

# 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

Fields marked with \* are mandatory.

### I. Information about reporting authority

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\* Country

Hungary

\* Name of National Authority

Ministry of Public Administration and Regional Development

\* Name of Unit/Department

Department for Public Procurement Monitoring

\* E-mail address

kmf@ktm.gov.hu

Name of contact person (not published)

E-mail address of contact person (not published)

## II. The public procurement framework

### 1. Legal framework

- \* Please indicate links to the main legal instrument implementing the public procurement Directives and its main amendments that occurred during the current reporting period.

*5000 character(s) maximum*

Please list the links in the text box below. You can link multiple links.

The main legal instrument transposing the public procurement directives is Act CXLIII of 2015 on Public Procurement. Link: <https://njt.hu/jogszabaly/2015-143-00-00>

The main amendments occurred during the current reporting period are available via the following links:

- Act CXVII of 2023 amending Act XCIII of 1990 on Levies and Act CXLIII of 2015 on Public Procurement: <https://njt.hu/jogszabaly/2023-117-00-00.0#CI>
- Act XVI of 2023 amending Act CXLIII of 2015 on Public Procurement: <https://njt.hu/jogszabaly/2023-16-00-00.0#CI>
- Act LXXV of 2022 amending certain acts in connection with the reduction of bureaucracy and legal harmonisation: <https://njt.hu/jogszabaly/2022-75-00-00.0#SZ9>
- Act XLIV of 2022 on the Directorate General for Audit European Funds and amending certain laws adopted at the request of the European Commission in order to ensure the successful completion of the conditionality procedure: <https://njt.hu/jogszabaly/2022-44-00-00.0#CI>
- Act XXIX of 2022 amending certain laws relating to the control of the use of EU budgetary resources concerning public interest trusts with a public service mission, the National Tax and Customs Office and the audits of the European Anti-Fraud Office: <https://njt.hu/jogszabaly/2022-29-00-00.0#CI>
- Act XXVII of 2022 on the Control of the Use of EU Budgetary Resources: <https://njt.hu/jogszabaly/2022-27-00-00>
- Act I of 2022 amending Act CXXIV of 1997 on the financial conditions for the religious and public activities of churches and other acts: <https://njt.hu/jogszabaly/2022-1-00-00.0#CI>
- Act CXIII of 2021 amending certain acts of public law: <https://njt.hu/jogszabaly/2021-113-00-00.0#CI>
- Act CI of 2021 on certain property management issues and amending certain acts to strengthen the coherence of the legal system: <https://njt.hu/jogszabaly/2021-101-00-00.0#SZ145>

The implementation of the Public Procurement Act and the compliance with the provisions of the Directives are further supported by, among others, the following legislation:

- Government Decree 424/2017 (XII. 19.) on the detailed rules of electronic public procurement: <https://njt.hu/jogszabaly/2017-424-20-22>
- Government Decree No. 321/2015 (X. 30.) on the method of verification of suitability and grounds for exclusion in public procurement procedures and on the definition of the technical specifications for public procurement: <https://njt.hu/jogszabaly/2015-321-20-22>
- 322/2015 (X. 30.) of the Government Decree on the Detailed Rules for the Public Procurement of Construction Projects and Design and Engineering Services Related to Construction Projects: <https://njt.hu/jogszabaly/2015-322-20-22>
- Government Decree No. 307/2015 (X. 27.) on the specific public procurement rules for public service contracts: <https://njt.hu/jogszabaly/2015-307-20-22>
- Decree 44/2015 (XI. 2.) MvM on the rules for the dispatch, control and publication of public procurement and design competition notices, on the models and certain content of notices, and on the annual statistical summary: <https://njt.hu/jogszabaly/2015-44-20-6N>

## 2. Procurement institutional framework

Please provide key bodies and institutions regarding public procurement matters, in charge of:

	Relevant bodies <i>(multiple entries possible)</i>
Body of normative regulatory function (including transposition) and policy development	Ministry of Public Administration and Regional Development
Bodies responsible for monitoring and reporting	Ministry of Public Administration and Regional Development Public Procurement Authority
Review bodies	Public Procurement Arbitration Board
Bodies responsible for the e-procurement and the functioning of the public procurement web portal	Ministry of Public Administration and Regional Development
Centralised procurement bodies	Directorate-General for Public Procurement and Supply National Communications Office Digital Government Agency Ltd. Defence Procurement Agency Ltd.
Competence centres	-
Other bodies	-

### III. Key quantitative indicators on public procurement

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#### 1. The total number of awarded contracts

Total number of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	7697	7595	7636

\* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

All data is collected from the Electronic Public Procurement System (EPS). The data show all awarded lots /contracts with the exception of design contests, contracts based on framework agreements (framework contracts) and below EU thresholds public procurements. The yearly breakdown is based on the publication date of the contract award notice.

Total number of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	7175	6558	6859



\* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

All data is collected from the Electronic Public Procurement System (EPS). The data show all awarded lots /contracts with the exception of design contests, contracts based on framework agreements (framework contracts) and above EU thresholds public procurements. The yearly breakdown is based on the publication date of the contract award notice.

## **2. The total value of procurement**

Total value of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	18484,96	14081,79	13197,95

\* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

All data is collected from the Electronic Public Procurement System (EPS). The data show all awarded lots /contracts with the exception of design contests, contracts based on framework agreements (framework contracts) and below EU thresholds public procurements. Contract values not in euros were converted to euros at the exchange rate published on the website of the Hungarian National Bank on the day the contract was concluded. The yearly breakdown is based on the publication date of the contract award notice.

Total value of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	1618,63	1339,13	1176,78

\* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

All data is collected from the Electronic Public Procurement System (EPS). The data show all awarded lots /contracts with the exception of design contests, contracts based on framework agreements (framework contracts) and above EU thresholds public procurements. Contract values not in euros were converted to euros at the exchange rate published on the website of the Hungarian National Bank on the day the contract was concluded. The yearly breakdown is based on the publication date of the contract award notice.

## IV. Sources of wrong application or of legal uncertainty (including possible structural or recurring problems)

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### 1. Preparation and launch of a public procurement procedure:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, 7, 8 or 9 is yes, additional options will appear.

- 1. Preliminary market consultation
- 2. Estimation of contract value (if yes, please specify below)
- 3. Wrongful setting of deadlines
- 4. Inappropriate selection criteria (too restrictive, tailor made for a particular economic operator, not related to subject matter of contract)
- 5. Discriminatory technical requirements
- 6. Conflict of interest
- 7. Procedures without publication (if yes, please specify below)
- 8. Inappropriate use of specific procedures (if yes, please specify below)
- 9. Other issues (if yes, please specify below)

### 2. Estimation of contract value:

- Underestimation of contract value to avoid application of EU public procurement rules
- Artificial splitting of the contract (including no aggregation of value of similar contracts)

### 9. Other issues, please specify:

*5000 character(s) maximum*

The legal compliance of the procedures was also examined as part of the analysis presenting the results of the performance measurement framework established by Government Decision 1425/2022 (IX.5.) for the year 2023, which assesses the efficiency and cost-effectiveness of public procurement. The analysis showed that – beyond the reasons listed above - a common reason for infringement in relation to preparation was the inadequate preparation of public procurement procedures. This is many times established subsequently by the review body at the time when an unlawful modification of the contract occurs.

Detailed data in this respect (including the results of indicator 9 on the distribution of the number of infringements detected by the Procurement Arbitration Board) are available via the link below:  
<https://ekr.gov.hu/portal/hirek/8798812927320>

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

I. In the context of the above responses, the following guidance documents and communications have been issued or revised, both independently and in the context of the Action Plan on measures to increase the level of competition in public procurement (2023-2026) adopted by Government Decision 1118/2023 (31.III.) (Link: <https://njt.hu/jogszabaly/2023-1118-30-22>).

I.1. Public Procurement Authority:

i) Guidance on the calculation of estimated value, the prohibition of splitting and the artificial pooling of purchase requirements. Link:

<https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-becsult-ertek-szamitasa-reszekre-bontas-tilalma-es-beszerzesi-igenyek-mesterseges-egyestese-targyaban/>

ii) Guidance on the preparation of public procurement procedures. Link:

<https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-a-kozbeszerzesi-eljarasok-elokeszitesevel-kapcsolatban-2023-02-20/>

iii) Guidance on conflict of interest in Public Procurement has been amended and revised. Link:

<https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-az-osszeferhetlensseggel-kapcsolatban/>

iv) Guidance on the rules for setting selection criteria. Link:

<https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-az-alkalmassagi-feltetelek-eloirasaval-kapcsolatos-szabalyokrol/>

v) Examples on the prohibition of division into lots pursuant to Paragraphs (2)-(3) of Article 19 of the Public Procurement Act. Link:

<https://www.kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/kozbeszerzesi-hatosag-miniszterelnokseg-eutaf-megyei-jogu-varosok-szovetsege-kozos-peldatara-kbt-19-2-3-bekezdese-szerinti-reszekre-bontas-tilalmaival-kapcsolatosan/>

I.2. Prime Minister's Office:

Further guidance documents and communications on the preparation of public procurement procedures have been published and revised in relation to the conduct of public procurement procedures with EU funding such as:

- Communication from the Prime Minister's Office and the Directorate General for Audit of European Funds on the experience gained in the assessment of the estimated value of public procurement and the application of the so-called " no splitting " rule;
- Communication from the Prime Minister's Office on guidelines for the preparation of public procurement documents for EU funds;
- Communication on control practices to avoid certain situations resulting in an infringement of the principle of fair competition in the award of public contracts;

- Guidance on the use of preliminary market consultation;

These and other information documents are available via the following link:

<https://www.palyazat.gov.hu/informacio/kozbeszerzes>

II.1. In addition to the above guidelines and notices, Government Decree 63/2022 (28.II.) on measures to reduce the number of single-bid procurements also serves to resolve the uncertainties related to the issues mentioned. Link: <https://njt.hu/jogszabaly/2022-63-20-22>

In the case of the procurement subjects most affected by single-bid procurements as defined in the Government Decree, the use of preliminary market consultation or, alternatively, the requirement of Article 75 (2) (e) of the Public Procurement Act has become mandatory for all contracting authorities. In addition, for certain contracting entities, the use of prior market consultation or the requirement of Article 75(2) (e) of the Public Procurement Act is mandatory for all procurement subject matters. Related guidance is available via the link in point I.2. or via the following link on the EKR platform: <https://ekr.gov.hu/portal/hirek/8797698782552>

There are also ex-ante control mechanisms in place in the KFF and the Public Procurement Authorities notice control also serves such purposes.

## 2. Evaluation of tenders and contract award:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 8 is yes, additional options will appear.

- 1. Unlawful exclusion of tenderers/rejection of offers
- 2. Non compliance with mandatory exclusion grounds
- 3. Unlawful exclusion of third country bidders covered by GPA or by other international agreement
- 4. Incorrect evaluation of award criteria
- 5. Incorrect application of rules related to abnormally low tender
- 6. Lack of publication of contract award notice
- 7. Unlawful modification of the tender conditions before conclusion of the contract
- 8. Other reason (if yes, please specify below)

8. Other reasons, please specify:

*5000 character(s) maximum*

In addition to the above reasons, the results of the Performance Measurement Framework also show that the failure to apply the rules on the remedy of deficiencies in the context of the assessment is a relevant reason for infringement. Detailed data in this respect (including the results of indicator 9 on the distribution of the number of infringements detected by the Procurement Arbitration Board) are available via the link below: <https://ekr.gov.hu/portal/hirek/8798812927320>

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

In addition to the relevant guidance documents and notices listed in point 1.9, which provide guidance on the application of the procurement law, the Council of the Public Procurement Authority has guidance on the rules for the remedy of deficiencies. Link: <https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-a-hianypotlas-szabalyairol-2023-02-20/>

### 3. Contract implementation:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, or 3 is yes, additional options will appear at the end of STAGE 3 to provide further details.

- 1. Illegal contract modifications
- 2. Wrong application of procurement instruments (if yes, please specify below)
- 3. Other reasons (if yes, please specify below)

3. Other reasons, please specify:

*5000 character(s) maximum*

In addition to the above reason, the latest results of the Performance Measurement Framework indicate that there are other relevant infringements related to implementation and/or modification:

- Infringement related to the reporting of subcontractors,
- Infringement related to the payment of subcontractors,
- Non-compliance with the requirements concerning the documentation of implementation.

Detailed data in this respect (including the results of indicator 9 on the distribution of the number of infringements detected by the Procurement Arbitration Board) are available via the link below:

<https://ekr.gov.hu/portal/hirek/8798812927320>

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

1. In addition to the relevant guidance documents and notices listed in point 1.9, which provide guidance on the application of the procurement law, the Council of the Public Procurement Authority has a guidance on certain issues regarding the modification and fulfillment of contracts concluded as a result of procurement procedures according to the Public Procurement Act. Link: <https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-a-kozbeszerzesi-eljarasok-eredmenyekent-megkotott-szerzodesek-kbt-szerinti-modositavasaval-valamint-teljesitesevel-kapcsolatos-egyes-kerdesekrol-05-25/>
2. Technical guidance to facilitate the appropriate formulation of draft contracts and contract terms in the preparation of the procurement procedure. Link: <https://kozbeszerzes.hu/media/documents/a-szerzodeses-feltetelek-megfelelo-kidolgozasat-elosegito-szakmai-iranymutatas-1127.pdf>

### 4. Problems that may originate at different stages:



Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 4 is yes, additional options will appear.

- 1. Wrong application of centralised or joint procurement
- 2. Failure to comply with legal deadlines (prescribed by EU or national law)
- 3. Biased prior involvement of candidates or tenderers
- 4. Other issues (if yes, please specify below)

4. Other issues, please specify:

*5000 character(s) maximum*

See the answers given in point 1.9, 2.8., 3.3. and the latest results of the referred Performance Measurement Framework.

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

See the answers given point 1.9, 2.8., 3.3.

**5. Which are the specific legal provisions of EU public procurement law that raise problems?**

Directive 2014/23/EU ('Concessions Directive')

Directive 2014/24/EU ('Classical Directive')

Directive 2014/25/EU ('Utilities Directive')

Directive 2007/66/EC ('Remedies Directive')

Please list the articles of the Directives and describe the issue you face (e.g., unclear, too strict/vague, meets contradictory interpretations or practices):

*5000 character(s) maximum*

We can reiterate the problems identified by the bottlenecks working group in the context of the public procurement directives, on which a summary was adopted during the French Council Presidency (WK 2645 /2022 INIT).

In particular, we would like to highlight the following issues:

Article 32 of Directive 2014/24/EU – Negotiated procedure without prior publication:

- o rules applicable to the procedure be clarified;

Article 57 of Directive 2014/24/EU – Exclusion grounds:

Problems related:

- o difficulty in verifying an absence of exclusion grounds;
- o also evaluating the means of proof;
- o the margin of discretion for evaluating exclusion grounds;
- o difficulty in dealing with emergency situations, since in cases of extreme urgency it is not always possible to verify exclusion grounds in a timely manner;
- o the conditions (how and when) under which economic operators may present corrective measures

they have adopted;

Article 59 of Directive 2014/24/EU – Difficulties with the use of the European Single Procurement Document

Article 67 of Directive 2014/24/EU – Contract award criteria

o We still find that defining meaningful quality award criteria in the procurement of works is also a source of difficulty for contracting authorities. In particular they struggle to determine criteria that enable a true competition on a basis other than price.

Article 69 of Directive 2014/24/EU – Abnormally low tenders

o 2014/24/EU does not define the concept of “abnormally low tender”, only indicating that a tender may appear abnormally low in relation to the works, supplies or services of the contract. The directive provides no more details as to criteria or calculation methods for a threshold indicative of irregularity.

Article 72 of Directive 2014/24/EU, Article 43 of Directive 2014/23/EU and Article 89 of Directive 2014/25/EU – Modifications of contracts during performance

o difficulty for parties to a contract to predict future requirements and provide for them in sufficiently clear, precise and unequivocal contract clauses (point (a) of paragraph 1 and item (i) of point (d) of paragraph 1 of Article 72 of Directive 2014/24/EU);

o difficulties in the practical application and interpretation of conjunctive clauses which allow contracts to be modified for unforeseen circumstances (point (c) of paragraph 1 of Article 72 of Directive 2014/24/EU);

o inconsistency in the cumulative conditions for cases where additional works, services or supplies have become necessary and a change of contractor cannot be made for economic or technical reason;

o implementation of conditions under which a new co-contractor replaces the one that had initially been awarded the contract by the contracting authority;

o difficulty of combining conditions for the modification of a contract during its performance if the value of the modification is below two values expressed as a threshold (paragraph 2 of Article 72 of Directive 2014/24/EU)

## 6. Which are the patterns and behaviours that do not stem from wrong application or of legal uncertainty, but indicate possible problems in the application of public procurement rules?

In case your answer to any of these questions is yes, additional options will appear below to provide further details.

- 1. Preference for lowest price as award criteria negatively affective quality of the purchase (if yes, please specify below)
- 2. Frequent use of derogatory procedures (if yes, please specify justifications used for derogatory procedures)
- 3. Frequent use of shortest possible deadlines (if yes, please specify below)
- 4. Recurrent award of contracts to the same economic operator
- 5. Recurrent award of contracts to third country economic operators not covered by GPA or by other international agreement (if yes, please specify justification below)
- 6. Contract awarded in suspected situation of unfair competition (if yes, please see below)
- 7. Low use of green requirements or award criteria (if yes, please provide us with further explanation below)
- 8. Low use of social requirements or award criteria (if yes, please provide us with further explanation below)
- 9. Low use of procurement of innovation (if yes, please provide us with further explanation below)
- 10. Lack of monitoring of implementation of contract (if yes, please specify below)
- 11. Other issues (if yes, please specify below)

## 7. Low use of green requirements or award criteria, caused by:

- Lack of governance
- Lack of professionalisation
- Lack of legal certainty

- Higher prices
- Lack of available offers on the market
- Other reasons

8. Low use of social requirements or award criteria, caused by:

- Lack of governance
- Lack of professionalisation
- Lack of legal certainty
- Higher prices
- Lack of available offers on the market
- Other reasons

9. Low use of procurement of innovation, caused by:

- Lack of governance
- Lack of professionalisation
- Lack of legal certainty
- Higher prices
- Lack of available offers on the market
- Other reasons

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

See the answers given point 1.9, 2.8., 3.3.

## V. Qualitative reporting on application of public procurement review system

**1. Please indicate relevant figures for the national review system in the table below, as described below.**

(A) **Number of first instance review decisions** (all the first instance review decisions),

(B) **Median length of first instance reviews - median length of all the first instance reviews** (the number of calendar days between a starting date and an end date, where the starting date is when the complaint/action is registered and the end date is when the review decision is issued) and

(C) **Number of first instance review decisions that were appealed to the (next) judicial level and its results** - (all the first instance review decisions that were appealed to the (next) judicial level, both on merit or procedural reasons, in addition, it shall include the number of first instance review decisions that were

a) (primarily) upheld;

b) (primarily) rejected; or

c) neither upheld nor rejected by the (next) judicial level (e.g. because they were not yet decided, retracted).

	2021	2022	2023
A. Number of first instance review decisions	557	534	598
B. Median length of first instance reviews	27	29	30
C. Number of first instance review decisions that were appealed to the (next) judicial level and its results	83	57	72

**2. Indicate best practices** that are aimed at reducing the number of obstructive complaints/actions for review (A)

*5000 character(s) maximum*

Setting the adequate level of related administrative service fees may greatly contribute to the reduction of the number of malicious applications, as setting a low level of service fees could provide opportunity for wrongful exercise of rights by the applicants. It has to be highlighted in this respect that the Hungarian regulation of the fees currently in force is fully in compliance with EU practice, which is supported by ECJ judgement C-61/14, based on which EU law does not preclude the Member State regulation, which requires the payment of service not exceeding 2% of the value of the public procurement being subject of the legal dispute. In terms of the reporting period, pursuant to the Decree of the Minister of the Prime Minister's Office No. 45/2015 on the administrative service fee payable for the procedure of the Public Procurement Arbitration Board, the base level of the administrative service is only quarter of the amount above, just 0,5%. Furthermore, it has to be stressed in this respect that the administrative service fee mandatorily payable to initiate the procedure only arises as cost for the applicant, if the review application or any of its part is rejected, in all other cases – that is upon a decision favouring the application or refusal of the application due to procedural obstacle and the termination of the procedure – the administrative service fee will be repaid to the applicant.

**3. Indicate best practices** that are aimed at reducing the length of first instance review decisions as marked in the previous column (B)

*5000 character(s) maximum*

The amendment of the law passed by the National Assembly in 2020 allowed the Public Procurement Arbitration Board to hold its review hearings by using electronic communications network. As a result, as first and only by default in Hungarian public administration, the Public Procurement Arbitration Board used this state-of-the-art and effective hearing method, and switched to its application smoothly and quickly. In May 2022, the Public Procurement Arbitration Board published a questionnaire with seven questions on the website, in order to gather feedback from the clients concerning their e-hearing related experiences. It can be stated based on the questionnaire that clients are very satisfied with e-hearings, the feedback was very positive in terms of both saving time and money (65,8%). In view of the above, by 2023 all hearings are held electronically, so compared to the significance and complexity of the cases, the first instance decision-making operated effectively, smoothly and on high level, within 30 days, with an average case handling time of 29 days.

**4. Indicate best practices** that are aimed at reducing the number of first instance review that were appealed to the next judicial level as marked in the table above (C)

*5000 character(s) maximum*

Judicial complaints submitted against the decisions of the Public Procurement Arbitration Board are decided on by the Metropolitan Court of Budapest, which has exclusive jurisdiction and competence. The court success rate of the Public Procurement Arbitration Board has been outstanding for years, above 90%. One of the guarantees of the high professional level of the work of the Arbitration Board is that the Council operating within the framework of the Public Procurement Authority sets the headcount of the Public Procurement Arbitration Board, the Council also appoints public procurement commissioners and decides on conflict of interest cases related to them. In terms of public procurement commissioners, the personal independence and also that of decision-making is guaranteed by the public procurement act; public procurement commissioners cannot be influenced or instructed concerning their decisions. The colleagues of the Arbitration Board actively participate in the meetings of the Commission expert group "network of first

instance review bodies”, furthermore, they follow and apply the latest trends of the application of the law, by considering the last judgements of the ECJ.

## VI. Fraud, corruption, conflict of interests and other serious irregularities

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Describe the actions undertaken and/or mechanisms put in place to ensure prevention, detection and adequate reporting of case of public procurement serious irregularities including fraud and corruption and conflicts of interests.

### 1. Regulatory requirements on:

- Enhanced rules on the application of whistle-blower system
- Enhanced rules on transparency
- Enhanced rules on conflict of interest
- Enhanced rules on anti-corruption
- Enhanced rules on the application of exclusion grounds
- Other rules (if yes, please describe below)

#### 1.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

### 2. Enforcement measures:

- Reporting/monitoring system in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- Reporting/monitoring system in place to measure fraud, corruption, conflict of interest and other serious irregularities
- Systemic audit in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- Sanction system in place to remedy fraud, corruption, conflict of interest and other serious irregularities
- Other rules (if yes, please describe below)

#### 2.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

1. 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). Link: <https://njt.hu/jogszabaly/2021-256-20-22>

2. In accordance with Ministerial Decree No. 44/2015 the Public Procurement Authority carries out the ex ante control of public procurement notices to be published in the Official Journal of the European Union (TED). The aim of the control is to check whether the notice is in compliance with the law and whether the content of the notice is coherent and deadlines are kept for publication. The notice examination is a multiple-step checking system embedded in the public procurement procedure process. The control is a checking point aimed at contract notices and corrigenda; contract award notices; contract modification notices. In addition, Under the 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. Latest data on tasks carried out by the Public Procurement Authority are available on the website of the Authority: <https://kozbeszerzes.hu/hatosag/kozbeszerzesi-hatosag/eves-beszamolok/>

3. 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 also contribute to the work of the Competition Authority. Latest data on cartel cases investigated by the Hungarian Competition Authority (HCA) are available on the website of HCA: [https://www.gvh.hu/gvh/orszaggyulesi\\_beszamolok/2321\\_hu\\_orszaggyulesi\\_beszamolok](https://www.gvh.hu/gvh/orszaggyulesi_beszamolok/2321_hu_orszaggyulesi_beszamolok)

4. The Integrity Authority, established by Act XXVII of 2022 on the Control of the Use of EU Fund, has as part of its tasks, among others:

- to carry out official controls in the context of public procurements carried out or planned to be carried out in whole or in part with European Union funds,
- may impose an information obligation in the context of public procurement contracts financed in part or in whole by European Union funds,
- keep a register of legal persons, individual companies and individual contractors excluded from public procurement procedures in connection with certain criminal offences.

The Authority shall take action whenever it considers that an entity with responsibilities for the use of EU funds or for the control thereof, including the contracting party, has not taken the necessary steps to prevent, detect and correct fraud, conflicts of interest, corruption and any other breach or irregularity affecting its sound and effective financial management of the EU budget or the protection of the financial interests of the EUR or there might be a serious risk of this happening. In particular, the Authority shall be competent for planned, ongoing or previous actions or projects receiving full or partial financial assistance from the European Union. Reports and analyses on the Authority's activities are available on the following website: <https://integritashatosag.hu/jelentesek/>

### 3. Soft law/Policy measures

- Guidance related to the prevention of fraud, corruption, conflict of interest, serious irregularities

- Recommendations related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Guidance on ethical conduct for public administration staff
- Guidance on fighting bribery practices
- Guidance on the detection of collusion/bid-rigging practices
- Guidance on compliance with competition rules
- National strategy to prevent fraud, corruption, conflict of interest, serious irregularities
- Action plan for the implementation of practices to prevent fraud, corruption, conflict of interest, serious irregularities
- Training/conference related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Reinforced cooperation among different state bodies
- Establishment of open-access information system to enhance transparency (public registry, declarations)
- Other measures (if yes, please describe below)

### 3.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Government Decision 1118/2023 (31.III.) on the Action Plan on measures to increase the level of competition in public procurement (2023-2026). Link:

<https://njt.hu/jogszabaly/2023-1118-30-22>

Measures related to the above mentioned soft policy measures:

- Carry out analyses and research to support the assessment of the level of competition and the intensification of competition (further development of the Framework) with the involvement of the OECD.
- Automated retrieval of databases to verify the absence of exclusion criteria
- As part of the support for access to and participation in public procurement procedures:
  - Possibility to set up automatic notifications in the EKR
  - Further development and extension of the CPV code search function in the EKR
  - Provision of anonymous access to public procurement documents in the EKR
- Organisation of conferences and information events for public sector employees and other actors in public procurement to promote organisational integrity
- Review of the rules on appeal fees
- Guidance on conflict of interest in Public Procurement has been amended and revised. Link: <https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-az-osszeferhetetlenseggel-kapcsolatban/>
- Technical guidance on corruption risks and cartel agreements affecting the fairness of public procurement. Link: [https://kozbeszerzes.hu/media/documents/A\\_GVH\\_%C3%A9s\\_\\_KH\\_szakmai\\_ir%C3%A1nymutat%C3%A1sa\\_2023.11.15..pdf](https://kozbeszerzes.hu/media/documents/A_GVH_%C3%A9s__KH_szakmai_ir%C3%A1nymutat%C3%A1sa_2023.11.15..pdf)

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

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### SMEs' participation



SMEs are defined in the Commission Recommendation (2003/361/EC) as having less than 250 persons employed and an annual turnover of up to EUR 50 million or a balance sheet total of no more than EUR 43 million.

Further information is available at [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)

## 1. Qualitative reporting on SME participation

Policy measures:

- Policy initiatives launched to support SMEs participation in public procurement;
- Measures targeting SME participation in different techniques for aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities);
- Measures targeting the participation of start-ups and scale-ups in public procurement;
- Measures ensuring that payment for public contracts are made on time, especially in the case of SMEs;
- Measures addressing the payments to subcontractors;
- Guidelines for contracting authorities on the application of 'divide or explain' principle (concerning division into lots);
- Policy measures in place to monitor SME participation in subcontracting
- Other measures (if yes, please describe below)

Other measures, please describe below:

*5000 character(s) maximum*

Implementation of the following reform measures as part of the Hungarian RRP:

- i) Development of 3 e-learning training materials and making them available free of charge to economic operators on the subject of participation in public procurement procedures (tendering, remedies, performance of contract).
- ii) Organisation of free training sessions on tendering, contract performance and remedies for micro-enterprises and SMEs, countrywide and online, with the involvement of an external service provider, to facilitate participation in public procurement.
- iii) Making available e-learning material on the use of the EKR and organising free training sessions for economic operators at national level with the participation of the EKR operator.

Link for the ongoing training sessions for SME's: <https://kkvkepzes.gov.hu/>

The above measures are also part of the Action Plan on measures to increase the level of competition in public procurement (2023-2026) adopted by Government Resolution 1118/2023 (31.III.). Link: <https://njt.hu/jogszabaly/2023-1118-30-22>

2. Aspects of winning public contracts for SMEs was also examined as part of the analysis presenting the results of the performance measurement framework established by Government Decision 1425/2022 (IX.5.) for the years 2022 and 2023, which assesses the efficiency and cost-effectiveness of public procurement.

Detailed data in this respect are available via the following links:

Analysis for 2023: <https://ekr.gov.hu/portal/hirek/8798812927320>

Analysis for 2022: <https://ekr.gov.hu/portal/hirek/8798092096856>

### 1.1. Best practices.

Indicate best practices that are aimed at encouraging the participation of SMEs in public procurement as marked in the previous column.

Please provide a link to any publicly available document relevant for the issues you indicated.

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### 2. Quantitative reporting on SME participation

Please quantify the impact of these best practices in the table below:

## 2.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – above threshold

	2021	2022	2023
Value (in EUR million)	10224,08	6631,86	7760,38

**2.1.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – below threshold**

	2021	2022	2023
Value (in EUR million)	1455,87	1209,78	1051,00

Please explain the calculation/assessment method used for collection of data.

All data is collected from the Electronic Public Procurement System (EPS). The data show all awarded lots /contracts with the exception of design contests, contracts based on framework agreements (framework contracts) and below EU thresholds public procurements (in case of table 2.1)/ above EU thresholds public procurements (in case of table 2.1.1). Contract values not in euros were converted to euros at the exchange rate published on the website of the Hungarian National Bank on the day the contract was concluded. The yearly breakdown is based on the publication date of the contract award notice.

**2.2. Number of contracts directly awarded to SMEs over total number of awarded contracts – above threshold**

	2021	2022	2023
Number	5 613	5 460	5 549

**2.2.1. Number of contracts directly awarded to SMEs over total number of awarded contracts – below threshold**

	2021	2022	2023
Number	6 299	5 780	5 987

Please explain the calculation/assessment method used for the collection of data.

5000 character(s) maximum

All data is collected from the Electronic Public Procurement System (EPS). The data show all awarded lots /contracts with the exception of design contests, contracts based on framework agreements (framework contracts) and below EU thresholds public procurements (in case of table 2.2)/ above EU thresholds public procurements (in case of table 2.2.1). The yearly breakdown is based on the publication date of the contract award notice.

## VIII. Practical implementation of national strategic procurement

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### 1. Green procurement ('GPP')

Green Public Procurement ('GPP') is defined as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured." [1] A voluntary target of 50 % GPP per Member State in number and value of relevant procedures was proposed by the Commission and welcomed by the Council in 2008.

[1] Commission Communication (COM (2008) 400) "Public procurement for a better environment".

#### 1.1. What is the state of play of green procurement in your Member State? (regulatory requirements and policy measures related to GPP)

1.1.1. How do you in general evaluate the degree of the GPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of GPP policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include sustainability requirements,
  - Results of monitoring of sustainable outcomes.
- 
- Implementation is advanced
  - Implementation is in progress
  - Implementation is low

The broad objectives in GPP policies are met:

- Yes
- Partially
- Not yet

1.1.2. Existing GPP regulatory requirements in your Member State:

- General legal obligation imposing GPP goals
- Sectoral regulations requiring sustainable development including public procurement
- Sectoral regulations encouraging sustainable development including public procurement
-



Other regulatory requirements (if yes, please describe below)

If other regulatory requirements, please describe:

5000 character(s) maximum

Sectoral regulations which are requiring sustainable development including public procurement:

1. Government Decree No 397/2022 (20.X.) on the promotion of the purchase of clean road transport vehicles in order to support low-emission mobility (transposition of the new CVD directive). Link: <https://njt.hu/jogszabaly/2022-397-20-22>
2. Government Decree No 676/2020 (XII. 28.) on the specific rules applicable to public catering procurement procedures. Link: <https://njt.hu/jogszabaly/2020-676-20-22>

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

See section 1.1.3.

1.1.3. GPP policy measures applied in your Member State:

- Guidelines to encourage the use of GPP
- National strategy to encourage the use of GPP
- National action plan to implement measurable objectives in GPP
- National target of GPP in certain sectors/in public procurement
- Monitoring/reporting on the use of GPP criteria
- Existence of national competence centre/national network of experts to promote the use of GPP
- Existence of specific working groups to promote the use of GPP in specific sectors
- Mandatory regular trainings for the promotion of GPP
- Optional trainings/events/workshops for the promotion of GPP
- Online information tool on the use/on best practices of GPP
- Other policy measures (if yes, please describe below)

Other policy measures, please describe:

5000 character(s) maximum

1. 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 (ss. 76-78 of the PPA).

Besides the requirement of the best price-quality ratio the PPA and its implementing decrees contains further rules and provisions connected to the application of green, social and quality aspects of public procurement, which includes the following:

- Rules on the preparation of procedures – s.28(1) PPA
- Labels and certificates – s.59(1) PPA
- Exclusion criteria – s.63(1)(a) PPA
- Invalidity of tenders – s.73(4) PPA
- Special contract performance conditions – s.132(1) PPA
- Definition of life-cycle – s.3, point 7. PPA
- Special rules for works contracts – s.24 of Gov. Decree 322/2015
- Possibility to require environmental criteria in the technical specifications – s.48(2) Gov. Decree 321

/2015

2. The Hungarian Government adopted by Government Resolution 1646/2022 (XII. 22.) Hungary's Green Public Procurement Strategy (2022-2027). ). The strategy provides an overview of the current state of green public procurement in Hungary and sets out key considerations for the design of measures to promote and increase its use. Additionally, the strategy contains an action plan to support the practical implementation of green public procurement. The strategy aims to achieve two objectives by 2027:

- a. Contracting authorities to include green aspects in their public procurement procedures as widely as possible, beyond the mandatory cases. To this end, a support toolbox should be developed to develop the skills and competences needed to conduct green public procurement procedures effectively and to disseminate good practices.
- b. The share of green public procurement in domestic public procurement should reach at least 30% of all public procurement by 2027.

The government decision and strategy can be found at the following links:

<https://njt.hu/jogszabaly/2022-1646-30-22>

<https://kormany.hu/dokumentumtar/magyarorszag-zold-kozbeszerzesi-strategiaja-2022-2027-1>

3. The monitoring/reporting on the use of GPP criteria was also examined as part of the analysis presenting the results of the performance measurement framework established by Government Decision 1425/2022 (IX. 5.) for the years 2022-2023, which assesses the efficiency and cost-effectiveness of public procurement.

Detailed data in this respect are available via the following links:

Analysis for 2023: <https://ekr.gov.hu/portal/hirek/8798812927320>

Analysis for 2022: <https://ekr.gov.hu/portal/hirek/8798092096856>

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

1. Under the Action Plan of the adopted Hungarian Green Public Procurement Strategy of Hungary (2022-2027), measures have been taken so far to promote green public procurement:

i) Designation the Public Procurement Authority as a centre of competence for green public procurement and facilitator of the application of green public procurement criteria; creating tools/guidelines to support green public procurement in practice.

The PA has already published guidelines for contracting authorities for three product areas (indoor cleaning services, furniture and graphic papers) and is producing information leaflets promoting elements of green public procurement which is available on a dedicated website.

The guidelines, leaflets and the dedicated website is available via the following links:

Guidelines:

<https://www.kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/>

Leaflets and the website: <https://fenntarthato.kozbeszerzes.hu/>

ii) Developing life-cycle costing methodologies for contracting authorities for specific purchasing categories. In the framework of the project "Promoting Green Public Procurement in Hungary, with special regard to Life Cycle Costing", implemented in cooperation between the Prime Minister's Office and the Organisation for Economic Cooperation and Development (OECD), with the participation of the Public Procurement Authority and funded through the Technical Assistance Instrument of the European Union, aids and user guides for the application of life cycle costing were prepared for three product groups. The guidelines and the manuals are available via the following link:

<https://ekr.gov.hu/portal/hirek/8798649087320>

iii) Strengthening professional capacity in green public procurement. Developing the procurement organisation of contracting authorities, supporting the development of green public procurement strategies in contracting authorities; training of responsible accredited procurement specialists, contracting authorities' procurement staff, contracting economic operators.

The Public Procurement Authority has launched a training series with the aim to effectively transferring the attitudes, management and procurement skills necessary for the successful application of green public procurement by developing the knowledge and competences of public procurement professionals through practice-oriented methods. Link:

<https://kozbeszerzes.hu/hirek/zold-kozbeszerzesi-treningsorozat-2023/>

2. Commissioned by the Monitoring and Evaluation Department of the Prime Minister's Office, the Green Public Procurement Support - Good Practice Handbook was prepared with the involvement of external public procurement experts.

The handbook contains national good practices and ideas on evaluation aspects or contract content related to green public procurement tried and tested by market actors. Given the challenges of implementation, the majority of the suggestions are less complex and more suitable for contracting authorities seeking legal certainty in public procurement. Link:

<https://ekr.gov.hu/portal/hirek/8798812894552>

## 1.2. What are the key challenges for the uptake of green public procurement?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of a risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such risk exists
- Risk of legal actions for wrong application of GPP criteria or a perception of some public buyers that such risk exists
- Lack of policy guidance and support on GPP
- Lack of policy strategy on GPP
- Lack of guidance on implementation of GPP requirements/criteria in procurement procedures
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Other reasons, please explain:

*5000 character(s) maximum*

In addition to the reasons identified above, fear of audit risk remains a persistent challenge. Contracting authorities are under pressure to demonstrate that tax payers' money is being well spent and tend to choose the best value for money at the time of the purchase rather than using LCC, which may involve larger capital outlays that will be compensated by reduced operating and maintenance cost as well as avoided environmental risks across the project/product life cycle.

The experience of audits shows that green criteria need to be accompanied by rigorous controls that contracting authorities have not always been able to meet.

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

See section 1.1.3.

## 2. Socially responsible public procurement ('SRPP')

Socially responsible public procurement is defined as procurement that takes into account one or several social considerations for advancing social objectives. SRPP covers a wide spectrum of social considerations, such as employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility.

### 2.1. What is the state of play of SRPP in your Member State?

2.1.1. How do you in general evaluate the degree of the SRPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of SRPP policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include social requirements,
  - Results of monitoring of social outcomes.
- Implementation is advanced
- Implementation is in progress
- Implementation is low

The broad objectives in SRPP policies are met:

- Yes
- Partially
- Not yet

2.1.2. Existing SRPP regulatory requirements in your Member State:

- General legal obligation imposing SRPP goals
- Mandatory requirements regarding employment from vulnerable groups
- Respecting minimum criteria on human- and labour rights in the value chain
- Specific SRPP requirements for the performance of contracts
- Mandatory exclusion grounds related to SRPP
- Sectoral regulations requiring equal treatment and non-discrimination

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

-

2.1.3. SRPP policy measures applied in your Member State:

- Guidelines to encourage SRPP
- National strategy to encourage SRPP
- National action plan to implement measurable objectives in SRPP
- National target of SRPP in certain sectors/in all sectors
- Monitoring/reporting on the use of SRPP criteria
- Existence of national competence centre/ specific working groups to promote the use of SRPP
- Mandatory regular trainings for the promotion of SRPP
- Optional trainings/events/workshops for the promotion of SRPP
- Online information tool on the use/on best practices of SRPP
- Other policy measures (if yes, please describe below)

Other policy measures, please describe:

*5000 character(s) maximum*

1. The PPA contains some basic rules connected to SRPP. Since the last monitoring report no further provision or regulation was adopted. PPA rules on SRPP include the following:
- Definitions of “provider of educational development” and “sheltered workshop” – s.3. points 38 and 41 PPA
  - Light regime – s.21(2) PPA
  - Rules on the preparation of procedures – s.28(1) PPA
  - Reserved contracts – ss.33-34 PPA
  - Labels and certificates – s.59(1) PPA
  - Exclusion criteria – s.63(1)(a) PPA
  - Awarding the contract – s.76(1)-(3) PPA
  - Special contract performance conditions – s.132(1), (3) PPA
  - Keeping records on the list of sheltered workshops – s.187(2)(u) PPA
  - Rules on taking into account accessibility when drafting technical specifications s.47(2) of Gov. Decree 321/2015
2. The monitoring/reporting on the use of social criteria was also examined as part of the analysis presenting the results of the performance measurement framework established by Government Decision 1425/2022 (IX. 5.) for the years 2022-2023, which assesses the efficiency and cost-effectiveness of public procurement. Detailed data in this respect are available via the following links:  
Analysis for 2023: <https://ekr.gov.hu/portal/hirek/8798812927320>  
Analysis for 2022: <https://ekr.gov.hu/portal/hirek/8798092096856>

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

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**2.2. Key challenges – What are the key challenges in the uptake of SRPP?**

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such risk exists

- Risk of legal actions for wrong application of SRPP or a perception of some public buyers that such a risk exists
- Lack of policy guidance and support on SRPP
- Lack of policy strategy on SRPP
- Lack of guidance on implementation/insufficient implementation of policies on SRPP
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Other reasons, please explain:

*5000 character(s) maximum*

The experience of audits shows that social criteria need to be accompanied by rigorous controls that contracting authorities have not always been able to meet.

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

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### 3. Public procurement of Innovation

An innovative solution is defined in 2014/24/EU Art.2 (1.22) as "a new or significantly improved product, service or process". This includes not only those solutions resulting from R&D but also those solutions resulting from activities, "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." Please report on both dimensions.

#### 3.1. What is the state of play of procurement of innovation in your Member State?

3.1.1. How do you in general evaluate the degree of the innovation procurement implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of innovation policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include innovation aspects,
  - Results of monitoring of innovation procurement.
- Implementation is advanced  
 Implementation is in progress  
 Implementation is low

The broad objectives in policies supporting innovation are met:

- Yes  
 Partially

Not yet

### 3.1.2. Innovation policy measures applied in your Member State:

- Guidelines to describing the procurement of innovation
- National strategy to encourage the procurement of innovation
- National action plan to implement measurable objectives to procure innovation
- National target to procure innovation in certain sectors/in all sectors
- Monitoring/reporting on the procurement of innovation
- Existence of national competence centre/specific working groups develop policies on the procurement of innovation
- Mandatory trainings related to the procurement of innovation
- Optional trainings/events/workshops related to the procurement of innovation
- Online information tool on the use/on best practices related to the procurement of innovation
- Other policy measures (if yes, please describe below)

Other policy measures, please describe:

*5000 character(s) maximum*

The relevant provisions on innovative procurement include the following:

- The definition of “innovation” – s.3, point 12 PPA
- Rules on award criteria for works contracts – s. 24 of Gov. Decree 322/2015

Indicate best practices that are aimed at encouraging the procurement of innovation. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

1. Guide of the Council of the Public Procurement Authority on certain aspects of the application of the Innovation Partnership was revised and updated in 2023. Link: <https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-az-innovacios-partnerseg-alkalmazasanak-egy-kerdeseirol-05-25/>

### 3.2. Key challenges – What are the key challenges for the uptake of Procurement of Innovation?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of a risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such a risk exists
- Risk of legal actions for procedures carried out wrongly
- Lack of policy guidance and support on Innovation
- Lack of policy strategy on procurement of innovation
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at mitigating indicated issues.

*5000 character(s) maximum*

## IX. The level of competition in public procurement

### 1. Do you monitor the level of competition in public procurement in your Member State?

To assess please consider in particular: proportion of single bids, proportion of negotiated procedures without prior publication, proportion of cancelled tenders

- Yes, the level of competition is monitored
- Yes, the level of competition is partially monitored (not comprehensive for all the procurement markets)
- No, the level of competition is not monitored

**If the reply to the previous question is yes, please indicate whether the level of competition compared to the previous reporting period:**

- Increased
- Remained unchanged
- Decreased

**If the reply to the above question is yes, please provide best practices** (e.g.: including on the tools used, methodology, indicators, etc.)

*5000 character(s) maximum*

Government Decision 1425/2022 (IX. 5.) adopted by the Government of Hungary in September 2022 ordered the establishment of a performance measurement framework for evaluating the efficiency and cost-effectiveness of public procurement. Hungary undertook to create the performance measurement framework in the procedure initiated on the basis of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget and in its Recovery and Resilience Plan.

The performance measurement framework started operating on November 30, 2022, in accordance with the description published on the website of the Electronic Procurement System (EKR).

Independent, non-governmental organizations active in the field of domestic public procurement and public procurement experts selected based on an open call for applications participate in the operation of the framework as a working group. The results of the performance measurement framework must be published by February 28 of each year.

The purpose of the performance measurement framework is to:

- give an idea of the realization of the public procurement policy objectives defined in the performance measurement framework by means of measurable indicators,
- contribute to the identification of areas in which additional measures are necessary to achieve policy goals, and
- support the goals set out in Act XXVII of 2022 on the control of the use of European Union budget funds.

The results of the performance measurement framework serve as one of the bases for the proposed measures that are the elements of the government's action plan aimed at increasing competition in public procurement. The first Action Plan was adopted by Government Decision 1118/2023 (III.31.).



The performance measurement framework relies on three main types of data sources:

- for indicators based on certain quantifiable properties of public procurement procedures and public procurement contracts, collected data from the Electronic Public Procurement System (EPS);
- data provided by public administration bodies (Public Procurement Arbitration Board, Public Procurement Authority and the Hungarian Competition Authority) and central purchasing bodies;
- the results of a publicly published, anonymous, online questionnaire.

The framework contains a total of 114 indicators and 158 sub-indicators, which enable a comprehensive understanding of the Hungarian public procurement system. Methodological notes for each indicator are publically available.

## 2. Did you launch/complete a comprehensive analysis of main causes of the lack of competition on the public procurement market during the current reporting period?

- Yes, a comprehensive analysis of main causes of the lack of competition was launched/completed in the current reporting period
- No, a comprehensive analysis of main causes of the lack of competition was not launched/completed in the current reporting period
- No, a comprehensive analysis of the main causes of the lack of competition was not launched/completed in the current reporting period as the level of competition is satisfactory

## 3. What are the sectors mostly concerned by low competition?

Please list the sectors concerned:

*5000 character(s) maximum*

The performance measurement framework established by Government Decision 1425/2022 (IX.5.) also contains indicators for the degree of competition, including a sectoral breakdown based on CPV divisions for some indicators. Based on these indicators, the sectors mostly concerned by low competition are the following:

- 09000000-3 - Petroleum products, fuel, electricity and other sources of energy
- 50000000-5 - Repair and maintenance services
- 33000000-0 - Medical equipments, pharmaceuticals and personal care products
- 34000000-7 - Transport equipment and auxiliary products to transportation
- 38000000-5 - Laboratory, optical and precision equipments (excl. glasses)

Please list other relevant factors (for example regions, areas, level of administrative level, type of public buyer, calendar period):

*5000 character(s) maximum*

The performance measurement framework examines several indicators to measure the level of competition in public procurement in Hungary. One of the most important indicators shows the proportion of single-bid procurements, which is also of particular importance in terms of the fulfilment of Hungary's commitments to the European Union. In connection with the above, a number of measures to increase competition and reduce the proportion of single-bid procurements have been implemented over 2022 and 2023. The effect of the measures is shown by the fact that the proportion of single-bid public procurement shows a clear decrease after 2021: from 30.79% in 2021 to 21.84% in 2023. In some CPV divisions - such as repair and maintenance services; medical equipment, pharmaceuticals and personal care products; petroleum

products, fuels, electricity and other energy sources in particular - the single-bidding ratio is permanently higher, which indicates that besides the possible common causes that arise as obstacles to competition in public procurement there are also sector-specific characteristics in the background. At the same time, the proportion of single-tender public procurements decreased in all examined CPV divisions except for one division.

Another indicator of the level of competition is the average number of offers. Among successful lots, an average of 3.4 bids per lot were received last year, which represents a clear increase compared to the average of less than 3 in recent years. Examining the subjects of procurement by CPV divisions, the average number of offers shows a general increasing trend in the level of competition, the indicator points to particularly intense competition in the construction sector, however, in the case of energy purchases, this indicator also reflects a large drop in competition from the year 2022.

#### 4. What are the main causes for the decrease in competition?

- 1. Structure of the market (e.g. size of the market)
- 2. Market concentration in the sectors concerned
- 3. Recurrent, particularly low number of bidders due to (if yes, please specify below):
- 4. Low attractiveness of the public procurement market, in particular (if yes, please specify below):
- 5. Anticompetitive market practices (collusions)
- 6. Other reasons (if yes, please specify below)

#### 3. Recurrent, particularly low number of bidders due to:

- Structure of the market (e.g. monopolistic, oligopolistic market)
- Suspicion of collusion between bidders (bid rigging)
- Tailor-made public procurement procedures

#### 4. Low attractiveness of the public procurement market, in particular:

- Lack of market knowledge of buyers (unrealistic demand)
- Lack of mid/long term planning of public procurement needs
- Not optimal contract size (too large for SMEs, too small for non SMEs)
- Complex tender documents and requirements
- Short period available for publication and submission of offer
- High administrative burden linked to submission of offer
- Lack of trust of companies in fair chances to win (e.g. suspicion of fraud, corruption, conflict of interests and other serious irregularities)
- Limited possibility of contract modification
- Strict contract terms and risk of penalties
- High risk of delayed or no payment
- Perceived unattractiveness of public procurement

#### 6. Other reasons, please specify:

*5000 character(s) maximum*

In 2022 as part of the performance measurement framework, a questionnaire survey was prepared, which generally referred to obstacles to competition in the Hungarian public procurement market. Based on the results, the opinions of tenderers, contracting authorities and independent public procurement consultants differed regarding many factors regarding the extent to which a given factor represents the reason for limited

competition. All stakeholders saw the lack of knowledge as a significant obstacle to competition. From the tenderers' side, according to those who completed the questionnaire, the contracting authorities' lack of market knowledge, the significant business risks related to public procurement (limited possibility of contract modification; incompatibility of contract terms with market conditions and excessive risk borne by the winning tenderer; unpredictable market conditions), the restrictive public procurement conditions (technical description and selection criteria) and reasons related to a lack of trust are the most typical obstacles to competition, while administrative obligations were rated less as a limitation of decisive importance.

The questionnaire survey prepared for the 2023 analysis specifically assessed the opinions of contracting authorities, tenderers and public procurement consultants active in the most problematic sectors from the point of view of single-bid procedures (indicated by CPV divisions) regarding the obstacles to competition in these sectors. The opinions of the contracting authorities and the tenderer partially differ in this case as well. According to the tenderers' answers, the restrictive nature of the public procurement conditions used by the contracting authorities, as well as the contract terms that do not support competition, appear as particularly relevant factors (the tenderers' and consultants' answers rated them less significant). Contracting authorities more often see the structure of the market and the presence of few economic actors as a problem. However, in several markets (repair and maintenance services; medical equipment, pharmaceuticals and personal care products; laboratory, optical and precision equipment), both the contracting authorities and tenderers consider technical limitations due to special procurement needs to be a determining factor. The lack of trust appeared among the answers, but it was not among the reasons that the respondents considered most relevant in relation to the competitive situation in the sector.

Please provide a link to any publicly available document relevant for the issues you indicated:

*5000 character(s) maximum*

More detailed information on the level of competition is available in the reports on the results of the performance measurement framework (only in Hungarian):

2023: <https://ekr.gov.hu/portal/hirek/8798812927320>

2022: <https://ekr.gov.hu/portal/hirek/8798092096856>

## X. Additional information

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Please provide any other information you consider relevant:

*5000 character(s) maximum*

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### Contact

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