

AUSTRIA

KEY FACTS AND FIGURES

Key Facts and Figures in Austria						
Overview	Total procurement 35,180,000,000€		Procurement % GDP 11%		2013 GDP 322,878,300,000€	Contracting authorities 5,600
Procedures applied	Open 75%	Restricted 1%	Negotiated procedure with call 19% no call 3%		Competitive dialogue 0%	Direct award 1% Other 1%
Share of contract notices by buyer	National 5%		Regional/local 30%		Body governed by public law 24%	Other 40%
Contract type	Services 28%		Works 45%		Supplies 27%	Framework agreement 11%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 8%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 78%		Individuals 66%		At national level 50%	At local/regional level 48%
TED indicators	Value of tenders 4,157,752,573€		Of total procurement 12%		# contract notices 2,956	# contract awards 2,315
Other indicators	Received single bid 12%		# days for decision 63.0		Price only criteria 53%	MEAT criteria 47%
	Won by foreign firms 6%		Related to EU funds 3%		Joint purchase 5%	Central purchasing Yes, BBG

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Austria's public procurement system is quite streamlined and efficient thanks mainly to a simple and stable regulatory framework. As a result, reduced length of procurement procedures, just 63 days in 2014 compared with the EU average of 120 daysⁱ. Although public procurement is carried out at all different levels of government, an important share of purchases is centralised by the Federal Procurement Agency (BBG), which plays a central role in the efficiency and harmonisation of public procurement procedures as well as in the capacity building of public practitioners at federal, state, and local levels.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In Austria, EU procurement directives are transposed by the 2006 Federal Procurement Act (*BVergG*), which regulates procurement above and below EU thresholds. The *BVergG* distinguishes between government authorities on federal, state and local levels and sectoral contractors. Above EU thresholds, open procedures or negotiated procedures with prior publication are mandatory. Below EU thresholds, Austrian legislation allows direct purchasing as well as negotiated procedure without prior notice for contract at value up to EUR 100,000 for supplies, services and works. Restricted procedure without prior publication are allowed for supplies and services up to EUR 100,000 and for works up to EUR 1 million.

In addition to the *BVergG*, regional public procurement provisions define the review procedures at federal states levelⁱⁱ.

Institutional system

The Federal Chancellery was the primary responsible for public procurement policy, and is thus in charge of drafting legislation, implementing EU directives, providing guidance, and performing monitoring and control functions.

The *BBG* is another essential player in Austria's public procurement system, acting as both central purchasing body and the body responsible for e-procurement. The *BBG* was established in 2001 to generate savings through to the bundling of procurement of the federal agencies. The *BBG* is responsible for purchasing standardised goods, the development of e-procurement tools, and the simplification of internal procurement processes. It manages contracts for approximately 270,000 products and services available not only to central federal bodies, for whom the use of *BBG* is mandatory, but also to federal states, municipalities, and public-owned bodies such as universities and healthcare services. In 2013, the *BBG* procured goods worth EUR 1.2 billion, generating estimated savings of EUR 253 millionⁱⁱⁱ.

In addition to the *BBG*, municipalities are increasingly taking advantage of their ability to form limited liability companies to do joint procurement. More and more municipalities work in the procurement area in the form of inter-municipal cooperation to support centralised procurement management at the local level.

The Austrian Court of Audit is in charge of supervising the economy, efficiency, and effectiveness of public expenditure at federal, state and local levels. Part of its activity is the supervision and control of the procurement practices of public authorities, and it regularly publishes its findings in thematic and annual reports.

The review system was reformed in 2013 in an effort to streamline the appeal procedure in the field of public procurement. Previously, dedicated review bodies were in charge of appeals both at federal and state levels. Since 2014, these competencies have moved to the Federal Administrative Court for federal matters, and to the respective administrative courts at the level of the federal states.

Key issues that have a bearing on administrative capacity

Human resources: The overall administrative capacity of procurement officials is high, as demonstrated by an above average procedural efficiency. This is facilitated by formal and informal mechanisms of communication and exchange federal and state authorities. For instance, an informal technical exchange between the Unit for General Affairs and Public Procurement at the Federal Chancellery and various state level authorities takes place regularly^{iv}. However, within the Federal Chancellery there are not sufficient human resources.

The *BBG* has a staff of approximately 80, and boasts a successful track record. Since its foundation in 2001 it carried out 1,636 procurement procedures and only 23 were annulled due to irregularities, a rate of less than 1.5%^v.

Administrative capacity for the management of EU Funds has been sufficient for the 2007-2013 programming period, but need for increased capacity is expected for 2014-2020, to be covered by increased staff or outsourcing^{iv}.

Structures: In Austria, many institutions support contracting authorities and economic operators in navigating public procurement, the *BBG* being the most active one. The Constitutional Service within the Federal Chancellery also gives legal counselling to contracting authorities. In addition, the Working Group Federation-States is responsible for fostering coordination and exchange on legal matters, including public procurement.

The *BBG* also has set up a procurement competence centre with a team dedicated to legal advice for contracting authorities. It cooperates with the Federal Attorney's Office and the Federal Chancellery to this purpose. The Austrian Economic Chambers also provides legal advice and other forms of support to their members.

Specialised bodies, such as the Service Centre for Innovation Procurement and the Service Centre for Sustainable Procurement, also support public procurement practitioners to foster the use of strategic procurement in the country.

Training: The *BBG* provides all employees of the public sector (federal, state, local and public-owned companies) with a dense program of training and information sessions on public procurement, as well as e-learning courses. It covers for instance basics on procurement law, introduction to procurement processes, electronic purchase, and thematic subjects such as procurement for healthcare services.

In addition, the Federal Academy of Public Administration (*BKA*) has a dedicated training programme on ESI Funds that includes public procurement.

Systems/tools: The *BBG* regularly organises the so-called weekly *BBG*-Forum that comprises seminars on procurement-related topics, presentations or "InfoDays" on available products and contracts, and discussions with procurement experts.

In the field of strategic procurement, the Service Centre for Innovation Procurement has developed four modules of tools that help to estimate the innovation potential of a good, evaluate the risks associated with that good and evaluate the innovation capacity of a contracting authority^{vi}. In addition, the Service Centre for Sustainable Procurement has set up a Help Desk as well as guidance material on best practices in sustainable procurement.

Furthermore, in accordance with the Federal Procurement Act of 2006, standardised tender documents have been developed in different areas of public procurement. For example, standardised terms of reference for construction and home automation are provided by the Federal Ministry for Science, Research and Economy,^{vii} and for transport and infrastructure by the Austrian Association for Research on Road-Rail-Transport.^{viii}

E-procurement

The *BBG* is the primary drive of the e-procurement policy. The E-procurement Master Plan for the Public Administration, developed in 2011, serves as the overall strategy and aims to make e-procurement a standard practice in Austria's public administration^{ix}.

Overall, the Austrian e-procurement infrastructure is well developed and contracting authorities have considerable experience with e-procurement. Based on a self-assessment, a majority of Austrian contracting authorities consider themselves as moderately or quite advanced in e-procurement matters^{ix}.

E-notification and e-access are mandatory, yet there is no single mandatory e-notification platform. Procurement entities publish their contract notices on a variety of different public and private platforms either at national, state or even on their own systems. Federal states are required to have a procurement platform for contract notification. So far, e-submission is only mandatory for dynamic purchasing systems and e-auctions, but otherwise it is voluntary. E-invoicing is mandatory at national level since 2014.

In addition, Austria participated to the PEPPOL project, concluded in 2012, which aimed at fostering European-wide interoperable e-procurement. Notably, it helped the *BBG* to develop e-invoicing facilities, e-catalogue and a bidders' registry enabling

economic operators to upload other technical and financial capacity documents in one single place.

Corruption

In Austria, two national bodies are in charge of the fight against corruption. First, the Federal Agency for Fighting and Preventing Corruption (*BAK*) was introduced in 2010, replacing the Office for Internal Affairs of the Ministry of the Interior. It is tasked with the fight against corruption at large, including bid-rigging and fraud in procurement. Second, the Prosecution Service for Corruption and White-Collar Crime (*WKStA*) is composed of specialists that are able to handle large-scale business and financial crime prosecution.

The recent uncovering of large-scale corruption cases in Austria resulted in reinforced measures to fight corruption. Penalties for corruption have been strengthened and the legal definition of corruption has been expanded^x. Although it is not directly related to procurement, the new legislation has an impact on companies that interact with the public administration. For instance, the crime of "*anfüttern*", i.e. maintaining personal relationships with public officials with the goal of influencing their behaviour, has become punishable under corruption legislation^{xi}. Another recent effort in the fight against corruption has been the introduction a Code of Conduct for civil servants^{xii}.

Europe 2020 Agenda

Austria is advanced with respect to strategic procurement. In fact, it is a frontrunner in green public procurement, has relatively high level of SME participation, and fosters the inclusion of social considerations in tender processes. Furthermore, the government is pushing for innovation in procurement and has introduced specific innovation criteria in the public procurement law^{xiii}.

Austria launched an Action Plan on Sustainable Procurement in 2010 to anchor sustainable procurement as a key practice, and to maintain Austria as a leading country in the field. The Action Plan defined key economic, environmental, and social criteria for 16 product groups and set up activities to coordinate and foster the use of these criteria by public administrations^{xiv}.

Compliance with social standards and labour market regulations in public procurement is mandatory in Austria. Furthermore, a promising initiative in Austria's socially responsible procurement is the SO:FAIR project. This project gathers public and private stakeholders who work on the definition of social criteria and undertake dissemination on socially responsible public procurement^{xv}.

The introduction of innovation aspects in public procurement, on the other hand, is a more recent development. In fact, the strategy for fostering innovation in public procurement was launched in 2012 and the Centre for Innovation in Public Procurement created in 2013^{xiii}. The latter offers services such as e-platforms, consulting, training, awareness activities, and event organisation. Political commitment for implementing innovative procurement has already resulted in some examples of good practices, such as the adoption of an innovation policy mix by Austria's highway operator ASFINAG or the start of a pilot project by utility company *Verbund*^{xvi}.

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Austria's SME have an above EU average participation rate in procurement^{xxviii}. Even though SMEs receive no special treatment under procurement law, the *BBG* has introduced measures to facilitate their participation such as the division of contracts into SME-friendly lots. As a result, about 70% of *BBG* suppliers are currently SMEs^{xxix}.

Irregularities and findings of national audit authorities

With respect to public procurement, the Austrian Court of Audit carries out numerous ad-hoc audits and large-scale audits of federal administrations. Furthermore, it expresses general recommendations and key statements related to public procurement.

In 2013-2014, a specific audit of a federal Ministry uncovered shortcomings in a large number of cases. These shortcomings include lack of offers for comparison, wrong procedure chosen, insufficient documentation, missing or unjustified price ceilings, and inadmissible direct award. In addition, the Court noticed a relatively frequent disregard for internal procurement guidelines, in particular concerning the reporting duty to the internal audit unit^{xx}.

Finally, the Court has recently pointed out that there is potential for contracting authorities to improve procurement of public works. In particular, it highlights weaknesses in the preparatory phase, formal mistakes during the opening of offers, lack of sufficient documentation of the award process and lack of in-house skills to oversee the work execution^{xxi}. Audits conducted by DG REGIO in 2013 revealed irregularities similar to those previously noted by the Austrian Court of Audit and the Austrian Audit Authority. These include incorrect choice of procedure, insufficient documentation, missing evaluation reports, and unjustified use of direct award^{xxii}.

Outlook

The upcoming public procurement reforms related to the transposition of the new EU directives are happening in a context of longstanding efforts to reform the public administration encompassing many areas, including the development of e-government solutions and the overall simplification and streamlining of public governance.

Despite on-going complaints from business organisations^{xxiii}, Austria will also maintain its focus on strategic procurement. For instance, in order to complete the activities of the newly created Centre for Innovation in Public Procurement, there are commitments in place to set up innovative procurement "competence centres" across a number of different economic sectors.

ANALYSIS

Strengths

Austria has a well-functioning procurement system that ensures an efficient processing of procurement procedures. The central purchasing body *BBG* contributes not only to efficient procurement, but also to secondary goals such as sustainable development, innovation, social responsibility, and SME participation. The *BBG* is also leading in matters of e-procurement, not only at national but also at European level, thanks to its contribution to the PEPPOL project and its efforts to increase the adoption of e-procurement solutions. Furthermore, given its expertise, the *BBG* was tasked to coordinate the development of Austria's e-procurement Master Plan.

Strategic procurement is highly developed in tender procedures throughout the country. Innovation has been the most recent addition as a policy objective of the public procurement law and has led to the conduction of pilot projects and to the development of guidance and tools.

Weaknesses

Despite the overall strong performance of Austria's procurement system, there are still some areas in need of improvement. Though well-developed, e-procurement is still highly fragmented. The lack of a single mandatory centralised portal has led to the proliferation of numerous platforms at every level of governance. For suppliers, this implies potentially missing out on opportunities or incurring costs to monitor public procurement activities.

In addition, while Austria has recently strengthened its anti-corruption framework with the newly introduced anti-corruption bodies, initiatives that are specific to procurement, such as the division of procurement processes into various phases and the regular rotation of staff, have not been launched. Given that Austria has shown vulnerability to high-level corruption in recent years, corruption prevention in tender procedures needs to be high on the agenda.

Lastly, Austria has a low rate of publication of EU-wide public contracts, as assessed as part of Austria's Country-specific Recommendation in 2014. In fact, the value of contracts published in 2013 amounted to 1.9% of GDP compared to the EU average of 3.23%. As a consequence of low publication, Austria is foregoing welfare from increased competition.

Recommendations

- **Increasing administrative capacity:** Overall, administrative capacity for the management of EU Funds is considered sufficient for the previous programming period. However, it is anticipated that staff and/or outsourcing will be increased within the framework of the current programming period.
 - Develop and implement targeted trainings, particularly covering the management of EU funds, at all levels of governance.
- **Fragmented e-procurement:** E-procurement is fragmented between levels of government due to lack of a single mandatory e-procurement portal.
 - Consolidate or improve interoperability between the different public and private platforms at national and sub-national levels.
- **Corruption:** Austria's anti-corruption framework is strong, particularly following a number of recent reforms, yet corruption risk remains a concern.
 - Enact procurement specific anti-corruption measures, such as mandatory division of roles in the different phases of the procurement process, and regular staff rotation.
- **Insufficient number of EU-wide public contracts:** Austria stands out among EU Member States for its low rate of publication of EU-wide public contracts.
 - Incentivise EU-wide publication of procurement contracts through mandates and awareness-raising efforts.

ⁱ European Commission, Internal Market Scoreboard (2014), available at: http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm
http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm

ⁱⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

ⁱⁱⁱ BBG Bundesbeschaffung (2014), *Tätigkeitsbericht 2013* (Annual Activity Report 2013).

^{iv} Partnership Agreement of Austria for the implementation of the ESI Funds 2014-2020.

^v BBG Bundesbeschaffung (2014), Facts and figures, available at: <http://www.bbg.gv.at/ueber-uns/unternehmen/geschaeftsfelder/zahlen-daten-fakten/>

- ^{vi} Centre for Innovation in Public Procurement (IÖB), available at: <http://www.ioeb.at/downloads-links/ioeb-tools/>
- ^{vii} *Standardisierte Leistungsbeschreibungen*, website of the *Bundesministerium für Wissenschaft, Forschung und Wirtschaft*, available at: <http://www.bmwf.wg.at/Tourismus/HistorischeBauten/Seiten/StandardisierteLeistungsbeschreibungen.aspx>
- ^{viii} *Standardisierte Leistungsbeschreibungen*, website of the Austrian Association for Research on Road - Rail – Transport, available at: <http://www.fsv.at/Leistungsbeschreibungen/default.aspx>
- ^{ix} *E-Procurement Masterplan für die öffentliche Verwaltung* (2011)
- ^x *Bundesgesetzblatt* (Official bulletin) (2012), *Korruptionsstrafrechtsänderungsgesetz* (Corruption Criminal Law Amendment), no 61/2012.
- ^{xi} European Commission (2014), *DG HOME*, EU Anti-corruption report, Annex Austria.
- ^{xii} *Bundeskanzleramt* (Federal Chancellery) (2012), *Die VerANTWORTung liegt bei mir : Verhaltenskodex zur Korruptionsprävention* (Guidelines for the prevention of corruption).
- ^{xiii} *Leitkonzept für eine innovationsfördernde öffentliche Beschaffung (IÖB) in Österreich* (Guide for the promotion of innovation in public procurement in Austria), available at: https://www.bmwf.wg.at/innovation/forschungspolitik/innovationsfoerdernde_beschaffung.html
- ^{xiv} Federal Ministry of Agriculture and Forestry (2010), *Umwelt und Wasserwirtschaft, Österreichischer Aktionsplan zur nachhaltigen öffentlichen Beschaffung* (Austrian Action Plan for sustainable public procurement).
- ^{xv} *Initiative für Soziale & Faire öffentliche Beschaffung in Österreich* (Initiative for social and fair public procurement in Austria), available at: <http://www.sofair.at/>
- ^{xvi} Federal Ministry of Economy, Family and Youth, Federal Ministry for Transport, Innovation and Technology (2012), *4 x Good Practice, Öffentliche Beschaffer als Innovationstreiber ASFINAG – VERBUND – BIG – BBG* (Public procurers as drivers of innovation).
- ^{xvii} *Initiative für Soziale & Faire öffentliche Beschaffung in Österreich* (Initiative for social and fair public procurement in Austria), available at: <http://www.sofair.at/>
- ^{xviii} European Commission (2014), *DG ENTR*, Small Business Act Fact Sheet
- ^{xix} *BBG Bundesbeschaffung* (2012), *KMU-Strategie der Bundesbeschaffung* (Strategy for federal procurement)
- ^{xx} Austrian Court of Audit (2013), *Bericht des Rechnungshofes* (Report of the Auditors), Reihe BUND 2013/2
- ^{xxi} Austrian Court of Audit, *Hauptprobleme der öffentlichen Finanzkontrolle: Verbesserungsmöglichkeiten bei der Vergabe öffentlicher Bauvorhaben* (Main problems of public audit: improvement in the award of public works)
- ^{xxii} European Commission (2013), Annex of the Commission decision of the 19.12.2013 on the setting out and approval of the guidelines for determining financial corrected to be made by the Commission to expenditure financed by the Union, available at: http://ec.europa.eu/regional_policy/sources/docoffic/cocof/2013/cocof_13_9527_annexe_en.pdf
- ^{xxiii} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, Comparative survey on the transposition of the new EU public procurement package