INTEGRITÁS HATÓSÁG

ANNUAL ANALYTICAL INTEGRITY REPORT

2022

Budapest, June 2023

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Foreword

The Integrity Authority (hereinafter: the Authority) was established to safeguard EU taxpayers' money in Hungary and to ensure that it is spent as intended. We also aim to build an economic culture where stakeholders can and will say no to corruption challenges. According to its mission, the role of the Authority is preventive, protecting society and the economy and assisting Hungarian and foreign businesses.

Act XXVII of 2022 establishing the Authority (hereinafter: Eufetv) provides for the tasks of the Authority, including the annual analytical integrity report to be prepared by 30 June each year and the areas and topics to be analysed in it. Thus Integrity Authority's Annual Analytical Integrity Report examines the development of the public procurement market, the effectiveness of the regulatory environment, the practice of framework agreements and assesses the control system in the context of the use of EU funds. As required by law, our first Annual Analytical Integrity Report also addresses the issue of conflict of interest and declarations of assets.

The completion of our report by 30 June 2023, as well as the functioning of the Authority, is a milestone in the conditionality procedure.

There had never been an integrity report in Hungary before, so we had to produce one without precedent and in a relatively short time. While the Authority's Public Procurement Risk Assessment Report published on 15 March 2023 was prepared in the structure set out under Pillar IV of the OECD MAPS (Methodology for Assessing Procurement Systems), the Integrity Report is based on significant research and our own methodology, developed in parallel with the preparation of the report, and also draws on international examples where relevant.

The Integrity Report, which is over 200 pages long, is divided into chapters on the main topics identified by the law. The structure of the chapters is consistent: summary, assessment of available data, description of the subject and recommendations. The nearly 50 recommendations in the report were written with the intention of introducing and strengthening good practices.

In the course of our work, we found that the data from the domestic institutional system are fragmented, sometimes incomplete, and the information is often not verified.

Together they do not form a coherent, structured database, so the Authority will carry out further systemic and ad hoc investigations in several areas over the next 6-12 months.

Our experience also varied in terms of the speed and capacity of data provision and the quality, completeness and usability of the data provided. Part of our proposals will therefore deal with data and their maintenance and accessibility.

The key lesson from the work we have done is the need to introduce an ownership approach (and the responsibility that goes with it) and, where relevant, a risk-based approach across the whole range of institutions. The institutional - control - system needs to be equipped with the right human and IT tools, knowledge and methodology to make its control work more effective.

The Integrity Authority offers assistance and partnership in building a system of ownership approach, audit methodology and risk-based audits for domestic institutions dealing with public procurement and EU funds.

In the meantime, the Integrity Authority itself is working with both the OECD and recognised high-level EU national authorities to identify and localise international good practice.

The key recommendations from the report's chapters are summarised below.

CONTROL SYSTEM FOR EU FUNDS

The legislative environment for public procurement is considered to be appropriate, on the basis of which each control institution has established its own internal control methodology. However, these methodologies are specific to the different EU funds, both in terms of content and form, and therefore vary considerably. The discrepancies make it difficult, among other things, to assess the rules applied, to verify compliance with them and to judge whether the checks are being carried out properly. In view of the above, it cannot be stated with reasonable assurance and sufficient supporting evidence whether the controls performed are sufficiently effective and whether they meet the stated control objectives and the related tasks. It should be pointed out that internal regulations do not, or rarely, specify individual responsibilities for performing audits.

The above weaknesses in the control system in place may be the reason why the number of irregularity procedures is very low in relation to the number of support agreements, which in itself indicates a lack of functionality of the control system.

A notable example is the advance notice given by the institutions to the subject of the inspection, which, depending on the purpose and scope of each inspection, may allow excessive time and opportunity to prepare or even to remove evidence. To ensure a higher success rate in detecting fraudulent projects, we propose to rethink the method of pre-announced on-site audits and to use a higher proportion of surprise, unannounced audits.

A similar example is that the Directorate General for Audit of European Funds (EUTAF) regularly draws attention to high systemic risks in the institutional system that are not being adequately and/or timely addressed. There were also findings that have been included in every annual EUTAF systemic audit for the last 2-3 years. This suggests that there has been no substantial progress in that area.

It is recommended that the audit institution should introduce a risk analysis approach and methods and cross- support scheme audits.

We recommend in particular and explicitly that the principle of 'substance over form' should be a priority for controls, as real financial risks can only be properly assessed by understanding and evaluating the actual content of transactions. Given that the current control system focuses primarily on the formal aspects of legal compliance, the Authority also offers methodological assistance to organisations to help them assess the content of controls and to take a risk-based approach.

PUBLIC PROCUREMENT

The Hungarian public procurement legislation is in line with the requirements of the EU Directives.

One of the main findings of our audit of the Hungarian public procurement system is that, as the bottlenecks identified in the relation to efficiency indicate, in addition to minor adjustments to the regulations, the most important anomalies should be addressed in the application of the law in order to ensure the proper functioning of public procurement.

In accordance with the provisions of the Eufetv., we dealt with the functioning of framework agreements, including the current practice of centralised public procurement.

Centralised public procurements are characterised by their high value and therefore the number of tenderers who can participate in the procedures is limited. The framework agreements typically significantly narrow the public procurement market for 2-4 years, depending on the decision of the central purchasing body. We therefore consider it necessary, in agreement with the Anti-Corruption Working Group, to look more deeply into the distortive, competition-restricting effects of framework agreements on the market, including a review of the limit numbers and the practice of central purchasing bodies to permit partial tenders.

In order to perform meaningful audits and analyses, the Authority primarily recommends that the data on public procurements implemented by central purchasing bodies under framework agreements should be publicly available and that the analysis and linking of such data with other public procurement databases should be ensured.

We also made proposals to extend competition in public procurement, including a review of the rules.

In addition to centralised public procurement, we have made proposals to increase confidence in public procurement and improve its efficiency. Of those we wish draw your attention specifically to the following:

- supplementing the rules on prior market consultation to reduce single-tender procedures,
- the elimination of the two-hour waiting period between the deadline for submission of tenders and their opening,
- supplementing the legislation to better ensure the division of the contract into lots,
- the publication of the results of notifications of infringements of fair competition by the Hungarian Competition Authority,
- modification of the rules for the evaluation of tenders in order to reduce the length of procedures,
- increasing the effectiveness and consistency of administrative and judicial remedies in public procurement

CONFLICT OF INTEREST

In short, in a relatively small market with few players, such as Hungary, conflict of interest situations are particularly difficult to avoid, and therefore they require special attention and learning to manage the inherent risk in conflict of interest situations. Instead of the forced concealment of these situations, an appropriate control environment should be put in place. In the Authority's view and based on actual market examples, this is feasible.

The EU and national rules on conflicts of interest are essentially the same, in line with EU standards, which provides a sound basis for building trust in public procurement. At the same time, the legislation and guidelines are very complex, so it is appropriate to support practitioners by publishing practical guides, model declarations and organising workshops.

An important aspect, together with declarations of assets, is the development of a uniform system for electronic recording and control of those within the public procurement market, for which we are developing a separate recommendation.

DECLARATION OF ASSETS

The issue of the system, operation and control of declarations of assets requires further examination: the Authority will issue a separate report on the subject in Q4 2023, detailing its findings and making recommendations.

ANALYSIS OF PUBLIC PROCUREMENT DATA

For the analysis of public procurement data, we identified a number of international methodologies and/or analytical components, of which the OECD and the European Commission were considered relevant and we modelled our own analysis on those based on the available Hungarian data.

We found that the public procurement market is particularly concentrated in terms of several procurement objects and geographical locations (counties). Further and deeper analysis are needed to identify meaningful points of intervention.

In the course of its work, the Authority has found that the EKR (Electronic Public Procurement System) database contains adequate data, but the information content and completeness of the manually entered EKR records are in several cases of varying quality in terms of content and format.

This currently limits the ability of the EKR system to provide high quality data for automated processing and automated testing. We recommend extending the checks on the input interfaces, clarifying and cleansing the data loaded, and ensuring data linkage with the separate registers of the central purchasing bodies.

RECOMMENDATION

The implementation of the recommendations outlined in the Authority's first Integrity Report will hopefully contribute to a change of mindset, a more careful and efficient use of public funds, laying the foundations for a change in economic culture and the country's rise.

Ferenc Pál Biró

President

List of abbreviations

ARACHNE – A risk assessment tool developed by the European Commission

Audit Authority – the Directorate General for Audit of European Funds (EUTAF) and, for agricultural subsidies, KPMG Tanácsadó Korlátolt Felelősségű Társaság

ÁEEK – Állami Egészségügyi Ellátó Központ (State Health Supply Centre)

Áht. – Act CXCV of 2011 on Public Finances

ÁÚF – general guide for the calls for proposals for the programming period

Be. – Act XC of 2017 on the Code of Criminal Procedure

BEII – Belső Ellenőrzési és Integritási Igazgatóság (Directorate for Internal Audit and Integrity)

Criminal Code – Act C of 2012 on the Criminal Code

CAGR – Compound Annual Growth Rate

CEF – Connecting Europe Facility

PR – Common Provisions Regulation

CPV – Common Procurement Vocabulary: a uniform classification system for public procurement used in the European Union to classify the subject of public contracts

CRCB – Korrupciókutató Központ Budapest (Corruption Research Centre Budapest)

BR – Dynamic Purchasing System

DROP Plus – Digital Renewal Operational Programme Plus

KÜ – Digitális Kormányzati Ügynökség (Digital Government Agency)

EACN – European Anti-Corruption Contact Network

HRDOP – Human Resources Development Operational Programme EKR – Electronic Public Procurement System

EC – European Commission

Eufetv. – Act XXVII of 2022 on the Control of the Use of EU Budget Funds

EP – European Parliament

EUTAF – Directorate General for Audit of European Funds

ADF – Annual Development Framework

FAIR system – Magyarország Fejlesztéspolitikai Nyilvántartási és Menedzsment Rendszere (Hungary's Development Policy Registration and Management System)

EDIOP – Economic Development and Innovation Operational Programme

GRECO – Group of States against Corruption (Council of Europe)

GVH – Hungarian Competition Authority

Authority – Integrity Authority

HET – Magyarország Helyreállítási és Ellenállóképességi Terve (Hungary's Recovery and Resilience Plan)

ITOP – Integrated Transport Development Operational Programme

Infotv. – Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information

Integrity Report – Annual Analytical Integrity Report

Kbt. – Act CXLIII of 2015 on Public Procurement

KDB or Arbitration Board – Public Procurement Arbitration Board

KEF – Közbeszerzési Ellátási Főigazgatóság (Directorate-General for Public Procurement and Supply)

EEOP – Environment and Energy Operational Programme

KFF or Közbeszerzési Felügyeleti Főosztály (Public Procurement Oversight Department) – Prime Minister's Office, Deputy State Secretariat for Public Procurement Oversight, Public Procurement Oversight Department

KH – Közbeszerzési Hatóság (Public Procurement Authority)

KKM Külgazdasági es Külügyminisztérium (Ministry of Foreign Affairs and Trade) – Brexit Fund

FA – framework agreement, where FA1 indicates public procurement procedures and contracts for the conclusion of framework agreements and FA2 indicates procurement from framework agreements

CHR – Central Hungary Region

PASOP – Public Administration and Public Service Development Operational Programme

KPMG – KPMG Tanácsadó Korlátolt Felelősségű Társaság

KSZF - MKGI Központi Szolgáltatási Főigazgatóság (Central Services Directorate General)

HFOP - Hungarian Fisheries Operational Programme

MAPS - Methodology for Assessing Procurement Systems (OECD methodology for assessing public procurement systems)

MKGI - Miniszterelnökség Közbeszerzési és Gazdasági Igazgatósága (Prime Minister's Office, Public Procurement and Economic Directorate)

MNB - Magyar Nemzeti Bank (National Bank of Hungary)

NAIH - Nemzeti Adatvédelmi és Információszabadság Hatóság (National Authority for Data Protection and Freedom of Information)

NAV - Nemzeti Adó- és Vámhivatal (National Tax and Customs Administration)

NFFKÜ -Nemzetközi Fejlesztési és Forráskoordinációs Ügynökség Zrt - Modernisation Fund

NGM - Nemzetgazdasági Minisztérium (Ministry of National Economy)

NKOH - Nemzeti Kommunikációs Hivatal (National Communications Office)

OECD - Organisation for Economic Co-operation and Development

OLAF - European Anti-Fraud Office

OP - Operational Programme

Panasztv. - Act CLXV of 2013 on complaints and notifications of public interest

Civil Code - Act V of 2013 on the Civil Code

PÜT - az operatív programok finanszírozásához kapcsolódó pénzügyi elszámolásról szóló tájékoztató (Guidelines on the financial clearance of accounts for the financing of operational programmes)

PWC - PricewaterhouseCoopers

Old Criminal Code - Act IV of 1978 on the Criminal Code

RRF - Recovery and Resilience Facility

TOP - Territorial Development Operational Programme

UNCAC - United Nations Convention against Corruption

VBÜ - Védelmi Beszerzési Ügynökség (Defence Procurement Agency)

CCHOP - Competitive Central Hungary Operational Programme

Vnytv. - Act CLII of 2007 on Certain Obligations to Declare Assets and Liabilities

RDP - Rural Development Programme

vs. - versus

1. Introduction

Background

The Authority is an autonomous public administration body established on 19 November 2022 in accordance with the relevant provisions of Act XXVII of 2022 on the Control of the Use of EU Budget Funds. The aim of the Authority is to strengthen the prevention, detection and correction of fraud, conflict of interest and corruption in the implementation of EU financial assistance, as well as other related infringements and irregularities.

The Authority acts in all cases where it considers that a body responsible for the use or control of EU funds has failed to take the necessary steps to ensure sound financial management of the EU budget or to protect the financial interests of the European Union, or where it considers that there is a risk of such failure.

The Authority pays particular attention to the Integrity Risk Assessment Report in the performance of its tasks and takes it into account when preparing its annual analytical integrity report. The Integrity Report provides the basis for the development of integrity risk indicators.

Applied methodology and limitations

Pursuant to its obligation under Section 11 of the Eufetv., the Authority prepares an annual Analytical Integrity Report. The Authority must prepare its first annual Integrity Report by 30 June 2023, publish it on the Authority's website and send it to the National Assembly for information pursuant to Section 12(1). Thereafter, within three months of disclosure, the Government sends a response to the Authority describing how it will address the findings and recommendations of the Annual Analytical Integrity Report.

Pursuant to the relevant provisions of the Eufetv., the Integrity Report contains the following:

a) an analysis of the concentration of the public procurement market in the context of the use of EU funds, the difference between the estimated value and the contract value in public procurement procedures, and the possible reasons for this,
b) assessment of the effectiveness of legislation and problems encountered in its implementation in the areas within the Authority's competence, as well as analysing legal practitioners' and administrative practices and identifying risk indicators,

c) an analysis of the use of framework agreements and of the practice of awarding contracts under framework agreements, including the distribution of their award among the various economic operators,
d) * assessment of the control system in place for monitoring the use of European Union funds regarding the identification and effective prevention of risks of corruption, fraud and conflicts of interest, and the detection and remedying of such cases,
e) * recommendations on issues under points a) to d).

Pursuant to section 74 (1) of the Eufetv, in addition to the content set out in Section 11, the first analytical integrity report

a) shall include an assessment of whether existing conflict of interest regulations are in line with Commission Notice Guidance on the avoidance and management of conflicts of interest under the Financial Regulation (C/2021/2119) and whether improvements are needed,
b) shall, taking into account the integrity risk assessment practice of the Authority, define specific indicators for fraud within the meaning of Article 3 of Directive (EU) 2017/1371, corruption within the meaning of Article 4 (2) of Directive (EU) 2017/1371 and conflict of interest within the meaning of Article 61 (1) (a) of Regulation (EU, Euratom) 2018/1046 and Article 24 of Directive 2014/24/EU, adjusted in accordance with Commission Guidance on the avoidance and management of conflicts of interest under the Financial Regulation (C/2021/2119),
c) shall survey the regulatory framework and operation of the Hungarian system of declarations of assets, including its scope and control process.

From the second annual report onwards, the Authority's Integrity Report will also include an evaluation of how the organs vested with functions and powers regarding the control of the use of EU funds have taken into account previous Integrity Reports and recommendations, and in particular recommendations under section 15.

In the course of its work, the Authority has essentially conducted a secondary analysis by compiling, reviewing and analysing the relevant information and data made available to the Authority or publicly available up to 28 June 2023. While doing so, the Authority also took into account its report on the integrity risk assessment of the Hungarian public procurement system published on 31 March 2023 and the report of the Anti-Corruption Working Group for the year 2022.

As part of its assessment of the control systems, the Authority collected additional information from the organisations/responsible persons concerned through professional interviews.

The annual Analytical Integrity Report was prepared based on:

- the relevant legislation and regulations listed in Annex 1, and
- the data and information supply collected by the Prime Minister's Office, the Directorate for Internal Audit and Integrity (BEII), the Public Procurement Authority, the Directorate-General for Public Procurement and Supply (KEF), Digitális Kormányzati Ügynökség Zrt., (DKÜ), the National Communications Office (NCA) and the Directorate General for Audit of European Funds (EUTAF), as well as publicly available

information databases.

The analyses, assessments and recommendations presented in the Integrity Report are based solely on the publicly available information cited, the data and information provided by stakeholders and the interviews conducted.

2. Systemic audit of the control system for EU funds

2.1 Summary

In our work we examined whether and to what extent the systems in place to control the use of EU funds are capable of identifying, preventing, detecting and remedying the risks of corruption, fraud and conflict of interest.

The Authority examined the control processes and systems for EU funds in order to assess the compliance of the control systems in Hungary with the effective Hungarian legislation and regulations and with EU standards and the applied and documented control methods. The Authority wanted to ensure that appropriate control steps were in place and that each documented control achieved its objectives. The main objective of the Authority's audit is to make findings and recommendations on identified weaknesses in control systems based on the facts.

The control systems were examined from a process perspective, following the life cycle of the support from the definition of the Annual Development Framework to the closure of the maintenance period. The scope of our review covered the calendar year 2022, so it also covers the 2014-2020 and 2021-2027 programming cycles. For the purpose of our audit, we considered the audit trails[1] and related internal rules and procedures at each audit organisation, as well as the Audit Authority's reports and the European Commission's audit reports as the basic documentation, and took into account the relevant legislation.

The Authority's assessment is that the completeness, consistency and structure of the existing systems, processes, internal rules and legal standards for the regulation and control of the use of EU funds are broadly in line with international expectations and standards (detailed in Annex 1). In addition to the Integrity Report, we consider it necessary to carry out further testing of the effectiveness and operating mechanisms of the control systems established on the basis of the results of the Integrity Report in order to obtain a full and detailed picture of any weaknesses, inconsistencies or anomalies in the control systems.

[1] Section 3. item 4 of Government Decree 272/2014 (5 November) and Section 3. tem 4 of Government Decree 256/2021 (18 May)

During our audit work, we made the following specific and systemic observations on the control processes and systems for EU funds, mostly concerning the first level of control of managing authorities:

- the level of detail of the regulation of the control systems varies from one managing authority to another: the information content, completeness and relevance of the legally required audit trails vary in terms of content and form from one managing authority to another. With regard to the differentiated content elements, their practical application and the effectiveness of their functions also vary widely;
- the recommendations for action by the Audit Authority (which, as the second level of control, is also responsible for the sample checks of projects) have not been fully followed up and corrected by the organisations affected by the recommendations. We recommend that the audit authority's findings be processed and integrated into the system as soon as possible and, if possible, within the calendar year, with a focus on the early identification and immediate elimination of circumstances that could give rise to fraud;
- the control system was in several cases not fully regulated, and we therefore consider it necessary to provide a complete outline of the processes, with the appropriate control steps and responsibilities;
- it is essential that, at least annually, and more often if necessary, the basic audit processes are kept up to date with economic, legal and other changes;
- we believe it is crucial to change the approach to the audit systems and especially the audit programmes used, by placing more emphasis on the content-based, risk-based review of documents, the use and assessment of red flags, rather than the current administrative, checklist-based approach that focuses on the formality of transactions and deals;
- in addition to acknowledging the IT innovations of the new programming period, we recommend the further development of the IT environment, the integration of new functions and the synchronisation with different databases to identify risk factors early and effectively, especially for critical processes such as the performance of financial audits;

- to ensure objectivity and independence, we propose a significant increase in the frequency of unannounced audits, with the permanent use of external experts;
- in the case of audits of public procurement performed by the managing authority or the Public Procurement Supervision Department, we see the need to develop methodologies for detecting fraud and corruption and to integrate them into the audit structure;
- the application of a single set of evaluation criteria would be justified for irregularity procedures, in order to ensure full transparency, consistency and publicity, along with the public disclosure of the data of the procedures in an organised, searchable and publicly available manner in accordance with the data management rules;
- In our Integrity Report, we also made specific findings on areas identified as risky, in particular in relation to On-site Audit and Financing, which are explained in more detail in the Findings section.

Our findings and recommendations are collected in a summary in Annex 2 of the Integrity Report, along with the relevant part of the Integrity Report.

Although the above findings of our audits contain observations and criticisms concerning several segments of control systems, we consider it important to emphasise that these findings were made in a constructive spirit, with the aim of improving the institutions and systems operating the system for the common purpose. In view of the extended timeframe available for the preparation of future Integrity Reports, the Authority considers it its task to open up a dialogue with all institutional actors, with a deeper understanding of operational problems and inconsistencies and a focus on connectivity.

2.2 Summary of the audit process and operational programmes

2.2.1 Control systems

The use of EU funds is a complex process from a regulatory and institutional point of view, given that the support scheme must comply with both national and EU legislation.

The principle of shared governance means that the European Union and the Member States regulate jointly. Following the rules set out in EU regulations, the Member State is responsible for setting up and running the implementing institution system responsible for using EU funds.

The legal framework for European Structural and Investment Fund resources is laid down by the European Union in the Common Provisions Regulation (CPR[2]) and in the Fund-specific regulations[3]. These regulations are filled with content by the government decree of the domestic legislator on implementation for a given period, which together contain the mandatory bodies to be established and define their tasks.[4]

Managing Authority

In the programming period 2014-2020, the tasks of the managing authority were performed by the line ministries, and then, based on Government Decree 272/2014 (5 November) [hereinafter: Government Decree 272/2014 (5 November) and, for the 2021-2027 programming cycle, the amendments of Government Decree 256/2021 (18 May) [hereinafter: Government Decree 256/2021 (18 May)] effective from 25.05.2022, the managing authority functions have been largely absorbed by the Ministry of Regional Development of the Prime Minister's Office, with the exception of the roles of the Ministry of Agriculture, which is in charge of the fisheries sector[5] , and the Cabinet Office of the Prime Minister in the areas of digitisation[6] and resilience[7] .

Managing authorities have a statutory obligation at Community and national level to carry out primary management and control of all types of use of funds and have a complex organisational structure to perform these tasks.

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[2] Regulation (EU) 1303/2013 of the European Parliament and of the Council for the programming period 2014-2020; Regulation (EU) 2021/1060 of the European Parliament and of the Council for the programming period 2021-2027

[3] For example: Regulation (EU) 2021/1058 of the European Parliament and of the Council on the European Regional Development Fund and the Cohesion Fund

[4] The detailed tasks of the institutional system of development policy are regulated by Government Decree 272/2014 (5 November) on the rules for the use of certain EU funds in the 2014-2020 programming period, and by Government Decree 256/2021 (18 June) on the rules for the use of certain EU funds in the 2021-2027 programming period.

[5] Hungarian Fisheries Operational Programme Plus

[6] Digital Renewal Operational Programme Plus

[7] Recovery and Resilience Building Tool

In addition to the strategic planning, monitoring, methodological and other support units, the work of a number of departments and divisions is more closely linked to the direct management of projects. These bodies follow the entire support lifecycle of the beneficiaries' projects, exercising primary control over the beneficiaries of EU funds, whether in priority, standard or simplified procedure schemes. A brief description of these bodies:

- *Project-selection and decision:* The primary stage for subsequent projects is the submission of the support application, where the beneficiary submits its application to the managing authority with the documents specified in the call. The Project Selection and Decision Unit is responsible for checking the form and content of applications and then recommends a support decision, which may be negative or positive (without specifying whether the decision has reduced support content or support is conditional), indicating the amount of funding awarded and the total cost of the project.
- *Contract management:* The managing authority, as a public body in a civil law relationship, concludes a support agreement with or issues a support instrument for applicants who have received a positive decision granting support. This body handles changes and amendments to the terms and conditions of the support agreement.
- *Financial control:* From the date of entry into force of the support agreement concluded, the beneficiary may use part of the amount of the support granted to them, the advance. Advance claims are checked and approved by the financial control unit of the managing authority, as are subsequent interim and final payment claims in which the beneficiary submits the invoices that may be linked to the project for clearance.
- *Public procurement inspection:* If a procurement obligation arises during the implementation of the project, it is managed by the public procurement unit of the managing authority.
- *On-site audit:* To ensure the contractual implementation and effective closure of projects, the managing authority operates an on-site audit unit. This unit works in the area where the projects are implemented, making sure that the project is technically and professionally advanced, that the documentation is complete and that other legal and call obligations are met.

- *Project maintenance monitoring:* Beneficiaries undertake, as specified in the call for proposals, to maintain the technical and professional content of their project for the period of time specified in the legislation (3-5 years) after the physical completion of the project, where relevant, i.e. where a maintenance obligation is required. A project maintenance report is prepared on this process and submitted to the managing authority from the completion of implementation. A final project maintenance report is prepared at the end of the maintenance period.

- *Irregularity:* Throughout their lifecycle, projects are bound by their support agreement, the call for proposals and general guidelines that form part of it, as well as the legal requirements. In case of non-compliance with any of these obligations, the managing authority will conduct an irregularity procedure, on the basis of which, after having established the irregularity[8], the managing authority may unilaterally withdraw from the beneficiary's project and order the beneficiary to repay the support received plus interest.

Certifying authority

The functions of the *certifying authority* are performed by the Hungarian State Treasury, within that the EU Support Clearance Department and the EU Support Compliance Department are responsible. Professional supervision over the departments performing the tasks of the certifying authority is exercised by the Deputy President of the Hungarian State Treasury for Payments. The certifying authority's tasks include checking the documentation supporting the payment of support, drawing up statements of expenditure, sending financial forecasts for the amount of payment claims for the current year and the following calendar year, and submitting accounts and corrections to the EC.

Audit Authority

For the current and previous programming periods, the Audit Authority tasks will continue to be performed by a public administration body, autonomous from 1 January 2023, by EUTAF, and by KPMG for agricultural support. The Audit Authority, as the second level of control, is responsible, among other things, for the formulation and regular review of the audit strategy and annual audit plans, the implementation of system audits and sample checks of projects, and the examination of annual accounts.

8 Section 3. item 18 of Government Decree 256/2021.(18 May)

Central coordination

The coordinating body has been set up within the Prime Minister's Office. The tasks of the coordinating organisation include, but are not limited to:

- checking the regularity of public procurement procedures,
- operation of a single monitoring and information system,
- coordination of anti-fraud activities,
- monitoring the progress of programmes, monitoring indicators,
- ensure consistency in programme and project implementation (single legal environment, template documents),
- coordinating the planning process for the annual development framework,
- coordination of the preparation of system specifications,
- quality assurance and publication of calls for proposals,
- coordination of partnership consultation and communication tasks,
- tasks related to financial processes.

Intermediary Bodies

Intermediary bodies were set up for three operational programmes (Regional and Settlement Development OP, Competitive Central Hungary OP, Hungarian Fisheries OP) in the 2014-2020 programming period, and for two operational programmes (Hungarian Fisheries OP Plus, Regional and Settlement Development OP Plus) in the 2021-2027 programming period, which in both periods were established within the Hungarian State Treasury and perform the tasks set out in the agreement with the Managing Authority.

Implementation of the Recovery and Resilience Facility

As regards EU funds, a review of the institutional framework for the implementation of the Recovery and Resilience Facility (RRF) is also needed. The institutional framework for implementation is similar to that for the allocation of Cohesion Fund resources and is integrated into it. The institutional system and the tasks of the organisations are regulated by the Government Decree 373/2022 (30 September) on the basic rules of the implementation of Hungary’s Recovery and Resilience Plan (HET) and the institutions responsible for it.

The national authority coordinates the planning and implementation of the HET. Its tasks include: drafting the rules of procedure, liaising with national and EU institutions, drafting reports and fund drawdown requests to the EC. The national authority may also designate *implementing bodies* to act in the name and on behalf of the national authority, as specified in the implementation agreement. The tasks of the operating bodies are performed by the organisation specified in Annex 1 to Government Decree 373/2022 (30 September).

The primary focus of the present assessment is the effectiveness of the managing authorities - in the case of the RRF, the national authority - responsible for the first level of control of the management and control system, and the design and adequacy of the control system.

2.2.2 Operational Programmes

In the first phase of the Operational Programme planning, the Member State concludes a Partnership Agreement with the European Commission. In this document, the Member State draws up a list of thematic objectives for which it intends to carry out interventions using Community funds over the seven-year budget cycle. The Partnership Agreement lists the operational programmes that will operate during the period.

Operational programmes of the 2014-2020 Partnership Agreement:

HUMAN RESOURCES DEVELOPMENT OPERATIONAL PROGRAMME (HRDOP)
The objectives of the HRDOP include addressing the challenges of social inclusion and demography, strengthening the role of the family in society and social cohesion, health promotion and disease prevention, improving the quality of public education, and increasing the number of people with tertiary education who are able to adapt to changes in the labour market.[9]

ECONOMIC DEVELOPMENT AND INNOVATION OPERATIONAL PROGRAMME (EDIOP)

The focus of the programme is on improving the competitiveness and growth of domestic small and medium-sized enterprises. In addition, a secondary objective of the programme is to increase employment through the creation of competitive jobs. A key objective of the OP is to develop underdeveloped areas, including free enterprise zones, to unlock and strengthen their socio-economic potential, and to improve employment for disadvantaged groups and ensure that workers thrive locally.[10]

[9] Human Resources Development Operational Programme, CCI: 2014HU05M2OP001, 10.0, Date of Commission Decision: 15.03.2023

[10] Economic Development and Innovation Operational Programme, CCI: 2014HU16M0OP001, 14.0, Date of Commission Decision: 16.12.2022

INTEGRATED TRANSPORT DEVELOPMENT OPERATIONAL PROGRAMME (ITOP)

Based on its name, the ITOP contributes indirectly to economic growth based on high value-added production and employment expansion through infrastructure investment, modernisation of regional and urban-suburban transport. It aims to increase energy and resource efficiency directly by strengthening public transport and less polluting modes of transport.[11]

ENVIRONMENT AND ENERGY OPERATIONAL PROGRAMME (EEOP)

The Operational Programme for Environment and Energy Efficiency aims to address climate change adaptation, improvements in urban water supply, wastewater drainage and treatment, wastewater cleaning, waste management and remediation, nature and wildlife conservation, in line with the Resource Efficient Europe[12] initiative.[13]

TERRITORIAL AND SETTLEMENT DEVELOPMENT OPERATIONAL PROGRAMME (TOP)

The development policy objectives of the Operational Programme cover the development of local economic infrastructure, increasing investment and investment, improving access to jobs, providing local services, promoting economic activity and employment, and supporting tourism in all counties with the exception of the Central Hungary Region (CHR). In addition, it allocates resources for the implementation of municipal and urban development concepts, such as municipal energy improvements, the creation of green spaces, sustainable urban transport improvements and the development of run-down urban areas.[14]

[11] Integrated Transport Development Operational Programme, CCI: 2014HU16M1OP003, 19.0, Date of entry into force of the Member State modification decision: 16.11.2022

[12] European Parliament resolution of 24 May 2012 on a resource-efficient Europe (2011/2068(INI)) (2013/C 264 E/10). 14.05.2012

[13] Environment and Energy Efficiency Operational Programme, CCI: 2014HU16M1OP001, 10.0, Date of Commission Decision: 22.12.2021

[14] Territorial Development Operational Programme, CCI: 2014HU16M2OP001, 7.0, Date of Commission Decision: 15.07.2020

COMPETITIVE CENTRAL HUNGARY OPERATIONAL PROGRAMME (CCHOP)

The development resources of the Structural Funds to be used in the Central Hungary Region and the resources of the sectoral operational programmes to be implemented in accordance with Article 70 of EU Regulation 1303/2013 for the support of operations outside the programme area, and the resources of the national impact of the development projects to be implemented in the Central Hungary Region are included in the CCHOP. The objectives of the programme include improving the competitiveness of economic operators and their international role, increasing employment, improving energy and resource efficiency, and implementing local and regional development in CHR that supports economic growth.[15]

PUBLIC ADMINISTRATION AND PUBLIC SERVICE DEVELOPMENT OPERATIONAL PROGRAMME (PASOP)

The proper functioning of public administration and public services is a crucial need for modern European societies. In this respect, the Public Administration Development Operational Programme, which is part of the Partnership Agreement, included among its objectives, for example, investments in increasing the institutional capacity and efficiency of central, regional and local public administration bodies and public services, reducing administrative burdens and introducing e-government.[16]

HUNGARIAN FISHERIES OPERATIONAL PROGRAMME (HFOP)

The programme's objectives consist of points related to the conservation and sustainability of aquaculture, such as improving the competitiveness of traditional pond farming, increasing biodiversity, using alternative energy sources, reducing environmental pressures, promoting fisheries and aquaculture research and knowledge transfer.[17]

RURAL DEVELOPMENT PROGRAMME (RDP)

The focus areas of Hungary's rural development programme are: restoring, preserving and enhancing ecosystem health, promoting food supply chain organisation and agricultural risk management, and supporting poverty reduction, social inclusion and economic development in rural areas.[18]

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[15] Competitive Central Hungary Operational Programme, CCI: 2014HU16M2OP, 6.1, Date of Commission Decision: 21.12.2020

[16] Public Administration and Public Service Development Operational Programme, CCI: 2014HU05M3OP001, 3.0, Date of entry into force of the member state amending decision: 18.06.2022

[17] Hungarian Fisheries Operational Programme, CCI: 2014HU14MFOP001, 3.0, Date of Commission Decision: 02.09.2019

[18] Rural Development Programme, CCI: 2014HU06RDNP001, 7.0, Date of Commission Decision: 07.08.2020

The 2021-2027 programming period:

In the current programming period, the new Partnership Agreement did not make many changes to the operational programmes. A significant number of programmes, their objectives and instruments have been retained with a simple "Plus" (e.g. ITOP Plus) added to their titles, reflecting the continuity in the use of resources compared to the previous period. As a novelty, digitalisation and ICT development was integrated into a separate programme called DROP Plus, and the EAFRD-funded rural development area was removed from the structure of the Partnership Agreement.

DIGITAL RENEWAL OPERATIONAL PROGRAMME PLUS (DROP Plus)

The Digital Renewal Operational Programme Plus aims to improve Hungary's digital readiness and competitiveness on a large scale. The programme aims to respond to emerging global, technological, security and sustainability challenges with a comprehensive approach and to link all relevant policies, responding to the era of digital transformation and the growing role of the data economy.[19]

The continued version of the OP on Administrative Reform (PASOP) cannot be detected in full in the new period. Instead, the Implementation Operational Programme Plus was created, with the specific aim of ensuring the effective functioning of the development policy institutional system and the necessary and appropriate IT, communication, public evaluation and other professional knowledge engagement tools.[20]

[19] Digital Renewal Operational Programme Plus, CCI: 2021HU16FFPR005, 1.2, Date of Commission Decision: 22.12.2022
[20] Implementation Operational Programme Plus, CCI: 2021HU16FFTA001, 1.3, Date of Commission Decision: 22.12.2022

Table summarising the framework for the programming period, in euro:

2014-2020 programming period[21]		2021-2027 programming period[22]	
OP abbreviation	EU support (EUR)	OP abbreviation	EU support (EUR)
EDIOP	8,086,741,462	EDIOP Plus	4,966,866,973
HRDOP	2,908,158,797	HRDOP Plus	2,908,040,936
EEOP	3,436,287,274	EEOP Plus	3,665,898,008
ITOP	3,331,808,225	ITOP Plus	3,545,630,819
TOP	3,389,963,001	TOP Plus	4,354,018,373
CCHOP	581,963,439	IOP Plus	670,634,820
RDP	3,430,664,493	DROP Plus	1,619,014,275
HFOP	39,096,293	HFOP Plus	37,710,346
PASOP	794,773,905		
Total:	25,999,456,889	Total:	21,767,814,550

Recovery and Resilience Facility (RRF) envelope (EUR)[23]:	5,824,000,000

2.2.3 Preventive System Assessment Reports

During our procedure, we took into account the previous reports of the Authority and the Anti-Corruption Working Group attached to it on the situation of public procurement and corruption in Hungary, which were drafted in line with the objectives of our review.

Report of the Authority of 31.03.2023

The legal framework for public procurement in Hungary is adequate, but the practical operation and control of the system has shortcomings, which the Authority already identified in its first report, the publication of which is a milestone in the EU conditionality procedure.

The document concludes that the legal framework for public procurement in Hungary is basically in line with international standards and guidelines, and that operators are performing the tasks assigned to them by the legislation.

[21] Main allocation + Efficiency reserve, ESIF fund + REACT EU funding, Hungary's Partnership Agreement for the 2014-2020 development period

[22] Without national co-financing, ESIF Fund, Hungary's Partnership Agreement for the 2021-2027 development period

[23] Hungary Recovery and Resilience Plan, www.palyazat.gov.hu/helyreallitasi-es- ellenallokepessegi-eszkoz-rrf

It is positive that the legal provisions on publicity are detailed and data on public procurement procedures are publicly available. Despite the above, the system as a whole is dysfunctional and cost-increasing, rather than reducing costs in line with the original function of public procurement.

In the report, the Authority concludes that there is a need to take a holistic approach to the public procurement control system and to establish more uniform practices and a single control system. The Authority would also expect the operation of harmonised integrity systems at both contracting authorities and tenderers to participate in public procurement. The Authority considers it essential to ensure effective and timely actual control of these and to sanction consistently any shortcomings.

2.3 Examined area and restrictions

Support examined

The scope of the Integrity Report covers the calendar year 2022, so it includes findings related to the audit of the control system of indirect EU funding for the 2014-2020 (Széchenyi 2020) and 2021-2027 (Széchenyi Plus) programming periods. The EU funds under review are the Operational Programmes running in 2022 and the RRF (Recovery and Resilience Facility).

Support not examined:

- Direct EU funding (EC)
- Financial instruments (as part of OPs)
- CEFII - European Network Financing Instrument (CEF)
- Brexit Fund (KKM)
- Modernisation Fund (NFFKÜ)

Restrictions

The Authority examined the control systems operated by the managing authorities and the Public Procurement Authority. The managing authority of each operational programme (OP) is responsible for the regular, efficient and effective use of the funds allocated to it, and the audit therefore covered key elements of the first level control system of EU funds and grants, subject to the limitations.

For the above reasons, during the assessment of the 2022 Integrity Report on control systems, the Authority did not have the opportunity to interview the organisations/responsible persons concerned or to perform sample checks.

However, the Authority will continue to carry out a more detailed and in-depth examination of the control systems after the publication of the Integrity Report, which may be published at a later stage as a result of the legal obligation.

2.4 Audit

2.4.1 Audit methodology and approach

The purpose of our audit is to assess the system controlling the use of EU funds and to determine whether and to what extent it is capable of identifying and preventing, detecting and remedying the risks of corruption, fraud and conflict of interest.

Documents and rules used for the systemic assessment:

- Audit trails,
- Internal rules and procedures,
- Checklists,
- Educational/training materials,
- EUTAF audit reports,
- EC audit reports.

An exhaustive list of the legislative background used for the systemic assessment is provided in Annex 1.

Our approach to the audit was essentially process-oriented, with the main focus on the completeness of the audit processes and the adequacy of the control points. Based on the documents and information made available to us, we examined the transparency of the control systems, the existence and regularity of control points, and their mitigating and reducing effect on corruption, fraud and conflict of interest risks.

The audit work carried out was based on the audit trails (per Operational Programme) made available to the Authority. The audit trails are intended to cover the whole domestic process of the managing authorities' work, i.e. from the annual development framework to the end of the maintenance period.

2.4.2 Completed audits

For the audit trails, we examined their consistency with the Hungarian regulatory framework and whether they are complete in terms of the process under review. The Authority has also examined whether they are properly documented in relation to the relevant legal framework, whether they contain the necessary checks, control points, approvals and levels of responsibility, and whether they are continuously updated.

The processes have been examined objectively, both in isolation and in comparison, to identify any discrepancies and the reasons for them.

In parallel and in line with the trails, the completeness and consistency of the related checklists, internal policies and procedures were also examined.

We have also identified the riskiest processes among those governed by each trail, where any intervention affecting the totality of these processes, could have the greatest impact. We considered a risk area to be one where the control process, based on known good practice and audit experience, is deficient and its regularity may be open to fraud.

In line with the above, we have analysed the key elements of the Operational Programmes:

(1) funding, where accurate, detailed and all-risk analysis prior to the allocation of resources is crucial, as it is at this stage of the process that authorities and institutions can detect signs of fraudulent behaviour in order to minimise the impact on public finances,

(2) the public procurement control process, whose possible deficiencies also have a horizontal impact on the aid system as a whole,

(3) the rules governing on-site audits, their practical implementation and effectiveness,

(4) the irregularity management practices, their level of detail and their traceability.

2.5 Findings

The internal structure of managing authorities is complex and their tasks are well defined. The operational processes are well established, with a sense of continuity across programming periods, since, in addition to the closure of the phasing-out period, the launch of the new budget period programmes can happen simultaneously, in order to follow and apply possible changes in legislation and procedures.

In the course of the audit of the control systems, it can generally be said that the audit requirements and documentation are formally adequate, but in many cases the content is not sufficiently detailed and regulated. The documents available to us were not fully consistent between the operational programmes, and the differences were not justified by the specificities of the programmes. We found that the internal rules and procedures of the organisation were sufficiently detailed, but the Authority identified weaknesses in the audit trails used for the audit, including inaccuracies and possible lack of documentation of steps and controls, the findings for which are included in the General Findings.

It should be noted that our document-based audit found the legal framework to be adequate, but further statistical and sample-based verification of its effectiveness and practical application is needed.

We categorise our findings of our audit according to two types of criteria, systemic general findings and specific findings.

2.5.1 General findings

<u>General finding 1 - Audit trails</u>

As a consequence of the application of shared governance, it is the responsibility of the Member States to establish and continuously update the audit trail. The detailed rules are set out in the CPR regulations mentioned in the previous chapter, specifying, among other things, which institution of the management and control system is responsible for their preparation.

Government Decree 272/2014 (5 November) for the programming period 2014-2020 and Government Decree 256/2021 (18 May) for the programming period 2021-2027 define the audit trail as term in their interpretative provisions.

According to Section 3(4), the audit trail is "a description of the support planning, financial governance and control system, in text, table or flowchart form, including, in particular, the levels of responsibility and information, the links, the management and control processes and the documents supporting those controls, enabling them to be monitored and checked ex post during the use of the support".

It can be stated that the audit trail summarises the basis for the implementation of each programme, the description of the departments of the institution, the processes carried out and their functioning. It also provides a description of each task and its sequence, illustrated by a flowchart. Its main function is to ensure the transparency and traceability of the system by clearly identifying the sub-processes, control points, control points, the scope and level of responsibility along the trails. The existence, substantiation, use and traceability of properly detailed trails are a prerequisite for the correct use of funds. It also provides an important system audit tool for the audit authorities, as it can help to identify malfunctions. The audit trail can be used to identify risks arising from the operation of the institution, from specific processes, inconsistent tasks or control points.

As regards the expected content of audit trails, it is generally agreed that, in order to perform the main function, they should include, inter alia, a description of the activity or task, its legal basis, the person or organisation responsible for the performance of the task and its control, the way in which the task is performed, the follow-up, given that an inadequate institutional system, weak or incomplete control points, the development of overlaps, can lead to malfunctions and, overall, can jeopardise the effective and efficient functioning of the management and control system.

As a first step in the audit, the Authority aggregated the trails of the different Operational Programmes and the RRF. In general, the trails were found to cover all steps of the procedure and to be in line with the relevant legislation. It was concluded that the requirements set out in Article 2(32) of the CPR and Annex XI are met by the institutional system, and we did not identify any high priority risks that would significantly affect the effectiveness of the operation of control processes.

The documentation is easy to follow, with the steps in a logical sequence.

The trails audited did not differ in form, but the following general deficiencies were found in the content:

- Not all of the procedural steps were described precisely or explained in sufficient detail. This deficiency was identified by the Authority for about one third of the trails examined.
- In several cases the approval steps or checkpoints were not properly documented. The Authority identified this on more than half of the trails audited.
- The exact date and deadline of the procedural step is duly indicated in 20% of the trails.
- In several cases, the evaluation criteria or indicators forming the basis of monitoring or approval are not sufficiently defined in the trails.
- The input data or documents used and the systems or reports used in the process have not been specified. This was identified on more than two thirds of the trails reviewed.
- Several steps have been identified where a deadline is set for the completion of the task, but it is not clear how the deadline is monitored.
- There were steps where the department or person responsible for the process and the approving department or person are the same, but the levels of approval have not been sufficiently explained and separated. If the four eyes principle applies, it has not been properly documented.
- There are several points on the trails where an approver is indicated, but no approval step is included in the description. This deficiency was identified by the Authority for one third of the trails audited.
- The process steps are not always complete, and the Authority has identified a number of cases where process steps are required by law but not visible in the trail.

Another general shortcoming is that while Government Decree 272/2014 (5 November) stipulates the updating of audit trails, Government Decree 256/2021 (18 May) for the new programming period only requires the preparation of audit trails, and does not mention their updating.

Overall, it can also be noted that the trails provided by the different managing authorities vary in the level of detail of the description of the processes, the procedural steps, the supporting documentation and the identification of control points. As a general conclusion, there is a need to improve the consistency of the trails as a result of the audit of the Operational Programmes Coordination Body, and our observation is in line with the findings of the Authority's Integrity Risk Assessment Report of 31 March (findings related to indicator 12).

General finding 2 - General finding on the control system

Our review of the EUTAF's system audit and control reports for the current year found that they correctly follow the templates and recommendations set out in the EC's system evaluation guidance EGESIF_14-0010. The Authority also took into account the results of the already completed EC/ECA audits, and the scope of the audits, the criteria and key requirements were defined in detail, building on the previous EU and national audits in a logical and sequential manner. For all criteria, the assessments contained in the reports included a review and follow-up of the central and organisational regulatory framework and the actions taken on the basis of previous system audits. However, a weakness in the first level control system is that the system weaknesses noted by the audit authority, sometimes identified as high risk, were in several cases not remedied within the agreed time limits. The documents on which we based our analysis were for the years 2022 and before, and we have not examined development policy changes made after that date in this Integrity Report. Based on the available data, one recommendation made by EUTAF has not been corrected by the date of closing of the Integrity Report.

2.5.2 Specific findings

Specific finding 1 - Funding

As recorded under subsection 4.2 "Audits completed", we also examined the funding control processes as a key element of the audit trail, as it is critical that the allocation of funding only takes place after the legal conditions have been effectively met.

If the eligible entity becomes aware of the circumstances giving rise to a repayment order after the funds have been disbursed, the entity will, by its very nature, be at greater risk of being unable to effectively pursue all available options, such as set-off, enforcement of security, recovery by way of taxes and other creditor enforcement actions. In the light of the above, it is important that, before making the first payment, the disbursing body obtains reasonable assurance that the criteria set have been met, which the managing authority has rightly recognised and has regulated this process in one of the most extensive and detailed forms of audit trail. The approach of our audit was primarily to review the checks that the managing authority performs before allocating funds.

In the course of our work, we examined, parallel with the trails available to us, the legislation in force, the Guidelines on the financial clearance of accounts for the financing of Operational Programmes (PÜT) the general guide for the calls for proposals for the programming period (ÁÚF). We found that the document submitted by beneficiary to certify the payment made, as required by the regulators, is subject to formal administrative checks by the managing authority. If the formal requirements of the document, which merely relate to the transaction and the execution of the transaction itself, are met, i.e. if they are formally certified and the accounting criteria are met, the document is accepted. In the Authority's view, this may raise concerns about the primacy of substance over form and the accounting principle of authenticity laid down in Sections 15-16 of Act C of 2000.

Based on the documents examined, the documentation submitted does not raise any red flags[24] indicating fraudulent behaviour, such as the breakdown of transactions or business details of the parties involved.

Based on other information available to the Authority, the main risk factors affecting transactions are known to the managing authority, their application is informally regulated, but there are technical and resource capacity constraints to detect them.

As stated in the ÁÚF, support can be paid for real costs with a payment request approved by the managing authority.

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[24] Indicates situations (circumstances, actions) that could potentially lead to irregularities related to fraud, corruption or conflict of interest, or in serious cases criminal offences.

[25] The own funds is the eligible cost of the project minus the amount of the non-repayable support and the amount of the loan. Own funds may consist of own resources and other support from sub-systems of the general government (e.g. subsidised loans). A significantly higher risk may be own funds from own resources, which does not include public or market sources, and their justification. The ÁÚF provides an exact list of the ways of proving own resources.

Our analysis focused primarily on the circumstances of justification of the most risky, own funds from own resources [25], with the finding applying horizontally wherever an upfront transaction by the beneficiary, such as full settlement of a supplier's claim, is a condition for the allocation of support.

Specific finding 2 - Audit of public procurement

The Authority identifies as a risk for the first level of control of public procurement that

- the content of the public procurement, eligibility, accountability and technical checks carried out during public procurement procedures is not specified, but is regulated individually based on the decision of the managing authority (if regulated);
- it is not possible to determine the extent to which the public procurement controls performed cover the screening, prevention and elimination of corruption and fraud risks;
- the risk assessment is not part of the audit trail, which does not indicate which findings are consistent with the integrity risk assessment report of the Hungarian public procurement system;
- the legal provisions on the control of public procurement relate to ensuring the regularity of procedures (legal, eligibility, accountability, technical aspects) and do not include provisions on the detection and management of fraud/corruption;
- the managing authorities and the minister/secretary of state responsible for public procurement who perform public procurement controls have no power/role to influence the behaviour of market participants.

Based on a detailed analysis of the audit trails related to public procurement, it can be concluded that the procedural steps, their sequence and description, as well as the deadlines applied in the audit trails provided to the Authority were prepared in accordance with the provisions of Government Decree 272/2014 (5 November).

The audit found a deficiency that the trails contained a small degree of inconsistency with each other, in some cases activities incompatible with the law and in several cases incomplete or non-detailed documentation and also, in some cases no activities required by legislation. A further weakness was that the method of approval/control of each activity to be performed was typically indicated as management control, but the method of implementation was not detailed, and no independent control activities were highlighted among the activities. In view of this, the content of the checks actually carried out could not be clearly established from the documentation.

The mandatory legal requirement for audit trails ensures a basic/standard level of control in the audit of public procurement. However, the trails prepared in practice did not contain/reflect any deviations or separate/individual control procedures due to organisational structure, organisational characteristics, specific human or IT procedures, risk analysis. The legislation does not specify the method of controls (procurement law, eligibility, accountability, technical aspects) performed by the managing authority and the Minister responsible for public procurement. It was not possible to reconstruct from the trails the content of the audits actually performed, as the criteria for auditing public procurement are sometimes detailed in internal rules and manuals (e.g. using checklists). The specific internal rules do not guarantee uniform control criteria, so it can be concluded that the rules applied by each managing authority or by the organisation of the Minister responsible for public procurement influence or determine the quality/efficiency/effectiveness of the control of public procurement.

Based on a detailed analysis of public procurement audit trails and the relevant legal requirements, it can be reasonably asserted that all procurement procedures involving EU funding are subject to ex-post controls by the managing authority which must receive all documents relating to the public procurement procedure. In addition, in the case of public procurement procedures with a value equal to or above the EU thresholds, and in the case of public procurement procedures for construction works and concessions with a value equal to or above HUF 300 million, the minister responsible for public procurement (or their office) also performs an audit in all cases, and there is always an in-process audit by both the managing authority and the organisational unit under the Minister responsible for public procurement prior to the launch of the public procurement procedure. The checks are carried out directly during the procedures, and the legislation gives both the managing authority and the minister responsible for public procurement the possibility to intervene in the procedure by means of an irregularity and/or legal remedy procedure, or by amending the public procurement documents. The beneficiary is only eligible for EU funding if the auditing authorities have approved the public procurement procedure and documents.

The value of public procurement has averaged 6.6% of GDP over the last 14 years, and has been between 6.8% and 7.8% of GDP in the last few years. Around 30% of the procedures involved EU funding (based on 2020 data).

According to the data of the public corruption indices, Hungary has a high corruption risk/level by international/European standards. In terms of the magnitude of the data on public procurement, it can also be said that corruption affects public procurement procedures to a significant extent. The audit coverage of all procedures in public procurement involving EU funds, compared to the high level of corruption, shows or implies a certain degree of dysfunctionality of controls.

Specific finding 3 - On-site audits

In the case of development funds from European Community funds, the national legislator provides for the regulation of the on-site audit procedures for the period in question. Government Decree 272/2014 (5 November) and Government Decree 256/2021 (18 May) contain general provisions applicable to all programmes, from the risk-based planning, preparation, conduct and annual on-site audits to the summary of the on-site audit, which include criteria for all process units, including the persons performing the checks.

In chronological order of the projects' life cycle, a site visit may be conducted first, before the support decision is taken or the support agreement is signed. In terms of the timing of the on-site audit, it can be an interim on-site audit, which is a control visit during the project implementation phase, a final on-site audit, which is a control visit before the approval of the final payment request, and finally a maintenance on-site audit, which is a control visit during the maintenance period. The type of on-site audit may be planned or unscheduled.

When planning the on-site audits, the managing authority prepares a risk analysis methodology in which the risk aspects are identified, in particular with regard to the complexity of the project, the amount of aid and the aid intensity. After the adoption of the risk analysis methodology and risk analysis, an annual audit plan is prepared, which includes the planned on-site audits to be performed in the year, broken down by support schemes on a monthly basis, and is to be reviewed on a quarterly basis.

On the basis of the quarterly revised audit plan, an on-site audit is ordered by the head of the managing authority's specialised department, stating the reason, the project ID and the priorities to be audited. External experts may be called in on a case-by-case basis to assist with the audit.

The appointed auditors and the ad hoc expert will be issued with a letter of assignment and trained on the basis of the project and call documents.

Prior to the on-site audit, the managing authority is obliged to inform the beneficiary at least five calendar days before the planned date of the audit, in accordance with Government Decree 272/2014 (5 November). However, this obligation may be waived by the managing authority if the effective outcome of the audit so requires.

The on-site inspection may be carried out by at least two persons who have no conflict of interest or ground of exclusion in relation to the project, and who must declare that in any case in preparation for the audit. During the on-site audit, the on-site auditors are responsible for verifying that the project is progressing financially and physically in accordance with the contract, that it is sound, that the accounts are in order and that the supporting documents are accurate. For that, the auditors are entitled to enter the premises of the auditee, to inspect the documents and other records related to the subject of the audit, to inspect the data stored on electronic media, to make copies and extracts thereof, in compliance with the data and confidentiality protection provisions set out in the legislation. A report is prepared on the on-site audit, in which the auditee can comment on the findings. The findings of the on-site audit can have a decisive influence on the life of the project. Some of the errors and omissions recorded in the report may be corrected, but failure to correct them or serious breaches of the beneficiary's obligations, or the discovery of facts proving that the support was not used for the purpose intended, justify the finding of a suspicion of irregularity. If an irregularity is suspected during the on-site audit, the managing authority proposes taking appropriate measures, including contract modification, suspension, correction, debt management, within five days of the end of the on-site audit. The Authority has no statistics on this.

An annual summary report must be drawn up of the on-site audits performed, which, in addition to simple figures, must also identify the type of defects detected.

The audit trails and internal procedures provided to us correlated with the legal background, and the documents at the level of the managing authority complied with the requirements of the relevant Government Decree 272/2014 (5 November).

Nevertheless, in our opinion, the audit trails were not adequately documented, some control steps were missing or did not include the entity or person responsible for approving the task.

On-site audits are an effective way to identify weaknesses in projects and filter out fraudsters from the system. An examination of the trails revealed that their detail coverage is very low. Steps or their explanation or description of the task are missing, and in many cases no approver/checker is indicated. In view of this, in order to increase efficiency, it is essential to improve the detail of the control process and to introduce new controls.

A common problem with pre-announced on-site audits is that the beneficiary may be given plenty of preparation time to cover up any suspicious facts, and the notice provided may indicate in advance the documents to be checked (invoices, contracts, payment vouchers, pay slips, etc.) which are included in the sample, thus providing an opportunity to eliminate any documentary gaps or cover up other fraudulent acts. Given that the law requires the verification of separate accounting records at the project level during the on-site audit, this practice may violate the accounting principle of authenticity.

Control procedures vary from managing authority to managing authority. On the basis of the EDIOP on-site audit trail, the beneficiary may refuse a pre-announced on-site audit date in its request for postponement, giving reasons, and indicate the earliest suitable date for the on-site audit. According to the EDIOP procedures, in this case the project is classified as high risk and an extraordinary on-site inspection is conducted, but this is not mentioned in the trail. In other cases, this practice is not included in the audit trails examined by the Authority.

Based on an examination of the managing authority's internal documents, there is a fundamental deficiency that the conditions and rules for the use of external independent experts are not clear. The procedures merely mention the possibility of doing so, but no mention is made of their specific application, such as the specific purpose for or the way in which their findings are to be used, or the logic of their designation. The audit trail contains the step, but only in relation to the request (on occasional basis), and the activity and obligations of the external expert do not appear in any of the points later, so the activities and task performed by them is not clear when they are contracted, or who checks them and how the material produced by them is subsequently used by the managing authority and for what purpose.

Neither the annual summary of on-site audits, nor the audit trails and procedures allow to determine how many on-site audits have been performed with the help of external independent experts, nor whether the on-site audits conducted were announced in advance or unscheduled, what conclusions were drawn in the experts' opinions, whether any type, systemic nature or recurrent errors can be identified in the beneficiaries' projects.

Specific finding 4 - Irregularity management

Irregularity management concerns all actions that can be identified as improper operations/procedures in the management of support. Irregularity also includes intentional behaviour. An irregularity procedure may be triggered by an audit, a suspicion/error detected in the course of any support-related activity, a procedure of a public procurement arbitration board, an administrative or judicial procedure, a whistleblowing report or other report, a press report or an appeal against a previous irregularity procedure. The irregularity management process is therefore a key element/information base for fraud risk databases and the operation of the irregularity management system is crucial for the prevention of fraud and corruption. Accordingly, Government Decree 272/2014 (5 November) identifies the staff dealing with irregularity management as members of the development policy institutional system in a sensitive position, who require regular rotation and supervision.

By analysing the audit trails for irregularity management, it can be stated that the procedural steps of the irregularity management trails provided to the Authority, their sequence and description, as well as the deadlines applied in them were prepared in accordance with the requirements of Government Decree 272/2014 (5 November). According to the legal requirements, the process steps include independent control activities (e.g. review, quality assurance) and decisions on irregularities are taken by the head of the managing authority. As an external control, there is also a possibility of appeal. The audit trails for the different operational programmes examined (EDIOP, ITOP, EEOP, TOP, CCHOP) are essentially the same. A comparison of the trails of each operational programme shows that the trails prepared in practice do not contain/reflect any deviation or separate/unique control procedures due to organisational structure, organisational characteristics, specific human or IT procedures, risk analysis.

The inherent risks identified in relation to the irregularity management activity:

- the use of resources in full (absorption pressure) is contrary to the regular use of resources;
- the data of the irregularity management activity can be used to show the extent and proportion of cases of fraud and corruption within the irregularities detected in relation to EU support, but the data are not currently publicly available;
- from the audit trail, the absence of control of the irregularity register can be identified: no visible management control, no visible action for the transfer/receipt/registration/recording/signing of the notification (except for TOP and CCHOP);
- a number of activities and discretions (submission of a suspected irregularity for decision, initiation of an irregularity procedure, criteria for decision, methodology for investigating the irregularity, criteria for suspending payments, measures to be taken in the event of an irregularity) may be identified in the trail of irregularity management whose aspects, criteria and details are not known while they are decisive for the effectiveness/quality of the irregularity management activity;
- the legislation provides for tight time limits for the activities carried out in the course of the irregularity management procedure (e.g. 5 days from the date of receipt for the preparation of the irregularity decision, i.e. the assessment of the suspected irregularity), which is contrary to the well-based preparation and decision-making process;
- the meaningful irregularity management activity, especially under tight deadlines, is affected by the amount and preparedness of available human capacity;
- in the case of projects implemented with EU funding for priority public strategic objectives (e.g. development of public institutions, infrastructure development, performance of EU and international contracts), the performance of irregularity management may be influenced by the public interest in the implementation of the project.

The Authority did not receive any substantive information and documents from the managing authorities in its request for information on the detailed rules for the management of irregularities.

Some of the data on irregularities (e.g. how the irregularity was committed, the consequence of the irregularity) are public and available online on palyazat.gov.hu. The published data show that the irregularity management function is capable of detecting and managing a wide range of irregularities, and that the projects and the consequences of irregularities can be identified in principle.

However, data in this form are not or only to a limited extent suitable for analysis and drawing conclusions. The disclosures are not compatible across Operational Programmes, they are not structured in the same way and contain differently categorised data, with substantive data sets not or only partially categorised. The timeliness of the data and the nature of the acts committed (e.g. intent, suspected fraud and corruption) is not known.

The published data do not allow us to assess or characterise the capacity of the current irregularity management system to detect and address fraud and corruption. In the whole 2014-2020 programming period, the legal consequence of exclusion from the support scheme was applied only in the Rural Development Programme and in only 2 cases, which is very low given the number of irregularities and the number of suspicious cases made public in the press, but it does not reflect a zero tolerance towards fraud and corruption. However, information on the cases in which suspected irregularities are treated with or without the opening of an irregularity procedure and the reasons for this is not publicly available.

2.6 Recommendations

2.6.1 General recommendations

General recommendation 1 - Audit trail

In order to ensure the effective application and full guidance of the trails in practice, it is recommended that the comments made and the deficiencies identified on the basis of the audit be improved and compensated.

In order to ensure that the trails are as appropriate as possible for the control function and the functions set out in the Decree, it is proposed to complete and correct the documentation of the trails. In order to monitor and follow up the controls and control points, it is essential, among others, to indicate the appropriate levels of responsibility and relationships, to specify the document supporting the control, so that the trails fulfil their function as defined in the Regulation.

We propose that the obligation to update the trail should also be required by law for the new programming period (Government Decree 256/2021 (18 May)), as it was also for the previous period (Government Decree 272/2014 (5 November)). Without updating, an "old" trail may lose its functionality.

General recommendation 2 - General observation on the control system

To ensure that the control system is fully effective, it is essential that the bodies concerned comply with the Audit Authority's requests and correct identified weaknesses in a timely manner. It is important to clarify when, under what conditions and within what scope the Audit Authority can extend the deadlines. In our view, the procedural discipline of the audit authorities needs to be improved to ensure that the weaknesses identified are adequately addressed.

2.6.2 Specific recommendations

Specific recommendation 1 - Funding

Based on the audit deficiency/risk detected, we consider it a necessary step, in particular when the payment voucher as defined in paragraph 5.2.1.2 of the PÜT, i.e. usually a bank statement, is used to justify the payment of the own funds or the full supplier fee, that the payment submitted for clearance is examined by the first level audit authority for risk indications, which may be the following (without aiming at an exhaustive list):

- provision of own funds or payment of a supplier invoice that significantly exceed the public financial capacity of the beneficiary;
- method of execution of the transaction – for example, a payment made in several instalments, which may raise suspicions of a circular deal;
- tracking the flow of money after the supplier has been credited and identifying warning signs, such as the immediate cash withdrawal of the amount transferred, which shows signs of an unusual economic transaction.

On the basis of the data available to the Authority, where the managing authority has the appropriate data and resources, the risky transactions are screened. This step is not, or not fully, reflected in the rules examined, so we recommend that good practice be made formally applicable.

If the transaction which is the condition of the payment of the support shows signs of a risky transaction, the actual allocation should be preceded by a deeper check on the way the money is spent.

Given the large number of transactions and supporting documents to be examined, a full manual examination is not feasible, and it seems appropriate to set up a pre-screening process built into the electronic application management system, thus facilitating the cost-benefit principle. A further limitation of the check may be the range of documents available – for example, the bank account statement may only include the transaction in question, or the circular transaction took place over a longer period of time – so to ensure an adequate data background, it is advisable to integrate databases already in use at other authorities, such as GIRO, NAV data, e-invoice data. The processing of information indirectly linked to a given project for specific purposes must be a legal obligation for the audit body. It should also be stressed that, due to the nature of the procedure, it can only be partially automated, and individual review of the cases indicated is necessary, as the risk factors do not represent an actual fraud. Until the IT system is prepared for the examination of the conditions, the procedures should be completed and the staff performing the controls should be trained, in the risk factors that can be identified efficiently and time-savingly during the manual examination, taking into account the accounting principle of materiality.

In addition to the above, we recommend the monitoring and evaluation of the applied procedures and the identified red flags by the department responsible for monitoring activities.

Specific recommendation 2 - Audit of public procurement

The Authority considers necessary and proposes to include a control function in the audit of public procurement, which, in addition to the legal, eligibility, accountability and technical aspects of public procurement, also includes a risk-based approach to the investigation of known and potential fraud and corruption in public procurement procedures.

Specific recommendation 3 -on-site audit

- Mandatory involvement of experts:

It would be appropriate that on-site auditors (who may not necessarily be experts in the relevant profession/subject related to the technical/professional content of the project) are accompanied in their on-site audit by independent experts with professional and reliable knowledge of the subject, where this is relevant to the nature of the project and the size of the support.

Accordingly, it is proposed that the provisions of the relevant legislation on ad hoc invitations to experts be amended as follows:

Original text:

"Where justified by the call for proposals or the nature of the project, the managing authority may involve an external expert on an individual basis to conduct an on-site audit."

Revised text:

"Where justified by the nature of the call and the complexity of the project, the managing authority is required to involve an external expert to conduct an on-site audit. In all other cases, experts may be involved on a case-by-case basis."

When designing the call, we recommend taking into account that, if the purpose of the call and the technical and technical content of the project justify the involvement of an expert in the monitoring of implementation, this is reflected both in the text of the call and in the support agreement concluded. This could be done at the level of the call for proposals, in order to state the involvement of experts in relation to the site. It should be indicated in a separate clause in the support agreements concluded that an external, independent expert will be involved in the on-site audit and that the party concerned must tolerate and facilitate the expert's examination.

- Increased use of unannounced on-site audits:

To ensure a higher success rate in detecting fraudulent projects, we propose reducing the use of pre-announced on-site audits and to increase the proportion of unannounced audits, which is currently very low according to the information available to the Authority.

It is also proposed to measure and improve the ratio and effectiveness (e.g. number of irregularities detected) of unannounced on-site audits to those agreed with beneficiaries in advance and to include them in the annual summary.

- Keeping confidential the documents to be sampled for audit:

In order to ensure separate and complete project documentation, we recommend that the list of invoices, summary sheets and other documents collected for the audit is not disclosed to the beneficiary by the managing authority. In this context, the wording of the relevant government decree should also be amended.

Specific recommendation 4 - Irregularity management

The Authority proposes a higher level of transparency and publicity of the irregularity management process in order to ensure a higher level of transparency of EU funding, in particular in the management of irregularities. In particular, it proposes to

- make the process of irregularity management monitorable publicly and up-to-date, e.g. on palyazat.gov.hu (viewing procedures in progress and their status, search, results - decision);
- establish uniform and public criteria for the classification of irregularities and the decisions to be taken in irregularity management;
- ensure that the standard quality of irregularity management is always guaranteed by providing adequate resources.

The Authority recommends a more structured form of publication of the information required by law for the publication of information on irregularity procedures, and an extension of the scope of the information published. To ensure a higher level of transparency, the published data on irregularity procedures should in the future:

- be organised in a common database, but can be filtered by Operational Programme,
- be categorised in the same way and have standardised characteristics (in particular as regards the way in which the irregularity was committed and the consequence of the irregularity),
- be provided with timely data (e.g. date of decision),

- be flagged for the classification of irregularity (e.g. fraud, corruption),
- contain details of irregularity procedures rejected on the basis of suspicion and the reason for rejection,
- include an indication and type of cases dealt with without opening an irregularity procedure,
- specify the nature of the project (e.g. priority project).

3. Evaluation of the effectiveness of public procurement rules

3.1 Summary

In its annual Analytical Integrity Report, the Authority assesses the effectiveness of public procurement rules, highlighting problem areas in their application, in particular with regard to enforcement practice.

The effectiveness of public procurement legislation can be assessed from a variety of perspectives. One of the most obvious of those is the extent to which the existing rules, and in particular the resulting enforcement practice, are able to meet the fundamental objectives of public procurement and the expectations of how, under what rules and in what timeframe contracting authorities are able to achieve the procurement result they intend to have.

The public procurement procedure is a multi-stakeholder relationship, bipolar from a procurement perspective: it creates a regulated relationship between contracting authorities and the economic operators participating in the procedure. The other group of criteria for assessing the effectiveness of the regulation can therefore be related to the procedural options and rights of the actors involved in the public procurement procedure on the side of the bidders. In particular, this includes examining the effectiveness of the rules on the participation of economic operators in public procurement procedures and, where appropriate, their ability to enforce their rights.

The areas selected for the evaluation of the effectiveness of the public procurement rules relate to the risks identified in the Authority's Integrity Risk Assessment Report published by 31 March 2023, reflect the problems identified in the notifications received by the Authority and are based on the feedback from the respondents to the Authority's questionnaire survey. This chapter draws on the results of the Performance Measurement Framework for assessing the efficiency and cost-effectiveness of public procurement (hereinafter: the Public Procurement Framework) and on the information received by the Authority in the context of targeted data requests to individual data holders, in particular in the light of the requirements for the Authority's annual integrity report set out in the Council Implementing Decision on the approval of the evaluation of Hungary's recovery and resilience plan (hereinafter: Council Implementing Decision).

Pursuant to Section 11 of the Eufetv, the Authority's Integrity Report also includes an analysis of the use of framework agreements and the practice of contracts concluded on the basis of them, and therefore we will deal with that issue separately in the section on the evaluation of the effectiveness of public procurement.

We note here that, although framework agreements may be concluded by any contracting authority, in view of the risks identified in the integrity risk assessment, we focus on a detailed analysis of the practices followed by centralised contracting authorities and the underlying legal framework. This is due to the fact that centralised procurements are typically high-value purchases and therefore the pool of bidders is obviously more limited, and also to the fact that framework agreements typically close the public procurement market for 2-4 years, depending on the decision of the central purchasing body. Given their impact on the market, the efficiency of centralised procurement is therefore key to the proper functioning of public procurement. Chapter 7 of this Integrity Report contains further conclusions and data on the Framework Agreements based on the audits carried out.

In relation to the areas reviewed, we stress that Hungarian public procurement legislation is in line with the requirements of the EU Directives. As indicated by the bottlenecks identified in relation to efficiency, the anomalies in law enforcement should be addressed, apart from minor adjustments to the legislation, to ensure the proper functioning of public procurement.

The Authority will make a specific set of proposals for centralised public procurement, given its high impact on the functioning of the public procurement market, as follows:

- the cost-effectiveness of centralised public procurement systems should be assessed through targeted audits and the reporting obligations of central purchasing bodies should be strengthened;
- the Authority will encourage the development of methods and standards that allow the comparison of prices obtained in centralised public procurement with market prices;
- with regard to the current percentage-based fees for the services of the central purchasing body, the Authority proposes to review the fees, also taking into account the operating costs of central bodies, and to introduce a nominal ceiling;
- the Authority recommends for consideration a legislative review of the scope of procurement within own powers and the public disclosure of the criteria for the decision to award the procurement contract within the own powers of a central purchasing organisation;
- the Authority proposes to review the system of mandatory centralised public procurement procedures without thresholds;

- in line with the specificities of the central purchasing bodies, the Authority proposes to examine the optimal range of funding under the framework agreements to be concluded and the possibility of concluding several framework agreements, also by allowing covering central procurement objects by several tenders where the contracts are divided into lots, thus widening competition and participation;
- to enhance publicity and transparency, data on the distribution between economic operators of the award of framework agreements concluded by central purchasing bodies and the and individual contracts under dynamic purchasing systems, including their number and value, as well as the prices obtained in the second part of the framework agreement procedure and the savings achieved through centralised procurement, should be made available;
- the Authority proposes to analyse the effectiveness of the use of centralised procurement for the product ranges currently included in the centralised range and to conduct an impact assessment of the likely benefits of centralised procurement before deciding on any new products to be included in the centralised range in the future.

The Authority also proposes the following to improve the effectiveness of the application of public procurement rules:

- in the context of the reduction of single-tender procedures, the Authority recommends, in addition to the measures already taken, reviewing the minimum rules on the conduct of prior market consultations, which are mandatory, adding detailed rules and reviewing the adequacy of the minimum time limits;
- in view of the reliable and predictable functioning of the EKR, the Authority does not consider it justified to maintain the waiting period of two hours between the deadline for submission of tenders and the opening of the tenders, and therefore proposes to abolish it;
- in order to facilitate the wider availability of the division of the contract into lots, the Authority proposes to supplement the legal framework on partial tendering and, following a review of case law, to develop methodological material on the subject;
- the Authority recommends defining the legal framework for the electronic access of contracting authorities to contract documents;
- the Authority proposes to reinforce the monitoring and information obligations of contracting authorities during the contract performance period, in order to ensure the proper use of the involved capacity providers;

- in order to facilitate the practical application of the optional ground for exclusion provided for in Section 63(1)(c) of the Public Procurement Act, the Authority proposes that contracting authorities in public procurement procedures should specify in advance, in their contracts resulting from the procurement procedure, the detailed provisions which constitute a serious breach of contract and which justify notification to the Public Procurement Authority; in order to apply this principle, the Authority proposes to amend Chapter XX of the Public Procurement Act on contracts to make it compulsory for contracting authorities to provide for contractual clauses on serious breach of contract;
- in connection with the ground for exclusion under Section 63(1)(c) of the Public Procurement Act, the Authority recommends for consideration that the Public Procurement Act should lay down conditions for the acceptance of a challenge to a serious breach of contract, in order to prevent its misuse, for example by requiring it to be brought before a court and requiring the contractor to prove that it has been committed;
- in order to ensure the proper application of the assessment of disproportionately low price, the Authority proposes to analyse the case law, develop model price justification request documents and issue guide on that matter;
- with respect to disproportionately low prices, the Authority recommends increased monitoring and enforcement of the timely publication of the figures for wages, salaries and other costs in the various sectors by the designated bodies each year, as required by the Public Procurement Act;
- in the context of the assessment of disproportionately low prices, the Authority recommends that the law should stipulate that contracting authorities should not be entitled to request the presentation of additional cost elements in supplementary requests for justification of prices, or to extend the cost elements previously indicated;
- the Authority does not consider it justified to maintain the 180-day rule in order to reduce the length of the evaluation, and therefore recommends that the legislator review the need for Section 70(2a) of the Public Procurement Act and the related declaration of ineffectiveness;
- the Authority proposes to review the practice of conditional public procurement and, on that basis, to supplement the rules on conditional public procurement procedures and to tighten the conditions of application;
- in view of the increasing trend towards accelerated procedures, the Authority proposes targeted audits of the justification for accelerated procedures and, where not excluded by the EU public procurement Directives, to review legislatively whether it is justified to maintain the option for contracting authorities to use accelerated procedures for framework agreements, given their high value and multiannual term;

- in order to effectively address situations of unfair competition, the Authority recommends that the results of notifications of unfair competition in the conduct of public procurement procedures be made public by the Competition Authority and that lessons learned be shared with monitoring bodies and law enforcement authorities;
- the Authority proposes to maintain the type of procedure under Section 115 of the Public Procurement Act and to revise the conditions of its application, for example by converting it into a call for proposals in which only micro and small enterprises may submit proposals;
- the Authority proposes the creation of various structured public procurement databases, in a standardised format, suitable for searching and processing data, for a longer period;
- the Authority proposes to analyse the jurisprudence on preliminary dispute settlement and, on that basis, to supplement the relevant legislation, in particular as to whether it should be mandatory, and to recommend that the failure of contracting authorities to respond in a timely and substantive manner should be sanctioned; to ensure the effectiveness and consistency of the rules on administrative and judicial remedies in public procurement, the Authority proposes:
  - to ensure the right to request a hearing in administrative proceedings,
  - a review of the provisions of a different nature relating to administrative service charges and court fees,
  - an assessment of the justification for maintaining compulsory representation in proceedings before the Arbitration Board,
  - the analysis of the jurisprudence of the Arbitration Board and the courts on client eligibility, and the issuance of guide and clarification of the rules accordingly,
  - the analysis of the jurisprudence of the Arbitration Board and the courts on the imposition of fines, and the clarification of the legal regulation in this context,
  - examination of the measures and tools to support a faster conclusion of the review phase of the public procurement court in order to ensure effective remedies.

3.2 Centralised public procurement

The Council Implementing Decision approving the evaluation of Hungary's Recovery and Resilience Plan requires the Authority's annual Integrity Report to include an analysis of the application of the Framework Agreements. The Integrity Report shall include an analysis of the distribution of contracts awarded to and agreements concluded with the economic operators, as well as data on the conclusion of individual contracts based on framework agreements and the award of individual contracts between economic operators based on framework agreements.

The high volume of exchanges of goods in the context of centralised public procurement and the longer-term framework agreements resulting from such procurement make the efficient and transparent functioning of the centralised procurement system of particular importance. Given that framework agreements typically close the public procurement market for 2-4 years, depending on the decision of the central purchasing body, and that centralised procurements are typically high-value purchases and therefore inherently more limited in the pool of bidders eligible to participate, framework agreements pose an integrity risk to the functioning of the public procurement system.

The rise of framework agreements is clearly demonstrated by the fact that both the number and the share of framework agreements in public procurement have shown a gradual and sustained rising trend in recent years.[26]

It should be noted here that the use of the framework agreement procedure as a specific procurement method is not restricted to centralised purchasing entities; it can be used by any contracting authority falling within the scope of the Public Procurement Act. However, in view of the increased integrity risk of centralised public procurement systems, this Integrity Report focuses on framework agreements concluded in the framework of centralised public procurement and their operational characteristics. The Integrity Report does not, however, examine the cost-effectiveness of centralised public procurement due to the tight deadline for its preparation, and only makes general recommendations in that regard. Extensive and further targeted data requests and analysis are needed to measure cost-effectiveness.

To present the functioning of framework agreements and to understand their role and importance in centralised public procurement, it is worth clarifying some basic concepts and reviewing the main actors in the system.

[26] According to a questionnaire survey conducted under the Public Procurement Framework, 92% of the 377 responding contracting authorities use the services of a central purchasing body.

3.2.1 Basic terms

Framework agreements, like dynamic purchasing systems, are a procurement technique that can be used to provide a flexible procedure for the well-specified and recurring purchases of specific items by contracting authorities over a given period. In other words, if they work properly, framework agreements can be a way for contracting authorities to make their purchases quickly and efficiently.

Centralised public procurement, which most often uses the framework agreement procedure mechanism, is an activity carried out on a regular basis by a central purchasing body for

- awarding public contracts or concluding framework agreements for works, supplies or services intended for contracting authorities under the Public Procurement Act;
- awarding public contracts or concluding framework agreements for works, supplies or services intended for contracting authorities provided for in the Public Procurement Act; [Section 3. 26 of the Public Procurement Act].

The purpose of a centralised public procurement system is, on the one hand, to enable a single public procurement procedure to be used for the procurement of recurring products and services with the same use and the same (similar) technical, economic or other characteristics for a given group of contracting authorities and to allow for flexibility in the way in which the needs arising are dealt with. On the other hand, centralised public procurement systems are also expected to lead to an economic advantage by exploiting economies of scale, through discounts for large volume orders, and to achieve better value for money through centralisation.

The term central purchasing body is defined in Section 3. 25 of the Public Procurement Act. The central purchasing body is the entity entitled to launch a call for tenders in centralised public procurement procedures. **The most important central purchasing organisations in the public procurement market are KEF and DKÜ.**

3.2.2 Central purchasing organisations and the rise of centralised procurement systems

The system of centralised public procurement in Hungary goes back a long way; it was already recognised in the first Public Procurement Act[27]. The current Public Procurement Act, as in previous versions, empowers the Government to order the centralised award of public contracts for the bodies managed by it. The Government designates the central purchasing bodies on the basis of the authorisation[28] in the Public Procurement Act, defines the institutions subject to each centralised procurement system and the products and services that the institutions are obliged to provide under the centralised procurement system.

The first designated central purchasing body was the Prime Minister's Office, Public Procurement and Economic Directorate (MKGI) in the early 2000s. The MKGI conducted centralised public procurement procedures in the areas of office paper, office supplies, furniture, IT, motor vehicles and health for institutions controlled by the Government. And from 2004, the framework agreement procedure was introduced, based on the Public Procurement Act, harmonised with the 2003 EU Public Procurement Directives.

From 2007, MKGI continued to operate under the name of the Central Services Directorate General (KSZF), and its tasks were extended to new product groups, such as travel organisation. From 2014, it has been known as the Directorate-General for Public Procurement and Supply (KEF), continuing the central purchasing function for an ever-expanding range of products.

A new milestone was reached in centralised public procurement in 2012 with the creation of a new central purchasing body[29]. The now closed State Health Supply Centre (ÁEEK) conducted centralised public procurement procedures in the health sector for a limited range of products, such as medicines, disinfectants and medical gloves. Following its termination, its centralised procurement tasks were taken over by KEF.

In 2014, a new central purchasing body was created under the name of National Communications Office (NKOH) for the provision of government communication services, event management and organisational development through centralised public procurement[30].

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[27] Act XL of 1995 on Public Procurement

[28] "Section 31(1) of the Public Procurement Act. The Government may order budgetary authorities and public foundations it controls or supervises, or public foundations it has founded, as well as State-owned economic operators over which the Government is able to exercise a dominant influence directly or indirectly to conduct their public procurements within the framework of a centralized procedure, and may determine the personal and material scope therefor, appoint the organization authorized to invite tenders (central purchasing body) and announce the possibility for joining the procedure.

[29] See Government Decree 46/2012 (28 March) on the national centralised system of procurement of medicines, medical equipment and disinfectants for specialised inpatient care institutions.

At present, the NKOH, the central purchasing body, performs the function of the central purchasing body for the implementation of government communication and organisational development tasks on the basis of Government Decree 162/2020 (30 April) on the legal status of the National Communications Office and government communication procurement.

New central purchasing organisations were established between 2017 and 2020. One of those was the now closed down Központi Humánfejlesztési Nonprofit Kft. (Nkft.), which was responsible for the operation of the centralised public procurement system for human development services under Government Decree 237/2017 (18 August) [31].

The Digitális Kormányzati Ügynökség Zrt. (DKÜ) entered the centralised public procurement market in 2018. Under Government Decree 301/2018 (27 December)[32], the DKÜ is responsible for the centralised procurement of government IT purchases. As of 1 November 2019, DKÜ, as the successor to KEF in that respect, has taken over the centralised public procurement framework agreements for IT procurement concluded by KEF. From that date, the DKÜ is also entitled to conduct the new centralised public procurement procedures in the field of IT.

The Defence Procurement Agency (VBÜ) has performed the functions of the central purchasing body in a special field, in the context of defence and security tasks[33], which is an exception to the scope of the Public Procurement Act, and has conducted centralised procurement procedures from March 2020.

It can be seen that the central procurement market has changed dynamically over the last ten years, with a number of new central purchasing organisations emerging (or being transformed in the meantime). The range of products and services included in the centralised scope has increased accordingly. In addition to the centralisation of products related to the activities of the newly established central purchasing bodies, the expansion of the portfolio managed by KEF to new products and services is spectacular.

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30 see Government Decree 247/2014 (1 October) on the National Communications Office and the centralised public procurement system for government communications purchases.

31 see Government Decree 237/2017 (18 August) on the tasks and powers of the central purchasing body and the body responsible for crisis management for the use of support from European Union funds falling within the tasks and powers of the Minister of Human Capacities

32 Government Decree 301/2018 (27 December) on the National Council for Communications and Information Technology and the Digital Government Agency Ltd. and the Centralised Public Procurement System for Government IT Procurement.

33 Government Decree 329/2019 (20 December) on the designation of the central purchasing body, the definition of the scope of procurements related to defence and security tasks and the centralised system of procurements related to defence and security tasks

Thus, since May 2020, following the amendment of the relevant legislation[34], the KEF has been procuring for the obliged institutions the medical consumables (such as dressings, cannulae, medical plaster products), medical gases, hygiene products and cleaning products specified in the legislation. From that date, the KEF has been given responsibility for providing security and cleaning services and for the purchase of electricity and natural gas for in-patient care facilities.

At present, the majority of central purchasing tasks are performed by the following four state actors: KEF, DKÜ, NKOH and VBÜ, in different product groups, so we focused on these four actors in our detailed analysis.

Based on an overview of the functions and responsibilities of the central purchasing organisations the following conclusions were drawn. Central purchasing bodies carry out centralised public procurement for the budgetary agencies under the control of the Government in specific product areas (known as priority products). While KEF proceeds in broad, general procurement categories such as furniture, motor vehicles, travel organisation and energy purchases, the other three central purchasing bodies conduct public procurement for the obliged and voluntary joining institutions in narrower, well-defined or specific product groups.

The main product groups are:

- furniture;
- stationery, office supplies; office equipment;
- motor vehicles;
- motor vehicle fuels;
- travel arrangements;
- electronic public procurement services;
- health products;
- facility management services for specialised in-patient healthcare institutions (guarding and security services, cleaning);
- electricity, natural gas;
- public security CCTV cameras and related services for voluntarily joining municipalities;
- government IT purchases
- procurement related to government communication and organisational development;

[34] see Government Decree 165/2020 (30 April) amending Government Decree 168/2004 (25 May) on the centralised public procurement system and the duties and powers of the central purchasing body and Government Decree 46/2012 (28 March) on the national centralised system of procurement of medicines, medical equipment and disinfectants for specialised inpatient care institutions

- procurement related to security, safety and security-related tasks.

In addition to the mandatory centralised public procurement systems mentioned above, it is worth mentioning that Section 32 (1) of the Public Procurement Act also contains the option for contracting authorities to freely establish central purchasing bodies to meet their specific procurement needs.[35] As regards the relationship between mandatory centralised procurement systems and centralised procurement systems based on the contracting authorities' own choice, the only limitation to the establishment of a centralised procurement system based on the voluntary choice of the contracting authorities is that contracting authorities may not carry out "their own" centralised public procurement for those purchases where the use of the services of a central purchasing body established by the Government is mandatory.

3.2.3 Operational characteristics of centralised public procurement systems

Among the characteristics of centralised public procurement systems, we examined and here briefly present the elements that pose integrity risks to the functioning of these systems.

It is inherent in all centralised public procurement systems mentioned above that their scope is defined: in this context, the subjects to be covered and the objects to be purchased are defined. In centralised public procurement terminology, the obliged institutions are designed in the system that must order specific products under centralised public procurement. In addition to mandatory application, all systems offer the possibility for contracting authorities outside the mandatory scope to join voluntarily.

All centralised public procurement systems provide for the possibility of procurement within their own powers, but this is an exceptional procedure and can only be used if the conditions laid down in the legislation are met.

One of the basic conditions for the operation of a centralised public procurement is that the central purchasing body must be aware of the purchasing needs of the institution. Given the large number and value of centralised public procurement, it is of particular importance to assess the procurement needs of the institutions in advance. This is the purpose of the registration in the centralised public procurement system and the obligation for institutions to provide information. Obliged organisations are also required to submit their demand in respect of the purchases they intend to make.

[35] Section 32 (1) of the Public Procurement Act - Where the use of a central purchasing body has not been made mandatory under Section 31, two or more contracting authorities may agree to set up a joint central purchasing body or to designate any one contracting authority from among themselves to function as a central purchasing body, and perform certain specific procurements jointly, centrally.

Centralised public procurement is characterised by the fact that central purchasers are responsible for the tasks of operation of the centralised procurement system. As part of this, they operate a centralised procurement portal, where both the beneficiary institutions and suppliers can find information on, among other things, the framework agreements concluded and the products available for centralised procurement.

The portal maintained by the KEF (hereinafter KEF Portal) can be accessed at www.kozbeszerzes.gov.hu, while the portal operated by the DKÜ (hereinafter DKÜ Portal) can be accessed at www.dkuzrt.hu/portal/. The NKOH centralised public procurement portal is available at kozbeszerzes.nkoh.gov.hu.

Another common feature is that in the case of centralised procurement, a statutory fee must be paid for the services of central purchasing bodies. **While the rate of the public procurement fee varies from one organisation to another, the general feature is that the applicable legislation sets it at a fixed percentage of the value of the resulting fee-based procurement contract net of VAT, without a ceiling, ranging from 2% to 4%** in the case of a successful tender, or 0.25% to 1.5% of the estimated value of the procurement procedure in the case of an unsuccessful tender or no award of a contract.

3.2.4 Framework agreements and dynamic purchasing systems: typical public procurement methods in centralised public procurement systems

In order to meet the diverse needs of the large number of contracting authorities managed under centralised public procurement, central purchasing bodies most often use framework agreements, and since 2018, with the rise of e-procurement, have been operating dynamic purchasing systems.

(Note that this Integrity Report also covers dynamic purchasing systems, but focuses primarily on framework agreement procedures as a procurement method used by central purchasing bodies, in line with the requirements of the Council Implementing Decision.)

According to the data from the Public Procurement Framework Survey:[36] based on EKR data, the number of procedures for the conclusion of framework agreements by the KEF, the DKÜ and the NKOH in the years 2020-2022 was as follows:

- 22 public procurement procedures conducted by the KEF, resulting in 56 framework agreements;
- 40 public procurement procedures conducted by the DKÜ, resulting in 48 framework agreements,

[36] see Public Procurement Framework, Section II.6.3; p. 69.

- NKOH concluded 9 framework agreements as a result of 8 public procurement procedures.

Framework agreements and dynamic purchasing systems are procurement methods, complex purchasing techniques that can be used to more quickly address the well-classified purchasing needs of contracting authorities that arise regularly over a given period.

An analysis of the practice of centralised public procurement requires an overview of the operational principles of the framework agreement procedure.

The rules and conditions for the use of framework agreements - in line with the relevant EU public procurement directives[37] - are set out in Sections 104-105 of the Public Procurement Act, providing for framework agreements concluded with one single or multiple tenderers. A framework agreement is a two-part procedure, the first part of which is the conclusion of the framework agreement itself, following one of the general procedures under the Public Procurement Act, typically an open procedure. In the second part of the procedure, the procurement is carried out on the basis of the respective framework agreement, in accordance with the provisions of Section 105 of the Public Procurement Act, as specified by the contracting authority in its notice of opening of procedure. In doing so, the tenderers party to the framework agreement are obliged to submit a tender or conclude a contract.

The implementation of the specific public procurement under the concluded FA in the second part of the procedure may be carried out through different procedural mechanisms, depending on whether the framework agreement contains all the conditions for the contract(s) for the implementation of the procurement awarded under it. If so, the procurement is normally made based on any direct order. If the framework agreement does not contain all the conditions for the award of the contract, the successful tenderer will be selected after a written consultation in the case of an FA with a single tenderer, or after reopening the competition in the case of an FA with multiple tenderers.

It should be noted that Section 31 of the Public Procurement Act, which lays down the basic rules for centralised public procurement, allows the Government to adopt rules that differ from the Public Procurement Act in the case of centralised public procurement, to the extent necessary due to the specific nature of such procedures. However, these justified and different rules cannot be in conflict with the EU directives on public procurement.

[37] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

When considering framework agreement procedures as a specific procurement method, one of the advantages is undoubtedly that in the second part of the procedure, as intended by the legislator, they allow for a flexible and rapid handling of the contracting authorities' needs, while the first part of the procedure is subject to public scrutiny. However, the disadvantages include the fact that it is not possible to join the framework agreement at a later date, and the actors cannot change. Thus, in addition to the fact that a framework agreement can only be concluded with a number of tenderers determined by the contracting authority at the start of the procedure (typically a consortium of tenderers in the case of centralised public procurement), it also closes the market for a limited period, given that it can be concluded for a maximum of four years under the Public Procurement Act.

Also according to the data from the Public Procurement Framework Survey[38], the average duration of framework agreements concluded by the KEF, the DKÜ and the NKOH in the years 2020-2022 was as follows:

- On average the NKOH concluded framework agreement for 450 calendar days,
- the DKÜ for 1,108 calendar days,
- and the KEF for 994 calendar days.

Another typical procurement method used in centralised public procurement is the dynamic purchasing system, although it has only appeared alongside framework agreements in the last few years.

The dynamic purchasing system (DPS), like the framework agreement procedure, is also designed to meet the frequent procurement needs of contracting authorities, with the dynamic purchasing system being operated as a fully electronic process. Its major advantage over framework agreements is that any economic operator can join for the entire duration of the agreement, provided that it meets the eligibility criteria set by the contracting authority.[39]

In addition to openness, the possibility for the contracting authority to divide the dynamic purchasing system into categories supports the conditions for wider competition. The DPS therefore addresses the problem of framework agreements not being able to be joined at a later stage, and it is not necessary for suppliers to be able to supply the entire procurement portfolio, as the subject matter of the procurement can be divided into different categories. It is also a much less fixed structure for dealing with the needs of contracting authorities during the DPS period, as in the call for the setting up a DPS it is sufficient to specify the procurement categories, the characteristics of the categories and the main contractual terms and conditions.

[38] see Procurement Framework, Section II.6.3; p. 69.
[39] Section 106 (3) of the Public Procurement Act

The precise technical specifications and contractual conditions for the specific procurement to be implemented in the system must be made available at the same time as the tender notice is sent.[40]

3.2.5 The examined centralised public procurement systems

In order to prepare the present Integrity Report, the Authority sent targeted enquiries and data requests to the KEF, the DKÜ and the NKOH in order to map the operational characteristics of centralised public procurement systems, the volume and efficiency of centralised procurement.

It should be noted that **before 2022, we could not find comprehensive statistics on the functioning of centralised public procurement systems, nor even basic information on the share of centralised public procurement in the overall public procurement market.** This is not covered by the wide range of analyses and statistical data contained in the Public Procurement Authority's annual report.

In this respect the Public Procurement Framework Report fills the gap, which for the first time includes data on the number of procurements made through centralised public procurement. For example, it presents the number and average duration of framework agreements concluded in the framework of centralised public procurement, the number of contracting authorities using the centralised procurement system and the number of contracts concluded by them. However, the data provided are statistical and partial, and are not suitable for establishing deeper correlations. They do not include, for example, data on the value of framework agreements (even in aggregate form), the limits used, the procedures used in the second part of the framework agreement procedures, to mention only the most basic ones.

3.2.6 Operation of centralised public procurement procedures and framework agreements concluded by the KEF

The tasks and activities of KEF are defined by Government Decree 168/2004 (25 May) on the centralised public procurement system and the tasks and powers of the central purchasing body (KEF Decree).

The KEF is the central purchasing body with the longest history and performs the functions of a central purchasing body for the widest range of products.

The system of framework agreements operated by KEF is as follows. In all cases, the first part of the framework agreement procedure is conducted by KEF.

[40] Section 107 (2) of the Public Procurement Act

Pursuant to Section 24(1) of the KEF Decree, a centralised public procurement procedure results in a framework agreement or framework contract, and there are individual contracts under a framework agreement or framework contract. The framework agreements are defined as framework contracts, which contain all the contractual terms and conditions, on the basis of which the procurement is made by means of a purchase order. In comparison, framework agreements in the classic sense do not contain all the contractual terms and conditions, from which institutions can purchase priority products after written consultation or by reopening a competition.

In each case, the specific FAs concluded specify the rules and conditions under which the institutions can meet their needs under the framework agreement. Thus, for example, in a framework agreement concluded under Section 105(2)(a) of the Public Procurement Act - a framework agreement concluded with several tenderers and containing all the terms and conditions of the contract(s) for the performance of the public procurement contract(s) awarded on the basis of that agreement - the institutional needs are satisfied by a direct order to the seller offering the best price. This typically means the bidder ranked first in a comparison of all suppliers participating in the FA with the products (the basket) that the obliged institution wishes to purchase at a given time.

The other type of framework agreements contains an "internal" threshold - typically in the case of framework agreements under Section 105(2)(b) of the Public Procurement Act - up to which the institutions may carry out their procurement with direct orders, and above which the reopening of competition is mandatory. This is the case, for example, if the estimated value of an institution's individual purchase is at or above the EU threshold in force at the time.

In order for the central purchasing body to be able to monitor the purchases made under the scope of the FA and to have real information on the level of performance of the framework agreement in force, the actors of the FA are obliged to provide data. According to this, the obliged institution must notify its procurement needs for the priority product every three months in advance, and in case of extreme urgency, immediately, using the centralised public procurement portal[41]. This is to ensure that, in the second part of the framework agreement procedure, the vendor (the successful tenderer for that part) can only confirm and execute the order for the institution that has completed the notification of its needs approved by the KEF. On the other hand, the institution is obliged to inform the central purchasing body of the execution of the orders, as well as their exact details and qualification, through the centralised procurement portal.

[41] see Section 17 (1) of Government Decree 168/2004 (25.V),

Government Decree 168/2004 (25 May) provides for the option of procurement within own powers. This is an exceptional procurement option and may only be used in the cases specifically listed in Section 7(1) of the KEF Decree. Examples of such exceptional circumstances are where, for whatever reason, the KEF does not have a framework agreement, framework contract or dynamic purchasing system in force, or where the institution is able to obtain a priority product at a price below the price under the framework contract and that product is fully satisfactory in other respects (e.g. in terms of the same service).

3.2.7 Centralised public procurement procedures conducted by DKÜ

The tasks and powers of the DKÜ are defined in Government Decree 301/2018 (27 December) on the National Council for Communications and Information Technology, the Digital Government Agency and the centralised public procurement system for government IT procurement (DKÜ Decree). The DKÜ conducts public procurement procedures in the field of information technology for the organisational group (the organisations concerned[42]) defined in Section 1(2) of the above Decree.

As already mentioned, following the amendment of the KEF Decree on 1 November 2019, the DKÜ took over the framework agreements previously concluded by the KEF in the IT field, and from that date it has responsible for the launch of new centralised IT public procurement procedures.

In order to meet its procurement needs effectively, DKÜ develops its own procurement strategy, which may include, inter alia, the use of specific procurement methods: a procurement procedure to establish a framework agreement, and operation of a dynamic purchasing system.

The DKÜ may decide to carry out the procurement procedure itself, acting on behalf of the organisation concerned, either through centralised procurement or by providing an additional procurement service to meet the procurement need. The DKÜ Decree also provides for the option for the DKÜ to return the procurement procedure to the organisation concerned for the purpose of fulfilling the procurement need within its own powers. [43] A fundamental difference compared to the procurement within its own powers regulated by the KEF Decree is that while the KEF Decree provides for the possibility of a procedure outside the centralised system, under certain conditions, the DKÜ Decree does not allow for it.

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[42] see Budgetary bodies under the control or supervision of the Government, the Prime Minister's Government Office and the central, regional and local budgetary bodies and institutions under their control or supervision; foundations and public foundations established by the Government or under the founding authority of the Government or a member of the Government; Magyar Nemzeti Bank and companies in which the State exercises a majority influence pursuant to Section 8:2 of the Civil Code, with the exception of the business association in which the Magyar Nemzeti Bank has majority influence pursuant to Section 8:2 of the Civil Code.

[43] Section 13 (1) of Government Decree 301/2018 (27 December)

The centralised system is also used for procurement when the DKÜ "returns" the procurement to be carried out by the respective organisation within its own powers. This simply means that the contracting authority concerned will itself conduct the second part of the procedure on the basis of the Framework Agreement concluded by the DKÜ, with the participation of the suppliers identified in the centralised system.

There, too, one of the prerequisites for a centralised system to work is that the central purchasing body must have information on the purchasing needs of the obliged institutions and the size of those needs. This is the purpose of the data reporting obligation provided for in Section 7 of the DKÜ Decree. According to this, the organisation concerned must notify its annual IT procurement plan and annual IT development plan to DKÜ by 30 September of the year preceding the year in question, and its request for a specific IT procurement within 5 working days of the emergence of the request.

3.2.8 Centralised public procurement procedures performed by the NKOH

NKOH is the central purchasing agent for a specific procurement subject, government communication. Its activities and tasks are defined by the Government Decree 162/2020 (30 April) on the Legal Status of the National Communications Office and Government Communications Procurement.

In accordance with the centralised procurement systems described above, the NKOH performs the functions of the central purchasing body and prepares and conducts the procurement procedures of the relevant organisations for communication and organisational development on behalf of the contracting authorities subject to the relevant Government Decree. The tasks falling within the scope of the above are listed in Annexes 1 and 2 of Government Decree 162/2020 (30 April). The procurement needs in accordance with the approved communication plan and organisational development plan must be notified to the NKOH, which will conduct the communication procurement and organisational development procurement procedures in accordance with the information provided by the organisations concerned within the framework of the centralised public procurement and purchasing system. The NKOH decides on the feasibility of procurement by the organisation within its own powers.

Centralised public procurement is also subject to a fee in this system.

3.2.9 Findings and recommendations for the examined centralised public procurement systems

All three centralised systems presented are mandatory by nature. The institutions, contracting authorities and contracting entities falling under its competence are not free to choose any other procedure.

Although the KEF Decree provides for the possibility of procurement within own powers, this is exceptional and the institution must demonstrate that the conditions are met. In contrast, in both the DKÜ and the NKOH models, it is left to the discretion of the central purchasing body whether to provide the obliged institution the option to proceed within its own powers. While in the case of DKÜ this does not imply the possibility to procure under a system other than centralised public procurement, **it is not transparent on what criteria the central purchasing body bases its decision to return the procurement/public procurement to the institution to conduct the procedure within its own powers.**

In its annual Integrity Risk Assessment, the Authority identified as an integrity risk the fact that in the second part of framework agreement procedures conducted by central purchasing organisations outside the EKR, no or only limited data are available on the procurement needs met (reopening of competition and direct orders). This is partly due to the approach followed in the case of centralised public procurement, in particular the mixed system used for electronic procurement.

The legal basis for the dual system is provided by Section 31 (5) of the Public Procurement Act. Accordingly, the use of the EKR in the dynamic purchasing system operated by the central purchasing body is not mandatory for electronic communication between contracting authorities and economic operators when conducting a tender phase or using an electronic catalogue, or when carrying out a procurement under a framework agreement concluded by the central purchasing body, with or without reopening of competition. In practice, this means that while in the first part of the framework agreement procedure the central purchasing body conducts the public procurement procedure through the EKR, in the second part of the procedure the institutions concerned conduct the second part of the procedure, which results in the actual procurement, through the procurement portal (DKR, KEF-portal) operated by the central purchasing body. Although the central purchasing body or the contracting authority implementing the procurement is still obliged to publish publicly or record in the EKR all notices and data which it is obliged to publish or record under the Public Procurement Act or its implementing decree, the data of the procedures conducted under the second part of the framework agreements are available to a limited extent.

In its assessment of openness and transparency, the Authority found that the limited data available on centralised procurements outside the EKR, carried out mainly by centralised purchasing bodies was a major weakness and a high risk to integrity.

While this is not exceptional in Europe - a study on centralised public procurement[44] describes this phenomenon in detail - the publicity and wide availability of data on centralised public procurement should be strengthened in the second part of the procedures. Compliance with the contracting authority's obligation in this respect could be measured by targeted monitoring.

As part of strengthening publicity and transparency, data should be made available on the distribution of the award of individual contracts under framework agreements between the various economic operators, including their number and value, as well as the prices obtained in the second part of the framework agreement procedure and the savings achieved through centralised public procurement, in order to draw conclusions on the effectiveness of these systems.

The Public Procurement Framework also highlighted that the high volume of centralised public procurement makes the efficient functioning of central purchasing bodies a key factor in the cost-effective operation of the state and the proper use of EU funds. In terms of effective operation, two key aspects that can be achieved through centralised public procurement i.e., time and cost savings, are significant. The results of a survey carried out under the Public Procurement Framework showed that **while the use of centralised public procurement offers significant benefits in terms of time efficiency of procurement, there is a lack of research results on the cost-effectiveness of public procurement systems, which requires further data and deeper analysis.**

When asked by respondents to the Public Procurement Framework questionnaire how much centralised public procurement would save them compared to if contracting authorities were to implement their procurement needs on their own, the vast majority of those who gave valid answers (i.e. those who did not tick the "don't know" option) **chose "no savings" or "additional expenditure".**

The perceptions of users of centralised public procurement are also important indicators, and **the Authority urges and explicitly recommends that targeted analyses should be carried out to assess the cost-effectiveness of centralised public procurement systems, and that the reporting obligations of central purchasing bodies should be strengthened.**

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[44] "The activities of centralised public procurement bodies, the publication of catalogue prices, the actual number of tenderers in the second part of the framework agreement procedure or even the role of the entity in the public procurement market of the Member State concerned in terms of contract value are not typically disclosed. Member States do not even report the most important data in their public reports" in. Központosított közbeszerzés és fejlődési lehetőségei, különös tekintettel az e-közbeszerzésre (Centralised public procurement and its development opportunities, with special regard to e-procurement); TÁTRAI, Tünde; Dialóg Campus Kiadó, Budapest 2019

3.2.10 Evaluation of information received from central purchasing bodies

As already mentioned above, the Authority has sent targeted requests for information to the KEF, the DKÜ and the NKOH in order to gain a more in-depth understanding of the operational characteristics of centralised public procurement systems.

While the focus of the Authority's annual integrity report is on the processes of the year 2022, in order to get a comprehensive picture of the evolution and trends in centralised public procurement, the data requests covered the period 2016-2022. The extensive, multi-component request for information, including the number of tenders received per framework agreement, the tenderers, the terms of the contract notices, the number of participants under framework agreements, the amount of funding under the framework agreement, the length of the evaluation, the effectiveness of the procedure, was met to varying degrees and in different ways by the central purchasing bodies contacted.

The NKOH provided data for the year 2022, for all 3 framework agreements concluded by it.

The data provided by the KEF, although limited in scope, covered the entire period indicated by the Authority and included information mainly on the volume and the winners of the procedures carried out under the second part of the framework agreements.

Processing the large amount of data provided by DKÜ takes longer. The data received are still being collated and analysed, and cooperation agreements with the organisations concerned are still being drawn up, so our findings are formulated in the light of these limitations.

3.2.11 Selection of supplies for centralised public procurement

An important part of the strategy for central purchasing bodies is the products and sectors for which the Government is deciding to centralise procurement. In the introduction to the topic, it was mentioned that Hungary has a decades-long tradition of centralised procurement, so we accept as a default position that centralised public procurement is mandatory for a certain range of products.

The legal basis for this is provided by Section 31 (1)-(3) of the Public Procurement Act.[45]

In reply to the Authority's question on the examination and impact assessment prior to the selection of the procurement items to be centralised, all three central purchasing bodies referred to the legislation defining their competences and tasks as the regulators that define the scope of the priority products. In this context, Section 20(1) of the KEF Decree states that the Minister responsible for the sector concerned may propose the list of priority products and the ordering of their procurement under the centralised public procurement system to the Minister supervising the central purchasing body. However, the Authority has not received any information on what preliminary assessments precede the proposal of the minister responsible for the sector concerned.

According to the NKOH's reply, no prior impact assessment was carried out for the selection of the procurement items under its competence.

The Authority **suggests that, in any case, before deciding on any new products to be centralised in the future, an impact assessment should always be prepared on the expected benefits of centralised procurement, and that for products already centralised, studies statements should be prepared on the effectiveness of centralised public procurement.**

In response to the Authority's question on the basis of which assessments the central purchasing body decides on the subject matter to be submitted to a centralised public procurement procedure within the product areas set out in the legislation, the NKOH states that it has framework agreements for all the tasks listed in Annexes 1 and 2 of Government Decree 162/2020 (30 April), i.e. there is no selection among the procurement subjects.

According to the mechanism followed by the KEF, an assessment of the needs of the obliged institutions for a given product is conducted on the basis of the monitoring of institutional needs and with the involvement of experts, on the basis of which a decision is taken on for which new subject matter and for which priority products a centralised public procurement procedure should be prepared within the product areas listed in the KEF Decree.

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[45] Section 31 (1) "The Government may order the centralised procedure for public procurement (...) "Section 31 (2) "In the case of organisations financed by the Health Insurance Fund, a centralised procedure shall be applied for health services in the cases provided for by specific legislation."
Section 31 (3) "In the case of public procurement related to the performance of government communication, organisational development and event management tasks, a centralised procedure shall be applied in the cases specified in a separate act."
Section 31 (3a) "In the case of government IT procurements, a centralised procedure shall be applied in the cases specified in the legislation.

DKÜ relies on the legislation defining the scope of IT procurements, the Decree of the Prime Minister's Cabinet Office 2/2019 (12 July) on the scope of applications, IT tools and software covered by government IT procurements, and decides on the basis of the requests of the organisations concerned, as announced on the DKÜ portal, on the subject matter of a tender to be issued for the framework agreement within the product scope defined by the legislation. It also takes into account framework agreements expiring in the current year, the availability of EU funds and expected market trends. It also takes into account the National Council for Communications and Information Technology's annual plan for government IT procurement and application development.

3.2.12 The relationship between the compulsory nature of centralised public procurement and the procurement within own powers

The use of centralised public procurement systems is mandatory for the organisations covered by such systems.

Even if the mandatory application is maintained, **it is recommended to review the scope of procurement within own powers in the case of the KEF Decree. As regards the DKÜ, where the decision to delegate institutional procurement to institutions to act within their own powers is taken at the discretion of the central purchasing body, it is recommended that the decision criteria of the central purchasing body be made public and accessible.**

In addition to the foregoing, another feature of domestic centralised systems is that the organisations (institutions) concerned are obliged to apply centralised procurement rules even if they could otherwise procure the product or service in question within their own powers without the use of public procurement.

In other words, **in the product areas covered by centralised procurement, the institution is not only obliged to procure under centralised public procurement when the applicable procurement threshold is reached, but also below the threshold. This is true for all three centralised public procurement systems examined**. In such a case, the institution is still liable to pay the centralised public procurement fee.

Almost more than half of the respondents (347) to the questionnaire on the effectiveness of centralised public procurement under the Public Procurement Framework (PFF) considered that the use of the centralised public procurement system would not lead to savings (23.3% of respondents) or would even lead to additional costs (33.1% of respondents) in terms of procurement procedures, i.e. below the threshold for public procurement.[46]

There is a slightly more favourable view - by 8 percentage points - of the use of a centralised public procurement system when procurement thresholds are reached, but even so, nearly half of respondents said that there are either no savings (22.8% of respondents) or there are even additional costs (25.9% of respondents). In the former case 32% of respondents and in the latter case almost 35% of respondents said that they could not decide whether there were savings to be made by using centralised public procurement.

In the light of this, **the Authority proposes to review the system of mandatory centralised public procurement procedure irrespective of the thresholds.**

3.2.13 The cost-effectiveness of the centralised public procurement system

As indicated in the introduction, the cost-effectiveness of centralised public procurement has not been examined in this report, as it requires targeted data and data analysis. However, it should be stressed that the efficiency of the operation of centralised systems is not equivalent to and cannot be measured with cost-effectiveness, but it is certainly an element that cannot be avoided. The benefits expected from such models include the ability to serve institutions quickly, to take advantage of the benefits of electronisation - for example, the development of electronic catalogues - and to operate professionally.

As with the questionnaire survey of the Public Procurement Framework to identify the direction of future data requests, the Authority's data request also included a review of whether the central purchasing body compares framework agreements, framework contracts and contracts concluded as a result of centralised public procurement procedures with market prices and measures the effectiveness of such agreements, contracts and framework agreements.

According to the data provided under the Public Procurement Framework, the central purchasing organisations KEF and DKÜ operate a system using their own resources to monitor the market price of products procured or covered by a framework agreement.[47]

[46] see figure showing the answers to question 18 in Annex 4 to the Performance Measurement Framework for the Evaluation of the Efficiency and Cost-effectiveness of Public Procurement (Results of the Public Procurement Efficiency Questionnaire)

[47] see details in Table 18 of the Procurement Framework Report.

However, in response to the question on the cost-effectiveness of centralised public procurement, whether the central purchasing bodies surveyed have a framework for monitoring the effectiveness of the central purchasing body and the procurement procedures carried out, it was found, on the basis of the data received, that none of the four central purchasing bodies have such a framework.[48]

In response to the Authority's question on the efficiency of public procurement conducted by the central purchasing body, the KEF replied that "savings from a centralised procurement system are not necessarily and not exclusively measured in terms of the prices of the products procured, but in terms of the concentration of time and human resources and the value of the savings". In its reply, the KEF also stressed that, in order for the centralised system to be able to meet the unforeseen needs of appr. a thousand of institutions, the central purchasing body must include specific conditions in the framework agreements that make the prices of public procurement procedures non-comparable with market prices. At the same time, in its response it also pointed out that, looking at individual products, the experience of competitive re-launches suggests that price reductions of 24-48% can be achieved for some medical equipment as a result of reopening competition.

In the case of framework agreements (framework contracts) concluded by the NKOH, there was no comparison of the prices contained therein with market prices, either. As regards the measurement of the effectiveness of framework agreements, according to the NKOH, the contracts concluded as a result of the FAs are typically framework contracts, which allow the organisations concerned to meet their specific procurement needs. The savings cannot be interpreted in terms of unit prices for individual items, as the underlying technical content is different for each procedure, which does not allow for a comparison of prices.

While recognising the wide range of needs addressed by centralised public procurement and the benefits expected from these systems, beyond the recognition of cost-effectiveness, **the Authority considers that methods and standards should be developed to allow comparison of prices achieved through centralised public procurement with market prices.**

In addition, in order to have a comprehensive and realistic picture of the real benefits of centralised procurement and its operational efficiency, we consider it essential to have access to data on procurement under centralised public procurement systems, including the level of prices achieved in reopened competition. More emphasis should be placed on targeted data analysis and savings reporting.

From the point of view of the cost-effectiveness of the centralised public procurement system, the fees to be paid for centralised public procurement cannot be ignored, either.

[48] See Table 22 in the Public Procurement Framework Report.

As mentioned in point 3.2.3, although the amount of the public procurement fee varies from one central purchasing organisation to another, it can generally be said that it is set at 2-4% of the value of the fee-based contract, excluding VAT, with no upper limit. Given the high value of the contracts are awarded in the context of centralised public procurement, they entail a significant procurement fee, which is paid by the individual institutions. **The Authority proposes to revise the current percentage-based fee, also taking into account the operating costs of central bodies, and to introduce a nominal cap.**

3.2.14 Analysis of the practice of contracts concluded under framework agreements

Based on the data provided on centralised public procurement procedures carried out by central purchasers, the following conclusions can be drawn.

The KEF has provided the Authority with tables containing summary data on its centralised public procurement procedures conducted since 1 January 2016, by procurement object, indicating the scope and status of the framework agreement/dynamic purchasing system, the number of direct orders and reopening competition for tenders carried out under it, the identification of suppliers and the net value of the relevant part. Accordingly, 18 DPSs were set up by the KEF during the period and in total 201 framework agreements were concluded as a result of the DPSs and framework agreement procedures. On that basis, 1,234 procedures were reopened for competition and 9,028,060 direct orders were placed by the institutions. It should be noted here that, although the KEF Decree does not provide for this option, the specific solution used by the KEF allows for the conclusion of a framework agreement not only as a result of a framework agreement procedure but also as a result of a DPS.

DKÜ concluded 35 framework agreements and set up 4 DPSs in the period 2018-2022. The DPSs did not result in a framework agreement.

According to the data provided, the NKOH concluded in total 3 framework agreements for HUF 133 billion in 2022-23.

In the case of framework agreement procedures conducted by the KEF, as described in detail in section 3.2.6, in the second part of the FA the procurement need may be met based on the provisions of the framework agreement concluded, either by direct award or by reopening of competition.

According to the information provided by the NKOH, written consultation procedures are carried out by the central purchasing body in the second part of the FA and specific contracts are concluded accordingly. In framework agreement procedures, the limit used by the NKOH is one.

In the second part of the framework agreement procedures conducted by DKÜ, it is possible to satisfy a specific procurement need by means of a direct order up to a certain amount, provided that the FA specifies all the conditions of the procurement need. Above the value threshold set in the FA, the procurement request may be implemented by reopening the competition. Otherwise, the possibility to reopen the competition is always open for the contracting authority, regardless of the value threshold.

The Authority recommends examining, in line with the specificities of each central purchasing body, the optimal limits for framework agreements to be concluded and the possibility of concluding several framework agreements covering central purchases, even by dividing the contract into lots, thus widening competition and the possibility to participate in it.

3.3 Proposed addition to the measures to reduce single-tender procedures

In Hungary, the high proportion of single-tender procedures is a well-known problem. Based on Government Decision 1186/2023 (31 March) on the Action Plan on measures to increase the level of competition in public procurement (2023-2026) (hereinafter: Action Plan), it can be concluded that the figures for 2022 are more favourable than those of the previous year: the share of single-tender procedures decreased from 39.5% in 2021 to 32.9% in 2022 in the EU procedure and from 22.1% to 20.1% in the national procedure, and as an aggregate of the two, from 30.8% to 26.7%. As set out in the Action Plan, looking separately at EU and nationally funded public procurement data, the share of single-tender procurement for EU-funded procurement decreased from 15.9% in 2021 to 13.3% in 2022, and for nationally funded procurement from 35.9% in 2021 to 31.3% in 2022.

In the conditionality procedure and in Hungary's Recovery and Resilience Plan, the Government made a commitment to reduce the proportion of single-tender procedures according to the following schedule: for EU-funded public procurement, from 2022 onwards, a uniform 15%, while for nationally funded public procurement, 32% for 2022, 24% for 2023 and 15% for 2024 onwards. It can therefore be concluded that, according to the available data, the 2022 commitments have been met for both EU and nationally funded public procurement. The Action Plan also states that further measures are needed to meet the commitments for the coming year, and the Authority considers that the effectiveness of the measures taken so far and the need to complement them should be examined.

In addition to what is proposed in the Action Plan, **the Authority recommends that consideration be given to reviewing the way in which the minimum regulatory regime for mandatory prior market consultation is regulated**, adding further detail and reviewing the appropriateness of the timeframe set out below:

- Government Decree 63/2022 (28 February) on measures to reduce the number of single tender public procurements sets only one time limit for pre-market consultations; in Section 1(4) it stipulates that the minimum time limit between the date of the announcement of the pre-market consultation and the date of the publication of the invitation to open the public procurement procedure shall be 7 calendar days. This 7-day time limit does indeed meet the objective of not significantly increasing the time needed to prepare the public procurement procedure, but taking into account the procedural framework established in the Electronic Public Procurement System, it is of concern that it would be sufficient to truly involve interested economic operators and to channel their views in a meaningful way. In this context, **it is also suggested to examine the extent to which contracting authorities apply this mandatory minimum or close to the minimum time limit for mandatory market consultations, possibly in order to formally comply with the requirements**;

- Currently, the process of mandatory pre-market consultation is effectively "regulated" by the EKR, and the Prime Minister's Office's Guide on Methods and Practices to Avoid Single-tender Public Procurement provides recommendations (e.g. on the deadline for economic operators to indicate their interest). Since prior market consultation is mandatory in certain cases, we therefore recommend that the Minister responsible for public procurement, with the involvement of the Ministry of Justice, should review **which requirements should be laid down at least at the level of a Government Decree, taking into account the guarantee aspects, instead of the EKR and the recommendations. It would also make the conditions for pre-market consultations more uniform and verifiable, and reduce the number of formal pre-market consultations, thus facilitating their proper application**;

- Since, under the provisions of the abovementioned Government Decree on the single-tender procedures, the mandatory pre-market consultation must, as a general rule, be advertised using the EKR function - without the Government Decree or other legislation regulating the conduct of the pre-market consultation in detail - thus the participation of economic operators is ensured within the framework of the process set out in the EKR, i.e. only those economic operators who have expressed an interest in the consultation by the date set by the contracting authority may participate in the actual consultation process.

We consider it appropriate to set a minimum legal deadline for the definition of this period for expressing interest and to bring it into line with the 7 calendar days referred to above (which should therefore include the announcement of the consultation, the expression of interest, the submission of observations and, where appropriate, the related consultations, the finalisation of the public procurement documents, the approval by the contracting authority's decision-maker and, finally, the publication of the contract notice);

- A separate issue is how to ensure that economic operators are informed of the announced pre-market consultation in due time, as without this, the mandatory pre-market consultation cannot fulfil its purpose. The Guide of the Prime Minister's Office already referred to recommends that the contracting authority should/may inform the economic operators concerned by separate e-mail, in compliance with the principles. **We suggest for consideration - with appropriate development of the EKR functions - that the contracting authority should be able to provide, through the EKR, brief information on the announcement of the pre-market consultation to economic operators already registered in the EKR and interested in the subject of the planned public procurement, which could serve as adequate documentation that the potential participants did not make use of the pre-market consultation option;**

- *Number of tenders received in public procurement procedures launched by contracting authorities subject to mandatory prior market consultation or single-tender procedures to the extent specified in the Government Decree*

  It is recommended to examine how many tenders are received in the public procurement procedures referred to and whether they are truly competitive (i.e. for example, there is no trend of two tenders being received instead of one and only one tender is considered to be a meaningfully competitive tender);

- *The content and effectiveness of the action plans published by contracting authorities required to draw up an action plan in order to avoid single-tender procedures;*

  It is proposed to assess the effectiveness of the action plans and, on that basis, **to make examples of good practice available to stakeholders,** as foreseen in the Action Plan.

3.4 Increasing the confidence of market players

In the Authority's view, the reduction of singe-tender public procurement procedures is a complex problem that cannot be achieved by increasing the effectiveness of the measures put in place so far. In our view, in order for interested economic operators (potential tenderers and the subcontractors and capacity providers they involve) to invest work, time and money in participating in public procurement procedures, they need to be confident that they have a realistic chance of winning the public procurement contract in question.

Adequately functioning public procurement requires rebuilding the confidence of market players. Of course, this cannot happen overnight, but it is important that economic operators feel the credibility of the contracting authorities' efforts. Each of the recommendations detailed below is designed to achieve this goal.

As a step towards building trust among tenderers, the Action Plan foresaw the provision of anonymous access to public procurement documents in the EKR by 31 December 2024. We agree with the Action Plan, and we propose to implement the development in such a way that the economic operators interested in the public procurement procedure do not become known to the contracting authority before the deadline for participation or submission of the tenders, and of course the EKR should ensure that the appropriate documentation is available. This would ensure that both the request for additional information and the response to it could be made anonymously. That way any attempt by the contracting authority to influence the range of tenderers participating in the public procurement procedure could be fully avoided and it would ensure that the contracting authority responds to requests for additional information from tenderers in a competitively neutral manner.

3.5 Eliminating the waiting time between the deadline for tenders and the opening of the tenders

In Hungary, it has been a long-standing practice (pre-World War II) to open tenders in a public opening procedure held at the time of the deadline for the submission of the tenders. And in the case of paper-based public procurement procedures, it was a guarantee that the commitments made on the reading sheet were explained at the time of the opening.

Since the rise of electronic public procurement, which has replaced paper-based public procurement procedures, the tender opening procedure has been transformed. On the one hand, the participation of an "external" observer is not possible at this stage of the public procurement procedures. This means that not only civil observers, but also other actors not involved in the public procurement procedure, are not allowed to participate.

The tenders are opened electronically, but tenderers do not have access to the information on the reading sheets (the other participants in the procedure and their bids according to the evaluation criteria) upon the deadline for submission of tenders.

Given the legislative justification for the 2023 amendments to the public procurement rules, the functioning of the EKR is reliable and predictable. **The need for a waiting period of two hours in the EKR between the deadline for the submission of tenders and the opening of the tenders is therefore not justified for the parties to the public procurement for IT reasons.**

This current 2-hour waiting time still raises concerns for the tenderers, so it would be justified to remove it.

3.6 Wider availability of the division of the contract into lots

Pursuant to Section 61 (4) of the Public Procurement Act, contracting authorities are required to examine their purchases to determine as to whether the nature of the subject-matter of the procurement and other related circumstances are such as to permit tendering for individual lots. If the contracting authority decided not to subdivide into lots, it shall give the reasons for such decision in the call for competition.

Pursuant to Section 61 (5) of the Public Procurement Act, if the contracting authority does not allow the division of the contract into lots, it shall give the justification for doing so in the notice launching the procedure. Where the contracting authority has the option of subdividing the tender into lots, it shall determine the estimated value, subject-matter and quantity of the public procurement by lots.

Providing the possibility dividing the contract into lots is closely linked to broadening and increasing competition, and thus even reducing the number of single-tender procedures. It is easy to see that, if the contracting authority allows only one tender for the entire public procurement contract, this may reduce the number of economic operators meeting the suitability criteria set accordingly and the number of tenderers capable of performing the public procurement contract. This is particularly true when the contracting authority intends to procure several types of items in one procedure and thus only allows them to be procured together.

Wider competition tends to result in lower prices, so whether the contracting authority makes an appropriate decision to allow the division of the contract into lots, including whether it sets an appropriate number of partial tenders, is also of paramount importance for the principle of responsible use of public funds.

A practice which, where the possibility to divide the contract into lots is provided for in the procedure, no longer considers it necessary to examine the need to further define the subdivision into lots is not considered appropriate.

The exclusion of the division of the contract into lots cannot be made legal by considerations of convenience for the contracting authority. The exclusion of the possibility of the division of the contract into lots is also objectionable if, although not only one or a few tenderers are able to bid in the procurement procedure, the definition of the subject and/or quantity of the public procurement contract significantly reduces the number of economic operators potentially able to participate in the public procurement procedure.

In particular, we consider it necessary to examine whether central purchasing bodies are making proper use of the obligation to allow for the division of the contract into lots (or even to procure through separate public procurement procedures). This can be particularly important when a framework agreement is concluded. Framework agreement procedures are subject to stricter suitability requirements, also in view of their high value, so it would be particularly important to ensure that, where possible, the lots are properly designed. The division of the contract into lots is also an accepted tool at EU level to help small and medium-sized enterprises compete.

We note that the Public Procurement Act itself previously set out more detailed criteria for the mandatory division of the contract into lots. Since they have been removed, their enforceability and accountability has been reduced. **Thus, we propose for consideration the addition of the legal provision on the division of the contract into lots in the Public Procurement Act.** In addition, it is proposed to review the jurisprudence, publish guide and methodological material, and share audit experience on the legal instrument.

3.7 Access to the contracting authority files

An e-procurement system that is in line with international standards has the potential to increase public confidence in public procurement in several respects. With respect to the EKR, in addition to the issue of anonymity of the enquiry into the procedure, as detailed above, two regulatory issues can be highlighted to enhance public confidence.

As a general rule, contracting authorities are required to conduct public procurement procedures electronically. However, in the case of access to documents opened at the contracting authority within short time limits after the dispatch of the summary pursuant to Section 45 (1) of the Public Procurement Act (since the contracting authority must provide access to the documents within two working days of receipt of the request and it may be requested within five calendar days of the dispatch of the summary), the Public Procurement Act does not make it mandatory to provide access to the documents electronically. Electronic access to the files would remove the direct personal link between the contracting authority and the tenderer requesting access to the file, and the possibility of influencing further remedies.

In addition, the current personal access to the file for both foreign and distant tenderers could be a potential limitation of the right of access to the file and thus indirectly of the right to remedy.

It would be justified to amend the legislation so that access to the file is always possible electronically, through the system used to conduct the procedure, and, where appropriate, to make the necessary improvements. The former would also significantly reduce the administrative burden for tenderers to participate in the procedural act.

3.8 Capacity provider organisations

The Public Procurement Act ensures - in line with EU law - that candidates and tenderers may also meet the eligibility criteria with capacity providers. However, we consider it important to review the jurisprudence in order to discourage the use of capacity providers contrary to public procurement principles.

- In relation to certain suitability criteria, Section 69(9) of the Public Procurement Act requires, with certain exceptions, that the entity or person providing the capacity participate in the performance of the public procurement contract. With regard to references, the law also specifically stipulates that the contracting authority is obliged to check during the performance of the contract whether the extent of the involvement in the performance of the contract is in accordance with the provisions of the commitment and the provisions of the Public Procurement Act. The legislator's intention with this clause was that the contracting authority should be obliged to verify **the adequacy of the involvement of the capacity provider during the contract performance period, in order to ensure that the commitment made in the tender has been fulfilled. To ensure that this does not lead to fraud, it has foreseen increased control by the Public Procurement Authority in this respect.**

- Considering that reliance on the body providing the capacity is also often the case for the requirements concerning the experts for whom contracting authorities also set evaluation criteria, in particular in the case of works and services, the effective involvement of these experts (including the extent and the way in which they are involved) is of paramount importance for the proper performance of the public procurement contract. Compliance with these requirements should also be monitored at systemic level. **It is recommended that the various notices and information on contract performance be reviewed from this point of view and supplemented as necessary.**

- An additional situation of fraud that may arise in the case of reliance on capacity providers is where a tenderer enters a public procurement procedure by relying solely on other organisations to demonstrate its capacity. It is even more worrying if the tenderer designates the same capacity provider for all the suitability requirements to demonstrate its own suitability (the question is why the capacity provider itself does not then take part in the public procurement procedure as a tenderer). An analysis is also recommended into the extent to which this type of fraud can be considered regular, and whether, in the case of any infringements detected, it is advisable to initiate legal proceedings.

3.9 The practice of applying a ground for exclusion for serious breach of contract

Exclusion grounds are circumstances in the regulatory framework of the Public Procurement Act which constitute an objective obstacle to the participation of economic operators in public procurement procedures. If they are present, the tenderer, candidate, subcontractor or entity involved in the attestation of suitability may not participate in the public procurement procedure or will be excluded from the procedure. Section 62 of the Public Procurement Act contains mandatory grounds for exclusion and Section 63 contains optional grounds for exclusion, based on the choice of the contracting authority.

The method of verification of the grounds for exclusion is set out in Government Decree 321/2015 (30 October) on the method of verification of suitability and grounds for exclusion in public procurement procedures and the method of defining the technical specifications of public procurement.

The Public Procurement Act sets out as an optional ground for exclusion the situation provided for in Section 63 (1) c) of the Public Procurement Act, specified under this sub-title. Accordingly, contracting authorities may stipulate in the contract notice that an economic operator cannot be a tenderer, candidate, subcontractor or may take part in the verification of suitability that has shown significant deficiencies in the performance of contractual commitments undertaken in a prior public procurement or concession award procedure within the previous three years, which led to early termination of that prior contract, damages or other comparable sanctions applicable under the contract in question, or if the successful tenderer to whom the contract was awarded was engaged in any conduct which led - in part or in whole - to the nullification of the contract.

In relation to the above-mentioned ground for exclusion, Section 142 (5) and Section 187 (2) (ac) of the Public Procurement Act lay down additional rules aimed at ensuring that contracting authorities in public procurement procedures have information on the operators falling under Section 63 (1) (c) of the Public Procurement Act.

In order to enable contracting authorities to verify the existence of grounds for exclusion of economic operators in ongoing public procurement procedures, Section 142 (5)-(6) of the Public Procurement Act imposes a general obligation to provide information to contracting authorities.[49]

Accordingly, the contracting authority shall report to the Public Procurement Authority any significant deficiencies in the performance of contractual commitments on the part of the successful tenderer to whom the contract is awarded, which led to early termination of the contract, damages or other comparable sanctions applicable under the contract in question, or if the successful tenderer to whom the contract was awarded was engaged in any conduct which led - in part or in whole - to the nullification of the contract. The notification shall include the description of the breach of contract, the legal consequence applied and whether or not the contracting party admitted breaching the contract, whether or not an action was filed in relation thereto. In the event of a dispute, the contracting authority is obliged to send the final decision closing the dispute to the Public Procurement Authority [Section 142 (5) of the Public Procurement Act].

Section 142 (6) of the Public Procurement Act covers cases where the breach of contract has been established by a final court decision. Accordingly, if the successful tenderer to whom the contract is awarded is found by final court ruling to have breached his contractual obligations, the contracting authority shall inform the Public Procurement Authority thereof, including a description of the breach and the material characteristics of the infringement, including, furthermore, if it led to early termination of the contract, damages or other comparable sanctions applicable under the contract in question, or if the successful tenderer to whom the contract was awarded was engaged in any conduct which led - in part or in whole - to the nullification of the contract.

The Public Procurement Authority keeps records of notifications. Section 187 (2) of the Public Procurement Act states the following in this regard:

"Section 187 (2) (a) The Authority shall keep up-to-date records and publish in the EKR (...)

ac) if the successful tenderer to whom the contract is awarded is found by final court ruling to have breached his contractual obligations undertaken following a public procurement procedure, or if the infringement is conceded by the economic operator, the fact of such infringement, including a description of the breach and the material characteristics of the infringement, including if it led to early termination of the contract, damages or other comparable sanctions applicable under the contract in question,

[49] See the Guide of the Council of the Public Procurement Authority on the certificates, declarations, records and data to be submitted with regard to the grounds for exclusion for economic operators established in Hungary; published on 12 May 2022.

and if the successful tenderer to whom the contract was awarded was engaged in any conduct which led - in part or in whole - to the nullification of the contract, with the proviso that such information shall be kept accessible on the website for a period of three years from the time of the infringement;".

The absence of grounds for exclusion is checked by the contracting authority on the basis of the records published by the public procurement authority in the EKR [Section 9(b) of the Code of General Administrative Procedure]. Therefore, the criteria on the basis of which the economic operator concerned is included in the list published by the public procurement authority are of paramount importance.[50]

An operator may only be entered in the register of the Public Procurement Authority if

a) the breach of contract *has not been disputed* by the economic operator, or

b) the economic operator was found in serious breach of its contractual obligations under a public procurement procedure *by a final court decision*.

Given that the case-law suggests that the phrase of the notification obligation on contracting authorities under paragraph (a) is the problem, we shall take a look at it below.

It is a fact that the Public Procurement Act does not set any requirements as to the contestation of the serious breach of contract by an economic operator, nor does it provide any guidance as to the documents that the contracting authority must provide to prove that the successful tenderer has not contested the fact of serious breach of contract. According to the information on the records on serious breaches of contract on the website of the Public Procurement Authority, it is sufficient for the contracting authority to attach documents which show that the successful tenderer has not contested the serious breach of contract. "In this case, an explicit statement by the successful tenderer acknowledging a serious breach of contract is not required. In the absence of an express statement, it is sufficient if the successful tenderer has not contested the existence of a breach of contract by any implicit conduct." The Public Procurement Authority also draws attention to the fact that it must be clearly established from the documents submitted by the contracting authority that the breach of contract was committed for reasons attributable to the winning tenderer and that the breach is causally linked to the legal consequence applied by the contracting authority. If the documents submitted do not establish this beyond reasonable doubt, the Authority will invite the winning tenderer to submit a declaration of recognition/no contestation of the breach or of its seriousness.

According to the information received from the Public Procurement Authority, their practice is to invite the successful tenderer, in all cases where a breach of contract is notified, to state whether they contest the fact or the seriousness of the notified breach.

[50] Electronic Public Procurement System - KH Registers (gov.hu)

This is the case even if the contracting authority has claimed a penalty as a legal consequence of the breach of contract.

In order for the Authority to have a comprehensive picture of the practice of notifications pursuant to Section 142 (5) - (6) of the Public Procurement Act related to the grounds for exclusion under Section 63(1)(c) of the Public Procurement Act, we addressed a targeted request for information to the Public Procurement Authority keeping the respective records.

According to the Public Procurement Authority, it received 183 notifications in the period from 01.2018 to 31.12.2022, pursuant to Section 142 (5) - (6) of the Public Procurement Act. 5 of the notifications based on court decisions and 35 of the notifications based on non-dispute/recognition by the winning tenderer were disclosed, i.e. 40 disclosures were made relating to serious breach of contract out of 183 notifications.

In response to the question on the number of cases in which the successful tenderer disputed the existence of a serious breach of contract concluded pursuant to public procurement procedures and the reasons for such a serious breach in the case of notifications on breaches of contracts awarded after 1 January 2019, the Public Procurement Authority said that of the notifications examined between 1 January 2018 and 18 May 2023, the successful tenderers disputed or did not acknowledge the existence and/or the seriousness of the breach in 152 cases. The reasons given were generally based on external circumstances beyond their control and their lack of responsibility. However, according to the Public Procurement Authority, in the vast majority of cases the winning tenderers return the form sent to them without giving reasons, contesting the fact and the seriousness of the breach of contract, taking advantage of the fact that the law does not provide for the obligation to give reasons.

In the Authority's view, the provisions of Act V of 2013 on the Civil Code should also be applied accordingly to the assessment of serious breaches of contract, with regard to Section 2(8) of the Public Procurement Act. In this context, it should be noted that the Civil Code regulates liability for breach of contract on the basis of non-attributability (see Section 6:142 of the Civil Code), which is also the basis for the liability rules set out in public contracts concluded on the basis of public procurement procedures. This should therefore be taken into account when examining issues relating to these grounds for exclusion and communicating about them.

The wording of this legal provision, which does not impose any additional condition for contesting the existence of a serious breach of contract, and the practice followed by the Public Procurement Authority, which requires the successful tenderer to declare the notified serious breach of contract in all cases, results in the fact that in approximately 20% of the notified serious breaches of contract, the serious breach is disclosed and thus registered by the Public Procurement Authority.

In order to avoid the situation that a formal declaration can be used to escape the legal consequence of a serious breach of contract notified by the contracting authority, we propose that the legislation should set a condition for challenging a serious breach of contract, for example by making it a specific declaratory action in a civil procedure before a court and requiring the successful tenderer to prove that this has been done.

A further problem with the grounds for exclusion in the title and the difficulty of uniform application of the law is that in relation to the wording of the grounds for exclusion i.e., *serious breach* of a contractual obligation entered into under a previous public procurement or concession procedure in the last three years, there is no further explanation in the Public Procurement Act and it is the responsibility of the contracting authority to fill in the respective content. In this respect, the Civil Code is the starting point, as the provisions of the Civil Code apply to contracts concluded on the basis of public procurement procedures, with the exceptions provided for in the Public Procurement Act. Based on Section 6:137 of the Civil Code, non-performance of an obligation is any failure to perform that obligation. However, only a qualified breach of contract, a serious breach of contractual obligations, is relevant for the purposes of the grounds for exclusion under Section 63 (1) c) of the Public Procurement Act.

As regards the assessment of what constitutes a "simple" and "serious" breach of contract, no general rule or criterion can be given, given that each breach of contract must be assessed individually in the complex set of conditions of the contract in question. However, it creates legal uncertainty between the parties if the nature of the serious breach of contract is not clear. On the one hand, it leaves the successful contractor in uncertainty and, on the other hand, it can provide scope for subjective and, in extreme cases, arbitrary, discretion for the contracting authority.

The starting point for the qualification of a breach of contract may be the impact on the essential objectives of the contract and the extent to which they are affected. While a simple breach of contract does not jeopardise the essential purpose of the contract and typically does not cause serious harm to the other party, a serious breach of contract makes it impossible to continue the contractual relationship.

Taking the above into account and in order to facilitate the practical application of Section 63(1)(c) of the Public Procurement Act, the Authority recommends that contracting authorities in public procurement procedures include in their contracts resulting from the procurement procedure detailed provisions on what constitutes a serious breach of contract that justifies notification to the Public Procurement Authority. In the field of public procurement, it proposes to the Prime Minister's Office, responsible for the preparation of the legislation, to consider inserting provisions on the mandatory inclusion of serious breach clauses in the contract terms and conditions in Chapter XX of the Public Procurement Act for the contracting authorities.

This latter amendment, together with the amendment proposal on the challenge of serious breach of contract, could ensure the effective application of the ground for exclusion under Section 63(1)(c) of the Public Procurement Act.

3.10 Assessment of abnormally low prices, standardisation of jurisprudence

Section 72 of the Public Procurement Act regulates the issue of the assessment of abnormally low prices.

One of the most frequently contested contracting authority decisions in application-based legal remedy procedures is the invalidation of a tender on the grounds of an abnormally low price or the fact that the contracting authority, in the applicant's view, did not at all or properly examine the abnormally low price and therefore unlawfully accepted the tenderer as valid and successful.

Under the current public procurement rules, the assessment of an abnormally low price is mandatory in the EU procedure, but is left to the discretion of the contracting authority in the national procedure. However, there have already been conflicting arbitration panel and court decisions as to whether, if the contracting authority exercises the possibility to request justification but does not declare the tender invalid because of an abnormally low price, another economic operator can appeal and be subject to review by the Arbitration Board.

When examining the abnormally low price, the contracting authority may or must request a price justification and - based on the case law - additional data and a price justification several times in order to ascertain whether the tender price is compatible with economic reasonableness and whether the public procurement contract can be performed for the tender price.

The price review is subject to a highly complex arbitration and judicial jurisprudence, with pro and con decisions, which makes it important to ensure consistency of jurisprudence, especially as the possible misuse of abnormally low price provisions may provide an opportunity to eliminate from the public procurement procedure tenderers not preferred by the contracting authority. It is a common phenomenon that the first request for justification by contracting authorities is very general, inviting tenderers to provide only a few key cost elements, and then, in the subsequent requests for additional information for the justification submitted on that basis, the contracting authority asks for the existence of many more cost elements. It can be noted that the case law is extremely strict in its examination of the legal requirement of objectivity in the justifications, exact amounts in HUF are required, and even the transfer of costs allocated to profit or reserves is not permitted, which often results in the invalidation of tenders.

In order to ensure that **the abnormally low price review is properly applied, and that it is indeed only intended to exclude the risk of contract performance resulting from an abnormally low price, but does not unduly restrict the number of tenderers competing in public procurement**, the case law and, if necessary, the legislation should be reviewed, in particular as follows:

- **It is recommended to control and enforce the publication of the wage, contribution, etc. items for the different sectors by the designated bodies, every year and on time, in accordance with the provisions of the Public Procurement Act**. It is proposed to publish, for all procurement subjects and sectors and for all procurement objects, supporting documents, with a level of detail similar to that previously used for the cleaning and security sector, which will allow tenderers to identify, at the pre-bid stage, all cost elements relevant to the abnormally low price, as well as their generally accepted % rate, thus ensuring that tenders can be submitted in the public procurement procedure with that in mind;

- **It is proposed to issue model price justification request forms for abnormally low prices in the form of a guide** to ensure that contracting authorities send out price justification requests in sufficient detail and receive price justifications with the same content and structure from the tenderers concerned, which are thus comparable;

- **It is proposed to specify that in the supplementary requests for price justifications related to the request for price justification, the contracting authority should not be entitled to request the presentation of additional cost elements**, or to extend the cost elements previously indicated.

3.11 The time needed to reach a decision in the evaluation phase of public procurement procedures

A problem that often arises with public procurement procedures and their time requirements is the length of the evaluation phase. Despite the fact that Section 70 (1) of the Public Procurement Act lays down in principle the general requirement for contracting authorities to evaluate tenders as soon as possible, tenders are not typically evaluated within the thirty days of the general rule of the time limit for the submission of tenders, or within the sixty days in the case of public procurement procedures for works or involving in-process controls.

In order to address this issue, the Public Procurement Act has long provided for the possibility of extending the time limit for the submission of tenders for up to sixty days.[51] However, experience has shown that in many cases contracting authorities have not been able to close the procedure even within the extended time limit of ninety (30+60) or one hundred and twenty (60+60) days.[52] The reasons behind the delay in the evaluation of tenders are complex, but in many cases the time-consuming nature of the monitoring process built into the process in the case of procurements with EU funds has contributed to this. Given the need to react to the situation, in practice different solutions have emerged, going beyond the specific legal provisions of the Public Procurement Act, as to how the parties can effectively conclude the public procurement procedure beyond the binding period of the tenders.

Instead of the bridging and non-regulated solutions, the new paragraph (2a) of Section 70 of the Public Procurement Act was adopted in response to practical needs.[53] According to the rule in force from 1 February 2021, if the contracting authority is unable to evaluate tenders within the maximum period of ninety or one hundred and twenty days of the deadline for submission of tenders, it may request tenderers to continue to maintain their tenders until a specified date, subject to the provisions of Section 54 (7) of the Public Procurement Act. And the second phrase of the rule provides that if the binding period of tenders would exceed one hundred and eighty days before the notification of the decision closing the procedure to tenderers, the contracting authority may take the decision closing the procedure subject to Section 75 (1) c) of the Public Procurement Act.

In the preamble of the Act introducing the change, the legislative objective of adding a new paragraph (2a) to Section 70 of the Public Procurement Act is to limit the scope of the evaluation and to encourage a faster evaluation of tenders. One instrument of doing so is that, if the contracting authority has made participation in the procedure subject to the provision of a tender security and is unable to evaluate tenders during the maximum ninety or one hundred and twenty-day period of the binding term of the tender, it may ask tenderers to maintain their tenders, but may not require the maintenance of a tender security for the extended binding period. Another element to encourage a faster evaluation is that, according to the explanatory memorandum to the amendment, beyond a certain point of the one hundred and eighty days' time limit set by the legislator at a period of more than one hundred and eighty days, the procedure can only be closed successfully if the tenderer who is most favourable to the contracting authority maintains its tender.

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[51] Section 70(2) of the Public Procurement Act. If the contracting authority is unable to complete the procedure in a timeframe so as to be able to inform tenderers of the contract award decision within the binding period, the contracting authority may invite tenderers - before the expiry of the binding period - to maintain their tenders further, for a specific time beyond the binding period, however, the binding period may not be extended by more than sixty days past the date of expiry of the initial binding period.

[52] According to the European Commission's Single Market Scoreboard, the average time between the end of the deadline for tenders and the end of the evaluation in EU open procedures was 131 days in 2019.

[53] see Act CXXVIII of 2020 amending Act CXLIII of 2015 on Public Procurement and certain related acts

Otherwise, it must declare the procedure ineffective in the light of the newly introduced second phrase of Section 75 (1) c) of the Public Procurement Act.[54]

In the context of the efficiency of public procurement procedures, the Public Procurement Framework has examined several indicators that give an idea of the time it takes for contracting authorities to implement their procurement needs. Given that the preparation of the procedures, although an essential and inevitable part of the public procurement procedure, varies from procurement to procurement and its length depends on many factors, it was not considered for the purpose of determining the time needed for the procedures. Time efficiency was therefore examined along the fixed dates in the procedure. Such is the period from the start of the procedure i.e., from the publication of the notice of opening of the procedure, until the contracting authority's decision, since this is the time taken by the contracting authority in the public procurement procedure to reach the decision closing the procedure. According to the data provided in the Public Procurement Framework, the average time from the start of the procedure to the final result of the procedure in 2022 was 65 days in the national procedure and 122 days in the EU procedure. This included an average of 39 days under the national procedure and 83 days under the EU procedure.

The Public Procurement Framework measurement shows a downward trend in the time taken to evaluate tenders over the last few years[55] , presumably partly due to the legislative changes cited.

It should be noted, however, that there is a significant discrepancy in the length of the evaluation between the data of the Single Market Scoreboard kept by the European Commission for 2019 and the data of the Public Procurement Framework for the same year. According to the Single Market Scoreboard, in 2019 the average time from the end of the deadline for submission of tenders to the end of the evaluation in an EU open procedure was 131 days, while the average time from the deadline for submission of tenders or participation to the publication of the final summary was 94 days in 2019, according to the Public Procurement Framework survey based on EKR data. Part of the reason for the discrepancy is probably that the data reported in the Public Procurement Framework includes the average time taken to complete the single and two-stage procedures, whereas the Single Market Scoreboard only includes the time taken to complete the open procedures.

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[54] Section 75 (1) of the Public Procurement Act. The procedure shall be deemed unsuccessful, if [...]
c) the binding period for all tenders submitted in the procedure have expired and no tenderer maintains its tender, *or the tenderer considered to be the most favourable in the light of the evaluation criteria after the expiry of the one hundred and eighty-day period for the submission of tenders pursuant to Section 70(2a) does not maintain its tender*.

[55] see "Indicators based on EKR data for the performance measurement framework to assess the efficiency and cost-effectiveness of public procurement", Figures 18-19

Based on the data published by the Public Procurement Framework for 2022, which shows that contracting authorities spent an average of 83 days on evaluation, the question arises whether it is justified to maintain the rule introduced in 2021, which offers contracting authorities the option to extend the evaluation. The data of the Public Procurement Framework show that contracting authorities do not even exhaust the 30+60 or 60+60 days timeframe for the evaluation of the tender, as provided for before the respective amendment of the Public Procurement Act.

Section 70(2a) of the Public Procurement Act referred to above gives contracting authorities the possibility to request tenderers to maintain their tenders if they are unable to evaluate the tenders during the extended binding period of the tender. The objective time limit for this extended evaluation period is one hundred and eighty days, after which the contracting authority may close the procedure successfully only if the most favourable tenderer maintains its tender.

However, the length of the evaluation process is not beneficial for any of the parties involved. It makes it unplannable for tenderers to maintain their capacity, forcing them to spend more than necessary and making planning more difficult. While contracting authorities risk being able to conclude a contract on less advantageous terms if the most favourable tenderer withdraws, there may also be a need for contract amendment due to delays.

By setting the tolerable extension of the evaluation period at one hundred and eighty days, the law makes relative the rule in Section 70(1) that contracting authorities must evaluate tenders as soon as possible. In the case of the one hundred and eighty days set by the legislator, six (!) months have already elapsed since the start of the period for the submission of tenders. Not to mention the fact that one hundred and eighty days is not an absolute limit either within which the contracting authority must evaluate tenders. If the tenderer considered to be the most favourable in the light of the evaluation criteria undertakes to maintain its tender, the contracting authority may continue the evaluation even beyond one hundred and eighty days.[56]It should be noted that the rule does not distinguish between the procedures used by the contracting authority, so it is also applicable for an accelerated procedure.

We believe that the overly permissive rule do not take into account that the costs for tenderers to participate in a public procurement procedure are further increased by the extension of the mandatory bidding period. In addition, it is unrealistic to expect a 180-day binding period for tenders, especially when the recent pandemic, war-torn and rapidly changing economic circumstances are taken into account.

[56] Éva Kothencz: Expanding opportunities for the discretion of contracting authorities, growing questions - reflections on the amendment of the Public Procurement Act by Act CXXVIII of 2020; in: KJO issue no. 2021/2; Wolters Kluwer Kft

Maintaining the commitments in the tender for such a long period of time, even in the normal course of business, is a heavy burden for economic operators.

Nor can it be ignored that the amended provision effectively places the consequences of delay by the contracting authority and the responsibility on the tenderer by making the success of the procedure dependent on whether the most favourable tenderer still maintains its tender on the 180th day of the binding period. And the misuse of the rule can even be used to manipulate the competition.

On the basis of the above, the Authority does not consider it justified to maintain the rule and **recommends that the legislator review the need for Section 70(2a) of the Public Procurement Act and the related case of invalidity.**

3.12 Increasing use of conditional public procurement

As a general rule, in public procurement procedures launched by the contracting authority, it is obliged to carry out the evaluation after the tender has become binding and to announce the result of the procedure to conclude a contract with the successful tenderer and to have it performed by the contracting parties accordingly. In contrast, in the case of conditional contracts, the contracting authority may be exempted from the obligation to evaluate or conclude the contract, and the public procurement contract concluded may not enter into force.

According to Section 53 (5) of the Public Procurement Act, the contracting authority may decide to declare the procedure unsuccessful also if it has informed the economic operators in the call for competition on the possibility to declare the procedure unsuccessful upon the occurrence of any specific unpredictable future event beyond its control following the date on which the tender is subject to a deadline (conditional public procurement).

Pursuant to Section 53 (6) of the Public Procurement Act, conditional public procurement may be launched also if the contracting authority lodged or plans to lodge an application (tender, project proposal, amendment of support agreement or notification of changes) for financial assistance, irrespective of whether the notice for financial assistance has already been published or not, and if refusal of the request for financial assistance, or if approved for an amount less than requested, shall be construed by the contracting authority as grounds for declaring the procedure unsuccessful.

The possibility of conditional public procurement was already provided for in the public procurement laws, but its application was considered an exception compared to the current one. The ratio of conditional public procurements is particularly high for EU-funded procurements: while 15.4% of public procurement procedures (rounds for lots counted as separate procedures) were launched conditionally in 2021, the figures were 40.8% in 2022 and 44.3% in 2023 (up to 1 June 2023) respectively, for EU-funded procurements.

The same proportions for public procurement financed from national sources were as follows: 5.1% in 2021, 10.1% in 2022 and 6.5% in 2023.

The rate of invalidity in conditionally launched public procurement procedures is significantly higher than in general, and the rate of invalidity due to lack of financial coverage is also higher than in the case of non-conditional public procurement procedures:

Percentage of invalid lots by number of lots in all conditional procurements			
Form of financing	**2021**	**2022**	**2023**
EU funded	31.7%	25.4%	21.6%
Nationally funded	22.8%	27.9%	25.3%
The two forms of financing together	27.3%	26.5%	22.8%

Proportion of lots terminated for the reason under Section 75 (2) (b) of the Public Procurement Act by number of lots			
Form of financing	**2021**	**2022**	**2023**
EU funded	8.8%	24.0%	21.9%
Nationally funded	13.0%	18.2%	14.9%
The two forms of financing together	11.7%	19.6%	16.4%

In the case of conditional public procurement procedures, the Public Procurement Act also allows the contracting authority to stipulate the condition specified in the notice of opening the procedure as a condition suspending the entry into force of the contract to be concluded as a result of the public procurement procedure (Section 135 (12) of the Public Procurement Act). In practice, a period of up to 180 days (6 months) is accepted for entry into force.

The practice of conditional procurement described above may have a negative impact on the number of tenders received in public procurement procedures and negatively affect the confidence of tenderers in public procurement processes in several ways:

- In the case of conditional procurement, tenderers are much more likely to invest time and money unnecessarily in participating in the public procurement procedure (the SME Incentive for Participation in Public Procurement Scheme, announced in 2023, allows for application for a HUF 500,000 grant to finance participation in public procurement procedures);

- In a conditional public procurement procedure, tenderers (especially if the contracting authority also postpones the entry into force of the contract) find it difficult to calculate exactly when the resources needed to perform the contract will be needed, and may not be able to bid in view of their other contractual obligations;

- In conditional public procurement procedures, it is much easier for the contracting authority to escape the obligation to award a contract on the grounds that the condition is not fulfilled if the tenderer preferred by them is not the winning tenderer.

- A particular problem is the extent to which performance can be guaranteed on the basis of an offer made up to 9 months earlier. This also reduces the number of tenderers and has the effect of raising prices.

In recent times, it has also become increasingly common for contracting authorities to launch conditional public procurement procedures before the publication of the contract notices, which means that they cannot even take the terms of the contract notice into account in the procurement procedures and draft contracts, creating further uncertainty for tenderers.

In the light of the above, **it is justified to review the practice of conditional public procurement and, on that basis, to supplement the regulation on conditional public procurement procedures, and, where appropriate, to tighten the conditions**, with particular regard to its influence on competition in public procurement procedures and the prices offered. It is also appropriate to examine whether the conditional tendering of public procurement contracts and the related possibility of a simplified declaration of invalidity are not abused by contracting authorities in order to influence the outcome of the procedure.

3.13 Practice in the use of accelerated procedures

In the case of certain types of procedures, the Public Procurement Act provides for the possibility, in line with the EU public procurement directives, to shorten the time limits generally applicable to the given procedure, the accelerated procedure.

Thus, in the case of an open procedure, pursuant to Section 81 (10) of the Public Procurement Act, in *exceptional cases of urgency and justification*, if the general 30-day time limit for the submission of tenders cannot be met, the contracting authority may set a shorter time limit for the submission of tenders. However, the time limit for the submission of tenders may not be shorter than fifteen days from the date of dispatch of the notice of invitation to tender (accelerated open procedure). The reason for the use of the accelerated procedure shall be stated in the notice launching the procedure." In restricted procedure and negotiated procedure, the accelerated procedure may be applied under the same conditions [Section 83 (2), Section 86 (4) of the Public Procurement Act].

The reasons for urgency must be set out in the notice launching the procedure, which must explain why the general deadline for submission of tenders is not applicable and why it is exceptionally important to complete the procurement by the deadline.[57]

[57] Dezső, A. (2016) Comment to Act CXLIII of 2015 on Public Procurement - Budapest Wolters Kluwer Hungary Kft.

In the case of accelerated procedures, the reasons given in the notice shall be verified in the context of the notice control, as is the case for all the information given in the notice. With regard to accelerated procedures, it should be stressed that they are not a separate type of procedure, but a procedural technique that can be applied within a given type of procedure in order to shorten procedural time limits. In contrast to the negotiated procedures without prior publication of a contract notice, which are based on extreme urgency, subject to specific conditions and can only be used in very limited circumstances, and are subject to the control of the Public Procurement Authority.

Although the proportion of accelerated procedures is not significant compared to the total, there is an increasing trend in their use. According to the information published by the President of the Public Procurement Authority on the development of public procurement in 2021, while in 2020 accelerated procedures (accelerated open procedure, accelerated restricted procedure and accelerated negotiated procedure) accounted for **2.7% of all procedures conducted under the EU's procedural framework, in 2021 they reached 3.7%. The increase is due to a higher use of accelerated open procedures (3.4%). In 2021, contracting authorities conducted HUF 57.7 billion worth of accelerated open procedures**, accounting for 1.6% of all public procurement procedures conducted under the EU's procurement rules.

In the case of an accelerated open procedure, instead of the 30-day time limit for the submission of tenders provided for in the general rule, the contracting authority may use a shortened time limit of up to fifteen days (the time limit may not be shorter than fifteen days from the date of dispatch of the notice of invitation to tender). In addition to the fact that a shorter deadline for tendering requires a faster response from economic operators interested in a given procurement and implies a greater public procurement routine, it may also have the potential to narrow competition.

An examination of the practice of accelerated procedures shows that they are also used by central purchasing bodies when concluding multiannual framework agreements.58 Although the Public Procurement Act does not contain any restriction on the fact that it cannot be used for framework agreements, the question arises whether the exceptional urgency underlying the accelerated procedures is indeed present in the case of a multiannual framework agreement.

The Authority therefore proposes, on the one hand, a targeted review of the justification for accelerated procedures. We also recommend a legislative review, where not excluded by the EU public procurement directives, of whether it is appropriate to maintain the possibility for contracting authorities to use accelerated procedures for framework agreements, given their high value and multiannual nature.

58 See e.g., the DKÜ's notice published in the Public Procurement Bulletin No. 7830/2023 and No 24134/2022.

3.14 Effective action against situations that breach the integrity of the competition

In response to the Authority's enquiries, several control authorities indicated that they had made use of the possibility of signalling to the Hungarian Competition Authority (GVH) under Section 36(2) of the Public Procurement Act when they had detected situations that were likely to infringe the fairness of competition. However, they were unable to provide information on the effectiveness of the signals due to the lack of feedback from the GVH.

It is recommended that the results of the notifications of infringements of fair competition in the conduct of public procurement procedures be made public by the Hungarian Competition Authority and that lessons learned be shared with monitoring bodies and law enforcement authorities.

3.15 Review of the rules on procedures under Section 115 of the Public Procurement Act.

The type of procedure without a contract notice pursuant to Section 115 of the Public Procurement Act may only be applied in the national procedural system, including in the case of public procurement related to construction works with an estimated value of less than HUF 300 million. The essence of this type of procedure is that the contracting authority launches the public procurement procedure by sending a direct written invitation to tender to at least five economic operators at the same time, instead of publishing a contract notice. Only the economic operators invited to tender may submit a tender in the procedure. Although Section 115 of the Public Procurement Act contains several guarantee provisions aimed at ensuring competition (for example, the contracting authority must act in a non-discriminatory manner when selecting economic operators, taking into account the principle of equal treatment, by ensuring competition and by changing, as far as possible, the identity of the economic operators to be invited to tender in the various procedures) there have been several criticisms of this type of procedure by public procurement operators.

As a result of a 2020 amendment to the law[59], in order to avoid financial corrections in the use of EU funds, a transparency measure was introduced, which no longer allows the procurement of construction works to take place through a procedure without public announcement, but the procedure under Section 115 of the Public Procurement Act is still ensured for construction works performed with national funds.

[59] See Act CXXVIII of 2020 amending Act CXLIII of 2015 on Public Procurement and certain related acts

Respondents to the Authority's questionnaire have expressed criticism of the procedures under Section 115 of the Public Procurement Act, with some considering that they are not "real public procurement" because contracting authorities invite tenderers in a controlled manner, with a clear idea of who they intend to contract with. Some of the commentators call for the abolition of procedures under Section 115 of the Public Procurement Act, partly for the reasons mentioned above and partly because competition is noticeably more intense where the procedure is launched by means of a contract notice, either by decision of the contracting authority or because of EU support.

The application of procedures under Section 115 of the Public Procurement Act also leads to a higher risk of irregular solutions in terms of the application of the prohibition of division into lots (the procedure can only be announced up to the net threshold of HUF 300 million), and it is also worrying that there is practically no control in these procedures (in contrast to other procedures without a contract notice). The above is also confirmed by the fact that appeals concerning the application of the procedure have been brought in the past only on the basis of an ex officio initiative of the bodies controlling public procurement financed by EU funds. The complete absence of appeals on request also seems to confirm the view that there is no real competition in these procedures, which is why tenderers submitting tenders in these procedures do not even attempt to challenge the contracting authority's decision to close the procedure. In addition to the above, the need to revise the rules relating to the application of the procedures under Section 115 of the Public Procurement Act is also supported by the fact that the violations of the conflict of interest and of the fairness of competition under Section 25 of the Kbt. that have been established in recent years have almost without exception been detected in these procedures.

It is doubtful how the principles referred to above (ensuring competition, non-discrimination in the selection of economic operators, respect for the principle of equal treatment) can be enforced in a procedure where the contracting authority is completely free to select the five economic operators it intends to invite to tender in the procedure, and the authority's document summarising the selection principles does not set out any substantive expectations for the change of tenderers.

There is evidence to suggest that these procedures do not help SMEs in general, but only one or a few local firms to win orders (which in this way gain a significant competitive advantage over competitors who only win orders in market competition).

In summary, the regulation on Section 115 of the Public Procurement Act needs to be reviewed; **it is proposed to**

- **abolish the procedure under Section 115 of the Public Procurement Act in its entirety, or**
- **transform it into a public procurement procedure, in which, however, only micro and small enterprises may start (and only subcontractors and capacity providers belonging to this category may be designated).**

A change of procedure as outlined above could increase the confidence of tenderers in public procurement and also help to ensure that small and medium-sized enterprises have real access to smaller value purchases.

3.16 Availability of databases

The public procurement rules ensure that all interested parties have sufficient and timely access to information on individual public procurement (in line with the legal provisions protecting sensitive information) and other information relevant to promoting competition and transparency.

While recognising that data on public procurement procedures are public and widely accessible to the interested parties, a typical criticism voiced by both questionnaire respondents and interviewed NGOs is that **the various databases, both the EKR and the KH and KDB registers, have limited search functions, which provide almost no opportunity to explore deeper context.** Structured data retrieval and processing are typically not suitable, despite the volume and variety of data recorded. Improvements to make the result notices available for mass downloading were acknowledged as a result, but for other documents (such as public procurement contracts or other types of notices) this option is still not provided.

It is proposed to create databases in a standardised format, with data for a longer period, up to 10-15 years, which would allow for a more detailed analysis of public procurement processes and thus also for the analysis of wider contexts.

It is essential to make available the information necessary for the analysis of data on the performance of contracts, including data on the tenderers awarded public procurement contracts and the subcontractors involved in the performance of contracts [in the latter case, the amendment of Section 66(6) and Section 138(3) of the Public Procurement Act ensures the availability of information].

In addition to what is foreseen in the Action Plan, **it is also proposed to increase publicly available information on public procurement in relation to the following**:

- adding data on non-winning bidders to the results information data that can be downloaded in mass from the EKR;

- reviewing the completeness of the data to be published in the EKR and in the CoRe contract database on the performance of public procurement contracts, comparing them with the data published on the modification of public contracts; penalising any uploading gaps (in this way, complete data will be available on the final tender prices at the end of the contract performance, which can be systematically compared with the estimated value and the contract value);
- in the case of centralised procurements, making information on individual direct orders and competitive re-openings, as well as information on procurements performed under dynamic purchasing systems, available and downloadable in the EKR or in the central public procurement body's own electronic system (including the consortium members actually involved in the performance of the procurement), in order to allow the effectiveness of procurements perform under centralised public procurement systems to be assessed;
- examining the extent to which, in the case of centralised procurement, the second part of the framework agreement procedures is used to upload the reopening of tenders conducted in the central purchasing bodies' electronic systems into the EKR;
- examining the manner in which, in the case of centralised procurement, the EKR records the performance of the subcontractors of each consortium member;
- In order to remedy any shortcomings identified as a result of the inspections, the Authority considers it necessary to take the necessary measures and perform improvements.

3.17 Proposals on preliminary dispute settlement, administrative and judicial remedy systems

The legal remedy system in Hungary operates within an institutional framework that meets EU legal requirements. The remedy before the Public Procurement Arbitration Board meets the requirements for a quick and effective remedy in terms of the time needed for the procedure. A significant advantage of the remedies available through the Public Procurement Arbitration Board with short deadlines, while maintaining the prohibition of contracting, is that a significant part of the infringements found can be eliminated or repaired by annulling the infringing contracting authority's decisions.

In legal proceedings relating to the Arbitration Board or the decisions of the Arbitration Board, the courts issue enforceable decisions that are binding on the parties. **The legislator should review the time needed for litigation and the adequacy of the capacity of the courts.**

In recent years, there have been a number of cases, particularly where a hearing has been held, where administrative cases seeking judicial review of the Arbitration Board's decision have not been concluded within 1 year, but there have also been public procurement disputes that have lasted several years. During the period of the judicial review of the decisions of the arbitration board, contracting authorities typically conclude the public procurement contract; this means that even if the court reverses the decision of the Arbitration Board, the aggrieved party is not guaranteed adequate redress, as most of the contract is already performed, and it is questionable to what extent such a review can be considered an effective judicial remedy.

The level of administrative service fees for appeals before the Arbitration Board is unjustifiably high (as evidenced by the decrease in the number of appeals), and will be reviewed in the Action Plan by 2023. In addition to a substantial reduction in the rates, it is proposed to decouple the administrative service fee from the number of elements of the claim (this leads to particularly problematic and sometimes controversial remedy practices in certain areas, such as disputes over disproportionately low prices). **It is also recommended to review the regulation and practice regarding the determination of the fees to be paid in court proceedings.** For many years, judicial review in administrative proceedings could be requested with the subsequent payment of an explicitly low fee, based on the value subject to litigation not specified by Act XCIII of 1990 on Duties. Recurrently, some courts and judges refer to the estimated value of the public procurement contract or the amount of the fine imposed. In this respect, we propose to review the regulation of the fee for the judicial review of public procurement and to ensure its uniformity, namely its independence from the estimated value of the public procurement or the level of the fine imposed (in line with previous case law).

In this context, it should also be noted that **there is currently a significant difference between the method and amount of the administrative service fee payable for the appeal procedure of the Arbitration Board and the fee payable for the judicial review of a decision of the Arbitration Board.** We propose a single approach for consideration.

It is recommended to **develop search interfaces for the decisions of the arbitration boards and courts**, which would ensure that both the clients seeking legal remedies and the operators in the public procurement market can consult the case law, up to and including the final court decision closing the dispute, and would also indicate whether a legislative amendment is necessary to ensure the consistency and development of the case law or whether it is sufficient to supplement the guide.

The harmonisation of the rules on appeals before the Arbitration Board and the rules on review before the courts is also justified by the fact that, while in court proceedings the claimant (and other parties) may request a hearing to decide on their claim, the claimant does not have the right to request such a hearing before the Arbitration Board deciding the dispute at first instance. At present, although the Public Procurement Act lays down criteria for holding a hearing, the Arbitration Board holds a hearing in a minimum number of cases. In order to ensure the proper enforcement of the rights and procedural principles of the clients, we propose, in the same way as judicial review, that the amendment to the Public Procurement Act should at least provide the applicant who submits the request for review with the right to request a hearing, which they may give in the request for review, with the right to forfeit. Previous public procurement laws provided for this possibility, and its abolition has been criticised by public procurement market operators ever since.

The practice of client eligibility should be reviewed, as it is currently liable to restrict the right to legal remedy.

It is appropriate to review the legal provisions on mandatory representation in the procedure before the Arbitration Board, as this may also make the appeal procedure more difficult and costly; in view of the expertise and professional knowledge of the public procurement commissioners, it may be advisable to consider abolishing mandatory representation.

In order to increase confidence in the institutional system, it is recommended that more general council resolutions be issued. Section 168 of the Public Procurement Act provides for the institution of a general council resolution to ensure the unity of the decision-making of the Public Procurement Arbitration Board. Pursuant to Section 168 of the Public Procurement Act, in case of agreement between the proceeding panel and the council or the general council, the Public Procurement Arbitration Board shall publish information on the new position of the genera council or the amendment of the position on the website of the Public Procurement Authority. There is a demand from practitioners to be aware of these collective positions and to increase their number. It is worth mentioning that in the recent past, the Public Procurement Authority has published on its website several times the most important findings of court judgments of principle, and it would be advisable to include them in the general council resolution(s).

It is also recommended that the judgments referred to should be directly available from these news items, since the search facilities for the decisions of the Public Procurement Arbitration Board do not provide reliable results and the judgments are not published in a single database, it is recommended to improve the search interface and to include the judgments in the database (all judgments).

An improved and extended search interface could facilitate the traceability of the decisions of the Public Procurement Arbitration Board and the courts, as the parties in appeal proceedings often refer to the relevant arbitration board and court decisions (and the Public Procurement Arbitration Board itself often refers to court case law in its decisions).

Facilitating the review of jurisprudence as it takes form of decisions could help to promote compliance with the law and further increase confidence in remedy forums.

The Public Procurement Act mentions the option of imposing a fine among the legal consequences that may be applied by the Public Procurement Arbitration Board, which cannot be waived in the case of certain infringements. **A review of the Arbitration Board's fining practices is recommended for several reasons:**

- concerns and recommendations have been raised about the level of the administration service fee; as long as the level of the administration service fee appears excessive, the level of fines imposed on contracting authorities for reparable infringements is typically low (also in relation to the estimated value of the public procurement); a tightening of the fining practice for bad faith and "notorious" contracting authorities is justified;

- significant differences in the level of fines imposed on contracting authorities and tenderers, and the recurrent complaint from practitioners that different levels of fines are applied by the legal remedy body for the same infringements;

In view of the above, it is appropriate to provide a comprehensive overview of the fining practice, including the criteria taken into account by the Public Procurement Arbitration Board in the imposition of fines and the level of fines applied to a given infringement, expressed as a percentage of the estimated value of the public procurement contract (from -, to - rates). In view of the results of the analysis, it is proposed to adapt the fining practice and to publish information material on this basis.

3.17.1 Recommendations on the use of the preliminary dispute settlement procedure

The remedy procedure of the Public Procurement Arbitration Board may be preceded by a preliminary dispute settlement procedure, which is not mandatory under the Public Procurement Act, but is free of charge. Based on the facts described in the decisions of the Public Procurement Arbitration Board, it can be concluded that the initiation of a preliminary dispute settlement almost always precedes the lodging of an appeal.

At the same time, **consideration could be given to making the preliminary dispute settlement procedure mandatory before an appeal is brought before the Arbitration Board.**

It is suggested to examine how to increase the willingness of contracting authorities to cooperate, in the sense that they should always respond to the substance of the request for preliminary dispute settlement and not risk launching a legal remedy. The institution of preliminary dispute settlement is widely used in the Hungarian remedy system, which, in view of the practice of the Arbitration Board and the courts in relation to the institution, is suitable for reducing the number of appeals before the Arbitration Board. **It is proposed to introduce mandatory fines in cases where the contracting authority has failed to give a reasoned reply to a request for a preliminary dispute settlement, or has failed to give such a reply within the time limit.** However, it is not considered necessary to set a significant or differentiated fine, as a smaller and fixed fine may ensure the desired objective.

Experience has shown that the contracting authority's willingness to cooperate in the preliminary dispute settlement procedure is increased if it is performing a public procurement with EU funding, as in this case public procurement procedures are subject to control and therefore contracting authorities also consider how the control authority will assess the infringements alleged by economic operators when providing their response.

The contracting authority is obliged to disclose the information on the preliminary dispute settlement in the EKR immediately upon receipt of the request for preliminary dispute settlement.

Section 80(2) of the Public Procurement Act does not provide a clear and precise provision on the fact of preliminary dispute settlement and the obligation to inform contracting authorities in connection with the obligation to inform tenderers, which is why the case law is also mixed. On the one hand, it is not clear whether the request for a preliminary dispute settlement itself should be given to interested economic operators or tenderers. On the other hand, part of the case law already does not provide information in its response to the request for a preliminary dispute settlement as to who submitted the request for a preliminary dispute settlement, as the Public Procurement Act does not provide for the disclosure of the identity of the economic operator submitting the request for a preliminary dispute settlement.

In order to ensure clarity and uniformity of jurisprudence, we consider it appropriate to clarify the provisions of the Public Procurement Act on the contracting authority's response to a request for a preliminary dispute settlement.

In this context, it should be assessed and considered by the legislator that, taking into account the principles of fair competition and equal treatment, the submission of the request for preliminary dispute settlement and the response thereto should be anonymised, i.e., without revealing the identity of the person submitting the request, as is the case with the rules on supplementary information requests.

4. The Authority's risk assessment practices and risk indicators

4.1 Summary

The public procurement and subsidy systems in Hungary are strictly regulated and impose strong constraints on the actors involved in the decisions, limiting their discretion. The purpose of limiting discretion and applying detailed procedural, transparency and record-keeping requirements is to reduce the risk of irregularities. However, our analysis assumes that, regardless of the strict regulation, measurable risks are present at all stages of the processes under reviewed, which can be used to identify the main risk areas. By identifying the areas at risk, the associated risk indicators can be defined to support the Authority in planning and implementing actions in its areas of activity. This report describes the Authority's risk assessment practices and the risk indicator system used to identify risks.

The broader context of the Authority's risk assessment activities is defined in Section 3 of the Eufetv. Accordingly, we consider as a risk the occurrence of abuse, irregularities, breaches of organisational integrity (whether financial, economic, political, social, organisational or personal) or other events that may harm or jeopardise the achievement of the objectives, values and principles of the European Union and its Member States, or of the organisation responsible for the use or control of EU funds. In this respect, the Authority's risk assessment activity includes the identification of the cases identified above, which in practice, in particular, aims at identifying the following behaviours and persons/organisations, when performing each specific analysis: any conduct (failure to act or to comply with an obligation, i.e., omission) by a natural person, including conduct by a natural person on behalf or in the interest of any business organisation, other economic operator, public or local body or other entity, which could reasonably give rise to a suspicion of fraud, conflict of interest, corruption or any other illegal activity or irregularity which has, directly or indirectly, an adverse effect on, or a serious risk of having an adverse effect on, the sound financial management of the European Union budget or the protection of the financial interests of the European Union.

4.2 Risk assessment practices of the Authority

A risk-based approach is generally expected in the use and control of EU funds, but this is limited by the overly administrative focus of the system, which the Authority highlighted in its report on the integrity risk assessment of the Hungarian public procurement system published on 31 March 2023[60]. The Authority places a risk-based approach and the principle of evidence-based decision-making at the centre of its activities and tasks. Accordingly, it has developed its risk assessment activities in line with its responsibilities under the Eufetv., the principles of the OECD Council Recommendation on Public Sector Integrity[61] and relevant international best practices.

The Authority's risk assessment practice has two main, informing and complementary areas:

1. **Integrity risk assessment exercise**: In the framework of its analytical and proposing tasks under Section 5 of the Eufetv, the Authority conducts an integrity risk assessment exercise for the protection of EU funds, which includes an assessment of the integrity situation of the Hungarian public procurement system. This is achieved by exploring the systemic risks in the public procurement and aid system, how the existing legislation, system design and practices influence the level of corruption, fraud and conflict of interest risks and how effective they are in reducing them. The integrity risk assessment shall identify integrity risks and systemic issues to be addressed, means available to address them, deficiencies in addressing such risks and issues as well as solutions. In accordance with Section 73 of the Eufetv., the Authority performed its first integrity risk assessment based on the OECD's "MAPS" (Methodology for Assessing Procurement Systems) methodology indicators for accountability, integrity and transparency in public procurement (MAPS Pillar IV) and published its report on 31 March 2023 on its website.

60 https://integritashatosag.hu/wp-content/uploads/2023/04/Integritas_Hatosag_Integritaskockazat_ertekeles_2023_marcius.pdf 61 https://www.oecd.org/gov/ethics/integrity-recommendation-hu.pdf

2. **Risk assessment exercises related to the functions and competences of investigative and administrative authorities**: The Authority performs its own risk assessment exercise in relation to its investigative and administrative functions and competences. This includes supporting the process of selecting cases for inspection and investigation by assessing them according to risk indicators and risk levels. It can also support the conduct of investigations at the level of an organisation, programme or sector.

It is important to underline that the above supports the Authority in performing its tasks, but also imply cooperation and coordination between authorities and the sharing of relevant data and information. The latter implies that the Authority may, to the extent necessary for the conduct of its proceedings, obtain and receive all banking, tax, insurance, financial, legal and other data and secrets protected by law, through a direct data link between the body or organisation holding the data and the Authority. Effective risk management also requires the continuous development of relevant expertise and practices, and the integration of the results of these practices into policy decisions.

In the following, the risk assessment practices related to the investigative and administrative tasks and responsibilities are presented, detailing the risk indicators used, which are based on the identified risks and form the basis for a risk assessment using data analysis.

4.3 Data analysis in risk assessment practice

Methodologies based on data analysis applied in the context of risk assessment can support the identification of risky transactions and projects, inform audit activity on methodological iterations that may be needed in the process, and help in the early warning of high-risk transactions and projects. The use of data analysis thus complements other, qualitative risk assessment methods, helping to identify genuinely high risks and reducing the number of false positives and false negatives (alerts). The data analysis methodologies described above therefore complement and provide evidence to support decisions, not replace human judgement and professional scepticism.

The Authority is entitled to access and process the data in accordance with the Eufetv.

The main databases used as a basis for the risk analysis process are the Electronic Public Procurement System (EKR), the company records and a number of central registers and databases. The Authority manages these databases in an integrated way in the risk assessment activity (where it is possible to link the different databases partially or completely.) In order to increase the efficiency of risk analysis, the Authority may identify and include new relevant data sources in the analysis, so that the data content of the system is dynamically changing.

4.4 Concept and methodology of the risk indicator system

The Authority's first analytical integrity report presents the Authority's specific system of risk indicators for fraud, corruption and conflict of interest in accordance with Section 74(1)(b) of the Eufetv. In developing our methodology for the definition of risk indicators, we took into account the findings of the Authority's integrity risk assessment practices report, as well as international good practices, the findings and recommendations of the joint project on data analysis and indicators[62] of the European Anti-Fraud Office (OLAF) and the European Anti-Corruption Contact Network (EACN), and related initiatives by national and international NGOs that included the development of risk indicators.

Specific indicators are developed taking into account, among others, the following risk indicator systems:

- ARACHNE risk assessment tool risk indicators: ARACHNE is an integrated IT tool for data mining and enrichment, developed by the European Commission to support managing authorities in their administrative and management control of the Structural Funds.
- General risk indicators for public procurement developed by the OECD[63].
- A list of warning signs published in the OECD Guidelines on Fighting Bid Rigging[64].

[62] European Anti-Fraud Office (OLAF) and European Partners against Corruption (EPAC) joint project „Enhancing the analytical capacity of law enforcement authorities to detect and prevent fraud and corruption affecting the financial interests of the EU"

[63] https://www.oecd.org/governance/procurement/toolbox/search/indicators-procurement-risk.pdf

[64] https://www.oecd.org/daf/competition/45263580.pdf

- Fraud risk indicators published in the European Commission (OLAF) Compendium of Anonymised Cases – Structural Actions.
- Warning signs published in the European Commission (OLAF) publication "Anti-fraud advice for the purchase of IT hardware and software under EU funded projects".
- Conflict of interest risk indicators published in the European Commission (OLAF) publication "Identifying conflicts of interests in public procurement procedures for structural actions".
- PwC-Ecorys study[65] Risk indicators: a methodological study for the European Commission on the development of methodologies to identify and reduce corruption in public procurement in the European Union, including a risk indicator system for public procurement.
- Risk indicators for the OpenTender.eu[66] project: composite risk indicators for public procurement developed by the OpenTender website, a project of the Digiwhist project funded by the EU Horizon 2020 programme.
- Risk indicators of the ProACT[67] platform: The platform was developed by the World Bank in partnership with the Government Transparency Institute and the Centre for Corruption Research at the University of Sussex. The platform is based on a methodology developed for the OpenTender.eu project and the Global Integrity Anticorruption Evidence (GI-ACE) programme funded by the UK Foreign, Commonwealth and Development Office (FCDO).
- Risk indicators for the Red Flags project[68]: Corruption risk indicators for public procurement used by the Red Flags[69] app and website developed by K-Monitor, PetaByte and Transparency International Hungary.
- Risk indicators of the CRCB Corruption Risk Index[70] a composite risk index developed by the Corruption Research Centre Budapest (CRCB) for the ex-post evaluation of public procurement.

65 Identifying and Reducing Corruption in Public Procurement in the EU. Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption. http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying_reducing_corruption_in_public_procurement_en.pdf

66 https://opentender.eu/hu/

67 https://www.procurementintegrity.org/

68 https://www.redflags.eu/

69 https://www.redflags.eu/?lang=hu

70 http://www.crcb.eu/?p=274

- TenderBajnok[71] platform alerts: an online platform developed by Transparency International Hungary that checks for red flags of conflict of interest or corruption risk in companies whose main source of revenue comes from public procurement procedures.

In total, more than 300 risk indicators were identified as a result of the analysis of the relevant risk indicator systems. Of these, based on the specificities of the Hungarian market and internal professional experience, we have retained a total of 35 indicators, retaining the basic logic but adapting the content to the Hungarian context, and developed 18 additional risk indicators specifically based on the Hungarian context and specificities.

The main criteria for selecting indicators were that they should be specific (measuring a well-defined phenomenon) and objective (based on data and not perception). The selection was made with the aim of minimising, as far as possible, the occurrence of hits that do not correspond to the real risks (false alarms or "false positives"), thus making the system as efficient as possible from the initial indicator set design. The selected indicators act as a warning signal for fraud, corruption or conflicts of interest, and draw attention to some unusual phenomenon or outstanding value. Alerts do not always represent a true hit, and a high number of hits for an indicator may also indicate the existence of systemic deficiencies, such as control deficiencies or weaknesses. The identification of these types of deficiencies informs the Authority's analytical and recommendation activities and is the subject of the Authority's integrity risk assessment exercise.

The 53 risk indicators retained as a result of our procedure were classified according to the main risk categories used by the ARACHNE risk assessment tool. These 53 risk indicators constitute an initial set of indicators, which the Authority has started to test in a targeted way, based on data analysis and statistical procedures, on the available data sources, and will further develop the system of indicators itself and the queries based on the combination of several indicators, by applying thresholds, averages, ratios and weights, in an iterative process, with a view to achieving hit efficiency.

[71] https://tenderbajnok.transparency.hu/

In the application of the indicators, the Authority shall develop data visualisation and other analytical support tools to further analyse the results and aspects of the risk ranking and to identify additional correlations. These include various dashboards, plotting distributions or creating risk heat maps (for example, presenting the distribution of projects included in the analysis on a risk score/incidence axis for each operational programme). In addition, the Authority shall further develop its risk analysis methodology by further analysing the relationships between the data (e.g., by defining new segments, further identifying indicators, refining indicators/thresholds for risk factors, etc.). The possibility of linking the existing system to other databases will also be tested in the future, as additional data sources become available. However, for these developments, it is essential to ensure, through appropriate regulation, that the Authority has access to all relevant data necessary for the effective performance of its tasks, by establishing a direct data link between the body or organisation holding the data and the Authority.

Once the risk weights have been developed, the indicators are reviewed at least annually and whenever there are changes in relevant EU and national legislation or an exceptional, unforeseen event occurs. Consequently, the risk indicator system is constantly evolving and changes are made to reflect changes in EU and national legislation and risk trends (taking into account, among other things, feedback from stakeholders and recommendations from public procurement and grant-related audits). In the context of the review, the Authority may, inter alia, modify the content and weighting of the risk indicators used and may identify different segments for which the same risk indicator is assessed differently. On the basis of the experience gained in using the indicators and as a result of the review, the Authority may subsequently modify the risk categories or the classification of the indicators and may define new risk indicators as necessary.

4.5 Categories of risk indicators for the Authority

The Authority's risk indicators can currently be grouped into six categories, depending on the area of risk, also used by the ARACHNE risk assessment tool:

- Reasonableness,
- Reputational and fraud warnings,

- Concentration,
- Public procurement,
- Contract management,
- Eligibility for support.

In addition, the Authority also plans to develop indicators specifically related to performance, based on its experience in inspection and investigation activities, and will classify these indicators in a separate category.

The categories of risk indicators used are briefly described below:

Reasonableness: Measurable risk factors that characterise the entire life cycle of the public procurement contract/grant relationship, based mainly on a comparison of the revenues and costs associated with the project, and which are used to support economic reasonableness/feasibility, and which are suitable for drawing conclusions about the likelihood of potential misuse or irregularity actually occurring.

Reputational and fraud warnings: Measurable risk factors characterising the entire life cycle of the public procurement contract/grant relationship and the period preceding it, in particular financial ratings, contacts of persons or companies involved in the project, involvement in offshore or other risk areas, public status, and exposures to sanctions, enforcement or undesirable media, and changes in basic personal, activity and company data, which are suitable for drawing conclusions about the likelihood of the actual occurrence of potential fraud or irregularity.

Concentration: Measurable risk factors throughout the life cycle of the procurement contract/grant relationship that are suitable to draw conclusions on the likelihood of actual abuse or irregularities potentially occurring in the project participants (beneficiaries, partners, contractors, etc.) in relation to their over-represented performance in public procurement procedures.

Public procurement: The measurable risk factors relating to the conduct of the procurement procedure as a whole which are suitable for drawing conclusions about the likelihood of the actual occurrence of potential abuse or irregularity in relation to the public procurement procedure as a whole.

Contract management: Measurable risk factors that characterise the entire life cycle of the public procurement contract/grant, which are suitable for drawing conclusions on the likelihood of potential abuse or irregularities with regard to the key elements, additions or amendments in each public procurement/support agreement.

Eligibility for support: Measurable risk factors that characterise the entire life cycle of the public procurement contract/support relationship and are suitable for drawing conclusions about the likelihood of actual abuse or irregularity in terms of the value, quantification and allocation over time of the cost amounts.

5. Conflicts of interest

5.1 Summary

With regard to conflicts of interest, it is essential to establish and enforce measures and rules to ensure the effective protection of financial interests, to prevent conflicts of interest and to detect and manage perceived or real conflicts of interest.

The Hungarian rules on conflicts of interest for participants in the implementation of the EU budget are basically in line with those set out in the European Commission's Guidance on the avoidance and management of conflicts of interest under the Financial Regulation[72] (hereinafter: Guidance). However, given the complexity of the requirements, it is recommended that the domestic conflict of interest regime be strengthened by adopting best practice examples.

The Authority makes the following recommendations in the context of conflicts of interest, including in the area of public procurement:

- Examining the practical application of the requirements on the obligation to check declarations of conflict of interest and declarations of interest, the need for additional public procurement legislation. In our view, it is not clear whether the Guide and the Minister's Explanation to the Public Procurement Act are sufficient in themselves to make it general practice for contracting authorities to request declarations of interest in addition to the declaration of conflict of interest and to check the declarations of conflict of interest made, and therefore the Minister responsible for public procurement should examine the practical implementation of the requirements by the practitioners and consider setting out the requirements in clear and detailed legislation;
- Digitisation of data disclosure: Submission of declaration of conflict of interest, declaration of asset and interests via online/offline e-forms - ensuring conditions and creating obligation. Consideration should be given to the electronic support for the declaration of public procurement procedures, to be integrated into the Electronic Public Procurement System and the electronic public procurement systems operated by central purchasing bodies;

[72] European Commission - Communication from the Commission - Guidance on the avoidance and management of conflicts of interest under the Financial Regulation (2021/C121/01)

- Examination of the registration and management of declarations of conflicts of interest, declarations of personal wealth and interests, data disclosures, and, where appropriate, the organisation of these declarations in a database, in order to support the wider and deeper processing of declarations at system level and the comparability of declarations. Subject to the outcome of the investigation, the public procurement rules should be amended.
- **Practical guides, education and advisory service**: As conflicts of interest must always be examined and dealt with on a case-by-case basis, **the publication of guidance clarifying and explaining the aspects to be considered in each case**, illustrated by concrete examples, would facilitate the correct application of the rules. It is also recommended to **provide workshops and advice to stakeholders based on the guidelines.**
- **Regular assessment and continuous improvement of compliance with conflict of interest requirements**: The preparation of an annual evaluation report is recommended, which may identify proposals to improve the effectiveness of the system, based on experience gained in the monitoring of declarations of assets, declarations of interests and declarations of conflicts of interest, and possibly on a review of the legal consequences applied (disciplinary proceedings and criminal sanctions).
- **Disclosure of templates for declaration of conflict of interest and declaration of interest in public procurement**: The Public Procurement Authority Council's Guide on Conflict of Interest details the proposed content of the declaration of conflict of interest, but in order to ensure uniform application of the law and the same conditions in different procedures, the Authority considers it appropriate to issue **guidelines and model declarations to ensure their proper application**. In particular, **it would be appropriate to develop declaration templates with guide on how to fill them in**, and to ensure that the rules are consistently applied and that declarations are processed efficiently.
- **Supplement to the provisions of the public procurement rules of the Public Procurement Act**: In view of the importance of the conflict of interest issue, it is proposed to supplement the detailed provisions of the general rules on public procurement of Public Procurement Act with a reference to the provisions on the declaration and management of conflicts of interest, the verification of declarations and the request for declarations of interest;
- **Linking the declaration of assets system and the declaration of interests system**: In addition to the introduction of electronic support for the declarations and the verification of declarations, **it is proposed to link the two systems, thus allowing a systematic verification of declarations of interest among persons subject to the obligation to declare assets.**

To ensure effective control, it is necessary to ensure that at least the data on economic interests contained in the company register, the private entrepreneur's register or the register of beneficial owners can be queried. **For persons not subject to the obligation to declare their personal wealth, it would be left to the individual contracting authorities to perform random checks on declarations of interest. A methodological guide and a system of indicators for contracting authorities should be developed for random checks.**

5.2 Introductory, EU legislation background

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the European Union[73] (hereinafter: Financial Regulation 2018) further strengthened the measures previously put in place to protect the financial interests of the European Union. A key example is the deepening of the conflict of interest rules in Article 61 of the Financial Regulation 2018.

Conflict of interest is defined in Article 61(3) of the Financial Regulation 2018, which states that a conflict of interests exists where "the impartial and objective exercise of the functions of a financial actor or other person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest." The actors involved in the implementation of the EU budget cannot therefore act in a manner that puts their own interests at odds with the interests of the Union. The Financial Regulation 2018 deals with certain elements and cases of conflict of interest.

Avoiding and managing conflicts of interest is an essential element of good governance. It is not only necessary to preserve the credibility of the rule of law principles, but also to establish the transparency and impartiality of the public sector. Failure to prevent or manage conflicts of interest can have a negative impact on the decision-making process of public bodies, the use of public funds or trust in the public sector.

[73] REGULATION (EU, EURATOM) No 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the financial rules applicable to the general budget of the European Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

Conflict of interest situations can occur at any time, therefore it is essential to enforce and adopt policies and rules to prevent the occurrence or presumption of conflicts of interest, and to identify and manage perceived or real conflicts of interest.

In the past, the conflict of interest rules laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union[74] (hereinafter "the 2012 Financial Regulation") were not directly applicable in the Member States when implementing the EU budget under shared governance. (Shared governance means that Member States are responsible for implementing programmes, support schemes and actions financed under shared governance. This role includes defining the scope of the funds, designing the specific instruments of support and allocating resources to beneficiaries, as well as monitoring and controlling the implementation of the programmes.)

Prior to the Financial Regulation 2018, the conflict of interest rules applied only to direct and indirect governance. The Financial Regulation 2018 explicitly extends the scope of the conflict of interest provisions to all modes of governance and all actors involved in the implementation of the EU budget, including preparatory acts and controls, and to all actors involved in the control process, including national authorities. The concept of conflict of interest has also been amended to cover a wider range of situations than before. The regulation was designed to protect the integrity of budget implementation and public confidence in it.

In order to raise awareness of the rules on avoiding conflicts of interest and to promote a uniform interpretation and application of these rules, the European Commission has issued Guidelines. The Guidelines also include practical examples, recommendations and suggestions, providing guidance and tools to help national authorities avoid conflicts of interest.

Under the Guidelines, the main objective is to prevent conflicts of interest, i.e., to avoid unlawful conduct.

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[74] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the European Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (2) Financial regulation

The Guidelines set out the procedure to be followed in the event of a conflict of interest and also provide details of possible measures to avoid and manage conflicts of interest. However, it also stresses that there is no single policy on conflict of interest management that can be applied with equal effectiveness to all Member States and EU institutions. In order to be effective, these regulations must always take into account the political, administrative and legal context of each country, its specificities, current trends and risks.

5.3 Hungarian conflict of interest regulation and institutional framework

The Hungarian conflict of interest rules are complex and diverse. Many sectoral laws contain provisions on conflicts of interest for persons holding various public offices, and there is no law defining the general meaning of conflict of interest. These laws have two main features for the analysis: on the one hand, they regulate different types of conflict of interest (e.g., prohibition to hold public office jointly, prohibition to abuse office for undue advantage, prohibition to hold corporate or economic office, restrictions on the disposal of shares or other ownership interests and the obligation to declare them, unfairness and other forms of conflict of interest), and they define the rules of conflict of interest in different depths.

In general, the above creates a complex, difficult to interpret and assess regulatory environment for conflicts of interest. The lack of a central institution to consult on the relevant legislation and the absence of a central supervisory body make it difficult to apply the rules in practice. Institutional supervision is typically exercised by the body or person who elects or appoints the person suspected of having a conflict of interest, and without central supervision it is easier for control mechanisms to fail to function effectively (for example, by not conducting the necessary internal controls).

The national rules on conflicts of interest have recently been tightened and clarified in several areas, in the light of the EU changes described in the previous subsection.

Our analysis will now focus on the conflict of interest rules and practices in the areas of development policy and public procurement, which are particularly relevant to the Authority's tasks.

5.4 Managing conflict of interest in the development policy framework

The chapter of the Government Decree 256/2021 (18 May) laying down the rules for the functioning of the development policy institutional system[75] contains all the rules that permeate the functioning of the development policy institutional system in all respects. Conflicts of interest are also regulated here, in a separate subsection, ensuring that they are always present in the application of Government Decree 256/2021 (18 May).

Government Decree No 256/2021 (18 May) sets out the possible institutional roles in this area (preparation of the support decision, public project appraisal, controls and payments, irregularity procedures, legal remedy-type procedures).

Certain specific cases of conflict of interest set out in Government Decree 256/2021 (18 May) follow a similar logic. The first points list the objective grounds for conflict of interest, while the last point deals with the subjective grounds for conflict of interest. If there is an objective conflict of interest, it should be established without further investigation. This means that the person concerned should be excluded from the procedure, regardless of the actual emotional relationship between the persons concerned. For example, there are no emotional ties between related parties that would prevent a member of the development policy system from making an objective assessment of the case, but the right to a fair trial requires that the process and the participants in it remain fully impeccable. Thus, in cases of objective conflict of interest, the staff member of the development policy institution concerned should be excluded from the procedure and replaced by another person.

Pursuant to Government Decree 256/2021 (18 May), it may not participate in the preparation and adoption of the support decision:

- *The applicant*: The applicant cannot prepare or take the decision on the basis of which their own application for support may be granted.

[75] Chapter VI of Government Decree 272/2014 (5 November) has been amended with effect from 30 November 2022, in accordance with the rules on conflicts of interest in the Financial Regulation 2018.

In practice, it is impossible to make an objective and impartial proposal or decision in such a case.

- *The applicant's executive officer and other representative, member of the Supervisory Board, auditor:* With few exceptions, the support covered by the Regulation is available to legal persons. Legal persons are incapacitated, but there is an objective conflict of interest for persons representing them or acting in their interest or on their behalf. Thus, in the case of legal persons, organisational representatives cannot act, such as managers in the case of companies, directors in the case of cooperatives, and managers or executive bodies in the case of NGOs (managers or executive boards in the case of associations, trustees or boards of trustees in the case of foundations). In the case of a legal person registered with the court, these can be found in the court register, i.e., the company records or the register of NGOs. In the case of an organisation established under public law, the legal representative of the legal person can be determined on the basis of the special legal status law. Some examples that may occur: in the case of a ministry, the minister; in the case of a budgetary body, the head (president, director, etc.); in the case of a local government, the mayor.

  By other representative is mostly meant representation by proxy. A power of attorney is a unilateral legal declaration that must be made by someone who is otherwise authorised to act in the matter. The auditor gives an opinion on whether the annual account of the company is in conformity with legal requirements, and whether it provides a true and fair view of the company's assets and liabilities, financial position, and profit or loss. The auditor is independent of the management of the company, but performs its activities for the benefit of the company and its supreme body, and has a contractual relationship with the company. For this reason, the auditor cannot be expected not to have regard to the interests of the company in the course of their activities, and therefore cannot act from the perspective of the development policy institutional system.
- *The applicant is the beneficial owner pursuant to Section 3, point 38 of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter: Money Laundering Act): The Money Laundering Act lists the legal persons or unincorporated organisations*, foundations and, in the case of fiduciary asset management contracts, natural persons who can be considered beneficial owners.

  These people are often invisible or not transparent in the life of the listed organisations and relationships.

Their common characteristic is that they either have a significant influence on or benefit from the operation of these organisations or have an interest in achieving the organisation's purpose. The conflict of interest here is also objective, there is no need to examine whether these persons could act impartially and objectively when making funding decisions.

- *A person who has an employment relationship with the applicant:* In an employment relationship and related relationships, the employer, the client or the principal has a certain degree of right of instruction, while on the other hand the person performing the work receives payment or appropriate consideration for the work. The person performing the work is acting in the interests of the person who employs them, within the limits of the contract and the law governing it. Again, this is a case where its existence is not acceptable from the institutional side.
- *A person who, in respect of the applicant, has qualified under the preceding three paragraphs in the year preceding the submission of the support application:* This provision gives a temporal dimension to the cases listed above. Any acquaintances that still exist, perhaps surviving the previous legal relationship, or any positive or negative emotions associated with the previous job could influence the staff member or manager working in the development policy institutional system in a manner that is inappropriate. Thus, the legislation provides for a one-year period during which the employee or manager may be able to become independent of the previous employment relationship. Even then, if they would not be able to do so, the subjective reason must be applied.
- *A relative of the persons listed above pursuant to Act V of 2013 on the Civil Code (hereinafter: Civil Code):* All the relatives of all the persons listed above are also conflict of interest and cannot be involved in the preparation and adoption of the support decision, as they cannot be expected to act impartially and objectively. The conflict of interest persons are the relatives according to the Civil Code. The content of this concept is defined in Section 8:1 (1) Point 2 of the Civil Code. They include close relatives (spouse, next of kin, adopted, step and foster child, adoptive, step and foster parent and sibling), as well as life partner, spouse of a next of kin, spouse's next of kin and sibling, and spouses of the siblings. The category of persons is very wide, but this ensures that family-relationship-based personal entanglements do not negatively influence the procedures and decisions of the development policy institutional system, that they are impeccable and that public confidence in their legitimacy and professionalism is not shaken.

It should be noted here that the minimum family relationship defined in the Directive, as described above, is broader in terms of collateral relationship. However, these differences can be remedied as described in the next section.

- *A person from whom an impartial assessment of the case cannot otherwise be expected:* This section regulates a subjective conflict of interest. This may be the case where, in a situation not covered by the previous sections, the staff or manager of the development policy institution has a relationship with the applicant or with the person or persons acting on their behalf which would prevent them from being able to act independently and prepare or take an objective decision. This may be the case when there is a friendship, a love affair, a very strong sympathy or affection between the person acting in the interest of the development policy institution and the person requesting support or other persons acting in connection with them. But the opposite emotions (hatred, contempt, disdain, contempt or related negative emotions) can also make the person acting on the development side incapable of performing an objective decision-preparation or decision-making role.

If a conflict of interest pursuant to Article 61(3) of the Financial Regulation 2018 is present or if there is a risk or appearance of a conflict of interest objectively present, the conflict of interest of that person shall be qualified on the basis of the subjective conflict of interest. This new regulation will apply to all cases.

Exceptions to the conflict of interest for the support decision

In some cases, the national authority may itself submit an application for support. In such cases, it must be ensured that the staff and managers preparing the application for support and the persons assessing it are not the same, but are separated at organisational and staff level. Preferably, different people working in different departments should work on the support application and, after the support application has been submitted, in the role of the applicant, as well as in the role of managing authority, for example. The same applies to the policy officer and to the territorial operator or a company majority-owned by the territorial operator.

Conflict of interest rules for public evaluators:

The purpose of the public project evaluation system is to provide the expertise needed to evaluate projects through the state's internal resources.

However, this can lead to conflict of interest situations, as a public evaluator can also be a person working in the institutional system. So a project can be presented to them in both capacities, as an evaluator and, for example, as a member of staff working for a managing authority. Thus, the evaluator cannot act from the managing authority's side, as they would have to examine their own evaluation, and thus lose control over the substance. Nor can they act for the applicant, as it is responsible for an objective, impartial assessment of the project proposal. That is, they cannot play any role in the interests of the applicant that does not call into question the objectivity of the assessment. In view of this, if someone is a state project evaluator in a case, they cannot act in any other role, and this is also prohibited in reverse, i.e., anyone who has acted in any role in the case, either on the side of the applicant or on the side of the development policy institutional system, cannot be a state project evaluator. There is a similar relationship between the persons performing the evaluation of public procurement, with the difference that the judgement is subjective. A person who cannot be expected to give an unbiased assessment of the case may not perform a public procurement evaluation.

Conflict of interest rules and exceptions to the irregularity procedure:

The stakes of irregularity cases are high: from the perspective of the beneficiary, the sustainability of the support, from the perspective of the development policy institutions, the prevention of illegal use of funds, and for the European Union and Hungary as a Member State, the protection of their financial interests. The first category of persons is therefore wider than usual in this case. The legislator treats the beneficiary in the same category as the persons whose rights or obligations may be affected by the irregularity decision. The project is then already in the implementation phase, likely to be determined by contractual relationships and financial obligations. The beneficiary may have consortium partners or contracts with suppliers. In this way, the beneficiary's partners also have an interest in the project retaining the funding. For this reason, it is necessary to expand the category of persons with stakeholders on which the additional layers are built. The subjective reason was also the basis for the inclusion of the EU conflict of interest rule in this case. As an exception, the managing authority or the policy officer appears as one side of the irregularity case, so that the staff member can only act if there is a proper organisational and staff separation.

Conflict of interest rules in legal remedy procedures:

A remedy procedure can be substantive if different persons examine the objection or appeal against the irregularity decision than the person who made the underlying decision.

If it were to be examined by the same person who made or prepared the decision under challenge, they would presumably have no different views on the matter, or would be in a defensive position when examining the application challenging the decision. This would defeat the purpose of the remedy procedure. This is the basis for the exclusion from the review of the decision of the person who took part in the substantive decision.

The objection and the appeal against the irregularity decision must be submitted to the body which took the basic decision, which has the right of self-revision. If, following an application for legal remedy, the body considers that its decision was unlawful, it may, on its own initiative, correct it: revoke or amend it. If the body which acted previously considers that its decision is lawful, the obligation to refer the matter to a legal remedy body is a guarantee.

Conflict of interest rules for intermediary bodies:

The intermediary body shall exercise the rights delegated it by the managing authority. Thus, in a situation where the intermediate body is placed in the position of applicant or beneficiary and is considered to be in a conflict of interest, the powers delegated to it should be returned to the managing authority. The provision is based on the logic already known in relation to the intermediary body. Government Decree 256/2021 (18 May) applies the subjective ground of conflict of interest also to the whole of the intermediary body, which should be assessed through the activities of the persons determining the whole of the operation of the intermediary body and the influence they may have on the operation. In this case also, this ground may be used as a basis for the application of the conflict of interest under Article 61(3) of the Financial Regulation 2018. Employees, former employees and relatives of employees of the intermediary body are grounds for exclusion of the intermediary body as a whole only if the intermediary body does not have an employee who can act objectively in the case. If there is such an employee, the case must be transferred to them and the intermediary body as a whole is not considered to have a conflict of interest.

Procedure to terminate the conflict of interest - notification by the person concerned:

It is true that the majority of actors in the development institutional system are not in conflict of interest, the conflict of interest status is the natural status arising from the sworn of the staff member and the legal relationship of their employment. The obligation to declare a conflict of interest and its content may change at any time in practice, so this regulation is timeless and has a guarantee nature, under which the employee must declare if a conflict of interest arises for them.

In this case, however, it is a fundamental obligation to indicate the legal grounds on which they cannot act. A person who declares a conflict of interest themselves cannot take any substantive action in the matter. This is a key element of prevention, the basis of trust.

Procedure for the termination of a conflict of interest - procedure based on an external notification:

Pursuant to Section 50/A (1) of Government Decree 256/2021 (18 May), "Anyone is entitled to declare on www.palyazat.gov.hu if they have a conflict of interest in the matter". These notifications are investigated by the BEII. The BEII is obliged to justify its decisions, thus promoting legal certainty and transparency. It does not have to give reasons for the refusal if the notification has been repeated against a person who is not in conflict of interest with the facts or if it is manifestly unfounded. In case of a conflict of interest, the BEII shall send its report to the relevant actor in the development policy institutional system.

Procedure to terminate the conflict of interest - the ex officio procedure:

A key task of the development policy institutional system is to prevent conflicts of interest and, if they arise, to resolve the situation. Therefore, the actor of the development policy institutional system shall ex officio investigate the case to ensure that no person with a conflict of interest is involved, and shall have to constantly use their own means and knowledge to ensure that no conflict of interest situations arise. If this is the case, the conflict of interest should be dealt without delay.

As part of the ex officio procedure, it is necessary to arrange for the appointment of another person to act in the case. If the conflict of interest is self-declared by the staff member or arises in the course of the procedure of the managing authority, or is acknowledged by the staff member upon external declaration, the matter may be dealt with by immediate reassignment to another staff member. Where a conflict of interest has been established, it is necessary to consider whether this has affected the case as a whole or specific acts performed by the person with a conflict of interest. Where necessary and possible, the procedural act may be repeated or rectified. However, for certain substantive procedural acts and their effects, more drastic measures must be taken by the decision-maker. These may include: •- revoking the support decision, • withdrawing from the support agreement, • amending the support agreement, • initiating an irregularity procedure, • initiating the prosecution provided for in Article 43/A c) of the Regulation, • reporting suspected offences.

The new system of declarations:

Section 52/A of Government Decree 256/2021 (18 May) introduced significant changes in the field of conflict of interest declarations. These require actors in the broader development policy institutional system to make general declarations and declarations of interest, as well as ad hoc declarations before the start of certain procedural acts. The general declaration of conflict of interest does not have to be made before a specific case (e.g., an applicant or beneficiary involved in a task to be performed by the staff member) or procedural act. The declaration is intended to identify, acknowledge and accept the conflict of interest situations and circumstances detailed in the applicable legislation. By doing so, the employee undertakes to avoid any conflict of interest and to take the necessary steps to eliminate any conflict of interest that is identified. A declaration of interests must also be completed by staff of the institutional system and updated in case of changes. The content of the declaration of interest is defined in the Commission Guidance (Section 6.3). The respondent must declare any interests (such as office or interest in a company, positions held, etc.) 5 years retroactively. Interest is defined and examined very broadly. The first section of the declaration of interests is practically identical to the declaration of interests section of the declaration of assets, except that the information must be provided for a period of 5 years retroactively and interests of persons living in the same household do not need to be declared. The ad hoc declaration must be made before the procedural step in question (e.g., eligibility check, assessment of the aid application, payment application, assessment of the report). This is performed by the persons concerned in a system that helps them to conduct and document procedural steps (EUPR) before the procedural step in question is taken. It is the responsibility of the staff member to complete the declaration as appropriate, detailing the circumstances of the conflict of interest if there is a conflict of interest. In the absence of a declaration or in the case of a conflict of interest, the procedural act in question may not be performed. The declarations must be kept for 5 years. The BEII checks the accuracy of declarations on a sample basis, by controlling at least 5% of the number of persons required to declare a conflict of interest. The Regulation also requires beneficiaries, suppliers, subcontractors and those involved in the preparation and implementation of the project to declare a conflict of interest in order to ensure that there is no conflict of interest on all sides. The obligation applies in cases under the Guidance.

5.5 Managing conflicts of interest in public procurement system

The development of EU law described in the introduction has made it necessary to review the conflict of interest provisions of Hungarian public procurement law.

Section 25 of the Public Procurement Act regulates the rules for dealing with situations of conflict of interest in the field of public procurement and related situations resulting in a breach of the fairness of competition.

The amendment to the Public Procurement Act, which entered into force on 11 October 2022, has basically aligned the public procurement rules with the Financial Regulation 2018 and the Commission's Guidance on its application. In the summer of 2022, the Communication of the Minister responsible for public procurement on control practices to avoid certain situations that may lead to breaches of fair competition in public procurement was also revised in the light of the above.

As a result, the Hungarian legislation also requires contracting authorities to disclose and remedy conflicts of interest, in addition to preventing them, and has broken with the approach that in public procurement procedures it was sufficient for persons acting on behalf of the contracting authority or involved in the preparation and conduct of the procedure to submit a declaration of conflict of interest. In line with EU requirements, the Public Procurement Act stipulates that where these persons are involved in several processes related to the public procurement procedure (preparation of the procedure, evaluation of tenders and applications, decision on the result of the procurement procedure), the persons concerned must make the declaration for each of these processes. Thus, it can be ensured more effectively that, for example, conflict of interest situations that are not necessarily obvious during the preparation of the procedure are identified and addressed.

The law itself does not specify how many times and at which point in the procedure conflict of interest declarations must be made, which has raised many questions from the legal practitioners, but on 25 May 2023 [substantially before the deadline of 31 December 2023 set in Government Decision 1118/2023 (31 March) on the Action Plan on measures to increase the level of competition in public procurement (2023-2026) (Action Plan)), the Council of the Public Procurement Authority issued a guide on conflicts of interest, which, among other things, contains a recommendation on this issue.

The Authority stresses that, in view of the legislative intention, the persons involved in the public procurement procedures must make their declarations in relation to each procedure and that this should be done at the time of the first involvement of the person concerned, and therefore the first declarations should also be made at that time. The Guide states that, in certain cases, two declarations may be sufficient for a person involved in the preparation of the procedure, but also mentions that it may be advisable to request a declaration of conflict of interest in relation to other processes in the public procurement procedure, in particular if the circumstances to be examined in the course of the conflict of interest have changed in the meantime, which may also be the case if the evaluation process results in a change of economic operators (capacity providers/subcontractors).

The Guide underlines that the purpose of conflict of interest declarations is to ensure that the persons concerned declare responsibly to contracting authorities for all relevant processes. As the Guide also points out, the latter requires that the persons making the declaration of conflict of interest are aware of the content of the declaration and do not regard it as a mere additional administrative requirement, and that the person in charge of the public procurement procedure informs the persons involved orally about the content, significance and consequences of the declaration.

The Guide details the proposed content of the declaration of conflict of interest, but it would be useful to provide declarations of conflict of interest templates, which also contain appropriate clarification and guidance on the persons required to make a declaration. In order to ensure that these declarations are made in a timely manner and with the appropriate content, it is therefore recommended to automate the collection of these declarations in the context of public procurement procedures, to support them with IT tools and, as a first step, to make their use mandatory for public procurement financed by European Union funds.

In the light of the Minister's Explanation to the amending provisions, the Public Procurement Act expects contracting authorities to be more proactive and active than before in dealing with conflicts of interest, and it continues to stipulate that the person affected by a conflict of interest has an immediate obligation to notify the contracting authority if a conflict of interest or a risk thereof arises. It is the responsibility of the contracting authority to examine and decide whether a conflict of interest exists in the light of the circumstances declared by the person involved in the procedure.

Declaring a conflict of interest does not automatically mean that it exists.

The Public Procurement Act does not specify the requirements for notification or the procedure for examination. The Guide also covers the above, recommending that these detailed rules be set out in the public procurement rules. Taking into account that conflict of interest situations are most effectively handled through prevention, it would be of paramount importance to properly prepare and inform the parties concerned as to who they have to notify, with what content and when. EU law requires a decision to be taken by a supervisor who is in a position to properly assess the existence of a conflict of interest and the possible next steps. In view of the importance of the conflict of interest issue, it is proposed to add a reference to the provisions on the declaration and management of conflicts of interest to the provisions of the public procurement rules of the Public Procurement Act.

The notification and investigation of conflicts of interest is of particular importance because breaches of public procurement rules may lead to financial corrections or other forms of remedies, as the Commission's Guide to the determination of the financial corrections to be applied in the event of breaches of the applicable public procurement rules for public contracts financed by the European Union (COCOF[76]) provides for flat-rate financial corrections in cases of conflict of interest, "where a conflict of interest is identified as undisclosed or not properly remedied in accordance with Article 24 of Directive 2014/24/EU (or Article 35 of Directive 2014/23/EU or Article 42 of Directive 2014/25/EU) and the tenderer concerned has been successful in obtaining the contract(s) concerned".

According to the Commission's Guidance, undisclosed and inadequately remedied conflicts of interest include the following:

i. the obligation of the person concerned to disclose in advance any alleged conflict of interest, and
ii. the obligation of the contracting authority to take measures to remedy such situations.

A conflict of interest that is not disclosed, i.e., not declared and not investigated, shall result in a 100% financial correction.

[76] Commission Decision laying down guidelines on the financial corrections to be applied in the event of infringements of the rules on public procurement in the context of expenditure under shared governance financed by the Union (C(2019) 3452 final, 14 May 2019).

The Minister’s Explanation to the current conflict of interest rules of the Public Procurement Act, referring to the European Commission's Guidance, points out that "the use of declarations of interest is effective if they are accompanied by controls to identify false declarations. Such controls may be performed, in particular, by cross-checking with other sources of information, such as publicly available data in the company records, to see whether the contracting authority can find any links between the persons involved in the procedure and the tenderers, or by requesting more detailed declarations from the persons involved, for example on their business interests. The contracting authority may lay down in its public procurement rules how the accuracy of the declarations is to be controlled."

The Public Procurement Act itself does not provide for the obligation to check conflict of interest declarations and declarations of interest, but the Authority's Guide mentioned above details the requirements for these. It is questionable whether the non-legislative Guide alone will be sufficient to make it common practice for contracting authorities to request declarations of interest and to control declarations of conflict of interest (even if accompanied by an appropriate information campaign). It is appropriate for the Minister responsible for public procurement to examine the practical implementation by law enforcers and, if necessary, to lay down the requirements in legislation. In connection with the above, it is recommended that the Public Procurement Authority should pay particular attention to the examination of the Guide in the context of its own controls.

Declarations of interest are similar to declarations of assets, except that they should, where applicable, only contain information on the economic interests of the persons involved in the public procurement procedure and their relatives. Consideration should be given to linking the declaration of assets system and the declaration of interests system, based on international best practice, with electronic support for declaration and declaration verification (see also the findings of the declaration of assets section of this report). This would allow systematic verification of declarations of interest for persons subject to the obligation to declare assets, while for other persons not subject to the obligation to declare assets, the random verification of declarations of interest could be left to the competence of each contracting authority. It would be appropriate to support contracting authorities by providing indicators for the selection of the declarations to be subject to random checks.

In order to ensure the verifiability of the data communicated in the above-mentioned linked declaration of assets/interest system, it is required, as a minimum, the economic interests of these persons can be queried in the company records, the private entrepreneurs register or the beneficial ownership register.

In the context of EU funds, contracting authorities are expected to use data mining tools to control the content of the declarations of conflict of interest and related declarations of interest made, since without them, as already mentioned above, the proper functioning of the system cannot be ensured. As the Authority's Guide also indicates, it is also important to control press releases and information available on the Internet. Of course, special attention must be paid to the enforcement of GDPR requirements with regard to the collection and processing of the declaration.

Based on the practical experience gained, it will also need to be examined whether the definition of the category of relatives covered by the obligation to declare a conflict of interest in the Public Procurement Act and the Authority's Guide is appropriate. Taking also into account the practical feasibility, there is no doubt that it is necessary to set a reasonable limit as to the categories of persons involved in the preparation or conduct of a public procurement procedure for whom a declaration of conflict of interest is required. With regard to the concept of relatives referred to in the presumption of conflict of interest under Section 25(5) of the Public Procurement Act, the Authority's Guide is based on the concept of relatives under the Civil Code, which is a rather broad category, but the regulations and the Guide do not mention, for example, godparents, good friends, neighbours, among the persons mentioned in the Commission's Guidance. It is questionable how far it would be viable to extend the obligation to declare to these persons, but it would be important to create a public procurement culture in which, given the close relationship with the person involved, the lack of impartiality would be automatically indicated in these cases. According to Section 25(4) of the Public Procurement Act, a conflict of interest exists where a person involved in the activities of the contracting authority in connection with the procedure or its preparation or capable of influencing the outcome of the procedure, including the public procurement service provider and its employees, has, directly or indirectly, a financial, economic *or other personal interest* which may be considered to affect the impartial and objective exercise of their functions.

According to the Minister's Explanation, "a conflict of interest within the meaning of paragraph (4) includes any situation where there is an objective circumstance that affects confidence in the independence and impartiality of a person or entity. A conflict of interest is therefore a situation (e.g., a relationship between a person involved in the evaluation and a member of a contracting company) which, according to an objectified standard, is likely to interfere with the impartial performance of the duties of the person or organisation concerned. However, it is not necessary for the person acting on behalf of the contracting authority to be effectively biased and it is also not necessary to prove intentional acts on the part of the persons concerned. If it is proven that a person acting on behalf of a contracting authority has actually used their position to favour an economic operator, this may constitute an act of corruption or other serious misconduct."

A proper understanding of the conflict of interest rules can be facilitated by the widespread training foreseen in the Action Plan. Effective training requires a professionally sound choice of category pf persons, topics and training formats.

The Hungarian public procurement legislation and the Guide do not deal with the revolving door phenomenon, and it needs to be examined whether, taking into account the practical experience of the application of the amended legislation, the legislation and the Guide need to be supplemented in this respect.

5.6 Strengthening the control system to manage conflicts of interest

5.6.1 Directorate for Internal Audit and Integrity (BEII)

In Milestone 224 (C9R22), the Hungarian Government committed to the establishment of the BEII to strengthen the control of conflicts of interest in the implementation of EU funds. The milestones are set out in the Annex to the Commission's recommendation for approval[77].

The BEII was established on 10 October 2022, on the basis of Act XXVIII of 2022 amending certain acts related to the control of the use of EU budgetary resources.

BEII's tasks include:

- Performs a sample control of declarations of conflict of interest and declarations of interest and investigates declarations of conflict of interest;

[77] European Commission - Council Decision - Recommendation for the approval of the assessment of Hungary's Recovery and Resilience Plan {SWD(2022) 686 final}

In terms of sampling for validity controls, the institutional system involved in the implementation of EU funds is divided into two main parts:
    - Operators providing data to the FAIR system, Hungary's Development Policy Registration and Management System;
    - operators outside the FAIR system, e.g., those dealing with the Rural Development Programme 2014-2020, financial instruments, Ministry of Interior Funds;

- It also identifies potential conflict of interest situations and performs a risk analysis;
- It ensures that the operators in the development policy institutional system are made aware of the need to avoid conflict of interest situations;
- Operates an anonymous reporting system;
- Liaises and cooperates with national security services and law enforcement agencies.

BEII reports annually to the Authority on its activities.

In preparing this report, the Authority requested the BEII to comment on the main challenges they see in the interpretation and practical application and controlling of the conflict of interest rules, based on their experience to date.

BEII reported the following practical experiences:

- In relation to the obligation for suppliers and subcontractors to declare a conflict of interest, practical experience from the development policy institutional system has shown that there are cases where the requirement to declare a conflict of interest places a disproportionate burden on the beneficiary or supplier. However, the national rules agreed with the Commission do not allow for derogations, and all suppliers and subcontractors must make a declaration. These include the accounting of costs related to low-value purchases, the costs related to low-value verbal agreements, the eligibility of purchase price of an online shop, the purchase price of ordinary consumer goods, the cost of public services and the cost of public transport. In many cases, access to the supplier or subcontractor is also problematic.

- The currently available tools (public or open databases) have limited possibilities to verify the accuracy of the data content of the declaration (questionnaire) on personal contacts made by the obligor in the light of the European Commission Guidance, in addition, pursuant to Section 29/B (3d) of the Kit. (Government Administration Act), broad data is obtained from the obligor, the incomplete provision of which does not clearly establish bad faith.
- The audit methodology for verifying the accuracy of declarations of conflict of interest and interest by the obligors is developed within the available legal framework, which makes the audit time-consuming in case of data shortages;
- A solution to this problem could be for BEII to take over data from the register under Act LXVI of 1992 on the Registration of Personal Data and Addresses of Citizens (hereinafter: Citizens' Registration Act) in order to perform its tasks as defined in the Act, which would contribute to a more efficient detection of cases of conflict of interest and to the effective protection of the financial interests of the European Union. According to BEII, the legislation is in the process of being amended;
- The making and availability of individual declarations of conflict of interest varies considerably between organisations/programmes (in many cases, paper declarations are made, whereas for EUPR staff, the obligation to declare is enforced by the system when the substantive procedural act is performed). In order to increase the effectiveness of controls, the above-mentioned FAIR system needs to be further developed and paper declarations gradually replaced;
- The BEII pointed out that targeted access to databases would greatly facilitate conflict of interest investigations, risk analysis and increase the efficiency of the organisation, and that it would be useful to initiate the development of IT systems for the management of EU supports.

5.6.2 Integrity Authority

One of the European Commission's central expectations is set out in Milestone 160, which establishes an Authority for the prevention, detection and correction of fraud, conflict of interest and corruption in the implementation of EU funds in Hungary.

According to Section 3 of the Eufetv., the Authority shall take action in all cases where the Authority considers that an organisation, including a contracting party, vested with functions and powers regarding the use, or the control of the use, of European Union funds has not taken the necessary steps to prevent, detect and correct conflicts of interest that affect or seriously risk affecting the sound financial management of the European Union budget or the protection of the financial interests of the European Union.

Under the Eufetv., the Authority's tasks in relation to the control of conflicts of interest are in particular:

- The Authority shall verify, as provided for in law, the declarations of conflict of interest made by the employees of the audit body for BEII (Section 5 (4)).
- The Authority shall perform the tasks set out in the Act on Government Administration in connection with the operation of the BEII (Section 5 (5)).
- At the request of the BEII shall without delay provide the Authority access to declarations of conflict of interest and declarations of interests managed by the BEII and to all documents necessary for the exercise of the powers of the Authority (Section 5 (5a)).

The Authority will be able to report in detail on its experience with conflict of interest controls in its report for 2023.

6. Asset declaration systems

6.1 Summary

The publication of asset declarations by public officials can be an important tool for preventing corruption and detecting unlawful wealth accumulation, and indirectly can make a significant contribution to increasing public confidence.

The provisions of the Eufetv. on declarations of assets require the Authority to perform the same analysis with deadlines of 30 June and 31 December 2023. Although the legal background of public asset declarations has been amended several times in the years 2022-2023 in order to ensure the successful conclusion of the conditionality procedure, according to the information received from the Ministry of Justice, further amendments are expected in the second half of 2023. At the time of writing our Integrity Report, discussions with the European Commission are still ongoing.

On the basis of the above, the Authority's present Integrity Report is primarily a descriptive presentation of the asset declaration system: it describes the development, operation, scope, control processes of the international and national regulatory framework, as well as the amendments to the Hungarian law in recent years. In its ad hoc report, due by 31 December 2023, the Authority will look at practices in other countries and identify good practices (where they exist) that could be replicated in the national context. On the basis of these international examples and its own analysis, the Authority will make recommendations to ensure that the asset declaration system can effectively fulfil its purpose and function, properly serve its social utility and contribute to the clarity of public life.

The Authority maintains the view expressed in its report on the integrity risk assessment of the Hungarian public procurement system[78] that it is of the utmost importance to strengthen the system of control of asset declarations and to introduce a system of sanctions with adequate deterrent effect, consistently and coherently applied. In practice, the control of asset declarations only covers the fulfilment of the obligation to declare, and does not automatically cover the content of the declaration. Moreover, even in the case of non-public asset declarations, the person responsible for the custody of the asset declarations can only know their content in exceptional cases: if they have to decide to order an investigation into the assets.

[78] Integrity Authority: Integrity Risk Assessment Report of the Hungarian Public Procurement System, 31.03.2023.

Section 5(6)-(7) of the Eufetv. also lay down certain tasks for the Authority in relation to the control of asset declarations. The Authority has drafted and submitted to the Ministry of Justice a recommendation for a legislative amendment to clarify and, where necessary, extend the powers necessary for the performance of this task.

6.2 Purpose of the asset declaration system

The OECD study[79] analysing existing practices in the area of asset declarations suggests that such systems can serve several purposes:

- declaring conflicts of interest under the declaration of interests system and controlling conflict of interest situations;
- ensuring transparency and public accountability, to increase public trust and verify integrity;
- controlling the legality of the acquisition of income and assets.

According to the explanatory memorandum of the relevant legislation, in Hungary the legislator currently imposes the obligation to make an asset declaration for the holding of offices and duties of particular importance for the integrity of public life, for the control of activities related to the allocation and use of public funds and for the examination of the accumulation of assets in the case of jobs most vulnerable to corruption.

6.3 Regulatory framework for the system of asset declarations

6.3.1 International regulatory outlook

The foundations of today's asset declaration systems were laid after World War II. First in the United States (1950s), and then in Western Europe in the 1980s, regulations on asset declarations emerged. In the late 1980s and 1990s, much of Central and Eastern Europe was undergoing a process of democratisation following regime change. While before the 1990s, public officials were not required to declare their income or assets, after the change of regime, as global anti-corruption principles became more important, an increasing number of countries introduced asset declaration systems and/or extended the scope and coverage of their previous systems.[80]

[79] OECD: Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent corruption, 2011

[80] OECD: Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent corruption, 2011

The earliest European regulatory model can be found in Recommendation No R (2000) 10 of the Council of Europe of 11 May 2000[81], where Article 14 on asset declarations states: "*The public official who occupy a position in which their personal or private interests are likely* be affected by their official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests." *It should be noted* that the Recommendation only used the declaration of assets to control conflicts of interest, but not to control assets, which was already considered important in many countries.

Although in the 2000s there was no EU legal requirement to establish a declaration system for public officials, in practice this has become a de facto expectation for candidate countries, and specific requirements have been set for some countries to strengthen measures to control conflicts of interest and assets of public officials as part of the EU's requirements to manage corruption.[82]

Today, the obligation for public officials to declare their assets has become part of the global regulatory environment, embodied in the United Nations Convention against Corruption (UNCAC) adopted in 2003. Article 8 (paragraph 5) contains a general expectation provision requiring Member States "to endeavour, *where appropriate* and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials".

[81] Code of ethics for public officials: Recommendation Rec(2000)10 and Explanatory Memorandum adopted by the Committee of Ministers of the Council of Europe on 11 May 2000

[82] OECD: Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials, A tool to prevent corruption, 2011

The UN Convention against Corruption only provides for a discretionary obligation, but the Legislative Guide to the Implementation of the Convention[83] (UN, 2006, 12.4) clearly states that there is an expectation that Member States should develop the declaration systems contained in the Convention and make real efforts to ensure that they are compatible with the legal systems of individual Member States.

Further recommendations are set out in the Technical Guide to the United Nations Convention Against Corruption (UN, 2009, pp. 25-26)[84], which states that, with regard to disclosure and record-keeping requirements and interests in assets, it should be ensured that

- the disclosure covers all significant types of income and wealth of public officials (all public officials, or above a certain level or sector, and/or relatives);
- the declaration forms allow a year-on-year comparison of the financial situation of public officials;
- the disclosure procedures exclude the possibility of public officials' assets being otherwise concealed and, to the fullest extent possible, being in the possession of persons to whom the State concerned may not have access (e.g., foreign or non-resident interests);
- there is a reliable system of income and wealth control for all natural and legal persons, for example within the tax administration, which is available for natural or legal persons related to public officials;
- public officials have the obligation to justify/prove the sources of their income;
- the possibility of public officials declaring non-existent assets that can later be used to justify unexplained wealth is excluded as far as possible;
- authorities have the staff, expertise, technical capacity and powers to perform meaningful controls;
- penalties for breaches of the relevant rules are sufficiently dissuasive.

[83] United Nations (UN) (2006), Legislative Guide for the Implementation of the United Nations Convention Against Corruption, www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf

[84] United Nations (UN) (2009), Technical Guide to the United Nations Convention against Corruption, www.unodc.org/ documents/corruption/Technical_Guide_UNCAC.pdf

6.3.2 National historical outlook (from regime change to EU accession)

In Hungary, the first time that Members of Parliament had to declare their assets was in 1990.[85] At that time, they had to declare their assets within thirty days of the establishment of the validity of their mandate, and then within thirty days of the termination of their mandate. Failure to make such a declaration would have resulted in the Member not receiving an honorarium. This legislation was supplemented in 1997 by detailed rules to improve the transparency of assets and income[86], when the obligation to make a declaration was extended beyond the representative to include the members of the household living with them. The legal consequences of failing to make a declaration have also been tightened: in addition to the suspension of the payment of the honorarium, the exercise of the rights of the representative has also been suspended in case of failure to make a declaration, and interest for late payment has been introduced. At that time, however, only an extract from the declaration of assets, income and economic interests made by the Member of Parliament was public, not the full declaration of assets.

The full declaration of assets of Members of Parliament has been public since 2001[87]. This amendment introduced the obligation to declare in the declaration of assets all activities from which the Member derives taxable income other than their income as a Member, and the obligation to renew the declaration of assets on 1 January of each year, without changing the obligation to make an initial and final declaration, in order to ensure the continuous traceability and verifiability of their wealth. The rules currently in force for Members of Parliament are contained in Act XXXVI of 2012 on the National Assembly (hereinafter: "Ogytv."), the provisions of which are basically identical to those introduced in 2001.

Thanks to the initial amendments and new legislation, detailed rules for non-public asset declarations were laid down in several laws in the early 2000s. In line with the EU accession, this fragmented regulation was to be replaced in 2007 by the creation of a separate Act CLII of 2007 on Certain Obligations to Declare Assets and Liabilities ("Vnytv."), which regulates the legal instrument in its entirety.

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[85] Section 12 of Act LV of 1990 on the Legal Status of Members of Parliament

[86] Section 19 of Act V of 1997 amending Act LV of 1990 on the Legal Status of Members of Parliament

[87] Section 2 of Act VI of 2001 amending Act LV of 1990 on the Legal Status of Members of Parliament

With the entry into force of the Vnytv. in 2007, the content of the obligation and its legal consequences changed, the frequency of declarations was reduced, the procedures for asset declarations were changed, the independent declaration of dependant's assets and the central administration of asset declarations was abolished, and the control was transferred to the state tax authority in the framework of a wealth assessment.[88] The rules currently in force regarding non-public asset declarations are contained in this Act, which is basically identical to the provisions introduced in 2007.

6.3.3 Commitments to the European Union and their implementation

As a result of the conditionality procedure and the commitments made under Hungary's Recovery and Resilience Plan (HET), the asset declaration system was modified several times in the years 2022-2023. The following commitments are included in the HET in relation to the amendment of the asset declaration system:

1. Granting the Integrity Authority, the right to audit asset declarations (Q1 2023);
2. Extending the scope of personal and material assets declarations, while ensuring frequent publication (Q4 2022): registers of Members of Parliament and senior political leaders[89] (Prime Minister, Ministers, State Secretaries) and their relatives should cover their income, real property, other valuable movable property (e.g., vehicles, boats, valuable antiques, works of art, etc.), savings (bank deposits and cash), shares, securities and holdings in private equity funds, life insurance and economic interests; declarations of assets must be submitted on appointment, annually thereafter and on termination of employment;
3. Creation of digital asset declarations and a free public database (Q1 2023);
4. Introduction of effective administrative and criminal sanctions in case of serious breaches of the obligation to declare assets, in line with the National Anti-Corruption Strategy and Action Plan 2023-2025 (Q3 2023).

It should be noted that the Council of Europe's Group of States against Corruption (GRECO) already made similar recommendations in its Fourth Interim Compliance Report[90] in 2015 regarding the declaration of assets of Members of Parliament.

[88] Preamble to draft bill T/4117 on certain obligations to declare assets

[89] Sections 183 and 184 of Act CXXV of 2018 on Government Administration

[90] GRECO, Fourth Interim Compliance Report, Hungary: Preventing corruption of parliamentarians, judges and prosecutors (March 2015); https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e

Thus, GRECO recommended, among others, that declarations should also cover the reporting of other non-financial activities and that declarations should be made in a recorded form and preferably electronically, allowing for appropriate public review at a later stage.

In July 2022, the Hungarian National Assembly adopted a similar system to the European Parliament (EP), under which Members of Parliament had to submit their declarations in August 2022, in accordance with the new requirements. However, the new legislation did not bring any significant change in the transparency of the assets and income situation, as instead of the annual declaration obligation, only changes to the information in the previous declaration had to be declared, and there was no need to declare movable property, real properties, savings, income of close relatives or an exact amount. These changes were objected to by the European Commission in the conditionality procedure, therefore the previous Hungarian legislation was partially reinstated with some new provisions in relation to the above-mentioned Sections 1-3 of the HET:

- restored the obligation for Members of Parliament and relatives of senior political leaders living in the same household to submit a declaration of assets;
- the new rules extend the obligation to declare to activities that are not covered by a conflict of interest (which previously had to be declared separately),
- in addition to domestic assets, foreign assets must also be reported,
- the declarations shall again cover income, real property, other movable property (e.g., vehicles, boats, valuable antiques, works of art, etc.), savings (bank deposits and cash), shares, securities, holdings in private equity funds, life insurance and economic interests;
- restored the requirement to submit asset declarations again at the start of the mandate or appointment, annually thereafter, and at the end of the mandate or employment;
- declarations can be submitted electronically in digital format, which is then publicly available, free of charge and without registration, mainly on the websites parliament.hu or kormany.hu (declarations from relatives will still not be made public);

- With effect from 31 March 2023, the Authority's powers of control over public and non-public declarations of assets and liabilities have been established.

However, in addition to the above changes to strengthen the system, the declarations of assets and liabilities shall only include a declaration of income bands instead of specific amounts, and shall not include the property reserved for the exclusive use of Members of Parliament and their family members living in the same household. In addition, free allowances, gifts, and state or EU subsidies granted to a stakeholder ("*by virtue of any activity, ownership of movable or immovable property or other entitlement thereto, or by virtue of being owned or having an office or interest in a company*") do not need to be declared any further.

The obligation to declare holdings in private equity funds is a step forward, but in practice it is not feasible to control this, as none of the private equity fund laws require the list of shareholders to be published. This means that it is not possible to control if someone fails to declare such a holding in their declaration of assets. We propose to amend the legislation on private equity funds to make it easier to control.

The above amendments affected public asset declarations, while the rules on non-public asset declarations remained unchanged. However, we note that, based on the information received from the Ministry of Justice, further amendments to the declaration of assets rules are expected in order to ensure the successful conclusion of the conditionality procedure.

As regards the introduction of a system of sanctions under Section 4 of the above-mentioned HET:
"The specific measure in the National Anti-Corruption Strategy and Action Plan 2023-2025 on serious violations of the obligations of persons subject to the rules on asset declarations and the introduction of an effective, proportionate and sufficiently dissuasive system of sanctions (including both criminal and administrative sanctions) should be completed and the related system of sanctions should be implemented."

We note that the Medium-Term National Anti-Corruption Strategy 2023-2025 and the Action Plan for its implementation were only available in draft form at the time of writing this report, but we consider it important to note that the draft Action Plan of 14 March 2023[91] included the following measures in relation to the asset declaration system:

[91] https://integritashatosag.hu/wp-content/uploads/2023/06/Kiegeszito_jelentes_NKS.pdf

- the establishment of an electronic asset declaration system and database for the entire public sector by the end of 2025 (Action Plan 2.1);
- extending the scope of the scope to executive officers of public bodies, for certain key job titles (Action Plan 2.2);
- propose the introduction of an effective, proportionate and dissuasive system of administrative and criminal sanctions for serious violation of obligations under the asset declaration system (Action Plan 5.12).

The Authority considers the above measures to be a step in the right direction, in particular the extension of the electronic declaration system to the whole public sector, which could both replace the current costly storage of declarations on paper and facilitate the development of a single automated control system, where instead of a large number of persons responsible for the custody of declarations, a dedicated authority or body could perform a de-personalised control of declarations, effectively centralised. The demand for a review of the sanctions system is also welcome.

6.4 Types of asset declarations, disclosure

On the basis of the level of accessibility, the law distinguishes between non-public (e.g., the majority of public officials), mandatory (e.g., senior political leaders, members of parliament) and public (e.g., local government councillors) declarations of assets.

The Vnytv. contains rules on non-public declarations of assets. In addition, there are more than 20 pieces of legislation that regulate the declaration of assets by certain public officials. For example, Members of Parliament in accordance with the provisions of the Ogytv., local government representatives in accordance with the provisions of Act CLXXXIX of 2011 on Local Governments in Hungary, the heads of certain bodies with special status (as listed below) in accordance with the provisions of the Act establishing the body with special status and the Ogytv:

- President and Vice President of the Hungarian Competition Authority, member of the Competition Council;
- Member of the Media Council;
- President and Vice-President of the State Audit Office;

- The President of the Republic;
- The former President of the Republic;
- The Commissioner for Fundamental Rights and their deputy;
- President and Deputy President of the National Authority for Data Protection and Freedom of Information,
- Members, President and former President of the Constitutional Court;
- The Prosecutor General and the Deputy Prosecutor General;
- President of the Budgetary Council;
- The Deputy of the Speaker of National Assembly;
- The Member of Parliament;
- The parliamentary nationality spokesperson;
- President and Vice-President of the National Election Office;
- The President of the MNB, the Vice-Presidents, the Monetary Council and the Supervisory Board;
- Member of the Committee of National Remembrance;
- President, Vice President and member of the Public Procurement Council;
- A senior political leader who is not a Member of Parliament.

In the case of local government councillors, according to the NAIH's 2020 Information[92], Annex 1 of the Infotv. (general publication list) does not provide for the mandatory publication of the asset declaration of local government councillors. However, there is no provision prohibiting local governments from ordering the publication of asset declarations in a specific publication list. Practice shows that the majority of municipalities publish the declaration of assets and liabilities of local government councillors. In relation to the above, it is proposed to consider the development of a common practice.

The non-public category also includes declarations by relatives of the obliged persons, since, as explained in the NAIH's information note mentioned above, family members do not perform a public function in their capacity as relatives.

The above shows that currently only a very small part of asset declarations are subject to mandatory disclosure, while the majority of public sector employees do not make their asset declarations public.

The non-public asset declarations are usually kept on paper by the persons responsible for their safekeeping, while the declarations that must be published can be accessed electronically in pdf format on the sites parlament.hu (e.g., for Members of Parliament and most of the persons included in the above list) or kormany.hu (e.g., for senior political leaders).

92 https://www.naih.hu/dontesek-informacioszabadsag-tajekoztatok-kozlemenyek?download=143:a-nemzeti- adatvedelmi-es-informacioszabadsag-hatosag-tajekoztatoja-a-vagyonnyilatkozatok-megismerhetosegerol- roviditett-verzio

The documents are declarations completed by hand or electronically.

6.5 Frequency of asset declarations

The declaration of assets must, as a general rule, be made before the legal relationship giving rise to the obligation is established, and after its termination, and in certain cases must be repeated every year, every two years or every five years during the legal relationship.

For public asset declarations, as mentioned above, in 2022 it was first introduced that only changes would have to be declared by the declarants, and then the annual declaration requirement was reintroduced.

It is suggested that a combination of the two systems should be considered, i.e., in addition to the annual, biannual and five-yearly declarations, an interim declaration should be required if there is a significant change in the assets situation. The same would apply to the declaration of joint household members, which could enhance transparency and the traceability of asset changes.

The Vnytv. lists in detail the frequency with which non-public declarations of assets must be made (annually, every two years or every five years). For example, a declaration must be made annually by the person who is entitled to propose, decide or control the public procurement procedure, every two years by the person who, in the performance of their duties, is entitled to take a decision on budgetary or other funds, the management of state or municipal assets, and the management of extraordinary budgetary funds, chapter-managed appropriations, municipal financial aid funds, in the course of the procedure for deciding on individual state or municipal support, or in the course of the examination of the use of state or municipal support or the accounting for its use, and every five years for persons holding a prominent public office, such as public prosecutors, notaries or bailiffs, etc.

6.6 Content of the asset declarations

Under the current rules, each declaration of assets must include information on income, interests and assets (occupational and non-occupational), with a separate declaration for dependants.

Spouse or cohabiting partners living in the same household and children living in the same household must be named in their own declaration of assets.

The table below shows the major similarities and differences in the content of the 3 laws with the greatest personal impact on asset declarations (Ogytv., Vnytv., Mötv.):

	Ogytv.	Vnytv.	Mötv.
Identification	Name of the obligor, their spouse or partner and children		
Income	• Income bands • All regular and occasional non-occupational activities from which taxable income is derived (for occasional activities, only if the annual amount exceeds HUF 2 million)	• Exact amount • Total annual income of the declarant	• Exact amount • Also any non-occupational activity from which taxable income is derived
Real property	• Except for the property for the exclusive use of the declarant and of the persons living in the same household as the declarant	• Total properties	• Total properties
Movable properties	• Only to be completed for movable property over HUF 5 million • Items in foreign currency both • Motor vehicles • Water and aircraft • Protected work of art, protected collection • Other movable property • Savings or other investment in securities (shares, bonds, shares, treasury bills, capital notes, holding in a private equity fund, insurance, etc.) • Savings in a savings deposit • Cash	• movable property of high value (including leased property and property held in trust as trustee and the benefits received as trustee or beneficiary of such property) • Vehicles • Protected work of art, protected collection • Other movable property with a value exceeding ten times the monthly amount of the statutory minimum wage in force on the first day of the month • Cash exceeding the above value • Amounts owed to financial institutions	• Motor vehicles • Water and aircraft • Protected work of art, protected collection • Other movable property exceeding six months' salary under the Act on Public Service Officials • Cash exceeding the above value • Amounts owed to financial institutions or other contractual monetary claims exceeding the above amount • Savings or other investment in securities (shares, bonds,

	• Credit institution accounts receivable or other contractual monetary claims • Other property	or other contractual monetary claims exceeding the above amount • Savings in securities (shares, bonds, shares, treasury bills, capital notes, etc.) • Savings in a savings deposit	shares, high value insurance, etc.) • Savings in a savings deposit
Debts	• Public, financial and private debt	• Against a financial institution and a private person	• Public, financial and private debt
Declaration of economic interest	• Memberships (including supporting and honorary membership), offices in a business organisation (including public interest asset management foundation performing a public task), principal, fiduciary, or beneficiary status based on a fiduciary asset management relationship • any interest in a company which gives them the power to exercise influence over public policy and any ownership interest which gives them decisive influence over the company's affairs	• Any office or interest (including any interest held in trust as a principal or benefit received as a fiduciary or beneficiary of an interest) in a business company (including a business entity with state ownership)	• Position or interest held in a business company

6.7 Control system

The asset declaration system can only fulfil its purpose and function effectively if the control process effectively screens illegal and/or unverified asset accumulation. And, as the UN Technical Guide[93] states, to perform meaningful inspections, authorities must have adequate staff, expertise, technical capacity and inspection powers.

In Hungary, as mentioned above, the vast majority of asset declarations are not public, so they are primarily controlled by the person responsible for their custody. For example, the person responsible for the custody may be the person exercising the employer's powers in the case of a person in the public service. In practice, the person responsible for custody mainly examines compliance with the obligation to declare, as they can only find out the content of the declaration in very limited cases, when an investigation into the increase in assets[94] is initiated. In this connection, the person responsible for the custody may perform an audit procedure (i) within one year of the termination of the legal relationship, position, job or function on which the declaration is based or (ii) if there are grounds for believing, on the basis of a notification, that the increase in assets cannot be justified.

The situation is different for declarations of assets that must be disclosed, where the assets of the person concerned are public (but not those of their relatives) and can be accessed by anyone. In other words, anyone can initiate an investigation into unjustified asset accumulation before the Committee on Immunities or the body designated for that purpose, by stating the facts and specifying the part and content of the declaration of assets that are the subject of the complaint.

As presented in the Authority's March report[95], according to the National Tax and Customs Authority (NAV), after 1 January 2020, a total of 20 private individuals were subject to an asset accumulation investigation, of which 2 were concluded without an assessment and 2 with an assessment in favour of the taxpayer. In view of the relatively limited scope for the imposition of asset investigations under the current regulatory framework[96], the impact of such investigations on the fight against corruption is so far limited.

93 UN (2009), Technical Guide to the United Nations Convention against Corruption, www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf

94 Sections 13-14 of Act CLII of 2007 on Certain Obligations to Declare Assets and Liabilities

95 Integrity Authority: Integrity Risk Assessment Report of the Hungarian Public Procurement System, 31.03.2023.

96 Pursuant to Section 87 (1) of Government Decree 465/2017 (28 December), the NAV may only conduct an investigation into the accumulation of assets in the case of suspicion of an offence by the investigating authority as defined in Chapters XXXVI, XXXVIII, XXXIX, XL and XLI of Act C of 2012 on the Criminal Code.

Based on the above, it would be justified to extend the current scope of application of the asset accumulation investigations to the suspected commission of corruption offences covered by Chapter XXVII of the Criminal Code. Furthermore, the efficiency of the asset declaration system would be significantly improved if a dedicated authority automatically compared asset declarations and tax returns of the taxpayers. At present, neither the NAV, nor the police, nor the prosecutor's office have independent powers to investigate asset declarations, and they are not compared with tax returns.

It noted that the European Commission has made similar remarks in its 2022 Rule of Law Report on Hungary[97]. On the one hand, it criticised the low number of asset accumulation procedures for corruption offences, and the insufficient supervision and lack of systematic controls on asset declarations.

6.7.1 The Authority's powers of control

The rules on the control of asset declarations within the organisation have changed in the context of the control of EU funds. Sections 5(6), (6a) and (7) of the Eufetv. conferred on the Authority, with effect from 31 March 2023, the power to control the assets declarations of the persons listed in the table below to the extent necessary for the performance of its duties:

Type of declaration procedure	Declarants
The Authority may conduct an investigation procedure on the basis of which it may initiate a procedure for the declaration of assets with another body	• President, Deputy President of the Hungarian Competition Authority • member of the Competition Council • member of the Media Council • president and Vice-President of the State Audit Office • the Commissioner for Fundamental Rights and their deputy • president and Deputy President of the National Authority for Data Protection and Freedom of Information • member of the Constitutional Court • the Prosecutor General and the Deputy Prosecutor General • president of the Budgetary Council • president and Vice-President of the National Election Office • the Governor, the Vice-Chairmen of the MNB, certain members of the Monetary Council and the members of the Supervisory Board • Member of the National Remembrance Committee • Chairman, Vice-Chairman and member of the Council of the Public Procurement Authority • a senior political leader who is not a Member of Parliament

[97] 2022 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf

	• the local government councillors and the mayor, the nationality local government councillors
The Authority may initiate proceedings concerning a declaration of assets with another body	• President of the Republic • the Deputy of the Speaker of National Assembly • the Member of Parliament • the nationality spokesperson • the judges • senior political leaders
In connection with non-public declarations of assets under the Vnytv., the Authority may initiate an audit procedure to investigate the accumulation of assets by means of a notification.	• against persons whose obligation to declare assets is based on their right to propose, decide or control EU funds.

In view of the short time available, the Authority does not yet have an established practice in relation to the verification of asset declarations, but it can already be established that for the Authority to be able to perform its task of auditing asset declarations effectively and efficiently, it is a prerequisite that the Authority has access to all relevant data, which is not currently the case. In view of the foregoing, the Authority has initiated a consultation to ensure that, to the extent necessary for the conduct of its proceedings, the Authority may access and receive all data through direct data links.

6.8 Sanction system

Under current legislation, only those who fail to submit a declaration of assets can be directly sanctioned. In the case of compulsory declarations of assets[98], the Member may not exercise their rights as a Member or receive any remuneration until the declaration of assets has been submitted. In the case of non-public declarations[99], the person concerned must be dismissed from employment and may not be employed for three years or perform any job, function, activity or position which gives rise to an obligation to make a declaration.

In the case of declarations of assets that must be made public, the fact of non-disclosure is established by the National Assembly, while in the case of non-public declarations of assets, it is the responsibility of the person responsible for custody.

[98] Section 90 of the Act XXXVI of 2012 on the National Assembly
[99] Sections 9-10 of Act CLII of 2007 on Certain Obligations to Declare Assets and Liabilities

In addition, if a Member intentionally or negligently makes a declaration of assets that is required to be disclosed and contains false information, the Chairman of the Committee on Immunities must initiate a declaration of the Member's conflict of interest.[100]

As stated in the Authority's March report[101], we consider it important to further strengthen the legal sanctions for breaches of the obligation to make a declaration of assets, in order to ensure that the sanctions applied are effectively dissuasive, effective and proportionate. Our detailed recommendations will be set out in our ad hoc report on 31 December 2023, through a presentation of international good practices.

[100] Section 94 (6) of the Act XXXVI of 2012 on the National Assembly

[101] Integrity Authority: The Hungarian Public Procurement System Integrity Risk Assessment Report, 2023

7. Analysis of public procurement data

7.1. Summary

The analysis of the public procurement data referred to in the Eufetv. and detailed in this section was performed by the Authority on the basis of the publicly available EKR database[102]. The data cleansing and filtering criteria applied by the Authority are described in more detail in Methodological Description.

In 2021 and 2022, the amount of public procurement contracts increased significantly, mainly due to the end of the coronavirus epidemic and rising inflation in 2022 (compound annual growth rate (CAGR) 2019-2022: +14.1%), while the number of contracts remained stable over the same period, decreasing slightly (CAGR 2019-2022: -2.5%). Proportionally, the value of EU-funded public procurement has increased more (CAGR 2019-2022: +21.1%) in the public procurement market compared to the increase in the value of nationally funded public procurement (CAGR 2019-2022: +10.6%). The increase in the value of EU-funded public procurement was mainly driven by an increase in the value of construction and IT purchases.

Looking at the spatial distribution of public procurement across the country, unsurprisingly, the capital city dominates both in terms of EU-funded public procurement and the overall public procurement market, while the lowest number of public procurement was performed in Nógrád, Vas, Zala and Tolna counties in 2022.

Looking at the overall public procurement market, the highest concentration is in the energy market, which is basically due to the small number of operators present in the market, so that the TOP10 winning tenderers cover almost the entire market. In addition, TOP10 concentration is also high in the following markets: transport services (TOP10 covered nearly 100% of the market in 2022 and was mainly related to the operation of public bus lines), business services (TOP10 concentration was nearly 70% in 2022 and was mainly related to public procurement for communication activities) and transport equipment (TOP10 concentration was nearly 60% in 2022 and was related to the long-term rental and purchase of buses).

In 2022, the concentration of EU-funded public procurement by CPV code was similar to that of the overall market.

[102] https://ekr.gov.hu/portal/kozbeszerzes/eredmeny-tajekoztato-hirdetmenyek

The TOP10 winning tenderer in the procurement services market accounted for 100% (public procurement of electricity on a project basis for the increase of the load capacity of substations and works on the electrical metering point and connection were part of TOP10 and the overall market), and 85% for transport equipment (fire-fighting vehicles, simulation equipment development, procurement of waste collection and transport vehicles were TOP10), nearly 80% for office and computer machinery and equipment and nearly 60% for radio, telecommunications and communications.

Based on the data available in the EKR, the share of single-tender contracts decreased slightly in both amount and number of contracts from 2021 to 2022 for all public procurement contracts (from 22.5% to 19.4% and from 35.1% to 33.2% respectively), while for public procurement contracts with EU funding only the number of contracts decreased (from 3.5% to 4.0% and from 14.0% to 11.9% respectively).

The Authority has examined the differences between the estimated value and the contract amount, and found that in 2021 and 2022 the final total value of contracts including EU funds was lower than the estimated value (while for the market as a whole, this difference has been gradually increasing since 2010). During 2022, the ratio of the contract amount to the estimated value fell within the range 0.95-1.05 in 6,618 cases (42.0%), of which the contract value and the estimated value were the same in 2,932 cases. The Authority plans to further investigate the difference between the estimated value and the contract value through targeted data requests, which could not be performed due to the short time available. In addition, the Authority plans to include in its own risk analysis, as a risk indicator, an examination of the differences between the contract value and the estimated value, the reasons for this and the correlation between the two.

The amount and the number of actual public procurements (FA2) under framework agreements have steadily increased between 2019-2022, both in the overall procurement framework agreement market and in the EU-funded procurement framework agreements (CAGR for 2019-2022 +51% and +108% respectively). This growth was mainly driven by construction works, business services and various IT purchases, with IT purchases being almost entirely EU funded, 45% of construction works being EU funded and business services being entirely domestically funded in 2022. In terms of the number of tenders received, single-tender contracts are prevalent in the market for nationally funded framework agreements (FA2), while EU-funded FA2s of five or more are common in the market.

In summary, the mandatory data content required by the Public Procurement Act, as contained in the EKR, makes publicly available a database that could be suitable for a comprehensive and detailed analysis of the Hungarian public procurement market. At the same time, the information content, completion and completeness of the manual records in the EKR vary in terms of content and format. It is important to note, however, that the EKR was launched in 2018 and the quality of the data seems to have improved and become clearer as the years have progressed. In order for the EKR system to be able to perform statistical and data provision functions to the maximum extent possible, and to provide high quality data for machine processing and automated analyses, we recommend extending the checks on the input interfaces, and the clarification and cleaning of the data loaded.

It is proposed that written data on public procurements (competitive reopening, direct orders, written consultations) performed under framework agreements by central purchasing bodies should be publicly available and that automatic linking of this data with the data recorded in the EKR should be ensured. In this context, the Authority recommends considering the proposal of the Anti-Corruption Working Group on framework agreements to examine the viability of framework agreements of central purchasing bodies and their distortive and competition-restrictive effects on the market. In addition, the Authority considers that a deeper analysis of the concentration of the public procurement market is warranted in order to identify measures to reduce concentration and widen competition in public procurement. It is also important to explore the possibility of fully integrating data on framework agreements into the Public Procurement Framework (and into public procurement statistics in general).

In addition to the above, the Authority also proposes to consider

- in the case of consortia, the estimated and actual contribution of each consortium member to the estimated and contracted amount, showing the actual participation of each member; and

- the final contract amount at the time of performance (not only the contract amount, but also the final price at the time of performance) should be published, even in a separate table, and the link to the EKR result notice should be ensured.

7.2. Methodological description

For the analysis of public procurement data, we identified a number of international methodologies and/or analytical components, of which the OECD and the European Commission were considered relevant and we modelled our own analysis on those based on the available Hungarian data.

When preparing the data analyses specified in Section 11 of the Eufetv., the Authority applied and took into account the tools and methodological considerations presented below.

7.2.1. Databases and information used as sources

The starting point for the analysis of the public procurement market was the result notice database downloaded from the Electronic Public Procurement System (EKR) website (ekr.gov.hu). This source of information is freely available and contains all the information that appears in the information notices. It also includes the data of information notices published in the Public Procurement Bulletin disclosed outside the EKR on a system operated by the Public Procurement Authority.

The analysis used data from the database update of 8 June 2023.

During the analysis, the Authority consulted with the Public Procurement Authority and the Public Procurement Monitoring Department of the Prime Minister's Office on the reliability of the data in the EKR database, and in order to extend the analysis, the Public Procurement Monitoring Department of the Prime Minister's Office also sent the following databases through BEII:

- a detailed statement of the total value of the contracts initially estimated, using the form for entering the estimated value in the EKR 'Preparatory documents' interface;
- a list of the tendering organisations in the EKR procedures. This has made it possible, subject to certain restrictions, to determine the winning and losing tenders for each call for tenders.

The Authority has also requested data from the centralised purchasing bodies (KEF, DKÜ and NKOH) for the data on purchases made under framework agreements, but due to their different structure and content, it has not been able to fully reconcile them with EKR data.

7.2.2. Preparation of the EKR result notice database

7.2.2.1. Data correction

The following correction steps were applied in the data preparation after the download of the result notice database:

- by partially overruling the content of the corresponding column, a procedure was not considered to be a framework agreement procedure if the type of notice was "Joint information notice" on the results of the procedures. After reviewing the database and taking a sample, it is certain that in these cases the indication of the reference to a framework agreement was incorrect;
- the content of the calculated (correction) column in the downloaded database was taken as the basis for the award of the contract. (The basis for the correction, which is part of the database, is presumably the content recorded for the date of publication and the contract price.)

7.2.2.2. Filter conditions applied

Based on the information on the award of a contract, 183,296 of the 220,300 contract award initiatives in the database contain information on awarded contracts.

The screening and results of the pre-cleaning process were as follows:

- contract amounts denominated in currencies other than the forint are not taken into account. This is because in several cases the conversion resulted in unrealistic amounts in forints, and the inaccuracy of the recording was confirmed by the random examination of the contents of the individual result notices. No additional information was available to separate the data that were filled in correctly from those that were filled in incorrectly. For 4,153 records in the database, the currency is not fixed or other than forint, so this step reduced the number of contracts examined to 179,143.
- contract amounts of less than HUF 1,000, which in the vast majority of cases are based on incorrect fixation, were also not taken into account. 875 contracts did not exceed the threshold, bringing the total number of records taken into account to 178,268.
- the final filtering was to limit data collection and analysis to the four calendar years preceding 2019-2022.

(In addition to the year 2022, we have therefore also examined the previous three years to see the main trends.) In total, 72,295 contracts were analysed. Their total value was HUF 22,837.3 billion.

This number and amount of contracts also includes data on the procedures for framework agreements. Excluding these, 70,030 contracts amounting to HUF 15,640.9 billion were examined.

7.2.2.3. Classification and analysis considerations

The calendar year classification of each contract was based on the calendar year of the contract information notice. Where this information was not available in the database, the year of the contract was taken as the reference year.

By default, data extraction and analysis were examined at the level of individual contracts. The reason for this is that a contract is a separate basic unit for both the tendering and the awarding of the contract. For this reason, 1 record in the EKR result notice database contains data on 1 contract concluded - or failed to conclude a contract.

In this respect, it should also be pointed out that the procedure identifier in the database (usually beginning with the character string "EKR" or "KBE"), together with the number of the procedure part, does not clearly identify the specific contract. Some procedures or parts of procedures may involve several tendering options and therefore several separate contracts. In the workflow, each contract was identified by a serial number matched to the downloaded database.

When determining the winning tender/contract amounts, consortia of several organisations required special treatment. The data on their members (recorded in a field (cell)) could be extracted using a suitable separation procedure. As no information was available on the distribution of the contract amount between the consortium members, an equal distribution was assumed (e.g., each member of the winning consortium of 5 organisations had a share of 20-20% of the contract amount).

The data on contracts for the conclusion of framework agreements (FA1) can be separated within the result notice database, taking into account the correction indicated above. Based on the framework agreements concluded, public procurement procedures (FA2) which have been completed in the second part of the procedure, by reopening of competition, direct order or written consultation, can be filtered by the procedure identification code.

(In the current analysis, all the codes of the framework agreements concluded in advance have been taken into account to filter out the FA2 procedures for the period 2019-2022.)

The volume of data extracted and other available knowledge make it clear that the data on the contracts concluded under the framework agreement in the second part of the procedure (FA2) are only partially covered by the database. The missing data could not be filled in with the information provided by the central public procurement bodies, nor was it possible to quantify the size of the shortfall.

The database also contains the CPV codes of the goods, services and works covered by the public procurement, in the columns "Main CPV code(s)" and "Additional CPV codes". Of these, only the content of the first column and only the CPV major group (defined by the first two digits of the CPV code) were taken into account in the analysis. Where this method did not result in a clear classification for a given contract, the primary CPV main group associated with the contract had to be defined in order to allow analysis. According to the methodology used, the one with the largest (clearly identifiable) contract amount (for the years 2019-2022, in total) was selected from the several main groups.

The information in the preparatory files made the estimated values comparable with the contract amounts for a very high proportion of contracts, over 90%. (In addition to the lack of detailed recording, the data received is not complete because it is not defined at contract level but at procedure part level.) Where possible, the contract value was divided by the estimated value to obtain the relevant ratio. The frequencies associated with the ratios, forming defined intervals, formed the basis of the analysis. For the year 2022, the database of estimated values provided contained two outliers (unrealistically high) values, which were filtered out in the analysis.

For further analysis, we also mention the following.

- To determine the data for public procurements involving EU funds, the criterion "Yes" in the column "Procurement related to a project and/or programme financed by EU funds" in the result notice database was used as a filtering criterion.
- The presentation of the number of contracts and the territorial distribution of the contract amount was based on the NUTS codes in the result notice database. The contracts considered in the analysis were those for which the Hungarian county was clearly identifiable.

Where more than one county was identified as the place of performance, all of them were taken into account, with a proportionate share of the contract (one third for three NUTS codes).

- In determining the number of winning and losing tenders for each company, we compared the contents of the separately provided tenderers database and the result notice database. The former database was also created at the level of the procedure part (i.e., not contract, unlike the latter), so only those contracts that could be identified with certainty were included. For the losing tender, we had no more detailed information than the tenderers database, but the number of winning tenders could be determined with a high degree of accuracy from the result notice database.

7.2.3. Recommendations to improve the accuracy of the analysis

In order to make the analysis of the data on the Hungarian public procurement market more accurate, realistic and transparent, the Authority proposes the following changes to the registration system:

- The contract or the invitation to tender for the conclusion of the contract should be considered as the "basic unit" in the result notice database, rather than the contract part, which is not clearly identifiable. It is recommended to assign a separate code to the contract (invitation for tenders).
- It should be ensured that contracts under framework agreements (FA2) are fully included in the EKR, but at least with the specified data. To achieve this, the relevant procedural rules need to be reviewed and, if necessary, amended.
- The result notice database should indicate, among the information on the conclusion of the contract, whether the contract was based on a framework agreement, with a reference to the details of the framework agreement.
- The EKR result notice database should display information on tenderers at contract level.
- To identify the winners, and in the future the tenderers, the technical compliance of the tax numbers should be checked. Proper synchronisation should also ensure that the exact (registered) names of the companies are entered in the EKR and the database.
- It is necessary to ensure that the distribution of the contract amount between consortium members is recorded in the EKR (the final data should be included in the data to be recorded in relation to the performance of contracts).
- An appropriate database management technique, including the publication of a separate table, should ensure that winners/tenderers are displayed in a separate row, even if they are members of a consortium.

This would include a separate record of the winners' details – including tax number, name, address, SME status, etc. This would avoid the problem of "bulk" data within each field being separated and resulting in inconsistent results.

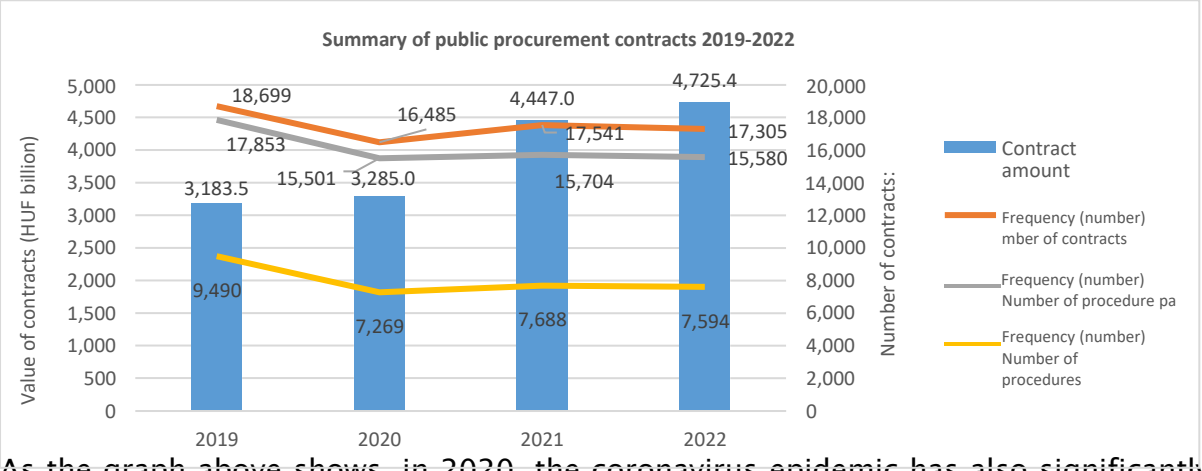
- A more precise procedure should be established for recording the amounts of contracts denominated in a currency other than HUF (making it clear that in these cases it is not the value converted into HUF but the value recorded in the original currency that should be recorded).
- When setting the contract values, realistic intervals should be used to prevent unrealistic values (very low, very high, uninterpretable format) being set.
- In the result notice database, the estimated value information should be disclosed on the basis of the content of the preparatory documents, at contract level, in order to allow a reliable analysis of the difference between the estimated value and the contract amount.
- The monitoring of the data recorded helps to eliminate false information recording related to the eligibility to conclude a framework agreement. A similar approach should be taken to deal with any further discrepancies.

7.3. Analysis of public procurement market concentration

In its analysis, the Authority examines separately the procedures for the conclusion of framework agreements (FA1), as they do not yet involve actual procurement, but provide the public procurement and legal basis for the possibility to procure from the successful tenderers of a framework agreement, up to the amount of the framework agreement, over a period of several years. At the same time, actual public procurements under framework agreements in the EKR (FA2) are included in the analysis. Our methodological description we present in detail the data cleaning we performed and the filtering conditions we applied.

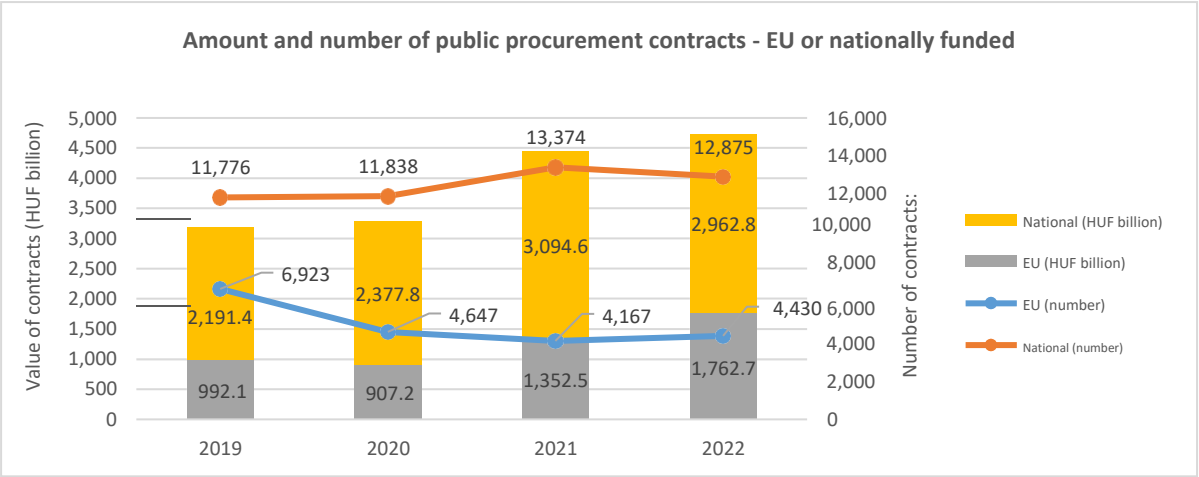
It is important to stress that in much of our analysis we present the public procurement market on a contract basis rather than on a procedure or, in the case of division of the contract into lots, on a lot-by-lot basis, which is more in line with EU practice. As a result of the contract-based analysis and our data cleaning, the data we present differs from the data described in the Performance Measurement Framework and published by the Public Procurement Authority. For the latter, the discrepancy is further explained by the fact that these data are not based on EKR data, but are derived from a proprietary database, which is compiled from the data of notices published in the Public Procurement Bulletin.

In our analysis, we present separately the overall public procurement market and, within it, public procurement contracts financed partly or fully by EU funds.

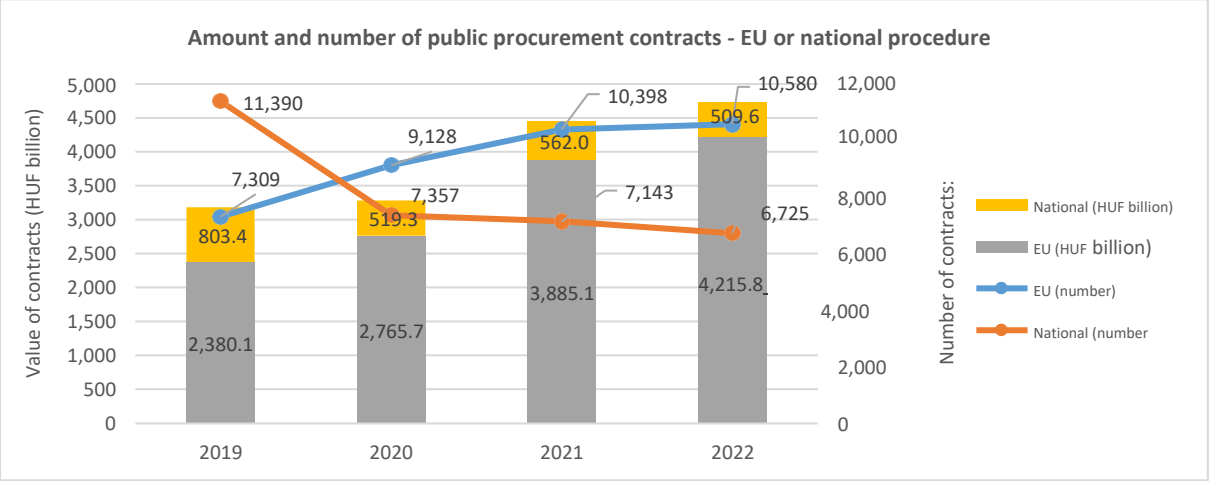


As the graph above shows, in 2020, the coronavirus epidemic has also significantly reduced the number of procedures and contracts, while the value of public procurement contracts has not changed significantly compared to the previous year. In contrast, in 2021 and 2022, the amount of public procurement procedures increased significantly, partly due to the end of the epidemic,

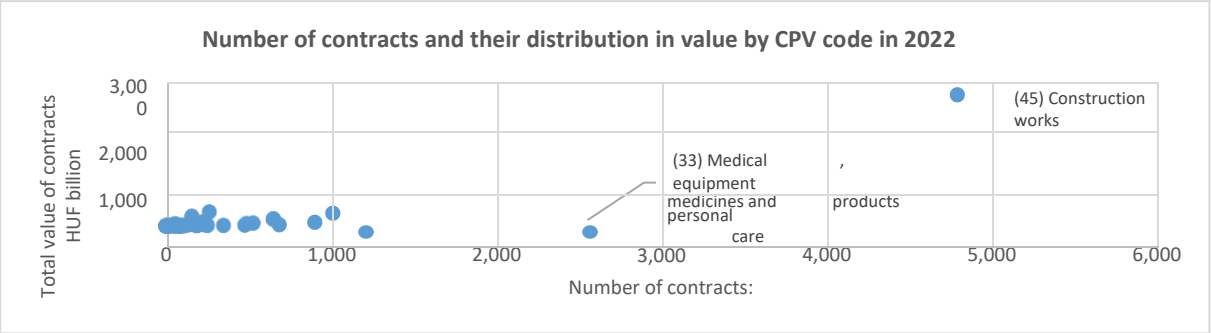
and, inflation is expected to rise in 2022, while the number of procedures and contracts has not changed significantly.

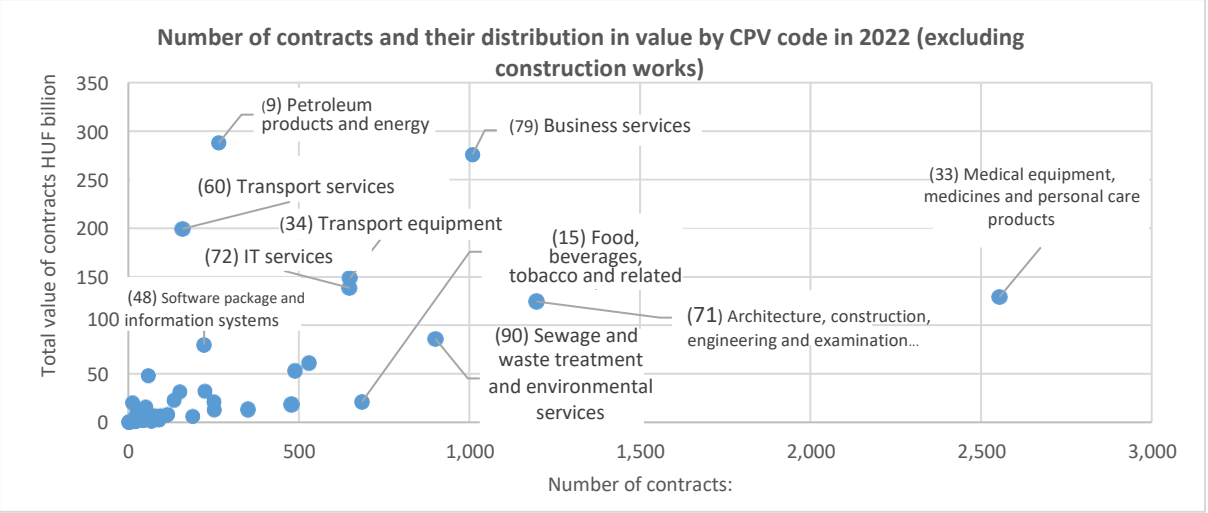


Proportionally, the value of EU-funded public procurement has increased more (CAGR 2019-2022: +21.1%) in the public procurement market compared to the increase in the value of nationally funded public procurement (CAGR 2019-2022: +10.6%) over the period 2019-2022. However, over the same period, the number of contracts for EU-funded public procurement decreased significantly (CAGR 2019-2022: -13.8%) compared to nationally funded procurement (CAGR 2019-2022: +3.0%). The increase in the value of EU-funded public procurement was mainly driven by an increase in the value of construction works.



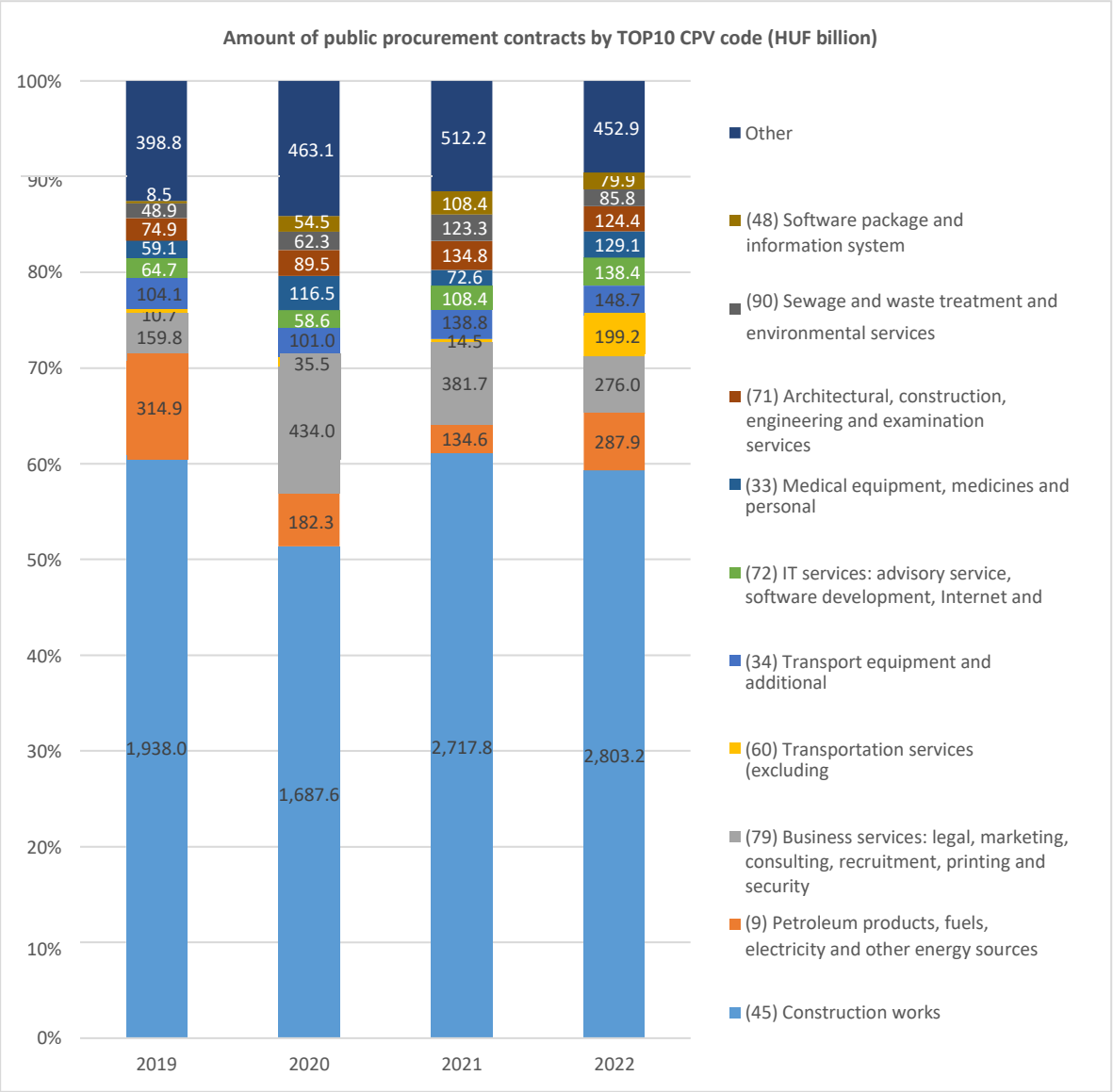
As regards the procedures, there is a clear increase in both the number and value of public procurement under the EU procedure (CAGR 2019-2022: +13.1% and +21.0% respectively), which is due to the increase in construction investments and the rise in the average value of public procurement (partly explained by inflation), which is leading to more public procurement under the EU procedure instead of national.



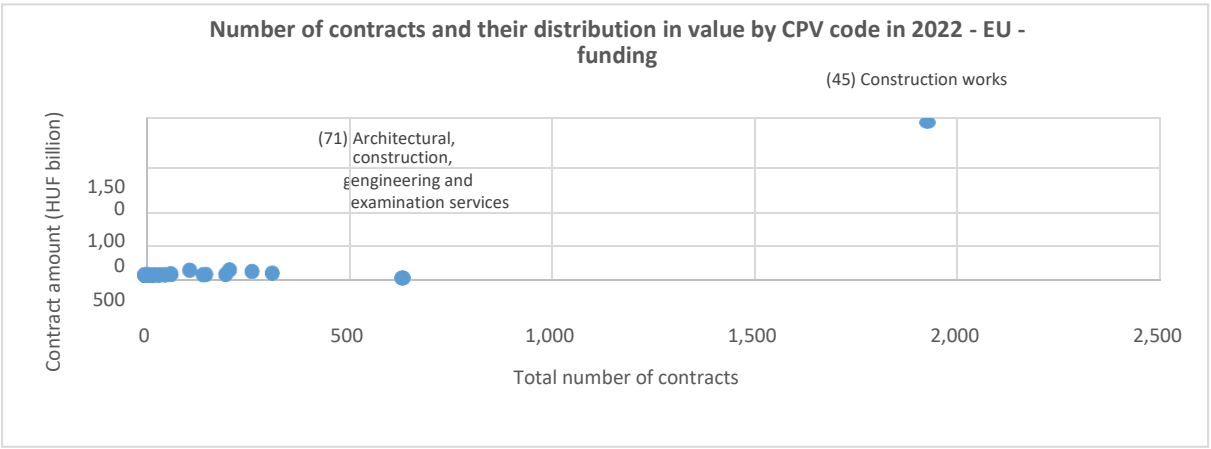


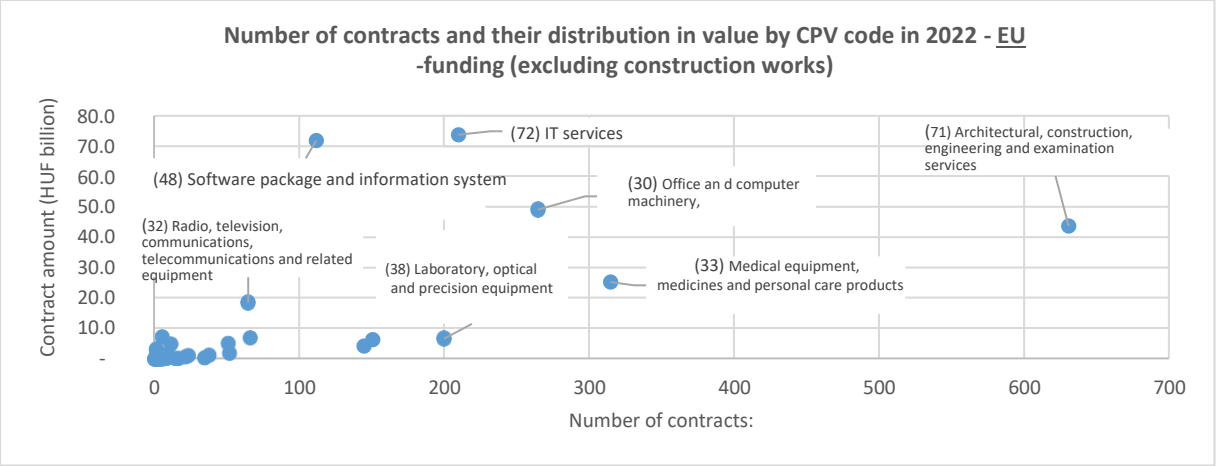
It can be clearly seen that construction works far exceeded the value of contracts related to other CPV codes in 2022, both in terms of the amount and the number of public procurement contracts, so we present the breakdown of public procurement contracts by CPV code even without construction works. Based on these, although the number of public procurement contracts for medical equipment is significantly higher (2,554) than for the other CPV codes, the value was only HUF 129 billion in 2022, compared to, for example, transport services, where 159 contracts were worth HUF 199 billion.

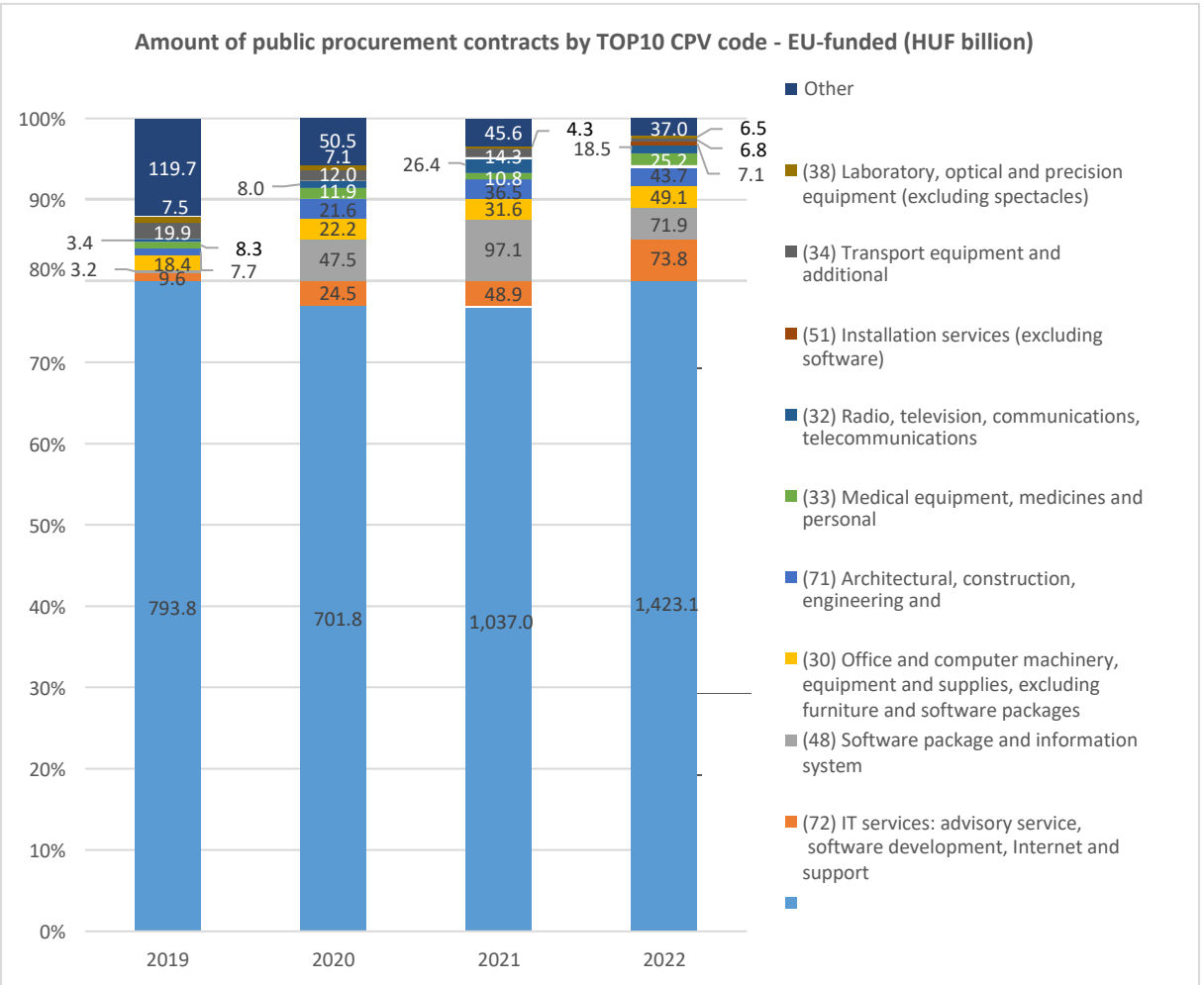
In terms of size, construction accounted for nearly 60% of the total public procurement market in 2022, with energy and business services being the largest categories in terms of volume. As the TOP10 CPV codes covered more than 90% of the public procurement market in 2022, the Authority's analysis of concentration is presented primarily by the TOP10 CPV codes included in the table above.



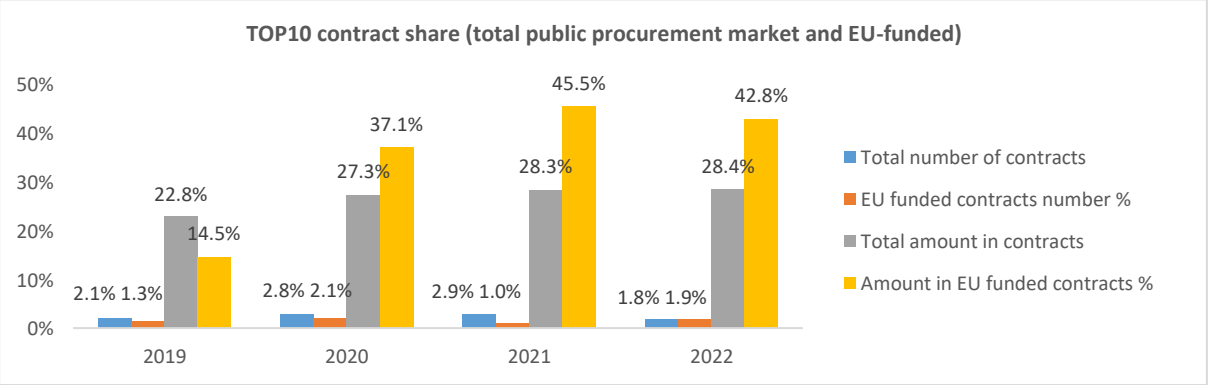
Among EU-funded public procurement, construction works also stand out significantly among the other CPV codes, followed in value terms by the total value of public procurement procedures for IT purchases (services, information systems).

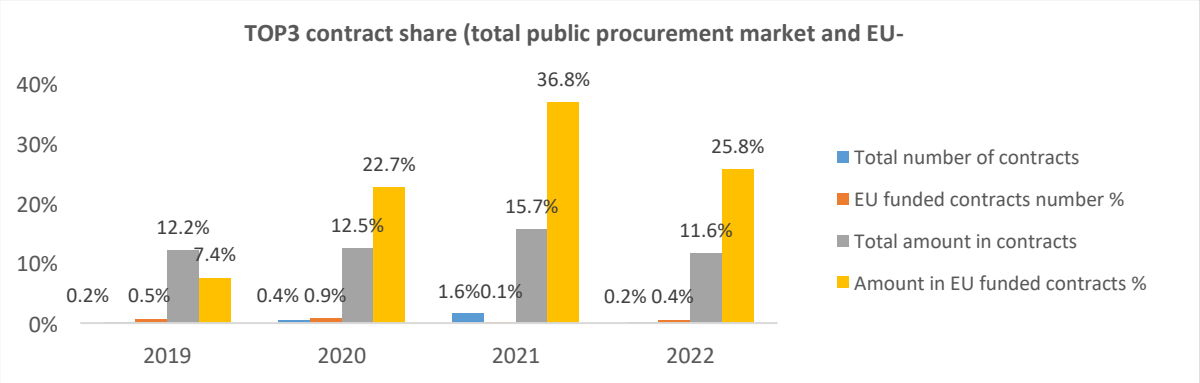


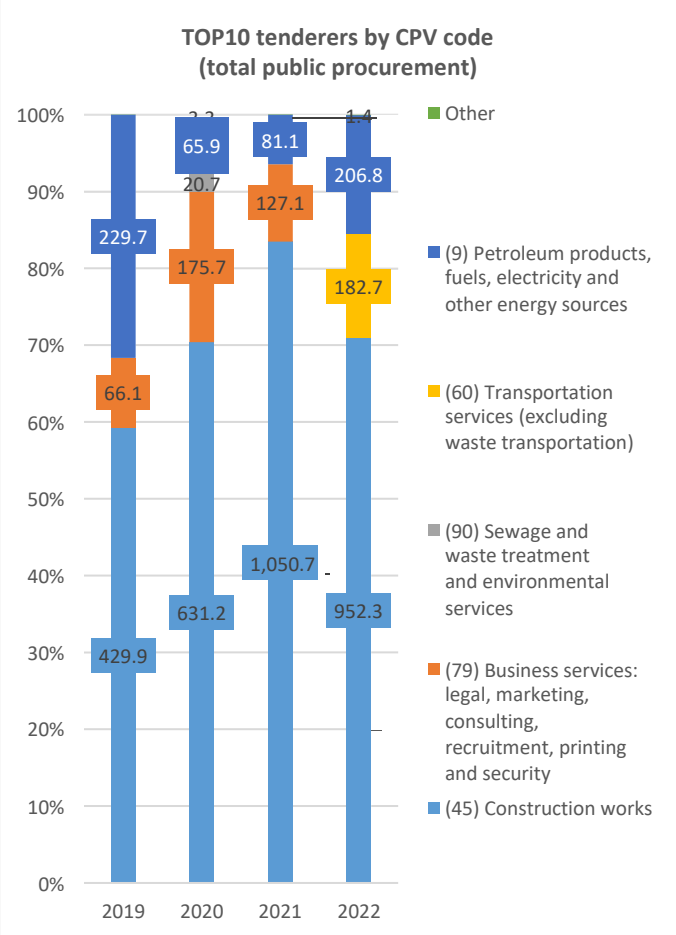

Number of contracts and their distribution in value by CPV code in 2022 - EU -funding (excluding construction works)
Contract amount (HUF billion)
80.0
70.0
60.0
50.0
40.0
30.0
20.0
10.0
-
0
100
200
300
400
500
600
700
Number of contracts:
(72) IT services
(71) Architectural, construction, engineering and examination services
(48) Software package and information system
(30) Office an d computer machinery,
(32) Radio, television, communications, telecommunications and related equipment
(38) Laboratory, optical and precision equipment
(33) Medical equipment, medicines and personal care products


Amount of public procurement contracts by TOP10 CPV code - EU-funded (HUF billion)
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
2019
2020
2021
2022
119.7
7.5
19.9
3.4
18.4
3.2
9.6
793.8
8.0
8.3
7.7
50.5
7.1
12.0
11.9
21.6
22.2
47.5
24.5
701.8
26.4
45.6
4.3
14.3
18.5
10.8
36.5
31.6
97.1
48.9
1,037.0
37.0
6.5
6.8
25.2
7.1
43.7
49.1
71.9
73.8
1,423.1
Other
(38) Laboratory, optical and precision equipment (excluding spectacles)
(34) Transport equipment and additional
(51) Installation services (excluding software)
(32) Radio, television, communications, telecommunications
(33) Medical equipment, medicines and personal
(71) Architectural, construction, engineering and
(30) Office and computer machinery, equipment and supplies, excluding furniture and software packages
(48) Software package and information system
(72) IT services: advisory service, software development, Internet and support

7.4. TOP10 tenderers



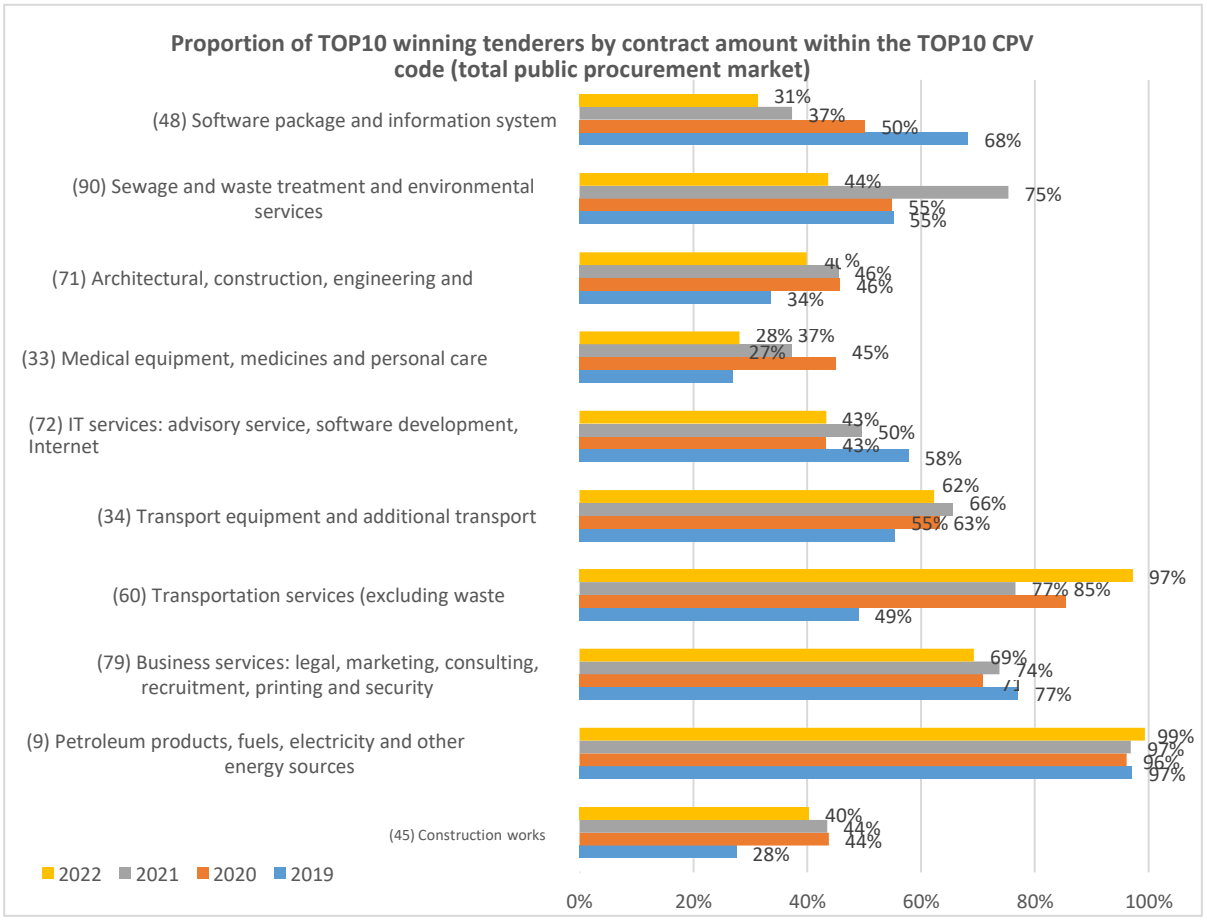




The above graphs show that the concentration of TOP3 and TOP10 winning tenderers increased steadily in terms of amount between 2019–2021, and then decreased slightly in 2022. The number of contracts has not changed significantly between 2019 and 2022. Overall, there are few contracts with a relatively high public procurement value. If we examined only at the TOP10 winning tenderers for public procurement contracts fully or partially financed by EU funds, we found an even higher concentration.

This is due to the fact that EU-funded projects tend to be larger in scale and fewer in number, and therefore more concentrated. The TOP10 tenderers in EU-funded public procurement were 100% construction related, while the TOP10 winning tenderers in the overall public procurement market are not only in construction (see chart above left). In addition, almost 50% of the TOP10 tenderers for all public procurement contracts have been financed (in whole or in part) by EU funds. Looking at the market as a whole, the TOP10 companies in 2022 were involved in the following public procurement projects: design and construction of potable water and waste water pipelines, operation of public bus lines, renovation of sports halls and castles, development of universities, expressway construction, electricity and natural gas procurement, road pavement renovation and national road network renovation.

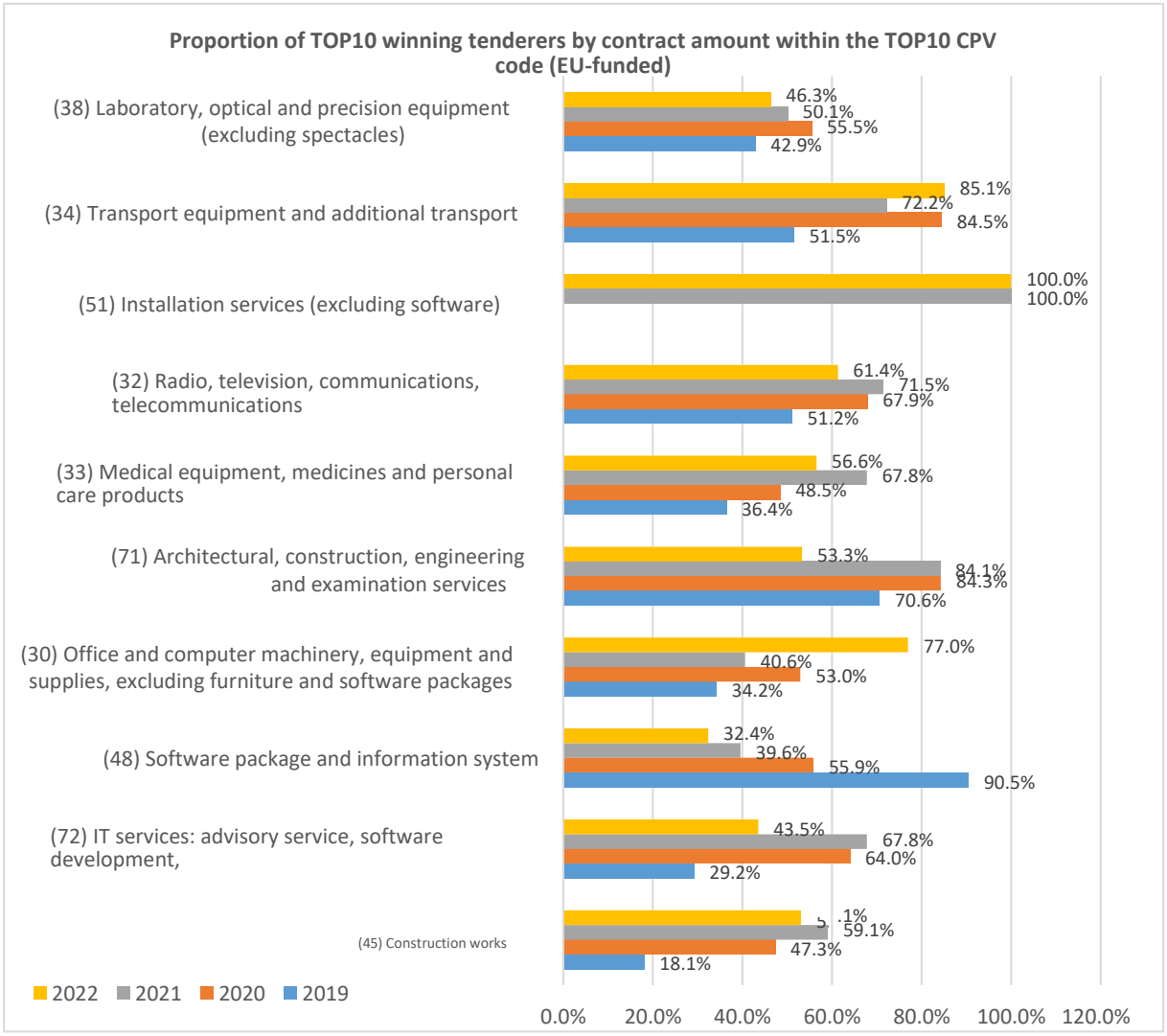
The Authority has not performed any sample contract-level testing for this Integrity Report.



Looking at the overall public procurement market, the highest concentration is in the energy market, which is basically due to the fact that the domestic energy market is characterised by a small number of operators, also given its size, and thus the TOP10 covers almost the entire market.

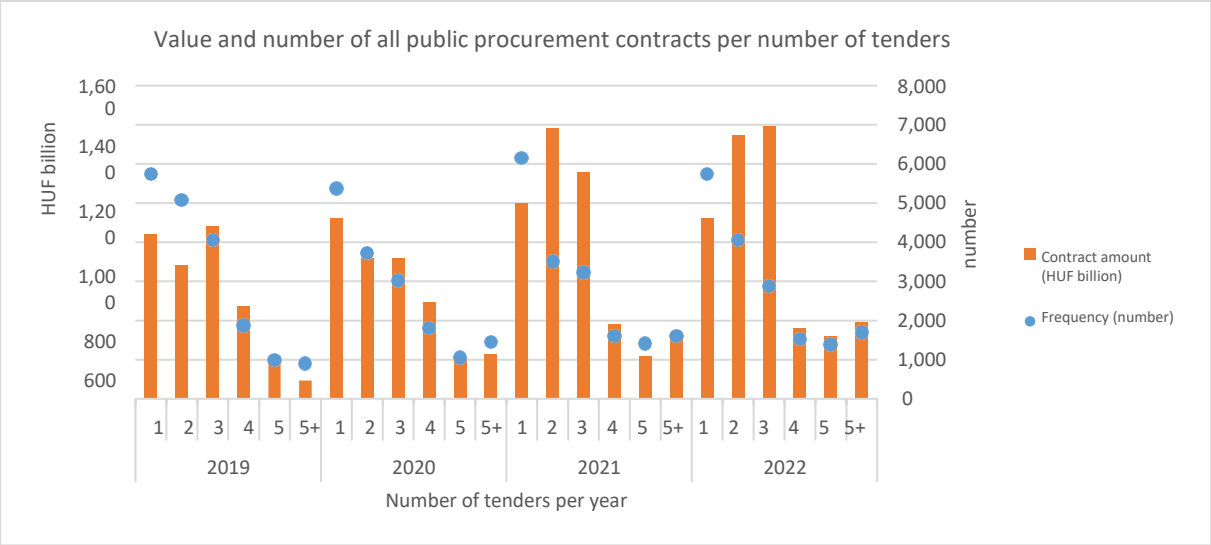
In addition, TOP10 concentration is also high in the following markets: transport services (TOP10 covered nearly 100% of the market in 2022 and was mainly related to the operation of public bus lines), business services (TOP10 concentration was nearly 70% in 2022 and was mainly related to public procurement for communication activities) and transport equipment (TOP10 concentration was nearly 60% in 2022 and was related to the long-term rental and purchase of buses).

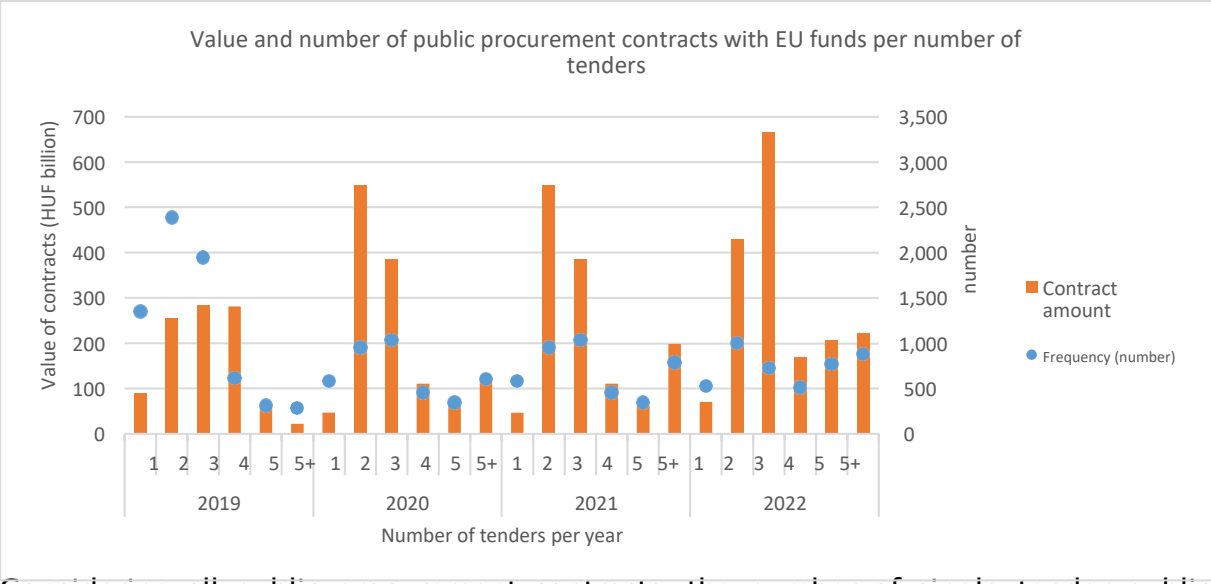
In 2022, the concentration of EU-funded public procurement by CPV code was similar to that of the overall market. The TOP10 winning tenderer in the procurement services market accounted for 100% (public procurement of electricity on a project basis for the increase of the load capacity of substations and works on the electrical metering point and connection were part of TOP10 and the overall market), and 85% for transport equipment (fire-fighting vehicles, simulation equipment development, procurement of waste collection and transport vehicles were TOP10), nearly 80% for office and computer machinery and equipment and nearly 60% for radio, telecommunications and communications.



Single-tender public procurement procedures

The Authority's methodology for the analysis of single-tender public procurement procedures presented in this section differs from the EU's Single Market Scoreboard methodology. This is reflected in the fact that only the procedures for the conclusion of framework agreements (FA1) have been excluded, as they are not aimed at actual procurement, performance, whereas, for example, negotiated procedures without prior publication of a contract notice have been included in the data set.

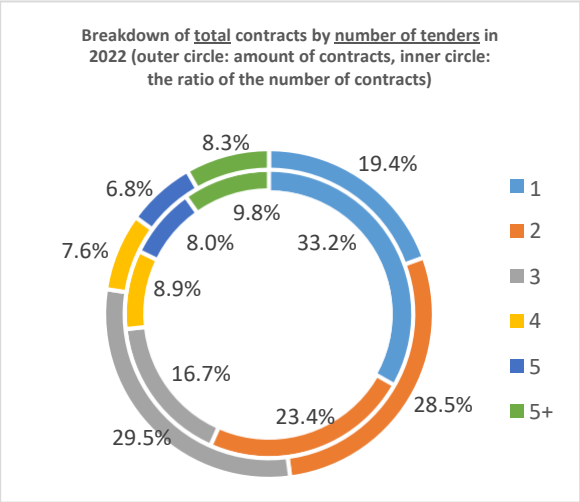


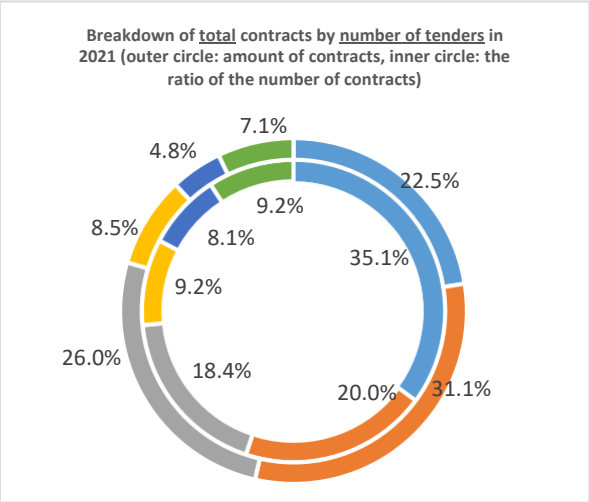


Considering all public procurement contracts, the number of single-tender public procurement contracts remains the highest compared to two and three-tender contracts in 2019-2022 (5,749 single-tender contracts vs. 4,057 two-tender contracts and 2,883 three-tender contracts in 2022). However, in value terms, the value of two and three-tender public procurements exceeds that of single-tender procedures from 2021 onwards (HUF 918.5 billion in 2022 vs. HUF 1,346.9 billion and HUF 1,392.8 billion respectively).

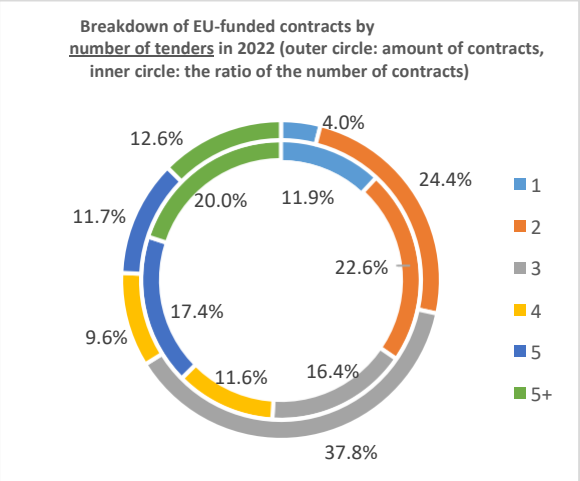
In contrast, among procurements involving EU funds, two and three-tender procurements exceeded the value/number of single-tender public procurements not only in value but also in number of units in 2019-2022.

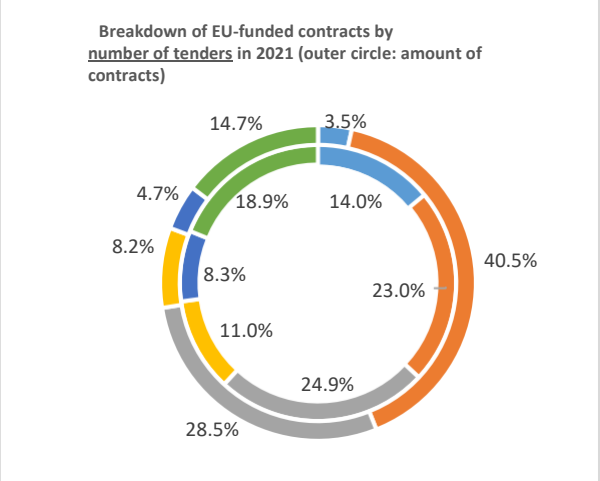
Looking at trends, it can be seen that the proportion of two and three-tender contracts with EU funds increased significantly in 2020-2022 compared to 2019, but the number of contracts with EU funds decreased significantly in 2020 compared to 2019, while the number of contracts with EU funding did not change significantly in 2021-2022.

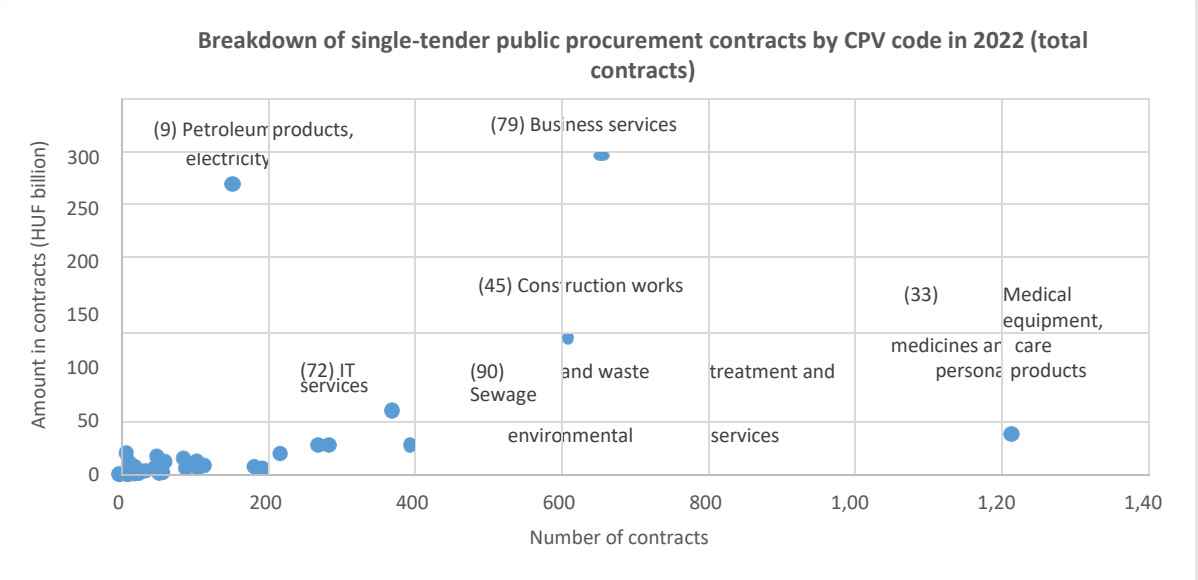




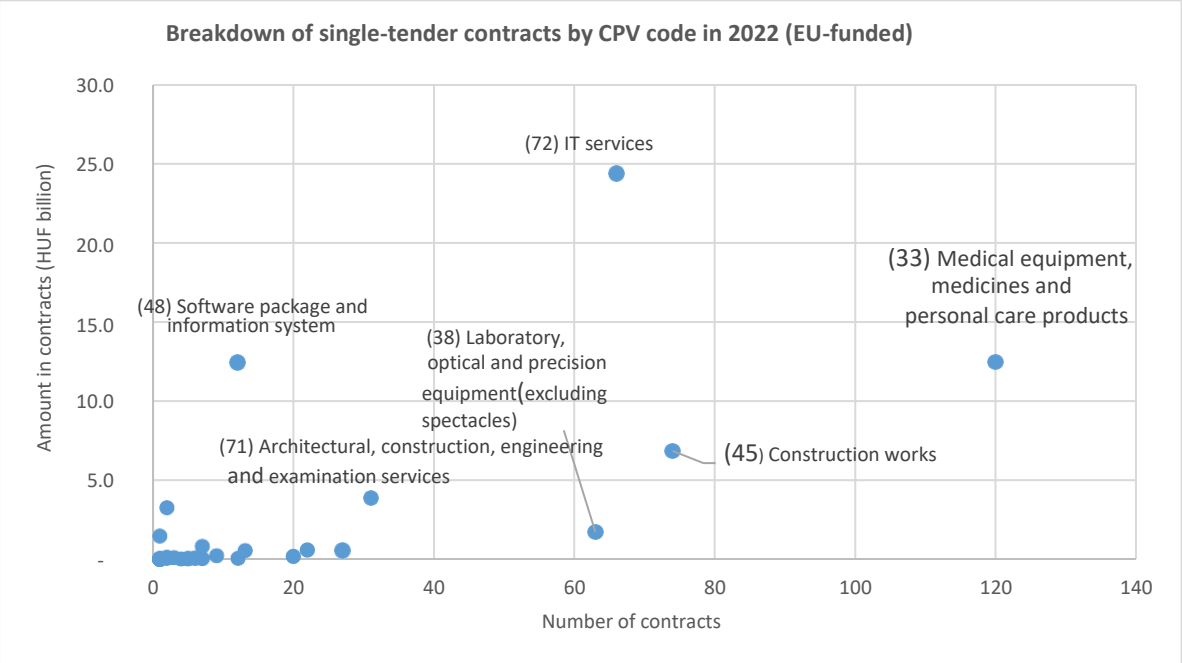
Overall and in terms of number of contracts, the share of single-tender contracts decreased slightly from 2021 to 2022 for all public procurement contracts (from 22.5% to 19.4% and from 35.1% to 33.2% respectively), while for public procurement contracts with EU funding only the number of contracts decreased (from 3.5% to 4.0% and from 14.0% to 11.9% respectively). However, it should be noted that the value of single-tender public procurements was already lower among public procurements involving EU funds (3.5% vs. 22.5%).

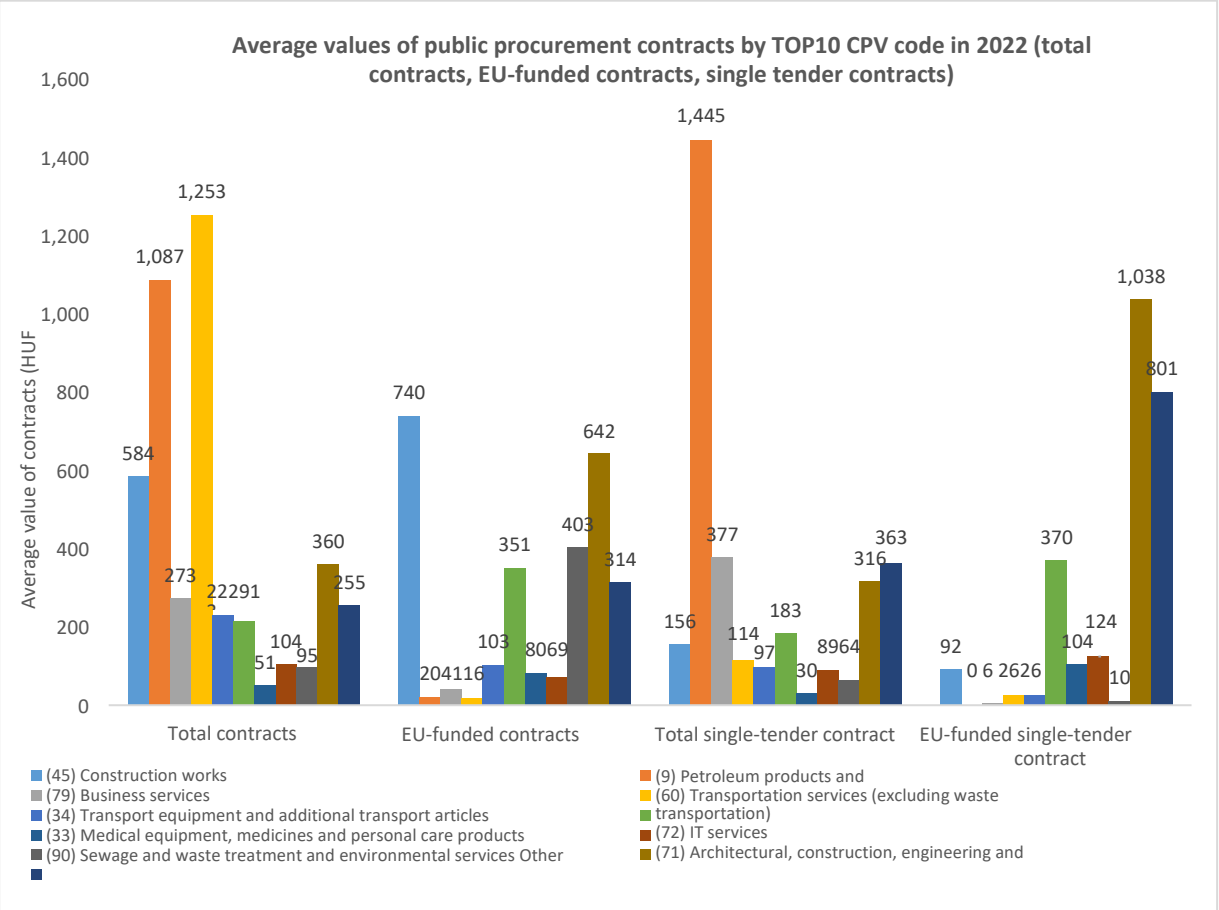






Energy and business services rank first in terms of the total number of single-tender contracts, while medical equipment is the most important in terms of the number of contracts. The latter is also true for EU-funded single-tender public procurement, but when examining at the amount of contracts, the higher values are typically related to various IT services, software and information systems.



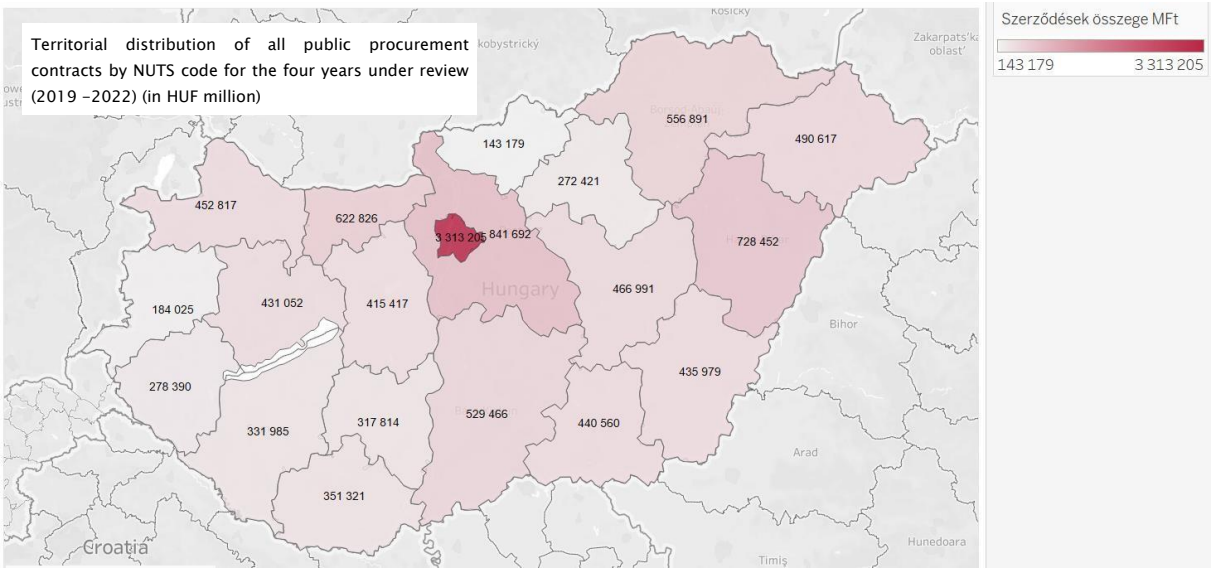


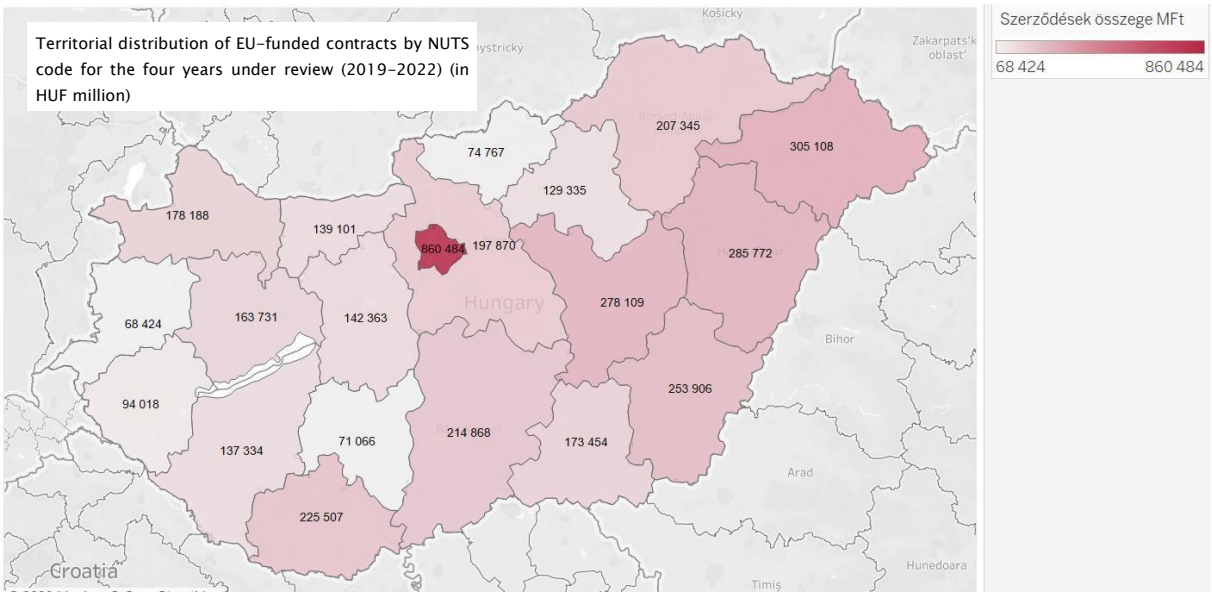
The Authority has also examined the evolution of average contract values in 2022 for all procedures, EU-funded procedures and single-tender procedures (with a separate breakdown for all contracts and EU-funded contracts). On this basis, the public procurement markets for nationally funded gas and electricity and for transport services (e.g., operation of public bus lines) showed an outstanding value. Also high average values are associated with multi-tender construction works, while the single tender averages for the same category were much lower (total contracts vs. total single tender: HUF 584 m vs. HUF 156 m and EU-funded contract vs. EU-funded single tender contract HUF 740 m vs. HUF 92 m). The value of public procurement for software packages is also very high among the EU-funded single contracts.

7.5. Territorial distributions

If we examine the territorial distribution within the country, it is clear that the capital city dominates both the EU and the overall public procurement market (HUF 860.5 billion and HUF 3,313.2 billion), while the lowest number of public procurements was in the counties of Nógrád (HUF 74.8 billion and HUF 143.2 billion), Vas (HUF 68.4 billion and HUF 184.0 billion), Zala (HUF 94.0 billion and HUF 278.4 billion) and Tolna (HUF 71.1 billion and HUF 317.8 billion) in 2022.

The most striking difference between total market and EU-funded public procurement is in Pest (HUF 841.7 billion vs. HUF 197.9 billion) and Komárom-Esztergom (HUF 622.8 billion vs. HUF 139.1 billion) counties, where although the EU funds was less, the proportion of public procurement from national sources was higher, see the graphs below.





7.6. Examination of the difference between estimated value and contract amount

In accordance with Section 11.a) of the Eufetv., this annual Integrity Report examines in detail, in the absence of other data, the difference between the estimated value and the contract amount at contract level for public procurement procedures. The Authority did not have data on the final prices (meaning the price at the time of performance of the contract). The source of the data on the estimated value is the form for entering the estimated value in the EKR "Preparatory documents" interface; see our methodological description in this respect for details.

Our analysis compares the estimated value determined during the preparation of the public procurement procedure with the contract amount in the EKR, which is the tender price submitted by the winning tenderer in the procurement procedure. In each case, a separate contract-level comparison was made.

Based on the analysis performed, the following average contract amounts and estimates were identified, based on the data available for the four years under review and included in the EKR:

Closing notice year	Estimated value fixed	Number of contracts	Ratio	Total amount in contracts (HUF million)	Average contract amount (HUF million)	Average of estimated values (HUF million)
2019	No	550	2.94%	228,224	415	-
	Yes	18,149	97.06%	2,955,263	163	172
2020	No	809	4.91%	70,506	87	-
	Yes	15,676	95.09%	3,214,475	205	218
2021	No	1,291	7.36%	591,160	458	-
	Yes	16,250	92.64%	3,855,874	237	248
2022	No	1,538	8.89%	516,205	336	-
	Yes	15,765	91.11%	4,197,053	266	277

In each year examined, the proportion of contracts for which we were able to identify the fixed estimate as described above was above 90%.

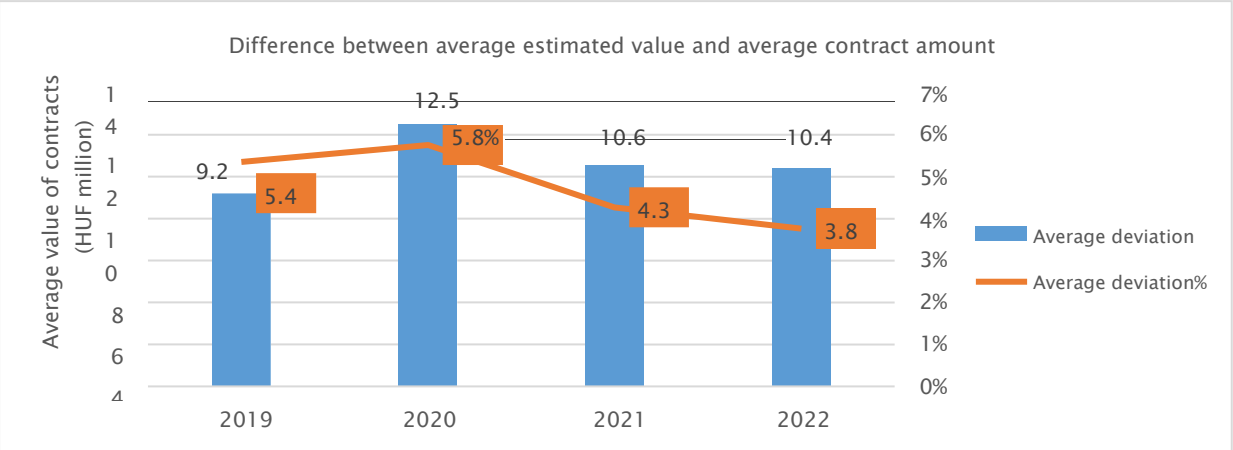
For contracts with a value of HUF 516 billion for 2022 (88.9% of all contracts for 2022), the estimated value was not filled in either in the EKR database or in the "Preparatory documents" form.

On the basis of the information available to the Authority, the average contract value and the average estimated value for contracts involving EU funding were as follows:

Closing notice year	Estimated value fixed	Number of contracts	Ratio	Total amount in contracts (HUF million)	Average contract amount (HUF million)	Average of estimated values (HUF million)
2019	No	76	1.10%	141,324	1,860	–
	Yes	6,847	98.90%	850,741	124	118
2020	No	65	1.40%	9,549	147	–
	Yes	4,582	98.60%	897,607	196	193
2021	No	129	3.10%	36,781	285	–
	Yes	4,037	96.90%	977,792	242	245
2022	No	322	7.27%	176,539	548	–
	Yes	4,107	92.73%	1,452,234	354	373

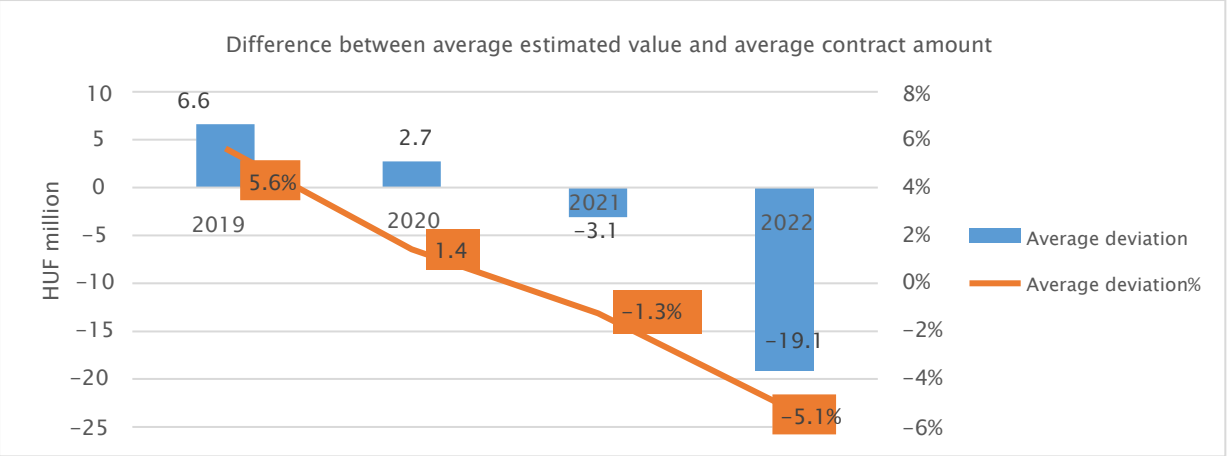
For contracts including EU funds, the estimated value was more complete, for the year 2022, in 7.3% of the contracts (322 contracts in total), the amount of the estimated value was not filled in either in the EKR database or in the "Preparatory documents" form. The total value of these contracts is HUF 176.5 billion.

The difference between the average contract amount and the average of the estimated value over the four years under review was as follows:



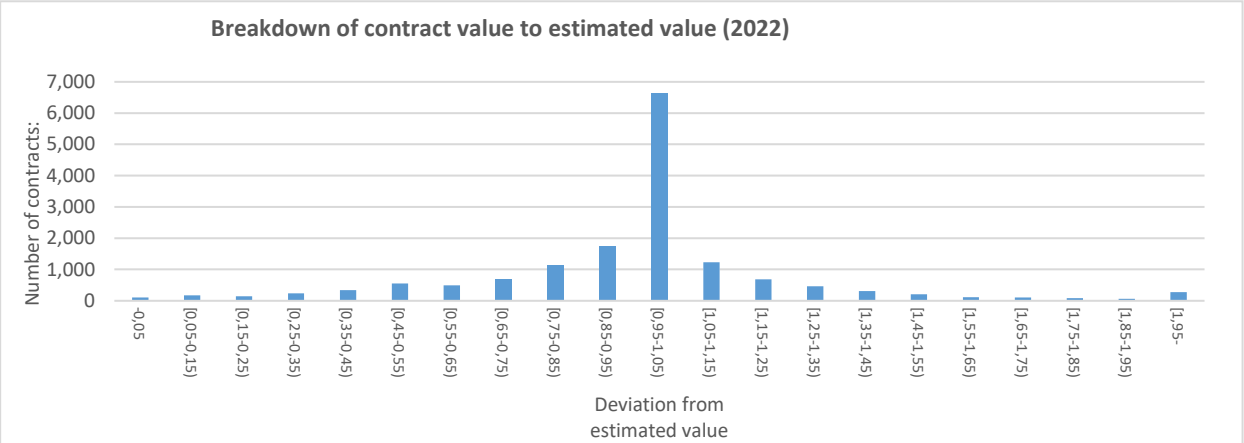
The above chart suggests that the average deviation of the estimated value from the contracted amount has been slightly decreasing since 2020, as has the average percentage deviation. During 2022, the average amount of the estimated values exceeded the average contract amount by HUF 10.4 million, i.e., the average contract amount per contract was on average HUF 10.4 million higher than the initially estimated value.

For contracts including EU funds, the difference between the average estimated value and the average contract amount over the period under review was as follows:

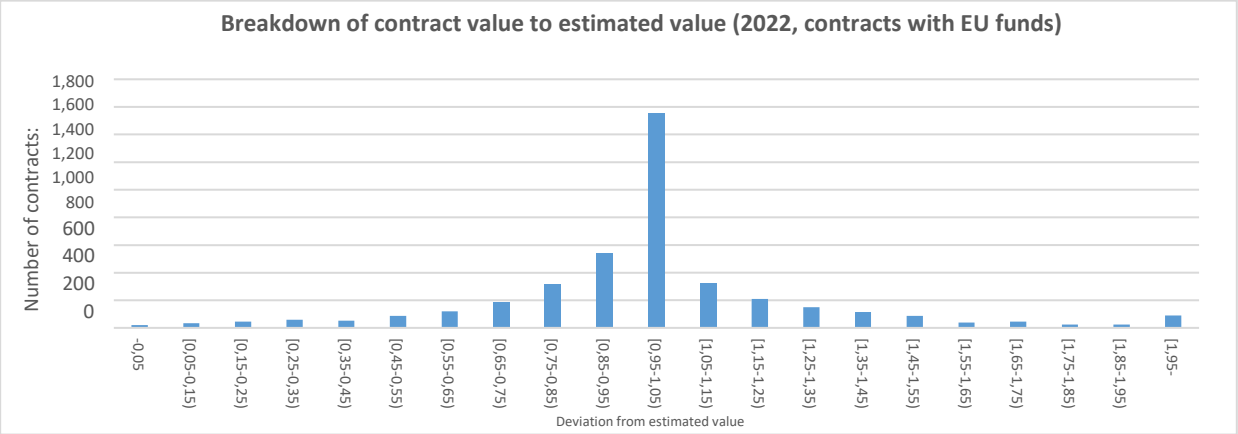


As can be seen in the above graph, for contracts with EU funds, the average estimated value exceeded the average contract amount in 2021 and 2022, i.e., the final total value of the contract with EU funds was lower than the estimated value.

The Authority also examined the ratios between the estimated value and the contract amount. For the purpose of the analysis, the ratios were sorted into 0.1 intervals (10%) and the rates were defined as the quotient of the contract amount to the estimated value. During 2022, the ratio of the contract amount to the estimated value fell within the range 0.95–1.05 in 6,618 cases (42.0%), of which the contract value and the estimated value were the same in 2,932 cases.

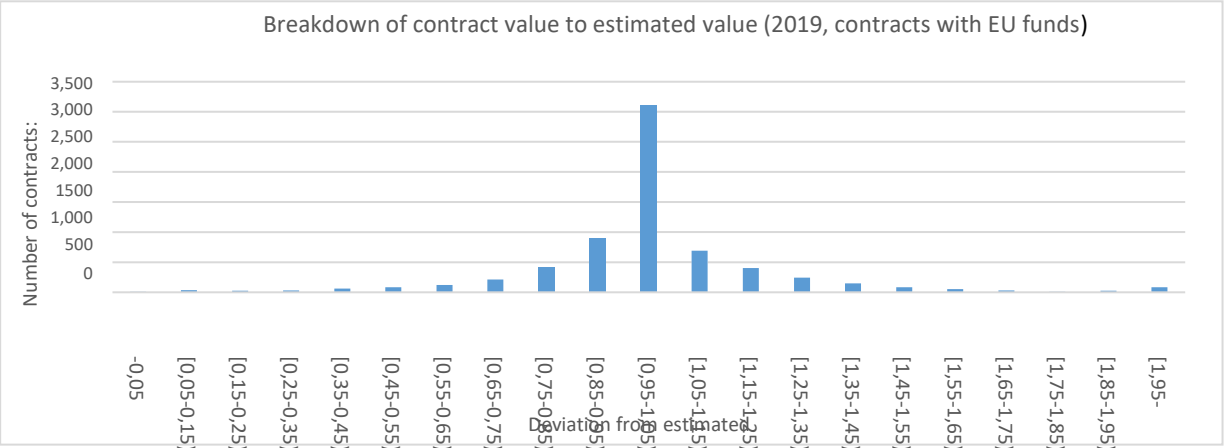


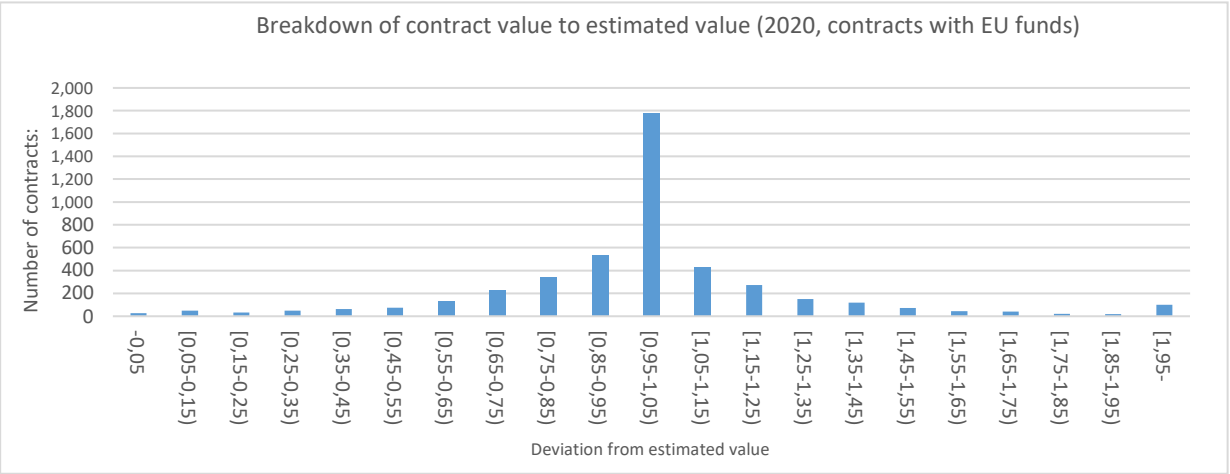
For contracts involving EU funds, the proportions were as follows:

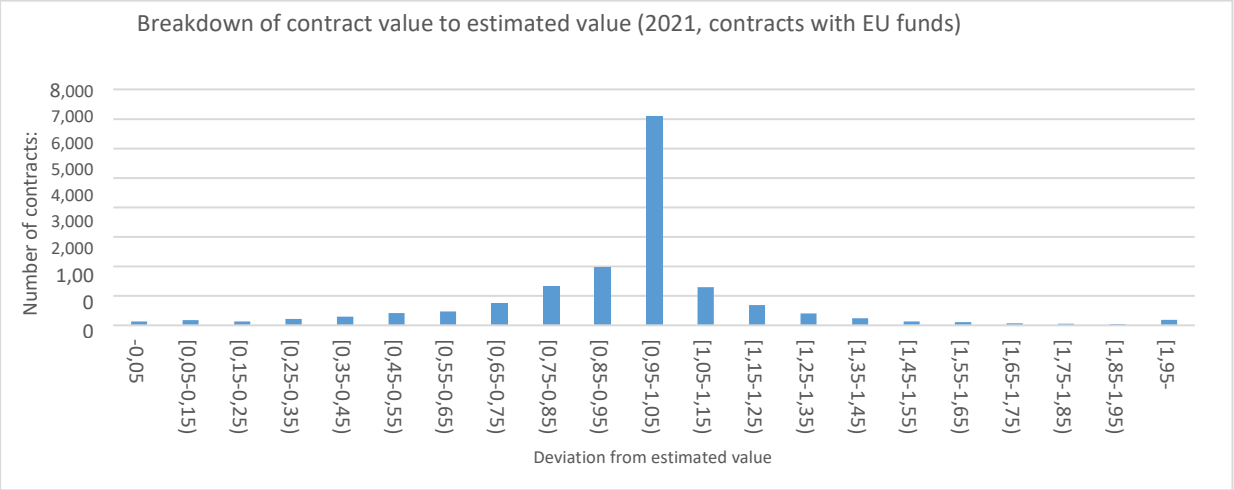


In total, there were 435 cases where the estimated value was the same as the contract value in 2022 for contracts including EU funds. The graph also shows that in 35% of cases, the estimated value exceeded the contract value by more than 5% for contracts with EU funds.

The distributions for 2019 – 2021 also show similar interval values:





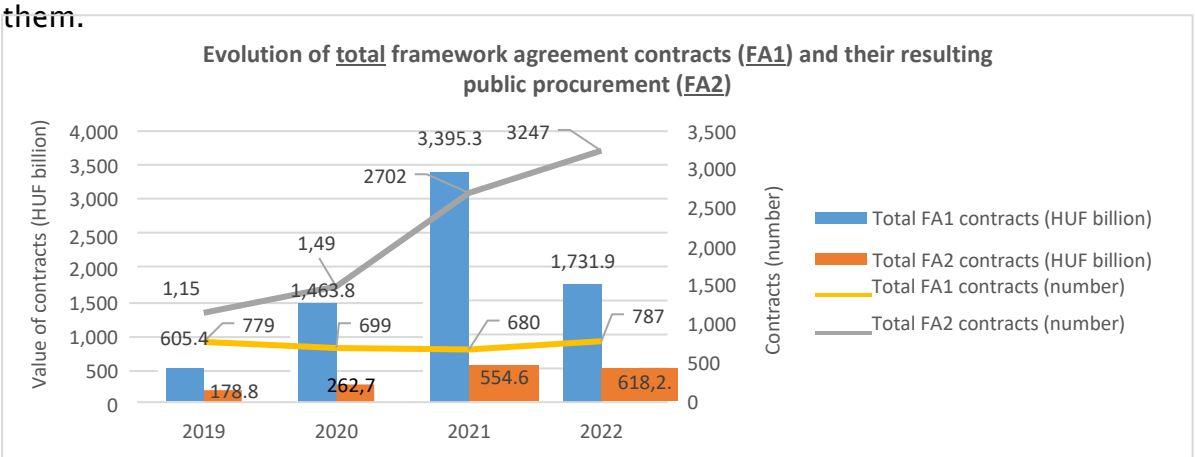


To explore the possible reasons, a further deeper, contract-level analysis of the ratios and correlations between the estimated value and the contract value is needed.

In addition, using the indicators outlined in Chapter 4, the Authority plans to include in its own risk analysis an examination of the differences between the contract value and the estimated value, as well as the distribution intervals.

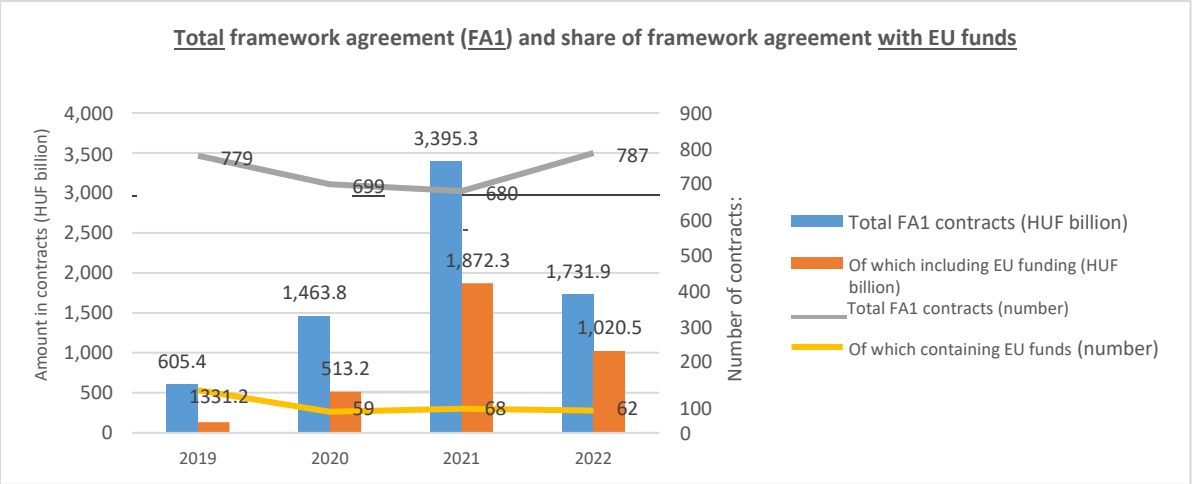
7.7. Framework agreements

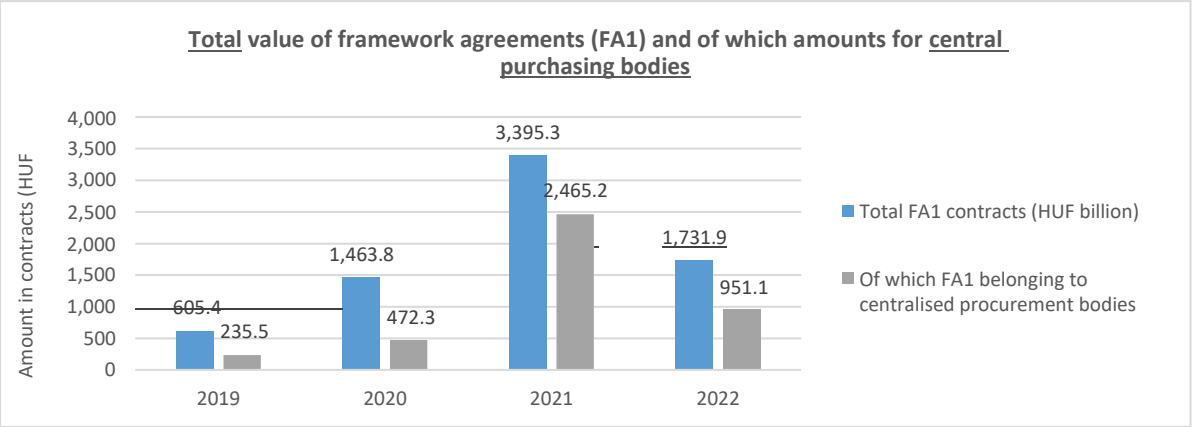
In accordance with Section 11c) of the Eufetv., in this Integrity Report the Authority examines the framework agreements and the contracts concluded on the basis of them.



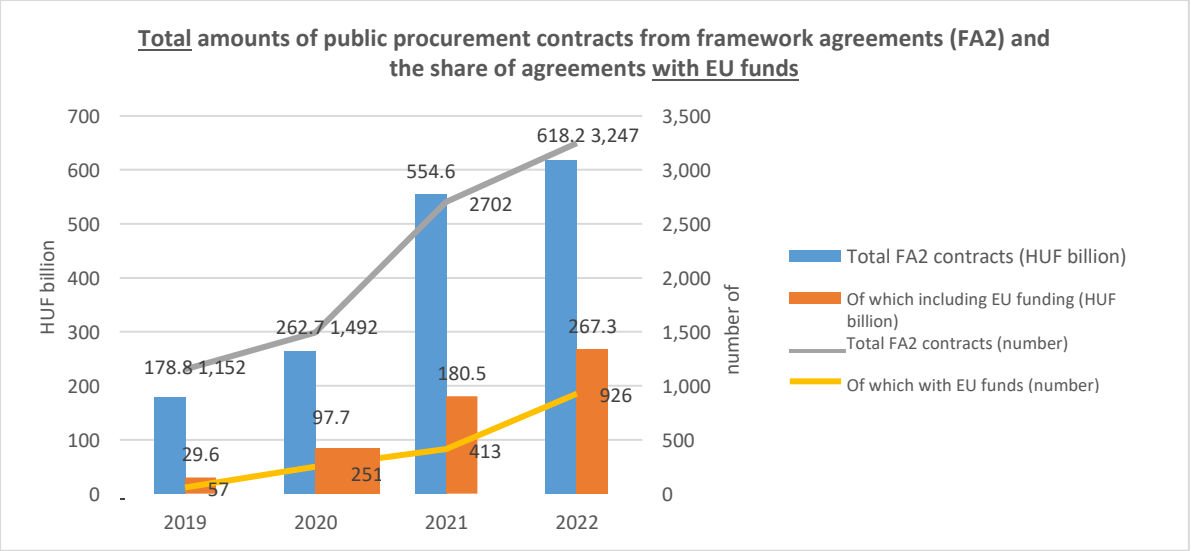
The graph above shows that the value of public procurement procedures for the conclusion of framework agreements has increased significantly in the years 2019-2022. The 2021 outturn is mainly due to the EU-funded procurement of application development services, network active and passive devices, servers and storage, and framework agreements for Microsoft software.

The graphs below show the share of EU-funded framework agreements in the total FA1 and the share of framework agreements related to the three central purchasing bodies (KEF, NKOH, DKÜ) examined in Chapter 3 of this Integrity Report. (The framework agreements of other central public procurement bodies were not examined separately.)

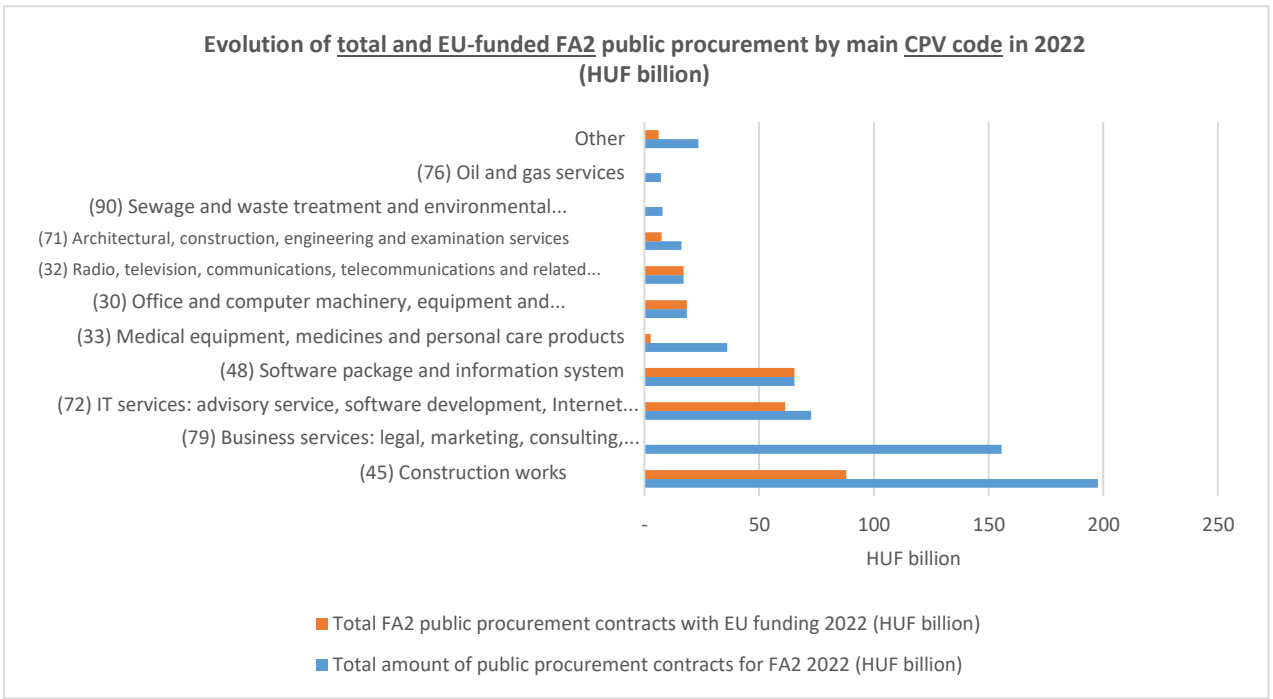


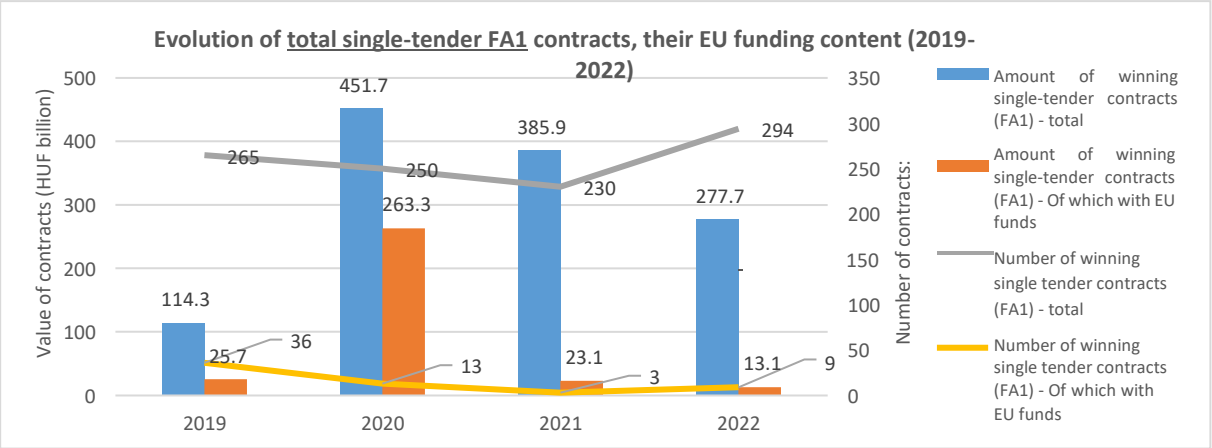


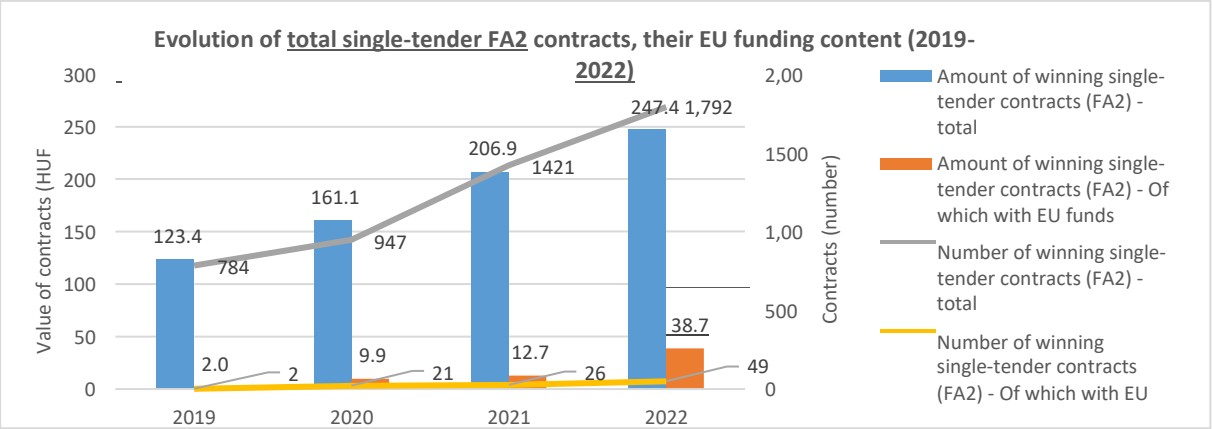
As can be seen from the graph below, the amount and the number of actual public procurements (FA2) under framework agreements have steadily increased between 2019-2022, both in the overall procurement framework agreement market and in the EU-funded procurement framework agreements (CAGR for 2019-2022 +51% and +108% respectively).



As shown in the graph below, the growth was mainly driven by construction works, business services and various IT purchases, with IT purchases being almost entirely EU funded, 45% of construction works were EU funded, while business services were entirely domestically funded in 2022.

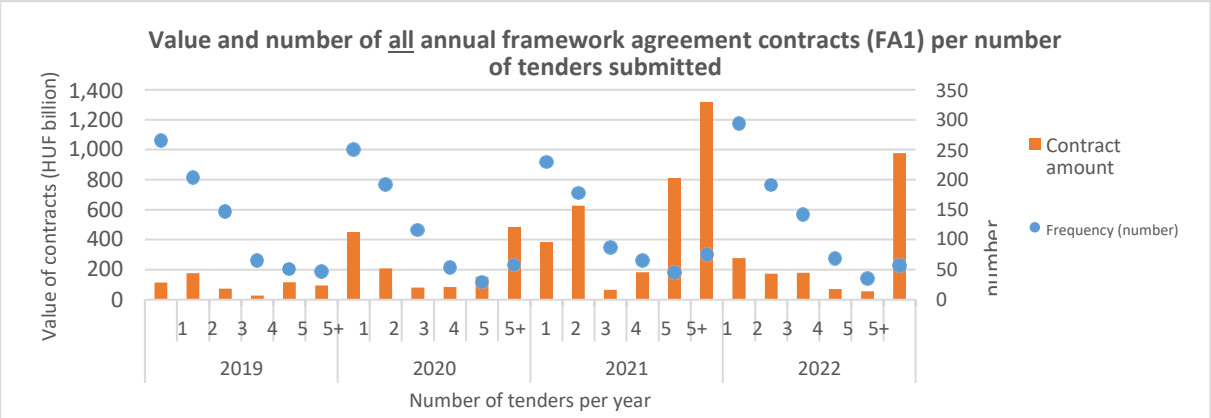


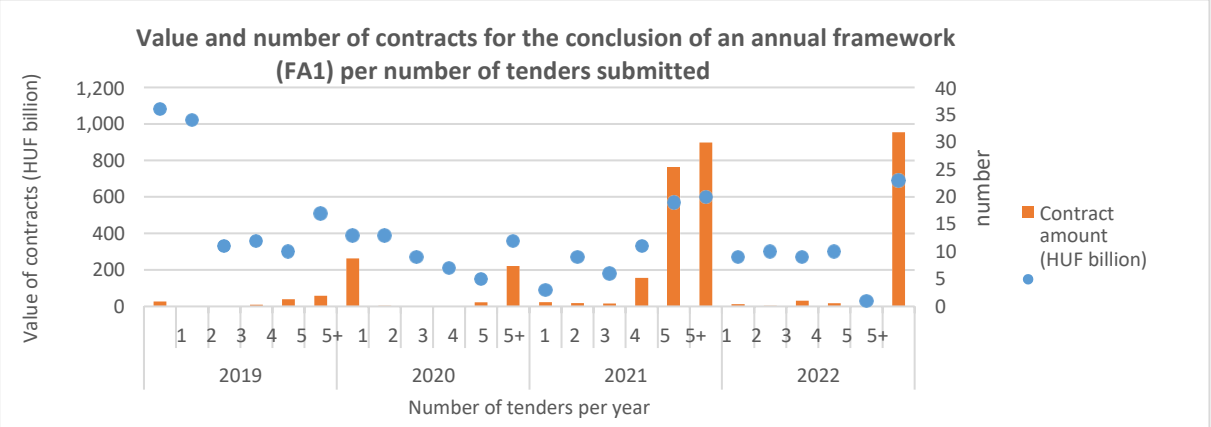


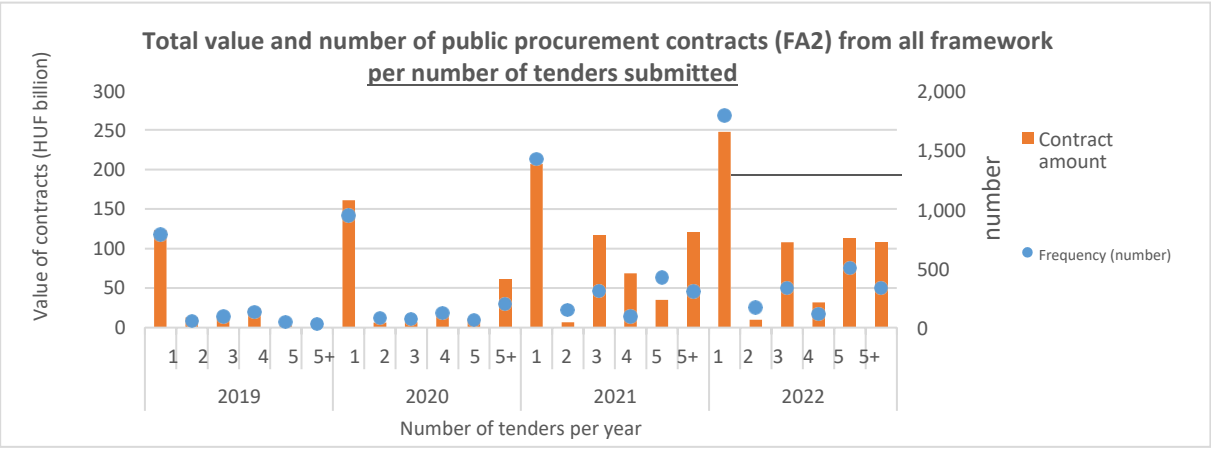


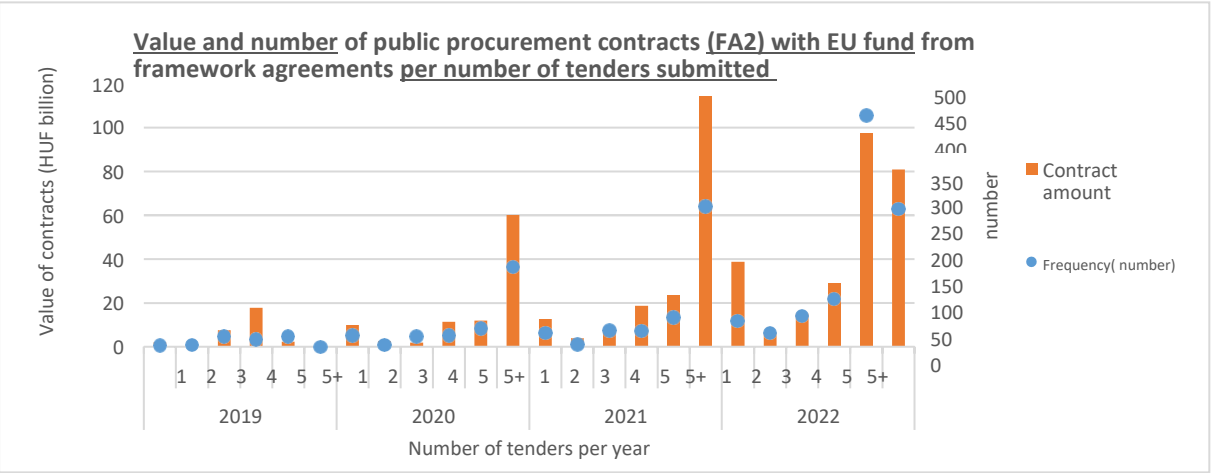
From 2020 onwards, there is a downward trend in the amount of procedures for the conclusion of single-tender framework agreements (FA1), both for the overall market and for the EU-funded public procurement market (CAGR -21.6% and -77.7% respectively for 2020-2022). At the same time, the evolution of public procurement from framework agreements concluded (FA2) shows a time shift, as framework agreements are typically concluded for a longer period (up to 4 years). This trend is also reflected in the steady increase in the amount of FA2 in the above graph over the period under review (CAGR of 26.1% and 169.7% for the years 2019-2022 respectively).

The graphs below show the values and numbers of FA1 and FA2 contracts per contract number for the years 2019-2022. Overall, it can be seen that while single-tender contracts are more common in the market for domestic public procurement, contracts with five or more tenders are more common in the market for EU public procurement.


Value and number of all annual framework agreement contracts (FA1) per number of tenders submitted
Value of contracts (HUF billion)
1,400
1,200
1,000
800
600
400
200
0
350
300
250
200
150
100
50
0
number
Contract amount
Frequency (number)
1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+
2019
2020
2021
2022
Number of tenders per year


Value and number of contracts for the conclusion of an annual framework (FA1) per number of tenders submitted
Value of contracts (HUF billion)
1,200
1,000
800
600
400
200
0
40
35
30
25
20
15
10
5
0
number
Contract amount (HUF billion)
1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+
2019
2020
2021
2022
Number of tenders per year

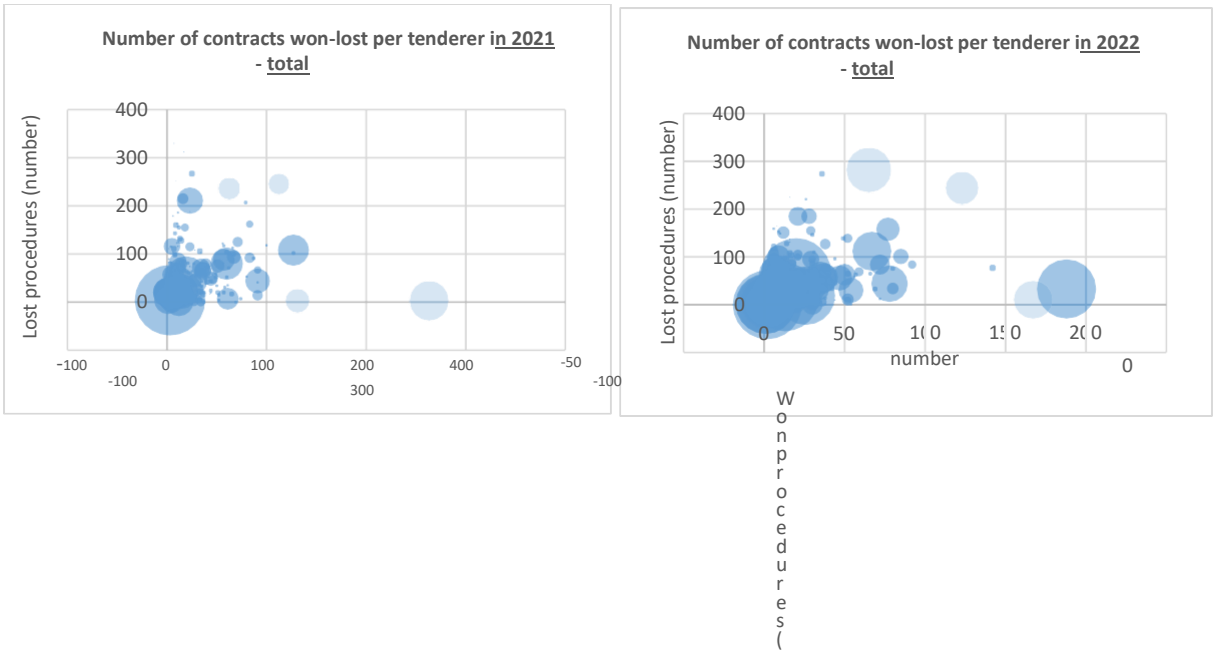

Total value and number of public procurement contracts (FA2) from all framework per number of tenders submitted
Value of contracts (HUF billion)
300
250
200
150
100
50
0
2,000
1,500
1,000
500
0
number
Contract amount
Frequency (number)
1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+
2019
2020
2021
2022
Number of tenders per year


Value and number of public procurement contracts (FA2) with EU fund from framework agreements per number of tenders submitted
Value of contracts (HUF billion)
120
100
80
60
40
20
0
500
450
400
350
300
250
200
150
100
50
0
number
Contract amount
Frequency(number)
1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+ 1 2 3 4 5 5+
2019
2020
2021
2022
Number of tenders per year

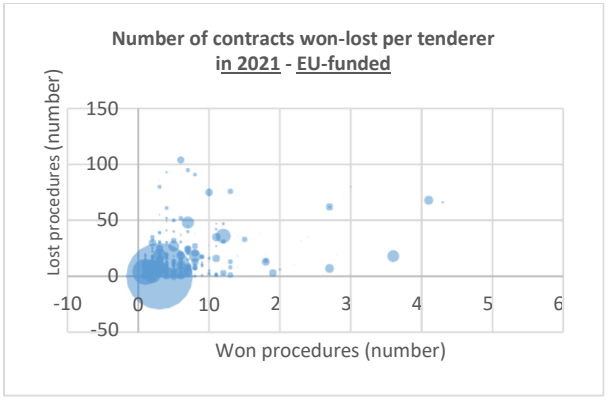
It is noted that public procurements made under framework agreements concluded by the central purchasing bodies audited (KEF, NKOH, DKÜ) are primarily recorded in their own systems and subsequently uploaded to the EKR by the contracting authority or central purchasing body. As the completeness of this upload (i.e., whether FA2 data stored in the central purchasing bodies' own systems matches the data in the EKR) is not fully verified, the possibility that there are public procurement contracts from framework agreements that are never entered in the EKR cannot be excluded. In this context, the Authority recommends considering the proposal of the Anti-Corruption Working Group on framework agreements to examine the viability, market distorting and competition restricting effects of framework agreements of central purchasing bodies, and to examine the possibility of fully integrating framework agreement data into the EKR Performance Measurement Framework (and public procurement statistics in general).

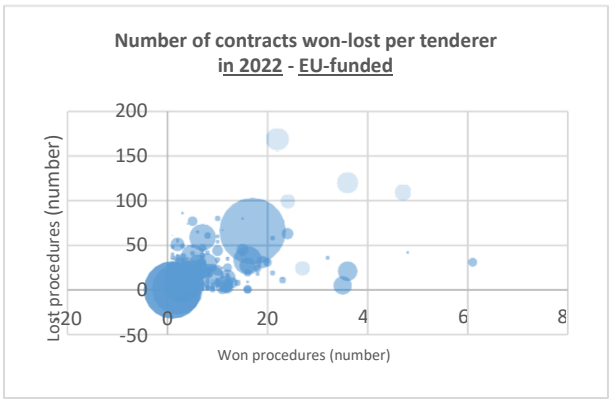
7.8. Winning – losing tenderer ratio

Although the database including the losers in the public procurement procedures made available to the Authority is not complete (see our methodological description for details), the figures show that the concentration increased from 2021 to 2022 (both in the overall public procurement market and in EU-funded public procurement), i.e., the number of tenderers winning public contracts above the average amount (see number and proportion of larger circles, where the circle represents the specific tenderer and the size of the circle represents the amount of contracts won by that tenderer in a given year). It should be noted that unidentified and losing only tenderers are not included in this analysis, as the size of the bubble (i.e., the amount of the public procurement contract) is not meaningful for them.

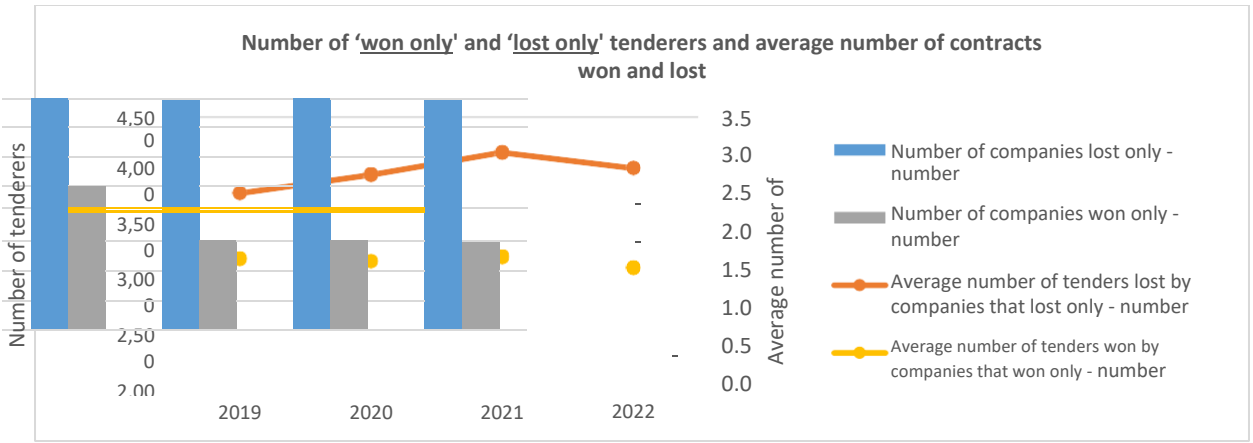


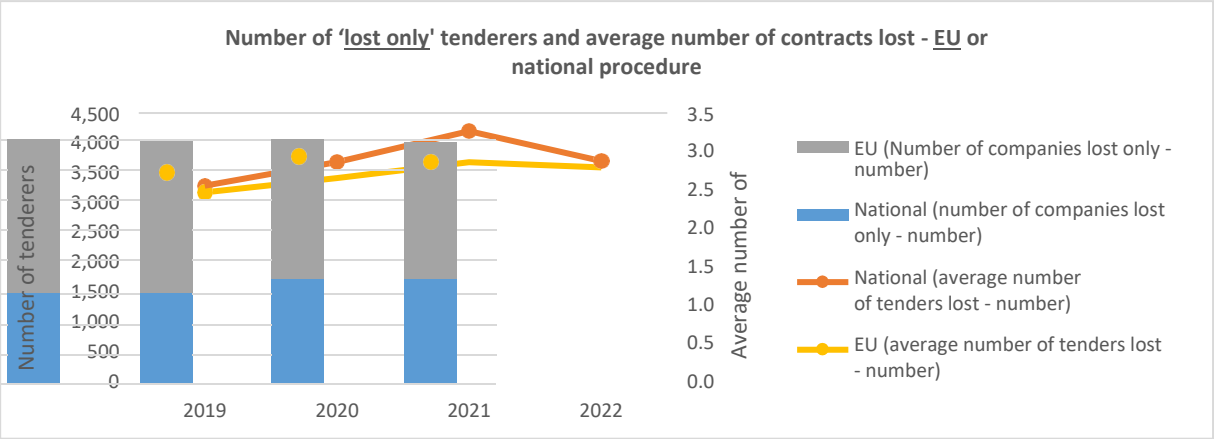
Won procedures (number)

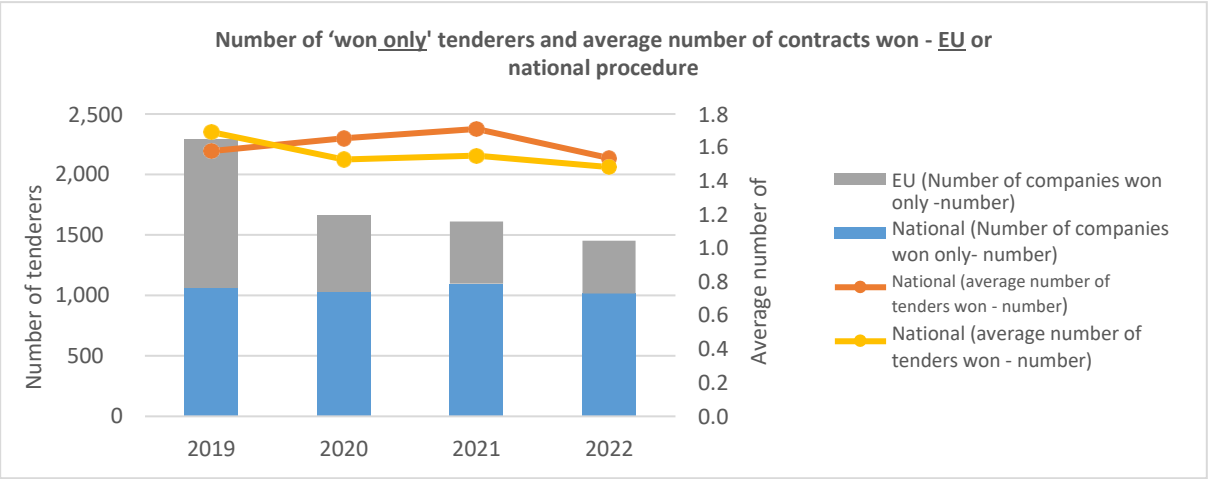




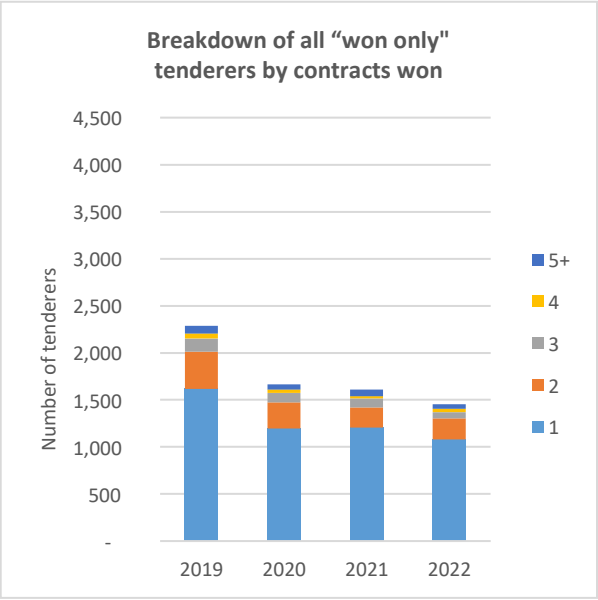
The charts below show the number of winning and losing tenderers only, and the average number of contracts associated with them, based on the database of public procurement tenderers including losing tenderers provided to us. This shows that the number of “won only" companies decreased steadily during the period under review, while the number of “lost only" companies did not change significantly in 2019–2022. On average, “won only" companies won one and a half contracts, while “lost only" companies lost an average of 2.5 – 3.0 contracts in 2019–2022. The breakdown of EU and nationally funded contracts is similar, as shown in the graphs below.

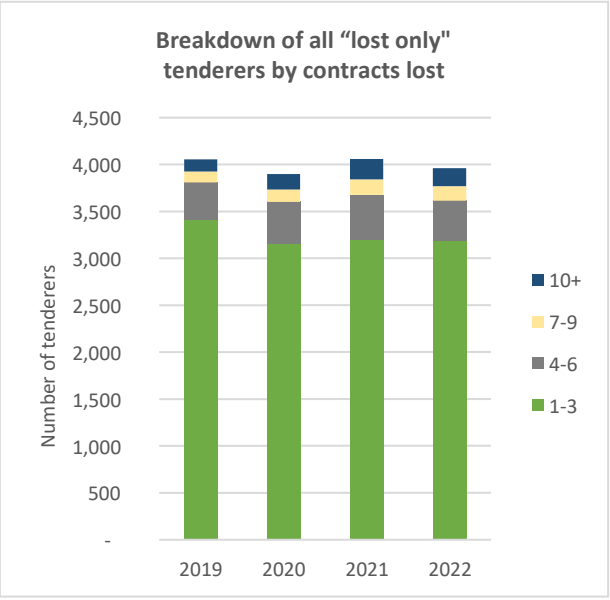






The two charts below show the distribution of "won only" and "lost only" tenderers in terms of the number of contracts won and the number of contracts lost. This shows that "winners only" typically won one contract, while "losers only" typically did not win 1-3 contracts.





Annex 1 - Relevant legislation

Public procurement law and related legislation:

Act CXLIII of 2015 on Public Procurement

Act XXX of 2016 on Defence and Security Procurement

Act XXXII of 2021 on the Supervisory Authority for Regulated Activities

Government Decree 168/2004 (25 May) on the centralised public procurement system and on the duties and powers of the central purchasing body

Government Decree 16/2012 (16 February) on the specific rules of public procurement of medicines and medical devices

Government Decree 109/2012 (1 June) on the detailed rules for procurement under the NATO Security Investment Programme

Government Decree 317/2013 (28. August) on the selection of public service providers and public waste management service contracts

Government Decree 307/2015 (27 October) on specific public procurement rules for public procurement of public service providers

Government Decree 308/2015 (27 October) on the control by the Public Procurement Authority of the performance and modification of contracts concluded as a result of public procurement procedures

Government Decree 310/2015 (28 October) on design competition procedures

Government Decree 321/2015 (30 October) on the method of certifying suitability and grounds for exclusion in public procurement procedures and of specifying the technical description in public procurement procedures

Government Decree 322/2015 (30 October) on the detailed rules of public procurement of construction works and design and engineering services related to construction works

Government Decree 323/2015 (30 October amending certain government decrees on public procurement

Government Decree 226/2016 (29 July) on the detailed parameters of military equipment and services subject to Act XXX of 2016 on Defence and Security Procurement

Government Decree 424/2017 (19 December) on the detailed rules of electronic public procurement

Government Decree 257/2018 (18 December) on the responsible accredited public procurement consultant activity

Government Decree 276/2018 (21 December) on the rules for the forecasting of expected pension benefits provided by occupational pension providers

Government Decree 301/2018 (27 December) on the National Council for Communications and Information Technology and the Digital Government Agency Ltd. and the Centralised Public Procurement System for Government IT Procurement.

Government Decree 162/2020 (30 April) on the legal status of the National Communications Office and government communications procurement

Government Decree 676/2020 (28 December) on the specific rules applicable to public catering public procurement procedures

Decree of Minister in charge of the Prime Minister's Office 44/2015 (2 November) MvM on the rules for the dispatch, control and publication of public procurement and design competition notices, on the templates and certain content elements of notices, and on the annual statistical summary

Decree of Minister in charge of the Prime Minister's Office 45/2015 (2 November) MvM on the administrative service fee payable for the procedure of the Public Procurement Arbitration Board

Decree of the Minister of Defence 19/2016 (14 September) HM on the notices applicable to defence and security procurements, the rules for their dispatch and publication, the templates of evaluation summaries and the annual statistical summary of procurements

Other relevant related legislation:
Act IV of 1978 on the Criminal Code (old Criminal Code)

Act XXXIII of 1992 on the Legal Status of Public Servants

Act CXXXIV of 1994 on Police

Act XIX of 1998 on Code of Criminal Procedure (old Act)

Act LXXX of 2003 on Legal Aid

Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing
Act CLII of 2007 on Certain Obligations to Declare Assets and Liabilities

Act CLXXXI of 2007 on the Transparency of Public Funding

Act CXXII of 2009 on the More Economic Operation of Publicly Owned Business Associations

Act CLXIII of 2009 on the Protection of Fair Procedure and related amendments

Act CXXII of 2010 on the National Tax and Customs Administration

Act CXXX of 2010 on Legislation

Act CXXXI of 2010 on Public Participation in Developing Legislation

Act LXVI of 2011 on the State Audit Office

Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information

Act CLXIII of 2011 Prosecution Service of Hungary

Act CLXXXIX of 2011 on Local Governments in Hungary

Act CXCV of 2011 on Public Finances

Act CXCIX of 2011 on Public Service Officials

Act I of 2012 on the Labour Code

Act XXXVI of 2012 on the National Assembly

Act C of 2012 on the Criminal Code (Criminal Code)

Act CLXV of 2013 on Complaints and Notifications of Public Interest

Act CL of 2016 on the General Public Administrative Proceedings

Act XC of 2017 on the Code of Criminal Procedure

Act CVII of 2019 on Bodies with a Special Legal Status and the Legal Standing of their Employees

Act LXXXIX of 2021 on the Foundation of the 2022 Central Budget of Hungary

Act XXVII of 2022 on the Control of the Use of EU Budget Funds

Act XLIV of 2022 on the Directorate General for Auditing European Subsidies and amending certain laws adopted at the request of the European Commission in order to ensure the successful conclusion of the conditionality procedure

Government Decree 355/2011 (30 December) on the Government Control Office

Government Decree 370/2011 (31 December) on the Internal control system and on the internal audit of central public administration bodies

Government Decree 50/2013 (25 February) the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists

Government Decree No 272/2014 (5 November) on the rules for the use of certain EU funds in the 2014-2020 programming period

Government Decree 339/2019 (23 December) on the internal control system of publicly owned enterprises

Government Decree 1328/2020. (19 June) on the adoption of the Mid-Term National Anti-Corruption Strategy for the period 2020-2022 and the related action plan

Government Decree 256/2021 (18 May) on the rules for the use of certain EU funds in the in the 2021-2027 programming period

Decree of the Minister of National Economy 28/2011 (3 August) NGM on the registration and compulsory professional training of persons performing internal control activities at budgetary bodies, and on the training of heads of budgetary bodies and economic managers on internal control systems

Decree of the Minster of Interior 12/2018 (7 June) BM on the Unified Investigation Authority and Prosecutor's Office Crime Statistics, detailed rules for data collection and processing; Government Decree 293/2010 (XII. 22.) on the designation of the police agency performing internal crime prevention and detection tasks and the detailed rules of the performance of such tasks, the lifestyle monitoring and integrity checks

Decree of the Minister of Finance 22/2019 (23 December) PM on the registration and compulsory professional training of persons performing internal control activities at budgetary bodies and public enterprises, and on the compulsory training of heads of budgetary bodies and economic managers on internal control systems

Government Decree 373/2022 (30 September) on the rules and responsible institutions of implementing Hungary’s Recovery and Resilience Plan

Government Decree 255/2014 (10 October) on State aid rules under EU competition law concerning the financial resources allocated to the 2014-2020 programming period

Government Decree 258/2021 (20 May) on State aid rules under EU competition law concerning the financial resources allocated to the 2021-2027 programming period

Government Decree 590/2022 (28 December) on the rules for the use of appropriations for chapters and centrally managed appropriations under the chapter of EU development

Government Decree No 60/2014 (6 March) on the central monitoring and registration of developments implemented with the support

Government Decree 75/2016 (5 April) on the use of funds from the Connecting Europe Facility

Government Decree 256/2021 (18 May) on the rules for the use of certain EU funds in the in the 2021-2027 programming period

EU directives and regulations:

Regulation (EU) No 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

Directive 2017/1371 of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law

Directive 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law

Regulation (EU) No 2020/2092 of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget

Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund

Regulation (EU) No 1301/2013 of the European Parliament and of the Council on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal

Regulation (EU) 2021/1058 of the European Parliament and of the Council on the European Regional Development Fund and the Cohesion Fund

Regulation (EU) No 1304/2013 of the European Parliament and of the Council on the European Social Fund

Regulation (EU) No 2021/1057 of the European Parliament and of the Council establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013

Regulation (EU) No 1303/2013 of the European Parliament and of the Council (CPR 2014-2020)

Regulation (EU) 2021/1060 of the European Parliament and of the Council (CPR 2021-2027)

Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement procedures of entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

European Commission - Council Decision - Recommendation for the approval of the assessment of Hungary's Recovery and Resilience Plan {SWD(2022) 686 final}

Communication from the Commission – Guidance on the prevention and management of conflicts of interest under the Financial Regulation (2021/C121/01)

Commission Decision laying down guidelines on the financial corrections to be applied in the event of infringements of the rules on public procurement in the context of expenditure under shared governance financed by the Union (C(2019) 3452 final, 14 May 2019).

1. Annex 2 – Summary of proposals and recommendations

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
1.	2. Systemic audit of the control system for EU funds	General (Audit trails)	In order to ensure the effective application and full guidance of the trails in practice, it is recommended that the comments made and the deficiencies identified on the basis of the audit be improved and compensated. In order to ensure that the trails are as appropriate as possible for the control function and the functions set out in the Decree, it is proposed to complete and correct the documentation of the trails. In order to monitor and follow up the controls and control points, it is essential, among others, to indicate the appropriate levels of responsibility and relationships, to specify the document supporting the control, so that the trails fulfil their function as defined in the Regulation.
2.		General (EUTAF system audit)	It is important to clarify when, under what conditions and within what scope the Audit Authority can extend the deadlines. In our view, the procedural discipline of the audit authorities needs to be improved to ensure that the weaknesses identified are adequately addressed.
3.		Audits performed during the financing procedure	The supporting documents submitted should be subjected to a risk analysis, with a more detailed examination of the route of the money in case of suspicious circumstances. The analysis of the main risk factors can be automated, but training is needed to ensure that the implementing staff are also aware of them.
4.		Use of experts for on-site audits	More frequent use of external independent experts, as a mandatory requirement for certain calls. Accordingly, legislation needs to be amended and managing authorities should take this into account when designing calls for proposals.

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
5.		Pre-announced on-site audits	To ensure a higher success rate in detecting fraudulent projects, we propose to reduce the use of pre-announced on-site audits and to increase the proportion of exceptional audits.
6.		Supporting documents subject to pre-announced audit in preparation for on-site audits.	In order to ensure separate and complete project documentation, we recommended that the managing authority does not disclose to the beneficiary the list of invoices, summary sheets and other documents to be sampled and used as a basis for audit.
7.		Details, disclosure and regularity of data in the irregularity management procedure	There is a need for a more structured disclosure of the mandatory publication of information on irregularity procedures, and for a broadening of the range of information published (in particular: time data, uniform categories and characteristics, classification of irregularities, decisions taken without proceedings, nature of the project).
8.		The regularity of the process of irregularity management	Establish uniform and public criteria for the classification of irregularities and the decisions to be taken in irregularity management.
9.		Publicity and transparency of the irregularity management process	Make the process of irregularity management monitorable publicly and up-to-date, e.g. on palyazat.gov.hu
10.		Ensuring an adequate level of irregularity management	Ensure that the standard quality of irregularity management is always guaranteed by providing adequate resources.
11.		Control of public procurement	It is proposed to include a control function in the audit of public procurement, which, in addition to the legal, eligibility, accountability and technical aspects of public procurement, also includes a risk-based approach to the investigation of known or potential fraud and corruption in public procurement procedures.

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
12.	3. Evaluation of the effectiveness of public procurement rules	Centralised public procurement	The cost-effectiveness of centralised public procurement systems should be assessed through targeted audits and the reporting obligations of central purchasing bodies should be strengthened
13.		Centralised public procurement	The Authority will encourage the development of methods and standards that allow the comparison of prices obtained in centralised public procurement with market prices
14.		Centralised public procurement	With regard to the current percentage-based fees for the services of the central purchasing body, the Authority proposes to review the fees, also taking into account the operating costs of central bodies, and to introduce a nominal ceiling
15.		Centralised public procurement	The Authority recommends for consideration a legislative review of the scope of procurement within own powers and the public disclosure of the criteria for the decision to award the procurement contract within the own powers of a central purchasing organisation
16.		Centralised public procurement	The Authority proposes to review the system of mandatory centralised public procurement without thresholds
17.		Centralised public procurement	In line with the specificities of the central purchasing bodies, the Authority proposes to examine the optimal range of funding under the framework agreements to be concluded and the possibility of concluding several framework agreements, also by allowing covering central procurement objects by several tenders where the contracts are divided into lots, thus widening competition and participation
18.		Centralised public procurement	To enhance publicity and transparency, data on the distribution between economic operators of the award of framework agreements concluded by central purchasing bodies and the and individual contracts under dynamic purchasing systems, including their number and value, as well as the prices obtained in the second part of the framework agreement procedure and the savings achieved through centralised procurement, should be made available
19.		Centralised public procurement	The Authority proposes to analyse the effectiveness of the use of centralised procurement for the product ranges currently included in the centralised range and to conduct an impact assessment of the likely benefits of centralised procurement

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
			before deciding on any new products to be included in the centralised range in the future.
20.		Evaluation of the effectiveness of public procurement rules	In the context of the reduction of single-tender procedures, the Authority recommends, in addition to the measures already taken, reviewing the minimum rules on the conduct of prior market consultations, which are mandatory, adding detailed rules and reviewing the adequacy of the minimum time limits
21.		Evaluation of the effectiveness of public procurement rules	In view of the reliable and predictable functioning of the EKR, the Authority does not consider it justified to maintain the waiting period of two hours between the deadline for submission of tenders and the opening of the tenders, and therefore proposes to abolish it
22.		Evaluation of the effectiveness of public procurement rules	In order to facilitate the wider availability of the division of the contract into lots, the Authority proposes to supplement the legal framework on partial tendering and, following a review of case law, to develop methodological material on the subject
23.		Evaluation of the effectiveness of public procurement rules	The Authority recommends defining the legal framework for the electronic access of contracting authorities to contract documents;
24.		Evaluation of the effectiveness of public procurement rules	The Authority proposes to reinforce the monitoring and information obligations of contracting authorities during the contract performance period, in order to ensure the proper use of the involved capacity providers
25.		Evaluation of the effectiveness of public procurement rules	In order to facilitate the practical application of the optional ground for exclusion provided for in Section 63(1)(c) of the Public Procurement Act, the Authority proposes that contracting authorities in public procurement procedures should specify in advance, in their contracts resulting from the procurement procedure, the detailed provisions which constitute a serious breach of contract and which justify notification to the Public Procurement Authority; in order to apply this principle, the Authority proposes to amend Chapter XX of the Public Procurement Act on contracts to make it compulsory for contracting authorities to provide for contractual clauses on serious breach of contract

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
26.		Evaluation of the effectiveness of public procurement rules	In connection with the ground for exclusion under Section 63(1) c) of the Public Procurement Act, the Authority recommends for consideration that the Public Procurement Act should lay down conditions for the acceptance of a challenge to a serious breach of contract, in order to prevent its misuse, for example by requiring it to be brought before a court and requiring the contractor to prove that it has been committed
27.		Evaluation of the effectiveness of public procurement rules	In order to ensure the proper application of the assessment of disproportionately low price, the Authority proposes to analyse the case law, develop model price justification request documents and issue guide on that matter
28.		Evaluation of the effectiveness of public procurement rules	With respect to disproportionately low prices, the Authority recommends increased monitoring and enforcement of the timely publication of the figures for wages, salaries and other costs in the various sectors by the designated bodies each year, as required by the Public Procurement Act
29.		Evaluation of the effectiveness of public procurement rules	In the context of the assessment of disproportionately low prices, the Authority recommends that the law should stipulate that contracting authorities should not be entitled to request the presentation of additional cost elements in supplementary requests for justification of prices, or to extend the cost elements previously indicated.
30.		Evaluation of the effectiveness of public procurement rules	The Authority does not consider it justified to maintain the 180-day rule in order to reduce the length of the evaluation, and therefore recommends that the legislator review the need for Section 70(2a) of the Public Procurement Act and the related declaration of ineffectiveness
31.		Evaluation of the effectiveness of public procurement rules	The Authority proposes to review the practice of conditional public procurement and, on that basis, to supplement the rules on conditional public procurement procedures and to tighten the conditions of application
32.		Evaluation of the effectiveness of public procurement rules	In view of the increasing trend towards accelerated procedures, the Authority proposes targeted audits of the justification for accelerated procedures and, where not excluded by the EU public procurement Directives, to review legislatively whether it is justified to maintain the option for contracting authorities to use accelerated procedures for framework agreements, given their high value and multiannual term

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
33.		Evaluation of the effectiveness of public procurement rules	In order to effectively address situations of unfair competition, the Authority recommends that the results of the notifications of infringements of fair competition in the conduct of public procurement procedures be made public by the Hungarian Competition Authority and that lessons learned be shared with monitoring bodies and law enforcement authorities.
34.		Evaluation of the effectiveness of public procurement rules	The Authority proposes to maintain the type of procedure under Section 115 of the Public Procurement Act and to revise the conditions of its application, for example by converting it into a call for proposals in which only micro and small enterprises may submit proposals
35.		Evaluation of the effectiveness of public procurement rules	The Authority proposes the creation of various structured public procurement databases, in a standardised format, suitable for searching and processing data, for a longer period
36.		Evaluation of the effectiveness of public procurement rules	The Authority proposes to analyse the jurisprudence on preliminary dispute settlement and, on that basis, to supplement the relevant legislation, in particular as to whether it should be mandatory, and to recommend that the failure of contracting authorities to respond in a timely and substantive manner should be sanctioned; to ensure the effectiveness and consistency of the rules on administrative and judicial remedies in public procurement, the Authority proposes: • to ensure the right to request a hearing in administrative proceedings, • a review of the provisions of a different nature relating to administrative service charges and court fees, • an assessment of the justification for maintaining compulsory representation in proceedings before the Arbitration Board, • the analysis of the jurisprudence of the Arbitration Board and the courts on client eligibility, and the issuance of guide and clarification of the rules accordingly, • the analysis of the jurisprudence of the Arbitration Board and the courts on the imposition of fines, and the clarification of the legal regulation in this context, • examination of the measures and tools to support a faster conclusion of the review phase of the public procurement court in order to ensure effective remedies.

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
37.	5. Conflicts of interest	Examining the practical application of the requirements on the obligation to check declarations of conflict of interest and declarations of interest, the need for additional public procurement legislation	In our view, it is not clear whether the Guide and the Minister's Explanation to the Public Procurement Act are sufficient in themselves to make it general practice for contracting authorities to request declarations of interest in addition to the declaration of conflict of interest and to check the declarations of conflict of interest made, and therefore the Minister responsible for public procurement should examine the practical implementation of the requirements by the practitioners and consider setting out the requirements in clear and detailed legislation.
38.		Digitisation of data disclosure	Submission of declaration of conflict of interest, declaration of asset and interests via online/offline e-forms - ensuring conditions and creating obligation. Consideration should be given to the electronic support for the declaration of public procurement procedures, to be integrated into the Electronic Public Procurement System and the electronic public procurement systems operated by central purchasing bodies.
39.		Examination of the registration and management of declarations of conflicts of interest, declarations of assets and interests, data disclosures	Examination of the registration and management of declarations of conflicts of interest, declarations of personal wealth and interests, data disclosures, and, where appropriate, the organisation of these declarations in a database, in order to support the wider and deeper processing of declarations at system level and the comparability of declarations. Subject to the outcome of the investigation, the public procurement rules should be amended.
40.		Practical guides, education and advisory service	As conflicts of interest must always be examined and dealt with on a case-by-case basis, the publication of guidance clarifying and explaining the aspects to be considered in each case, illustrated by concrete examples, would facilitate the correct application of the rules. It is also recommended to provide workshops and advice to stakeholders based on the guidelines.
41.		Regular assessment and continuous improvement of compliance with conflict of interest requirements	The preparation of an annual evaluation report is recommended, which may identify proposals to improve the effectiveness of the system, based on experience gained in the monitoring of declarations of assets, declarations of interests and declarations of conflicts of interest, and possibly on a review of the legal consequences applied (disciplinary proceedings and criminal sanctions).

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
42.		Disclosure of templates for declaration of conflict of interest and declaration of interest in public procurement.	The Public Procurement Authority Council's Guide on Conflict of Interest details the proposed content of the declaration of conflict of interest, but in order to ensure uniform application of the law and the same conditions in different procedures, the Authority considers it appropriate to issue guidelines and model declarations to ensure their proper application. In particular, it would be appropriate to develop declaration templates with guide on how to fill them in, and to ensure that the rules are consistently applied and that declarations are processed efficiently.
43.		Supplement to the provisions of the public procurement rules of the Public Procurement Act	In view of the importance of the conflict of interest issue, it is proposed to supplement the detailed provisions of the general rules on public procurement of Public Procurement Act with a reference to the provisions on the declaration and management of conflicts of interest, the verification of declarations and the request for declarations of interest.
44.		Linking the declaration of assets system and the declaration of interests system	In addition to the introduction of electronic support for the declarations and the verification of declarations, it is proposed to link the two systems, thus allowing a systematic verification of declarations of interest among persons subject to the obligation to declare assets. To ensure effective control, it is necessary to ensure that at least the data on economic interests contained in the company register, the private entrepreneur's register or the register of beneficial owners can be queried. For persons not subject to the obligation to declare their personal wealth, it would be left to the individual contracting authorities to perform random checks on declarations of interest. A methodological guide and a system of indicators for contracting authorities should be developed for random checks.
45.	6. Asset declaration systems	Strengthening the asset declaration control system	It is of the utmost importance to strengthen the system of control of asset declarations and to introduce a system of sanctions with adequate deterrent effect, consistently and coherently applied. The Authority will publish its detailed findings and proposals in 2023 Q4, pursuant to Section 75 of the Eufetv.
46.		EKR Data	In order for the EKR system to be able to perform statistical and data provision functions to the maximum extent possible, and to provide high quality data for machine processing and automated analyses, we recommend extending the checks on the input interfaces, and the clarification and cleaning of the data loaded.

Ser. No.	Integrity Report Chapter	Area	Recommendations and proposals
47.	7. Analysis of public procurement data	EKR data	The Authority also proposes to consider making it compulsory for consortia to indicate the estimated and actual contribution of each consortium member to the estimated and contracted amount.
48.		EKR data connection	The Authority also proposes to consider publishing the final amount of the contracts at the time of performance (not the contract price, but the final price at the time of performance), even in a separate table, and to ensure data linkage with the EKR result notice.
49.		Framework agreements	It is recommended that data retrieved under framework agreements registered by central purchasing bodies should also be publicly available and that the possibility of linking the data to the EKR should be ensured. In this context, the Authority recommends considering the proposal of the Anti-Corruption Working Group on framework agreements to examine the viability, market distorting and competition restricting effects of framework agreements of central purchasing bodies, and to examine the possibility of fully integrating framework agreement data into the EKR Performance Measurement Framework (and public procurement statistics in general).

Annex 3 Table of general deficiencies related to audit trails

Trail	Deficiencies identified
General	The description of the control, approval step is missing, incomplete.
General	The description of the supporting, related document needs clarification.
General	Concepts and steps are not explained.
General	References to other legislation are incomplete.
General	In the documentation of the trail, the person named in the case of many levels of organisation, responsible or approving, is too broad a concept.
General	The person specified in the approver (e.g., referee) is too low a level for an approver.
General	Approval is in the process, but it is not clear exactly how/in what form the approval is given.
General	The trail of calls for proposals lacks a description of the steps to ensure publicity.
General	The documentation of the IT system is missing (what system, what input is used to generate the letters, etc.)
General	The documentation of the 4-eye principle is missing, there is no documentation on how the 4-eye principle is ensured, what is the justification.
General	There are no deadlines or frequencies.
General	No evaluation criteria are given.
General	In several places the responsible and/or approver is missing.
General	Same approver and responsible.
General	There are controls/decisions in the process for which the aspect, the person, the control method are not documented
Complaints handling	When dealing with a complaint, the 4 worksheets of the Excel file containing the trails contain the same steps
Complaints handling/RRF	In RRF objection handling, the Minister's work is approved by the head of the responsible department.
Irregularity	The reporting of suspicions by an external person poses a risk to the procedure: are they familiar with the procedure, can they use the appropriate form, do they know who to contact
General	The process steps may include missing activities required by the relevant legislation or irrelevant activities
Irregularity	The provisions on the protection of the notifier are not fully detailed
General	Where the methodology is subject to change, the trail does not include a procedure for change
General	No control activity at a given step of the trail
Irregularity	Extension of irregularity procedure due to “new suspicion of irregularity" step missing
Public Procurement	Inconsistent sequencing of different process types in relation to each other

Public Procurement	Inadequate audit trail for public procurement procedures below the EU threshold.
ESF	Adequate audit trail of indicators extracted, requested and received
On-site inspection	Records of on-site audits not detailed
On-site inspection	The process for using external experts and the definition of their tasks is not elaborated
Cost statement	How to make sure that the service is delivered, that the documents are correct, that the prices are compared with the market and that a cost item has not been invoiced more than once