), since without such regulations contracting authorities might carry on negotiations for an unreasonable length of time, which can lead to an infringement on basic principles.
1. Selection criteria: references in particular

It is not a direct issue in the sense that the related rules are applied wrongly however conceptually we think that requiring references (Art. 58 (4) second subparagraph of 2014/24/EU Directive) as part of the selection criteria is not suitable to assess the ability of economic operators to perform the contract to be awarded, as references show only the past performance of an economic operator, but not necessarily their future or actual ability to perform. The wide use – as in the case of Hungarian public procurement practice – of references as selection criteria may lead to restricted competition since it prevents newly – or relatively newly – established economic operators to bid in public procurements. |
| Specific legal provisions (from EU or national law) which appear to raise significant problems of application | 1. Artificial splitting of contracts, examination of single economic and technical function:

In practice, the rules against the artificial splitting of contracts are difficult to implement properly for contracting authorities. The main reasons of these difficulties are on the one hand the lack of detailed rules on the prohibition of artificial splitting of contracts in the Directives and consequently, in national legislation. On the other hand, contracting authorities cannot be expected to keep themselves updated with the complex case law of the Court of Justice of the European Union.The Public Procurement Authority and the Prime Minister’s Office provide guidance on the rules on artificial splitting of contracts and examination of single economic and technical function in the form of regularly updated guidelines and other supporting documents, but these guidance documents are not (and by definition, cannot be) detailed enough to fully summarise the elaborate and complex case law of the Court of Justice of the European Union on the issue to be fully and exclusively relied upon by contracting authorities. We think that based on the above there is a need to issue an interpretative guidance from the European Commission on this subject matter.1. Submission of request to participate:
* The general 30-day deadline to submit a request to participate is unreasonably long since the time required to prepare the necessary documents and to submit them (electronically) doesn’t justify such a long time period, and contracting authorities can ask for clarifications or the supplementation of the documents as per Art. 56 (3) of the Directive if necessary. The unreasonably long submission deadline may deter contracting authorities from using restricted procedures or may incite the use (even unlawful use) of accelerated procedures.
1. The directive does not contain clear and detailed (or detailed enough) provisions regarding some undermentioned instruments that are new, or not frequently used. Thus these instruments are not or rarely used by contracting authorities because there are no clear boundaries on lawful use and guidance on when and how to use them:
* Article 40 allows for the use of prior market consultations, but there aren’t any guides or examples as to when the consultations are appropriate and don’t lead to the distortion of competition and don’t result in a violation of the principles of non-discrimination and transparency;
* Paragraph (93) of the recital only has a very limited number of examples regarding environmental award criteria, and it does not specify a common approach towards life-cycle costing.
1. Art. 47 (3) of the Directive states the following regarding the extension of the time limits for the submission of tenders: „the length of the extension shall be proportionate to the importance of the information or change”. In practice, it can be difficult to define whether the extension is appropriate or not, which may lead to unlawful practice, therefore we suggest specifying an objective minimum deadline.
2. The mandatory contents of the prior information notice are not defined clearly in the Directive which can lead to substantial legal uncertainty.
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| An assessment on whether a wrong application of rules might exist, by observing patterns of application of the rules which do not by themselves constitute cases of wrong application of the rules, but nonetheless point at structural or recurring problems yielding a sub-optimal outcome. | **Award of contract, specification of qualitative award criteria**:Contracting authorities are uncertain in choosing and elaborating qualitative award criteria because of audit risks. Even with the best intention of contracting authorities qualitative award criteria may lead to infringement of the principle of equal opportunities. The new public procurement Directives place great emphasis on the quality-based awarding as they make the application of the criteria of most economically advantageous tender compulsory.The Directives say that the most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject of the public contract in question. Such criteria may comprise, for instance the quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions [Article 67 (2) of the 2014/24/EU Directive].As regards the criteria of quality the Directives do not give the definition of quality and concrete example how should contracting authorities evaluate it during the award process.In addition the question is the same when price is used as award criteria, since it is often difficult to decide what weight should be given to the price besides the other quality based criteria during the award process. Following from the above, currently it is difficult to decide what criteria and weighting is in line with the Directives and the audits.In our opinion it is not sufficient that the Member States share their best practices since in every case the recommendations of the audits are decisive. Therefore either more detailed rules shall be set out in the Directives or we recommend to have more specific guides on qualitative award criteria which shall be endorsed by auditors also. |
| **II.2 Supporting documents** |  |
| Please provide any available evidence of the issues identified under section II.1. | **Additional interpretative guidance documents published in order to clarify legal issues:*** The PPA is available in English on the website of the Public Procurement Authority: <http://www.kozbeszerzes.hu/torveny/act-cxliii-of-2015-on-public-procurement/>
* The Prime Minister’s Office’s guidelines on the control of public procurements (see III.1.)are available in the following link: <https://www.palyazat.gov.hu/tmutat-a-2014-2020-programozsi-idszakban-az-egyes-eurpai-unis-alapokbl-szrmaz-tmogatsok-felhasznlsnak-rendjrl-szl-272-2014-xi-5-korm-rendelet-szerinti-ellenrzshez>
* The Public Procurement Authority’s guideline on the preliminary verification of exclusion grounds and the filling of part III of the ESPD: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesek-tanacsanak-utmutatoja-kizaro-okok-tekinteteben-benyujtando-igazolasokrol-nyilatkozatokrol-nyilvantartasokrol-es-adatokrol-magyarorszagon-letelepedett-gazdasagi-szereplok-vonatkozasaban>
* The Public Procurement Authority’s guideline on lifecycle costing methods: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesi-hatosag-utmutatoja-az-eletcikluskoltseg-szamitasi-modszertanokrol>
* The Public Procurement Authority’s guideline on artificial splitting of contracts and calculating the estimated value of procurements: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesek-tanacsanak-utmutatoja-becsult-ertek-szamitasa-reszekre-bontas-tilalma-es-beszerzesi-igenyek-mesterseges-egyesitese-targyaban>
* The Public Procurement Authority’s guideline on amendment of public procurement contracts and contract performance: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesek-tanacsanak-utmutatoja-kozbeszerzesi-eljarasok-eredmenyekent-megkotott-szerzodesek-kbt-szerinti-modositasaval-valamint-teljesitesevel-kapcsolatos-egyes-kerdesekrol-2017-05>
* The Public Procurement Authority’s guideline on certificates, declarations, registers and data to be submitted by economic operators established in the European Union and the European Economic Area: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesek-tanacsanak-utmutatoja-az-europai-unioban-es-az-europai-gazdasagi-tersegben-letelepedett-gazdasagi-szereplok-altal-benyujtando-igazolasokrol-nyilatkozatokrol-nyilvantartasokrol-es-adatokrol>
* The Public Procurement Authority’s guideline on the application of award criteria: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesi-hatosag-utmutatoja-nyertes-ajanlattevo-kivalasztasara-szolgalo-ertekelesi-szempontrendszer-alkalmazasarol>
* The Public Procurement Authority’s guideline on the rules of procurement of public works: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesi-hatosag-utmutatoja-az-epitesi-beruhazas-targyu-kozbeszerzesi-eljarasok-szabalyairol>
* The Public Procurement Authority’s guideline on the conditions of using negotiated procedures: <http://www.kozbeszerzes.hu/kozbeszerzes-z/magyar-jogi-hatter/kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesi-hatosag-utmutatoja-targyalasos-eljaras-alkalmazasanak-felteteleirol>
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| II.3. Quantitative indicators  |  |
| Indicators about the national review system  | Proceedings initiated against any infringement of the legislative provisions applicable to public procurements, concessions and design contests are within the competence of the Public Procurement Arbitration Board, an independent, first instance review body with national jurisdiction.Statistics of the review system:* number of complaints: 684
* number of procedures initiated ex officio: 447
* number of procedures initiated on application: 237
* number of submitted complaints in case of awarded contracts: 571
* number of review procedures closed by the substantial decision of the Public Procurement Arbitration Board: 424
* infringement was found in 309 cases
* the average length of review procedures: 28 day
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| Histogram of values of procedures, covering also procedures below the thresholds | \* *Due to the distribution of the values of public procurements (too many histogram bins), analysis of all data is not suitable for the detection of possible ‘spikes’ in the distribution of values, indicating a bunching of procedures below the EU threshold. To overcome this problem, we have taken into account a set of data relatively close to the EU thresholds for the creation of histograms.* *Concerning supplies and service contracts, in case of contracts concluded by central contracting authorities and other contracting authorities, the median 50% of the procurement values was taken into account, with bins of 10 000 EUR.**In case of works contracts, only the last 95% of values were suitable for creating a histogram and considering the low number and high value of contracts an adequate overview could only be achieved by using bins of 1 000 000 EUR and taking into account all contracting authorities.**On all histograms, the bins including the relevant thresholds were highlighted with red.* |

## III. Prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interests and other serious irregularities

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| III.1. Qualitative reporting on fraud, corruption, conflict of interests etc. |  |
| Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities including fraud and corruption | 1. **Legal Framework:**

Act CXLIII of 2015 on Public Procurement (hereinafter: PPA) which entered into force on 1 November 2015 includes numerous measures on the prevention of corruption and increasing transparency. Some of these measures were further tightened with the amendment of the PPA applicable as of 1 January 2017.* In case of public procurement procedures with the lowest value below EU threshold, the new PPA determines a narrower scope of application of the so-called “low-value tenders”:
* In case of supply and services procurements the threshold above which tenders have to be published was 18 million HUF before the amendment of 1th January 2017 of the PPA. After the mentioned amendment this rule cannot be used in case of supply and services procurements.
* In case of public works below the threshold of 300 million HUF (approx. 1 000 000 EUR) a so-called “low-value procedure” can be applied where only those economic operators may submit a bid who were called to do so. In these procedures every procurement document must be published on the Internet, at least five economic operators shall be called for tender and if it is possible the contracting authority shall change the economic operators called for tender in those procedures which have the same or similar subject in order to enhance access of suppliers to public procurement procedures.
* In addition this type of procedure may not be applied if the public procurement is related to any cross-border project supported by any EU fund.
* Contracting authorities shall publish more information in the Public Procurement Database than under the previous PPA, for instance, the individual report about the criteria, process and result of the evaluation. According to the PPA, in the case of the failure of publishing data required by the PPA, the remedy procedure of the Public Procurement Arbitration Board can be initiated against the contracting authority.
* The list of exclusion grounds was extended by the new PPA, to ensure fair competition and to make public procurement more efficient; for instance with the case if the economic operator has entered into agreements with other economic operators aimed at distorting competition (took part in a cartel). Furthermore, a new exclusion ground was introduced, it is applicable as of 1 January 2017: if an infringement of the public procurement rules on the performance of the contract is determined by the Public Procurement Authority, the economic operator concerned shall be excluded from public procurements for 90 days.
* Transparency and compliance with the principles of the PPA in the stage of contract performance is supported by the measure that the Public Procurement Authority controls the performance and amendment of contracts and in case of any violation of law the Authority initiates the proceedings of the Public Procurement Arbitration Board. Information on the practice and results of this control may be found on the website of the Authority: <http://www.kozbeszerzes.hu/cikkek/szerzodes-ellenorzes>. In the case of non-public procurement infringements, the Public Procurement Authority may also apply to court.
* Strict rules were introduced on negotiated procedures without prior publication of a contract notice, applicable as of 1 January 2017:
* In each procedure, the Public Procurement Authority passes a reasoned decision concerning the legal grounds, which shall be published on the Authority’s website: <http://www.kozbeszerzes.hu/adatbazisok/tajekoztatok-hnt-dontesekrol>.
* If the Authority is unable to determine that the legal ground exists beyond doubt, it shall initiate a remedy procedure before the Public Procurement Arbitration Board, proposing a fine.
* All documents of the procedures – including the data of the economic operators called for tender – shall be published on the internet, which makes procedures more transparent (information on what legal basis and in which subject the procedure was launched, and to which economic operator was the contract awarded).
* If the contracting authority fails to perform its publication duties it is instructed to provide the missing details. If the contracting authority still fails to publish the required documents, the President of the Public Procurement Authority initiates a remedy procedure before the Public Procurement Arbitration Board.
* Introduction of electronic communication in public procurement is considered to be an effective tool to increase transparency and reduce the risk of fraud and irregularities. Hungary fulfilled its obligation to introduce e-procurement by developing and launching a central electronic public procurement system. The system can be used on a voluntary basis from 1 January 2018 and its use will be compulsory from 15 April 2018. In case of central purchasing bodies, electronic public procurement has been compulsory since 1 February 2017.
1. **Public Procurement Control Mechanisms**

As regards the public procurement control mechanisms, two distinct regimes exist in Hungary. The first regime applies to all public procurement procedures which are financed from European Union funds.[[2]](#footnote-3) The second regime is applicable to other procurements – mainly those of the central budgetary bodies – where no EU funding is involved.[[3]](#footnote-4) ***A. Control of public procurements to be realised using EU funds*****Government Decree No. 272/2014 on the procedure for using certain EU funds in the programming period 2014-2020 (Decree I)**When EU funds are used for a project for which a public procurement procedure is conducted, a compulsory control mechanism automatically becomes applicable. Control is carried out mandatorily for the procurement of any type of contracting authority (central government, local government, utilities, economic operators receiving subsidies). According to Decree I the Beneficiary is responsible for conducting the public procurement procedure and also for the appropriate documenting.The **type of control is divided into two categories** (either in case of public contracts and the modification of the contracts), depending on the estimated value of the procurement in question.1. **Follow-up review or subsequent inspection (ex post control) for:**
* supply contracts, service contracts and service concessions below the EU thresholds,
* works contracts and works concessions below HUF 300 million.
1. **Monitoring integrated in a process (ex ante control) for:**
* supply contracts, service contracts and service concessions reaching or exceeding the EU thresholds,
* works contracts and works concessions reaching or exceeding HUF 300 million.

**The above mentioned control mechanisms fall under the responsibility of the following institutions:**1. the competent department of Managing Authorities
* control of eligibility, accountability and technical aspects, public procurement law aspects (for ex post only)
1. the Department of Public Procurement Control (DPPC) of the Prime Minister’s Office
* control of public procurement law aspects

***B. Control of ‘other’ public procurements*** **In accordance with Government Decree No. 320/2015 on the Central Control and Approval of Public Procurements (“Decree II”)**As mentioned above, Decree II is applicable for public procurement procedures where no EU funds are used. It is important to clarify both the personal and the material scope of Decree II to see when these control mechanisms are applicable.Personal scope:* budgetary bodies and their organisations under the control or supervision of the Government,
* economic operators with majority state ownership where the ownership (shareholders’) rights are exercised in the name of the State by a central budgetary body or its organisation on the basis of:
	+ a ministerial decree based on the Act on State Assets *or*
	+ a contract concluded with Hungarian National Asset Management Inc.
* public foundations of the Government.

Material scope:* public procurements and concessions under the PPA,
* Decree II also provides for exceptions (for example procurements related to State protocol task).

Types of control:(a) Monitoring integrated in a process (ex ante control; most of the procedures belong to this category)(b) Follow-up review or subsequent inspection (ex post control).The institution responsible for conducting supervision under Regulation II is the Prime Minister’s Office through its Public Procurement Supervision Department (PPSD)[[4]](#footnote-5). The main tasks of the PPSD are: the central control and approval of the public procurement procedures, the control of the public contracts [modification of public contracts and the control and approval of other contracts above 50 million HUF (aggregated estimated value) and contract modification], and the management of the databases related to the above tasks. It’s important to mention Government Decree No. 459/2016 on the Implementation and Control of Procurements under the National Public Procurement Thresholds. According to this Government Decree contracting authorities controlled by the Government – in case of procurements below national public procurement thresholds and above 1 million HUF – shall call for at least three bids. The fulfilment of this obligation is controlled by the PPSD based on annual control plan but it also has the right to control procurements on an ad hoc basis.1. **Further mechanisms on the prevention of irregularities, corruption and fraud**

1. According to a cooperation agreement between the Prime Minister’s Office and the Hungarian Competition Authority (HCA), data on the controlled public procurement procedures are handed over by the DPPC of the Prime Minister’s Office to the Competition Authority by sending market signals in case of suspected cartels. Besides the case by case signals the cooperation and information provided by DPPC about the market significantly also contribute to the work of the Competition Authority. There is a continuous flow of information between DPPC and HCA; in addition to pointing to specific cartels, the transfer of market-related information promotes HCA’s investigation work in general. The DPPC has already indicated 34 specific cases[[5]](#footnote-6), and HCA initiated proceedings in connection with two projects (for comparison: HCA detects a total of around 8 cartels a year).2. Under the new PPA, the Public Procurement Authority controls the performance of contracts and in case of any infringement the Authority initiates a remedy procedure before the Public Procurement Arbitration Board, which can impose a fine. In the case of non-public procurement infringements, the Public Procurement Authority may also apply to a civil court or initiate a criminal procedure.These measures enable the detection of not only public procurement or competition law infringements, but of criminal offenses too. The Hungarian Criminal Code (Act C of 2012 on the Criminal Code) defines “restricting competition in public procurement or concession procedures” as a criminal offense. This offense also constitutes an exclusion ground under the PPA.In 2017, the Public Procurement Authority indicated 5 reports on suspected crimes to the competent investigating authorities.The reports made by the Public Procurement Authority covered the following suspected crimes:* budget fraud (Art. 396 (4) point a) of Act C of 2012 on the Criminal Code): 4 reports
* wilful cause of imminent danger (Art. 165 (3) of Act C of 2012 on the Criminal Code): 1 report
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| Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of conflicts of interests | The definition of conflict of interest set out in the Directives is supplemented with some cases, where the risk of conflict of interest is the highest and it shall be examined carefully: for example an economical operator shall be excluded from the public procurement if one of its owners, executive officers or members of its supervisory board or one of the relatives living in the same household with these persons was involved in the public procurement procedure – including preparatory stages. Business entities owned by leaders of state and the heads of certain national agencies or authorities and their relatives living in the same household with them shall not participate as a tenderer in public procurement procedures.According to the above the rules of the PPA concerning conflict of interest are one of the strictest rules in Europe in this regard, it also provides stricter rules than the new EU directives.On the basis of the Art. 25 (5)-(6) and (8) of the PPA contracting authorities shall pay a special attention to the existence of conflict of interest and shall indicate to the affected person if such a situation comes up on its side:* If the participation of a person or organization involved in the preparatory work of the procedure have the effect of creating a conflict of interest, the contracting authority – considering in particular the extra information gathered by it – shall notify such a person or organization of the conflict of interest [Art. 25 (5) of the PPA].
* Persons or organisations acting on behalf of the contracting authority or are involved in the procedural processes or in the preparatory works by the contracting authority shall declare in writing whether they are subject to a conflict of interest [Art. 25 (6) of the PPA].
* Tenderers or candidates may be excluded from the procedure if equal opportunities may not be guaranteed in any other way for economic operators participating in the procurement procedure. Prior to the exclusion, the contracting authority shall, by a request for supply of missing information or provision of information, ensure that the economic operator concerned is given an opportunity to prove that its participation in the preparation of the procurement procedure does not violate the principles of equal opportunity and fair competition or to parry the conflict of interest in any other way. The measures taken by the economic operator in order to parry the conflict of interest shall be indicated by the contracting authority in the summary concerning the evaluation of tenders (requests to participate) [Art. 25 (8) of the PPA].

The practical implementation of the conflict of interest rules are also supported by the ex ante legal control of public procurements covering every EU-funded procedure in case of public supplies and public services above the EU thresholds and in case of public works above 300 million HUF (approx. 1 000 000 EUR).Several measures support the prevention of corruption with regard to the staff of the departments for public procurement control within the Prime Minister’s Office. All members of the staff of the relevant departments shall submit a declaration of assets annually regarding themselves and their closest relatives who live in the same household with them. They are also subject to a national security screening, and they must be in a so-called “protected status”, which means they can be subject to integrity tests conducted by the National Protective Service, done under prosecutor’s supervision. If the declaration of assets is not submitted, or the examination from the perspective of national security or protected status is refused by the colleagues, their employment contract must be terminated. |
| III.2. Supporting documents |  |
| Please provide any available evidence on the actions/mechanisms and measures described under section III.1. above demonstrating compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities and conflicts of interests  | The guideline on regulatory controls conducted by the Public Procurement Control Department of the Prime Minister’s Office available on [www.palyazat.gov.hu](http://www.palyazat.gov.hu) provides guidance on submitting declarations on conflicts of interests helping not only officials conducting controls, but also public procurement professionals: <https://www.palyazat.gov.hu/tmutat-a-2014-2020-programozsi-idszakban-az-egyes-eurpai-unis-alapokbl-szrmaz-tmogatsok-felhasznlsnak-rendjrl-szl-272-2014-xi-5-korm-rendelet-szerinti-ellenrzshez> https://www.palyazat.gov.hu/download.php?objectId=72651To support economic operators, the template documents published by the Prime Minister’s Office include a guideline and a sample declaration on conflicts of interest, available on [www.palyazat.gov.hu](http://www.palyazat.gov.hu): <https://www.palyazat.gov.hu/iratmintk-1> <https://www.palyazat.gov.hu/download.php?objectId=64523> The EKR system, the Hungarian electronic public procurement platform also incorporates a declaration template on conflicts of interest, which can be reached after a registration. |
| III.3. Quantitative indicators |  |
| Statistical distribution of buyers by frequency of actual competition  | The proportion of single-bid procedures according to the type of contracting authorities

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of contracting authorities** | **Total number of awarded contracts** | **Number of single-bid procedures** | **Proportion of single-bid procedures (%)** |
| Other entities | 1 616 | 277 | 17,14% |
| Public bodies | 1 764 | 418 | 23,70% |
| Central bodies | 906 | 187 | 20,64% |
| Utility companies | 523 | 146 | 27,92% |
| Regional/local bodies | 3 315 | 343 | 10,35% |
| Supported entities | 687 | 94 | 13,68% |
| **Total** | 8 811 | 1 465 | 16,63% |

**Statistical distribution of buyers by frequency of single bid procedures\***

|  |  |
| --- | --- |
| **Intervals** | **Number of contracting authorities** |
| <0%, 10%> | 562 |
| <10%, 20%> | 19 |
| <20%, 30%> | 26 |
| <30%, 40%> | 25 |
| <40%, 50%> | 18 |
| <50%, 60%> | 13 |
| <60%, 70%> | 8 |
| <70%, 80%> | 6 |
| <80%, 90%> | 1 |
| <90%, 100%> | 9 |
| **Total** | **687** |

*\*The table contains all procedures above and below EU thresholds, including buyers with at least three contract awards in 2017 (except framework agreements).* |
| Statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call of competition | **Proportion of negotiated procedures without prior publication of a contract notice according to the type of contracting authorities**

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of contracting authorities** | **Total number of awarded contracts** | **Number of negotiated procedures without prior publication of a contract notice** | **Proportion of negotiated procedures without prior publication of a contract notice (%)** |
| Other entities | 1 616 | 116 | 7,18% |
| Public bodies | 1 764 | 76 | 4,31% |
| Central bodies | 906 | 53 | 5,85% |
| Utility companies | 523 | 31 | 5,93% |
| Regional/local bodies | 3 315 | 50 | 1,51% |
| Supported entities | 687 | 10 | 1,46% |
| **Total** | 8 811 | 336 | 3,81% |

**Statistical distribution of buyers by frequency of negotiated procedures without prior publication of a contract notice\***

|  |  |
| --- | --- |
| **Intervals** | **Number of contracting authorities** |
| <0%, 10%> | 660 |
| (10%, 20%> | 13 |
| (20%, 30%> | 5 |
| (30%, 40%> | 3 |
| (40%, 50%> | 0 |
| (50%, 60%> | 2 |
| (60%, 70%> | 1 |
| (70%, 80%> | 0 |
| (80%, 90%> | 0 |
| (90%, 100%> | 3 |
| **Total** | **687** |

*\*The table contains all procedures above and below EU thresholds, including buyers with at least three contract awards in 2017 (except framework agreements).* |
| Quantitative assessment of collusion risks | In Hungary the Competition Authority (hereinafter: HCA) is responsible for the competition supervision in order to ensure fairness and freedom of competition.The HCA puts a great emphasis on the revealing of public procurement cartels and on the actions against anticompetitive behaviours. The HCA has several tool with the help of which public procurement cartels can be discovered efficiently for example:* complaint and report: the HCA receives numerous signals regarding public procurement cartels
* Cartel Chat: the Cartel Chat is an anonymous communication form freely accessible on the website of the HCA where anybody can share information directly with the HCA. This is a really important tool since several useful information and signals can be received through the system on the basis of which the HCA has launched a competition supervision procedures concerning procurements in several cases.
* leniency policy and cartel informant reward
* methodology about the promotion of the identification of signals concerning public procurement cartels: on the basis of the methodology the HCA also creates publications and learning materials for contracting authorities and economic operators, available under the following links:
	+ <http://gvh.hu/sajtoszoba/sajtokozlemenyek/2017_es_sajtokozlemenyek/ujabb_lepes_a_kozbeszerzesi_kartellek_ellen.html>
	+ <http://www.gvh.hu/data/cms1036313/KARTELL_ajanlatkeroknek_2017_05_24.pdf>
	+ <http://www.gvh.hu/data/cms1036296/GVH_VKK_kiadvanyok_oktatasi_anyag_kozbesz_kartell_2017.pdf>
* Daily Tips: The HCA regularly publishes so called “Daily Tips” on the Public Procurement Authority’s mobile application.

Statistics about cartel suspicious cases and the competition supervision procedure of the HCA in 2017:* number of signals connected to public procurement cartel suspicion: around 20 signals
* competition supervision procedures launched by the HCA on the basis of the signals connected to public procurement cartel: 4 procedures (currently they are in progress)
 |
| Risk of undiscovered conflict of interest  | Percent of contracts awarded to companies with concealed ownership structure (i.e. whose ultimate beneficiary owner cannot be verified). Information for this indicator should be available in central registers of beneficial ownership, which are to be established by all Member States under the 4th Anti-Money Laundering Directive (2015/849 Art. 30) by June 2017. For more context for this indicator, please see the Commission's Anticorruption Report available at <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm> 1. The ownership structure of economic operators shall be examined in every procedure, because having a concealed ownership structure constitutes a compulsory exclusion ground under the Hungarian PPA [Art. 62 point kb)-kc)].According to Art. 62 (1) point kb)-kc), “Any economic operator shall be excluded from participation in a public procurement procedure as a tenderer, candidate , subcontractor, or on whose capacity the economic operator intends to rely regarding which any of the following conditions exist:

kb) companies which can’t identify their beneficial owner pursuant to Art. 3 point 38. a)-b) or d) of the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing, or* Art. 3 point 38. a)-b) and d) - beneficial owner:

a) the natural person who owns minimum 25% of the voting rights or ownership interest through direct or indirect ownership in a legal entity or in an entity without a legal personality, or controls these entities via other means, if these entities are not listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information,b) the natural person who owns dominant influence in a legal entity or in an entity without a legal personality,d) in case of foundations that natural personda) who is the beneficiary of minimum 25% of the assets of the foundation, if prospective beneficiaries are defined,db) in behalf of the foundation was created and managed, if beneficiaries are not defined, ordc) who is member of the foundation management or owns dominant influence more than 25% of the assets of the foundation or acting on the behalf of the foundationkc) an economic operator in which a legal person or any entity with legal capacity according to its national law under point kb) controls directly or indirectly more than 25% of the ownership interest or voting rights;”1. According to Act LIII of 2017 on the Prevention and Combating of Money Laundering and Financing of Terrorism a beneficial ownership database shall be established. Currently the database is under development.

 1. Furthermore, it should be pointed out that the ARACHNE system, a risk scoring, data mining and data enrichment tool is used by managing authorities in the management of operating programs, which includes the control of public procurements financed by ESI funds. ARACHNE’s objective is to support managing authorities in their administrative controls and management checks in the area of ESI funds by establishing a comprehensive database of projects implemented under the ESI funds and provided by the managing authorities and enriching data with publicly available information in order to identify - based on a set of risk indicators - projects, beneficiaries, contracts and contractors which might be susceptible to risks of fraud, conflict of interest and irregularities.
 |

## IV. Level of SMEs' participation in public procurement

|  |  |
| --- | --- |
| **IV.1. Qualitative reporting on SME participation** |  |
| IV.2. Supporting documents |  |
| Please report any available evidence or supporting document for point IV.1, illustrating the measures, achievements or challenges faced, relating to the facilitation of the participation of SMEs in public procurement | 1. To help SMEs gain access to public procurements, so called normative requirements of selection criteria are specified in the Public Procurement Act.

Since its entry into force on 1 November 2015, Art. 65 of the PPA limited the use of selection criteria with a general effect to* + technically equivalent references representing no more than 75% of the value/volume of the particular contract in relation to references
	+ no more than the value of the particular contract in terms of turnover
	+ a requirement consistent with the audit practice of the Commission in terms of experts and technical equipment

With the amendment of the PPA on **1 January 2017**, the economic and financial selection criteria were made stricter with the provision that when the contracting authority examines only the turnover from the subject matter of the procurement and not the total turnover of the tenderer, 75 % of turnover may be required regarding the value of the procurement at the most. Since – by definition – SMEs have a smaller turnover, the provision maximizing the value of turnover from the subject matter of the procurement that can be required by the contracting authority aims to further their participation in public procurement procedures.These measures were introduced to limit the use of excessive selection criteria by contracting authorities, therefore making participation in public procurement procedures easier for SMEs. 1. According to the 1 January 2017 amendment of the PPA, no procedures may be launched without any public notice in the case of supply and service contracts above the national threshold. When the estimated value of a public works project is lower than HUF 300 million, the rules of Section 115 of the PPA on low value procedures may be applied, according to which the contracting authority does not need to launch the public procurement procedure with a prior publication of a contract notice or to publish summary information before launching the procedure; in such cases the contracting authority may launch the public procurement procedure with an invitation to tender, directly sent to at least five selected economic operators.

The selection of invited economic operators must ensure competition and be in full compliance with the requirement of equal treatment and – to the extent possible – the participation of SMEs should be ensured.The five tenderers in such procedures of the given contracting authority must vary in order to allow a larger pool of enterprises to have access to public procurement.1. Under the national regime (in case of procedures launched with a summary notice, Section 113 of the PPA), when preparing the procurement procedure, the contracting authority shall assess the market and identify at least three economic operators capable of delivering under the contract, who may be potentially interested in acquiring the contract. The contracting authority has to distribute the detailed request for bid notice to the economic operators specified, and in addition, to all other economic operators who indicated their interest based on the summary notice. Economic operators may express their interest by a simple e-mail without adding an electronic signature.
2. The Department of Public Procurement Control advises contracting authorities to only require economic operators to fill in the “α: GLOBAL INDICATION OF ALL SELECTION CRITERIA” section of “Part IV: Selection criteria” of the ESPD when submitting their bids. This is supposed to lessen the administrative burden of all businesses – and is especially favourable for SMEs, where there might be a smaller capacity for filing documentation.
 |
| IV.3. Quantitative indicators  |  |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section IV.1. above | Participation of SMEs in public procurement procedures

|  |  |  |
| --- | --- | --- |
| **Regime** | **Average number of bids in all procedures** | **Average number of SME bids in all procedures** |
| EU | 11,13 | 7,40 |
| National | 7,02 | 6,47 |
| **Total** | 7,94 | 6,68 |

|  |  |  |
| --- | --- | --- |
| **Regime** | **Number of all procedures** | **Number of bids** |
| EU | 1 965 | 21 872 |
| National | 6 846 | 48 052 |
| **Total** | 8 811 | 69 924 |

|  |  |  |
| --- | --- | --- |
| **Regime** | **Number of procedures where SMEs submitted a bid** | **Number of SME bids** |
| EU | 1 295 | 14 540 |
| National | 5 981 | 44 322 |
| **Total** | 7 276 | 58 862 |

|  |  |  |
| --- | --- | --- |
| **Type of procedures** | **Average number of bids in all procedures** | **Average number of SME bids in all procedures** |
| Open procedure  | 13,11 | 8,98 |
| Restricted procedure | 8,52 | 6,22 |
| Negotiated procedure | 10,49 | 8,90 |
| Negotiated procedures without prior publication of a contract notice | 2,36 | 1,90 |
| Accelerated open procedure | 6,11 | 3,02 |
| Accelerated restricted procedure | 3,50 | 1,50 |
| Accelerated negotiated procedure | 3,86 | 1,57 |
| Concession | 1,44 | 0,11 |
| Open procedure according to Art. 113 of the PPA | 11,58 | 10,72 |
| Restricted procedure according to Art. 113 of the PPA | 6,26 | 6,04 |
| Negotiated procedure according to Art. 113 of the PPA | 3,30 | 2,18 |
| Open procedure according to Art. 115 of the PPA | 4,54 | 4,20 |
| Negotiated procedures without prior publication of a contract notice according to Art. 115 of the PPA | 4,23 | 3,92 |
| Procedure based on Art. 117 of the PPA | 5,11 | 4,36 |
| Procedure based on Art. 122/A of the PPA | 2,08 | 2,08 |
| **Total** | 7,94 | 6,68 |

|  |  |  |
| --- | --- | --- |
| **Type of procedure** | **Number of procedures** | **Number of bids** |
| Open procedure  | 1 636 | 21 442 |
| Restricted procedure | 23 | 196 |
| Negotiated procedure | 262 | 2 749 |
| Negotiated procedure without prior publication of a contract notice | 336 | 792 |
| Accelerated open procedure | 66 | 403 |
| Accelerated restricted procedure | 2 | 7 |
| Accelerated negotiated procedure | 7 | 27 |
| Concession | 9 | 13 |
| Open procedure according to Art. 113 of the PPA | 2 141 | 24 797 |
| Restricted procedure according to Art. 113 of the PPA | 27 | 169 |
| Negotiated procedure according to Art. 113 of the PPA | 107 | 353 |
| Open procedure according to Art. 115 of the PPA | 3 650 | 16 556 |
| Negotiated procedures without prior publication of a contract notice according to Art. 115 of the PPA | 370 | 1 565 |
| Procedure based on Art. 117 of the PPA | 162 | 828 |
| Procedure based on Art. 122/A of the PPA | 13 | 27 |
| **Total** | 8 811 | 69 924 |

|  |  |  |
| --- | --- | --- |
| **Type of procedure** | **Number of procedures where SMEs submitted a bid** | **Number of SME bids** |
| Open procedure | 1 143 | 14 687 |
| Restricted procedure | 14 | 143 |
| Negotiated procedure | 146 | 2 331 |
| Negotiated procedure without prior publication of a contract notice | 246 | 638 |
| Accelerated open procedure | 43 | 199 |
| Accelerated restricted procedure | 1 | 3 |
| Accelerated negotiated procedure | 3 | 11 |
| Concession | 1 | 1 |
| Open procedure according to Art. 113 of the PPA | 1 727 | 22 956 |
| Restricted procedure according to Art. 113 of the PPA | 25 | 163 |
| Negotiated procedure according to Art. 113 of the PPA | 69 | 233 |
| Open procedure according to Art. 115 of the PPA | 3 375 | 15 313 |
| Negotiated procedures without prior publication of a contract notice according to Art. 115 of the PPA | 340 | 1 450 |
| Procedure based on Art. 117 of the PPA | 130 | 707 |
| Procedure based on Art. 122/A of the PPA | 13 | 27 |
| **Total** | 7 276 | 58 862 |

The number and value of public procurement procedures won by SMEs

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Regime** | **Number of procedures won by SMEs in the given regime** | **Proportion of procedures won by SMEs (% - compared to the total number of procedures in the given regime)** | **Value of procedures (HUF bn)** | **Value of procedures won by SMEs(% - compared to the total value of procedures in the given regime)** |
| EU | 1 295 | 65,90% | 965,28 | 31,52% |
| National | 5 981 | 87,36% | 493,69 | 86,86% |
| **Total** | 7 276 | 82,58% | 1 458,97 | 40,19% |

 |

## V. Information on the practical implementation of national strategic procurement

|  |  |
| --- | --- |
| V.1 Green procurement ('GPP') | One of the main goals of the new public procurement Directives is to enhance and make the application of green public procurement tools more flexible. In order to be in line with the Directives the PPA contains numerous provisions to enhance the use of green criteria in public procurement procedures. The PPA provides contracting authorities the opportunity to take environmental considerations into account in their public procurement procedures for example as contractual terms, assessment criteria, among technical specifications or eligibility criteria and exclusion grounds.Furthermore the activity of the Public Procurement Authority should be highlighted which has continuously followed the latest information connected to sustainable procurement in order to highlight the importance of green, social and innovative aspects and provide adequate information to all affected by public procurement. For these purposes the Public Procurement Authority actively takes part in promoting of sustainability aspects by publishing relevant, up-to-date information on its website, making statistics, and guidelines in cooperation with the Prime Minister’s Office and by organising conferences. |
| V.1.1 Qualitative reporting  |  |
| Key challenges encountered | On measures to overcome challenges in promoting all the three fields of strategic procurement, please see point V.3.1.  |
| V.1.2. Supporting documents |  |
| Please report any available evidence or supporting document for point V.1, illustrating the measures, achievements or challenges faced, relating to the promotion of green public procurement.  | *Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):***Legal background:**The PPA states that as a primary rule, contracting authorities shall – where applicable, using social, environmental, or other aspects – choose the most economically advantageous tender, by using a cost-effectiveness approach, or best price-quality ratio as contract award criteria instead of the lowest price (Art. 76-78 of the PPA).Besides the requirement of the best price-quality ratio the PPA contains further rules connected to the application of green, social and quality aspects in public procurement procedures among which the following measures shall be highlighted:* **Application of green aspects:**
* *The preparation of public procurement procedures:* the contracting authority shall aim to high-quality execution during the preparation of the public procurement procedure with special attention to the subject of the procurement, the protection of the environment, sustainability and prevention of contractual amendments concerning the subject of the procurement [Art. 28 (1) of the PPA].
* *Technical specifications & labels*: [Art. 59 (1) of the PPA] Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics or intend to take those characteristics into account during the evaluation, they may - in the technical specifications, the contract performance conditions or the award criteria - require a specific label, provided that all of the following conditions are fulfilled:
1. the label requirements only concern criteria which are linked to the subject of the contract and are appropriate to define characteristics of the subject of the contract;
2. the label requirements are based on objectively verifiable and non-discriminatory criteria;
3. the labels are established in an open and transparent procedure in which all relevant parties, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations may participate;
4. the labels are accessible to all interested parties;
5. the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.
* *Selection of economic operators:*
* exclusion grounds: Art. 63 (1) a) of the PPA, [transposes Art. 57 (4) point a) of the 2014/24/EU Directive]
* award criteria: Art. 76 (1) and (3) point a) of the PPA [transposes Art. 67 (1) and (2) point a) of the 2014/24/EU Directive]
* *Invalidity of the tender:* Art. 73 (4) of the PPA [transposes Art. 18 (2) of the 2014/24/EU Directive]
* Art. 73 (1) point e): The tender or the request to participate shall be considered invalid, if it does not comply in any other way with the conditions stipulated in the contract notice, and in the public procurement documents and by law, with the exception of formal tender requirements set out by the contracting authority;
* Art. 73 (4): According to paragraph 1(e), the tender shall be considered invalid, in particular, if it does not comply with the environmental, social and labour requirements laid down by legislation or mandatory collective agreement or the provisions on environmental, social and labour requirements listed in Annex 4 [transposes Annex X of the 2014/24/EU Directive].
* *Contractual terms:* As regard the performance of the contract, the contracting authority may determine special requirements especially environmental, social or innovative aspects [Art. 132. (1) of the PPA, transposes Art. 70 of the 2014/24/EU Directive].

**Other legal instruments and policy documents:**1. According to Government Decree 321/2015 (X. 30.) environmental and social approaches may be required by the contracting authority in the technical specifications [Art. 48 (2)].
2. The energy efficient procurements of public bodies are covered by Art. 10 of the Energy Efficiency Act. The Energy Efficiency Act states that if the estimated value of a procurement of a public body exceeds EU public procurement thresholds, only highly energy efficient services, products and works shall be purchased.
3. Government Resolution 1849/2014. (XII. 30.) on Energy Efficiency provides similarly to the Energy Efficiency Act, that governmental authorities shall purchase energy efficient services, products and works. Annex I. of the Government Resolution enumerates the relevant energy efficiency requirements, which shall be taken into consideration during the procedures, and which further support the promotion of green public procurement. These requirements are supplemented by the guideline of the Ministry of National Development on energy effective procurements, which is available under the following link: <http://www.kormany.hu/hu/dok?source=9&type=402&year=2016#!DocumentBrowse>
4. Government Resolution 48/2011. (III. 30.) on the Promotion of Environmentally Friendly and Energy Efficient Vehicles stipulates, that contracting authorities and public service providers shall purchase environmentally friendly and energy effective vehicles.
5. The activity of the Public Procurement Authority in the field of GPP:
* To further help the implementation of sustainability criteria in public procurement practice the Public Procurement Authority published a guideline on life-cycle costing methods. The guideline also indicates whether a common methodology for certain subjects to be used mandatorily under EU law is available.

http://www.kozbeszerzes.hu/dokumentumok/megtekint/1490664920/826/* In addition to the guideline mentioned above, the Public Procurement Authority publishes other various briefings and guides, information about both national and EU law and constantly publishes updates about changes in the field of public procurement.
* Information on sustainable procurements can be accessed via several channels. As regard to green public procurement, an important tool is the subpage on green procurement of the website of the Public Procurement Authority. In this page, good practices, the relevant communications of the European Commission, and academic publications are also available:

http://www.kozbeszerzes.hu/cikkek/zold-kozbeszerzes |
| V.1.3. Quantitative indicators |  |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.1.1 above. To the extent possible, these indicators should be further grouped by type of legal problem. | Number, value and proportion of green public procurement procedures in national regime according to the subject of the contract\*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Subject of the contract** | **Number of procedures** | **Proportion of green pp procedures(%)** | **Value of procedures****(Bn HUF)** | **Proportion of value** **(%)** |
| Supplies | 116 | 6,96% | 3,85 | 6,56% |
| Works | 635 | 17,41% | 96,58 | 21,47% |
| Services | 80 | 5,24% | 2,44 | 4,09% |
| **Total** | **831** | **12,15%** | **102,87** | **18,10%** |

*\* The table includes only statistical data concerning the national regime, since the EU standard forms don’t contain specific fields for this purpose unlike the Hungarian standard forms in national regime. The Public Procurement Authority collects statistical data from contract award notices nevertheless these statistics don’t even show an accurate picture because marking green, social or innovative criteria in the notice is not compulsory, it is always the decision of the contracting authority.*One of the challenges we see as regards to green public procurement is that contracting authorities are afraid to use the tools provided by the new directives – specifically lifecycle-costing tools. A primary reason for this is that there are not many good practices concerning its correct application. To help contracting authorities gain a better understanding of life-cycle costing, the Prime Minister’s office joined the „Public Procurement (PP) good practice sharing across the EU for improving the delivery of European Structural and Investment (ESI) Funds" initiative of the Commission. Within the framework of this programme, we received assistance from PriceWaterhouse Coopers Luxembourg, who presented the Swedish practice to us. After receiving the final feasibility study from them, we plan on disseminating what we learned and hope that contracting authorities will be more open to using this tool in practice. |
| V.2 Socially responsible public procurement ('SRPP') |  |
| V.2.1 Qualitative reporting |  |
| Key challenges encountered | On the basis of Art. 187 (2) of the PPA the Public Procurement Authority keeps and publishes a list of sheltered places of employment in order to enhance the use of socially responsible public procurements (<http://www.kozbeszerzes.hu/cikkek/vedett-munkahelyek>).There is such a list on the webpage of the Hungarian National Asset Management Inc. which also includes the products manufactured or distributed and the services provided by sheltered places of employment (<http://www.mnvzrt.hu/szocialisan_felelos_kozbeszerzes>).For further challenges and measures to overcome them applicable to all three fields of strategic procurement please see point V.3.1. |
| **V.2.2. Supporting documents** |   |
| Please report any available evidence or supporting document for point V.2.1 illustrating the measures, achievements or challenges faced, relating to the promotion of SRPP.  | The PPA contains the following rules connected to SRPP:**I. Reserved contracts – Art. 33-34**Art. 331. Contracting authorities may or, if the Government so provides, shall reserve the right to participate in a public procurement procedure for organizations qualifying as sheltered place of employment, employing persons with reduced ability to work or disadvantaged workers more than 30 %, furthermore, for developmental employers, provided more than 30% of their employees are involved in developmental employment. Contracting authorities may or, if the Government so provides, shall require that the public procurement contract have to be performed in the framework of a job creation programme, provided at least 30% of the people employed during the performance of the contract are persons with reduced ability to work, disabled or disadvantaged workers (sheltered employment programmes). Contracting authorities shall refer to this fact in the contract notice.
2. In the case of contracts that are reserved according to point 1, contracting authorities shall ensure equal rights, where more than 30% of the employees of an economic operator established within the European Union are persons with reduced ability to work, disabled or disadvantaged workers.

Art. 341. Contracting authorities may reserve the right of participating in public procurement procedures in case of health, social and cultural services referred to in Annex 3, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, for economic operators fulfilling the following conditions:
2. their task is to provide public services connected to health, social and cultural services referred to in this paragraph;
3. they are non-profit-making organizations, in which profits are spent on the organisation’s public tasks or, where profits are distributed in order to integrate employees into the management of the organisation;
4. the management or ownership structure of the organisation ensures the active participation of employees in the management or require the active participation of employees or all affected by the public task of the organisation; and
5. on the basis of this point, they haven’ t concluded a contract being subject of this point with the contracting authority within the past three years.
6. The contracts under point 1 shall be concluded for a maximum of three years.
7. Contracting authorities shall refer to Art. 34 in the contract notice.

Definitions connected to the above mentioned rules:* *persons with reduced ability to work (Art. 2 (1) of Act CXCI of 2011 on the Benefits of Persons with Reduced Ability to Work and the Amendment of Certain Acts):* person with reduced ability to work is any person aged over 15 years and whose state of health is of 60 % or less based on the complex rating of the authority for rehabilitation.
* *disadvantaged worker (Art. 3 point 11. of the PPA, Act IV of 1991 on Jobs Assistance and Unemployment Benefits [Art. 57/B (4) 1])*: any person, who
1. has not been in regular paid employment for the previous 6 months;
2. has not attained an upper secondary educational or vocational qualification (ISCED 3); or
3. is over the age of 50 years; or
4. lives as a single adult with one or more dependents; or
5. works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
6. is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment.
* *developmental employer (Art. 3 point 38. of the PPA, Art. 99/D (1) of the Act on Social Governance and Social Benefits)*: an employment relationship aimed at developmental employment or developmental legal relationship can be established with an institution, service provider offering social service, provision or with an organisation registered in the service provider registry as offering developmental employment.
* *sheltered place of employment (Art. 3 point 41 of the PPA)*:
* employment by an accredited employer,
* the employer shall ensure a transit or permanent employment and
* as a minimum 30% of its employees qualifies to be persons with reduced ability to work pursuant to Article 22 of Act CXCI of 2011; or
* employer established with the aim of employing disadvantaged workers

**II. Procedural rules concerning light regime procedures:*** Art. 21 (2) of the PPA: In case of public procurement procedures concerning social and other services specified in Annex 3 (light regime) – except concessions – the Third Part of the PPA (rules for procedures below EU thresholds) shall be used.

**III. Application of social aspects:*** requirements connected to the subject of the procedure:
* technical specification
* labels: Art. 59 (1) of the PPA
* selection of economic operators:
* exclusion grounds: Art. 63 (1) a) of the PPA, Art. 57 (4) point a) of the 2014/24/EU Directive
* award criteria: Art. 76 (1) and (3) point a) of the PPA, Art. 67 (1) and (2) point a) of the 2014/24/EU Directive
* invalidity of the tender: Art. 73 (4) of the PPA, Art. 18 (2) of the 2014/24/EU Directive
* contract performance: Art. 132 of the PPA, Art. 70 of the 2014/24/EU Directive
* Art. 132 (3): For the purposes of the application of paragraph 1 it shall be a social criterion, in particular
1. the fulfilment of the relevant contract by involving an organisation specified in Article 33 or, according to the legal provisions of another Member State of the European Union, an organisation specified in Article 20 of Directive 2014/24/EU;
2. employment of job-seekers, disadvantaged workers, unemployed people or prisoners;
3. employment of persons, in part-time employment, who are beneficiaries of any child care benefit set out in the Act on Family Benefits during the payment of the benefit or after the termination of such payments, and employment of persons who are beneficiaries of maternity care benefit and child care fee after the end of such payment;
4. stipulation of measures for ensuring the principle of equal treatment;
5. in the framework of the performance of the given contract, provision of training helping acquire the skills needed for the performance for unemployed or young people participating in the performance.
 |
| **V.2.3. Quantitative indicators**  |  |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.2.1 above.  | Number, value and proportion of social public procurement procedures\*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Regime** | **Number of procedures** | **Number of procedures being subject to the light regime** | **Proportion of social pp procedures****(%)** | **Value of procedures****(Bn HUF)** | **Proportion of value****(%)** |
| EU | 60 | 60 | 3,05% | 73,67 | 2,41% |
| National | 141 | 2 | 2,06% | 22,35 | 3,93% |
| **Total** | **201** | **62** | **2,28%** | **96,01** | **2,65%** |

*\* The table includes only statistical data concerning the national regime, since the EU standard forms don’t contain specific fields for this purpose unlike the Hungarian standard forms in national regime. The Public Procurement Authority collects statistical data from contract award notices nevertheless these statistics don’t even show an accurate picture because marking green, social or innovative criteria in the notice is not compulsory, it is always the decision of the contracting authority.* |
| V.3 Public procurement of innovation |  |
| V.3.1 Qualitative reporting |  |
| Key challenges encountered | **I. Legal background**Innovation procurement as such is not defined by the law in Hungary, nevertheless innovation is defined in Article 3 point 12. of the PPA as follows: “innovation: the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, in particular with the purpose of improving the efficiency of a given activity and having a favourable impact on the society and environment”.**II. Key challenges in the promotion of innovation procurement**One of the main reasons behind the low application of innovation procurement is due to the lack of experience by the contracting authorities and given there is no long-established tradition of the application of sustainable procurement, contracting authorities are rather hesitant to make attempts, thus generating a virtuous circle. Furthermore, the other explanation for the reluctance in case of EU-funded projects is the audit risk, as contracting authorities are threatened by corrections should there be any infringement in the public procurement, thus they tend to keep their procurement procedure simple and compliant and do not wish to venture off the beaten path. It is also a widespread misconception among contracting authorities that innovation procurement requires much more time. A further specificity is identified in health procurement, namely that although health is one of the most rapidly developing sector as regards innovation, health professionals and doctors usually have very clear and definite procurement needs and stick to the already established practice and wish to apply the methods and medical instruments already used earlier, this is the case by implants for example. Additionally, the survey of the National Research, Development and Innovation Office revealed that contracting authorities choose the already familiar solutions and consider long projects covering several years too risky.**III. Measures taken to overcome the key challenges identified**In compliance with the PPA, one of the main tasks of the Public Procurement Authority is to stimulate the application green, social and innovation procurement and to raise awareness by familiarizing stakeholders with the relevant national and EU regulations and the available best practices.Considering the importance of the issue, in 2018 the Authority launched its programme titled: “*2018 – The year of sustainable procurement*”. The goal of the programme is to promote and raise awareness concerning sustainable procurement and to spread the public procurement attitude responsible for future generations. The following actions are taken in the framework of the programme:* conferences are organised focusing on green, social and innovation procurement, furthermore on circular economy;
* the Authority awards the „Public Procurement Prize” to acknowledge and promote public procurement best practices (e.g. green procedures, most innovative tenders);
* by announcing the sustainability competition, the winners of the prize and the results are published in the Public Procurement Review, also aimed at raising awareness concerning sustainability;
* a microsite was launched dedicated to sustainability, informing the contracting authorities and tenderers about the practical tools, useful links, available guidance and best practices of the European Union;
* a sustainability brochure will be published; furthermore
* the Authority also intends to consider the above during its own activities and plans to prepare its own inner sustainability purchasing regulation.

The recently launched microsite of the Public Procurement Authority provides information on innovation procurement: <http://fenntarthato.kozbeszerzes.hu/innovativ-kozbeszerzes/>At its regular free-of-charge conferences, the Authority provides information on the law amendments in the field of innovative public procurements and also on the opportunities for contracting authorities in this area. As one of the most effective ways to stimulate innovation procurement is the presentation of best practices, these are introduced both at conferences and at the website of the Authority.A further information tool is the mobile application of the Authority titled “Daily Procurement”, on which platform - apart from the website of the Authority - the latest developments concerning sustainable procurement are published, e.g. guidelines, brochures, best practice examples and short articles.**IV. Difficulties still existing**The application of green, social and innovative criteria has just started to unfold in the national public procurement practice. Nevertheless, in order to tackle the fear of audit risks and paying corrections on the contracting authorities side mentioned above, more and detailed guidance from the European Commission would be helpful concerning the application of strategic procurement. Likewise, the further presentation of best practices or even highlighting bad practices would definitely encourage contracting authorities to apply innovation procurement and to overcome the obstacles identified above. Additionally, as there is no experience and practice in Hungary concerning innovation partnership (Article 49 (1c) and articles 95-97 of the PPA), any guidance, related example or training provided by the European Commission would be highly appreciated. |
| V.3.2. Supporting documents |  |
| Please report any available evidence or supporting document illustrating the measures, achievements or challenges faced, relating to the promotion and implementation of innovation procurement. | According to the above mentioned in point V.3.1. and to the lack of application we haven’t got any appropriate tool for collect data on the proportion of innovative public procurements. |

## VI. Replicability

|  |  |
| --- | --- |
| Links to datasets used to prepare the report | The Commission recommends publishing the source data as open data, e.g. as is the case for the Tenders Electronic Daily database at <http://data.europa.eu/euodp/cs/data/dataset/ted-csv>.  |
| Files used to obtain the results from the datasets | This section should include for example the scripts or code for the relevant statistical software or the Excel files used. |

**Annex I:**

**Methodology for estimating the value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds**

### 1. Classification and methodology

#### 1.1. General approach:

1. *[data available under national publication requirements]*
2. [sample-based estimates]
3. [combined]

#### 1.2. Source of data:

|  |  |  |
| --- | --- | --- |
|  Scope:Source of data: | above national publication thresholds [✓] | below national publication thresholds [✓] |
| [e-notification platforms] | ✓ | ✓ |
| [e-submission platforms] |  |  |
| [invoices] |  |  |
| [budgets] |  |  |
| [other] |  |  |

### 2. Methodology description

The collection of statistical data is managed by the Public Procurement Authority with the help of the Electronic Notice Management System (a system specially developed for this purpose) which stores all the relevant information contained by the contract award notice published in the Public Procurement Bulletin. (Concerning main statistical data: framework agreements, unsuccessful procedures, design contests and defence procurements are not involved as they may distort results.)

1. The English version of the PPA is available here: http://www.kozbeszerzes.hu/torveny/act-cxliii-of-2015-on-public-procurement/ [↑](#footnote-ref-2)
2. Government Decree No. 272/2014 [↑](#footnote-ref-3)
3. Government Decree No. 320/2015 [↑](#footnote-ref-4)
4. Note that this is a separate department from the DPPC, but is also part of the Deputy State Secretariat for Public Procurement Control in the Prime Minister’s Office [↑](#footnote-ref-5)
5. According to the statistics of the HCA. [↑](#footnote-ref-6)