HUNGARY

KEY FACTS AND FIGURES

<table>
<thead>
<tr>
<th>Overview</th>
<th>Total procurement</th>
<th>Procurement % GDP</th>
<th>2013 GDP</th>
<th>Contracting authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13,730,000,000€</td>
<td>14%</td>
<td>100,536,500,000€</td>
<td>13,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Procedures applied</th>
<th>Open</th>
<th>Restricted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>67%</td>
<td>1%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Share of contract notices by buyer</th>
<th>National</th>
<th>Regional/local</th>
<th>Body governed by public law</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>16%</td>
<td>16%</td>
<td>20%</td>
<td>Other 42%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract type</th>
<th>Services</th>
<th>Works</th>
<th>Supplies</th>
<th>Framework agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>37%</td>
<td>10%</td>
<td>53%</td>
<td>3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ex ante conditionality criteria as of 2014</th>
<th>EU rules</th>
<th>Transparency</th>
<th>Training</th>
<th>Admin. capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not met</td>
<td>Not met</td>
<td>Not met</td>
<td>Not met</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E-procurement adoption</th>
<th>E-notification</th>
<th>E-access</th>
<th>E-submission</th>
<th>Uptake rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mandatory</td>
<td>Voluntary</td>
<td>Voluntary</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Perceived corruption</th>
<th>Corruption widespread in society</th>
<th>Corruption widespread in procurement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Businesses</td>
<td>Individuals</td>
</tr>
<tr>
<td></td>
<td>91%</td>
<td>89%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TED indicators</th>
<th>Value of tenders</th>
<th>Of total procurement</th>
<th># contract notices</th>
<th># contract awards</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7,130,872,369€</td>
<td>52%</td>
<td>1,936</td>
<td>1,972</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other indicators</th>
<th>Received single bid</th>
<th># days for decision</th>
<th>Price only criteria</th>
<th>MEAT criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>36%</td>
<td>69.3</td>
<td>65%</td>
<td>35%</td>
</tr>
</tbody>
</table>

|                  | Won by foreign firms | Related to EU funds | Joint purchase | Central purchasing |
|                  | 2%                  | 20%                 | 10%             | Yes, KSF       |

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

Summary of public procurement system

Since its accession to the EU in 2004, Hungary has undertaken a dramatic shift of its procurement system from one in which responsibilities were widely dispersed to a more harmonised system under the coordination of various public entities. The 2011 Act on Public Procurement already entailed a substantial realignment of the primary legislation, contributing to a more standardised and transparent environment. Furthermore, the year 2014 brought a major reorganisation, consolidating the functions of the bodies in charge of public procurement legislation, implementation, and control and monitoring, within the Prime Minister’s Office (PMO). A new Public Procurement Act (PPA) was recently adopted and entered into force on November 1st 2015.

While progress has been made in many areas, structural weaknesses have still to be addressed. Above all, application of the law varies substantially across contracting authorities nationwide, and corruption remains a significant concern.

Moreover, e-procurement is still in its infancy, and the national procurement portal does not yet offer e-submission services. Another major challenge of the Hungarian public procurement system is the significant lack of user-friendly and streamlined access to data on public procurement spending and published information in this field.

Hungary distinguishes itself from other MS for its significant use of negotiated procedures without publication, accelerated negotiated and accelerated restricted procedures, which are considered among the least conducive to openness and competition. They also have one of the highest rates of procedures that involve only a single bidder.
DESCRIPTION OF FEATURES

Legal features of public procurement system

As part of the EU accession process, Hungary undertook a substantial remaking of its procurement system to reflect EU procurement rules. In September 2015, Hungary adopted the Act CXLIII of 2015 on Public Procurement (PPL), which defines national rules on public procurement procedures and concessions as well as implements the EU Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. In the previous legislative framework, the conditions for procurement both above and below the EU thresholds, as well as EU Directives 2004/17/EC, 2004/18/EC and the review procedures set out in Directives 89/665/EEC and 92/13/EEC, covering public contracts and utilities respectively, were set out in Act CVIII of 2011 on Public Procurement.

In addition to the main legislative act, the PPL is supplemented by several governmental and ministerial decrees, the aims of which are to regulate matters like centralised procurements, order of publication and standard forms.

The Hungarian system does allow for simplified procedures below the EU thresholds. It also provides substantial leeway for contracting authorities. For instance, contracting authorities are permitted to use restricted or negotiated procedures as long as this is indicated in their call for tenders. Also contracting authorities may develop independent procedural rules, which are not subject to provisions set out by the second part of the PPL, for the execution of public supplies and public services not reaching EU thresholds.

The PPL includes a number of exemptions from the PPL for contracts below EU thresholds, including amongst others groceries, sport and cultural services, prison labour, and emergency relief.

As for the national thresholds, the §15 of Act CXLIII of 2015 states that amounts regarding each subject matter of public procurement are set on a yearly basis by the Budget Act of Hungary.

Institutional system

Hungary has two main bodies for procurement policy: the PMO and the autonomous Public Procurement Authority (KH). The PMO has primary responsibility for drafting legislation related to public procurement. In addition, it provides support and guidance to contracting authorities. It also acts as an internal overseer, conducting regulatory control of procurement procedures and monitoring compliance with the PPL.

The KH serves as the primary executive agency. It is responsible for monitoring the application of the law and formulating opinions on draft legislations. It also collects and publishes operational and statistical information via annual reports, as well as the official Public Procurement Bulletin and the central register of award procedures. In addition, it performs a key support function in fielding implementation questions from contracting authorities, issuing non-binding guidance documents, and organising trainings and seminars for practitioners. Furthermore, it maintains relationships with public procurement bodies of other States.

The Directorate General for Public Procurement and Supply (KEF) acts as a central purchasing body for central Government agencies. Use of the KEF is mandatory based on product categories, specifically software and IT services, stationary and office products, and motor vehicles. Contracting authorities at the local level must take charge of their own procurement, but the PPL allows for local Governments to use central purchasing in their territory.
In addition to the PMO, the State Audit Office (SAO) also conducts oversight of procurement. The SAO conducts external oversight, providing recommendations and legally binding obligations to correct the most serious irregularities.

The contracting authorities themselves are the first point of contact for claims of infringement of procurement rules. If a claim is not addressed to the satisfaction of the petitioner, it can be elevated to the Public Procurement Arbitration Board (KDB), which has the power to suspend a procurement proceedings, void previously made award decisions, impose fines, or bar tenderers from involvement in future procurement. Decisions of the KDB can be appealed through the judicial court system, starting with the regional courts. Decisions rendered by the courts are subject to review by the Curia, Hungary’s Supreme Court, if these are challenged through an extraordinary remedy.

**Key issues that have a bearing on administrative capacity**

**Human resources:** Public procurement is carried out by approximately 13,000 contracting authorities at all territorial levels. As a result, administrative capacity varies considerably among contracting authorities, as does implementation. Recruitment efforts face substantial challenges due to a combination of unfavourable demographic developments and a general decrease in the attractiveness of public sector employment, which could lead to a recruiting crisis in the public sector in the coming years.

As part of its procurement ex-ante conditionalities Action Plan, the Government is undertaking three initiatives to improve administrative capacity. First, it will expand the total number of procurement experts on staff by 25%. Second, it is developing a work plan to more efficiently and systematically build up the expertise of new hires. Third, it will work to improve qualified staff retention through a motivational system scheduled for implementation before the end of 2015.

**Structures:** Four higher education institutions – the National University of Public Service (NKE), the Budapest Business School, the Budapest University of Engineering and Economics, and the Corvinus University of Budapest – offer specialised programs or optional courses in public procurement, which are open to everyone. Two private entities – the Hungarian Association of Logistics, Purchasing and Inventory Management, and the agency for the development of vocational training, DFT Hungária – also offer coursework for procurement practitioners.

The Government has also established the Hungarian Public Procurement Institute (MKI) to increase the availability of accurate, authoritative procurement information and to provide active support to contracting authorities and bidders at national and local levels. MKI hosts training seminars and informal meetings for procurement professionals, and posts regular news and policy updates on their website.

**Training:** Several training seminars and courses are organised by the KH for public procurement practitioners. Moreover, the KH, as well as the PMO, conduct training courses for their own procurement staff. The objectives of these courses are to enable participants to get to know the EU’s public procurement system, and to provide them with tools focusing on the implementation of the PPL, as well as the regulation of anti-fraud measures. In addition to training, a further objective is to encourage the exchange of experience and sharing of good practices between public procurement practitioners.

**Systems/tools:** The primary tool for procurement practitioners and potential suppliers is the website of the KH, which hosts not only a searchable tender database but also a wealth of freely available guidance materials in different languages including Hungarian, English and German. These include legal and legislative information, official public procurement counsellors, links to TED and the PPN, and other useful information.
Since its founding in 2011, the KH also publishes a monthly journal called Procurement Review featuring scholarly and professional articles on the PPL and any recent changes, recent decisions of the Arbitration Board, announcements for upcoming education and training events, and answers to pressing questions from practitioners. A one year subscription to the online version costs approximately EUR 50.

The independent Corruption Research Centre of Budapest provides basic data on public procurement spending through a tool available on its website, known as the Makab database. However, the difficulty in accessing documents on the database makes it difficult to identify and analyse trends. Some private parties and academic researchers have constructed their own databases of public procurement. For instance, the anti-corruption NGO K-Monitor has developed a database, which allows users to track public procurement contracts based on official notifications in national newspapers.

**E-procurement**

The digitisation of Hungary’s procurement system is still in its early stages, having neither a well-developed online environment nor sufficient incentives for contractors to participate. E-notification via the KH’s online portal is mandatory, but additional pre-award processes are limited. E-submission is wholly voluntary in Hungary, and not offered by any central government service. As such, uptake rates remain quite low.

One barrier to greater e-procurement uptake is technical. Indeed, the public portal managed by the KH is still in its infancy and does not yet offer e-access or e-submission services. The site does host a searchable tender database, as well as lists of contracting authorities and procedural and legal guidance materials. While e-submission services are offered by two private portals, these are primarily geared toward private sector contracts.

Furthermore, because contracting authorities are not required to report e-procurement data, the Government does not carry out systematic monitoring, making it difficult for policymakers to evaluate issues and design appropriate responses.

**Corruption**

The perception of corruption in Hungary is quite high compared with other MS and the procurement system appears to be one of the key drivers of this view. It has the second highest rate in the EU of people who report that giving a gift or doing a favour in exchange for a public service is an acceptable practice, far above EU norms. Furthermore, EU and national institutions, as well as civil society groups, frequently cite procurement as a major area of concern for corruption, and the need for action is highlighted in one of the Council’s 2015 country-specific recommendations. However, it should be noted that perceptions among the business community of corruption in procurement are comparatively low, as 47% of businesses perceive corruption to be widespread in national level procurement compared to the EU average of 56%. This disparity may potentially be explained by the culture of impunity that surrounds corruption, or by a fear among respondents of reprisals.

Bid rigging, or collusive tendering, has been identified as one of the most frequent problems in public procurement, representing 60% of the types of corruption encountered in Hungary. Bid rigging undermines the primary goal of the procurement process, which is to achieve the best value for money for public services through fair competition among potential providers.

Moreover, a high number of contracts have been awarded to a relatively small number of companies in recent years, which may be an indicator of insufficient competition or potential corruption.
Since 2012, the Government has been implementing a Corruption Prevention Programme in Public Administration comprising a range of integrity-related measures for the public administration. The programme focused on prevention policies, such as an integrity management system, including anti-corruption training for civil servants, corruption impact assessment of governmental proposals and decrees, protection of whistle-blowers, and awareness-raising activities.

The revised National Anti-Corruption Programme for the period 2015-2018 focuses on the concept of ‘open contracting,’ that is, increased disclosure and participation in public contracting. Specific to procurement, the Hungarian government has set a goal to create an easily searchable and regularly updated database of procurement calls for tender and contracts available online, with each procedure and each bidder given a unique and permanent identifier.

Furthermore, Hungary is currently trying to implement an initiative to incorporate the principle of integrity into its education system through the introduction of anti-corruption material into the national core curriculum, and the curriculum of the NKE, but the effectiveness of the integrity framework in curbing corruption remains to be proven.

**Europe 2020 Agenda**

Hungary’s progress in integrating environmental, sustainability and social policy goals into its public procurement system has been limited. It has not yet adopted targeted national strategies on green public procurement (GPP) and socially responsible public procurement (SRPP), but has introduced initiatives to promote SMEs’ access to procurement markets as well as innovation procurement.

Although the use of GPP criteria in the evaluation process has been permitted for some time, the number of public procurement procedures that do so is consistently small. The 2012 PPL does make a priority of promoting GPP, but implementation is still on-going. The KH has published guidance materials on the website, and the MKI has made available free life cycle cost and CO2 emissions estimation tools for use in preparing and evaluating tenders.

Considerations for innovation-oriented public procurement have been addressed in the Research, Development and Innovation Strategy for 2020, of which one of the overall objectives is to “reinvigorate public sector innovation in the healthcare, environmental, energy, educational, transport and logistics sectors.” The strategy includes recommendations for supporting innovation procurement instruments, including pre-commercial procurement, from the budgets of the Research and Technology Innovation Fund, the ERDF, as well as sectorial budgets. Also, it suggests that consideration be given to setting up an independent governmental function for the management of innovation-centred public procurements.

Additionally, one of the areas that have seen most policy activity in 2013-2014 is support for SMEs. The PPL contains a number of provisions designed to promote better access for SMEs to public contracts, including by collecting data on SME participation in tenders, dividing-up large contracts into smaller lots to encourage competition, and providing opportunities for contracting authorities to conduct restrictive procedures directed at SMEs.

**Irregularities and findings of national Audit Authorities**

The SAO and the KH publish annual findings on the use of public procurement by contracting authorities. The most frequent irregularities are generally related to the submission of faulty data, amendments of the contracts, and procedures liaised with the award of contracts and subject of procurement.
The SAO conducts audits to evaluate the effectiveness of the public procurement system. In 2014, it assessed the impacts of the amendments made to the PPL in the period 2008-2012, as well as those of the new legislation that went into effect in 2014 on the following institutions: the Ministry of Public Administration and Justice, the Ministry for National Economy, the KH and the KEF. Two key positive findings were that during this period, the time required to process a tender from conception to signature of contract was substantially reduced, and the selection and award criteria were made less ambiguous. In addition, a few deficiencies were detected in the regulatory framework and yielded recommendations towards the Ministry of National Development, the KH, as well as the KEF concerning, respectively: the implementation of legislative amendments, the dissemination of information and data as established in the current legislation, and the possibility to log-in to the KEF portal through a client gateway.

The SAO regularly highlights the collusion of contracting authorities and bidders, unjustified cancellation of procedures post award, and low participation rates by local governments in centralised public procurement, as areas of concern.

In its role as the Audit Authority, the Directorate General for Audit of European Funds carries out system audits and audits of operations, including in public procurement. Access to its reports is, however, restricted.

Other assessments carried out directly by the EC also identify issues including, in particular affecting major infrastructure projects, conflicts of interest, high frequency of a small number of companies being awarded tenders for EU co-financed contracts, large number of tenders with only one tenderer, and excessive costs, especially in cases of EU funded projects.

Additionally, the most common irregularities detected by the EC include the application of discriminatory and disproportionate selection criteria, including excessive number of experts and very detailed technical and professional credentials required, excessive references required, contract performance criteria applied as selection criteria, or modification of an essential condition of the contract referring to “unforeseeable circumstances”. In 2013, a substantial financial correction was implemented, due in part to deficiencies observed in public procurement during the 2007-2013 programming period.

**Outlook**

The most significant issue in Hungary’s near-term outlook is a major overhaul of the country’s PPL. As part of their compliance with the requirement to transpose the 2014 EU Procurement Directives, the PMO has been consulting with other government bodies and a number of outside experts and professional associations to undertake a fundamental reform of the procurement system.

In addition to the Directive such as promoting SME access, adoption of e-procurement and reduction of administrative burden, the new PPL seeks to increase competition through broader dissemination of calls for tender, a more streamlined process including shorter deadlines and fewer documentation requirements, and greater supervision of the performance of contracts by the KH.

**ANALYSIS**

**Strengths**

Passage of the 2012 amended PPL was a landmark improvement for Hungary’s procurement system, contributing to a more standardised and transparent environment.
The PPL has also made headway in attracting more private sector bidders to the process by cutting red tape, thereby increasing competition.

**Weaknesses**

Despite the progress that has been made, one of Hungary’s key weaknesses is efficiency loss due to insufficient competition in the process, especially in view of the constantly evolving regulatory framework, above all for services. As pointed out by the EC, direct award of contracts continues to be broadly used, often without sufficient justification xxiii. In addition, the extensive use of negotiated procedures leads to higher costs and a distortion in the functioning of the market by excluding potential contractors. Additionally, the fact that a significant number of public contracts are being won by the same companies indicates possible corruption or collusive bidding, which may affect competition.

Moreover, corruption has repeatedly been identified as a significant issue affecting public administration in general, and specifically the procurement process. The 2012 Corruption Prevention Program in Public Administration involved a number of prevention policies aimed at reducing opportunities for corruption in public administration, such as the setting up of an integrity management system, but systemic problems remain. Amongst other things, Hungary still lacks a single independent and publicly credible agency that can take charge of, and be held accountable for combating corruption.

One of the key barriers to better oversight of the procurement system, and to better policymaking more generally, is the lack of comprehensive and reliable data collection. This, in turn, is due to the low level of development of the e-procurement system, under which currently only e-notification is mandatory xxiv. The lack of digitisation raises a general problem of transparency and deprives the government of data on award decisions and contracts, which are crucial to identifying potential misuse, and other areas in need of improvement.

Finally, implementation of strategic policy goals including environmental sustainability, innovation and social inclusion into the public procurement system is not highly developed and does not appear to be a top government priority.

**Recommendations**

- **Tackle corruption**: Corruption in the public procurement system is key concern in Hungary, despite the launching of multiple initiatives designed to address it in recent years.
  - Improve the track record of prosecution of corruption in public procurement and apply dissuasive sanctions.
  - Implement the Open Contracting initiative in a rigorous and comprehensive way.
  - Reduce the cost of appealing procurement decisions by lowering filing and court fees for aggrieved parties seeking redress.
  - Incorporate timely and comprehensive data collection and dissemination into the design of the ongoing e-procurement implementation process.

- **More competitive procedures**: Hungary makes more frequent use of direct award and negotiated procedures than most other MS, often without providing sufficient justification. This limits competition for public contracts.
  - Reduce reliance on negotiated procedures in favour of more competitive alternatives, unless well-justified.
Increase the uptake of e-procurement as it increases transparency, competition and allows for cost saving by providing sufficient and adequate administrative capacity.

**Improve staff capacity**: Shortages of adequately skilled staff are present at the central and local level, contributing to irregularities, delays, and Hungary’s low EU funds absorption rate.
- Institute mandatory, rigorous training regime for all new procurement practitioners to increase and maintain the skills of staff, as laid out in Hungary’s Partnership Agreement.
- Develop staff retention and motivation policy, as laid out in the Partnership Agreement.
- Increase procurement staff at the PMO, which is in charge of the supervision of procurement for EU development funds.

**Strategic use of public procurement**: The integration of environmental, sustainability and social policy goals into the public procurement system is not a high-level priority in Hungary, and thus not well advanced.
- Develop training and guidance materials on the use of non-price criteria in tender selection.
- Conduct awareness-raising efforts, including as part of the new training regime and planned procurement conferences, to educate contracting authorities on the benefits of innovative, sustainable and inclusive procurement.

---


iii Article 123 of the Act CVIII of 2011 on Public Procurement (PPL)


ix European Commission (2013), Identifying and reducing corruption in Public Procurement in the EU

x Public Procurement Authority, available at: www.kozbeszerzes.hu


xiv European Commission (2013) Flash Eurobarometer 374: Businesses’ attitudes towards corruption in the EU


xvi Centre for Environmental Studies, Available at: http://www.ktk-ces.hu/


DG REGIO (2014), Annual Activity Report
