

Specialised procurement trainings for judges

Summary

Several MS have developed dedicated procurement training programmes and more extensive and targeted training plans for first-instance judges in order to provide them with the technical knowledge required to issue grounded rulings that may be less likely to be appealed at the second-instance level. Procurement trainings for judges can cover a number of key topics, such as selection, qualification and award criteria, green public procurement criteria and strategic procurement, the European Single Procurement Document (ESPD), and corruption.

Judges that handle procurement cases often do not have specific expertise in public procurement, as they deal with the subject only occasionally. This is particularly relevant in MS where the responsibility for reviewing European public procurement law at first-instance level is allocated to ordinary courts. However, judges operating in ordinary courts may lack the technological, economic and practical knowledge relevant to a procurement case.¹ Consequently, the quality of a judge's rulings may be affected and the issuing of rulings take longer. A number of MS have introduced specialised review bodies, which can deliver less costly and quicker proceedings, often closer to the region where a given procurement contract was concluded.² Rulings by specialised review bodies are usually of better quality, as these bodies deal with procurement exclusively.

While specialised technical public procurement training for judges is considered important, the most common way to acquire the necessary knowledge remains through professional experience and learning by doing. Thus, ensuring awareness about national and EU case law is a training priority. Training includes university classes, targeted seminars, conferences organised by associations of procurement lawyers or judges, and vocational and continuous training provided by the national public procurement offices and national academic law institutes. However, the offer and the quality of training may vary, and in most cases professionalisation of judges is left to the individual.

Key success factors and potential pitfalls (1)

Perform systematic analysis of training needs

Mapping training needs of public procurement judges allows to assess the relevance of the training programme and design it in the most efficient and effective way to address skills and capacity gaps.

Raise awareness

Promotion and dissemination activities of the specialised training are important so that judges are aware of its existence and can proactively plan and organise their attendance to the training sessions.

Provide incentives for participation

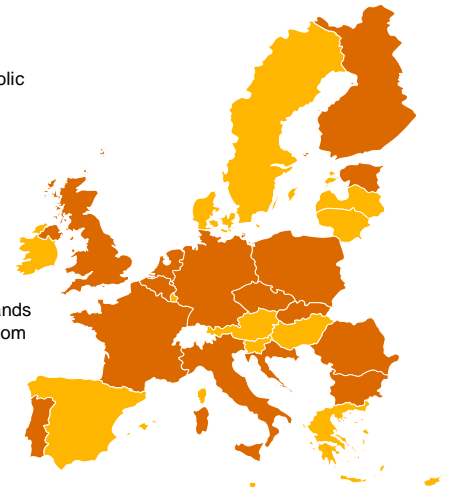
Creative positive incentives for judges to attend training classes could help ensure that attendance is high.

Include practical examples and past rulings

Integrating past rulings and case studies can help make training courses more practical and useful to judges.

Good Practice Examples

- ✓ Belgium
- ✓ Bulgaria
- ✓ Croatia
- ✓ Czech Republic
- ✓ Estonia
- ✓ Finland
- ✓ France
- ✓ Germany
- ✓ Hungary
- ✓ Italy
- ✓ Poland
- ✓ Portugal
- ✓ Romania
- ✓ The Netherlands
- ✓ United Kingdom



Impact

Promote professionalisation



The main objective of specialised training for judges is to professionalise them in specific subjects related to procurement. Judges specialised in procurement are able to handle cases more efficiently and effectively.

Input

Cost – €€

- Low set-up cost
- Medium operation cost



Time – 6 to 12 months



Complexity – Medium

- Securing funding sources and relevant experts
- Availability of training facilities in remote areas
- Identification of training needs



Related Good Practices

- Credentials for procurement professionals
- Teach SMEs how to tender

Key success factors and potential pitfalls (2)

Facilitate access in remote areas

Frequently organising training sessions closer to areas where specialised review bodies and courts are located ensures that local judges have the same opportunities and level of access to training.

Secure funding

To properly design continuous training programmes, sufficient funding has to be secured. Development agencies which already conduct professionalisation projects can be a source of financing.

Case Study

Romania – Targeted trainings for judges

The National Council for Solving Complaints³ (CNSC) of Romania acts as a specialised review body and manages first-instance review of procurement procedures.⁴ Appeals of CNSC decisions are heard before the Court of Appeal. Both the CNSC and the Court of Appeal resort to the involvement of experts during review proceedings. As this is quite costly and time-consuming, Romania has developed a training programme to professionalise judges. The main training institution in Romania is the National Institute of Magistracy⁵ (NIM) created in 1992.⁶ NIM provides initial training for future judges and prosecutors, as well as continuous trainings for in-service judges and prosecutors.

In its 2017 training plan,⁷ NIM offered 250 training activities available to judges and prosecutors with more than 5,000 seats open.⁸ Training activities are specialised and cover various legal fields such as administrative, financial, tax, civil, criminal and consumer law, as well as non-legal areas including communication, personal development, judicial ethics, and corruption, among others. Public procurement is also covered by the 2017 training plan⁹ via the following three free-of-charge training activities:

- Six two-day trainings on centralised public procurement developed within the scope of the project “Training support for capacity-building of judges and prosecutors in applying new laws” co-financed by NIM and the Swiss Agency for Development and Cooperation (SDC). The project aims at improving professional skills of Romanian judges;
- Two two-day training courses financed by the CNSC, the National Agency for Public Procurement (ANAP) and NIM that aim at unifying the judicial, administrative and jurisdictional practice and ensuring vocational training for judges responsible for settling cases in public procurement.¹⁰ In addition, the two-day training tackles new public procurement provisions brought by public procurement legislation. Specifically, it covers annual public procurement planning, the European Single Procurement Document, selection, qualification and award criteria, green public procurement criteria and strategic procurement;
- Two training courses under the project “Effective mechanisms to prevent and fight corruption in public administration” financed by the Internal Security Fund and the Anti-corruption Department of the Romanian Ministry of Interior. The course objective is to increase specialisation of personnel involved in the investigation and research of corruption in public procurement including in relation to EU funded projects.

In order to better meet the public procurement-related training needs of judges, Romania has also developed a process for carrying out a training needs assessment.¹¹ Needs-related information is gathered via multiple sources including the professional association of magistrates, legal associations, judicial trainers, courts and prosecutor offices. Once a list of needs is established, it is complemented by judges’ and prosecutors’ suggestions for training topics via an online system. This data represents the basis for the elaboration of an annual training plan. Also with the objective of better addressing local training needs, decentralised training courses are organised in remote areas. Decentralised trainings whose purpose is to enable face-to-face training with judges are coordinated and managed by NIM.¹²



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¹ OECD, "Public procurement review and remedies systems in the European Union - SIGMA paper No. 41" (2007), see:

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=qov/sigma\(2007\)5](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=qov/sigma(2007)5)

² Ibid.

³ See: <http://www.cnsc.ro/en/>

⁴ OECD, "Public procurement review and remedies systems in the European Union - SIGMA paper No. 41" (2007), see:

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=qov/sigma\(2007\)5](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=qov/sigma(2007)5)

⁵ See: <http://www.inm-lex.ro/>

⁶ E-Justice, "Judicial training structures in the EU – Romania" (2012), see: <https://e-justice.europa.eu>

⁷ The Superior Council of Magistracy, "Continuing Training Program" (2017), see: http://www.inm-lex.ro/fisiere/d_1636/Programul%20de%20formare%20continua%202017.pdf

⁸ See: <http://www.inm-lex.ro/>

⁹ The Superior Council of Magistracy, "Continuing Training Program" (2017), see: http://www.inm-lex.ro/fisiere/d_1636/Programul%20de%20formare%20continua%202017.pdf

¹⁰ National Council for Solving Complaints, "Activity report" (2016), see: http://www.cnsc.ro/wp-content/uploads/2017/03/raport2016_EN.pdf

¹¹ European Commission, "Study on Best Practices in training of judges and prosecutors - Fact sheet No. 2" (2014), see:

http://www.ejtn.eu/Documents/Resources/Lot1_final_Jan2015.pdf

¹² European Commission, "Study on Best Practices in training of judges and prosecutors - Fact sheet No. 29" (2015), see:

http://www.ejtn.eu/Documents/Resources/Lot1_final_Jan2015.pdf