INTEGRITÁS HATÓSÁG

INTEGRITY RISK ASSESSMENT REPORT OF THE HUNGARIAN PUBLIC PROCUREMENT SYSTEM

Budapest, March 2023

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Foreword

The Integrity Authority (hereinafter the "Authority") conducts integrity risk assessment exercises in accordance with its statutory objectives, as part of its analytical and proposal-making tasks. With this report (the "Report"), the Authority fulfils the requirement of Milestone 161 of the Conditionality Procedure.

The Report identifies integrity risks and systemic problems in public procurement that need to be addressed and proposes measures and tools to ensure that these risks and problems are effectively addressed.

The Hungarian public procurement system has a number of actors, and our report therefore interprets the term broadly, including the Hungarian and EU institutional system, contracting authorities, contracting entities, and organisations performing centralised public procurement functions, as well as civil, professional, and advocacy organisations involved in public procurement.

Although the Report is critical on several points, these comments are made with the intention of improvement and highlight long-standing, systemic problems: they are in no way directed at specific individuals or groups. We believe that our findings will not only contribute to the purity of public life, but also to a more efficient use of the funding available in our country.

The report follows the OECD's so-called "MAPS" (Methodology for Assessing Procurement Systems) methodology, including its Pillar IV, in line with the 161st milestone mentioned in the conditionality procedure. Pillar IV includes indicators on accountability, integrity, and transparency of public procurement systems.

It is to be noted that Pillar IV of the methodology is methodologically bounded; therefore, can only shed light on certain aspects of the public procurement system. The Authority intends to provide a comprehensive picture of the integrity risks of the domestic public procurement system in its forthcoming reports.

Despite the tight deadline set for the preparation of the Report and given the complexity of the administrative conditions for cooperation, the Authority has sought to work as closely as possible with the OECD and MAPS Secretariat experts to ensure the methodology is properly applied. Given the foregoing and time constraints, the evaluation does not cover the other three pillars closely linked to Pillar IV of the MAPS and, therefore, the Report does not and cannot, by definition, cover all aspects of the functioning of the public procurement system and, consequently, its shortcomings. Nevertheless, we have endeavoured to make the fullest possible use of the time available and the possible methods and sources of

data collection. We hope our findings will contribute to a better understanding of the public procurement practice in Hungary.

In our assessment, the legal framework for public procurement in Hungary is basically in line with international standards and guidelines, and the actors are performing the tasks assigned to them by law.

The legal provisions on publicity are detailed, and data on public procurement procedures are public. In the area of public procurement, several progressive reforms are underway as a result of ongoing negotiations with the European Commission and commitments made under the conditionality procedure.

Despite the above, the system as a whole is dysfunctional, cost-increasing, and does not meet the objectives declared in the Public Procurement Act, namely, to ensure the efficient use of public funds, to ensure transparency and public accountability of public spending, to create conditions for fair competition, and to promote public interest objectives.

In practice, this leads to a lack of trust in the public procurement system, resulting in low levels of competition and increased risks of corruption. There may be other factors behind this lack of competition, including alleged market distorting behaviour, which will be examined in future reports. There are systemic problems underlying this phenomenon. Notable among these are the lack of effective cooperation and social consultation between stakeholders and the overly complex and therefore weak institutional framework for control.

Another key limitation to risk mitigation is the administrative approach to the control system, which is only partly regulatory, and the limited use of a risk-based approach. The control system also faces technological challenges due to data integrity gaps.

In our opinion, the overall control, monitoring, accountability, and sanctioning in the public procurement system is inadequate.

In the framework of the Report, the Authority also makes recommendations. Our recommendations can form the basis for reforms to make current practices more transparent, which will help to restore confidence among bidders and enhance genuine competition.

Our proposals for improving the public procurement system are summarised below:

- We propose to curb public integrity crimes—which have a very negative impact on public perceptions of corruption—more effectively and to reverse

the clear upward trend in influence peddling—which statistics show has been increasing in recent years—through effective and comprehensive control and sanctioning.

- We propose the development of a single-control system that addresses the whole public procurement process holistically: the development of risk-based control methodologies, the application of effective solutions from national and EU control practices at all points of the process, and the full harmonisation of the methodologies used.
- In order to ensure effective enforcement of the conflict-of-interest rules of the Public Procurement Code, it is recommended that contracting authorities should establish a control system, and the provisions governing it should be included in the public procurement rules.
- We believe that the requirement to operate coordinated compliance systems is justified for both contracting authorities and tenderers to participate in public procurement. We consider it essential to ensure effective and timely effective control of these systems and to sanction their absence consistently.
- Increased competition is essential for the efficient functioning of the public procurement system, which requires a further reduction in the proportion of single-bid procedures (and a related examination of the effectiveness of the provisions introduced to date for this purpose), as well as the elimination or restructuring of procedural solutions that lead to market foreclosure, in particular, the procedures under Section 115 of the Public Procurement Act and the framework agreement procedures widely used in centralised public procurement.
- Both for the above and for the development of the redress system, it is necessary to facilitate/create the meaningful analytical potential of the public procurement related databases.
- We believe it would be useful to facilitate the procedures for legal remedies on request and to rebuild trust in the legal remedies system. One of the preconditions for this is a substantial reduction in the administrative service fee.
- We propose to change the rules on the elements of claim and to revise the rules on mandatory representation to ensure easier access to remedies.
- We propose to further increase the weight of the preliminary dispute settlement procedure.

- Demonstrating the will to increase competition is necessary to rebuild the confidence of stakeholders—in particular bidders—in the public procurement system. In addition to administrative measures, it is therefore an essential part of effective reforms that the implementation of solutions reflects this intention in all its elements (e.g. meaningful consultation of stakeholders, application of realistic deadlines and conditions).

Ferenc Biró

President

List of abbreviations

ÁBPE MKK – Public Internal Financial Control Methodology and Training Centre *[Államháztartási Belső Pénzügyi Ellenőrzési Módszertani és Képzési Központ]*

Áht. – Act CXCV of 2011 on Public Finances

Authority – Integrity Authority *[Integritás Hatóság]*

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

BEII – Directorate for Internal Audit and Integrity *[Belső Ellenőrzési és Integrálási Hatóság]*

BEMAFOR – Forum of Internal Auditors in Hungary *[Belső Ellenőrök Magyarországi Fóruma]*

BEMSz - Public Benefit Organisation of Internal Auditors in Hungary *[Belső Ellenőrök Magyarországi Közhasznú Szervezete]*

Bkr. – Government Decree 370/2011 (XII. 31.) on the internal control system and internal audit of budgetary bodies

Btk. – Act C of 2012 on the Criminal Code

ERA – Electronic Public Procurement System

ENyÜBS – Uniform Investigative and Prosecutorial Criminal Statistics *[Egységes Nyomozó Hatósági és Ügyészségi Bűnügyi Statisztika]*

EUFÁT – State Secretary for European Union Development Projects

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

Eurojust – European Union Agency for Criminal Justice Cooperation

EUTAF – Directorate General for Audit of European Funds

FAKSZ – Accredited Public Procurement Consultant in Charge *[Felelős akkreditált közbeszerzési szaktanácsadó]*

Gtbkr. – Government Decree 339/2019 (XII. 23.) on the internal control system of publicly owned companies

GVH – Hungarian Competition Authority *[Gazdasági Versenyhivatal]*

Hnt. – negotiated procedures without prior publication of a contract notice *[hirdetmény nélküli tárgyalásos eljárások]*

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

Intr. – Government Decree No 50/2013 (II. 25.) on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists

Jat. – Act CXXX of 2010 on Law-making

KAC – Public Procurement Anonymous Chat *[Közbeszerzési Anonim Chat]*

Kbt. – Act CXLIII of 2015 on Public Procurement

KDB – Public Procurement Jury *[Közbeszerzési Döntőbizottság]*

KEHI – Government Control Office *[Kormányzati Ellenőrzési Hivatal]*

KFF – Prime Minister's Office — Public Procurement Supervision Department *[Miniszterelnökség – Közbeszerzési Felügyeleti Főosztály]*

KFF HÁT – Prime Minister's Office Deputy State Secretariat for Public Procurement Supervision *[Miniszterelnökség – Közbeszerzési Felügyeletért Felelős Helyettes Államtitkárság]*

KH – Public Procurement Authority *[Közbeszerzési Hatóság]*

KMF – Department for the Prevention of Corruption *[Korrupciómegelőzési Főosztály]*

KONFORM – Public Internal Control Forum *[Államháztartási Belső Kontroll Fórum]*

KÖSZ – National Association of Public Procurement Consultants *[Közbeszerzési Tanácsadók Országos Szövetsége]*

KSH – Hungarian Central Statistical Office *[Központi Statisztikai Hivatal]*

KSZ – Intermediate Organisation *[Közreműködő Szervezet]*

Kttv. – Act CXCIX of 2011 on Public Service Officials

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

MKK – Hungarian Faculty of Government Officials *[Magyar Kormánytisztvieslői Kar]*

NAV – National Tax and Customs Administration *[Nemzeti Adó- és Vámhivatal]*

NAV KEKI – National Tax and Customs Administration, Training, Health, and Culture Institute *[Nemzeti Adó- és Vámhivatal, Képzési, Egészségügyi és Kulturális Intézet]*

NGM – Ministry of National Economy *[Nemzetgazdasági Minisztérium]*

NVSZ – National Defence Service *[Nemzeti Védelmi Szolgálat]*

OECD – Organisation for Economic Co-operation and Development

OLAF – European Anti-Fraud Office

Complaints Act – Act CLXV of 2013 on Complaints and Public Interest Disclosures

PMr. – Decree No 22/2019 (XII. 23.) PM of the Minister of Finance on the registration and compulsory professional training of persons performing internal control activities in budgetary bodies and public enterprises, and on the compulsory training of heads of budgetary bodies and economic managers in the field of internal control

ProcurCompEU – European Competence Framework for Public Procurement Professionals

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

SAO – State Audit Office of Hungary *[Állami Számvevőszék]*

SAO tv. – Act LXVI of 2011 on the State Audit Office of Hungary

Savings Act – Act CXXII of 2009 on the More Economical Operation of Publicly Owned Companies

TVI – Hungarian State Aid Monitoring Office *[Támogatásokat Vizsgáló Iroda]*

Vnytv. – Act CLII of 2007 on Certain Obligation to make Statements of Assets

WB-Directive – Whistleblowing Directive (Directive 2019/1937 of the European Parliament and of the Council on the protection of persons who report infringements of EU law)

1. Introduction

Background

Established on 19 November 2022, the Integrity Authority is an autonomous public administration body established under Act XXVII of 2022 on the Control of the Use of European Union Budget Funds (Eufetv.). The Authority aims 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 will act 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 serious risk of such failure.

The integrity risk assessment

In accordance with its legal obligation under Sections 9–10 of the Eufetv., the Authority is required to report by 31 March 2023 on its first integrity risk assessment, which will examine the integrity risks of the Hungarian public procurement system, taking into account the irregularities and weaknesses in public procurement procedures highlighted in the European Commission's Communication to the European Council of 30 November 2022. The study will also form the basis for the Authority's annual analytical integrity report, which is due by 30 June 2023 this year, in accordance with the relevant Subsection (2) of Section 74 of the Eufetv.

The work has identified the main gaps in the areas examined. With these in mind, the evaluation paid particular attention to the following critical issues:

- improving the regulatory and institutional framework;
- strengthening the public procurement profession;
- monitoring the results of public procurement.

In order to identify the proposed improvements to the public procurement system within the methodological framework, the evaluation also sought to:

i. identify the strengths and weaknesses of the Hungarian public procurement system in terms of the indicators examined, comparing it with international good practices;
ii. identify significant integrity weaknesses that negatively affect the quality and performance of the public procurement system;

iii. support the government in prioritising public procurement reform tasks to promote competition and the performance of the public procurement system.

2. Methodology used and limitations

According to Section 73 of the Eufetv., the Authority shall carry out its first integrity risk assessment within four months of the start of its operations, in cooperation with international organisations with internationally recognised methodologies, based on the Public Procurement Accountability, Integrity, and Transparency Indicators (MAPS Pillar IV). The MAPS is an internationally recognised methodology for assessing public procurement systems, originally developed as a joint initiative of the World Bank and the Development Assistance Committee (DAC) in 2003 and used by development banks, bilateral development agencies, and partner countries around the world to assess their public procurement systems.

According to the logic of the MAPS methodological documentation,[1] the assessment of public procurement systems is defined by a system of indicators based on four pillars. In simple terms, these provide the framework conditions for examining the following elements of a public procurement system:

MAPS Pillar I: legal-regulatory and policy side. Indicators will be used to determine the extent to which elements of the regulatory framework support the stated principles, the consistency of legislation, and the capacity of the system to adopt international standards.

MAPS Pillar II: institutional background and management capacity. Scope of the indicators: integration in the public financing system, responsible managing institution, procurement institutions with well-defined competences, adequate public procurement information system, and strong capacity for further development and improvement.

MAPS Pillar III: operational (process management) and market regulation side. Indicator targets: public procurement practice (existence of certain processes) and existence of a public procurement market.

MAPS Pillar IV: "external evaluation" - accountability, integrity, and transparency. Indicators: transparency and involvement of civil society, effective monitoring and investigation system; and existence of rules on redress, ethics, and anti-corruption.

The OECD approach is that each pillar looks at different aspects of compliance, but together they can give a good picture of the adequacy of the public procurement

[1] Methodology for Assessing Procurement Systems (MAPS) 2018. Available at: https://www.mapsinitiative.org/methodology/MAPS-Methodology-ENG.pdf

system. The MAPS approach—the unity of the four pillars—is illustrated in the following figure showing each pillar:

As shown in the figure, the indicators of each pillar are closely interlinked and together they provide relevant information. For example:

- in Pillar III, the establishment of an appropriate regulatory framework (Pillar I), the proper functioning of the institutions (Pillar II) and adequate control mechanisms (Pillar IV) are also essential for the proper functioning of certain processes, such as selection and contract management.

The same "pillar-to-pillar" relationship characterises, for example:

- the achievement of the fundamental objectives set out in Pillar I; and
- ensuring appropriate procurement expertise.

The present assessment, prepared by the Integrity Authority's staff between 1 December 2022 and 31 March 2023, analyses the integrity risks of the Hungarian public procurement system along the four indicators of the MAPS Pillar IV (indicators 11-14) and their seventeen sub-indicators.

The MAPS Pillar IV:

1. degree of transparency and public participation that enhances the integrity of public procurement,
2. existence of effective control and audit systems,

3. efficiency and effectiveness of public procurement redress mechanisms, and
4. examines the application of ethical and anti-corruption measures.

According to the methodology, the above is necessary to ensure that the public procurement system operates with integrity and has adequate controls in place to support its operation in accordance with the legal and regulatory framework, and to address corruption risks in the system through the application of measures. The methodology also examines important aspects of the public procurement system such as the involvement of stakeholders, including civil society, as part of the control system. Pillar IV examines elements of the public procurement system and governance environment from the perspective of how they are defined and designed to contribute to integrity and transparency.

The report does not take the adequacy of the other three MAPS pillars as a given but assumes that the risk assessment of Pillar IV puts the assessments under the other three pillars in the right context.

Of particular importance for the ongoing integrity risk assessment is addressing the following issues related to MAPS Pillar IV:

- lack of a complete and usable database (data integrity) for the public procurement system;
- proper assessment of the legal framework (basic issues are covered but clarification is needed, e.g. on the appropriate legal support for the audit process);
- improving-managing the quality of the control background.

Although the time available was short, the inquiry sought to gather information from a wide range of stakeholders in the public procurement system:

1. As such, in the course of its work, the Authority has partly carried out a secondary analysis: it has compiled, reviewed and analysed relevant information and data made available to the Authority or publicly available up to 28 February 2023;
2. In addition, the Authority organised workshops with representatives of professional organisations and domestic NGOs active in the field of public procurement to gather further information;
3. It also carried out a detailed questionnaire survey among the members of the National Association of Public Procurement Consultants (KÖSZ), which brings together public procurement experts working on the contracting

authority and contracting entity side of public procurement, as well as contracting authorities and contracting entities.

A number of other topical issues related to public procurement—such as the national anti-corruption strategy currently under development, the details of the restructuring of the Accredited Public Procurement Advisers (APPAs) and the system, and the ongoing implementation of Directive 2019/1937 of the European Parliament and of the Council on the protection of persons reporting infringements of EU law—were not covered by the evaluation due to methodological and time constraints and are not covered in the report. We plan to address these non-concerned topics in part in the Authority's Annual Integrity Report and in the context of our next annual risk assessment, which will take a broader approach to content than is currently the case. It should also be noted that, pursuant to Subsection (2) of Section 10 of the Eufetv., the Integrity Risk Report forms one of the bases for the Authority's annual integrity report. However, the content of the latter goes significantly beyond the scope of the MAPS IV indicators. For example, the relevant Section 11(b) of the Eufetv. explicitly provides for the assessment of the regulation, and (a) and (c) for the assessment of individual processes.

The claims and assessments presented in this report are based solely on the publicly available information cited, information provided by stakeholders, the questionnaire survey, and the interviews conducted. If our assessment had used additional information, other claims and assessments could have been made. In this respect, our report does not contain any formulations.

3. Evaluation

This chapter summarises the findings of the assessment and evaluation of the OECD MAPS methodology, based on the qualitative and quantitative criteria set out in Pillar IV of the OECD MAPS methodology. The assessment describes the main strengths and weaknesses identified and highlights areas with significant gaps and where action needs to be taken to improve the performance of the system.

Weaknesses have been categorised according to their risk to the public procurement system in line with the MAPS methodology and measures proposed to address them. A summary of the assessment results for each indicator and sub-indicator is presented in tabular form in Annex 1 to this report. The assessment staff applied the guidance and assessment criteria set out in the OECD MAPS methodology.

The evaluation is based on

- the relevant legislation and regulations listed in Annex 2,
- interviews with the stakeholders listed in Annex 3,
- the provision of information by the Prime Minister's Office, the Public Procurement Authority, the Public Procurement Arbitration Committee, the Directorate General for Audit of European Funds, the State Audit Office, and the Government Audit Office, and
- analysis of the responses to the questionnaire survey[2] of procurement professionals working on the contracting authority and supplier side.

[2] The questionnaires are available at the following link:
Bidders' questionnaire: https://forms.office.com/e/6YrpRE9R2d
Tenderers' questionnaire: https://forms.office.com/e/GVwU8y7pgx

MAPS Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

The civil sector can play an appropriate safeguarding role against inappropriate and inefficient use of public funds, thus contributing to making public procurement more competitive and fairer. In addition, civil society's potential can contribute to improving the quality of public procurement performance and achieving the objectives set:

i) making information public and
ii) direct involvement of civil society in participation, monitoring, and supervision.

Summary of the indicator

Transparency and openness are among the most important principles of public procurement and as such they are also included in the basic principles of the Public Procurement Act (Subsection (1) of Section 2 of the Public Procurement Act). The aim is to ensure the efficient use of public funds and to ensure transparency and public scrutiny of their use.

Although they share similar objectives, transparency and openness do not cover the same categories in terms of content; they are thus in a "general-general" relationship. While publicity is primarily understood as the requirement for public access to public procurement procedures and data, transparency is a broader concept.

Transparency is a comprehensive term that includes, among other things, the integrity of individual public procurement systems and subsystems, the predictability of public procurement regulation and practice—including the public procurement redress system—the transparency of legal regulation and public access to it. Transparency also means transparency of legislation and decision-making procedures. It also means transparency, an identical approach to control systems, and the integrity of public procurement databases.

Findings

Based on the factors and mechanisms examined under Indicator 11, the preliminary and overall conclusion is that the regulators in this area provide a wide range of publicity. In this context, it is understood that publicity of procedures is the general rule, which in principle serves to ensure the broadest competition and transparency. The specific provisions of the Tender Regulation ensure that economic operators have access to information and are provided with information

on the breakdown and evaluation of tenders so that the contracting authorities' decisions to award public funds can be monitored.

In the public sphere, it should also be highlighted that in recent years, the proportion of public procurement procedures with the broadest competition has been consistently high in Hungary. In 2022, 87.7 % of all procedures in terms of the number of procedures were launched by public advertisement.

The use of negotiated procedures without prior publication—which can only be used under strict conditions and without publicity—has, in line with the above trend, been at a very low level and accounted for a negligible share of domestic public procurement: in 2022, the share of procedures without prior publication was 1 % of the total number of procedures under the national procedure system, compared to 2.5 % under the EU procedure system.

Access to public procurement procedures, as a tangible and measurable aspect of public procurement transparency, is being implemented. However, despite the clear provisions of the legal framework and rules governing public procurement procedures, it is not possible to ignore the damaging trends in practice which have led to a reduction in the number of bids per procedure.

In the framework of this indicator, we examined the data available in public procurement databases, their availability and coherence.

According to the Internal Market Scoreboard for 2021 published by the European Commission, transparency in public procurement is fully achieved, as contracting authorities publish all the data required by law on their public procurement.

At the level of data availability, there is a high level of openness by EU standards, but regards to the transparency of the public procurement system, which is a complex and multi-component issue, the respondents to the questionnaire survey and the NGOs expressed a more nuanced and critical view.

While recognising that the legal provisions on publicity are detailed in the EU context and that data on public procurement procedures are public, a criticism voiced by both respondents and NGOs was that there are mostly no integrated databases in the field of public procurement, which results in "fragmented data, with too many authorities and not the same methodology of recording".

This is compounded by the fact that the various databases have limited search functionality, so it is almost impossible to see the context. There is a general perception among respondents that the systems are typically not suited to complex data searches, even though they could be, given the amount of data recorded and the variety of data.

Most of the NGOs interviewed criticised that data entry problems and incorrectly recorded data make searches difficult (e.g. incorrect company name). The lack of interconnection and integrity of the various databases makes the transparency of the public procurement system more difficult.

Finally, the findings on civil society participation are also summarised under this indicator. In summary, although progress has been made in recent years—particularly in the involvement of various professional and civil society organisations in working groups on public procurement—, stakeholders believe that forms of cooperation with civil society organisations should not be limited to participation in working groups but that other fora should be provided to channel their views.

Summary of the main shortcomings and recommendations for Indicator 11

Material weaknesses	Risk classification	Recommendations
Lack of transparency and risk of collusion in procedures under Section 115 of the Public Procurement Act	high	Termination of the procedures under Section 115 of the Public Procurement Act; instead, as a general rule, publication of the procedures
Fragmented public procurement databases in several central authorities; lack of structured databases and limited search functionality	high	Standardisation of data formats so that data can be automatically integrated without data cleansing; creation of data links (e.g. NAV, KSH); improvement of search functions; possibility to analyse data series for longer periods;
The limited data available on centralised procurements outside the Electronic Procurement System (EPS), mainly carried out by centralised purchasing organisations, the widespread use of long-term framework agreements in centralised procurements	high	Access to and searchability of data on procedures conducted under the framework agreement in the second part of the procedure, use of procurement methods other than those provided for in the framework agreement
Lack of social consultation in the legislative process, especially regarding civil society, and lack of civilian monitoring of procedures	Medium	Creation of appropriate channels for civil society monitoring, increased involvement in monitoring public procurement processes, e.g. through integrity

		agreements, more transparent search and publication of legislation submitted for public consultation, direct consultation of professional organisations in the event of major legislative amendments

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

The sub-indicator evaluates the following: *i) Will the public procurement system be amended through a transparent and consultative procedure?* *ii) Programmes are in place to build/enhance the capacity of stakeholders to understand, monitor, and improve public procurement.* *iii) There is ample evidence that the government takes into account the views and feedback of the civil society.*

Consultation on draft legislation, public consultation

The legislation provides for the possibility of prior information on draft legislation and regulates the institution of social consultation. The relevant legal provisions—see Act CXXX of 2010 on Law-making (Act on Legislation)[3]—stipulate that the preparer of legislation shall ensure that the draft legislation and the explanatory memorandum thereto are made available for consultation and comment, as defined in the Act on Public Participation in the Preparation of Legislation—see Act CXXXI of 2010 on Social Participation in the Preparation of Legislation.

The institution of social consultation ensures that draft legislation prepared by the competent ministries can be submitted for consultation by natural persons and non-state and non-municipal bodies and organisations.[4]

The legal provisions referred to provide for the possibility of prior consultation and comment on draft legislation, including draft legislation on public procurement, both by public institutions and organisations and by citizens, professional and non-governmental organisations involved in the public consultation. In order to ensure compliance with the above, a control function has also been included in the legislation: the Government Control Office (KEHI) will annually verify whether the Minister responsible for the preparation of the legislation is fulfilling his/her obligations under Act CXXXI of 2010. The legal framework is therefore in place.

[3] See Subsection (2) of Section 19 of Jat.

[4] See Subsection (1) of Section 1 of Act CXXXI of 2010

When adopting or amending regulations in public procurement, administrative consultation forms and channels are in place involving all actors in the public administration. According to the Annual Report of the Public Procurement Authority (PA) for 2021, in 2021, the PA received 16 requests for opinions on the legal aspects of public procurement in the form of draft legislation, amendments to legislation, and other sectoral reports and legislative aids.

The situation is not so good in the area of social consultation; there is room for improvement both in terms of easier access to information and in communicating the changes planned.

Although in the past year, the first local authority responsible for public procurement legislation, the Minister of Spatial Development (formerly the Prime Minister's Office), has returned to the practice of publishing draft legislation for public consultation on its website, interviews with NGOs active in the field of public procurement have revealed—while acknowledging the progress made—criticism that the short deadlines for commenting on draft legislation for public consultation make it difficult to express informed opinions (this is particularly true for major legislative amendments). Moreover, the availability of draft legislation does not facilitate the timely submission of opinions.

The consultation period is generally eight days from the publication of the draft legislation, which is not a short period in itself if you keep up to date with the legislative preparation process and know how to search the Government's website. From the main page of the Government's website (https://kormany.hu), you need to go to the sub-page for each ministry and there you will only find the sub-menu for public consultation. Here you need to look through the individual documents, as they are listed in the order they are published.

It would be advisable to improve the search engine for legislation submitted for public consultation, so that it would be possible to search for certain topics (e.g. public procurement), regardless of the ministry that submitted the legislation for consultation, and that the search term would be used to display all draft legislation containing the term (in its title or text).

The representatives of the civil sector complained that, with few exceptions, the process of amending the Public Procurement Act generally lacks consultation with civil society actors and that there is no feedback on the impact of the amendments. They also point to the lack of transparency and predictability, not only for the civil sector but also for business, as to when a law will be amended, and in many cases, the reasons for rejecting a proposal are not clear.

A further objection raised in relation to this issue was that sometimes substantial proposals for amendments affecting public procurement are implemented in amendments to legislation other than public procurement legislation. For example,

the amendments concerning the abolition of the FAKSZ institution and its partial replacement by the public procurement consultancy activity have been included in the draft law on the public works regime.

Training courses on public procurement

In the ever-changing EU and national public procurement environment, it is of utmost importance that the knowledge of public procurement professionals remains up to date, which is supported by mandatory training and further training requirements for FTEs. The importance of mandatory training is expected to increase in the future, considering the European framework of competencies for public procurement practitioners (ProcurCompEU[5]), as the European Union seeks to give strategic importance to the public procurement profession and to equip it to meet future challenges. Mandatory training and further training could be extended to include integrity awareness, which would help to achieve the objectives of greater transparency. Professionalism in public procurement is also seen by professional organisations as generally supporting efficient and transparent public procurement.

An obvious way to enhance public awareness and transparency in public procurement is to increase the knowledge base of the actors involved in public procurement and to provide them with up-to-date information by disseminating legislation, amendments to legislation, and case law on public procurement. The Public Procurement Authority plays an important role in this field, given that it has been a priority for decades to train and educate public procurement actors. Although there are no programmes specifically aimed at NGOs, training courses and conferences are open to NGOs and accessible to all. According to the data in the Annual Report of the Public Procurement Authority for 2021, the CPO contributed to the information and professional training of around 2,500 professionals in 2021.

The KÖSZ—association of public procurement experts—also regularly organises training courses and conferences on public procurement updates, case law, and audit practice in Hungary and the European Union. The specialised training courses in public procurement offered by various higher education institutions (specialised public procurement lawyer, public procurement manager, public procurement consultant) also make a significant contribution to the development of the public procurement profession and the acquisition of high-level public procurement expertise.

The various training providers on the market are also active in organising public procurement training. These events are open to all, including representatives of civil society, and contribute to raising the quality of public procurement by sharing

[5] ProcurCompEU – European Competence Framework for public procurement professionals (europa.eu)

knowledge, exchanging experiences, and sharing good practices at home and abroad.

Progress in engaging citizens

Considerable progress has been made in the recent period since autumn 2022 in taking into account and institutionalising civil society signals. In this context, it is worth highlighting that representatives and delegated experts of civil society are represented in several working groups and advisory bodies aimed at improving the efficiency of the public procurement system. For example, in the development of the report summarising the results of the Performance Measurement Framework (the Framework or the Performance Measurement Framework),[6] which assesses the efficiency and cost-effectiveness of public procurement. Delegates from independent non-governmental organisations active in the field of public procurement in the country and independent public procurement experts selected through an open call for tender, participated in the establishment of the Framework, as provided for in the above-mentioned Government Decision.

It is also indicative that 10 of the members of the Anti-Corruption Working Group—established by the Eufetv. as an independent analytical, proposing and opinion-giving forum alongside the Authority—are delegates from non-governmental organisations.

Sub-indicator 11(b): Providing adequate and timely information to the public

The sub-indicator examines citizens' right of access to information of public interest.

Availability of the regulatory framework for public procurement

The rules on public procurement, including the legal framework for public procurement, are freely available to all. The legislation (except for municipal regulations) must be published in the Hungarian Gazette. Issues of the Hungarian Gazette are available free of charge at https://magyarkozlony.hu. In addition, the Public Procurement Authority's website (www.kozbeszerzes.hu) also provides a collection of the most important legislation on public procurement, including EU public procurement rules, to help information and law enforcement. Not only the current version of the Public Procurement Act but also previous versions are available on the website of the Authority, thus helping to ensure proper application and compliance with the law.

[6] See Government Decision 1425/2022 (IX. 5.), which aims to develop a performance measurement framework to assess the efficiency and cost-effectiveness of public procurement.

Factors influencing the development of public procurement policy, including current aspects of aid policy, are also available on official forums and portals (in particular www.palyazat.gov.hu).

The portal www.palyazat.gov.hu provides applicants for EU funding and the general public with information on, among other things, available applications, development programmes, the institutional set-up of each operational programme (including managing authorities and intermediaries), supported projects, and e-administration. In particular, the "Transparency, whistleblowing" section provides information on whistleblowing on conflicts of interest and other issues, as well as on closed irregularity procedures. However, the register of notifications of public interest lacks information on the brief description of the notification.

Public consultation of individual development programmes and calls for proposals is also ongoing, with the number, content, and authors of the comments received in the context of the public consultation publicly available.

Availability of public procurement procedures

All interested parties will have sufficient and timely access to information on the website at each stage of the procurement process (in accordance with the legal provisions protecting sensitive information) and to other information relevant to promoting competition and transparency.

As already mentioned in the summary of indicator 11, Hungary has for several years had a persistently high proportion of public procurement procedures launched by public advertisement (i.e. by means of a contract notice) (this represents almost 90 % of all public procurement procedures based on the number of procedures conducted).

The different types of notices related to public procurement procedures are fully and electronically available free of charge in the Public Procurement Notice,[7] which is the Official Journal of the Public Procurement Authority, and on the ERA.[8] Not only national notices but also EU notices are published in the Public Procurement Notice (the latter for information purposes) but EU notices are officially published in the Tenders Electronic Daily, the electronic daily supplement to the Official Journal of the European Union.

The Public Procurement Authority is responsible for the publication of the Public Procurement Bulletin, which is the official and authentic electronic publication of notices relating to public procurement, concession, and design contest procedures in Hungary. The Public Procurement Bulletin is published every working day of the

[7] https://www.kozbeszerzes.hu/ertesito/

[8] https://ekr.gov.hu/portal/kozbeszerzes/eljarasok/lista

year since February 2017. 254 issues have been published on the Public Procurement Authority's website in 2021. The publication is also available via the Daily Public Procurement mobile app.

Public procurement notices sent for publication in the Official Journal of the European Union are also published in the Public Procurement Notice for information purposes so that economic operators can find out about public procurement notices in one place.

Contracting authorities must also publish information notices on the outcome of the procedure and on any modification of the contract, whether the expiry is announced or not. Thus, in the case of advertised procedures, the public has access to information on public procurement throughout the whole spectrum of the procedure.

At the same time, publicity is limited in the case of procedures without publication of a contract notice, due to the specific nature of the rules. However, in the summary of indicator 11, reference was made to the marginal share of negotiated procedures without a legal basis, in which it certainly plays a major role:

- the monitoring activities of the Public Procurement Authority in the context of negotiated procedures without prior publication of a contract notice,[9]
- the strict Public Procurement Arbitration Committee (PAC) jurisprudence on the legal bases for negotiated procedures without prior publication of a contract notice, and
- the strict control practices of the managing authorities and the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office (KFF) for public procurement contracts financed by EU funds.

Procedure without publication of a contract notice pursuant to Section 115 of the Public Procurement Act

The type of procedure without publication of a contract notice pursuant to Section 115 of the Public Procurement Act may only be used in the national procedure for public works contracts with an estimated value of less than HUF 300 million. The essence of this type of procedure is that the contracting authority, instead of publishing a notice to open a procedure, starts the procurement procedure by sending a written invitation to tender directly to at least five economic operators at the same time. Only economic operators invited to tender may submit a tender in this procedure. Although Section 115 of the Public Procurement Act contains several safeguards designed to ensure competition—for example, the contracting authority must act in a non-discriminatory manner when selecting economic operators, while ensuring competition and respecting the principle of equal treatment, and

[9] Section 103 of Kbt.

must vary, as far as possible, the economic operators invited to tender in the various procedures—there have been a number of criticisms of this type of procedure from public purchasers.

As a result of the amendment to the law in 2020,[10] the use of procedures under Section 115 of the Public Procurement Act has decreased, but in 2022, tenderers still carried out 1,043 such procedures, amounting to HUF 118.1 billion, which represents 26.3 % of the value of construction works carried out under the national procedure. To avoid financial corrections, a transparency measure has been introduced for the use of EU funds, which no longer allows the procurement of works to be carried out through a procedure without a public call for tenders.

As for the criticisms of Section 115 procedures among the respondents to the questionnaire, there are some views that this is not "real public procurement" because contracting authorities invite bidders in a controlled way, with a clear idea of who they want to contract with. Several commentators call for the abolition of the procedures under Section 115 of the PPA partly for the reasons set out above and partly because competition is noticeably more intense when the contracting authority decides to launch the procedure by means of a contract notice, either because of the contracting authority's decision 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 demolition by instalments (the procedure can only be tendered 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 prior publication of a contract notice). The above is also confirmed by the fact that appeals against the application of this procedure have been made in the past only based on an ex officio initiative by the bodies controlling public procurement financed by EU funds. The total absence of review procedures at the request of the contracting authority also seems to confirm the view that there is no real competition in these procedures and that, therefore, tenderers submitting bids in the procedure do not attempt to challenge the contracting authority's decision to close the procedure. In addition to the above, the need to review the rules governing the application of the procedures under Section 115 of the Public Procurement Code is also supported by the fact that the infringements of Section 25 of the Public Procurement Code, which have been identified in recent years and which have led to conflicts of interest or a lack of fair competition, have almost invariably 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

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

equal treatment) can be enforced in a procedure where the contracting authority is completely free to select the five economic operators it wishes 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).

To summarise the above, the regulation on Section 115 of the Public Procurement Act requires review; it is proposed to consider either the complete abolition of the procedure or a restructuring of the conditions for its application (e.g. mandatory advertising, with a reservation for micro and small enterprises). Further analysis is needed to determine the directions for such a restructuring.

Publication obligations for public procurement procedures

It can be seen that the whole process of public procurement procedures, from the planning and launching of the procedures to the performance of the contract or its modification, can be followed by the public.

At the beginning of the budget year, contracting authorities—except for central purchasing bodies—prepare an annual aggregated procurement plan (procurement plan) by 31 March at the latest for their planned procurements for the year. Procurement plans are public and available on the ERA.

In the ERA, contracting authorities are obliged to publish, among other things, the following information:[11]

- contracts concluded following a public procurement procedure;
- a summary of the evaluation of applications and tenders;
- where the contracting authority's procedure is subject to a preliminary dispute settlement procedure, the information specified in the legislation in relation to the request for settlement;
- certain data relating to the performance of contracts awarded under the procurement procedure (such as, in addition to the names of the contracting parties, whether performance was in conformity with the contract; the date of performance of the contract recognised by the contracting authority and the date of payment).

In the interests of transparency, the public data subject to publication requirements have also been extended in the context of negotiated procedures without prior publication of a contract notice. Thus, the reasoned decision of the Public

[11] See Subsection (1) of Section 43 of the Public Procurement Act.

Procurement Authority on the legal basis of the procedure in the context of the Hnt. procedures is public.

The documents relating to the procedures—including the details of the economic operators invited to tender—should be made public, which will make the procedures more transparent (information on the legal basis of the procedure, the subject of the procedure, the winning tenderer).

In 2018, the Public Procurement Authority launched the CoRe contract registry system to make it easier to find contracts that have been closed in public procurement procedures and to increase transparency. The system contains descriptive data on contracts concluded since 2018 within the framework of a public procurement procedure, as well as contracts in PDF format.

Overall, it can be concluded that the information published on these websites provides access to information on public procurement procedures at different stages, including full access to and participation in the procedure for advertised procedures.

Lack of a single database

While recognising that data on public procurement procedures are public and widely accessible to the interested public, a typical criticism voiced by both questionnaire respondents and interviewed NGOs is that the various databases—both the ERA and the KH and KDB registers—have limited search functions, which provide almost no opportunity to explore deeper context. Structured data search and processing is typically not possible, despite the volume and variety of data recorded. The improvements made to make the scoreboards available for mass downloading were acknowledged as an achievement, but for other documents (such as public procurement contracts or other types of notices) this is still not the case.

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 analyse data on the performance of contracts, including data on the tenderers awarded public contracts and the subcontractors involved in the performance of contracts [in the latter case, the amendment of Subsection (6) of Section 66 and Subsection (3) of Section 138 of the Public Procurement Act ensures the availability of information].

Centralised procurement

The NGOs interviewed identified as a weakness and integrity risk the fact that—in the case of procedures conducted by central purchasing bodies outside the ERA—no or limited data is available on the procurement needs (competitive re-opening

and direct orders) in the second part of these procedures. The practice of framework agreement procedures typically concluded by central purchasing bodies for the implementation of centralised purchases (where appropriate in the framework of dynamic purchasing systems) needs to be reviewed.

Framework agreement procedures typically close the public procurement market for a longer period (depending on the decision of the central purchasing body), typically 2-4 years: only the number of bidders corresponding to the number of framework agreements can bid for specific procurement needs. Centralised procurements are typically high-value procurements, thus limiting the number of bidders who can participate. Further investigation is needed into the reasons for the phenomenon in centralised procurement procedures of consortia of a large number of joint bidders submitting bids for many procurement items. The Public Procurement Framework referred to above has also started to examine the effectiveness of centralised procurement; it is recommended that the results of these studies are taken into account in the future.

One-stop procedures

Altough, as shown above, the vast majority of public procurement procedures in Hungary are open and public, there is a well-known problem with the high proportion of single-bid procedures. Further analysis is needed to assess the effectiveness of the measures introduced to address this. In particular, the extent to which the minimum time limits set for mandatory prior market consultation (taking into account the procedural framework for consultation established in the ERA) are sufficient for interested economic operators to engage in the process and the extent to which the comments received (in particular on the subject matter of the procurement, the technical content and the conditions for participation in the subsequent procedure) are useful.

As regards the improving statistics, it seems important to examine whether this is the result of genuine competition (i.e. to what extent there are genuinely competing bids and to what extent there are what is known in the jargon as "supporting bids"). The content and effectiveness of the action plans published by the contracting authorities which are obliged to do so to avoid one-bid procedures may also require analysis.

Confidence of market players

This is particularly important because the proper functioning of public procurement presupposes the rebuilding of trust among market players. This cannot, of course, be achieved overnight, but it is important that economic operators perceive the credibility of the contracting authorities' efforts.

It could be considered a step towards building trust among tenderers if the ERA and other electronic systems (including pre-market consultation) ensured that the list

of interested economic operators does not become known to contracting authorities before the deadline for submission of tenders or participation. During the interviews, it emerged that there have been cases where either the contracting authority or a competing economic operator, on the basis of information presumably leaked by the contracting authority, has approached the tenderer not to participate in the procurement procedure.

Sub-indicator 11(c): Direct engagement of civil society

This sub-indicator assesses *i) the extent to which laws, regulations, and policies allow for citizen participation in consultation, monitoring, and follow-up, and* *ii) whether the government promotes and creates opportunities for public consultation and monitoring of public procurement.*

Involving civilians

Domestic public procurement regulations do not contain explicit instruments to ensure the direct participation of citizens or civil society organisations in public procurement procedures, whether in the preparation or monitoring of the procedures.

As explained in more detail in sub-indicator 11(a), progress has been made in the involvement of civil society organisations in public procurement working groups (see page 18 for details: "Considerable progress has been made in the recent period since autumn 2022 in taking into account and institutionalising civil society signals. In this context, it is worth highlighting that representatives and delegated experts of civil society are represented in several working groups and advisory bodies aimed at improving the efficiency of the public procurement system.") but this does not mean that public participation in the individual public procurement procedures is guaranteed.

On the one hand, this is understandable, since the special expertise, first and foremost procurement-focused, which is expected from participants in public procurement procedures—whether on the side of the contracting authority or the tenderer—is not or not naturally provided by external participants. Public procurement databases are public and accessible electronically, free of charge, and citizens and civil society can obtain information directly on public procurement tenders and the processes involved in a given procedure.

However, in addition to the already mentioned representation in working groups—which is certainly a way forward—most CSOs would like to see other forms of

cooperation and channels through which civil audit can be better integrated into public procurement processes. It is also part of the overall picture that a civil society organisation such as the ACPC, which brings together public procurement experts, is in a much better position to make its voice heard.

For example, the delegates of the ACPC are not only members of the working groups mentioned above (see Public Procurement Framework, Anti-Corruption Working Group), but also members of the Public Procurement Council, as delegates of the FACPC body.

It should be noted here that other professional organisations also participate in the work of the Public Procurement Council of the Hungarian Chamber of Commerce and Industry: through three persons appointed by the national interest groups of employers and the national economic chambers, including the Hungarian Chamber of Agriculture, Food and Rural Development, and through one person appointed jointly by the President of the Hungarian Chamber of Engineers and the President of the Chamber of Hungarian Architects.

Through the cooperation agreement with the CA, the ACPC also has the opportunity, to—among other things—feed practical aspects into certain legislative support materials developed by the CA and also seeks to actively participate in the legislative process on public procurement by providing its views.

Integrity agreements

While the public procurement legislation does not mention integrity agreements—we note that there was an attempt to do so a few years ago—it does not prohibit parties from having an independent external expert monitor the procurement process. An integrity agreement is a tripartite agreement between the contracting authority, the tenderers, and an independent expert to monitor a specific procurement procedure. Its purpose is to promote transparency in the public procurement process, fair competition, and involvement of citizens in monitoring how public money is spent. Integrity agreements have an anti-corruption effect in addition to the existing controls by public authorities and can provide added value by reinforcing public confidence in public procurement. The conclusion of an integrity pact could therefore be a possible way of civic monitoring.

In Hungary, Transparency International Hungary has been involved in such agreements and monitored procedures. Within the framework of the pilot project "Integrity Agreements – Civil Control Mechanisms for the Protection of EU Funds",[12] independent experts are monitoring 18 EU-funded investments in 11 EU Member

[12] https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/

States. In Hungary, Transparency International Hungary monitored the investment for the implementation of the Bóly–Ivándárda section of the M6 motorway between the national border and the "Construction of the flood protection system of the VTT Felső-Tisza, Tisza-Túr reservoir".[13]

The wider use of integrity agreements in public procurement procedures is recommended.

Electronic breakdown of public procurement procedures

The opening of tenders received in public procurement procedures is carried out electronically and automatically in the EHR system. Since the advent of electronic procurement, which has replaced paper-based procurement procedures, and the abolition of the so-called 'demolition procedure', there is no possibility for an 'external' observer to be involved in this phase of the procurement procedure. This means that there is no possibility not only for a civil observer but also for the participation of other actors to be involved in the procurement procedure. The reading-out sheets of the bids are automatically made known to the participants in the procedure, who can then find out about the other participants in the procedure and their bids according to the evaluation criteria. In light of the above, and also in the context of the questionnaire survey, the need for a waiting period of two hours between the deadline for submission of tenders and the opening of the tenders, which in the case of the ERA, is not justified for the contracting authorities. Under the public procurement rules, it would be possible to do away with this and—unless experience with electronic public procurement systems (in particular the EPR) shows otherwise—it would be justified to open tenders at the time of the deadline for submission of tenders (as was done in the past, before the introduction of electronic public procurement).

Public Procurement Anonymous Chat

A possible platform for citizens and civilians to control public procurement procedures is the Public Procurement Anonymous Chat (PAC) run by the MoA.

The information channel launched by the Public Procurement Authority in 2020 will allow anyone to share information on suspected or actual public procurement infringements with Authority staff anonymously. The KAC will allow citizens to anonymously report suspected public procurement infringements to the Authority's staff. The KAC operates as a closed platform, according to the Public Procurement Authority, and only their own designated experts have access to the discussions.

[13] https://transparency.hu/kozszektor/kozbeszerzes/integritasi-megallapodas/eu-s-finanszirozasu-projektek/

The KAC received a total of 33 notifications in the period from 1 January 2021 to 31 December 2021.[14]

Among the respondents to the questionnaire survey, there were no respondents who had made a report on the KAC platform. This may be partly due to respondents' lack of confidence in anonymity or action being taken on the report. In the interviews, it was suggested that it would be advisable for the KH to provide regular information on whistleblowing and the action taken on it.

Request for redress

In addition to the foregoing, the Public Procurement Act provides for the possibility for a chamber of commerce or interest representation organisation with activities related to the subject of public procurement to submit a request for legal remedy to the Public Procurement Arbitration Committee due to the unlawfulness of the invitation to submit a tender, invitation to tender or participation, the public procurement documents or their amendment [Subsection (2) of Section 148 of the Public Procurement Act]. As an alternative remedy, the preliminary dispute resolution procedure is also open to the chambers concerning the said documents [Paragraph b) of Subsection (1) of Section 80 of the Public Procurement Act].

Contracts and contract amendments can be monitored primarily through the notices and disclosures set out in sub-indicator 11 (b).

[14] Source: Annual Report of the Public Procurement Authority for 2021.

MAPS Indicator 12. The country has effective control and audit systems

Summary of the indicator

The indicator aims to determine the quality, reliability, and timeliness of internal and external controls. The indicator shall also examine the effectiveness of controls. For the purpose of this indicator, 'effectiveness' means the speed and thoroughness with which the findings and recommendations made by the auditors are implemented.

Findings

The legislation referred to below sets out the levels of control and the institutions involved in public procurement. Priority cooperation has also been established between the various institutions. There are also developed and publicly available methodological guides for the different levels of control. Respondents consider that in most cases, formal and legal controls on public procurement are carried out to a high standard. The education and training of the auditors is regulated by law. For internal and external audit organisations, the independence of the auditors is also regulated by law.

In general, the current legal and institutional framework for public procurement control is adequate and covers the public procurement system, but it is also apparent that the number of control bodies is large, and their control practices differ. This fragmentation at the institutional level results in a diversity of methodologies and the resulting practical guidance, and multiple and divergent sources, which creates considerable legal uncertainty for practitioners, as there is no single benchmark to which they can adhere. This is further compounded by the differences between the control of domestic and EU funds.

The existing legal uncertainty calls for a holistic approach to the public procurement control system and the development of a much more uniform practice than at present, as well as the uniform application of deeper, more effective elements of scrutiny (in particular risk-based scrutiny) in both cases.

In order to support compliance and prevent further infringements, it would be recommended to publish methodological guides that are continuously updated and quickly follow up audit results and cases, to share practical examples adapted to different levels of control, and to provide educational materials and training opportunities.

In addition to the above, the lack or ineffectiveness of the control of professional compliance (mainly concerning the technical specifications of procurements, which may also require specific social/labour/environmental expertise) has been

criticised at several points in the control process, mainly by procurement professionals. We plan to make a more detailed recommendation on the above in a forthcoming report.

Summary of the main shortcomings and recommendations for Indicator 12

Material weaknesses	Risk classification	Recommendations
Risk-based methodology missing at several points in the audit process	High	Develop a risk-based audit methodology applicable to the entire audit process (global audit of the riskiest projects)
National and EU control practices differ	Medium	Rethinking the audit process from a holistic perspective, streamlining, and separation of duties
Methodological/practical guidelines of some bodies are not developed taking into account the whole control process, are not harmonised	Medium	Single source of truth methodological guides containing continuously updated audit results, cases with practical examples adapted to different audit levels, continuous follow-up with educational materials and training opportunities
Information on public procurement projects is partial and fragmented	Medium	Design the collection of audit information/data in a holistic approach - traceability, possibility to review the whole process for each case, introduction of unique external and internal identifiers. The analysis of such a database would also help subsequent audits, methodological guidelines
Inspection capacity gap	Medium	Managing this, and training and recruiting or hiring external experts who can also effectively look into technical content issues (e.g. technical). Conflict of interest checks when using external experts.

Sub-indicator 12(a): Legal framework, organisation, and procedures of the control system

The sub-indicator assesses whether

i) the legislation and regulations in force provide a comprehensive control framework,

ii) the institutions, policies, and procedures set out in the legislation are in place and functioning, and

iii) the existing control framework adequately covers the public procurement system.

Several laws and government regulations govern the control and institutional arrangements for public procurement. The control system of public finances is governed by Act CXCV of 2011 (Chapter VIII of the Act deals with the rules for the control of public procurement. In general, it distinguishes between external, governmental/self-governmental, and internal controls, process controls as so-called lines of defence.[15] There is a synergistic and mutually reinforcing effect between the lines of defence. The responsible bodies are separated accordingly. In addition to the lines of defence, the source of funding (national versus EU) is an important distinction.

Internal control system

The first line of defence is the internal control system and internal audit. It is implemented at the lowest level, i.e. at the level of all entities subject to public procurement [relevant legislation: the Áht., Government Decree 370/2011 (XII. 31.) on the internal control system and internal audit of budgetary bodies (Bkr.), Government Decree 339/2019 (XII. 23.) on the internal control system of publicly owned companies (Gtbkr.)].

Section 61 of the Áht. stipulates that the purpose of public finance controls is to ensure the regular, economical, efficient, and effective management of public funds and national assets and the proper fulfilment of reporting and data reporting obligations. Pursuant to Subsection (1) of Section 70 of the General Tax Act, the head of the budgetary body shall ensure the establishment, operation, and independence of internal control. The Bkr. contains detailed rules on internal control and internal control systems. Pursuant to Section 3 of the Bkr., the head of the budgetary authority is responsible for the proper implementation—design, operation, and development—of the internal control system at all levels of the organisation:

- control environment,
- integrated risk management system,
- control activities,
- information and communication system, and
- monitoring system.

The head of the budgetary authority is required to assess the quality of the control system annually and to send the results to the Minister responsible for public

[15] Public Benefit Organisation of Internal Auditors in Hungary. The IIA Three Line Model https://iia.hu/images/dokumentumok/tudas/haromvonal_hu.pdf

finances. The internal auditor shall perform his/her work under the direct authority of the head of the body. Based on a risk analysis, the head of internal audit prepares a strategic internal audit plan for the next four years, based on which the annual audit plan is drawn up. After the audit has been carried out, the person who carried out the audit investigation will prepare a report, which may be used as the basis for an action plan. The internal audit manager shall keep a record of the audits and ensure that the results are retained. An annual audit report and an annual summary audit report shall be drawn up at a yearly level, presenting the annual work of the internal audit based on self-assessment.

In order to directly enforce the institution of internal control in public procurement procedures, the Kbt. also contains an explicit rule. According to this (Subsection (1) of Section 27 of the Public Procurement Act), the contracting authority is obliged to define the responsibilities for the preparation, conduct, and internal control of its public procurement procedures, the responsibilities of the persons and entities acting on its behalf and involved in the procedure, and the documentation of its public procurement procedures, in accordance with the relevant legislation. Thus, contracting authorities should have internal rules of procedure, considering the specificities of their organisation, which set out the internal responsibilities for public procurement procedures, including internal control arrangements.

Government Audit, Government Audit Office

The second line of defence is government control. The Minister for Regional Development is a member of the government responsible for public procurement. He/She is responsible for preparing legislation, implementing the government's public procurement policy, and controlling and authorising public procurement. He/She carries out these tasks through the designated departments of the Prime Minister's Office (Deputy State Secretary for Public Procurement Supervision – KFF and Deputy State Secretaries for the implementation of development programmes).[16] Government audit is independent of the audited body and mainly involves audit or advisory activities on the use of public funds and the management of national assets. The KEHI is responsible for these audit tasks [relevant legislation: Government Decree 355/2011 (XII. 30.) on the Government Audit Office]. KEHI is a central budgetary body operating as a central office under the authority of the Prime Minister. Its audit activities are carried out as ex-post audits, for which it draws up an annual plan approved by the Government. Audits are carried out by means of requests for information or on-the-spot inspections. On completion of the audit, the KEHI prepares an audit report, which includes a brief, concise assessment of the findings and shortcomings. On this basis, the head of the audited body is required to prepare and follow up an action plan. According to Subsection (5) of Section 27

[16] Prime Minister's Office data reporting to the Integrity Authority

of Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information (Infotv.), the KEHI audit reports are considered to be decision-preparatory data; therefore, their subject, content, findings, possible recommendations, and utilisation cannot be verified. On this basis, they did not provide any information on their work, even in summary form, in response to a request from the Integrity Authority. In recent years, KEHI has not initiated any ex officio legal action before the KDB in relation to its activities.

Hungarian State Treasury

The audit activity of the Hungarian State Treasury [relevant legislation: Áht., Regulation (EU) No 1303/2013] covers the audit of local governments, national minority self-governments, associations, regional development councils, and the budget bodies they manage, where it primarily examines the accounting, budget reporting, and the provision of data. It also performs a certifying authority function in the control of the use of EU funds, which basically involves the verification of financial accounts and their conformity.

State Audit Office

The external audit tasks are performed by the State Audit Office of Hungary (SAO) [relevant legislation: Áht., Act LXVI of 2011 on the State Audit Office of Hungary (SAO Act)] (in certain cases specified by law, the Hungarian State Treasury may also perform external audits). The SAO is subordinate to the Parliament but independent of other organisations. It is also empowered to audit the first and second line of defence bodies. Its activities are based on an audit plan. It draws up and publishes its own professional rules and methodology for audits. In all cases, the output of the inspections is a report containing the facts found and the related findings and recommendations. This is sent to the head of the audited organisation. The reports are public, but in certain cases, this may be restricted (protection of classified information). Based on the report, the head of the audited body is required to draw up an action plan. The SAO may verify the contents of the plan.

In response to the Integrity Authority's request for information, the SAO stated that it had not carried out any public procurement audits in 2022, so it could not report on its experience in this area. The SAO has not initiated any ex officio proceedings before the KDB in recent years. In its reply letter, the SAO underlined that it has started to renew its strategy and audit methodologies, aiming at conducting audits with a different approach, and more in-depth content and procedures than in the past. In this context, the SAO, in cooperation with the Public Procurement Authority, will in the future also focus on the control of procurement processes, including the audit of public procurement, in order to establish a framework to ensure the regular and efficient use of public funds and to prevent abuses.

Every year, the SAO formulates proposals for the Parliament in its parliamentary reports based on its audit experience, which, by systematically collecting audit experience, can contribute to further development of certain areas of public finance and reducing risks.[17] In addition to the above, Act LXXXIX of 2021 on the Foundation of Hungary's 2022 Central Budget also contains a point that strengthens the coordination of the second and third lines of defence (government offices may initiate an investigation of local government management at the SAO within their competence of legal supervision, depending on the results of the Treasury audit).[16]

Office of Economic Competition

The Hungarian Competition Authority (GVH) is an autonomous public administration body, mainly responsible for competition supervision. If the contracting authority detects or suspects unfair market conduct or restrictions of competition, it is obliged to notify the GVH. If the minister responsible for public procurement or the use of EU funds detects a breach of the law during the public procurement control of contracts, he is entitled to hand over to the GVH any data, except for classified data, that he has at his disposal as a result of the public procurement concerned. The GVH has cooperation agreements with several organisations active in the field of public procurement control, and several notifications to the Integrity Authority contained information on the existence of signalling to the GVH (for example, 126 cases in 2022—by the KFF concerning public procurement procedures it controlled) but the results of these were generally not reported by the parties concerned.[18]

Subsidies Investigation Office

The State Aid Investigation Office (SAI) is the central coordinating body for the control of state aid in competition. It performs its tasks under the supervision of the Deputy State Secretary for Development Policy Services of the Prime Minister's Office.

Public Procurement Authority

According to Section 187 of the Public Procurement Act, the primary task of the Public Procurement Authority is to shape public procurement policy taking into account the public interest and the interests of contracting authorities and tenderers, and to promote the public spending of public funds in a public and transparent manner. The CA also performs, inter alia, control functions.

Elements of the audit activity of the CA:

[17] Information on the professional activities of the State Audit Office of Hungary in 2021 and report on the functioning of the institution to Parliament

[18] Prime Minister's Office to provide data to the Integrity Authority

(1) Notice management, notice control [relevant legislation: the rules for the dispatch, control and publication of public procurement and design competition notices, the models and certain content of notices, and the annual statistical summary of the Hungarian Public Procurement and Design Competition Notices, and Decree 44/2015 (XI. 2.) MvM of the Minister of the Prime Minister's Office]: in Hungary, public procurement notices—except for the calls for tenders for public procurements implemented with EU funding and with in-process control—are published only after the audit by the Public Procurement Authority; as a result of the audit, the content of the notices is of uniform quality and content, and many infringements are detected.

The notice control is an important element of the multi-stage control system built into the public procurement process. It aims to ensure that notices are completed in accordance with the requirements of the public procurement legislation, are coherent in their content and meet the deadlines for issuing them. The mandatory contract notice control activity includes the control of notices opening and amending the procedure, the control of information notices on the outcome of the procedure, and the control of contract amendment notices (unless the procedure is subject to in-process control by the Prime Minister's Office due to the relevant EU funding). If the content of the notices still does not comply with the legal requirements on public procurement, after having checked and corrected the notices, the Public Procurement Authority's notice control unit sends a signal to the President of the CA, who may initiate an ex officio appeal procedure.

(2) Control of negotiated procedures without prior publication of a contract notice (one-stage procedures with a legal basis in which the contracting authority negotiates the terms of the contract with the tenderers invited to submit tenders) [relevant legislation: Section 103 of the Public Procurement Act]: Pursuant to Section 103 of the Public Procurement Act, the CAO carries out a rigorous control of the legal basis of these procedures, which is also linked to a publicly accessible database, in the framework of which the CAO publishes its decisions on these procedures (see also the information under indicator 11(b)). The legality check is initiated via the Electronic Public Procurement System.

(3) Control of the modification and performance of public contracts [relevant legislation: Kbt., Government Decree 308/2015 (X. 27.) on the control activities of the Public Procurement Authority concerning the amendment and performance of public contracts]: its purpose is to verify whether the performance of contracts is in accordance with the terms and conditions of the tender communicated and submitted in the public procurement procedure and, if different, whether the modification of the contract is in accordance with the provisions of Section 141 of the Kbt. Contracts are checked by the Public

Procurement Authority on the basis of legal, technical, and professional criteria, taking into account the compliance of performance with the Public Procurement Act and the relevant implementing regulations.

The long-term objective is also to deter infringements, since in the event of an infringement, the President of the KH will initiate ex officio proceedings against the KDB, or, if he/she discovers indications of an infringement of a non-public procurement nature during the procedure, will contact the competent body by means of a signalisation. Investigations into the legality of the performance/amendment of contracts are always initiated ex officio and there are four main sources of information based on which the President of the KH decides whether an audit is necessary. These are the annual audit plan, ex officio initiatives by legally empowered bodies/individuals, contract modification notices, reported breaches of contract (if they are also suspected to be related to a public procurement infringement), and public interest notifications. The checks are mainly document-based and are primarily based on legal, technical, and professional (procurement) aspects. A record of the audit is drawn up.

(4) Keeping registers (contracting authorities, responsible accredited public procurement consultants, the reliability of the economic operator subject to a particular exclusion criterion, qualified tenderers, and decisions on appeals), issuing guidelines and opinions. These tasks are only partially and indirectly related to the control activity but are mentioned for completeness.

The questionnaire survey and the interviews mention as positive the high quality of the Authority's work in the field of negotiated procedures without prior publication of a contract notice and contract control but suggest that more resources should be allocated to the tasks of contract control, and also make suggestions for deepening and tightening up the control activities. As regards the contract audit function, it is proposed to further examine the risk analysis methodology used in the preparation of the audit plan.

Additional bodies are involved in the control process for EU-funded procurement.

Domestic inspection bodies

The body responsible for the quality control of public procurement law, the Public Procurement Supervision Department of the Prime Minister's Office (KFF), and the Managing Authorities are responsible for carrying out the checks. Managing Authorities are responsible for the effective management and implementation of operational programmes, project selection, and monitoring of implementation. The Managing Authorities may delegate certain administrative, financial, and technical tasks of implementation to an intermediate body (IE), subject to technical supervision.

Built-in monitoring

The first level of control is twofold [relevant legislation: Government Decree 272/2014 (XI. 05.)]. For some of the procurements with EU funds, there is a process-based control, which is applied by the KFF and the Managing Authorities in the case of public procurement procedures with a value of HUF 300 million or more and in the case of public works and concessions. Ex-post controls will be carried out for procurements below the EU procurement thresholds and for works below HUF 300 million.

The Managing Authorities are carrying out risk analysis through the monitoring and information system and have started to consider the results of the ARACHNE data mining and risk management tool. The application of the latter will be monitored by the Directorate General for Audit of European Funds (EUTAF) from 1 January 2023. When planning the procurement procedure, the time needed for the checks should be taken into account, as the beneficiary can only receive a grant if the KFF certificate of initiation with favourable content and the Managing Authorities' statement of support are available.

In the 2021–2027 programming period, the Managing Authorities may, if appropriate technology is available, carry out on-the-spot checks electronically (Government Decree 256/2021 (V. 18.) on the rules for the use of certain EU funds in the programming period 2021–2027). A criticism that emerged during the questionnaire survey and interviews was that there is no substantive, in-depth examination, but rather only formal compliance is checked. Practical application also often varies. At the same time, the problem of delays in inspections was highlighted by several respondents. This may be due to the fact that comments on the deficiency letters are sent in several rounds or to capacity constraints. The independence of the investigators may not be guaranteed at this level. In the case of ex-ante verification, however, the usefulness of the possibility of correction, despite the time needed, is a positive aspect.

Directorate General for Auditing European Aid

Second-level checks are carried out by the audit authority designated by the Member State under Article 123 of Regulation (EU) No 1303/2013. Act XLIV of 2022 on the Directorate General for Audit of European Funds and amending certain laws adopted at the request of the European Commission in order to ensure the effective completion of the conditionality procedure stipulates that the functions of the audit authority are to be carried out by the EUTAF [relevant legislation: Act XLIV of 2022]. Its powers include audits on budget aid, mainly from EU and other international sources, as well as on the procurement of budget aid and the performance of contracts concluded in connection with such aid. As of 1 January 2023, it is an autonomous public administration body (previously under the authority of the Minister responsible for public finances).

Audits are carried out based on an audit manual, which is prepared in accordance with relevant EU legislation and international auditing standards. System audits (whether management and control systems of operational programmes comply with legislation/internal rules) and sample audits of projects (focusing on three main areas: financial, physical, legal/procurement) are also carried out. Here too, an audit report is drawn up, the draft of which is sent to the head of the auditee and to all those to whom it refers.

Based on the questionnaire survey and interviews, the EUTAF also faced delays in sample checks. In its response, the EUTAF underlined that, in addition, sample audits do not necessarily allow for a macro-level examination of a project and that a global examination of riskier projects is recommended.[19]

Integrity Authority

Since 19 November 2022, the Integrity Authority has been in place to prevent, detect, and correct fraud, conflict of interest, and corruption as well as other breaches and irregularities in the use of EU funds. The Integrity Authority is an autonomous body, subject only to the law, and its tasks can only be prescribed by law. The Authority reports annually to Parliament. It acts in all cases where it considers that a relevant body has failed to take the necessary steps to prevent, detect, and correct fraud, conflict of interest, corruption, and other irregularities or infringements affecting the sound financial management of the EU budget or the protection of the financial interests of the European Union, or where there is a serious risk of such a risk. In addition, a new *Anti-Corruption Task Force has been* set up under the Integrity Authority Act, which will report annually.[20]

Directorate of Internal Audit and Integrity

The Government of Hungary has committed to the establishment of the Directorate of Internal Audit and Integrity (BEII) under point 6 of its conditionality commitments ("Strengthening audit and control mechanisms to ensure the proper use of EU funds"). The BEII started its work in October 2022, and the full staff of the BEII is currently being recruited through a tender process. The BEII is organised under the State Secretary in charge of European Union Development Projects (EUSG), the Minister responsible for the use of EU funds.

BEII works separately from the other departments of the Prime Minister's Office as a guarantee of independent work free from influence. The Director of the BEII is appointed by the Prime Minister on the proposal of the Minister of Spatial Development. The Director may not be instructed in the use of EU funds and must perform his/her duties free from any influence from any other institution, body,

[19] Integrity Risk Consultation Questionnaire – EUTAF response

[20] Prime Minister's Office to provide data to the Integrity Authority

political party, company, association, legal or natural person. The BEII's main tasks are to investigate conflicts of interest within the development policy institutional system (government officials, employees) and to identify and mitigate systemic risks within the development policy institutional system. The BEII raises awareness and encourages the prevention of conflicts of interest and corruption by conducting integrity training and cooperating with the competent bodies in cases of conflicts of interest and irregularities. Given that the BEII has only recently been set up, its functioning cannot yet be evaluated in the context of this report.

Level 3 checks

The third level of control is at the level of the European Union. OLAF, the European Anti-Fraud Office, is one of the bodies of the Commission, the European Court of Auditors. From October 2022, the National Tax and Customs Authority (NAV) will assist OLAF in carrying out on-the-spot checks and investigations in Hungary (Act CXXII of 2010, amended)

Summary

In general terms, the current legal and institutional framework for public procurement control is adequate and covers the public procurement system, but it is also clear that the number of control bodies is large, and their control practices differ, according to the questionnaire surveys and the feedback received during the interviews. In addition, the differences between the control of domestic and EU funds make it worthwhile to take a holistic approach to the control of public procurement and to apply the deeper, more effective elements of control (risk-based controls in particular) uniformly, regardless of the source of funding for public procurement. The relevance of this is demonstrated by the existence of separate cooperation agreements between several bodies. The fragmentation at the institutional level leads to a diversity of methodologies and the resulting practical guides, which also has an impact on training opportunities.

In order to promote compliance and prevent further infringements, it would be advisable to publish methodological guides that are constantly updated and quickly follow up on audit results and cases, to share practical examples adapted to the different levels of control, and to provide educational materials and training opportunities.

Sub-indicator 12(b) – Coordination of controls and audits of public procurement

The sub-indicator assesses whether internal controls and internal and external audits are well defined, coordinated, adequately resourced, and integrated to

ensure consistent application of procurement laws, regulations, and policies and monitor the performance of the procurement system and whether they are carried out with sufficient frequency.

For the first line of defence

In 2017, the Minister of Public Finance published the "Standards and Practical Guidance on Internal Control in Public Finance". The 2017 NGM Guide consolidates the following guidelines with updated and expanded content:

- PM Internal Control Manual (2010)
- Monitoring system for public bodies (2011)
- Internal control standards for public finances in Hungary (2012)
- Guidance for completing the declaration of undertaking in Annex 1 to the Bkr. (2013)

In 2019, the SAO examined the effectiveness of this in detail and concluded that the NGM guidance provides sufficient detail and practical examples to ensure that internal control contributes to the proper use of public funds. The NGM Guide harmonises the content of international standards and legislation, thus supporting a regulated and coordinated implementation of the task. It also provides support to managers in setting up an internal control system. However, these detailed analyses have in many cases revealed weaknesses in all the areas audited (367 reports in total). The examination of internal controls found that, although internal controls were in place in the institutions and municipalities audited, they were not functioning effectively and performing their true function in 90.7 % of the institutions and 96.7 % of the municipalities. The monitoring system was also found to be deficient, with only around half of the institutions in the central and local government sub-system having a properly set up monitoring system. In many cases, it is difficult to identify risks specific to the institution/organisation, and there is a high risk that risks are not being addressed. This can have a negative impact on sound management, and it would therefore be advisable for the Minister responsible for public finance to place more emphasis on risk management in the context of methodological guidance, in particular the presentation of practical examples.[21]

Pursuant to Article 62 of the Áht., the register of internal auditors is kept by the Minister responsible for public finances. The most up-to-date register is available on the website of the Ministry of Finance. Currently, there are 3 136 active internal auditors holding a licence.

[21] State Audit Office of the Republic of Estonia State of internal audit activity – analysis 2019

For the second line of defence and special control bodies

The most important experiences of the KFF's public procurement audits and the issues typically raised during the audits are set out in the following guidelines published by the Prime Minister's Office:

- Quality control guidelines for contracting authorities
- Compliance guidance for auditors
- Contract amendment guidelines for auditors

The guides are public and available online.[22] On specific issues (e.g. evaluation criteria, anti-competitive behaviour, or template solutions to avoid situations with higher public procurement accountability risks) further detailed guidance is available from the Prime Minister's Office, also available online.[23] Previously, the guidance on frequently encountered audit issues at the level of the KFF (taking into account the findings of the Commission, EUTAF), which was missed by the European Commission audit report REGC214HU0068, and the updated summary material of the EUTAF audit findings have been prepared. Since January 2019, the number of professionals performing audit tasks in the KFF has more than doubled by December 2021. In parallel, the share of external experts has decreased (from 73 % in January 2019 to 3 % in February 2022).[24]

The guidance documents produced by the Public Procurement Authority are also public and available on the Authority's website.[25]

The current methodology of the SAO as an external control body is also published.[26]

The above suggests that there are written methodological summaries for auditors at all levels of control but that their depth, timeliness, and coherence are not sufficiently achieved. Fragmentation at the institutional level results in a diversity of methodologies and many sources. The holistic approach proposed in sub-indicator 12(a) would also help to harmonise methodologies. Also, to improve the technical content verification reported in sub-indicator 12(a), it would be necessary to involve a sufficient number of colleagues with appropriate qualifications/experience and, where appropriate, to develop specific methodological guidance. Internal and external audits will be carried out annually by the relevant bodies in accordance with the modalities set out in their audit plans.

[22] https://www.palyazat.gov.hu/kozbeszerzesi_utmutatok

[23] https://www.palyazat.gov.hu/kozbeszerzesi_kozlemenyek

[24] "Thematic audit of the operation of the public procurement control system of the Deputy State Secretariat for Public Procurement of the Prime Minister's Office (KFF HÁT)" EUTAF Final Audit Report (January 2023)

[25] Guide to the Public Procurement Authority - Main portal (kozbeszerzes.hu)

[26] Methodology - State Audit Office of Hungary (asz.hu)

This is reported annually by the internal auditors to the Minister responsible for public finance and by the SAO carrying out external audits to Parliament.

Sub-indicator 12(c) – Enforcement and follow-up on findings and recommendations

The purpose of the sub-indicator is to provide an overview to which extent internal and external audit recommendations are implemented within a reasonable timeframe.

Internal audit

Sections 45–46 of the Bkr. stipulate that in the case of an internal audit, the action plan must be prepared and sent to the head of the budgetary body and the head of the internal audit within eight days of receipt of the audit report. The action plan must include the deadlines and responsible persons. The head of the budgetary authority shall decide on the approval of the action plan after consulting the internal audit manager. The implementation of the measures must be reported in writing to the same managers within eight days of the expiry of the final deadline set. If this is not done, the internal audit manager may initiate a follow-up audit.

Government control

In the case of KEHI inspections, there is a 15-day window after receipt of the inspection report for the audited body to take the necessary action, prepare the action plan and notify the KEHI President. As indicated in sub-indicator 12(a), KEHI did not provide aggregate statistical information on its operations, so we do not have a statement on this. The head of the audited body maintains a register containing an annual breakdown of the implemented and non-implemented measures related to the audit report and sends it to KEHI by 31 January each year (Sections 36–37 of Government Decree 355/2011 (XII. 30)).

External audit

Pursuant to Section 31 of the SAO Act, the SAO shall send a so-called attention letter to the head of the audited body in case of illegal practice or improper use of assets detected at the audited body. The audited body has 15 days to assess the findings, take the necessary measures and inform the SAO. In 2021, when 127 budgetary institutions were audited, 587 letters of attention were sent in 122 letters of attention,

96 % of the cases received a reply letter, and 489 new measures were taken to address the shortcomings.[27]

The action plan on the findings of the audit report must be sent to the SAO within 30 days. The deadline for implementation is not fixed by law. The SAO may carry out ex-post audits to verify implementation (Section 33 of the SAO Act). Nine organisations were subject to such ex-post audits in 2021.[26]

In more serious cases, the SAO may initiate criminal or disciplinary proceedings or use its powers to suspend grants and benefits.

The auditee is required to respond to audit findings and recommendations at all audit levels on time and in accordance with the law. Only in the case of external audits do we have statistics to show that compliance is being achieved. There is no statutory framework for the timing of the implementation of measures, which is set out in the individual action plans. The SAO can potentially verify the results in the framework of an ex-post audit, while in the case of internal audit and reporting to the KEHI on the progress of the implementation of the measures.

Sub-indicator 12(d) – Qualification and training to conduct procurement audits

The aim of the sub-indicator is to confirm whether there is a system in place to ensure that auditors working on public procurement audits are adequately qualified for the task.

First line of defence

Subsection (4) of Section 70 of the General Act lays down the expectations and tasks related to the internal audit activity. The Minister responsible for public finances must be notified of the intention to work.

Section 1/A of Decree 28/2011 (VIII. 3.) NGM of the Minister of National Economy on the registration and mandatory 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 defines the qualifications and qualifications required for performing internal control activities. The obligations of further training are regulated by the Bkr. and by Decree No. 22/2019 (XII. 23) PM of the Minister of Finance on the registration and compulsory further training of persons performing internal control activities in budgetary bodies and public enterprises and on the compulsory further training of heads of budgetary bodies and economic managers of budgetary bodies in the field of

[27] Information on the professional activities of the State Audit Office of Hungary in 2021 and report on the functioning of the institution to Parliament

internal control system. Pursuant to Subsection (4) of Section 1 of the PMr., the organisation involved in the professional training is the National Tax and Customs Administration's Institute for Training in Internal Financial Control Methodology and Training (NAV KEKI) within the framework of the Public Internal Financial Control Methodology and Training Centre (ÁBPE MKK). The internal auditor is obliged to attend an ÁBPE training course that ends with an examination in the year preceding or following the notification. After passing the examination, he/she must also attend optional training courses at least every two years, counted from the calendar year. The head of the budgetary authority or a senior manager designated by him or her in writing and the chief financial officer of the budgetary authority shall attend training on internal control every two years.[28] The training modules include training specific to public procurement, but these courses are optional and provide rather basic knowledge. The current training prospectus and list of trainers are publicly available on the Ministry of Finance website. It is also the only place to apply for the training courses.

The website also provides official methodological and professional information, guides, and training materials related to internal audit and internal control.

Up-to-date information and information sharing is facilitated by BEMAFOR, the free forum for public internal control practitioners in Hungary. It sends methodological and good practice information to its members by newsletter and organises meetings and workshops on topical issues. KONFORM, the Public Internal Control Forum, is modelled on BEMAFOR and aims to seek the views of relevant colleagues for the preparation of guidance on internal controls and also to share guidance and good practices.[29]

For the second line of defence and special control bodies

The KFF also assists the staff of the institutional system and managing authorities in pursuing a consistent approach to control by providing training courses and learning materials (detailed under sub-indicator 12(b)). Training for KFF control staff is also provided in the framework of the cooperation between the KFF and the GVH.[30]

The KFF and EUTAF also regularly organise training sessions to share audit experience.

The Public Procurement Authority plays an important role in public procurement education and knowledge sharing—for years, it has considered the training and education of public procurement actors as a priority task. In 2021, the ACA has contributed to the information and professional training of some 2,500 professionals. In addition, the KH is closely cooperating with institutions offering

[28] NTT 2023

[29] State Audit Office of the Republic of Estonia State of internal audit activity - analysis 2019

[30] Prime Minister's Office data for the Integrity Authority

training in the field of public procurement and has signed cooperation agreements with Eötvös Loránd University and the National University of Public Service. Several searchable databases and guides for knowledge sharing are available on the website of the EO.

The EESC has been active since 2004 and its main task is to share knowledge and make suggestions for better regulation. Their technical proposals are also available on their website.[31]

The selection of internal and external auditors is transparent, and their independence is ensured by law. The need for them to have the knowledge and experience to carry out the audit is only generally stated. Although specific courses on public procurement are available in the mandatory training curricula, they are both optional and at the most basic level. Inspectors can of course also obtain information from other sources (working groups, ACPC) and procurement consultants are available, but in general, a deeper knowledge of methodologies and a more systematic learning through practical examples would be essential for them to be able to work confidently. As discussed under sub-indicator 12(b), it would be useful to update the official NGM guidance more frequently with material, methodological updates and examples agreed upon the internal audit working groups, thus helping to provide internal auditors with access to information from a single source. The same is true for the other audit bodies, i.e. the single guide should be updated more frequently with recent training materials, audit results, practical examples and used in training/education. It would be a priority to expand training on public procurement, not only to provide introductory knowledge. It would be recommended that beneficiaries/project management, including contracting authorities and tenderers, participate in these trainings.[32]

[31] Professional proposals - National Association of Public Procurement Consultants (kozbeszerzok.hu). Available at: https://www.kozbeszerzok.hu/szakmai-javaslatok/

[32] Integrity Risk Consultation Questionnaire - EUTAF response

MAPS Indicator 13. Procurement appeals mechanisms are effective and efficient

Summary of the indicator

Indicator 13 under Pillar IV covers aspects related to the legal framework for the redress mechanism, including establishment and coverage. This indicator also assesses the effectiveness of redress mechanisms concerning several specific issues that relate to their contribution to the country's compliance environment and the integrity of the public procurement system.

Findings

The redress system in Hungary operates in line with EU legal requirements. In terms of the time required for the procedure, the remedy before the Public Procurement Arbitration Committee meets the requirements of a quick and effective remedy. The courts issue enforceable decisions which are binding on the parties in litigation proceedings concerning the decisions of the JTPC and the JTPC. The institutions have adequate capacity.

The institutions have sufficient capacity. The number of appeals on request has remained low, mainly due to high administrative fee rates, according to the feedback from interviews and questionnaire surveys. It is proposed to reduce the level of administrative service fees, independent of the number of elements of the request and the estimated value of the public procurement.

In order to increase confidence in the institutional system, it is recommended to issue more college-wide resolutions, to improve the search interfaces for appeals—arbitration and court decisions—and to increase the number of (face-to-face) hearings. A review of the practice on client eligibility is recommended. Review the legal provisions on mandatory representation.

The institution of preliminary dispute resolution is widely used in the Hungarian redress system, which—in the light of the arbitration and judicial practice associated with the institution—is capable of reducing the number of formal appeals. It is also proposed to introduce mandatory fines in cases where the contracting authority has failed to reply to the request for a preliminary dispute settlement or has failed to reply in time. For requests for preliminary rulings submitted before the deadline for submission of tenders or participation, it is proposed to provide for the possibility to submit them anonymously.

Summary of the main shortcomings and recommendations for Indicator 13

Material weaknesses	Risk classification	Recommendations
A persistently low number of appeals on request, mainly due to high administrative charges	High	It is proposed to review the level of administrative service fees, to remove the link to the estimated value of the public procurement and the number of applications, to reduce fees significantly and in some cases to abolish them.
Given the complexity of appeals before the ACPC, the parties concerned would request that a hearing be held and, if possible, take place in person	Medium	It would be advisable to increase the number of meetings and to provide the possibility of a face-to-face meeting as requested by the applicant/initiating party
Representation by a responsible accredited public procurement consultant, chamber of commerce. legal adviser or lawyer is mandatory in the appeal procedure before the Public Procurement Arbitration Committee	Medium	Given the skills and expertise of public procurement commissioners, it may be advisable to consider abolishing mandatory representation
Search facilities for decisions of the Public Procurement Arbitration Committee do not provide reliable results, court judgments are not published in a single database	Medium	Improvement of the search interface, creation of a separate, complete database of court judgments proposed
According to the provisions of the Public Procurement Act, if a preliminary dispute settlement has been requested in connection with the infringement covered by the application and the contracting authority has submitted its position on the infringement but has not taken any other action, the Public Procurement Arbitration Committee is obliged to impose a fine if it finds an infringement. However, the	Medium	It may be advisable to review the legislation in this respect

above-mentioned mandatory fines do not apply if the contracting authority fails to reply to the request for a preliminary ruling or fails to reply within the time limit (although the time limit for appealing does not start to run from the date of the contracting authority's reply, but from the expiry of the legal deadline for replying)		
In the context of the contracting authorities' obligation to inform contracting authorities of the fact of a preliminary dispute settlement, consideration may be given to clarifying in the Tender Regulation, along the lines of the rules on supplementary information requests, that this should be done in an anonymous manner, without revealing the identity of the person making the request	Medium	Proposed review of the legislation

Sub-indicator 13(a) - Remedies procedures

This sub-indicator examines the procedure for dealing with remedies and sets out some specific conditions to ensure fairness and due process.

i) Decisions are made based on the available evidence submitted by the parties.

ii) The first review is carried out by the body specified in the legislation.

iii) The appeal body (or authority) has sufficient powers to enforce its decisions.

iv) The timeframes set for the submission and review of objections/appeals and for the issuing of decisions do not unduly delay the procurement procedure or render the appeal unrealistic.

Status of the ACPC and details of the redress procedures

In Hungary, the Public Procurement Arbitration Committee is a body with a special status, established in accordance with the Remedies Directives, to adjudicate disputes concerning public procurement procedures, operating within the framework of the Public Procurement Authority but professionally independent of it.

The Public Procurement Arbitration Committee is a body with national competence, responsible for conducting appeals against infringements or disputes in connection with public procurement and design contest procedures.

The Arbitration Committee for Public Procurement is competent to conduct proceedings for infringement of the legislation on public procurement, public procurement procedures, works or service concessions and concession procurement procedures, and to hear appeals against public procurement or concession procurement procedures. The Public Procurement Arbitration Committee shall also have jurisdiction, with the exception of proceedings for civil law claims relating to the modification or performance of a contract, to hear and determine any proceedings for the modification or performance of a contract concluded pursuant to a public procurement or concession procurement procedure which is contrary to the Public Procurement Act or a regulation issued pursuant to the Public Procurement Act.

The public procurement remedy procedure conducted by the Public Procurement Arbitration Committee is an administrative authority procedure to which the provisions of Act CL of 2016 on the General Administrative Procedure shall apply with the different rules set out in the Public Procurement Act. Although the Public Procurement Arbitration Committee may even qualify as a "court" in the EU legal sense, according to the autonomous interpretation of EU law, in the domestic legal sense, it follows from the foregoing that the Public Procurement Arbitration Committee is an administrative body and an administrative authority, and its proceedings are administrative authority proceedings, not court proceedings.[33] The Hungarian public procurement legislation has therefore opted for the so-called authority model.

In previous years, the number of requests for redress and the number of initiatives taken, according to the Arbitration Committee, was as follows.[34]

[33] Detailed Commentary on the Public Procurement Act. *[Nagykommentár a közbeszerzési törvényhez]* (Edited by Attila Dezső; Authors: Barabás Gergely / Bodánszky Nikolett / Cseh Tamás / Dezső Attila / Dudás Gábor / Gyulai-Schmidt Andrea / Hellné Varga Anita / Hubai Ágnes / Kéri Zoltán / Kontor Eszter / Kothencz Éva / Kugler Tibor / Miklós Gyula / Nagy-Fribiczer Gabriella / Németh Anita / Nyíri Szabina / Perczel Zsófia / Süvöltős András / Szeiffert Gabriella / Támis Norbert / Tátrai Tünde / Toma Barbara / Tosics Nóra / Varga Ágnes / Várhomoki-Molnár Márta / Virágh Norbert / Zaicsek Károly; Wolters Kluwer Budapest, March 2022)

[34] Annex 6 to the performance measurement framework for assessing the efficiency and cost-effectiveness of public procurement A SUMMARY OF THE DATA PROVISION OF THE PUBLIC PROCUREMENT AUTHORITY, THE PUBLIC PROCUREMENT DECISION-MAKING BOARD AND THE ECONOMIC PROCUREMENT AUTHORITY; Deputy State Secretariat for Public Procurement Supervision, Prime Minister's Office; publication date: 28.02.2023; https://ekr.gov.hu/portal/hirek/8798092096856

	2019	2020	2021	2022
Total number of remedies	570	560	557	534
From the office	359	272	334	293
On request	211	288	223	241

	2019	2020	2021	2022
Decision of merit	396	418	370	306
No substantive decision	174	142	187	145
Decisions on appeals against convictions	341	306	283	241

The preliminary dispute settlement procedure

The formal remedy procedure of the Public Procurement Arbitration Committee may be preceded by a preliminary dispute settlement procedure, which is an informal remedy, although its use is not mandatory under the Public Procurement Act but since it is free of charge, unlike the formal remedy, it can be concluded from the facts described in the decisions of the Public Procurement Arbitration Committee that its initiation precedes the submission of the request for remedy in almost all cases. Therefore, although it has been suggested by legal practitioners that prior settlement of the dispute should be compulsory, in our view, it is not necessary in the light of current practice. If the amount of the administrative service fee payable for the proceedings of the ACPC on request was to be reduced, a parallel change in the amount payable for the appeals on request might be justified.

The time limits for submitting a request for a preliminary dispute settlement are regulated differently in the Public Procurement Act with regard to the call for tenders, the contract documents and subsequent decisions taken in the procedure. As a general rule, in the context of documents relating to the opening of public procurement procedures, the EU procedural framework allows for the submission of a request for a review within ten days before the expiry of the deadline for submission of tenders, in order to avoid unnecessary and abusive obstruction of public procurement procedures. In the context of decisions taken during or at the end of the public procurement procedure, the Civil Procedure Code provides for a time limit of three working days for the submission of applications, which is always considered appropriate from the point of view of both the contracting authority and the tenderer (it does not delay the procedure, but at the same time ensures the possibility to prepare an application with the content required by law).

Any interested economic operator or a chamber of commerce or interest representation organisation with activities related to the subject of the public procurement may submit a request for a preliminary dispute settlement concerning the tender documents, but the latter is not applied in practice—typically only interested economic operators submit requests for a preliminary dispute settlement to contracting authorities. After the deadline for submission of tenders/participation, only tenderers/candidates may submit a request for a preliminary dispute settlement in the procedure.

The contracting authority must reply to the request for preliminary dispute settlement within the three working days set out in the CBA, or within seven working days if the evaluation is reopened. In the case of a reopening of the evaluation (i.e., for example, a request for a deficiency or a request for clarification, a request for justification of a disproportionately low price), it is more difficult to meet the time limit if the contracting authority would have to order several evaluation acts (for example, a request for a deficiency following a request for clarification or a request for a supplementary indication of the price following a price indication). In the event of a possible revision of the time limits for contracting authorities to respond, it is essential that consistency with the time limits for appeal (including an extension of the moratorium on the conclusion of contracts) is also ensured so that the right of appeal of the economic operators concerned is not jeopardised by these changes.

The effectiveness of the preliminary dispute settlement procedure is facilitated if a tenderer submits a request for preliminary dispute settlement within the deadline and with the content of the public procurement procedure concerning a procedural act or document that has arisen after the opening of tenders. The contracting authority may not conclude the contract—or, if partial tendering was possible, the contract for the part of the procurement concerned—until the expiry of the 10 days following the date of its reply to the request for a preliminary ruling, even if the moratorium on the conclusion of contracts would otherwise have expired by that date, i.e. the moratorium on the conclusion of contracts in this case effectively starts again from the date of the contracting authority's reply to the request for a preliminary ruling. During this period, economic operators may consider whether to submit a formal request for review to the ACPC.

The willingness of contracting authorities to cooperate is increased by the fact that—according to the provisions of the Public Procurement Act—if a preliminary dispute settlement has been requested in connection with the infringement covered by the request and the contracting authority has sent its position on the infringement but has not taken any other action, the Public Procurement Arbitration Committee is obliged to impose a fine if an infringement is found. However, the above-mentioned mandatory fines do not apply if the contracting authority fails to reply to the request for a preliminary ruling or fails to reply within the time limit

(although the time limit for appealing does not start to run from the date of the contracting authority's reply but from the expiry of the legal deadline for replying). It may be advisable to review the legislation in this respect.

According to the feedback received during the interviews, the effectiveness of the request for a preliminary dispute settlement is increased when the contracting authority is carrying out a public procurement with EU funding, because in this case, since public procurement procedures are subject to control, contracting authorities also consider, when replying, how the control authority will assess the infringements alleged by economic operators, which increases their willingness to cooperate.

The arbitration panel's practice of taking into account only the contracting authority's arguments in the request for a preliminary dispute settlement and not allowing them to be supplemented in the course of the appeal procedure also helps to ensure that the contracting authority provides a meaningful response in the course of the preliminary dispute settlement procedure.

The contracting authority is obliged to publish the information on the pre-dispute settlement in the EDR immediately upon receipt of the request for pre-dispute settlement. In the context of the contracting authorities' obligation to inform contracting entities of the fact of a preliminary dispute settlement, consideration may be given to clarifying in the Tender Regulation, like the rules on supplementary information requests, that this should be done anonymously, without revealing the identity of the person making the request. [Since Subsection (2) of Section 80 of the Procedural Regulation does not provide for the disclosure of the identity of the economic operator submitting the request for a preliminary ruling, and given the principle of fair competition—and the conventions of the Procedural Regulation—we are of the opinion that the contracting authority's indication of the economic operator that initiated the procedure is also a matter of concern under the current rules. Obviously, after the deadline for the submission of tenders/participation, the foregoing does not apply since the identity of the economic operators participating in the procedure is already known to the tenderers/candidates.]

Requests for prior settlement of a dispute, where the tenderer does not wish to challenge the contracting authority's decision on its tender or not exclusively, are almost always preceded by a request for access to the contracting authority's file. Adequate access to the file is essential for the exercise of the right of appeal. Even though the public procurement procedure itself has been fully electronic in Hungary since 2018, the CPC still does not oblige contracting authorities to provide access to documents electronically (although it does not exclude this possibility anymore). As access to the file must be provided by the contracting authority within two working days of receipt of the request and may be requested within five calendar days of the date of dispatch of the summary, the administrative burden for tenderers participating in the procedural act could be significantly reduced if

access to the file, if requested by the tenderer, were to be provided by the contracting authority electronically.

Proceedings of the Public Procurement Jury

The proceedings of the ACPC may be initiated by request or ex officio. The law specifies the persons entitled to submit a request or initiative. If, in the course of its proceedings, the Public Procurement Arbitration Committee becomes aware of infringements other than those examined on the basis of the request or initiative before taking a decision on the merits [Section 165], it may also act ex officio in respect of them. The procedure may be extended if the infringement found is detrimental to the fairness or publicity of the competition, to equal opportunities for tenderers or has had a substantial impact on the decision of the contracting authority. The decision to extend the procedure is taken by the deliberating panel.

The decisions of the ACPC are based on the evidence provided by the parties. The Procurement Jury shall ensure that the applicant, the initiator, and the opposing party are informed of any new facts, requests or statements raised during the procedure and are able to express their views on them. The jury shall, in accordance with the legal provisions in force, decide on a public procurement case without holding a hearing, except where a hearing is strictly necessary, in particular for the exercise of the rights of the parties, for clarification of the facts and a professional decision taking into account all the relevant circumstances of the case. Under the rules on electronic communication, the Arbitration Committee may, where it holds a hearing, also hold it by electronic communications network. According to feedback from legal practitioners, the ACPC rarely holds hearings (which may increase the business risk associated with high administrative service fees; see details under sub-indicator 13(b)) and, when it does, it usually does so via electronic applications; several objections to the above were raised in interviews and questionnaire responses. As the negotiations are public under the provisions of the Public Procurement Regulation, the JPC provides information on the negotiations on the website of the Public Procurement Authority, but the number of negotiations published there is particularly low.[35] Given that the appeal cases before the ACPC are generally quite complex, customers would request that the hearing be held, and many would request that it not be held electronically. It would be advisable to increase the number of hearings and to provide for the possibility of a hearing in person, as requested by the applicant/initiator.

In both cases, the legislation in force sets out both objective and subjective time limits for legal remedies and the related presumptions. The duration of the time limits for appeals in the case of procedures initiated on request has been differentiated according to the stages of the procedure in order to ensure that the

[35] https://dontobizottsag.kozbeszerzes.hu/targyalasi-naptar/

appeal procedures do not unduly hinder the conduct of the public procurement procedure, taking into account the length of the moratorium on the award of contracts.

If an appeal is lodged in respect of the procurement procedure, the contract (for the sub-tender concerned, if applicable) may not be concluded until the decision on the merits or the decision closing the procurement case has been taken, unless the Public Procurement Jury—or the court in an administrative action against the decision of the Public Procurement Jury—authorises the conclusion of the contract.

A breach of the moratorium on the conclusion of a contract, where it also entailed depriving the tenderer of the possibility of a pre-contractual remedy and also infringed the rules on public procurement in such a way as to affect the tenderer's chances of winning the contract, results in the nullity of the public contract. It is presumably also due to this provision that there are no breaches of the moratorium on the award of contracts.

The ACPC makes enforceable decisions that are binding on the parties and are final unless challenged in an administrative court case. In its decisions, the JPC may apply different legal consequences as a result of the appeal procedure. In the event of a finding of infringement, the Arbitration Committee may, even before the end of the procurement procedure, call upon the infringer to take action in accordance with the Public Procurement Code or make the contracting authority's decision conditional. The Public Procurement Arbitration Committee may annul the decision of the contracting authority taken during the procurement procedure or close it if the contract has not yet been concluded on the basis of this decision and may order the removal of the tenderer from the official list of qualified tenderers or impose a fine. In the case of certain infringements, the Public Procurement Arbitration Committee is obliged to impose a fine on the infringing entity or person and to stop the infringements defined in Subsection (1) of Section 137 of the Public Procurement Act, to declare the contract null and void or, if the conditions of Subsection (3) of Section 137 of the Public Procurement Act are met, to declare that the contract concerned is not null and void. In the case of a contract that is null and void due to an infringement as defined in Subsection (1) of Section 137 of the Public Procurement Act, the Public Procurement Arbitration Committee shall determine whether the original situation can be restored by applying the legal consequences of invalidity. In certain cases, the maximum level of fines is also set in the Kbt. In connection with the above, it is recommended to examine the reasons for not setting minimum levels of fines for the most serious infringements. Considering the feedback received from the participants in public procurement procedures, it may be suggested to prepare a leaflet setting out the principles of the JPC on fining and to analyse in more detail the practice of fining. Adequate, consistent, and rigorous

enforcement of accountability and sanctions in the event of material breaches of the law affecting the public procurement process is warranted.

A significant advantage of remedies with short time limits for the Public Procurement Arbitration Committee, while maintaining the standstill period, is that a significant part of the infringements found can be remedied by annulling the contracting authority's decisions.

Sub-indicator 13(b): Independence and capacity of the appeals body

This sub-guide examines the redress procedure and the conditions for a fair and equitable procedure in relation to it.

Public procurement commissioners

The Act CVII of 2019 on Bodies with a Special Legal Status and the Legal Standing of their Employees shall apply to the civil service status of public procurement commissioners with the derogations provided for in the Public Procurement Act. In addition to the CPC, the CPC sets out further conflict of interest requirements for arbitration commissioners acting in appeal cases. Furthermore, except for scientific, teaching, artistic, proofreading, editorial, and intellectual activities protected by law and employment as a foster parent, the arbitrators may not accept any other assignment, engage in any other gainful occupation, be members of a company with an obligation to make a personal contribution, be executive officers or members of the supervisory board. Under the Public Procurement Act, an arbitrator must have a university degree and at least three years' professional experience and must have a degree in public administration or law, or a specialised degree in public administration, or a specialised degree in government studies. Arbitrators may not participate in any capacity in public procurement procedures and related processes.

The Public Procurement Code stipulates that public procurement arbitrators are independent in their decision-making, act in accordance with their convictions under the law, and cannot be influenced or instructed in the decisions they take.

Fees for redress procedures

In the case of appeal procedures initiated upon request, the applicant must pay the administrative service fee set out in Decree 45/2015 (XI. 2.) MvM of the Minister of the Prime Minister's Office on the administrative service fee payable for the procedure of the Public Procurement Arbitration Committee in order to initiate the procedure. According to the MvM Decree, the administrative service fee is based on 0.5 % of the estimated value of the procurement in the case of public procurement procedures, concession procurement procedures and design competition procedures with a value equal to or exceeding the EU thresholds, or 0.5 % of the

value of the part subject to appeal in the case of partial tenders, but not less than HUF 200,000 but not more than HUF 25,000,000 HUF; in the case of public procurement procedures below the EU threshold, concession procurement procedures, and design competition procedures, 0,5 % of the estimated value of the procurement or, in the case of partial tenders, of the value of the part subject to appeal but not less than HUF 200,000 HUF and not more than HUF 6,000,000. The administrative service fee shall be increased progressively according to the number of elements of the request contested by the appeal, up to twice the basic fee.

The level of the management service fee is overwhelmingly considered high by participants in public procurement procedures, as indicated by the results of the Performance Measurement Framework for the Evaluation of the Efficiency and Cost-effectiveness of Public Procurement 2019–2022, published by the Deputy State Secretariat for Public Procurement Oversight of the Prime Minister's Office. "Based on the results of the questionnaire survey carried out, several factors act as a disincentive to seek redress, of which the combined effect of the uncertainty of the outcome of the redress and the level of the redress fee may be significant. Together, these two factors represent a significant business risk for the decision of the contracting side (the administrative service fee is not refunded to the applicant in case of an application found unfounded by the ACPC)." The uncertainty is further increased by the case law on the concept of "element of challenge" and the fact that, even if the JTPF accepts one of the applicant's elements of challenge (even the most significant one), if it rejects the other element(s) of challenge, the applicant will still lose the share of the appeal fee corresponding to the element(s) of challenge, which also represents a significant business risk. Furthermore, the principle of proportionality may be infringed if the contracting authority that committed the infringement is obliged to pay a lower fine than the one the applicant would have to bear as a result of the partial rejection of the appeal, if the penalty is applied by the Jury.

Taking into account the significant decrease in the number of appeals on request and the fact that in recent years the number of appeals on request has always remained below the number of (free of charge) ex officio initiatives, it seems justified to reform the system of administrative fees. It should be pointed out that the main initiators of ex-officio procedures are the President of the Public Procurement Authority and the control bodies involved in the use of EU funds. Since most of the ex officio procedures initiated by the President of the Public Procurement Authority concern the control and modification of public contracts, and the appeals initiated by the control bodies typically concern procedures which have already been concluded with the conclusion of a contract, ex officio initiatives are not a suitable substitute for appeals on request with the possibility of reparation.

It should be recalled that, although the previous significant increase in fees was due to the high number of unjustified and unfounded appeals, the situation is now the opposite of what it was. It is proposed to examine what changes could help to increase the confidence of bidders in public procurement and thereby increase competition in the public procurement market and reduce one-off procedures. It may be appropriate to introduce a differentiated regime whereby no or only a minimum fee is charged for challenging public procurement documents before the deadline for submission of tenders/participation. Furthermore, taking into account that the level of the tasks to be carried out by the ACPC is not a function of the estimated value of the procurement, it may be appropriate to set the administrative/service fee independently (which could also help SMEs interested in large framework agreement procedures to exercise their right of appeal). There have also been suggestions that it may be worthwhile to examine solutions in other areas of law in the context of the restructuring of the fee structure (note that international experience suggests that an increase in the administrative service fee alone is not in itself a suitable means of reducing abusive remedies; other options should be explored).

A more in-depth review of the jurisprudence on the lack of customer empowerment may be warranted in examining the reasons for the decline in the number of appeals, based on feedback from the public procurement market.

Representation in the redress procedure

There have also been indications that the mandatory representation of a responsible accredited public procurement consultant, chamber of commerce counsel or lawyer in the appeal procedure before the Public Procurement Arbitration Committee may make the appeal procedure more difficult and costly. Given the training and expertise of the Public Procurement Commissioners, it may be advisable to consider abolishing the mandatory representation.

Both the legal requirements and the feedback from the interviews suggest that the procedural rules on appeals are clearly defined and publicly available.

As already explained under sub-indicator 13(a), if an appeal is lodged in respect of a procurement procedure, the contract may not be concluded (for the sub-tender concerned, if applicable) until a decision on the merits or a decision closing the procurement case has been taken, unless the Public Procurement Jury—or the court in an administrative appeal against the decision of the Public Procurement Jury—authorises the conclusion of the contract. In addition, the ACPC may, as an interim measure, order the suspension of the procurement procedure or require the contracting authority to include the applicant in the procedure.

Deadline for the redress procedure

The Public Procurement Arbitration Committee—except for the case specified in Subsection (2) of Section 164 of the Public Procurement Act—is obliged to complete the remedy procedure within fifteen days from the beginning of the time limit for the submission of the case, if no hearing has been held in the case. Two exceptions to this are provided for in the Kbt:

- if the Public Procurement Arbitration Committee has held a hearing in the case, it must complete the procedure within twenty-five days from the beginning of the time limit for the submission of the case, except for the case specified in Subsection (3) of Section 164 of the Public Procurement Act;
- pursuant to Subsection (3) of Section 164 of the Public Procurement Act, in the case of an amendment or performance of a contract concluded on the basis of a public procurement procedure that is in breach of the Public Procurement Act, in the case of a decision to dispense with the public procurement procedure, and in cases where the proceedings of the Public Procurement Arbitration Committee are initiated ex officio and the contract has already been concluded in the public procurement procedure subject to the appeal, it shall complete the proceedings within sixty days of the initiation of the proceedings.

The time limit may be extended once by ten days, of which the parties must be notified.

The average duration of the redress procedure over the last four years is 28 days:

	2019	2020	2021	2022
Average duration of redress procedures (days)	27	27	30	29

Based on the above data, it can be concluded that the time taken by the procedures of the Public Procurement Arbitration Committee meets the requirements of effective and quick redress.

Award of the Public Procurement Jury

In order to ensure the impartial and independent functioning of the ACPC, the Chairman, the Vice-Chairman and the Public Procurement Commissioners are appointed and dismissed by the Public Procurement Council, which also decides on any conflict-of-interest cases involving the Public Procurement Commissioners. It is also the Seventeen-member Council (whose members represent the principles of the TPA, the public interest objectives, the contracting authorities and tenderers, their interests, and the representatives of the main control bodies) that determines the composition of the Public Procurement Committee. It appears to have adequate resources and staff to carry out its tasks.

The interviews and surveys showed that, except for respondents with no experience in this area, more respondents were positive about the independence and impartiality of the ACPC than expressed doubts. At the same time, as with the Hungarian public procurement system as a whole, there is a perceived need to strengthen confidence in the functioning of the institutional system and the legal remedies. It is important to underline that no objections or comments were raised regarding the arbitrators' professional knowledge and preparation. This expertise is an essential guarantee for the functioning of the public procurement system.

Sub-indicator 13(c): Decisions of the appeal body

This sub-indicator assesses how independent the appeal body is from the rest of the system to ensure that its decisions are free from interference or conflict of interest.

Administrative litigation in the field of public procurement

The decision of the Public Procurement Jury on the merits may be challenged in administrative proceedings, which may also be brought by those entitled to initiate proceedings ex officio. The grounds for initiating an administrative action may be not only the violation of the law by the Public Procurement Jury but also the circumstance if the applicant claims that the Public Procurement Jury did not properly assess and qualify the defendant's previous procedure and decision concerning the rules of the Public Procurement Act. The public procurement administrative lawsuits fall under the jurisdiction of the Budapest-Capital Regional Court. If the court exercises its right of alteration in a public procurement case, an appeal may be lodged against the judgment of the Budapest-Capital Regional Court, which is adjudicated by the Curia.

	2019	2020	2021	2022
Number of cases challenged by action	69	83	78	58
Proportion of cases appealed compared to appeals	12%	14,5%	14%	10,8%

Outcome of judicial review[36]	2021		2022	
	On request	From the office	On request	From the office
Rejection of an application	13	29	7	5
Spray cancellation	-	6	-	-
Repeal + new decision	7	13	6	3
Destruction	-	-	-	-
Change	1	2	-	-
Refusal	1	1	1	-
Judicial review pending	3	2	22	14

The proportion of administrative appeals against the decisions of the ACPC is between 11 % and 14 % of the total number of appeals (rounded), which is not a high proportion, but it would be worthwhile to examine the proportions of substantive and non-substantive decisions. A significant proportion of judicial reviews lead to dismissal or discontinuance of the action, according to currently available data for 2021 and 2022, with a decreasing trend. Where the court does not dismiss the action, the court prefers to use the remedy of setting aside and ordering a new trial rather than reversal.

The courts' judgments are based on information relevant to the case.

The interviews and surveys suggest that—except for respondents with no experience in this area—respondents also tended to have a positive view of the impartiality and independence of the courts.

Access to the decisions of the Public Procurement Jury

Both the substantive and the non-substantive decisions of the Public Procurement Arbitration Committee are available in full and in due time on the Public Procurement Authority's portal. The decisions are also published together with the fact that the decision has been challenged by means of an appeal. As soon as the case is closed, the Public Procurement Jury will publish the final court judgement. Procurement actors are satisfied with the availability of the decisions, but interviewees raised the possibility of creating a separate database for the judgments, and the need to include judgments of the courts that are subject to appeal by the ACPC, which would help to review the decisions of the ACPC.

As regards the possibility to search the decisions of the ACPC: there have been several objections to this, and it would be appropriate to improve the application in

[36] Source: data provided by the ACPC.

order to be able to reliably search for certain characteristics of decisions (subject matter, legal provisions infringed, etc.).

A search interface could facilitate the traceability of the decisions of the ACPC, since, as several replies pointed out, the parties in appeal proceedings often refer to relevant ACPC or court decisions (and the ACPC itself often refers to case law of the Supreme Court in its decisions).

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

Intercollegiate resolution

Section 168 of the Public Procurement Act provides for the institution of a collective resolution to ensure the unity of the decision-making of the ACPC. Pursuant to Section 168 of the Public Procurement Procedure Act, in the event of an agreement between the Council and the college or the college as a whole, the ACPC shall publish information on the new or amended position of the college as a whole on the website of the Public Procurement Authority. There has been a demand from the legal practitioners to be informed of these College opinions and to increase their number. It is worth mentioning that in the recent period, the website of the Public Procurement Authority has published several times the main findings of judgments of principle. It would be advisable to make the judgments referred to directly accessible from these news items.

MAPS Indicator 14. Ethics and anti-corruption measures

Summary of the indicator

This indicator assesses i) the nature and scope of anti-corruption measures in the public procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system fosters openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

Findings

Anti-corruption measures are generally of a high standard: legislation includes definitions of illegal practices and appropriate sanctions. The effectiveness of the prosecution of corruption cases is above average and the situation concerning corruption offences is not significantly different from the European average, but public perception of corruption is still significantly different from the picture painted by the statistics.

This is partly due to a broader definition of corruption by the media and the public than the legal definition, but also to the low willingness to report corruption offences. In the case of the public procurement system under review, the latter is due to a lack of knowledge, mistrust of the system and the institutions involved, and fear of possible retaliation. This is also linked to the finding that the range of civil servants and professionals working in the field of public procurement who receive regular or mandatory training in ethics, integrity, fraud prevention and anti-corruption is currently not sufficiently wide and that there is a need to review and expand the training system. The transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report violations of EU law into national law, which is currently in the process of being transposed, will provide a good opportunity to encourage whistleblowing in the future, as it will allow the current legislation to be brought into line with the provisions of the Directive, which provide stronger protection for whistleblowers.

The main weakness in the public procurement system in terms of anti-corruption measures is the low effectiveness of the implementation of the existing legal framework, mainly due to the characteristics of the control system, as summarised in indicator 12. Although there are several anti-corruption procedures in the system, they are not systematically applied in a coherent, risk-based and coordinated system. In addition, the public procurement framework does not regulate certain aspects of integrity: for example, there is no obligation to include rules on fraud, corruption and other prohibited practices in public contracts, and there is ineffective control on the contracting authority side on the grounds of exclusion.

Government Decree 50/2013 (II. 25.) on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists and Government Decree 339/2019 (XII. 23.) on the internal control system of publicly owned companies represent an important step forward in the establishment of integrity-based operations in general and in the field of public procurement. However, there are shortcomings in the application of both, with compliance still operating on a checklist basis. It is also an important shortcoming for the effectiveness of the system that currently only contracting authorities are required to operate integrity systems.

Summary of the main shortcomings and recommendations for Indicator 14

Essential gaps	Risk classification	Recommendations
The control of the asset declaration system is ineffective and sanctions for non-compliance are not sufficiently dissuasive, effective, and proportionate.	High	Extend the scope of asset-gathering investigations to suspected corruption offences. Strengthen legal sanctions (including criminal sanctions) for breaches of the obligation to declare assets, ensuring that possible breaches are investigated and, where appropriate, sanctioned.
There is a lack of an integrity training system for public procurement professionals.	Medium	Expanding the range of regular mandatory training on integrity issues for public procurement professionals, to complement wider ethics and integrity training.
On the contracting authorities' side, there is often a lack of training in identifying grounds for exclusion. There is a lack of systematic, in-depth monitoring and prevention of conflicts of interest, and the public procurement control system does not include an examination of this activity.	Medium	It is appropriate to link the verification of declarations of conflict of interest to a system of checks and to lay down the relevant provisions in the contracting authorities' procurement rules. Provision for mandatory verification of the network of business relations, affiliated companies and other interests of the owners and managers of the economic operator submitting the bid. Developing effective guidelines and tools, and a more effective and widely mandatory training and refresher programme for public procurement professionals working on the contracting side.
Integrity systems are only required on the contracting authority side.	Medium	A mandatory requirement for both contracting authorities and tenderers to operate integrity

The control system needs to be strengthened in terms of internal and external monitoring of the application of the Intr. and the Gtbkr., and the institutions of integrity advisors and compliance advisors are not sufficiently strong.		systems in order to participate in public procurement. Developing a risk-based and deeper audit methodology—not only focusing on formal compliance—for the application of the Intr. and the Gtbkr. Develop training materials and guidance for key stakeholders on the development of integrity tools tailored to their organisation. Continuous training of internal auditors, regular sharing of experience from the competitive sector with public sector internal auditors in the framework of training and professional organisations (BEMSZ). More in-depth external audit (SAI) and more effective feedback.
There is no obligation to include rules on fraud, corruption, and other prohibited practices in public contracts.	Medium	Mandatory inclusion in the tender documents of provisions on corruption, fraud, and other prohibited practices. Accordingly, the relevant legislation and guidelines applicable to contracting authorities and economic operators submitting tenders should be amended.

Sub-indicator 14(a): Prohibited practices, conflicts of interest, and associated responsibilities, accountabilities, and penalties

The sub-Indicator examines whether there are legal provisions that define fraudulent, corrupt, and other prohibited practices and specify the responsibilities and penalties for government employees, individuals or companies that engage in such practices.

Prohibited practices in public procurement, grounds for exclusion

Transparent public management and transparency in the management of public funds and national assets, as well as a prevention-based approach to public life in general, are the principles of good governance and good public administration enshrined in the Fundamental Law of Hungary (25 April 2011). Fraud, corruption, money laundering, anti-competitive behaviour and other prohibited practices affecting public procurement are defined and prohibited in the relevant legislation.

In the field of public procurement, the rules on mandatory grounds for exclusion are set out in Section 62 of the Public Procurement Act, and the rules on optional grounds for exclusion are set out in Section 63 of the Public Procurement Act for tenderers, candidates, subcontractors, or entities involved in the attestation of

suitability. In the event of absolute grounds for exclusion as defined in Section 62 of the CBA, the economic operator concerned must be excluded from the procurement procedure irrespective of any other fact or may be required to provide evidence of its reliability. The grounds for exclusion are objective facts, many of which relate to the integrity of economic operators, such as fraud, corruption, money laundering or other criminal offences, undue influence on the decision-making process of the contracting authority, competition law infringements (e.g. cartels) or conflict of interest.

The provisions of paragraph a) of Subsection (1) of Section 62 of the Public Procurement Act concerning the grounds for exclusion relating to integrity refer to Title VII (Offences against the Integrity of Public Life) and Chapter XVIII (Offences against Property) of Act IV of 1978 on the Criminal Code (old Criminal Code, expired on 1 July 2013) and to the corruption offences defined in Act C of 2012 on the Criminal Code (Criminal Code). As a legal terminology, the Criminal Code (Btk.) regulates, under the chapter heading "Corruption Offenses" in Chapter XXVII, the specific legal concept of corruption offenses, which include bribery (Section 290 of the Criminal Code), acceptance of bribes (Section 291 of the Criminal Code), official bribery (Section 293 of the Criminal Code), acceptance of official bribes (Section 294 of the Criminal Code), bribery in judicial or administrative proceedings (Section 295 of the Criminal Code), and acceptance of bribes in judicial or administrative proceedings (Section 296 of the Criminal Code), buying influence (Section 298 of the Criminal Code), trading in influence (Section 299 of the Criminal Code), and failure to report a corruption offence (Section 300 of the Criminal Code). The Criminal Code distinguishes between corruption offences related to operation or influence, those related to an official, an economic entity, or an official procedure, active or passive corruption offences and corruption offences committed in Hungary and abroad.

Definitions of fraud, corruption, and other prohibited practices in the field of public procurement can be found in other normative acts but are sometimes general and not consistently aligned with existing legislation. For example, the definition of corruption in the Strategy against Fraud and Corruption for the implementation of the 2021–2027 programming period and the Recovery and Resilience Plan[37] is very general ("any abuse of power for private gain"), while the same document uses the definition of fraud under Directive (EU) 2017/1371 as fraud against the financial interests of the Union.[38] The medium-term National Anti-Corruption Strategy 2020-

[37] https://www.palyazat.gov.hu/csalas_es_korrupci_elleni_strategia

[38] According to Directive (EU) 2017/1371, fraud against the Union's financial interests includes:
In respect of expenditure, any intentional act or omission relating to:
- the use or presentation of false, incorrect, or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

2022,[39] which set out the orientations and framework for action to prevent and fight corruption in the period 2020–2022, similarly defines corruption broadly as "any social phenomenon whereby someone abuses the power entrusted to him". The National Anti-Corruption Strategy 2023–2027 had not yet been published at the time of preparing this risk assessment and was therefore not examined in this report.

Other main applicable legislation includes Government Decree 50/2013 (II. 25.) on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists, Act CLXV of 2013 on Complaints and Public Interest Disclosures (Complaints Act), Act CLII of 2007 on Certain Obligations to Make Statements of Assets, and Government Decree 339/2019 (XII. 23.) on the internal control system of publicly owned companies .

In the area under review, an important change was introduced by the Eufetv. establishing the Integrity Authority and the Anti-Corruption Task Force, which aims to increase the effectiveness of the control institutions in order to comply with the measures proposed under the procedure of Regulation (EU) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on the general conditions for the protection of the EU budget. The Eufetv. does not use a separate definition of corruption but uses the term "corruption" or "corruption-related offences". The Authority's tasks are more broadly defined by the list of "fraud, conflict of interest, corruption and other offences or irregularities". Subsection (1) of Section 50 of the Anti-Corruption Task Force, which specifies the tasks of the Task Force, refers to corrupt practices within the meaning of Article 4(2) of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating fraud affecting the financial interests of the Union by criminal law, the offences under Chapter III of the United Nations Convention against Corruption and the offences under the Criminal Code. Chapter XXVII of the Criminal Code.

Changes to the conflict-of-interest rules in the public procurement act

- withholding information and thereby breaching a specific obligation, with the same consequences as before,
- the misappropriation of such funds for purposes other than those originally stated and on which the decision was based;

In respect of income, any intentional act or omission relating to:

- the use or presentation of false, incorrect, or incomplete statements or documents which has as its effect the misappropriation of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
- withholding information and thereby breaching a specific obligation, with the same consequences as before,
- misappropriation of legally obtained benefits, with the same consequences as above.

[39] Medium-term National Anti-Corruption Strategy 2020–2022. Available at: https://korrupciomegelozes.kormany.hu/download/f/ff/92000/STRAT%C3%89GIA%20k%C3%B6zz%C3%A9tett.pdf

Section 81 of the Eufetv. has redefined the conflict-of-interest rules of the Public Procurement Act—discussed in more detail under sub-indicator 14(b)—in order to bring them more in line with the law of the European Union. The amendment to the Tender Procedures Act clarified that the contracting authority has a general obligation to prevent, detect and, if a conflict of interest arises, to remedy it. In addition to the above, the obligations of the contracting authority and the general rule of conflict of interest, as well as the cases of presumed conflict of interest, which typically involve a risk of prejudice to the impartiality of the persons concerned, have been laid down. To this end, persons acting on behalf of the contracting authority and involved by the contracting authority in activities related to the procedure or its preparation are required to declare a conflict of interest in relation to all procurement processes in which they are involved. Where there is a risk of a conflict of interest, the contracting authority is under an obligation to verify the existence of a conflict of interest. The new rules maintain the rules introduced in 2015 on the exclusion of public dignitaries and set out the general consequences of a conflict of interest, as well as the consequences in the event of the involvement of an economic operator in the preparation of the procedure. A separate Guide to the Public Procurement Authority analysing the new conflict of interest rules is being drafted at the time of writing. In addition to the provisions of the Civil Procedure Code, further detailed rules on conflict of interest can be found in several pieces of legislation and government decrees that also affect public procurement. For example, the creation, content, and termination of the legal relationship of public service officials is regulated by Act CXCIX of 2011 on the Public Service Officials (Act on the Public Service Officials), which also contains provisions on professional ethics and conflict of interest and, by way of reference, provisions limiting the revolving door phenomenon between the public and private sectors concerning public service officials.

Based on the interviews with stakeholders, a major obstacle to the implementation of the anti-fraud and corruption strategy in public procurement is the lack of systematic preventive action in practice on the contracting authority side and the absence of an audit of the existence and effectiveness of such action as part of the public procurement control system. The application of the provisions on conflicts of interest and breaches of fair competition is made more difficult by the fact that the affiliates of the economic operator making the offer and other interests of the owners and managers are not checked with sufficient effectiveness. For example, according to Government Decree 321/2015 (X. 30.) on the way of certifying suitability and the non-existence of the grounds for exclusion as well as the definition of public procurement technical specifications in contract award procedures, contracting authorities are obliged to check the data of the business register, which can be requested electronically free of charge from the service for company information and electronic company procedures (company information service), but there is

no requirement to check the company network in addition to the data of the business register. The application is also hampered by the fact that there is often a lack of professional capacity and a lack of additional, sufficiently effective guidance and tools (e.g. a database of effective owners) available to contracting authorities. Finally, the operation of harmonised compliance systems by both contracting authorities and tenderers is a mandatory requirement for participation in public procurement, which is essential for the implementation of the anti-fraud and corruption strategy.

Sub-indicator 14(b): Provisions on prohibited practices in public procurement documents

> *The sub-indicator assesses the extent to which the law and regulations oblige contracting authorities to refer to fraud, corruption and other prohibited practices, conflicts of interest and unethical behaviour in the tender and contract documents, as defined by law. The instructions may include a requirement that tenderers issue a self-declaration to ensure that the tenderer has not engaged in prohibited practices and has not been prosecuted or convicted of fraud, corruption, or other prohibited practices.*

Proper regulation of conflicts of interest is essential for good governance in the broader sense and for fair competition in public procurement. Under the harmonisation obligation arising from Hungary's membership of the EU, public procurement legislation must be harmonised with Community law and public procurement rules, and domestic legislation must be interpreted by law enforcers in line with EU rules. The EU conflict of interest rules directly applicable to public procurement in the Member States implementing the EU budget are set out in Article 61 of the EU's Financial Regulation, which entered into force on 2 August 2018.[40] In addition, domestic rules must also comply with the World Trade Organization's Agreement on Government Procurement (GPA).[41]

We have already described the legislative changes relating to conflicts of interest in sub-indicator 14 (a). Concerning the application of the amended rules, it is worth highlighting that, as indicated in the Ministerial Explanatory Memorandum to the amendment, the Communication of the European Commission 2021/C 121/01 "Guidance on the prevention and management of conflicts of interest under the

[40] 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, 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, Euratom) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046

[41] WTO, Agreement on Government Procurement. Available at: https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

Financial Regulation" in the context of the use of EU funds (Commission Communication 2021 on the interpretation of conflict of interest) points out that the use of conflict of interest declarations is effective if accompanied by controls to identify false declarations.

Such checks may be carried out, in particular, by cross-checking with other sources of information, such as publicly available data in the business register, 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 veracity of the declarations is to be checked."

In our view, meeting EU requirements on the prevention, detection, and management of conflicts of interest requires the enforcement of the foregoing and therefore requires contracting authorities to set out in procurement rules the requirements for the control of conflicts of interest.

Taking also into account that, given the complexity of the conflict-of-interest regime, appropriate information and training of stakeholders are necessary to enable them to identify conflict-of-interest situations, make appropriate declarations, and identify and manage the indicated conflict of interest risks on the contracting authority side.

Concerning the persons affected by conflicts of interest, it is also recommended that the legislator adopt a more uniform approach, i.e. to use the term "relatives" instead of "relatives living in the same household" for the persons listed in Subsection (6) of Section 25 of the Public Procurement Act, as otherwise used in Section 25 of the Public Procurement Act.

There are no clear and comprehensive definitions of prohibited practices in public procurement. The content of public procurement documents is not defined in the Kbt. and thus, does not impose the obligation to include statements on fraud, corruption, and other prohibited practices in public contracts. Such declarations do not form part of the model declarations available in the Public Procurement Documents at www.palyazat.gov.[42] Despite the absence of specific requirements in the legislation, procurement documents sometimes already contain provisions on prohibited practices. Likewise, anti-corruption clauses are not a mandatory part of the documentation, and their mandatory use is recommended.

[42] Available at: https://www.palyazat.gov.hu/download.php?objectId=64507

Sub-indicator 14(c): Effective sanctions and enforcement systems

The sub-indicator refers to the application of the legislation and how it is supported in practice.

Reporting corruption offences

As a general rule, the contracting authority and the contracting entity are obliged to report without delay to the competent authorities any case of corruption or attempted corruption committed by the tenderer or a representative of the contracting authority. A similar requirement is contained in secondary legislation. However, it is not entirely clear how this requirement is to be fulfilled in practice. In addition, the general rules on reporting unlawful practices, corruption offences, and other abuses apply. These are also provided for in the Criminal Code, Act XC of 2017 on the Code of Criminal Procedure (Be.), Act CLXV of 2013 on Complaints and Public Interest Disclosures, and other normative acts, such as Act CLXIII of 2011 on the Prosecution Service of Hungary, Act XXXIV of 1994 on the Police, and Eufetv. The data of the Uniform Statistics on Investigative and Prosecutorial Offences (ENyÜBS) are publicly available on the website of the Prosecutor General's Office, currently up to the year 2021, broken down by year and grouped by chapters and facts of the Criminal Code. The ENyÜBS does not contain information on how many corruption offences related to public procurement have been registered, so we cannot make a statement on this. Based on the available data, the number of registered corruption offences shows a high fluctuation in consecutive years (2019: 460, 2020: 2049, 2021: 6219, 2022: 1003), mainly due to the evolution of the number of bribery offences (2019: 242, 2020: 1978, 2021: 5976, 2022: 650). In contrast, the number of initiated prosecutions has remained relatively stable over the same period (2019: 275, 2020: 271, 2021: 358, 2022: 374). Within corruption offences, the trend of influence peddling has increased over the last three years, which will continue to rise without effective and comprehensive control and sanctioning and will worsen the public perception of corruption.

According to the Prosecutor General's Office, the high number in 2021 is due to the fact that the investigating prosecutors' offices investigate crimes detected in masses in the places of service with a high risk of corruption in one or two procedures, and their completion results in a surge in the number of registered crimes. In 2021, the highest number of offences in one case was 4,354 (accepting bribes) and the second highest was 718 (which included 357 accepting bribes and 341 accepting bribes). The Prosecutor General's Office highlighted that the efficiency of the prosecution in corruption cases is above average, as the rejection rate of denunciations is more favourable than the average rejection rate of denunciations, and the rate of prosecution terminations and cases completed with indictments in the criminal proceedings of corruption cases is significantly more favourable than for the overall range of offences. This statistic does indeed give a

positive picture of the efficiency of the prosecuting authorities, but it is tempered by the fact that the investigation of corruption cases may be carried out by secret information gathering, which is the most effective means of detection. Consequently, a simple comparison of statistics on the rejection rate, the number of cases closed, and the number of cases closed with indictments in corruption and non-corruption cases does not give a credible picture of the actual effectiveness. However, the above, together with sub-indicators 14(a) and 14(b), suggest that the situation in Hungary does not differ significantly from the European average in terms of the number of corruption offences detected. It is important to note, however, that the perception of corruption is not in line with this, inter alia because of the limitations of the usability of the statistics as explained above and presumably because the public also interprets other economic crimes as corruption. Perceptions of corruption and public perceptions of fairness, in general, are also negatively affected by the above-mentioned steady increase in influence peddling offences. In general, there is a low willingness to report corruption offences, which is due to several factors. As highlighted by our respondents, a significant problem is the failure to report cases of corruption and corrupt practices in public procurement, due to a lack of sufficient knowledge to identify them, a lack of trust in the prosecuting authorities and the judiciary in general, and the potential negative consequences for the reporting person or economic operator. It can be concluded from the above that, particularly on the contracting authorities' side, public procurement staff are often not sufficiently prepared to identify potential grounds for exclusion and that a more effective and widespread mandatory training and education programme is needed to facilitate this. In addition, measures to increase the willingness to report, in particular by further strengthening whistleblower protection and further steps to increase confidence in the system, would be necessary.

Surrogate accusation

The Act does not explicitly lay down special procedural rules for the detection and investigation of corruption offences. However, from the point of view of the sub-indicator, it is important to highlight the amendment to the Act on the Conditional Procedure, which entered into force on 15 November 2022, which allows anyone to bring a "supplementary private prosecution" against certain decisions of the police and the prosecutor's office refusing to report or terminating an investigation in the case of a corruption offence. This has put an end to the practice previously criticised by the European Commission of not allowing judicial review of proceedings terminated by the prosecution.

Pursuant to Section 27/A of the Eufetv., the Integrity Authority may initiate a review or a re-initiation of review in criminal proceedings initiated on or after 1 January 2023 if the proceedings are based on offences related to the exercise of public

authority or the management of public property as defined in the Criminal Procedure Act and the charges are dismissed or the proceedings are terminated. In such a case, if the court has determined that an indictment should be filed and orders an investigation or its continuation (Section 817/I of the Criminal Code), any natural or non-natural person other than the Integrity Authority may file an indictment.

In relation to the above, it is noted that individuals are not expected to have sufficient capacity to apply for redress. In the case of private prosecutions, stricter rules will apply as regards the merits—the court may reject the prosecution if it finds it unfounded. The applicability of the private remedy is weakened by the fact that the General Prosecutor's Office publishes anonymised extracts of the details of corruption cases it has closed on its website, so their identification requires more resources. It is therefore recommended to change the current practice to facilitate the identification of cases.

The "excessively short procedural time limit—30 days for a motion for reconsideration and a repeated motion for reconsideration and 60 days for the filing of a statement of charges" was criticised by the civil side as a circumstance that could prevent the use of legal remedies.

ENyÜBS

According to Subsection (1) of Section 1 of Decree 12/2018 (VI. 7.) BM of the Minister of Interior on the standard criminal statistics of investigation authorities and prosecutors, detailed rules for data collection and processing, the ENyÜBS collects statistical data on criminal proceedings, the acts underlying criminal proceedings, offenders and victims according to uniform principles, including the planning and implementation of data collection. The two substantively distinct sub-systems of data collection are the collection of data on initiated criminal proceedings and the collection of data on all observation units completed by the investigating authority and the prosecution service as defined in the course of criminal proceedings.

According to the public database based on ENyÜBS data available on the Criminal Statistics System website (bsr.bm.hu), in 2022, a total of 1,160 corruption offences were prosecuted, while the number of registered offences was 805. For the years 2018–2022, corruption offences were mostly reported to the investigating authority, to a lesser extent by the investigating authority ex officio or following a preparatory procedure. A significant number of private whistleblowers are unknown persons who do not wish to be named or persons who perceive an irregularity or suspected corruption in connection with an official act. The National Defence Service (NDS) is the dominant actor among the reports filed by institutions and partner bodies, and the control units of government agencies and municipalities also bring suspected corruption offences to the attention of the investigating authority in several cases.

Register of economic operators excluded from public procurement procedures

As mentioned for sub-indicator 14(a), paragraph c) of Subsection (3) of Section 5 refers to the competence of the Integrity Authority to keep a register of economic operators excluded from public procurement procedures in connection with certain criminal offences. The register must also record the duration of the grounds for exclusion, which may not exceed four years from the date on which the court's decision on the case becomes final. The Integrity Authority shall notify the economic operator of the opening of the registration procedure and at the same time invite it to submit its observations and self-cleaning measures to demonstrate its reliability within eight days of the notification. Contracting authorities shall exclude from the procedure any tenderer or candidate whose name appears on the list.

In addition to the possibility of exclusion, if a tenderer or candidate commits an act which seriously undermines the fairness of the procedure or the interests of other tenderers or candidates, the contracting authority may also declare the procedure ineffective [paragraph c) of Subsection (2) of Section 75 of the Public Procurement Act]; this possibility is used exceptionally by contracting authorities: in 2022, only 0.2 % of all ineffective procedures were based on this circumstance.[43]

Sub-indicator 14(d) - Anti-corruption framework and integrity training

The sub-indicator examines whether an anti-corruption framework is in place and, if so, what its content is, and whether there are other relevant measures, such as integrity training programmes, that can help specifically to prevent and/or detect fraud and corruption in public procurement.

International surveys on corruption

According to the European Commission's thematic Eurobarometer on corruption 2022, a very high proportion of respondents, 91 %, think corruption is widespread in the country (EU27 average 68 %), 61 % think corruption levels have increased in the last three years (EU27 average 41 %) and for almost all other indicators, respondents rated the corruption situation worse than the EU average. According to the 2022 Flash Eurobarometer survey on corruption among businesses, 75 % of respondents think that corruption is widespread in the country (EU27 average 63 %). Respondents identified nepotism (favouring friends and family) as the most widespread corrupt practice in business (Hungary: 41 %, EU27 average 48 %) and public institutions (Hungary: 31 %, EU27 average 46 %), while the level of prevalence was perceived to be below the EU average. Regarding the application of sanctions,

[43] "Results of the Performance Measurement Framework 2019-2022 to assess the efficiency and cost-effectiveness of public procurement", published by the Deputy State Secretariat for Public Procurement Oversight of the Prime Minister's Office. Annex 2

17 % of respondents believe that persons and companies involved in bribing high-ranking officials are adequately punished (EU27 average: 29 %) and 24 % believe that anti-corruption measures are applied impartially and without underlying motives (EU27 average: 38 %). However, in the area of corruption related to public procurement, respondents gave similar answers to the EU27 average.

According to the European Union Agency for Criminal Justice Cooperation (Eurojust) report on corruption cases registered with the agency in the period 2016–2021[44], Hungary is in the middle of the EU with a total of 34 registered corruption cases.

Developing a National Anti-Corruption Framework

In the field of government anti-corruption, a major organisational restructuring of the judicial system took place in the autumn 2014, resulting in the current structure. The Ministry of the Interior is responsible for coordinating the government's anti-corruption activities and overseeing the National Protection Service (NPS). The NPC is the state-owned, armed law enforcement agency[45] of the police with internal crime prevention and detection functions, whose priority tasks include reducing corruption. Within the organisation, the Corruption Prevention Department (CPD) is responsible for anti-corruption activities. Within this framework, the KMF carries out strategic planning, methodological support, analysis and evaluation, coordination, participates in the development of the integrity management system, prepares information and awareness-raising measures, and contributes to the fulfilment of obligations arising from international cooperation. It is also responsible for inter-governmental cooperation and evaluation of the anti-corruption strategy and action plans.

National Anti-Corruption Strategy

The majority of the tasks set out in the medium-term National Anti-Corruption Strategy 2020–2022 have been delegated to the Ministry of Interior, while the Ministry of Interior and the NCA are responsible for the overall coordination of the implementation of the strategy. In general, the scope of the anti-corruption strategy is limited to promoting the integrity of the public administration and does not include strategic policy coordination in important anti-corruption areas such as lobbying, the "revolving door phenomenon", the system of asset declarations, and campaign and party financing. No publicly available information on the implementation and milestones of the strategy, as well as details of related

[44] Eurojust Casework on Corruption: 2016-2021 Insights, May 2022, Available at: https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-casework-on-corruption-2016-2021-insights-report.pdf

[45] Government Decree 293/2010 (XII. 22.) on the designation of the body of the police performing internal crime prevention and detection tasks, and laying down detailed rules for the performance of its tasks, the impeccable conduct of life check and the reliability test

activities, was available at the time of preparing this risk assessment, which limits the scope for public monitoring and oversight.

The December 2021 amendment to the government decision adopting the Anti-Corruption Strategy[46] extended the deadlines for most of the relevant measures to the end of 2022 and the first half of 2023. According to the Government's response to the European Commission under the conditionality procedure, among other things, "the COVID-19 pandemic made it physically impossible to continue training, consultations or research and the implementation of the strategy was therefore extended until 30 June 2023". According to Hungary's Recovery and Resilience Plan, the main outstanding elements of the strategy are to be implemented by 31 March 2023 and the whole strategy by 30 June 2023.

Integrity management system of public administrations, internal control system

In February 2013, the Government introduced the Integrity Management System by Government Decree 50/2013 (II. 25.) on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists (Intr.). For the purposes of the Intr., integrity is "the operation of public administration bodies in compliance with relevant regulations and according to the objectives, values and principles defined by the head of the organization and by the management organ" (paragraph a) of Section (2) of Intr.), while the integrity management system related to integrity is "a functional subsystem of the management and governance system, which provides the unity of organisational culture with the harmonising of the activities of persons and groups participating in the implementation of the integrity based operation of the organisation, in line with the internal control environment defined by the Gov. Decree 370 of 2011 on the Internal Control System and Internal Auditing of Central Budgetary Organizations (Bkr.), by way of defining values, principles, goals and rules and guidance monitoring and—when needed—execution thereof which forms a part of the internal control system and aims at securing the integrity of the organization, with its principal elements including the definition of values to be followed, guidance for observing such values, and the monitoring—and, if required, the enforcement—of such values;" (paragraph b) of Section (2) of Intr.).

According to Section 3 of the Bkr., the head of the budgetary authority is responsible for the operation and development of the control environment, the integrated risk management system, the control activities, the information and communication system and the monitoring system within the internal control system. According to Section 4 of the Bkr., the internal control system shall include all principles, procedures and internal rules which ensure that all activities and objectives of the budgetary body are in accordance with the requirements of regularity, regularity,

[46] 1328/2020 (VI. 19.) Government Decision on the adoption of the Mid-Term National Anti-corruption Strategy for 2020–2022 and the accompanying action plan (as in force on 16.02.2023)

economy, efficiency, and effectiveness and that there is no waste, misuse or misappropriation of funds and resources. The internal control system is also responsible for ensuring that adequate, accurate and up-to-date information on the functioning of the budgetary authority is available and that the legislation on the harmonisation and alignment of the internal control system is implemented.

Section 5 of the Intr. provides for the appointment of an integrity adviser in public administration bodies. The integrity advisor is responsible for assisting in the assessment of integrity and corruption risks, the preparation of an action plan to address them and an integrity report on its implementation, receiving and investigating reports of misconduct, irregularities, and corruption risks in the operation of the organisation, and providing information and advice on ethical issues to the organisation's managers and staff. In addition, he/she may perform other duties and may be instructed by others in the performance of these other duties, but his/her duties as integrity adviser must not be compromised.

In the framework of the integrated risk management system under the Bkr., public administration bodies must annually assess the corruption risks related to the operation of the body and prepare an annual action plan to address the risks and establish a general procedure for receiving and investigating reports of abuse, irregularities and corruption risks related to the operation of the body.

To regulate the internal control system of publicly owned companies, Act CXXII of 2009 on the More Economical Operation of Publicly Owned Companies (Savings Act) was amended as of 1 January 2020 and supplemented with rules on the internal control system of publicly owned companies. Government Decree 339/2019 (XII. 23.) on the internal control system of publicly owned companies (Gtbkr.), which contains the detailed rules, also entered into force on 1 January 2020 as an implementing regulation of the Savings Act. Pursuant to Subsection (7) of Section 4 of the Gtbkr., the first manager of a public enterprise shall establish a system of internal control that is capable of ensuring the enforcement of ethical values and integrity in all areas of activity and of effectively preventing corruption and abuse. The application of the new standards will be mandatory from 1 January 2021, allowing time for adequate preparation in the light of the circumstances of the COVID-19 pandemic, which will start in March 2020.

The pandemic has made the application of the Savings Act and the Gtbkr. difficult. The relevant report of the SAO published in 2021[47] highlights that "in 2021, the majority of the companies concerned improved the basic conditions and the quality of the regulatory environment for integrity-conscious regulation" but only 35

[47] SAO: The integrity of majority state-owned enterprises - 148 enterprises, December 2021, Available at: www.aszhirportal.hu/storage/files/files/jelentes/2021/21089.pdf

of the 148 companies surveyed had already ensured the implementation of the 2021. In another similar report, also published in 2021[48], 17 of 208 majority state-owned companies audited have a low integrity risk because they have established the basic rules of appropriateness required by law and expected as part of an integrity environment in 2020. However, the latter report highlights that 79 % of the audited companies have taken measures to establish and improve the expected compliance rules required by law and as part of the integrity environment in 2021. During stakeholder interviews and in the questionnaire responses, many highlighted that there are still many gaps in the application of the Savings Act and the Gtbkr., compliance is typically only on paper, on a checklist basis, and the integrity advisory and compliance advisory institutions need to be further strengthened.

The current checklist-based approach to the application of the Intr. and the Gtbkr. must be abandoned and the practical application of the legislation must be brought to life. The application would be facilitated by a risk-based and deeper system of controls and sanctions, not only focusing on formal compliance. This should be addressed through the development of detailed guidance for key stakeholders, continuous training of internal auditors, regular sharing of experience with public sector internal auditors in the competitive sector through training and professional organisations (CIOs), more in-depth monitoring and effective feedback from the SAO, and consistent application of an appropriate system of sanctions.

Jurisdiction to investigate corruption offences

In the investigation of corruption offences, powers are separated according to the subject of the investigation. The police are competent to conduct investigations into private sector corruption and corruption-related economic crimes, while the investigation of official corruption offences in the public sector has been the exclusive competence of the Investigation Department of the Central Investigation Department of the General Prosecutor's Office since February 2019. Full cooperation and effective information flow between the prosecution, investigative authorities and investigative bodies is possible.

Corrective measures in the conditionality regulation

It has made a number of important regulatory changes and is expected to make further ones, in the form of so-called remedies, following consultation with the European Commission and the procedure under the Conditionalities Regulation, launched on 27 April 2022. These measures include the strengthening of the anti-

[48] SAO: The integrity of majority state-owned enterprises - 208 enterprises, December 2021, Available at: www.aszhirportal.hu/storage/files/files/jelentes/2021/21092.pdf

corruption framework, the development of an anti-fraud and anti-corruption strategy for EU funds and a new National Anti-Corruption Strategy and Action Plan.

As indicated for sub-indicator 14(a), the National Anti-Corruption Strategy and Action Plan 2023-2027 had not been published at the time of preparing this risk assessment and was not examined in this report. However, the new strategy is expected to be more ambitious and comprehensive than in the past and will include, inter alia, the development of ethical standards for senior officials (including a re-regulation of nepotism, revolving door, and lobbying) and a more effective asset declaration regime than currently in place. In the latter context, the Government has committed to establish by 31 March 2023 a new system for the electronic submission of asset declarations in digital format and a digital database of asset declarations that can be accessed and searched free of charge and without registration.

The Integrity Authority will be tasked with reviewing the regulatory framework and the functioning of the asset declaration regime, including its scope and verification processes, and will report by 31 December 2023.

Anti-corruption training and further training

The training structure of the development institutional system places a strong emphasis on fraud and corruption prevention and detection, irregularity management and integrity.

In addition to the regular training sessions, special training sessions are also organised on an ad hoc basis, with the participation of staff from the Prosecutor General's Office, the SAO and the Criminal Directorate General of the National Tax and Customs Administration, the Economic Competition Authority, the Public Procurement Authority, and the Directorate General for Audit of European Funds. A training programme on the protection of the financial interests of the European Union and fraud prevention has been developed in cooperation with the OLAF Coordination Office within the National Tax and Customs Administration Central Management, and the related training will be organised on the basis of the needs assessed among the institutions.

In order to identify, assess and manage the risks of breaches of professional ethics and professional rules, to raise awareness of fraud and to fight corruption, the training course "Integrity Basics" developed by the National University of Public Service is mandatory for government officials who have not previously completed a public service training programme on corruption prevention as part of the obligation to provide in-service training for government officials.

In 2021, the European Commission and OLAF launched a website called the EU Funds Anti-Fraud Knowledge and Resource Centre: https://ec.europa.eu/antifraud-knowledge-centre/index_hu. Its aim is to support the prevention and detection of

fraud involving EU funds by sharing relevant resources, best practices and supporting capacity building of experts.

It can be concluded from the above that, in general, the training and education system for the public sector, and within it for public procurement staff, includes ethics, integrity, fraud prevention and anti-corruption training. However, according to the available information and the interviewees' opinions, the range of participants in regular and mandatory training on these topics is still not sufficiently wide, and therefore there is a need to review and expand the training system and to make better use of the existing training capacities within the National University of Public Service. We, therefore, propose to remedy the above, in particular in the field of integrity, ethics and further training, the use of more effective face-to-face classroom training and the related training of a larger number of trainers in the framework of "train the trainer" programmes.

Sub-indicator 14(e) - Supporting stakeholders to strengthen integrity in public procurement

The sub-indicator assesses how strong the public and private sectors are in maintaining a sound public procurement environment. This can be reflected in the existence of recognised and credible civil society groups that focus on public procurement in their agendas and/or actively monitor and exercise social control.

In Hungary, there are relatively few professional and non-governmental organisations active in the field of public procurement. In general, the activities of these organisations in the field of public procurement include: carrying out analyses and studies; formulating proposals for policy development; participating in consultations related to the preparation of regulatory changes; assessing public perception of the transparency, efficiency and integrity of the public procurement system; training of actors involved in public procurement procedures (contracting authorities, economic operators, etc.); developing guidelines for the subjects involved in public procurement procedures; etc.

NGOs

NGOs dealing with public procurement, typically at the national level, include atlatszo.hu, the Budapest Institute for Policy Analysis, K-Monitor and Transparency International Hungary.

Based on the experience of interviews with NSAs and the analysis of media reports, it can be concluded that the cooperation between the government and NSAs dealing with public procurement is limited. According to the NGOs interviewed, the Hungarian government generally does not consider their professional opinions as

objective and is not open to their suggestions, while the general opinion of government representatives in the media is that NGOs overstep their role and formulate political opinions instead of professional proposals. Over the years, this self-perpetuating process has led to the virtual disappearance of trust-based, objective professional cooperation.

By the nature of their activities, NSAs have limited market support and orders. When developing their CSR strategies, companies typically seek to minimise risk and avoid divisive and sensitive social issues.

In the context of the ongoing conditionality procedure against Hungary, the European Commission is paying particular attention to broader social consultation and the involvement of civil society organisations in the field of public procurement. In line with the Commission's requests, there is a strong governmental effort to involve civil society organisations more widely, especially in the monitoring and other technical committees (e.g. transparency, fundamental rights) related to operational programmes.

The involvement of civil society organisations is still limited.

An important new forum for cooperation with NSAs is the Anti-Corruption Task Force, an independent body with analytical, proposal, opinion, and decision-making functions, established in December 2022. Section 49 of the Eufetv. provides that non-governmental actors active in the fight against corruption shall be involved in the activities of the Task Force, ensuring their full, organised, and effective participation. This was also achieved through the participation of representatives of the NGOs mentioned above. The Task Force provides an effective forum to further strengthen the professional dialogue.

Professional organisations

In Hungary, the only active professional organisation in the field of public procurement is KÖSZ, which has been operating as an association since 2004. The organisation is a member of the nine-member Professional Body of Accredited Public Procurement Consultants through its two experts and also delegates one member each to the Performance Measurement Working Group in the field of public procurement and the above-mentioned Anti-Corruption Working Group. The Professional Body of Accredited Public Procurement Consultants delegates a member to the Public Procurement Council, thus the ACPC is indirectly involved in the decision-making related to the public procurement system.

In addition, in 2019, KÖSZ signed a cooperation agreement with the Public Procurement Authority, under which it participates in the preparation and commenting on materials to assist the application of the law. According to the representatives of the ACPC, the Authority and the government are engaged in genuine professional cooperation: some of the suggestions and comments raised

during the professional consultations are taken into account in the legislative process.

Sub-indicator 14(f): Secure mechanisms for reporting prohibited practices or unethical behaviour

> *The sub-indicator assesses: i) whether the country's laws and institutional set-up provide a system for reporting corruption, other prohibited practices, or unethical conduct; and ii) whether such laws and systems ensure confidentiality and whistleblower protection. The system should be visibly responsive to whistleblowing, as evidenced by subsequent actions taken to address reported problems. Where a reporting system is established and data is generated on the number of investigations conducted and actions taken, this information should be taken into account.*

Commissioner for Fundamental Rights

The legal regulation of complaints and notifications of public interest has a long history in domestic law. Article XXV of the Fundamental Law of Hungary, in force since 1 January 2012, ensures that everyone has the right to submit, alone or in association with others, a written request, complaint or proposal to any body exercising public authority. The right to submit a request, complaint or proposal is therefore a fundamental, constitutional, and subjective right.

The current, uniform, comprehensive regulation of notifications of public interest and complaints was created by Act CLXV of 2013 on Complaints and Public Interest Disclosures (Complaints Act) with effect from 1 January 2014. In practice, the Complaints Act also requires taking into account a number of other sectoral laws, including Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information, Act LXXX of 2003 on Legal Aid and Act I of 2012 on the Labour Code.

According to the definition in the Complaints Act, a public interest report draws attention to a circumstance the remedying or elimination of which is in the interest of the community or society as a whole. A complaint, on the other hand, is a request for the redress of an individual right or interest and is not subject to any other procedure, in particular judicial or administrative. A declaration of public interest and a complaint may also contain a proposal.

According to the Complaints Act, the Commissioner for Fundamental Rights is responsible for the operation of the electronic system for filing and registering public interest reports. Pursuant to the provisions of Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner for Fundamental Rights provides information on his activities in the field of fundamental rights protection in

an annual report, including a separate section on his activities related to the investigation of public interest reports. According to the 2021 activity report,[49] 537 (316 in 2020) submissions were received in 2021 through the electronic system for the submission of public interest reports, 70% more than the average of the last five years. By legal definition, 306, i.e. almost 60 % of all submissions, were actually a public interest report. The report gives an illustrative thematic description of the typical cases of public interest notifications in 2021, without mentioning any notifications related to corruption offences or public procurement, which suggests that such notifications are not typical of the institution's practice.

Other public interest reporting systems

As regards abuses of the public procurement system, the Public Procurement Authority currently offers the possibility to make a public interest report by filling in a dedicated form on its website and submitting it through the Public Procurement Portal or by sending it to kozerdeku@kt.hu, but these possibilities are not anonymous. Anonymous reporting is only possible via the Public Procurement Anonymous Chat (PAC), which does not provide for any follow-up of the action taken on the reports, and the Public Procurement Authority does not provide feedback on the report or only in justified cases. Furthermore, a notification made via KAC does not oblige the Public Procurement Authority to carry out an inspection procedure or to initiate a review procedure before the Public Procurement Arbitration Committee.

Protection of whistleblowers

In addition to the above, it is worth highlighting that the Act does not specifically set out procedural rules for the detection and investigation of corruption offences, but rather formulates them in general terms, applicable to all criminal proceedings. The protection of whistle-blowers and witnesses is dealt with in Chapters XIV and XV of the Act. Pursuant to Subsection (1) of Section 98 of the Act, the court, the prosecution and the investigating authority shall ensure that protected data handled in criminal proceedings are not disclosed unnecessarily and that the protection of personal data is ensured. Further protection is provided by paragraph c) of Subsection (2a) of Section 98 of the Criminal Procedure Act, in force since 1 January 2021, which stipulates that, in order to protect whistleblowers under the Complaints Act, the file containing the whistleblower's report must be kept confidential until the whistleblower is questioned. At the request of the person concerned or his or her assistant, or for the protection of a person with special needs, the competent authorities may order ex officio the processing of personal data in camera.

WB Policy

[49] CONCLUSION ON THE OPPORTUNITY OF THE FUNDAMENTAL RIGHTS AND THE LOCATIONS IN WHICH THE FUNDING RIGHTS ARE ACTIVE 2021. Available at: https://www.ajbh.hu/eves-beszamolok

On 23 October 2019, the Council of the European Union and the European Parliament adopted the Directive on the protection of persons who report infringements of EU law [(EU) Directive 2019/1937, "the WB Directive"], on a proposal from the European Commission, which had to be transposed into national law by 17 December 2021. The Directive establishes a comprehensive legal framework and sets common minimum standards for the protection of whistleblowers and requires Member States to ensure internal and external channels for the confidential reporting of breaches of EU law and effective protection for whistleblowers. The scope of the WB Directive covers both public and private sector abuses in the following explicitly named areas of EU law: public procurement; financial services; product safety; transport safety; environmental protection; radiation protection and nuclear safety; food and feed safety and animal health and welfare; public health; consumer protection; privacy and personal data protection; and network and information security.

On 15 February 2023, the European Commission brought an action before the Court of Justice of the European Union against eight Member States, including Hungary, for failure to transpose the Directive. In the meantime, the Government, without consulting stakeholders in preparation for transposition, submitted to Parliament on 28 February 2023, without consulting stakeholders, Bill T/3089 on complaints, notifications of public interest and rules for reporting abuse.[50] The bill establishes more detailed procedural rules than the WB Directive, in particular in the field of data management, and extends the scope of the subject matter to activities and acts that endanger the Hungarian way of life. Overall, it enhances the protection of whistleblowers by extending the personal scope of the existing whistleblower protection framework compared to the existing Complaints Act. Due to the short time available, a detailed examination of the proposed law is not the subject of this risk assessment, which will be carried out in the framework of a future report of the Integrity Authority.

Sub-indicator 14(g) - Codes of conduct/ethics and disclosure rules

The sub-pointer examines the existence and application of codes of conduct and other measures to ensure the integrity of public procurement.

In accordance with the anti-corruption policy framework set out in the UN Convention against Corruption, the Hungarian legal system has an integrity approach that goes beyond the criminal law approach, as generally described in sub-indicator 14(d) in relation to the integrity of the public sector.

MKK Code of Ethics

[50] https://www.parlament.hu/irom42/03089/03089.pdf

The professional ethical standards applicable to civil servants are codified in the Civil Service Act (Kttv.), which provides for civil service consequences for violations, and in the Code of Ethics of the Hungarian Faculty of Government and State Officials (formerly: Code of Ethics of the Hungarian Faculty of Government and State Officials), which is binding on government officials.[51] The MKK, established by the Kttv. with effect from 1 July 2012, is a self-governing, professional, interest-representing public body of government officials, whose tasks include, among others, the drafting of detailed rules of professional ethics, the establishment of an ethical procedural system and the conduct of procedures. It operates on the basis of compulsory membership and carries out its tasks through its national and regional organisations with elected officers.

The Code of Professional Ethics of the MKK sets out the standards of conduct (e.g. non-prejudice, fairness, impartiality) and detailed rules (e.g. reporting misconduct, prohibition of accepting gifts) that can be derived from the basic ethical standards, but there are no direct legal consequences (ethical sanctions) for ethical violations arising from its rules.

Most central authorities have developed and approved their codes of conduct for civil servants by internal instructions. Such codes of conduct have also been approved by some local authorities. The public administrations that have developed and approved codes of conduct have largely taken over the provisions of the MCC Code of Ethics. According to the SAO's report published in April 2020, 65 % of the 4,002 public sector institutions surveyed had a code of ethics or code of conduct. 100 % of government organisations have a code of ethics, compared to 56 % of local authorities and 36 % of other administrative bodies. However, the 100 % result for government organisations is somewhat overshadowed by the fact that only nine such organisations took part in the survey.

Code of Ethics for Public Procurement

The Public Procurement Authority's Code of Ethics for Public Procurement,[52] in force as of 11 February 2022, regulates "situations that go beyond the legal provisions governing public procurement, looking beyond the legal provisions in line with the objectives and principles of the law", i.e. ethical conduct in general, transparent information flow and integral cooperation between participants in public

[51] The Code of Ethics for Hungarian Government Officials. Available at: https://mkk.org.hu/node/485 [In force as of 18 December 2020]

[52] Code of Ethics in Public Procurement. Available at: https://www.kozbeszerzes.hu/hatosag/kozbeszerzesi-hatosag/kozbeszerzesi-etikai-kodex/ [Effective as of 11 February 2022]

procurement procedures. The Code of Ethics for Public Procurement is a recommendation, that stakeholders may voluntarily subscribe to or develop their code of ethics for public procurement. Despite its permissive rules, so far only a small number of organisations and individuals have signed up for the initiative, with only 53 currently listed on the website.

Asset declarations

The publication of asset declarations by civil servants is in principle an important tool for preventing corruption and detecting illicit wealth accumulation, and indirectly can make a significant contribution to restoring and consolidating public trust.

The obligation of public sector employees to declare their assets is regulated by Act CLII of 2007 on Certain Obligations to Declare Assets (Act CLII of 2007 on Certain Obligations to Make Statements of Assets), which has the declared aim of ensuring the impartial and unbiased enforcement of fundamental rights and obligations, as well as ensuring the purity of public life and preventing corruption. There are also a number of other laws that impose an obligation on certain public officials to declare their assets.

Based on the level of accessibility, a distinction should be made between non-public declarations of assets and liabilities, which are accessible through individual requests (e.g. the declarations of mayors, deputy mayors and local government representatives) and those which are subject to mandatory disclosure (e.g. the declarations of state leaders, constitutional judges, members of parliament). The Vnytv. contains rules on non-public declarations of assets. Public servants, civil servants and government officials working in the positions listed in the Vnytv. are obliged to make a declaration of assets before or upon the termination of their legal relationship, position, job, or function. In addition, persons holding certain positions listed in the legislation and persons entitled to make proposals, decisions or exercise control are also required to make a declaration of assets at specified intervals (every two years). This latter category includes persons not employed in the public service who, individually or as a member of a body, have the right to make proposals, make decisions or exercise control in the context of a public procurement procedure. The declaration of assets and liabilities also includes information on the income, interests and assets of the debtor and his/her relatives living in the same household. Any person who refuses to comply with the obligation to make a declaration of assets shall have his or her mandate or legal relationship which gave rise to the obligation to make a declaration of assets terminated and shall not be entitled to enter into a public service, government service, public service, tax or customs service relationship or to perform any job, function, activity or position which gave rise to the obligation to make a declaration of assets under this Act for a period of three years from the date of termination of the relationship.

The person in charge of the custody (typically the employer) may conduct an asset accumulation control procedure (investigation) within one year of the termination of the position or if, according to a declaration of the debtor's financial situation, there are reasonable grounds to believe that his or her asset accumulation cannot be verified on the basis of his or her income from the employment relationship on which the declaration obligation is based or from other lawful sources known to the person in charge of the custody. In addition to the Vnytv., there are more than 20 other legal acts regulating the obligation of certain persons performing public functions to declare their assets, including Act XXXVI of 2012 on the Parliament, Act CLXXXIX of 2011 on Local Governments of Hungary and the Infotv.

The rules on the asset declaration scheme were amended several times during 2022. Overall, these changes have not contributed to strengthening the system, and have in fact weakened it in several respects in terms of transparency. However, the system has been strengthened by the fact that the Integrity Authority, in the performance of its duties, may verify the declarations of assets to the extent necessary for the performance of its duties, and is entitled to conduct an investigation procedure on the declaration of assets and to initiate proceedings on the basis of the results of such an investigation. It is expected that several important shortcomings will be addressed by Bill T/3131, submitted by the Government on 3 March 2023 to reach an agreement with the European Commission on the amendment of the rules on asset declarations, which, inter alia, provides for the need to include information on domestic and foreign assets and the digitisation of asset declarations and their publication in a searchable form on an electronic platform, in accordance with a government decree to be adopted at a later date.

However, in addition to these forward-looking measures, there is a need to strengthen the legal consequences (a system of sanctions, including criminal 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. Related to the above, the NAV informs that its tax department does not keep records of the so-called "wealth accumulation investigations" initiated by certain investigating authorities in relation to which criminal offence is suspected within the specific chapters of the Penal Code. Given the relatively narrow scope of the current regulatory framework for the ordering of asset forfeiture investigations,[53] the impact of such investigations on the fight against corruption is still limited. After 1 January 2020, a total of 20 asset forfeiture investigations were conducted in

[53] Pursuant to Subsection (1) of Section 87 of Government Decree 465/2017 (XII. 28.), 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. In this case, taking into account both known and taxed income, the State Tax and Customs Authority must estimate the amount of income the natural person need to cover the increase in wealth and living expenses.

relation to individuals, of which two were concluded without a finding and two resulted in a finding in favour of the taxpayer (for a total amount of HUF 360 thousand). On the basis of the information available, it can be concluded that it would be justified to extend the current scope of the wealth accumulation investigations to the scope of the Criminal Code. XXVII of the Criminal Code should be extended to cases of suspected corruption offences. Furthermore, the efficiency of the asset declaration system would be significantly increased if the NAV automatically compared the asset declarations with the tax returns of the taxpayers.

Annex 1 - Summary of key shortcomings and proposals

Indicator	Sub-guide	Material weaknesses	Risk classification	Recommendations
Indicator 11: Transparency and civil society involvement strengthen the integrity of public procurement	Sub-indicator 11(a): Environment for public consultation and monitoring Sub-indicator 11(b): Providing adequate and timely information to the public Sub-indicator 11(c): Direct involvement of civil society	Lack of transparency and risk of collusion in procedures under Section 115 of the Public Procurement Act	High	Termination of the procedures under Section 115 of the Public Procurement Act; instead, as a general rule, publication of the procedures
		Fragmented public procurement databases in several central authorities; lack of structured databases and limited search functionality	High	Standardisation of data formats so that data can be automatically integrated without data cleansing; creation of data links (e.g. NAV, KSH); improvement of search functions; possibility to analyse data series for longer periods;
		The limited data available on centralised procurements outside the EDF, mainly carried out by centralised purchasing organisations, the widespread use of long-term framework agreements in centralised procurement	High	Access to and searchability of data on procedures conducted under the framework agreement in the second part of the procedure, use of procurement methods other than those provided for in the framework agreement
		Lack of social consultation in the legislative process, especially with regard to civil society, and lack of civilian monitoring of procedures	Medium	Creation of appropriate channels for civil society monitoring, increased involvement in monitoring public procurement processes, e.g. through integrity agreements, more transparent search and publication of legislation submitted for public consultation, direct consultation of professional organisations in the event of major legislative amendments

Indicator	Sub-guide	Material weaknesses	Risk classification	Recommendations
Indicator 12: The country has effective control and audit systems	Sub-indicator 12(a): Legal framework, organisation, and procedures of the control system	Risk-based methodology missing at several points in the audit process	High	Develop a risk-based audit methodology applicable to the entire audit process (global audit of the riskiest projects)
		National and EU control practices differ	Medium	Rethinking the audit process from a holistic perspective, streamlining, separation of duties
	Sub-indicator 12(b): Coordination of the control and audit of public procurement	Methodological/practical guidelines of some bodies are not developed taking into account the whole control process, are not harmonised	Medium	Single source of truth methodological guides containing continuously updated audit results, cases with practical examples adapted to different audit levels, continuous follow-up with educational materials, training opportunities
	Indicator 12(c): Implementation and follow-up of findings and recommendations	Information on public procurement projects is partial and fragmented	Medium	Design the collection of audit information/data in a holistic approach - traceability, possibility to review the whole process for each case, introduction of unique external and internal identifiers. The analysis of such a database would also help subsequent audits, methodological guidelines
	Sub-indicator 12(d): Qualification and training to carry out public procurement audits	Inspection capacity gap	Medium	Managing this, and training and recruiting or hiring external experts who can also effectively look into technical content issues (e.g. technical). Conflict of interest checks when using external experts.

Indicator	Sub-guide	Material weaknesses	Risk classification	Recommendations
Indicator 13: Public procurement redress mechanisms are efficient and effective	Sub-indicator 13(a): Remedies procedures Sub-indicator 13(b): Independence and capacity of the appeal body Sub-indicator 13(c): Decisions of the appeal body	A persistently low number of appeals on request, mainly due to high administrative charges	High	It is proposed to review the level of administrative service fees, to remove the link to the estimated value of the public procurement and the number of applications, to reduce fees significantly and in some cases to abolish them.
		Given the complexity of appeals before the ACPC, the parties concerned would request that the hearing be held and, if possible, that it takes place in person	Medium	It would be advisable to increase the number of hearings and to provide for the possibility of a face-to-face hearing as requested by the applicant/initiating party.
		Representation by a responsible accredited public procurement consultant, chamber of commerce counsel or lawyer is mandatory in the appeals procedure before the Public Procurement Arbitration Committee	Medium	Given the skills and expertise of public procurement commissioners, it may be advisable to consider abolishing mandatory representation.
		Search facilities for decisions of the Public Procurement Arbitration Committee do not provide reliable results, court judgments are not published in a single database	Medium	Improvement of the search interface, creation of a separate, complete database of court judgments is proposed.
		According to the provisions of the Public Procurement Act, if a preliminary dispute settlement has been requested in connection with the infringement covered by the request and the contracting authority has submitted its position on the infringement but has not taken any other action, the Public Procurement Arbitration Committee is obliged to impose a fine if it finds an infringement. However, the above-mentioned mandatory fines do not apply if the contracting authority fails to reply to the request for a preliminary ruling or fails to reply within the time limit (although the time limit for appealing does not start to run from the date of the contracting authority's reply, but from the expiry of the legal deadline for replying)	Medium	It may be advisable to review the legislation in this respect.
		In the context of the contracting authorities' obligation to inform contracting authorities of the fact of a preliminary dispute settlement, consideration may be given to clarifying in the Tender Regulation, along the lines of the rules on supplementary information requests, that this should be done in an anonymous manner, without revealing the identity of the person making the request	Medium	A review of the regulation is proposed.

Indicator	Sub-guide	Material weaknesses	Risk classification	Recommendations
Indicator 14: Ethical and anti-corruption measures	Sub-indicator 14(a): Prohibited practices, conflicts of interest and related liabilities, accountability legal definitions and sanctions Sub-indicator 14(b): Provisions on prohibited practices in public procurement documents Sub-indicator 14(c): Effective sanctions and enforcement systems Sub-indicator 14(d): Anti-corruption framework and integrity training Sub-indicator 14(e): Supporting stakeholders to strengthen the integrity of public procurement Sub-indicator 14(f): Safe mechanisms for reporting prohibited practices or unethical conduct Sub-indicator 14(g): Codes of conduct/ethical codes and financial disclosure rules	The control of the asset declaration system is ineffective and sanctions for non-compliance are not sufficiently dissuasive, effective, and proportionate.	High	Extend the scope of asset-gathering investigations to suspected corruption offences. Strengthen legal sanctions (including criminal sanctions) for breaches of the obligation to declare assets, ensuring that possible breaches are investigated and, where appropriate, sanctioned.
		There is a lack of an integrity training system for public procurement professionals.	Medium	Expanding the range of regular mandatory training on integrity issues for public procurement professionals, to complement wider ethics and integrity training.
		On the contracting authorities' side, there is often a lack of training in identifying grounds for exclusion. There is a lack of systematic, in-depth monitoring and prevention of conflicts of interest, and the public procurement control system does not include an examination of this activity.	Medium	It is appropriate to link the verification of declarations of conflict of interest to a system of checks and to lay down the relevant provisions in the contracting authorities' procurement rules. Requirement for mandatory verification of the network of business relations, affiliated companies and other interests of the owners and managers of the economic operator submitting the bid. Developing effective guidelines and tools, and a more effective and widely mandatory training and refresher programme for public procurement professionals working on the contracting side.
		Integrity systems are only required on the contracting authority side. The control system needs to be strengthened in terms of internal and external monitoring of the application of the Intr. and the Gtbkr., and the institutions of integrity advisors and compliance advisors are not sufficiently strong.	Medium	A mandatory requirement for both contracting authorities and tenderers to operate integrity systems in order to participate in public procurement. Developing a risk-based and deeper audit methodology—not only focusing on formal compliance—for the application of the Intr. and the Gtbkr. Develop training materials and guidance for key stakeholders on the development of integrity tools tailored to their organisation. Continuous training of internal auditors, regular sharing of experience from the competitive sector with public sector internal auditors in the framework of training and professional organisations (BEMSZ). More in-depth external audit (SAI) and more effective feedback.
		There is no obligation to include rules on fraud, corruption, and other prohibited practices in public contracts.	Medium	Mandatory inclusion in the tender documents of provisions on corruption, fraud, and other prohibited practices. Accordingly, the relevant legislation and guidelines applicable to contracting authorities and economic operators submitting tenders should be amended.

Annex 2 - 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 (V. 25.) on the centralised public procurement system and the responsibilities and powers of the central purchasing body

Government Decree 16/2012 (II. 16.) on the specific rules of public procurement of medicines and medical devices

Government Decree 109/2012 (VI. 1.) on the detailed rules for procurement under the NATO Security Investment Programme

Government Decree 317/2013 (VIII. 28.) on the selection of public service providers and public waste management service contracts

Government Decree 307/2015 (X. 27.) on the specific public procurement rules for public service providers

Government Decree 308/2015 (X. 27.) on the control activities of the Public Procurement Authority concerning the amendment and performance of public contracts

Government Decree 310/2015 (X. 28.) on design competition procedures

Government Decree 321/2015 (X. 30.) on the way of certifying suitability and the non-existence of the grounds for exclusion as well as the definition of public procurement technical specifications in contract award procedures

Government Decree 322/2015 (X. 30.) on the detailed rules of public procurement of construction projects and design and engineering services related to construction projects

Government Decree 323/2015 (X. 30.) amending certain government decrees on public procurement

Government Decree 226/2016 (VII. 29.) on the detailed parameters of military equipment and services subject to Act XXX of 2016 on Defence and Security Procurement

Government Decree 424/2017 (XII. 19.) on the detailed rules of electronic public procurement

Government Decree 257/2018 (XII. 18.) on the activity of responsible accredited public procurement consultants

Government Decree 276/2018 (XII. 21.) on the rules for the forecasting of expected pension benefits provided by occupational pension institutions

Government Decree 301/2018 (XII. 27.) on the National Council for Communications and Information Technology, the Digital Government Agency and the centralised public procurement system for government IT procurement

Government Decree 162/2020 (IV. 30.) on the legal status of the National Communications Office and government communications procurement

Government Decree 676/2020. (XII. 28.) on the specific rules applicable to public procurement procedures for public catering

Decree 44/2015 (XI. 2.) MvM of the Minister of the Prime Minister's Office on the rules for the dispatch, control and publication of public procurement and design competition notices, on the models and certain content elements of notices, and on the annual statistical summary

Decree 45/2015 (XI. 2.) MvM of the Minister of the Prime Minister's Office on the administrative service fee payable for the procedure of the Public Procurement Arbitration Committee

Decree 19/2016 (IX. 14.) HM of the Minister of National Defence on the notices applicable to defence and security procurements, the rules for their dispatch and publication, the models 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 XXXIV of 1994 on the Police

Act XIX of 1998 on 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 Obligation to make Statements of Assets

Act CLXXXI of 2007 on the Transparency of Public Funding

Act CXXII of 2009 on the More Economical Operation of Publicly Owned Companies

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 Law-making

Act CXXXI of 2010 on Social Participation in the Preparation of Legislation

Act LXVI of 2011 on the State Audit Office of Hungary

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

Act CLXIII of 2011 on the Public Prosecutor's Office

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 Parliament

Act C of 2012 on the Criminal Code (Criminal Code)

Act CLXV of 2013 on Complaints and Public Interest Disclosures

Act CL of 2016 on the General Administrative Procedure

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 Hungary's 2022 Central Budget

Act XXVII of 2022 on the Control of the Use of European Union Budget Funds

Act XLIV of 2022 on the Directorate General for Audit of European Funds and amending certain laws adopted at the request of the European Commission in order to ensure the effective completion of the conditionality procedure

Government Decree 355/2011 (XII. 30.) on the Government Control Office

Government Decree 370/2011 (XII. 31.) on the internal control system and internal audit of budgetary bodies

Government Decree 50/2013 (II. 25.) on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists

Government Decree 272/2014 (XI. 05.) on the rules for the use of funds from certain EU Funds in the 2014-2020 programming period

Government Decree 339/2019 (XII. 23.) on the internal control system of publicly owned companies

Government Decree 1328/2020 (19.VI.) on the adoption of the Mid-Term National Anti-Corruption Strategy 2020-2022 and the related action plan

Government Decree 256/2021 (V. 18) on the rules for the use of grants from certain EU funds in the 2021-2027 programming period

Decree 28/2011 (VIII. 3.) NGM of the Minister of National Economy on the registration and mandatory 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 12/2018 (VI. 7.) BM of the Minister of Interior on the standard criminal statistics of investigation authorities and prosecutors, detailed rules for data collection and processing

Decree 22/2019 (XII. 23.) PM of the Minister of Finance 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

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 affecting the financial interests of the Union by means of criminal law

Directive 2019/1937 of the European Parliament and of the Council on the protection of persons reporting infringements of EU law

Regulation (EU) No 2020/2092 of the European Parliament and of the Council on general conditions for the protection of the EU budget

3. Annex 1 - Survey interviewees

Name	Organisation	Date
Petra Reszkető	Budapest Institute for Policy Analysis	22 February 2023. 22 March 2023.
Sándor Léderer Dr. Orsolya Vincze	K-Monitor Public Benefit Association	28 February 2023.
Dr. Adrienn Polgár Dr. Csilla Maczurka Dr. Ágnes Hubai Dr Andrea Gyulai-Schmidt	National Association of Public Procurement Consultants	28 February 2023.
Dr. Tamás Bodoky Dr. Attila Dull	atlatszo.hu Public Nonprofit Ltd.	1 March 2023.