

## **The Integrity Authority's position on the Government's responses**

On 29 June 2023, the Integrity Authority published its Annual Analytical Integrity Report for the year 2022, in which it formulated around half a hundred proposals and recommendations on the use of EU funds in the topics defined in Act XXVII of 2022 establishing the Integrity Authority (hereinafter: the Eufetv.). The proposals concerned in particular control systems, the functioning of the centralised public procurement system, the application of public procurement rules, public procurement remedies and conflicts of interest.

Pursuant to Section 13 of the Eufetv., the Government had three months from the publication of the annual analytical integrity report to present how it will deal with the findings of the Integrity Authority in the annual analytical integrity report. The Government sent its position to the Integrity Authority on 29 September 2023, which it published on [www.palyazat.gov.hu](http://www.palyazat.gov.hu) via the Minister for Spatial Development.

The Integrity Authority summarises its position on the Government's responses below.

Above all, we have noted and consider as a feedback of our work that the institutional system has moved in response to our proposals. While the Government has only agreed to a lesser extent with the proposals of the Integrity Authority – 12 out of some 50 proposals have the support of the Government – we consider it important to underline that the recommendations made and along the proposals, the Government has foreseen around 20 different measures to for the key players in the institutional system. The measures are addressed to the Minister of Regional Development, the Minister of Public Procurement, the Office of Economic Competition, the Public Procurement Council of the Public Procurement Authority, the Public Procurement Arbitration Committee and central purchasing bodies.<sup>1</sup>

At the same time, we regret that for a significant number of the recommendations that the Government has indicated it supports, the proposed solution addresses only part of the proposal. A fundamental shortcoming of the responses is that the process and timeliness of putting the proposed measures into practice remains in question in the absence of real substantive action and a timeframe. In view of this, the Integrity Authority is available for further technical consultation if necessary. Among our proposals concerning control systems and the practice of the institutional system for auditing the use of EU funds, the Government's support is mostly focused on procedural proposals, such as the greater involvement of

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<sup>1</sup> As regards the remaining proposals, in numerical terms: of the package of proposals formulated by the Integrity Authority, the Government agreed with 4 proposals that it did not consider any further action necessary, while it partially agreed with 10 other proposals and disagreed with 21 proposals, for the reasons set out therein.

external experts in controls or the extension of the scope of data to be published on irregularity procedures.

We believe it is essential that systemic changes are made to the controls on the use of EU funds, so that irregular use of public funds can be prevented and detected with a high probability. This could be helped by the emphasis on the risk-based methodology we advocate in audits, in addition to procurement law and accountability aspects, and by the de-emphasis of pre-announced on-the-spot checks, as well as by the more frequent use of independent external experts and the public availability of audit trails and criteria for classifying irregularities.

We consider it a step forward that the Government's planned measures show a shift in the provision of data on the second part of framework contract procedures carried out by central purchasing organisations and in making the data publicly available. However, we consider it important that these data are not only made available in aggregated form, but also in a structured way, separately for each framework agreement, in order to review and analyse the individual procurement needs implemented and to identify the bidder/joint bidder who actually implemented the procurement need.

While the willingness to assess the cost-effectiveness of centralised procurement systems is also a step forward, we maintain and continue to encourage the development of a methodology to assess the quality of prices achieved through centralised procurement and to put them in a market context.

While the Integrity Authority agrees with the benefits of centralised public procurement listed in the Government's response, it also points out that there is a legitimate expectation that the effectiveness of these systems should be measurable and actually measured. In the view of the Integrity Authority, the benefits listed (time savings, centralised procurement strategy, operational certainty, standard contract terms or professionalism) are quantifiable. Accordingly, they are not a substitute for cost-effectiveness considerations, but should be assessed in context with them. The overall picture thus obtained allows an informed opinion and valid conclusions to be drawn on the effectiveness and future role of the system.

The Government did not agree with our proposal to review the fees for the services of central purchasing organisations, but we believe that cost-effectiveness and the need to be rational with public funds require that the sustainability of the current structure be analysed objectively, with quantified data should be supported by. Not only is the future of centralised public procurement

We also consider it essential to examine the justification for centralisation, not only for the objects of procurement, but also for the current ones. In addition, while the practice of setting framework figures and ensuring partial tendering in the use of framework agreement procedures is to be welcomed review, we believe it is important that central purchasing bodies use a dynamic purchasing system

procurement method that keeps the market much more open, rather than framework agreement procedures.

The Integrity Authority has also made a number of recommendations to assess the effectiveness of public procurement rules, some of which the Government has considered to be acceptable. For example, to provide methodological support to law enforcers in order to promote the wider use of the partial bidding option to support the more effective participation of small and medium-sized enterprises in public procurement procedures, and to support the proper application of the disproportionate low price test with model materials and guidelines.

However, several of our important proposals to curb the misuse of certain legal instruments – such as greater control over the use of accelerated procedures, or the use of conditional tendering or the examination of disproportionately low prices our proposals to clarify the rules in this area. Even with the reasons given, the government's position is not clear, given that we have not questioned the justification of the legal provisions, but have merely proposed to fine-tune them in the interests of the proper exercise of the law, which we believe can be resolved by adapting the legislation.

We do not consider acceptable the government's response to our request concerning procedures without publication of a contract notice pursuant to Article 115 of the Public Procurement Act. While further analysis is needed to assess the actual significance of these procedures, based on the experience of the notifications we have received, we believe that the type of procedure is suitable for contracting authorities to a "selected" tenderer, overall a defined range of tenderers.

obtain public contracts with virtually no competition. Moreover, a form of tendering that is clearly not used for its intended purpose also carries a risk of corruption.

We have also formulated a complex package of proposals on public procurement remedies, several of which the Government has partially agreed with and has formulated measures for, among others, the Public Procurement Arbitration Committee, but – taking into account the currently known draft legislation – these are far from sufficient to facilitate the exercise of the right to remedy.

The Integrity Authority is committed to finding effective solutions to the shortcomings identified in the Integrity Report, whether they are systemic or result from the misuse of individual legal instruments. The Integrity Authority will therefore continue to consistently seek and advocate for appropriate and effective solutions. In this spirit, the no, or only partially supported recommendations, or even the still unresolved issues outlined in supported recommendations, will be addressed in detail in the Integrity Report 2023, and a comprehensive picture of newly identified integrity risks will be provided.