INTEGRITÁS HATÓSÁG

INTEGRITY RISK ASSESSMENT REPORT OF THE HUNGARIAN PUBLIC PROCUREMENT SYSTEM

Budapest, April 2024

Foreword

As part of its role to analyse and make recommendations, the Integrity Authority ("the Authority") conducts integrity risk assessment exercises in accordance with its objectives defined in law. In this report (the "Report"), the Authority will identify integrity risks and systemic errors that arise and are to be managed in the course of public procurement; make recommendations for measures and tools capable of effectively tackling such risks and problems; and assess how certain organisations with functions and powers considered the recommendations made in last year's report published on 31 March 2023.

Reviewed and updated according to the Authority's experience of the past year, this assessment is based on the Authority's inaugural report issued on 31 March 2023. The Report follows OECD's so-called "MAPS" (Methodology for Assessing Procurement Systems), especially Pillar IV of the methodology, in accordance with the requirements of Milestone 161 under the conditionality mechanism. Pillar IV includes indicators relating to accountability, integrity and transparency of the public procurement system. We should like to note that, considering the methodological framework, the Report can examine only the issues of certain aspects of the public procurement system and that it gives a comprehensive picture of the integrity risks of the country's public procurement system together with the Annual Analytical Integrity Report of the Authority.

We continue to experience that, although the Hungarian legal framework of public procurement essentially comply with international standards and guidelines, where the actors perform the tasks assigned to them by law, the overall picture remains unsatisfactory.

By and large, legal provisions concerning publicity are detailed, while data relating to public procurement procedures are public. At publication level, access to public procurement procedures is ensured, public procurement information is widely accessible. There is an abundance of data available in public procurement databases and various public procurement portals, while notices contain quality data. There are several ongoing reforms in the area of public procurement thanks primarily to commitments made in the conditionality mechanism.

Despite the publicity that is thought to be extensive, we cannot say that public procurement is transparent and the use of public funds are traceable. Public procurement continues to face scepticism, and there is a noticeable erosion of trust amongst tenderers. The Government's efforts to enhance competition have only

had a limited impact on countering these negative trends, as they were found to be unsatisfactory, inadequate and insufficient.

While over the past two years, partly thanks to European Union commitments, there has been significant progress in the development of public procurement databases, limited search options and the use of CAPTCHAs on certain webpages (e.g. that of the Public Procurement Authority of Hungary) to reduce information security risks hinder complex data analysis and, consequently, insight into certain public procurement connections. In addition to information security considerations, the Authority emphasises the importance of ensuring the automatic download of large amounts of data.

On top of these difficulties, which are sufficiently manageable with improvements, there has been no progress in the transparency of centralised public procurement over the past year. It remains a concern that procurement procedures that were conducted based on framework agreements concluded by central purchasing bodies, sometimes as part of dynamic procurement systems, are the least transparent part of public procurement. There is no clear understanding of the pricing standards, the division of actual purchase orders amongst tenderers concerned in framework agreements, and the specifics of completed procurement procedures. Without fundamental data, it is challenging to provide an objective assessment of how effective these systems are. Furthermore, despite the recommendations made in our 2022 Annual Analytical Integrity Report, the past one year has seen a further increase in the number of subject-matters of central purchasing bodies and those assigned into the mandatory, centralised procurement context. Considering their volume and the time frame of concluded framework agreements and dynamic procurement systems, centralised public procurement has a substantial influence on the market of specific subject-matters of procurement and do not favour the participation of micro and small businesses.

Despite the implemented reforms – the impact of which will be measurable only on the long run –, the system is therefore, by and large, dysfunctional and does not achieve its objectives stated in the Public Procurement Act: i.e. the efficient, transparent use, and public controllability of public funds, as well as the creation of the criteria of fair competition and the enforceability of public interest objectives.

In practice, all this results in a lack of trust in the public procurement system, which in turn causes competition to decrease and corruption risks to rise. Systemic issues lie at the core of this phenomenon. Competition levels in public procurement is a complex issue, which demands a multifaceted approach to resolve; it cannot be automatically identified with the issue of single tender procedures. The intensity of

public procurement competition should be examined in a broader context. The problems include not only single tender procedures, but also procedures with a few – mostly two – tenders, as well as difficulties in gaining access to the market, constant restrictions on the possibility of partial bids and a loss of confidence amongst tenderers, which also have a negative impact on competition.

The work and efficiency of audit and review bodies operating in this field have a significant role in restoring trust in public procurement. However, the extreme complexity and, at the same time, weakness of the institutional framework of auditing are hindering this process.

The administrative perspective and restricted application of a risk-based approach of the control system is also a fundamental roadblock to reducing risks. Furthermore, the control system is also facing technological challenges deriving from data integrity deficiencies. It is evident that auditing, monitoring, accountability and sanctioning within the public procurement system is not adequate.

The Report also includes recommendations from the Authority, which hopefully will form the basis of future reforms to improve transparency and therefore help restore the trust of tenderers and increase real competition. We trust that our findings will provide substantial contribution to the improvement of national public procurement practice.

Our recommendations for improving the public procurement system are as follows:

- We recommend a more efficient suppression of crimes against integrity in public life, which have an extremely negative impact on the perception of corruption in the public opinion.
- We continue to regard the formation of a uniform control system – the objectives of which are also defined in the Medium-Term National Anti-Corruption Strategy for 2024-2025 – that will holistically manage the entirety of the public procurement process as an important undertaking, namely the elaboration of risk-based audit methodologies, the application of effective solutions at all stages of the process within national and European Union control practices, and the comprehensive harmonisation of applied methodologies.
- The modification of the provisions of the Public Procurement Act concerning conflict of interest is warranted for the sake of integrating the requirements regarding the effective management of the revolving door phenomenon and

the disambiguation of the control system necessary for the effective enforcement thereof.

- We consider the requirement of operating harmonised compliance systems a necessary element to engage in public procurement for both the contracting authority and the tenderer. We consider the efficient, timely and actual control as well as consistent sanctioning of the lack of these an essential element.
- Enhancing competition is essential for the efficient operation of the public procurement system, which requires a complex approach. In addition to assessing the effectiveness of the measures taken to decrease the number of single tender procedures, it is also necessary to identify and address other factors that negatively affect competition.
- Based on the analysis of practical experiences of procedural solutions resulting in market closure, we consider it necessary to review regulations. In particular, to terminate proceedings under section 115 of the Public Procurement Act and to review the application of framework agreements widely used in centralised public procurement procedures.
- In light of the analysis of the practical experiences of legal institutions giving more leeway to the misuse of the law, especially the justification of conditional public procurement procedures and disproportionately low prices, it is necessary to review the legal regulations and make appropriate corrections.
- It is necessary to review the regulations allowing the classification of priced bill of quantities forming the basis of the bid price in public procurement procedures as trade secrets, at least in respect of framework agreements and priced bill of quantities including the unit prices of framework contracts.
- We recommend the modification of the Public Procurement Act regarding the possibility of setting prices at fixed prices by the contracting authority. This aims to prevent practices that exclude competition in respect of bid prices.
- We consider it necessary to review the subject-matters of procurement involved in centralised procurement, the methods used by central purchasing bodies, and the practices applied in concluding contracts.
- We recommend specifying the ground for exclusion concerning offshore companies and providing access to information on the ownership of economic operators involved in public procurement procedures.

- We believe it is warranted to reintroduce, beyond the minimum scope set by European Union directives, the obligation of public procurement for purchases realised with the support of either national or European Union funds, thus rendering the use of funds transparent. It is necessary to clarify the public procurement aspects of the use of corporate tax support within the Public Procurement Act.
- It is necessary to support the professionalisation of the public procurement profession and to review the legislative amendments relating to the abolition of the institution of accredited public procurement consultants.
- It is necessary to facilitate/create meaningful analysability of public procurement-related databases for the above-mentioned targeted investigations and development of the system of redress.
- We consider it important to facilitate remedy proceedings initiated on request and to restore trust in the system of redress. We believe that one of most crucial conditions of this process remains to be the substantial reduction of the administrative service fee.
- We recommend revising the regulations on the elements of application and reviewing the regulations on mandatory representation to facilitate easier access to options for legal remedy.
- We recommend the mandatory imposition of fines on contracting authorities in remedy proceedings requested due to illegalities left unremedied by contracting authorities following the preliminary dispute resolution in order to further increase the significance of the preliminary dispute resolution procedure.
- It is necessary to demonstrate the intent to enhance competition in order to restore the trust of stakeholders, especially that of tenderers in the public procurement system. In addition to administrative measures, the implementation of solutions reflecting this effort in all aspects (e.g. substantial consultation with stakeholders, the application of realistic deadlines and conditions) is therefore an essential element to effective reforms.

Ferenc Biró

President

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1. Applied methodology and limitations

Integrity risk assessment

In accordance with sections 9 and 10 of Act XXVII of 2022 ("Integrity Authority Act"), the Authority prepares a report on the integrity risk assessment, which will analyse, in particular, the integrity risks of the Hungarian public procurement system. The investigation also forms a basis for the Authority's Annual Analytical Integrity Report, which it is required to prepare by 30 June each year.

The investigation has managed to identify the major shortcomings in the targeted areas. Considering these deficiencies, the assessment paid particular attention to the following critical issues:

- improving regulatory and institutional frameworks;
- reinforcing the public procurement profession;
- monitoring public procurement outcomes

To specify the proposed areas for improvement of the public procurement system within the methodological frameworks, the assessment aimed for the following:

i. identify the weaknesses and strengths of the Hungarian public procurement system in the context of the investigated indicators;
ii. identify substantial integrity deficiencies that have a negative impact on the quality and performance of public procurement;
iii. assist the Government in the ranking of tasks relating to public procurement reforms to promote competition and improve the performance of the public procurement system.

MAPS methodology

MAPS is an internationally recognised methodology designed to assess public procurement systems. It was created by the joint initiative of the World Bank and the Development Assistance Committee (DAC) in 2003 and is utilised by development banks, bilateral development agencies, and partner countries globally to assess their public procurement systems.

According to the logic of MAPS's methodological documentation,[1] the assessment of public procurement systems is defined by an indicator framework consisting of four pillars. In simpler terms, these pillars provide framework conditions to the assessment of the following elements of public procurement systems.

MAPS Pillar I: Legal, Regulatory and Policy Framework The indicators help define to what degree certain regulatory elements support the stated fundamental principles; to what degree are the laws harmonised; to what degree is the system capable of adopting international regulations.

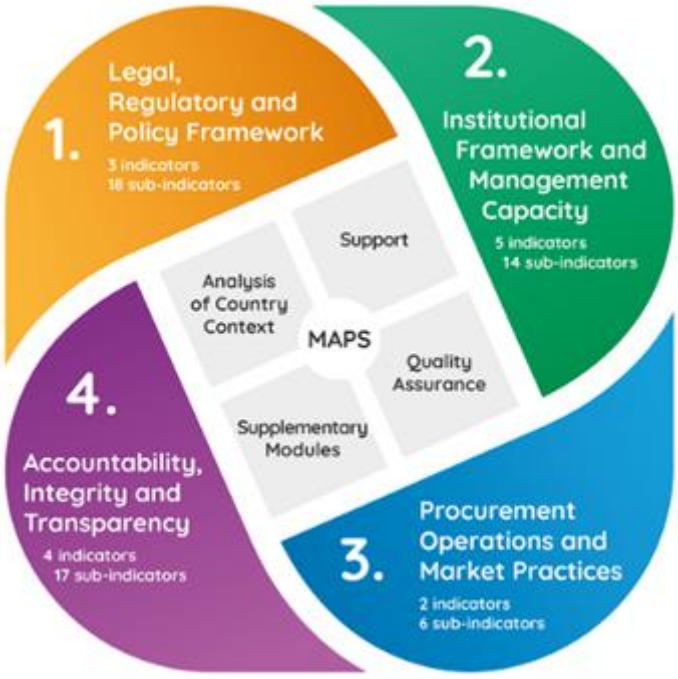
MAPS Pillar II: Institutional Framework and Management Capacity Scope of the indicators: integration into the public financial management system, managing institution, procuring entities operating with clearly-defined mandates, effective public procurement information system, strong capacity to develop and improve.

MAPS Pillar III: Procurement Operations and Market Practices Indicator objectives: the availability of public procurement practices (certain processes) and public procurement market.

MAPS Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System Indicators: transparency and civil society engagement, effective control and audit systems; the availability of appeal mechanisms, ethical and anti-corruption regulations.

According to the OECD's approach, the pillars analyse the various aspects of conformance. However, only collectively can they provide a complete picture of the compliance of the public procurement system. MAPS's perspective and the integrity of the 4 pillars are characterised by the following chart presenting the pillars:

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



As the chart shows, the indicators of individual pillars are closely intertwined and together provide adequate information.

Reviewed and updated according to the Authority's experience of the past year, this assessment is based on the Authority's inaugural report issued on 31 March 2023. This year's report analyses, in accordance with that of last year, the integrity risks of the domestic public procurement system along the four indicators of MAPS Pillar IV (indicators 11-14) and the related seventeen sub-indicators by trying to capture the issues associated with each indicator with the broadest possible interpretation.

The Hungarian public procurement system has numerous actors. Therefore, our report provides a broad interpretation of this concept and considers domestic and European Union institutions, contracting authorities, tenderers and organisations performing centralised public procurement duties, as well as CSOs, professional and advocacy groups to be part of them.

MAPS Pillar IV examines —

1. transparency and the extent of social engagement that strengthen integrity in public procurement;
2. the availability of effective control and audit systems;
3. the efficiency and effectiveness of appeal mechanisms of public procurement, as well as
4. the application of ethical and anti-corruption measures.

As per the methodology, the points outlined above are necessary for the public procurement system to operate with integrity, have appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and to manage corruption risks with measures in the system. 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 the aspects of the public procurement system and governance environment to ensure they are defined and structured in a way that contributes to integrity and transparency.

The Report does not consider the conformance of the other three pillars of MAPS to be an attribute, but assumes that the risk assessment of Pillar IV places the examinations outlined in the other three pillars in the appropriate context.

Addressing the following issues related to Pillar IV of MAPS is crucial from the perspective of integrity risk assessment:

- the lack of a comprehensive and well-functioning database (data integrity) of the public procurement system;
- the evaluation of the legal background (the regulation of essential issues is provided, but e.g. appropriate legal support for the control process needs to be clarified);
- improving and managing the control's quality background.

The Authority aimed to collect data from a wide range of stakeholders in the public procurement system to prepare this Report.

1. Therefore, the Authority conducted desk research: compiled, reviewed and analysed, through 14 March 2024, —
    a. relevant laws and decrees listed in Annex no. 3;
    b. information and data provided by the Ministry of Public Administration and Regional Development, the Public Procurement Authority of Hungary, the Public Procurement Arbitration Board, the Directorate General for Audit of European Funds, the State Audit Office, the Government Control Office, the Hungarian Competition Authority, the Ministry of Justice, the Ministry of Interior, the Office of the Prosecutor General, the Curia of Hungary, Budapest-Capital Regional Court of Appeal, Public Administration Section of the Budapest Metropolitan Court, and
    c. other publicly accessible and relevant information and data.

2. Furthermore, the Authority interviewed representatives from professional organisations, CSOs, and researchers listed in Annex no. 4, who actively participate in public procurement, to gather additional data.
3. The Authority also conducted a questionnaire survey amongst the concerned tenderers.

The Report did not examine every relevant public procurement-related topic (e.g. the system of centralised public procurement, framework agreements) due to the methodological framework; the Authority plans to examine these topics within its Annual Analytical Integrity Report.

We were not able to present a comprehensive picture of the integrity risks of the public procurement system in this Report due to the methodological restriction of Pillar IV of MAPS. Risks that exceed the methodological framework and the in-depth analysis of the risks outlined in the Report will be discussed in our Annual Analytical Integrity Report.

The statements and assessments in the Report were defined, using publicly accessible information cited herein, information provided by the organisations concerned, completed questionnaires, and conducted interviews.

2. Assessment

This chapter summarises the findings of the examination and assessment conducted on the basis of the qualitative and quantitative aspects outlined in Pillar IV of OECD's MAPS methodology.

In the assessment, the Authority will—

1. present the general description of the specific indicator/sub-indicator according to the MAPS methodology; then—
2. summarise the main findings related to the specific indicator/sub-indicator; then—
3. detail the primary strengths and weaknesses identified by each sub-indicator, highlighting areas with significant deficiencies that require measures in order to enhance the system's performance.

In accordance with the MAPS methodology, we categorised the deficiencies based on the risk they pose to the public procurement system and provided recommendations for their resolution. The summary of the assessment results for the individual indicators and sub-indicators is included in Annex no. 1 of the Report in the form of a table.

MAPS indicator 11: Transparency and civil society engagement strengthen integrity in public procurement

The civil sphere can safeguard against inexpedient and ineffective use of public funds, helping to make public procurement more competitive and fairer. The hidden potential within civil society can help improve performance standards of public procurement contracts and achieve the set objectives. The indicator assesses two mechanisms through which civil society can participate in public procurement procedures:

i) information disclosure and—
ii) direct engagement of civil society through participation, monitoring and oversight.

Indicator summary

Transparency and publicity are key pillars of public procurement and, as such, are also listed amongst the principles of the Public Procurement Act (section 2 (1) of the PPA). This is rooted in the efficient use of public funds and the assurance of transparency and public controllability over their use.

Although these objectives derive from similar sources, transparency and publicity cover different categories, meaning that they are in a relationship of "general rule to special rule". While publicity primarily refers to the requirement of public access to public procurement procedures and data, transparency has a broader definition.

Transparency is a comprehensive term that includes, amongst other things, the integrity of certain public procurement systems and subsystems, the computability of public procurement regulations and legal practice, including the system of redress in public procurement, the transparency and public accessibility of legislation. The definition of transparency encompasses the transparency of legislation and decision-making procedures. Furthermore, it includes the transparency of and identical approach toward control systems and the integrity of public procurement databases. Publicity is therefore a necessary prerequisite for transparency, but publicity does not imply the transparency of the aforementioned components.

Findings

We have examined transparency in the broadest possible sense under indicator 11. Therefore, we have also articulated findings concerning certain relevant legal institutions and public procurement subsystems in terms of publicity-transparency.

Considering the investigated factors and mechanisms, a preliminary and overall conclusion can be drawn that the applicable legislation ensures a wide range of publicity. As a general rule in this context, the public nature of procedures applies, which aims to ensure the widest possible competition and serves transparency through public scrutiny. The itemised regulations of the Public Procurement Act ensure that economic operators have broad access to information on public procurement procedures and receive information on their development at various stages of the procedures, such as on the opening and subsequent evaluation of tenders. This ensures the controllability of the contracting authorities' decisions on the allocation of public funds.

When it comes to publicity, it is worth mentioning that the proportion of procedures that are initiated with public notices and ensure the widest range of competition has been consistently high in Hungary in recent years. Considering the total number of procedures in 2023, over 88% of them were initiated with public notices.

On the other end of the spectrum are negotiated procedures without prior publication of a contract notice that lack publicity and may be used only under strict conditions. The use of this type of procedure, following the tendency mentioned earlier, continues to decrease in frequency and has accounted for only a small portion of domestic public procurement procedures for years: Their percentage continued to decrease in 2023 compared to the previous year. Negotiated procedures without prior publication of a contract notice account for 1.9% of all procedures.

Access to public procurement procedures at the publication level, as a tangible and quantifiable aspect of the publicity of public procurement, is ensured. At the same time, negative processes observable in practice, which led to a loss of trust amongst public procurement actors, a reduction in competition and the concentration of the public procurement market, must not be overlooked, regardless of the clear provisions of the legal framework and rules in public procurement procedures.

We have analysed the data present in public procurement databases, including their accessibility and coherence, within the confines of the indicator.

Opinions expressed in the Integrity Authority's interviews with representatives from CSOs, professional organisations, and researchers actively involved in public procurement were unanimous that there was an abundance of data available in public procurement databases and that the contract notices contained quality data thanks to mandatory contract notice controls and that contracting authorities publish, for the most part, every data regarding their public procurement procedures required by law. This is also supported by the 2022 Internal Market Scoreboard published by the European Commission.

While the legal provisions on publicity are detailed by EU standards, and there is typically a high degree of publicity at the level of data availability, we believe that there is room for improvement in the **quality of data and the searchability of databases**, as well as in the **targeted analysis and processing of data**. This is especially true for centralised public procurement. For purchases made under **framework agreements concluded by central procurers continue to be the least transparent aspect of public procurement**.

The issue of public availability of data is highlighted by the fact that access to public procurement information is hampered by CAPTCHAs on some websites, including the website of the Public Procurement Authority. The use of CAPTCHAs prevents automated gathering of data and makes it difficult to implement the decisions of the Public Procurement Arbitration Board. In a reply to our inquiry we were informed that they had been introduced because of information security requirements and to ensure the safety of data stored in the databases. Additional investigation is required to ascertain whether it is possible to implement information security requirements, using less restricting methods.

The Electronic Public Procurement System's ("EPPS") function , accessible since 30 September 2022 , that allows anyone to bulk download contract award notices and export data free of charge must be considered a significant and innovative advancement in the development of public procurement databases. Another positive aspect is that the data accessible through this method has been expanded in the meantime. Nonetheless, besides the database built upon the contract award notices, it would also be essential to enable **structured searches for the notices launching the procedures to conduct a thorough analysis of public procurement processes**.

While these positive changes have earned recognition, the lack of integrated databases in public procurement continues to face criticism. As a result of this issue, there are **fragmented data** at too many authorities competent in public procurement and the interconnection of public procurement databases with other

registers, including the ultimate beneficial owner register at the National Tax and Customs Administration ("NTCA"), is not provided.

Limited search functions in databases are a contributing factor, which is why finding links is practically impossible despite the fact that there is quite a large volume of available and publicly accessible data in relation to public procurement procedures in Hungary. Respondents generally agree that the systems are usually not suitable for complex data searches and analysis, even though they are expected to be, given the amount and variety of registered data.

Most CSOs and researchers who actively engage in public procurement have criticised the fact that **issues concerning data input and incorrectly registered data hinder searches** (e.g. incorrect company name, registration of incorrect tax number, or missing tax number). The lack of interconnection and integrity amongst the various databases, including IT subsystems operating in centralised public procurement, hinders the transparency of the public procurement system.

In the context of transparency, we have identified the **mandatory reform of the public procurement profession**, detailed under sub-indicator 11(a), as a risk factor that involves the gradual replacement of the pool of public procurement experts mustered over the years, i.e. accredited public procurement consultants, by state public procurement consultants employed by the contracting authorities.

In the context of this indicator, we will discuss **the lack of transparency in procedures under section 115 of the Public Procurement Act**, the lack of real competition and the **issue regarding procedures characterised by one or few tenders** on the grounds of its relevance to publicity and transparency.

Finally, findings regarding the civil sphere's participation will also be summarised in this indicator. Overall, it can be inferred that despite some improvements, especially in the involvement of professional organisations and CSOs in public procurement task forces, **recommendations crucial to the public procurement system's operation have not yet been considered either**. Furthermore, stakeholders believe that cooperation with CSOs should not be limited to participation in task forces; other forums should also be provided to incorporate their opinions.

Summary of the substantial deficiencies and recommendations of indicator 11

Substantial deficiencies	Risk classification	Recommendations
The lack of transparency, risk of collusive practices, and the phenomenon of so-called "supporting" tenders in procedures under section 115 of the Public Procurement Act	high	Terminate procedures under section 115 of the PPA; instead, as a general rule, announce procedures.
Low level of competition in public procurement procedures, including the issue of single tender procedures	high	Examine the effectiveness of measures implemented thus far and identify additional solutions.
The lack of structured databases and limited search functions	average	Standardise data formats to make data automatically integrable without data cleansing; establish data links (e.g. NTCA, HCSO); improve search functions; provide the possibility of analysing data series pertaining to longer periods.
Restricted access to data outside the Electronic Public Procurement System (EPPS) concerning centralised purchases made primarily by central purchasing bodies; the lack of transparency with regard to purchases within centralised public procurement; the practice of establishing the quotas used in centralised framework agreements	High	Make data concerning purchases under the second phase of the procedure as defined by the framework agreement accessible and searchable; review the practice of utilised quota; use procurement methods that deviate from framework agreements.
An increasing number of central purchasing bodies and the fragmentation of centralised procurement	high	Conduct an impact study and preliminary analyses before integrating new procurement categories into centralised procurement and admitting new operators; review existing subject-matters of procurement while considering their impact on the market
Reforming the public procurement profession; abolishing the institution of accredited public procurement consultants; abolishing the right of accredited public procurement consultants to legal representation	high	It is warranted to review the abolition of the institution of accredited public procurement consultants, expand the circle of individuals who can be added to the register with training and advanced training obligations, and provide accredited public procurement consultants and other professionals the right to legal representation in an expedited manner.
The absence of social consultation in legislative processes, particularly in the civil sphere, and the lack of civilian oversight in procedures	average	Create and promote a more gradual integration of appropriate civilian oversight channels into the monitoring of public procurement processes, for example, by utilising integrity pacts; transparent and searchable disclosure of laws submitted for

		social consultation; direct contact with professional organisations for significant legislative amendments.

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

The sub-indicator assesses the following:

i) Is a transparent and consultative process followed when formulating changes to the public procurement system?

ii) There are programmes in place to build/expand the stakeholders' capacity to understand, monitor and improve public procurement.

iii) There is ample evidence that the government takes into account the feedback and observations from the civil sphere.

Assessment of draft bills, social consultation

Legal acts enable preliminary access to draft bills and regulate social consultation. Pursuant to applicable legal requirements – see Act CXXX of 2010 on Legislation ("Legislation Act")[2] –, those preparing laws shall ensure that the draft and related motivation are clear and assessable in accordance with the act on social participation in the preparation of legislation – see Act CXXXI of 2010 on Social Participation in the Preparation of Legislation "Social Participation Act").

The institution of social consultation ensures that draft bills prepared by competent ministries may be assessed by natural persons, non-state and non-municipal bodies and organisations.[3]

The cited legislative provisions enable state institutions and organisations as well as civilians concerned, professional organisations, and CSOs engaged in social consultation to preliminarily study and assess the draft bills, including those related to public procurement. A control function has also been integrated into the regulation to comply with the aforementioned aspects: the Government Control Office (GCO) conducts annual checks to ensure that the minister responsible for drafting the legislation fulfills his or her duties as defined in Act CXXXI of 2010 [see

[2] See section 19(2) of the Legislation Act

[3] See section 1(1) of Act CXXXI of 2010

section 6/A(1) of the Social Participation Act][4]. The legal framework is therefore in place.

The Executive summary of GCO's control report from 2023 on the examination of the implementation of the Social Participation Act states that 94% – i.e. a total of 1185 pieces of legislation – of the laws, government and ministerial decrees covered by the Social Participation Act, which were drafted and issued during the investigated period, were issued following social consultation, while the use of exceptions defined by the Social Participation Act was warranted. The revealed omissions are related to not meeting the deadline for assessing the drafts and considering the received observations and to the failure to publish the law to be amended together with the amendments. We think it is worth examining the extent to which a social consultation that is included at the end of the administrative consultation process can be considered meaningful, as this practice in itself hinders the consideration of issued recommendations and observations.

Since 2022, the Ministry of Public Administration and Regional Development, the primary authority with local jurisdiction in public procurement (formerly part of the Prime Minister's Office), has resumed the practice of publishing draft bills submitted for social consultation on its website. In the context of draft bills, besides the draft of the legislative text, its motivation and content summary (which many times is identical with the motivation), the impact study form as well as the table summarising the recommendations received during the social consultation and related government position are also available.

During the interviews, CSOs that actively engage in public procurement primarily criticised the widespread lack of support for recommendations on the draft bills submitted for consultation in the context of experiences with social consultation. Justification for dismissal frequently stems from the conclusion that the recommendation does not align with government policy or goes against the legislative intent, or that it is being viewed as wasteful to engage in social consultations. Draft bills submitted for assessment must be monitored in order to meet the assessment deadline.

The consultation deadline is usually eight days from the publication of the draft bill, which in itself is a lengthy period if someone is up to date on legislative drafting processes and adept at navigating the Government's website. The social consultation submenu is available only on the subpages of the ministries, which are

[4] The GCO's control report from 2023 on the examination of the implementation of Act CXXXI of 2010 on Social Participation in the Preparation of Legislation has been available on Government of Hungary - Control report of the Government Control Office since 2 February 2024
0cb223be52ca99cda3194c9b012343cc6f4518c5.pdf (kormany.hu)

accessible from the main page of the Government's website (https://kormany.hu). Here, documents need to be looked through because they are listed in chronological order of publication.

It would be recommended that the search engines of legislation submitted for social consultation be improved in a way that would make it possible to search for topics (e.g. public procurement) regardless of the ministry that submitted the legislation for social consultation and to find every draft bill that includes (either in its title or main text) the given term by using specific keywords.

Civil sector representatives criticised (apart from a few exceptions) the general lack of consultation with civil actors in public procurement amendment processes and the absence of feedback on the impact of these amendments. Amendments concerning publicly accessible data also exhibit negative tendencies. For example, the end of 2023 saw the introduction of several significant amendments relating to publicity as part of a so-called omnibus act[5] that lacked prior professional consultation and impose additional limitations and conditions on data accessibility.

As regards administrative consultation, administrative consultation formats and channels covering administrative actors are employed when approving or modifying legislation related to public procurement. According to the Public Procurement Authority's (KH) 2022 Annual Report, a total of 21 inquiries were issued to the KH in 2022 to assess different draft bills, amendments, draft reports specialised in other sectors, and law application materials from a public procurement and legal perspective.

In 2023, the Integrity Authority joined the process of administrative consultation. Subsequently, it has many times given its opinion on the proposed amendment to the Public Procurement Act and Act XCIII of 1990 on Duties and submitted its position on state public procurement consultation activities and the draft bill on the mandatory training of state public procurement consultants to the Prime Minister's Office.

We find it exceptionable that substantial amendment proposals relating to public procurement are at times implemented in legislative amendments that are unrelated to public procurement. This is what led to the adoption of laws and regulations relating to the abolition of the institution of accredited public

[5] See amendments to certain laws included in chapter XVI of Act CI of 2023 on the Utilisation System of National Data Assets and Certain Services

procurement consultants and to its replacement by state public procurement consultation activities under the act on the order of state public works projects.

Overall, forums for assessing draft bills exist and operate in both social and administrative consultations, but significant professional influence on the processes is limited.

Transforming the public procurement profession

It is crucial to have a substantial number of competent public procurement experts in the ever-changing European Union and domestic public procurement environment to provide support for public procurement processes: to ensure that public procurement procedures are lawfully and effectively conducted by the contracting authority and to ensure successful tendering by the tenderer.

Public procurement regulations have ensured the application of public procurement technicalities since 1 May 2004 by allowing professionals and organisations with specific public procurement experience to be added to a professional register and, at the same time, requiring contracting authorities to engage these experts in specific public procurement procedures and involve an independent expert in the case of public procurements that reach the EU threshold from European Union funds. The Public Procurement Act initially referred to the professionals as official public procurement consultants; then, starting from 1 November 2015, following a review of the practice authorising registration, as accredited consultants. Even the regulations concerning accredited public procurement consultants have considerably narrowed down the circle of public procurement professionals who could be added to the register of accredited public procurement consultants (since activities performed on the tenderers' part were no longer accepted as relevant experience), while mandatory representation – which could be provided, in addition to lawyers and legal counsels, only by accredited consultants – was introduced in remedy proceedings at the Public Procurement Arbitration Board. As a result, those public procurement experts who would typically perform tasks on the tenderer's part were no longer authorised to represent their clients before the Arbitration Board unless they operated as lawyers or legal counsels.

Although characterised by different regulatory backgrounds and titles, the past almost twenty years saw the formation of a stable pool of public procurement consultants. Mandatory training and advanced training regulations prescribed by law for accredited public procurement consultants ensured that public procurement consultants update their knowledge at least before renewing their

authorisations; this is crucial in the ever-changing environment of public procurement regulations.

While granting some lead time, Act LXIX of 2023 on the Order of State Public Works Projects ("Investment Act") brought an end to the system of accredited public procurement consultants that had built up over the years. For the Investment Act amended the Public Procurement Act and introduced the institution of state public procurement consultants, effective from 8 November 2023. In accordance with section 3(2a) of the PPA, as amended, a public procurement consultant may only be a person employed by the ministry, central purchasing body appointed by the Government, the state or the budgetary authority – except for local municipal budgetary authorities and minority municipal budgetary authorities – who performs ancillary purchasing activities for the contracting authority employing him or her.

One source of the problem is that public procurement consultancy may be performed only with an employment status in accordance with the Investment Act. Although the consultants in the register of accredited public procurement consultants maintained by the Public Procurement Authority (KH) were added, by course of law, to the register of state public procurement consultants on 8 November 2023, accredited public procurement consultants had to declare, within 30 days of receiving the notification of their registration, whether they would continue their work as public procurement consultants. Based on the information at our disposal, the majority of accredited public procurement consultants have chosen, as of now, not to continue their work as state public procurement consultants (the current register numbers 139 state public procurement consultants and 722 accredited public procurement consultants). One of the reasons for this is that this shift was possible only if accredited public procurement consultants were in an employment relationship with one of the contracting authorities listed in the Public Procurement Act by the declaration deadline. Another important factor is that a significant number of accredited public procurement consultants had been discharging their functions without an employment contract.

According to data published in a report released at the end of February 2024 that summarises the results of the performance measurement framework evaluating the efficiency and cost-effectiveness of public procurement (Framework or performance measurement framework),[6] the responses given in a questionnaire survey conducted amongst the contracting authorities reveal that experts who are authorised accredited public procurement consultants or state public procurement

[6] Download it from the EPPS's website; https://ekr.gov.hu/portal/hirek/8798812927320

consultants employed by contracting authorities under an employment relationship exhibit huge capacity shortages. 92% of local authorities that completed the questionnaire responded by claiming to have no expert amongst the members of their internal staff who is an authorised accredited public procurement consultant or state public procurement consultant, which is true also for 75% of central budgetary authorities.[7]

Therefore, since there is no guarantee that contracting authorities can comply with their responsibility of engaging state public procurement consultants in cases set out in the Public Procurement Act, the compulsory transformation of the public procurement profession, despite stakeholders' professional objections, **constitutes a new risk to public procurement processes.** However, it is possible for state public procurement consultants to be employed part-time by contracting authorities, which may offer a way to circumvent regulations. Furthermore, the Public Procurement Act allows state public procurement consultants, with the consent of the contracting authorities they are employed by, to enter into an agency relationship with other contracting authorities, meaning that they can perform expert activities for other contracting authorities (the law is unclear as to whether this way contracting authorities can still fulfil their obligation to involve state public procurement consultants).

These may put public procurement consultants employed by contracting authorities in a more favourable position compared to accredited public procurement consultants and other experts with a different status, as only this group of experts will have a register under current regulations, while others will not. This will make it more challenging for the latter group to be contacted and secure jobs.

It is worth noting that even if we accept the legislative opinion that the legislation stipulates the mandatory involvement of only self-employed public procurement consultants, it is unclear as to why the institution and register of accredited public procurement consultants are being abolished. The obligation to engage state public procurement consultants concerns only a portion of ordinary contracting authorities. Therefore, it would be safer for other contracting authorities if they were able to ensure public procurement expertise by involving accredited public procurement consultants with professional liability insurance, at least in the case of high-value public procurements or those financed from European Union funds.

The modification of regulations may be considered a backward step in that, marking a break with a two-decade old practice, the obligation to engage

[7] Source: Framework indicator 81

registered experts, as defined in the legislation, is required only from a portion of contracting authorities in respect of public procurements financed from European Union funds and those whose value exceed European Union thresholds; whereas the regularity of public procurement procedures have been facing issues all along. In accordance with effective regulations, just to mention two significant categories of contracting authorities, neither local governments nor public utilities are required to involve public procurement consultants. Similarly, for example, supported organisations are also not required to engage accredited public procurement consultants to ensure public procurement expertise.

And on top of that, this happens at a time when, considering the European competency framework for public procurement professionals (ProcurCompEU), the European Union is planning to attribute strategic importance to the public procurement profession and prepare it to face future challenges.

This issue is further highlighted by the fact that the Investment Act modified section 145(7) of the Public Procurement Act in a way that, starting from 8 November 2023, representation by accredited public procurement consultants in remedy proceedings before the Public Procurement Arbitration Board is no longer available – mandatory representation may be performed only by state public procurement consultants, registered in-house legal counsels, or attorneys. This change has also impacted pending cases. Therefore, with the new regulation becoming effective, accredited public procurement consultants are no longer authorised to represent their clients in remedy proceedings related to the procedures they are conducting.

The public procurement consultant system is currently characterised by a particular duality where, although accredited public procurement consultants are allowed to provide public procurement consultancy until 30 June 2026 in cases under section 27(3) of the Public Procurement Act, except for public works, starting from 8 November 2023, they are not allowed to serve as representatives before the Public Procurement Arbitration Board, even in cases where they have extensive prior experience and involvement in the related public procurement procedures. This ambiguous situation, further complicated by the lack of professionals mentioned earlier, **jeopardises professionalism in public procurement procedures, which poses a serious integrity risk** while conducting public procurement procedures.

Public procurement training and education

Ensuring that professionals involved in public procurement keep their skills up to date is the key to high standards of professionalism. The tools here are the various forms and degrees of training and education available to public procurement stakeholders.

Expanding and providing up-to-date information to the knowledge base of public procurement stakeholders by promoting the understanding of public procurement laws, legislative amendments, and governing legal practice are evident tools for strengthening publicity and transparency in public procurement. Through sharing knowledge, exchanging experience, and sharing national and foreign legal practices, the various forms of education and training contribute to enhancing the standards and, thereby, the transparency of public procurement.

For decades, the Public Procurement Authority has seen training and educating public procurement operators as one of its key obligations, showcasing its crucial role in this area. Although there are no programmes specifically for CSOs, training courses and conferences are also open to civilians and accessible to everyone. According to data from the Public Procurement Authority's 2022 Annual Report, the Public Procurement Authority contributed to the education and professional training of nearly 1500 professional in 2022.

The HOPPAA of public procurement experts also frequently organises public procurement training and conferences on topics concerning public procurement updates, legal and audit practice. Postgraduate specialised training in public procurement at various higher education institutions (public procurement attorney, public procurement manager, public procurement consultant) also contributes significantly to the development of the public procurement profession and the acquisition of top-level public procurement expertise.

The government decree adopted in August 2023, which ordered the centralisation of government education and training services starting from 1 March 2024, redefines the operation and market of various market-based public procurement companies which have been active in organising educational courses for years. This means that companies under Government Decree No. 396/2023 (24 August)[8] (including budgetary authorities under the management or supervision of the government, central and local budgetary authorities and institutions under the management or supervision thereof) may participate in training courses, including public procurement training and related services, provided to those who are in a specified legal relationship with the organisation following a centralised public procurement procedure conducted by an appointed central purchasing body. The Ludovika University of Public Service is the designated central purchasing body, which performs its duties through the Government Training Organisation Centre

[8] See Government Decree No. 396/2023 (24 August) on Government Procurement Relating to Training and Education

(GTOC). With the introduction of the GTOC, a new central purchasing portal was set up, which is available at Homepage - UPS Portal (uni-nke.hu).

In its Annual Analytical Integrity Report published on 30 June 2023, the Integrity Authority devoted specific attention to the centralised public procurement system and gave numerous recommendations (namely nine) to improve and make the current operation of centralised public procurement transparent. Herein, the Authority recommended, amongst other things, analysing the efficiency of the application of centralised public procurement in respect of already centralised products and conducting an impact study on the expected benefits of centralised procurement prior to the decision on possibly newly centralised products.

Despite the Integrity Authority's recommendation from the previous year, as far as the Authority is aware, no impact study was conducted prior to the centralisation of educational and training services this time either. On top of that, with the emergence of GTOC, a new central purchaser, **the centralised public procurement market, which was already fragmented with many actors and therefore a greater risk to integrity, has become even more fragmented.**

Progress in engaging civilians

Since the autumn of 2022, the consideration and institutionalised involvement of the observations from the civil sphere have improved. Here, it is important to emphasise that the representatives of civilians, delegated experts from independent organisations, also participate in the task force and advisory board working to enhance the effectiveness of the public procurement system, including drafting the report that summarises the results of the performance measurement framework assessing the efficiency and cost-effectiveness of public procurement. In accordance with Government Decision No. 1425/2022 (5 September) on the development of a performance measurement framework for assessing the efficiency and cost-effectiveness of public procurement, delegates from independent, non-governmental organisations involved in domestic public procurement, who were selected through a public call for tenders, and independent public procurement experts participated in formulating the Framework.

The analysis showing the results of the performance measurement framework for the first time was published on EPPS's website on 28 February 2023[9]. The 2023 report, based on the improved framework and expanded indicators from 2023, was likewise published on the EPPS portal on 28 February 2024[10].

[9] https://ekr.gov.hu/portal/hirek/8798092096856
[10] https://ekr.gov.hu/portal/hirek/8798812927320

To involve CSO representatives, the Integrity Authority Act established the Anti-Corruption Task Force. This independent forum, which operates alongside the Integrity Authority, conducts analyses, makes proposals, and provides opinions. Ten members of the Anti-Corruption Task Force are not representatives from a government organisation, many of them were selected from amongst CSO delegates. One of the responsibilities of the Anti-Corruption Task Force is to prepare the annual report that analyses the risks and tendencies of corruption and corrupt practices. The Anti-Corruption Task Force had to prepare its first report following the year in question by 15 March 2023, while the 2023 report was issued on 14 March 2024. Both reports are available on the Anti-Corruption Task Force's website at Reports - KEMCS

The Task Force carries out its responsibilities through five sub-task forces; one focuses only on examining the Hungarian public procurement system, while another focuses on examining the system of EU and domestic grants.

In its 2023 report, the Anti-Corruption Task Force gave six consensus recommendations and eight non-consensus recommendations with regard to public procurement. The vast majority of recommendations relating to the operation of the public procurement system were not endorsed by the government members of the Task Force.

Here, it is important to mention the monitoring committee set up for the implementation of operational programmes and the monitoring of objectives. The monitoring committees required by Regulation (EU) 2021/1060 of the European Parliament and of the Council[11] for the 2021-2027 programming period were set up for each operational programme. Alongside various advocacy groups and professional organisations, CSOs also have representatives in these committees. Documents relating to the operation of monitoring committees, including the list of members, regulations, minutes from sessions, are accessible in a clear and transparent manner at palyazat.gov.hu for each operational programme.

[11] See Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy

11(b) sub-indicator: 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. Furthermore, the Public Procurement Authority's website (https://www.kozbeszerzes.hu) provides a collection of the most important pieces of legislation relating to public procurement, including EU public procurement rules, to promote information and help law enforcement. Not only the current version of the Public Procurement Act but also previous versions are available on the website of the Public Procurement Authority, thus helping to ensure proper application and compliance with the law.

Some factors influencing the development of public procurement policy, including current aspects of grant policy, are available on official forums and portals (especially at www.palyazat.gov.hu).

The portal www.palyazat.gov.hu provides applicants for EU funding and the general public with information on, for example, available applications, development programmes, the institutional set-up of each operational programme, supported projects, and e-administration. The portal, which was revamped with a new look and updated content in 2023, provides access to the conflict of interest reporting interface and Antilop, the public interest interface for reporting instances of grant misuse, under the "Transparency" menu option. Information on closed irregularity procedures are also accessible here. The new webpage now contains the information that gives a brief overview of the content of public interest reports, which was previously not available, as indicated in the 2022 Integrity Risk Assessment Report.

Social consultation with regard to development programmes and calls for tenders are also ongoing. The number, content and source of observations received through social consultation are also public.

Availability of public procurement procedures

All stakeholders can access, promptly and to the extent necessary, information relating to public procurement at every stage of the public procurement procedure

(in accordance with legal provisions protecting particularly sensitive information) and other information relevant to promoting competition and transparency.

For years, the percentage of public procurement procedures initiated through public advertisements, i.e. a contract notice, has remained consistently high in Hungary. In 2023, 88% of all procedures were initiated through public advertisements. Compared to the previous year, the percentage of negotiated procedures without prior publication of a contract notice continued to decline in 2023, accounting for 1.9% of all procedures.

The various types of notices related to public procurement procedures are fully and electronically available free of charge in the Public Procurement Bulletin[12], which serves as the Official Journal of the Public Procurement Authority, and on the EPPS platform.[13]

As a corrective measure under the conditionality mechanism available from 30 September 2022 and widely used from 2023, the EPPS's feature that enables the bulk download of notices about the awarding of contracts concluded as a result of public procurement procedures ("contract award notice") and the export of data must be considered a significant and innovative advancement in the development of public procurement databases. This freely accessible database enables structured searches and the processing of data stored therein through machine tools. Although information about the contract notices can be downloaded from the database built upon the contract award notices all the way back to 2014 thanks to developments, it would also be essential to enable **structured searches for the notices launching the procedures to conduct a thorough analysis of public procurement processes**.

The Public Procurement Authority is responsible for editing the Public Procurement Bulletin, the official and authentic electronic publication of notices relating to public procurement, concession, and design contest procedures in Hungary. Since February 2017, the Public Procurement Bulletin has been issued every working day of the year. The publication is also available on the Daily Public Procurement mobile app.

In addition to national contract notices, the Public Procurement Bulletin also includes European Union contract notices (the latter for informational purposes). However, European Union contract notices are published officially in the Tenders Electronic Daily, a supplement to the Official Journal of the European Union.

[12] https://www.kozbeszerzes.hu/ertesito/
[13] https://ekr.gov.hu/portal/kozbeszerzes/eljarasok/lista

Since the Public Procurement Bulletin also features public procurement notices sent to be published in the Official Journal of the European Union, economic operators may access information about public procurement notices from one source.

The introduction of eForms in 2023 brought about a new phase in the structure and appearance of European Union notices. Starting from 25 October 2023, new "standard forms", specifically notice data content, were introduced regarding the notices of the European Union procedure in accordance with Commission Implementing Regulation (EU) 2019/1780 of 23 September 2019 establishing standard forms for the publication of notices (eForms) in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986.

According to information received from the Public Procurement Authority, besides the fact that the preparation for managing and controlling eForms required significant IT capacities, the introduction of new standard forms posed a challenge to contracting authorities. One reason for this is that the EPPS platform is still built upon the pattern of previous standard forms. So, it follows the same structure, which is helpful for contracting authorities. This, however, is completely different from the view used by the Publications Office of the European Union. This is a characteristic contracting authorities must adjust to. The Public Procurement Authority aims to support the process during the management of notices, using its own tools.

The other reason for the issue regarding the new notices arises from a regulatory feature where the exact content of EU standard forms is not defined by law. The Authority pointed out this issue during the administrative consultation of Decree 44/2015 (2 November) of the Minister of the Prime Minister's Office. Those who apply the law may become acquainted with the regulations relating to defining the content of notices using a unique tool: a notice published by the minister responsible for public procurement on the EPPS's website [See section 27(3) of Decree 44/2015 (2 November) of the Minister of the Prime Minister's Office]

We are of the opinion that law enforcers should be supported with clear regulations and in a transparent manner whenever new regulations are introduced. Therefore, as a solution, we recommended that the list of mandatory and/or optional fields related to eForms to applied be published in legislation, e.g. in a ministerial decree.

The solution adopted turned out to be the draft notice published by the Minister for Regional Development on the EPPS's website. Since the EPPS's website does not allow searching within news content and does not have a specific menu item for publishing such communications about notice content, it is challenging to find relevant information. Two relevant notices have been published so far: one on 24 October 2023 and its amendment on 5 December 2023. However, the growing

number of notices will make it increasingly challenging to navigate through the array of information about the content of notices, which hampers transparency.

What is currently in operation is a dual system since the indicated changes were introduced only in respect of EU notices – the standard forms outlined in the annexes to Decree 44/2015 (2 November) of the Minister of the Prime Minister's Office remain normative in the national procedure.

With regard to the procedures, contracting authorities must publish notices about the outcome of published procedures and contract modifications, regardless of whether it is about a procedure with or without prior publication of a contract notice. Therefore, in the case of published procedures, the public may access public procurement information throughout the whole spectrum of the procedure.

In accordance with section 43(1) of the Public Procurement Act, contracting authorities are required to publish, although not in the form of a notice, contracts concluded on the basis of public procurement procedures as well as specific data concerning contract performance following completion, including data concerning subcontractors involved in the performance of contracts and payment to the subcontractors, in the Contract Register operated by the Public Procurement Authority, using the EPPS platform. (Note that downloading contracts in PDF format from the EPPS platform is also possible only by completing CAPTCHAs.)

During the interviews conducted by the Authority, it was commonly noted that the published data on contract performance was often incomplete, and contracting authorities frequently failed to fulfill their obligation to publish contracts. As for the contracting authority's part, stakeholders also spoke about increasing administrative workloads in the performance of public procurement contracts. As part of this, contracting authorities are required to publish various new data about subcontractors in the EPPS for contracts concluded after 30 November 2022. This is due to an obligation to the European Commission whereby the EPPS makes specific data about subcontractors involved in the performance of public procurement contracts accessible in a searchable format. Therefore, data submission now includes the expected percentage of the subcontractor's work and the amount of compensation, along with their name, tax number and title of the part they completed; upon completion, the actual percentage of the work done by the subcontractor, along with the date and value of compensation paid, must also be disclosed.

Since larger volumes of data on subcontractors begin surfacing only in the second half of 2023 under the newly introduced disclosure requirements, a database that

can thoroughly analyse the data is expected to be available only in the upcoming years.

Expanding data categories related to public procurement procedures helps enhance transparency in public procurement processes. However, this objective is achieved only if data is monitored while controlling the performance of contracts. **Competent control bodies should focus more on overseeing contract performance** to ensure that the mandatory disclosure requirement does not become merely an administrative burden. The Integrity Authority made a specific recommendation about the proposal regarding the modification of Decree 44/2015 (2 November) of the Minister of the Prime Minister's Office[14] during its administrative consultation.

The implementation of publicity is restricted in procedures without prior publication of a contract notice and procedures outlined in section 115 of the Public Procurement Act due to regulatory specificities. The following factors play a major role in a marginal number of negotiated procedures without prior publication of a contract notice subject to a legal basis:

- inspection conducted by the Public Procurement Authority in negotiated procedures without prior publication of a contract notice;[15]
- strict legal practice enforced by the Public Procurement Arbitration Board (PPAB) in respect of legal titles related to negotiated procedures without prior publication of a contract notice;
- strict inspection practice of managing authorities and the MPARD Deputy State Secretariat for Public Procurement Supervision (PPSD) in EU-funded public procurement procedures.

During the in-depth interviews conducted by the Integrity Authority, it was also noted that, as a collateral consequence of the rigorous inspection conducted by the Public Procurement Authority, law enforcers announce procurements through open procedures that allow only a limited number of tenderers to participate.

Procedure without prior publication of a contract notice under section 115 of the Public Procurement Act

The risks and integrity issues associated with procedures without prior publication of a contract notice as per section 115 of the Public Procurement Act, which can be used only in national procedures, were also highlighted in our 2022 report. In light of

[14] see Decree No. 44/2015 (2 November) of the Minister of the Prime Minister's Office on the rules of the dispatch, control and publication of public procurement and design contest notices, on standard forms and their certain content items and on the annual statistical summary

[15] Section 103 of the Public Procurement Act

this, the Integrity Authority made a recommendation in its Annual Analytical Integrity Report of 30 June 2023 to maintain this procedure type and review its conditions of application, suggesting transforming it into a procedure with prior publication of a contract notice. In its response, the Government did not support the suggestion, stating that data from a survey in the performance measurement framework indicates that these procedures are not significant when looking at the overall public procurement volume. The 2022 data reveals that these procedures made up only 2% of the entire public procurement market, with their value accounting for 4% of all public works projects.

It should be noted that an Anti-Corruption Task Force report published in March 2024 includes a recommendation similar to that of the Integrity Authority: civilian members of the public procurement sub-task force suggested transforming or terminating the procedure outlined in section 115. However, members of the Task Force representing state agencies did not endorse this recommendation.

The purpose of this type of procedure, exclusive to public works projects with an estimated value under HUF 300 million, is that contracting authorities may launch a public procurement procedure by issuing written invitations to tender to at least five economic operators concurrently, rather than publishing a contract notice. Only the economic operators invited to tender by the contracting authority are allowed to submit a bid in the procedure. Although section 115 of the Public Procurement Act stipulates various guarantees to uphold competition, such as the requirement for contracting authorities to select economic operators without discrimination, ensuring competition and equal treatment in such a way as to diversify, when feasible, the economic operators they intend to invite to tender in different procedures, this type of procedure has attracted a lot of criticism this year from the survey based on in-depth interviews and from public procurement stakeholders. These concerns are further supported by notifications issued to the Integrity Authority.

Although the 2020 amendment[16], which prohibits this type of procedure starting from 1 February 2021 if the procurement is funded either partially or entirely by the European Union, restricts the use of procedures outlined in section 115 of the Public Procurement Act, contracting authorities still carried out a total of 1043 procedures of this kind in 2022, amounting to HUF 118.1 billion, which represents 26.4% of the value of public works projects completed nationally. Although, according to data from the Framework, their value slightly decreased in 2023 (to HUF 107.3 billion), their

[16] See Act CXXVIII of 2020 on the Amendment of Act CXLIII of 2015 on Public Procurement and Certain Related Acts

percentage at the national level increased from 26.4% to 28.5% in 2023, considering the value of completed public works projects.

Although the role of this type of procedure in the national procedure cannot be considered marginal, we believe that **the negative impact of improper practices in implementing the procedure set out in section 115 extends beyond mere numbers and the national procedure**. Considering the trust in the functioning of the entire public procurement system, it is vital for the system to be void of any weaknesses—including those manageable with appropriate regulations—that public procurement stakeholders believe can be easily circumvented. Meanwhile, we believe that if public procurement stakeholders consider experience gained from only a section of procedures to be applicable to the entire public procurement system, **it has a significant impact on the** overall **public procurement moral**.

The respondents in the 2023 questionnaire survey, the 2024 survey exclusively involving tenderers, and the general opinion from the in-depth interviews all agree that this does not qualify as "genuine public procurement". This is because contracting authorities target specific tenderers, indicating they have a predetermined idea of whom they intend to contract with. This opinion is further supported by notifications issued to the Integrity Authority.

Furthermore, 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 prohibition of demolition by instalments (the procedure can only be tendered up to a net threshold of HUF 300 million). 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). These are also confirmed by the fact that, in the past, remedy proceedings against the application of this procedure have been practically only based on an ex officio initiative by the bodies controlling EU-funded public procurement. The total absence of remedy proceedings at request in this segment also seems to confirm the view that there is no real competition in these procedures. This is why tenderers submitting tenders in the procedure do not even attempt to challenge the contracting authority's decision to close the procedure. Moreover, the need to review the rules governing the application of the procedures under section 115 of the Public Procurement Act is also supported by the fact that violations under section 25 of the Public Procurement Act, which have been identified in recent years and have led to conflicts of interest and a lack of fair competition, have almost exclusively occurred in these procedures.

It is uncertain how the fundamental principles referred to above – ensuring competition, avoiding discrimination in selecting economic operators, and

maintaining equal treatment – can be enforced in a procedure where the contracting authority has full discretion to choose the five economic operators it wants to invite to tender. Additionally, the document from the Authority that outlines the selection principles does not set out any substantial requirements for changing tenderers.

There is evidence to suggest that these procedures usually do not benefit small and medium-sized enterprises (SMEs), but rather benefit only one or a few local firms in securing orders. This results in these firms gaining a significant competitive advantage over competitors who solely rely on winning orders through market competitions.

In summarising the previous points and maintaining our earlier recommendations, we continue to assert the necessity of reviewing the regulations related to section 115 of the Public Procurement Act.

Disclosure obligations in open public procurement procedures

According to the general rule, as explained in this sub-indicator regarding access to public procurement procedures and data availability, the public can follow the entire process of public procurement procedures, starting from planning and launching procedures to performing or modifying contracts.

At the start 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, outlining their planned procurements for the year. Procurement plans are public and available on the EPPS platform.

Contracting authorities must publish, amongst other things, the following information on the EPPS:[17]

- 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 resolution procedure, the information specified in the legislation in relation to the dispute resolution request;
- certain data about performance of contracts concluded following a public procurement procedure (for example, in addition to the names of the contracting parties, whether the performance was in conformity with the contract; the date of performance of the contract acknowledged by the

[17] See section 43(1) of the Public Procurement Act

contracting authority and the date of payment);

- for contracts signed after 30 November 2022, specific information about subcontractors involved in performing the contract; following the modification, data submission now includes the expected percentage of the subcontractor's work and the amount of compensation, along with their name, tax number and title of the part they completed; upon completion, the actual percentage of the work done by the subcontractor, along with the date and value of compensation paid must also be disclosed;
- the termination, cancellation or invalidity of the contract, starting from 1 February 2024.

Transparency is also strengthened by the fact that the Public Procurement Authority's justified decisions concerning negotiated procedures without prior publication of a contract notice subject to a legal basis are public. Documents related to the procedures, including information about the economic operators invited to tender, must be disclosed publicly. This enhances transparency in procedures (information about the legal basis, subject matter, and winning tenderer of the procedure).

Effective from 1 February 2024, the regulation that requires the disclosure of whether contracts in conditional public procurement procedures do not take effect was an important improvement.

Absence of a standard database

The absence of a standard database was identified as an integrity risk in the 2022 Integrity Risk Assessment Report. Although it is understood that information regarding public procurement procedures is public and widely accessible to those interested, the limited search functions on various portals storing public procurement data, such as the EPPS, KH and PPAB registers, which are practically unable to analyse complex connections, are still subject to criticism. Although enabling bulk downloads of contract award notices and expanding the range of datasets thereby made available are important steps forward in the development of public procurement databases, this progress does not yet extend to other documents, like different types of contract notices or public procurement contracts.

Based on the risk identified in the 2023 Integrity Risk Assessment Report, the Integrity Authority recommended, in its Annual Analytical Integrity Report of 30 June 2023, the creation of structured, standard format public procurement databases, which are capable of searching for and processing data for a longer period. The Government did not support the Authority's recommendation in this form, citing

that the EPPS is the general IT system for conducting public procurement procedures, meaning that its further development is therefore warranted. Considering the objective of the Authority's recommendation, the main focus is not on what platform will accommodate the standard database, but the Authority still considers it necessary to create a database capable of analysing the full spectrum of public procurement processes in greater detail than what is currently feasible, thus also allowing for the analysis of wider contexts.

Government Decision No. 1118/2023 (31 March) on the action plan for measures aiming to increase the level of competition in public procurement (2023–2026) addressed numerous innovative measures in this regard. For instance, it determined the development of the EPPS whereby users will have access to more developed search functions.

However, the current system is yet to make centralised procurement data available in a transparent format. We advocate for the availability of data in detailed, non-aggregated format on public procurement procedures conducted outside the EPPS, especially those concerning procurements within centralised framework agreements.

Centralised procurements

In its Analytical Integrity Report of 30 June 2023, the Integrity Authority makes several recommendations relating to centralised public procurement procedures. These recommendations were aimed at promoting publicity and transparency in these procedures and improving efficiency in the operation of these systems. Although the Government agreed with some of the recommendations, there has been no progress regarding the availability of data on procedures conducted by central purchasing bodies ever since. Furthermore, centralised procurement has been expanded with a new public procurement subject.

This is supposedly the reason why the CSOs interviewed in 2024 invariably viewed the lack or limited amount of data available on procurement needs (re-opening of competition and direct orders) in the second part of procedures conducted by central purchasing bodies outside the EPPS as a weakness and a risk to integrity. 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.

It was evident that centralised public procurement continued to gain ground by expanding into the education market. Addressing this issue is still crucial because,

on the one hand, framework agreements close the public procurement market for extended periods (depending on the decision of the central purchasing body), typically for 2-4 years, allowing only the number of tenderers corresponding to the number of framework agreements can tender in respect of specific procurement needs. On the other hand, centralised procurements are usually of high value, which limits the number of tenderers able to participate. These high-value public tenders are not advantageous for the SME sector. At the same time, the decreasing average duration (active period) of framework agreements since 2021, as indicated in the 2023 Performance Measurement Framework, can be seen as an improvement. (In 2021, the average duration was slightly over 2 years, whereas in 2023, it was 1 year and 9 months).

Although there are no established methodologies to measure the efficiency of centralised procurement, the way how the requirement for consortia of tenderers, typically comprising a large number of tenderers, to meet aggregated public procurement needs impacts prices is a current issue that requires investigation. Further investigation is also needed into why tenders for various subject-matters of procurement in centralised public procurement procedures are submitted by consortia with numerous joint tenderers.

Another integrity risk in domestic centralised public procurement models is that particular circumstance where central purchasing bodies are not actually compelled to engage in competition.

Single tender procedures

Although, as shown above, the vast majority of public procurement procedures in Hungary are openly advertised, the high proportion of single-tender procedures is a well-known issue.

The Integrity Authority is also committed to discovering effective tools to enhance competition in public procurement and promoting the necessary measures to achieve this objective. Therefore, the Authority gave several recommendations in its 2022 Annual Analytical Integrity Report to reduce the proportion of single tender procurement, amongst other things.

Single tender procurement is a complex issue, which demands a multifaceted approach to resolve. Problems related to the level of competition in public procurement cannot be automatically identified with the issue of single tender procedures. **The intensity of competition in public procurement should be examined in a broader context.** The issues include not only single tender procedures, but also procedures with a few tenders. Furthermore, the loss of trust

amongst tenderers also has a negative impact on competition. In other words, **just because the numbers in surveys assessing the level of single tender procedures are improving, we cannot jump to far-reaching conclusions about competition**.

The investigation of the effectiveness of the measures taken to remedy the issue of single tender procedures requires further analysis. Additional analysis is also required on the extent of contribution of preliminary market consultations mandatorily applied throughout the procedures to boost the level of competition; the proportion of economic operators participating therein; whether the set minimum deadlines to conduct the consultations suffice for interested economic operators to join the process (also considering the procedural framework outlined in the EPPS to conduct the consultations); and on how the indicated observations are utilised (in particular, concerning the subject-matter of procurement, technical content, and the participation conditions of subsequent procedures).

It appears to be important to examine whether the improving statistics are the result of actual competition (i.e. to what extent there are genuinely competing tenders and to what extent there are what is known in the jargon as "supporting tenders"). To avoid single tender procedures, it may be necessary to analyse the content and effectiveness of the action plans published by the contracting authorities required to engage in such procedures.

Market participants' trust

These are crucial also because adequate public procurement operation is a condition for rebuilding the trust amongst market participants. Of course, this cannot materialise from one day to the other; however, it is important that economic operators see the authenticity of the contracting authorities' efforts.

Eliminating the waiting time between the tender deadline and the opening can be one possible element to this. In the 2022 Integrity Risk Assessment Report, the Integrity Authority put forward the idea, as another possible measure to build trust amongst tenderers, that the EPPS and other electronic systems could ensure (including in preliminary market consultation) that the roster of interested economic operators is not revealed to contracting authorities prior to the tender and participation deadline. Since during the interviews, it was mentioned that in public procurement procedures, either the contracting authority or a rival economic operator, who is following up on information leaked presumably by the contracting authority, would approach the tenderer not to participate in the public procurement procedure.

Government Decision No. 1118/2023 (31 March) on the action plan for measures aiming to increase the level of competition in public procurement (2023–2026) prescribes an improvement of the EPPS, with a deadline set for 31 December 2024, to ensure the anonymous availability of public procurement documents in the EPPS. This could also help restore the trust of public procurement stakeholders.

Trust amongst tenderers may also be strengthened by—

- reviewing legislation and making appropriate corrections in light of the analysis of the practical experiences of legal institutions providing greater scope for law application, especially the justification of conditional public procurement procedures and disproportionately low prices;
- reviewing the regulations allowing the classification of priced bill of quantities forming the basis of the bid price in public procurement procedures as trade secrets, at least in respect of framework contracts and priced bill of quantities including the unit prices of framework agreements;
- modifying the Public Procurement Act to prevent the practice of contracting authorities fixing bid prices and thus eliminating competition in respect of bid prices;
- specifying the ground for exclusion concerning offshore companies and establishing the procedural framework providing access to information on the ownership of economic operators involved in public procurement procedures.

Reinstating the obligation of public procurement for purchases funded either from national or European Union grants, going beyond the minimum scope stipulated by European Union directives, and clarifying the public procurement aspects regarding the use of corporate tax support in the Public Procurement Act, would enhance transparency in the use of public funds and help improve integrity in competition. Analysing the practice of implementing procurements excluded from the scope of public procurement regulations in view of emergency regulations is also recommended.

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

This sub-indicator assesses *i) the extent to which the laws, regulations, and policies enable the participation of citizens in terms of consultation, observation, and monitoring and* *ii) whether the government promotes and creates opportunities for public consultation and monitoring of public contracting.*

Engaging civilians

Domestic public procurement regulations lack explicit instruments to ensure the direct participation of citizens or CSOs 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 involving CSOs in public procurement task forces. However, this progress does not guarantee public participation in public procurement procedures.

On the one hand, this is understandable because the first and foremost procurement-focused special expertise, which is required from participants in public procurement procedures, whether from the contracting authority or the tenderer, is not or not inherently possessed by external participants. Public procurement databases are public and electronically accessible free of charge. Citizens and the civil sphere can also directly access information about public tenders and processes related to specific procedures.

However, besides the representation in the task forces mentioned earlier, which is definitely a step forward, most CSOs are interested in exploring additional ways of collaboration and channels for better integrating civil control into public procurement processes. The fact that a civil society organisation like HOPPAA, which brings together public procurement experts, is in a much better position to make its voice heard is also part of the overall picture.

For instance, the delegates of HOPPAA can now influence and evaluate public procurement processes not only as members of the task forces mentioned above (see Public Procurement Performance Measurement Framework, Anti-Corruption Task Force), since members nominated by HOPPAA, as delegates of the Professional Body of Public Procurement Advisors, are also members of the Public Procurement Council.

Here it should be noted that other professional organisations also contribute to the work of the Public Procurement Council operating under the Public Procurement

Authority. This contribution comes through three persons appointed by the national advocacy 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 a cooperation agreement with the Public Procurement Authority, HOPPAA also has the opportunity to contribute, amongst other things, practical insights to certain legislative support materials developed by the Public Procurement Authority. Additionally, HOPPAA aims to actively participate in the legislative process on public procurement by providing assessments.

Integrity pacts

While the public procurement legislation does not mention integrity pacts (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 pact is a trilateral agreement signed by the contracting authority, the tenderer, and an independent monitor to oversee a particular public procurement procedure. Its objective is to enhance transparency in public procurement procedures, promote fair competition, and involve citizens in monitoring the use of public funds. Alongside the existing administrative audit function, integrity pacts also have anti-corruption influence and, as an added value, can strengthen public trust in public procurement. The conclusion of an integrity pact could therefore be a possible way of civic monitoring.

In Hungary, Transparency International Hungary has and continues to participate in such agreements. Furthermore, it has also monitored procedures.

"Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds" is a pilot project that has overseen the monitoring of 18 EU-funded public contracts in 11 EU countries. As part of this, Transparency International Hungary has monitored the investment project for the construction of the M6 motorway section between Bóly-Ivándárda (country border) and the project titled "Construction of the Improved Vásárhelyi Plan Upper Tisza Flood Protection System, Tisza-Túr flood reservoir". Furthermore, the organisation has signed integrity pacts with local authorities as well.[18]

Integrity pacts have proven to be capable of correcting legal and compliance deficiencies that may arise in public procurement procedures. Therefore, they have an educational impact on participants and contribute to promoting regularity.

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

Given the experiences, it may be necessary to examine how to increase awareness of integrity pacts amongst a broader audience and how to implement them in public procurement procedures.

Electronic breakdown in public procurement procedures

Tenders submitted in public procurement procedures are opened electronically and automatically in the EPPS system. Since the spread of electronic public procurement, which has overtaken paper-based public procurement procedures, (the so-called opening procedure was abolished) "external" monitors can no longer be involved in this phase of public procurement procedures. This means that not only civilian monitors but other participants who are not involved in the public procurement procedure are also excluded from participating. The fiches are made automatically available to all participants in the procedure, who can be acquainted with the other participants and their tenders subject to evaluation criteria. The points explained above and the questionnaire survey also mention that the waiting time (a period of two hours in the case of the EPPS) between the tender deadline and the opening of tenders for public procurement stakeholders is not justified. The Authority still believes that eliminating the waiting time between the tender deadline and the date of opening would be important, unless experiences with operating electronic public procurement systems (especially the EPPS) prove otherwise. (The Authority outlined a relevant recommendation also in its 2023 Annual Analytical Integrity Report.)

Although the Government is in favour of the recommendation put forth in the 2023 Annual Analytical Integrity Report and the minister responsible for public procurement was instructed to investigate the technical feasibility of the extent to which the time period between the tender (participation) deadline and the opening of tenders (applications) could be reduced while ensuring the breakdown-free operation of the EPPS, there has been no significant changes in this matter.

Eliminating the waiting time could also contribute to building more trust in the lawful execution of public procurement procedures.

One potential platform for citizens and civilians to oversee public procurement procedures is the anonymous abuse reporting system operated by the Authority, which is detailed in sub-indicator 14(f).

Public Procurement Anonymous Chat (PPAC)

This information channel, introduced by the Public Procurement Authority in 2020, allows anyone to anonymously share information with the Public Procurement Authority's colleagues about alleged or actual public procurement violations. The

PPAC allows citizens to anonymously notify the colleagues of the Public Procurement Authority of alleged public procurement violations. According to the Public Procurement Authority, the PPAC operates as a closed platform, allowing only their designated experts access to the conversations. Between 1 January 2022 and 31 December 2022, the PPAC received only 19 notifications—14 fewer compared to the previous year[19].

None of the respondents in the 2023 questionnaire survey submitted notifications on the PPAC. Respondents expressed their distrust in anonymity and questioned the likelihood of notifications resulting in concrete actions. Therefore, it seems warranted that the Public Procurement Authority should regularly provide information on the notifications and actions that ensue. According to information from the 2022 Annual Report of the Public Procurement Authority, out of the 19 notifications received in 2022, one underwent a contract review procedure, while three were subjected to an inquiry that did not necessitate a contract review.

Application for review procedure

Furthermore, the PPA allows any chamber or advocacy group whose activities are in line with the subject-matter of procurement to submit an application for review procedure to the Public Procurement Arbitration Board due to the illegal nature of a contract notice, invitation to tender, invitation to participate, public procurement documents, or a modification to any of these [section 148(2) of the Public Procurement Act]. With regard to the mentioned documents, preliminary dispute resolution is also an option for chambers as an alternative legal remedy [section 80(1)b) of the Public Procurement Act]. These topics are elaborated in detail in sub-indicators 13(a) and 13(c).

Monitoring contracts and contract amendments can be done primarily through the contract notices and data disclosures detailed in sub-indicator 11(b).

[19] Source: 2021 and 2022 Annual Report of the Public Procurement Authority.

MAPS indicator 12: The country has effective control and audit systems

Indicator summary

The indicator's objective is to define the quality, reliability and timeliness of internal and external audits and to assess the their effectiveness. "Effectiveness", as intended in this indicator, refers to the speed and thoroughness of the implementation of the findings and recommendations provided by those conducting the audits.

Findings

The legal acts cited in the Report outline the audit levels related also to public procurement and the relevant institutions. During the in-depth interviews conducted with various professional and civil society organisations, participants generally reported that public procurement in Hungary was subject to complex, multi-level audits. The practice followed by the participants in the audit institutions materialise based on formatting and legal aspects of public procurement. Thanks to this, contract notices display high-quality data; however, a risk-based audit is generally absent from the system.

The qualifications, professional advanced training, and, in the case of internal and external audit organisations, the independence of auditors are also outlined in legal regulations. Certain institutions have developed significant cooperation amongst each other (e.g. the cooperation agreement between HCA and PPSD to better fight public procurement cartels). Furthermore, there are detailed, publicly available methodological guidelines on the various audit levels. For example, the HCA and KH published a joint professional guideline on corruption risks and cartel agreements related to integrity in public procurement competition.

The current legal and institutional background in overseeing public procurement, namely the cooperation amongst institutions, is sufficient and encompasses the entire public procurement system. Nevertheless, there is **an abundance of control bodies** whose **methods are heterogeneous and lack coordination**. Fragmentation at the institutional level leads to variations in methodologies, practical guidelines built thereupon, and their sources, causing legal uncertainty amongst those who apply the law, as there is no standard benchmark to adhere to. This is further complicated by the differences in controlling domestic and European Union funds, as well as the different mechanism incorporated in the process and that of ex-post audit. Organisations' **failure to consistently communicate their changed control practices** leads to unpredictable scenarios.

In 2023, the Anti-Corruption Task Force assessed and reported in detail[20] on which practices used in controlling European Union funds can be implemented in the control of domestic funds.

The existing legal uncertainty necessitates a holistic review of the public procurement control system, the implementation of a practice that is more uniform than the current one, and the uniform use of a more thorough and effective investigative approach (primarily risk-based investigations).

Publishing continuously updated methodological guidelines that promptly trace audit results and legal cases, sharing practical examples tailored to different control levels, and providing educational materials and training opportunities would be recommended to promote law-abiding behaviour and prevent additional violations.

Furthermore, the lack or insufficiency of professional compliance control (regarding primarily the description of procurement requiring technical or, in some cases, special social/occupational/environmental expertise) is what has been criticised in various stages of the control process mainly by public procurement professionals In 2023, the Integrity Authority assessed the control system of European Union funds in detail. Its findings and recommendations are included in the Annual Analytical Integrity Report. The Integrity Authority's experience is that the internal audit methodologies of controlling institutions are uniquely defined and show significant differences in terms of content and formatting characteristics across various EU funds. These differences make it difficult to evaluate and control compliance with the applied rules and to assess conformance in the execution of controls, amongst other things. Therefore, it is not possible to determine with absolute certainty whether the conducted controls are effective enough and comply with the control objectives put forth and related tasks. It is worth mentioning that internal regulations do not, or only in rare cases, specify individual leaders in the execution of audits. The assessment has also found that the current control system primarily focuses on the formatting requirements of legal compliance rather than on the content, while the risk assessment approach and methods are not used to the extent required. Furthermore, it is necessary to restructure the method of on-the-spot inspections announced in advance and to conduct more spontaneous and unexpected inspections.

[20] https://kemcs.hu/wp-content/uploads/2024/03/KEMCS-2023-rol-szolo-eves-jelentes.pdf

Summary of the substantial deficiencies and recommendations of Indicator 12

Substantial deficiencies	Risk classification	Recommendations
Several stages in the control process lack a risk-based methodology	high	Developing a risk-based control methodology that can be applied throughout the entire control process (the universal control of the riskiest projects)
Domestic and European Union control practices differ from each other	average	Holistic consideration and rationalisation of the control process, separation of duties
Methodological/practical guidelines of certain bodies are not developed in view of the entire control process, are not harmonised	average	Single source of truth methodological guidelines containing continuously updated audit results, cases with practical examples adapted to different control levels, continuous follow-up with educational materials and training opportunities
The lack of communication of control aspects followed by certain control bodies	average	Publishing supporting materials, methodological guidelines based on the control practice and updating them at specified intervals.
The information on public procurement projects is incomplete and fragmented	average	Designing the collection of control information/data in a holistic approach – traceability, possibility to review the whole process in each case, introduction of unique external and internal identifiers. Analysing a database like this would assist in future inspections and help develop methodological guidelines.
Inspection capacity shortage	average	Managing capacity shortages; and training and recruiting professionals, or engaging them as external experts, who can effectively examine professional and content (e.g. technical) issues. Investigating conflict of interest when engaging external experts.

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

This sub-indicator assesses whether the

i) effective laws and regulations provide for a comprehensive control framework;
ii) whether the institutions, policies and procedures as defined in the law are in place and operational; and
iii) whether the existing control framework adequately covers public procurement operations.

Several and various laws and government regulations govern the oversight and institutional system of public procurement. The control system of public finance is

regulated by Act CXCV of 2011 on Public Finances ("Public Finances Act"). The duties of control bodies outlined in the Public Finances Act are closely related to public procurement. In general, the Public Finances Act distinguishes external (legislative), governmental/municipal, and internal (organisational) audits, as well as controls integrated into the process as so-called lines of defense.[21]. These lines of defense create a mutually reinforcing synergy effect. Responsible organisations are separated accordingly. Besides the lines of defense, the source of funds is also an important distinction (national vs European Union).

The first line of defense – Internal control system

The first line of defense at the organisational level consists of the internal control system and internal audit. This is implemented on the lowest level, meaning that it is mandatory for all entities subject to public procurement [relevant legal regulations: Public Finances Act; Government Decree No. 370/2011 (31 December) on the Internal Control System and Internal Audit of Budgetary Bodies ("Internal Control Decree"); Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies ("Company Internal Control Decree")].

Section 61 of the Public Finances Act stipulates that the objective of public finance controls is to ensure the regular, economical, efficient, and effective management with the public funds and national assets, and the regular fulfilment of the reporting obligations and disclosure requirements. In accordance with section 70(1) of the Public Finances Act, the head of the budgetary authority must ensure the setup, operation, and independence of internal audits. The Internal Control Decree specifies the detailed rules regarding internal audits and the internal control system. In accordance with section 3 of the Internal Control Decree, the head of the budgetary authority is responsible, as part of the internal control system, for setting up, operating, and developing the—

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

which are implemented and adequate on all levels of the organisation. The head of the budgetary authority, as defined in the Internal Control Decree, must evaluate the quality of the control system annually. The evaluation results are then submitted

[21] Institute of Internal Auditors Hungary IIA's Three Lines Model https://iia.hu/images/dokumentumok/tudas/haromvonal_hu.pdf

to the minister responsible for public finances. The person conducting the internal audit will carry out their duties directly under the supervision of the head of the organisation. They must remain independent, free from external influence, and objective in performing their duties. The head of internal audit draws up a strategic internal audit plan for the next four years, which they will use as the basis to prepare the annual audit plan. Once the audit is conducted, the person conducting the audit will prepare a report that can also serve as the basis for an action plan. The head of internal audit keeps records of the audits and ensures the results are preserved. They prepare annual audit reports and annual summary audit reports, which present the internal audit's yearly activities through self-assessment.

In order to directly enforce the institution of internal audit in public procurement procedures, and thus to increase the transparency and regularity of the procedures, the PPA also contains an explicit rule. Therefore, (section 27(1) of the PPA) the contracting authority must define the lines of responsibility in the preparation, performance, and internal audit of public procurement procedures, and the responsibilities of persons and organisations acting on its behalf and involved in the procedure, and the documentation regime in public procurement procedures, in accordance with applicable legal regulations. So, contracting authorities of public procurement procedures must have internal regulations that consider the specific characteristics of their organisations: public procurement regulations for general or specific procedures, which stipulate the internal lines of responsibility of public procurement procedures, identify the decision levels concerning the participants of the public procurement procedure, and defines the internal audit procedure of public procurement.

The second line of defense – Government-level control

The second line of defense is the government-level control. The member of the Government in charge of public procurement and the use of European Union funds is the Minister for Public Administration and Regional Development. In this capacity, he or she is responsible for the preparation of legislation on public procurement, the formulation and implementation of the Government's public procurement policy, and the central control and authorisation of public procurement. In the context of his or her responsibility for overseeing the use of EU funds, he or she coordinates the implementation and supervision of development policy programmes, and undertakes tasks related to remedy proceedings. He or she discharges their duties through the designated organisational units of the Ministry of Public Administration and Regional Development: the Deputy State Secretary for Public Procurement and the Deputy Secretary for Implementation of Development Programmes.

The government-scale control of public finances is carried out by the government regulatory authorities, the auditing body of European Union funds, and the Treasury.

G*overnment Control Office*

GCO is the government audit body [applicable legislation: Government Decree No. 355/2011 (30 December) on the Government Control Office] GCO is a central budgetary authority that operates as a central office under the supervision of the Head of Cabinet of the Prime Minister. The governmental audit conducted by GCO is an audit or consultation activity which is independent from the audited organisations and focuses on the use of public funds, the management of national assets, and the efficient, economical and effective performance of public functions.

The GCO conducts its audit activities as ex-post audits. It prepares an annual plan for these activities, which is then approved by the Government. These audits are carried out through requests for information or on-the-spot inspections. Once an audit is closed, the GCO prepares an audit report that also presents a concise evaluation of the results and deficiencies and makes recommendations to resolve deficiencies and improve process efficiency. Based on this, the head of the audited organisation must first prepare and then follow-up on an action plan.

According to the GCO, its audit reports are classified as decision-preparing data under section 27(5) of the Privacy Act. This means that the subject, content, findings, eventual recommendations, and utilisation of these reports cannot be accessed and will not be made public for a period of ten years from their creation. However, the summarised statistical data on its audits related to public procurement show that GCO conducted a public procurement audit in the case of 124 contracts in 2023, specifically looking into the unlawful exclusion of public procurement procedures and the legality of contract amendments. The data provided by GCO and PPAB shows that GCO initiated ex officio remedy proceedings with the PPAB concerning its activities in one case in 2022 and three cases in 2023 – there were no ex officio initiatives submitted by GCO in 2020 and 2021. Moreover, the GCO approached the president of the Public Procurement Authority regarding suspicions of public procurement violations in two more cases.

Hungarian State Treasury

The audit activity of the Hungarian State Treasury [applicable legislation: Public Finances Act, Government Decree No. 310/2017 (31 October) on the Hungarian State Treasury, Regulation (EU) No. 1303/2013/ of the European Parliament and of the Council] covers local authorities, national minority local self-governments, associations, regional development committees, and the budgetary authorities

they control, with a primary focus on accounts, budget reports, and compliance with data provision requirements. It also serves as a certifying authority in controlling the use of European Union funds, which basically includes verifying financial accounts and ensuring they comply with relevant legislation.

The Public Finances Act makes reference to the body auditing European funds (DGAEF) in the context of a government-level audit. The presentation of DGAEF takes place amongst the audit bodies of procurements funded by the European Union.

Unspecified in the Public Finances Act, the National Tax and Customs Administration (NTCA) is the authority of the second line of defense. It fulfills the responsibilities of the tax and customs authority as specified by law, operating through central and regional entities. The NTCA is responsible for defining, collecting, keeping records of, implementing, returning, allocating, and auditing mandatory payments and budgetary contributions to the central budget and state funds. The OLAF Coordination Office operates within the organisation of the National Tax and Customs Administration, under the direct supervision of the president of the National Tax and Customs Administration but independently in its responsibilities. We mention the OLAF Coordination Office likewise amongst the audit bodies of procurements funded by the European Union.

The third line of defense – external audit conducted by the State Audit Office

In accordance with the Public Finances Act, external audit functions are carried out by the State Audit Office (SAO) [relevant legislation: the Public Finances Act, Act LXVI of 2011 on the State Audit Office of Hungary ("SAO Act")]. Nevertheless, the Hungarian State Treasury may also conduct external audits in specific cases as defined by law.

The SAO is an independent financial and economic audit body subordinate only to the National Assembly, which is thus also authorised to audit the bodies of the first and second lines of defense. Its activities are based on an audit plan. It formulates and publishes its own professional rules and methodology for audits. As part of closing an audit, it always prepares a report that includes the identified facts, along with related conclusions and recommendations. These reports are public, but their publicity may be restricted to protect classified data. Furthermore, they may not contain classified data or other secrets protected by law. The report needs to be sent to the audited organisation as well, whose head must then prepare an action plan based on the report. The content of the action plan and its implementation may be checked by the State Audit Office.

In 2023, the State Audit Office prepared the Methodological guideline supporting the audits of public procurement, considering the relevant legal requirements and

the INOSAI GUID 5280 methodological standard (Guidance for audits of public procurement). This guideline aims to conduct audits with a different approach, more in-depth content, and more structured procedures than in the past, with a perspective on legality, expediency, and effectiveness. The methodological guideline was accompanied by a Manual for internal use which provides further guidance to auditors for evaluating the public procurement activities of audited organisations.

At the request of the Integrity Authority, the SAO reported conducting two audits related to procurement legality in 2023. These audits revealed suspicions of criminal offences, leading the SAO to file complaints with the investigative authority in total of four cases and initiate proceedings with the PPAB in two cases under section 30(1) of the SAO Act.

Although not part of the public finance system, the Hungarian Competition Authority (HCA) and the Public Procurement Authority (KH) are autonomous/independent regulatory bodies that are subordinate to the National Assembly and possess auditing authority related to public procurement.

Hungarian Competition Authority

As an autonomous state administrative body, the HCA mainly carries out competition supervisory tasks [relevant law: Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices]. The HCA has emphasized in the data it provided to the Integrity Authority that uncovering public procurement cartels is a constant priority. The HCA identified illegalities in two cases each in 2022 and 2023, and has thus far uncovered one violation in 2024. Furthermore, the HCA is currently looking into eight ongoing cases regarding alleged illegalities in public procurement procedures.

If the contracting authority detects or suspects unfair market practices or competition restrictions, it must notify the HCA (section 36(2) of the PPA). Contracting authorities in public procurement procedures approached the HCA in 15 cases in 2022 and 11 cases in 2023, in accordance with section 36(2) of the PPA.

If the minister responsible for public procurement or the minister responsible for the use of European Union funds identifies any violation during the public procurement procedures or the procurement-focused and legal examination of contracts and their amendments, they are authorised to transfer any data, excluding classified data, available through the public procurement in question to the HCA (section 36(3) of the PPA).

The HCA has cooperation agreements with numerous organisations actively involved in public procurement. Furthermore, many data disclosures submitted to the Integrity Authority contain information indicating that the HCA was notified.

Public Procurement Authority of Hungary

As outlined in section 187 of the PPA, the primary function of the Public Procurement Authority is to shape public procurement policy, assist in creating and spreading legal public procurement practices, and promote the public and transparent utilisation of public funds, taking into account the public interest and the interests of contracting authorities and tenderers. The Public Procurement Authority carries out audit functions, amongst other responsibilities.

Elements of the Public Procurement Authority's audit activity:

(1) Notice management and control [applicable legislation: Decree No. 44/2015 (2 November) of the Minister of the Prime Minister's Office on the rules of the dispatch, control and publication of public procurement and design contest notices, on standard forms and their certain content items and on the annual statistical summary]: In Hungary, public procurement notices are published only after an audit by the Public Procurement Authority, except in certain cases of EU-funded public procurement with in-process audit. As a result of audits on contract notices, the content of notices is consistent in quality and content, and several illegalities are identified.

Auditing contract notices is an important component of the multi-stage audit system integrated into the public procurement process. The goal is to ensure contract notices are filled out in accordance with the legal requirements relating to public procurement, have clear content, and meet the deadlines concerning the publication of the specific contract notice. The mandatory auditing of contract notices involves the inspection of notices launching the procedures and their modifications, contract award notices, and contract modification notices. (The inspection of notices launching the procedures and contract modification notices is not mandatory if the public procurement procedure is conducted with an in-process audit of the Ministry of Public Administration and Regional Development due to European Union funds of relevant amount, and the related certificate is attached to the request for contract notice audit.) If the content of notices still does not comply with the legal requirements relating to public procurement after the inspection and remediation of deficiencies, the organisational unit of the Public Procurement Authority conducting the audit will notify the president of the KH, who may initiate ex officio remedy proceedings with the PPAB.

(2) The audit of negotiated procedures without prior publication of a contract notice (one-phase procedures subject to a legal basis in which contracting authorities negotiate contractual terms with tenderers directly invited to tender) [relevant law: section 103 of the PPA]: In accordance with section 103 of the PPA, the KH applies increased scrutiny to the legal basis of these procedures, which may be used on an exceptional basis. Legal inspections are initiated by contracting authorities through the Electronic Public Procurement System. The KH publishes its decisions confirming the legal basis for NPwPPs. If the Public Procurement Authority finds there is no legal basis for a NPwPP, it may initiate remedy proceedings with the PPAB.

(3) Audit of the amendment and performance of public procurement contracts [relevant legislation: the PPA; Government Decree No. 308/2015 No. (27 October) on the Public Procurement Authority's Control of the Performance and Amendment of Public Contracts Concluded Based on Public Procurement Procedures]: The goal is to examine whether the performance of contracts complies with the conditions outlined in the recommendation issued in and provided for the public procurement procedure and whether the modification of contracts is in accordance with section 141 of the PPA. The Public Procurement Authority considers legal, technical, and professional perspectives when auditing contracts. The KH's contract audit activity also involves capacity checks whereby the KH checks whether tenderers and/or capacity-providing entities comply with the eligibility requirements set out by the contracting authority in the specific public procurement procedure and whether they actually take part in performing the public procurement contract in accordance with their commitments made in the tender.

Audits focusing on the legality of the performance/amendment of contracts are initiated ex officio based on the annual audit plan published on the KH's website, the requests from organisations/persons authorised by law, information notices on the modification of contracts (if allegedly related to public procurement violations), reported contract violations, and public interest reports. A record is kept of the audits. The indirect effect of these audits is to deter violations, since if a case of violation is confirmed, the president of the Public Procurement Authority will initiate an ex officio procedure with the PPAB. Furthermore, if the president identifies signs of illegalities related to public procurement during the procedure, he or she will notify the competent organisation.

The powers of the KH related to maintaining different registers (contracting authorities, state and accredited public procurement consultants, the reliability of economic operators subject to certain exclusion grounds, classified tenderers, remedial resolutions) and publishing guidelines and opinions are partially and indirectly connected to its audit activity.

The lack of a risk-based audit in contract auditing was also criticised during the interviews, while the high quality of the Public Procurement Authority's audit of negotiated procedures without prior publication of a contract notice was mentioned as a positive aspect. Additional organisations, as detailed below, are involved in the audit process of EU-funded procurement.

National control bodies

In accordance with the relevant EU legislation (Regulation (EU) 2021/1060 of the European Parliament and of the Council) concerning the 2021-2027 programming period, each member state is required to appoint a managing authority, audit authority, and operate a monitoring committee for operational programmes financed by the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund, the European Maritime, Fisheries and Aquaculture Fund, the Asylum, Migration and Integration Fund, the Internal Security Fund, and the Instrument for Financial Support for Border Management and Visa Policy. In addition to the organisations required to be appointed, each member state can appoint a coordinating organisation and an intermediate body.

The organisation in charge of the legal quality assurance of public procurement, the Public Procurement Supervision Department (PPSD) of the Ministry of Public Administration and Regional Development, and the Managing Authority are responsible for carrying out the audits. The Managing Authorities are responsible for effectively managing and implementing the operational programmes, selecting the projects, and monitoring their implementation. Managing Authorities have been set up in specialised ministries, the Cabinet Office of the Prime Minister, and the Ministry of Public Administration and Regional Development. Managing Authorities can delegate specific administrative, financial, and technical tasks for implementation to intermediate bodies (IB), while ensuring professional oversight. Intermediate bodies operate in two operational programmes (the Hungarian Fisheries Operational Programme Plus and the Territorial and Settlement Development Operational Programme Plus). The task is carried out by the Hungarian State Treasury. The tasks of the coordinating organisation are carried out by the Ministry of Public Administration and Regional Development. Monitoring committees have been set up for each operational programme.

The audit authority's responsibilities are performed by the Directorate General for Audit of European Funds. EU-funded procurement is also audited at multiple levels.

First-level audit: built-in and ex-post audit

At the first level, EU-funded public procurement undergoes a dual audit [relevant legislation: Government Decree 256/2021 (18 May) on the Rules for the Use of Certain EU Funds in the 2021-2027 Programming Period, and Government Decree 272/2014 (November 5) on the Rules Governing the Use of Grants from Certain European Union Funds in the 2014-2020 Programming Period]. Some procurements funded by the EU are subject to a built-in audit conducted by the PPSD and Managing Authorities. This audit applies in the case of public procurement procedures reaching or exceeding the EU threshold and public procurement procedures for public works projects and building concessions reaching or exceeding HUF 300 million. Ex-post audits are carried out for procurements below EU procurement thresholds and public works projects under HUF 300 million.

Managing Authorities carry out risk analyses through monitoring and information systems. Furthermore, the results of ARACHNE, a tool for data mining and risk management, are also starting to be considered. Since 1 January 2023, the Directorate General for Audit of European Funds (DGAEF) has been in control of the application of the latter. The time needed for the audits must be taken into account in the planning of public procurement procedures, as the beneficiary can only receive grant if the PPSD has issued a certificate of initiation with a favourable content and the Managing Authorities have issued a declaration of support.

In the 2021-2027 programming period, Managing Authorities may also carry out on-the-spot inspections electronically and remotely if the appropriate technology is available. The lack of substantial, in-depth examinations, which rather focus on verifying compliance with formatting and legal requirements, continue to draw criticism. Changes concerning audits are not always communicated. Stakeholders find delays in investigations with regard to ex-post audits problematic. One possible cause is that observations concerning notices to correct defects and deficiencies are communicated at different intervals.

Second-level audit - Directorate General for Audit of European Funds

Second-level audits are carried out by audit authorities appointed by the member states in accordance with Article 123 of Regulation (EU) 1303/2013. The audit authority's duties are provided by the DGAEF as stipulated in Act XLIV of 2022 on the Directorate-General for Audit of European Funds and amending certain acts adopted at the request of the European Commission to ensure the successful

conclusion of the conditionality procedure [relevant law: Act XLIV of 2022]. Its authority extends to auditing budgetary contributions, primarily from the European Union and other international funds, procurements funded by budgetary contributions, and the performance of related contracts. Effective from 1 January 2023, it discharges its duties as an autonomous state administrative body (previously under the supervision of the minister responsible for public finances).

It conducts audits using audit manuals that it prepares based on applicable EU legislation and international audit standards. It also performs system inspections (whether management and control systems of operational programmes comply with legal regulations/internal regulations) and sampling of projects (focusing on 3 main fields: financial, physical, legal/public procurement). The DGAEF carries out sampling to verify compliance with conflict of interest rules amongst contracting authorities and tenderers and independence requirements between tenderers. Audit reports are prepared on the audits in this case as well. The draft of a report is sent to the head of the audited organisation and to those to whom the findings and recommendations are relevant. In 2023, the DGAEF filed a criminal complaint in one case with regard to public procurement.

The interviews reveal that DGAEF is also experiencing delays in audits. In its response from 2023, the DGAEF highlights that sampling may not allow for the macro-level examination of specific projects. It suggests conducting a universal audit of riskier projects[22].

The operations of the Directorate for Internal Audit and Integrity, the Integrity Authority, the Anti-Corruption Task Force, and the State Aid Monitoring Office are connected to the national audit system.

Directorate for Internal Audit and Integrity

In accordance with point 6 of the commitments made by the Government of Hungary in the conditionality mechanism ("Strengthening audit and control mechanisms to guarantee the sound use of EU support"), the Government of Hungary made a commitment to create the Directorate for Internal Audit and Integrity (DIAI). The DIAI started its operations in October 2022. The DIAI is organised under the State Secretary for European Union Development Projects (EUFÁT) within the Ministry of Public Administration and Regional Development.

The DIAI operates separately from other organisational units within the Ministry of Public Administration and Regional Development to guarantee its operations are independent and free from influence. The DIAI's director is appointed by the Prime

[22] Integrity risk consultation questionnaire – response from the DGAEF

Minister on the recommendation of the Minister for Regional Development. With regard to tasks relating to the use of European Union funds, the director may not be given instructions and must perform his or her duties without any interference from other institutions, organs, political parties, companies, associations, legal or natural persons. Government officials and employees of the DIAI are selected through an application procedure, following objective criteria approved by the Integrity Authority. The selection of these individuals is controlled by the Integrity Authority.

The DIAI's primary function is to investigate conflicts of interest within the development policy institutional system (government officials, employees) and to identify and mitigate systemic risks to the development policy institutional system. The DIAI helps prevent conflicts of interest and raises awareness of corruption by organising integrity training courses. Furthermore, it cooperates with competent authorities in cases of conflicts of interest and irregularities. While carrying out its responsibilities, the DIAI must grant the Integrity Authority access to any document that is necessary for exercising the Authority's powers, along with other duties.

Integrity Authority

The Authority is an autonomous state administrative body established by the Integrity Authority Act on 4 November 2022. It carries out its duties with complete independence, subject only to legal regulations. The Authority may not be given instructions by another person or organ within its remit and must carry out its tasks independently from other organs, without any interference from other institutions, organs, political parties, companies, associations, legal or natural persons. The tasks of the Authority may be set out only in an act.

The Authority takes action in all cases where it considers that an organisation has not taken the necessary steps to prevent, detect and correct fraud, conflicts of interest, corruption, and other illegalities or irregularities that affect or seriously risk affecting the sound financial management of the European Union budget or the protection of the European Union's financial interests.

As part of its operations, the Authority conducts analyses that involve regular and ad-hoc reporting obligations as specified in the Integrity Authority Act, along with other responsibilities. The Authority publishes its reports on its website. In its reports, the Authority makes recommendations, amongst other things, to improve Hungary's public procurement system, European Union grant scheme, and asset declaration system.

Anti-Corruption Task Force

As detailed in sub-indicator 11(a), the Anti-Corruption Task Force is a body that is independent from the Integrity Authority, conducts analyses, makes proposals, provides opinions, and carries out decision preparatory tasks. In its reports, the Task Force examines existing anti-corruption measures and makes recommendations about investigating, sanctioning, and preventing corruption risks and corrupt practices.

State Aid Monitoring Office

The State Aid Monitoring Office (SAMO) is the central coordinating body for competition-focused inspection of state aids under EU competition law [relevant legislation: Government Decree No. 37/2011. (22 March) on procedures relating to State aid measures under EU competition law and the regional aid map]. The SAMO operates under the supervision of the Ministry of European Union Affairs.

Level three, EU audits

Level three audits are conducted by the European Union. These duties are carried out by the European Anti-Fraud Office (OLAF), one of the organs of the Commission and the European Court of Auditors. Since October 2022, the National Tax and Customs Administration (NTCA) has been assisting the OLAF in conducting on-the-spot inspections and investigations in Hungary (amendment to Act CXXII of 2010). Although under the supervision of the NTCA, the OLAF Coordination Office operates independently and autonomously in its remit, cooperates with the OLAF and assists in the audits conducted by OLAF.

Summary

Generally speaking, the existing legal and institutional framework for auditing public procurement is sufficient and encompasses the entire public procurement system. However, it is evident that there are numerous audit bodies with different practices. A systemic review of the audit system for European Union funds carried out by the Integrity Authority reveals that audit methodologies lack sufficient standardisation, even for EU funds, while the current audit system primarily focuses on the formatting requirements of legal compliance rather than on the content. Additionally, the risk assessment approach and methods are not utilised to the extent required. Furthermore, considering the variations in auditing national and EU funds, it would be beneficial to adopt a holistic approach to auditing public procurement and apply the more extensive and effective audit elements (espacially risk-based audits) in a uniform way, regardless of the source of funding for public procurement. The relevance of this is demonstrated by the conclusion of separate

cooperation agreements amongst various bodies. The institution-level fragmentation leads to diverse methodologies and guidelines built upon them, which also impacts training opportunities.

Although no significant change has taken place in bringing national and European Union audit practices together, we note that the 2023 report of the Anti-Corruption Task Force[23] includes a detailed description about the different practices and several recommendations made in this regard.

Publishing continuously updated methodological guidelines that promptly trace audit results and legal cases, sharing practical examples tailored to different control levels, and providing educational materials and training opportunities would be recommended to promote law-abiding behaviour and prevent additional violations.

The KH's contract notice audit activity received backlash during the interviews for being based on formatting and legal aspects of public procurement. Thanks to this, **contract notices display high-quality data**; however, **a risk-based audit is generally absent from the system**.

According to a communication from the president of the KH published in February 2024, it is an innovative advancement that, as part of executing the National Anti-Corruption Strategy 2024-2025 ("NACS 2024–2025") and point 5.1. a) of Annex 1 to Government 1025/2024 (14 February) on the adoption of the action plan relating to the implementation thereof, the Public Procurement Authority upscales its contract notice audit activities in the fields of two procurement legal institutions where contracting authorities have a high chance of integrating regulations capable of narrowing down competition into procurement notices. The upscaled inspection will cover the obligation to justify the provision of a partial offer, as well as specific serial types, over-specification of eligibility requirements and evaluation criteria.

Furthermore, it is important for the Authority that the inspection also covers the adequacy of the data published on contract performance. In accordance with section 43(1) of the Public Procurement Act, contracting authorities are required to publish, although not in the form of a notice, contracts concluded on the basis of public procurement procedures as well as specific data concerning the performance of the contract following completion in the Contract Register operated by the Public Procurement Authority, using the EPPS platform. In accordance with the proposal made by the Authority in its opinion on the proposal to amend Decree No. 44/2015 (2 November) of the Minister of the Prime Minister's

[23] https://kemcs.hu/wp-content/uploads/2024/03/KEMCS-2023-rol-szolo-eves-jelentes.pdf

Office, the Authority believes it is warranted to include the data to be published on contract performance in the audit scope of the Public Procurement Authority, both in terms of content and compliance with deadlines.

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

This sub-indicator assesses whether internal controls, internal audits and external audits are well defined, co-ordinated, sufficiently resourced and integrated to ensure the consistent application of procurement laws, regulations and policies and the monitoring of performance of the public procurement system, and that they are conducted with sufficient frequency.

In the case of the first line of defense – Internal control system

In 2017, the minister responsible for public finance published the "Internal Control Standards in Public Finance and Practical Guide". This guide from the Minister for National Economy consolidates the following guidelines with updated and expanded content:

- Internal Control Manual of the Minister of Finance (2010)
- Monitoring System of Budgetary Authorities (2011)
- Internal Control Standards in Public Finance in Hungary (2012)
- Guide for completing the management declaration in Annex 1 to the Internal Control Decree (2013)

In 2019, the SAO thoroughly examined the effectiveness of the internal control system and concluded that the Minister for National Economy's guide provides adequately detailed guidelines with practical examples, enabling internal audits to support the appropriate use of public funds. The Minister for National Economy's guide aligns the content of international standards and legal regulations, supporting the regulated and coordinated performance of duties. It supports management in setting up the internal control system. The SAO's detailed analysis uncovered numerous deficiencies in all areas examined (a total of 367 reports were prepared). The examination of internal audits revealed that, although internal audits had already been established within the institutions and local authorities under examination, they were not functioning effectively and failed to fulfil their intended purpose in 90.7% of the institutions and 96.7% of the local authorities. Deficiencies were also revealed during the examination of the monitoring system, as only about half of the institutions of central and municipal subsystems had properly established monitoring systems. In many cases, identifying risks

concerning specific features of an institution or organisation is challenging, potentially resulting in these risks being left unmanaged. All this has a detrimental impact on regular management. Therefore, it would be expedient for the minister responsible for public finances to put more emphasis on risk management, specifically on presenting practical examples as part of the methodological guidelines[24].

Pursuant to section 62 of the Public Finances Act, the minister responsible for public finances is responsible for maintaining the register of internal auditors. The latest register is available on the Ministry of Finance's website. Currently, more than 3200 active internal auditors in possession of a license are carrying out their duties.

In the case of the second and third line of defense – autonomous audit bodies

The most important findings from the public procurement audit conducted by the PPSD and the topics that typically arise during the audits are outlined in the following guidelines published by the Prime Minister's Office, the legal predecessor to the Ministry of Public Administration and Regional Development.

- Quality assurance guidelines for contracting authorities;
- Regularity guidelines for experts conducting audits;
- Guidelines on contract amendment for experts conducting audits;

The guides are public and available online[25]. Guidelines on specific issues (e.g. on evaluation criteria, practices violating fair competition, repetitive solutions to avoid situations that carry higher eligibility risks in public procurement) are also available on the KH's website.[26] The publications from the Prime Minister's Office contain additional, detailed guidelines, which are also available online[27].

The guides, programmes, supporting materials, and publications created by the Public Procurement Authority are also public and available on its website[28].

As an external audit body, the SAO's methodology is also public[29].

Summary

Thus, written methodological summaries are available at all audit levels for those conducting the audits, but these audits lack the necessary extent of detail, timeliness, and consistency. The institution-level fragmentation leads to diverse

[24] State Audit Office - on the status of internal audit activities - analysis 2019
[25] https://www.archive.palyazat.gov.hu/kozbeszerzesi_utmutatok
[26] https://kozbeszerzes.hu/tevekenysegek/jogalkalmazok-tamogatasa/miniszterelnoksegi-utmutatok/
[27] https://www.archive.palyazat.gov.hu/kozbeszerzesi_kozlemenyek
[28] https://kozbeszerzes.hu/tevekenysegek/#jogalkalmazok-tamogatasa
[29] Methodology– State Audit Office (asz.hu)

methodologies with different sources. Regularly updating the Minister for National Economy's guideline with materials adopted by task forces conducting audits, methodological updates, and examples which could help internal auditors gain access to single-source information, appears to be warranted. A holistic examination recommended in sub-indicator 12(a) would also help to harmonise the methodologies. To improve the technical and content control, as outlined in sub-indicator 12(a), it would be necessary to involve a sufficient number of professionals with suitable qualifications and experience and, if required, put together specific methodological support materials. Internal and external audits are carried out annually based on the methods outlined in the audit plans of competent bodies. Internal auditors send a report to the minister responsible for public finances, while the SAO, which carries out the external audit, sends a report to the National Assembly of this matter every six months.

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

The purpose of this sub-indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time.

In the case of the first line of defense – internal audit system

As stipulated in section 45 to 46 of the Internal Control Decree, action plans must be prepared and submitted to the head of the budgetary authority and the head of internal audit within 8 days following receipt of the audit report as part of internal audits. The action plan must include the deadlines and individuals in charge. The head of the budgetary authority decides whether to approve the action plan after consulting the head of internal audit. The audited body must provide a written report to the same executives regarding the implementation of the measures within 8 days after the final deadline has passed. Failing to complete this task may result in the head of internal audit initiating an ex-post audit.

In the case of second line of defense – government audit

For audits carried by the GCO, the audited body has a 15-day window after receiving the audit report to take the necessary actions, prepare the action plan, and notify the president of the GCO. As indicated in sub-indicator 12(a), the GCO provided only limited statistical information on its operations (mainly on its public procurement investigations and its monitoring of public participation in the preparation of legislation). The head of the audited body maintains a registry listing completed and uncompleted measures related to the audit report, categorised by year, which

they submit to the GCO before 31 January each year [section 36 to 37 of Government Decree No. 355/2011 (30 December)].

In the case of the third line of defense – external audit

In accordance with section 31 of the SAO Act, if the audited body is found to have engaged in illegal practices or improper use of assets, the SAO shall contact the head of the body by sending a so-called warning letter (in 2022, a total of 2932 recipients received such letters). The audited body must assess the letter's contents, take all required actions, and notify the SAO within 15 days. The action plan concerning the findings of the audit report must be submitted to the SAO within 30 days. The deadline for implementation is not stipulated by the law. Completion may be verified by the SAO as part of an ex-post audit (section 33 of the SAO Act). In 2022, a total of 54 organisations were subject to an ex-post audit[30].

In more serious cases, the SAO may initiate a criminal or disciplinary procedure or exercise its right to suspend grants and benefits.

Summary

At all audit levels, the auditee must respond to the findings and recommendations related to the audits in the way and within the timeframe specified by law. We only have statistics related to external audits, which demonstrate compliance with law-abiding behaviour. There is no time limit stipulated by law for the implementation of the measures. These are set out in the individual action plans. The SAO may potentially verify the results as part of an ex-post audit, while the progress in the implementation of measures must be reported in the case of internal audits and to the GCO.

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

The objective of this sub-indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task.

[30] Prospectus on the activity of the State Audit Office in 2022 and report to the National Assembly of the institution's operations

As regards the first line of defense – internal audit

Section 70(4) of the Public Finances Act stipulates the requirements and tasks relating to internal audit activities. The intent to work must be communicated to the minister responsible for public finances.

Section 2 of Decree No. 22/2019 (XII. 23.) of the Minister of Finance on the Register and Mandatory Professional Advanced Training of Persons Performing Internal Auditing Activities at Budgetary Bodies and Publicly-Owned Companies and on the Mandatory Advanced Training of Executives and Financial Executives at Budgetary Bodies Relating to Internal Control Systems ("Decree of the Minister of Finance") stipulates the qualifications required to carry out internal audit activities. Obligations relating to advanced training are defined by the Internal Control Decree and the Decree of the Minister of Finance. In accordance with section 1(4) of the Decree of the Minister of Finance, the National Tax and Customs Administration Institute of Training, Health and Culture (NTCA ITHC) is the intermediate body in the vocational training. In the year preceding or following the notification, internal auditors are required to participate in a training course on Public Finance Internal Financial Audit, which ends with an exam. Upon successfully completing the exam, they are also required to take an elective course at least once every two calendar years. The head of the budgetary authority or a person with a managerial position appointed by them in writing, along with the business manager of the budgetary authority, are required to participate in an advanced training course on internal control systems[31]. The training modules include training specific to public procurement, but these courses are elective and mainly offer fundamental information. The current training prospectus and list of instructors are publicly available on the Ministry of Finance's website. It is also the only place to apply for the training courses.

Official methodological and specialised prospectuses, guides, educational materials, and standards relating to internal audits and the internal control system are also available on the website.

IAHUFOR, the open forum of Hungarian internal auditors, supports the provision and sharing of up-to-date information. Members receive methodological and good practice information in newsletters. Furthermore, the Forum organises meetings and workshops on current topics. Modelled after the IAHUFOR, the objective of the Internal Control Forum of Public Finances (ICFPF) is to consult relevant colleagues

31 https://allamhaztartas.kormany.hu/download/2/9f/23000/%C3%89ves%20Tov%C3%A1bbk%C3%A9pz%C3%A9si%20T%C3%A1j%C3%A9koztat%C3%B3%202024.pdf

to formulate the guidelines on internal controls and share guidelines and good practices.[32]

Major stakeholders in the second line of defense, public procurement education, and knowledge sharing

The PPSD also helps the institutional system and managing authorities maintain a standard audit approach by making educational materials available. Furthermore, the partnership between the PPSD and HCA also provides educational programmes to the PPSD's employees who conduct audits.[33]

The PPSD and DGAEF regularly organise training courses to exchange audit experience.

The Public Procurement Authority plays a major role in public procurement education and knowledge sharing. Training and educating public procurement stakeholders have been amongst its key tasks for years. As mentioned earlier, the Public Procurement Authority contributed to the education and professional training of nearly 1500 professionals in 2022.[34] Furthermore, the Public Procurement Authority aims to work together with institutions offering specialised training courses and publishes the Public Procurement Bulletin, a freely accessible specialised periodical. KH's website hosts numerous searchable databases and guides that promote the sharing of knowledge.

Operating since 2004, one of HOPPAA's main responsibilities, besides sharing knowledge, is to give recommendations to improve regulations. Their professional recommendations are also available on their website.[35]

Eötvös Loránd University, Pázmány Péter Catholic University, Ludovika University of Public Service, and Corvinus University of Budapest also organise training courses on the procurement audit system. Furthermore, there are numerous specialised periodicals dealing with public procurement.

Summary

The selection of internal and external auditors is transparent. Their independence is ensured by law. The requirement for them to possess the necessary knowledge and experience to carry out audits is just a general provision. Although specific courses on public procurement are available in the compulsory training curriculum, they

[32] https://allamhaztartas.kormany.hu/konform-allamhaztartasi-belso-kontroll-forum
[33] Provision of data by the Ministry of Public Administration and Regional Development to the Integrity Authority
[34] https://www.kozbeszerzes.hu/media/documents/eves-beszamolo-2022.pdf
[35] Professional recommendations – Hungarian Official Public Procurement Advisors' Association (kozbeszerzok.hu). Available at: https://www.kozbeszerzok.hu/szakmai-javaslatok/

are optional and offer only fundamental knowledge. Naturally, auditors can also obtain information from other sources, and procurement consultants can also be used, but in general, a deeper knowledge of methodologies and a more systematic learning through practical examples would be essential for them to work confidently. As described in sub-indicator 12(b), it would be beneficial to update the Minister for National Economy's guideline with materials adopted by task forces conducting audits, methodological updates, and examples more frequently. This would help internal auditors gain access to single-source information. The same applies to audit bodies, meaning that the standardised guidelines should be updated more frequently with materials from new training courses, audit results, and practical examples, while all of these should be used in training and educational courses. Expanding public procurement education would be crucial, aiming to provide more than just introductory information. The participation of beneficiaries/project management, even contracting authorities and tenderers in these training courses, is recommended.

MAPS Indicator 13: Appeals mechanisms in public procurement are efficient and effective

Indicator summary

Indicator 13 under Pillar IV examines the aspects of the legal framework relating to the appeals mechanism, including its establishment and coverage. Furthermore, this indicator assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

Findings

Hungary has chosen a so-called independent official model to manage public procurement remedies: in the current public procurement legislation, the adjudication of public procurement disputes has been or is referred to the Public Procurement Arbitration Board, a specialised administrative authority established to adjudicate public procurement disputes. The organisational and operational guarantees required by the European Union remedies directives are fulfilled in respect of the Public Procurement Arbitration Board.

The Public Procurement Arbitration Board takes its decisions within tight administration deadlines, which begin once the Public Procurement Arbitration Board has received all available documentation pertaining to the public procurement or procurement, rather than from the day following receipt of the request or initiative. Further analysis is required to confirm the exact number of days it actually takes for arbitration board proceedings to conclude starting from the receipt of the application for review procedure or initiative. At the same time, it is evident that remedy proceedings with the Arbitration Board are considerably faster than court remedy proceedings (even when considering the average time taken for judicial review of arbitration board decisions).

In contentious proceedings concerning the Arbitration Board or arbitration board decisions, the courts issue enforceable decisions that are binding on the parties.

Based on the Integrity Authority's requests for data, there has been no clear feedback from the contacted bodies regarding the adequacy of the institutions' capacity. Therefore, further investigation is warranted.

The specialisation of the Public Procurement Arbitration Board is a crucial factor for the efficiency of the system of redress: resolving typically complex cases of public procurement requires the understanding of the – regularly changing – national and EU legislation and practice relating to public procurement. According to the

information received, committees that are not specialised in public procurement are involved in the review of public procurement cases in the courts. A study for all EU member states, commissioned by the European Commission, shows[36] that systems in which administrative review bodies, rather than ordinary courts, provide legal protection in public procurement procedures at first instance are more effective in terms of both the length of proceedings and the quality of justice.

The number of applications for review procedure initiated upon request is constantly low, which can still be attributed mainly to the high administrative service fee, as indicated by feedback from the interviews and surveys. Although administrative service fees were slightly adjusted in 2023, this mainly impacts only high-value public procurements, as only the maximum threshold was decreased, not the fee amount itself. While halving the fees in disputing documents related to the initiation of procedures can be considered a notable improvement, the fees to be paid during remedy proceedings remain disproportionately high, ranking amongst the highest in European Union. It is worth mentioning that the maximum amount of administrative service fee to be paid has increased from HUF 200,000 to HUF 300,000, which means there have been other changes in fees, not just reductions.

It should be recalled that, while in the past, a significant increase in fees in line with the element of the application was due to the high number of unwarranted and unfounded applications for review procedure, the current situation is the opposite: the number of procedures initiated upon request have drastically decreased. It is important to note that international experience has shown that increasing the administrative service fee alone is not sufficient to reduce the misuse of legal remedies. Therefore, we would see merit in exploring further options. The administrative service fee should be substantially reduced, regardless of the number of application elements and the estimated value of the procurement. It is warranted to introduce a differentiated regime that, at the most, applies a minimum fee before the tender/participation deadline in the event of a challenge to public procurement documents within the prescribed period. Furthermore, considering that the tasks carried out by the Public Procurement Arbitration Board are not different depending on the estimated value of the public procurement, it is still warranted to determine the amount of the administrative service fee (which

[36] Legal remedy report (2017): REPORT OF THE BOARD TO THE EUROPEAN PARLIAMENT AND COUNCIL on the effective application of Directives 89/665/EEC and 92/13/EEC, as amended by Directive 2007/66/EC, in the context of remedy proceedings concerning public procurement https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52017DC0028&from=EN

could also help SMEs involved in framework agreements with substantial overall amounts to exercise their right to seek legal remedies).

To boost trust in the institutional system, it is advised to redefine the institution of the general council's decision-making, elevate the importance of the institution and, in respect of remedial (arbitration board and court) decisions, to improve the search interface on the Public Procurement Authority's website and increase the number of (face-to-face) negotiations. A review of practices related to applicant eligibility is needed. The abolition or, at a minimum, the expedited expansion of legal requirements for mandatory representation to accredited public procurement consultants, public procurement attorneys, and other professionals with a higher education degree in public procurement is warranted.

The Hungarian system of redress frequently utilizes preliminary dispute resolution, which, in view of the arbitration and judicial practices connected to this system, has the ability to reduce the number of formal legal remedies. To boost the willingness of contracting authorities to cooperate, it is also advised to introduce mandatory fines in cases where a contracting authority fails to reply completely or within the specified time frame to a request for preliminary dispute resolution, or where the contracting authority has not taken action to remedy the infringement in the context of the infringement covered by the request for a dispute resolution. For requests for preliminary dispute resolution submitted before the tender or participation deadline, it is advised to allow for anonymous submissions.

Summary of the substantial deficiencies and recommendations of Indicator 13

Substantial deficiencies	Risk classification	Recommendations
The number of applications for review procedure initiated upon request is constantly low, which can still be attributed mainly to the high administrative service fee.	high	Reviewing the amount of the administrative service fee once again, abolishing its dependence on the estimated value of the public procurement and number of requests, and further mitigating or, in certain cases, removing the fees are recommended.
Considering that legal remedy cases submitted to the Public Procurement Arbitration Board are usually fairly complex, stakeholders would need to have meetings, preferably in person.	average	It would advisable to make the organisation of in-person or online meetings dependent on the declaration of the requester and initiator.

Representation by state public procurement consultants, registered in-house legal counsels, or attorneys in remedy proceedings before the Public Procurement Arbitration Board is obligatory.	average	Considering the level of preparation and expertise of public procurement officials, it is advisable to consider abolishing mandatory representation or, at least, extending the circle of those eligible for representation (giving particular consideration to the abolition of the APPC's right to representation back in 2023).
In respect of the Public Procurement Arbitration Board's resolutions, search options do no provide reliable results and court judgements are not published in a single database.	average	Improving the search interface and creating a separate, comprehensive database for court judgements are recommended.
In respect of preliminary dispute resolutions, it is reasonable to apply mandatory fines in cases where a contracting authority fails to reply completely or within the specified time frame to the contents of the preliminary dispute resolution, or where a contracting authority fails to take action to remedy the infringement.	average	Reviewing the regulations is recommended in this regard.
In the context of the obligation for contracting authorities to inform contracting entities of a preliminary dispute resolution, consideration may be given to clarifying in the PPA, in a manner similar to the rules on requests for supplementary information, that this should be done in an anonymous manner, without revealing the identity of the person making the request. The effectiveness of the preliminary dispute resolution may be weakened if the contracting authority knows the identity of the person making the request.	average	Reviewing the regulations and reforming the EPPS to ensure the anonymity of the person requesting a preliminary dispute resolution is advised.
During the judicial review, the contracting moratorium is no longer enforced. This means that the contracting authority can conclude the contract after the Arbitration Board's decision.	average	The Authority recommends that the judicial review allows for the option to request the suspension of the ongoing procurement procedure and seek an appeal against the court's decision.

Sub-indicator 13(a) - Process for challenges and appeals

This sub-indicator looks at the process that is defined for dealing with challenges or appeals and sets out some specific conditions that provide for fairness and due process.

i) Decisions are rendered on the basis of available evidence submitted by the parties.
ii) The first review is carried out by the entity specified by law.
iii) The appeals body (or authority) has enough authority to enforce its decisions.
iv) The time frames specified for the submission and review of challenges/appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Legal status of the Public Procurement Arbitration Board and data related to remedy proceedings

The Public Procurement Arbitration Board is a special body established for the adjudication of disputes concerning public procurement procedures in Hungary, with a status in accordance with the remedies directives. It operates as part of but independently from the Public Procurement Authority, in accordance with the legal provisions.

Tasked with conducting remedy proceedings in cases of infringement and disputes relating to public procurement and design contest procedures, the Public Procurement Arbitration Board is a body with national authority.

The Public Procurement Arbitration Board is responsible for conducting proceedings for infringement of legislation on public procurement, public procurement procedures, works or service concessions, and concession procurement procedures, and for review procedures in respect of public procurement or concession procurement procedures. With the exception of proceedings for civil law claims relating to the modification or performance of contracts, the Public Procurement Arbitration Board is also responsible for conducting proceedings for the modification or performance of contracts concluded under a public procurement or concession procurement procedure which is contrary to the Public Procurement Act or to a regulation adopted on the basis of the Public Procurement Act. Considering that public procurement procedures are conducted to establish public contracts, the Public Procurement Arbitration Board's power to enforce contract terms and conditions related to public procurement and to sanction unlawful contract modifications are vital for reaching

statutory objectives. In cases of infringement that are given priority in EU law (e.g. failure to comply with the Public Procurement Act or major violations of the contracting moratorium), the Public Procurement Arbitration Board is authorised and required to nullify public contracts and implement relevant legal consequences, thus facilitating the effective enforcement of EU directive requirements.

Procurement remedy proceedings conducted by the Public Procurement Arbitration Board are administrative public proceedings which require the application of the provisions of Act CL of 2016 on the Code of General Administrative Procedure, along with the different rules set out in the Public Procurement Act. From an EU legal perspective, the Public Procurement Arbitration Board may qualify as a "court" based on the autonomous interpretation of EU law. However, from an internal legal perspective, the preceding information suggests that the Public Procurement Arbitration Board is an administrative body and administrative authority, its proceedings are administrative proceedings, and not judicial proceedings.

According to the Public Procurement Arbitration Board, in previous years, the number of applications for review procedure and the number of initiatives taken were as follows:

	2019	2020	2021	2022	2023
Number of remedy proceedings	570	560	557	534	598
Ex officio	359	272	334	293	254
Upon request	211	288	223	241	344
European Union procedure	155	195	160	185	266
National procedure	172	239	277	244	283
N/A	243	126	120	105	49

Subject-matter of public procurement procedures	2019	2020	2021	2022	2023
Public works	106	144	191	162	212
Public services	334	213	188	159	181
Service concessions	2	-	1	-	-
Public supply	128	201	174	213	204
N/A	-	2	2	-	-
Defense procurement			1	-	1
Total:	**570**	**560**	**557**	**534**	**598**

	2019	2020	2021	2022	2023
Substantive decision	396	418	365	372	378
Non-substantive decision	174	142	192	162	219
Suspended proceedings	**-**	**-**	**-**	-	1
Infringement decisions	335	306	286	298	284
Lack of infringement	17	56	19	12	16
Unfounded applications dismissed	44	56	60	41	78
Verifying cases of infringement	335	306	286	298	284
Non-substantive decision					
Lateness	28	31	98	48	55
Lack of eligibility of the applicant	4	12	7	13	17
Withdrawal of applications/initiatives	27	26	27	45	57
Failure to resolve discrepancies	89	56	34	46	88
Irrelevancy	11	4	7	-	2
Withdrawal of calls	14	10	14	9	-
Lack of authority	-	3	1	1	-
Premature	1	-	3	-	-
Decision already made	-	-	1	-	-

Compared to the previous period, the number of remedy proceedings in Hungary has drastically dropped. The communicated data is highlighted by the fact that the applications for review procedures and initiatives concerning several partial tenders within the same public procurement procedure are documented by the Public Procurement Arbitration Board as separate cases, and the same approach is applied to requests/initiatives concerning the illegal disregard of the PPA. Therefore, legal remedies concern fewer public procurement procedures/procurements than those featured in the tables. Moreover, the percentage of non-substantive decisions is also high: it was at 36% in 2023. In the same context, the percentage of case groups involving non-performance in resolving discrepancies and withdrawal of requests/initiatives was 66% in 2023. When examining the number of legal remedies, it cannot be ignored that a

significant percentage of remedy proceedings – 42% in 2023 – were initiated ex officio. This means that the number of procedures initiated upon request and documented as independent cases by the Arbitration Board totaled only 344 in 2023. Thus, the development of the number of legal remedies requires further analysis.

Preliminary dispute resolution procedure

The formal remedy proceedings of the Public Procurement Arbitration Board may be preceded by the informal preliminary dispute resolution procedure, which is an alternative remedy. Although its use is not mandatory under the Public Procurement Act, 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 Board that its initiation precedes the submission of the application for review procedure in almost all cases. Therefore, even if not required, preliminary dispute resolution can be considered as a general rule in remedy proceedings, so although the proposal to make preliminary dispute resolution mandatory has been raised by law enforcers, the Authority believes that it is not strictly necessary (however, if the lawmaker does not support reducing the administrative service fee out of fear of an increase in unfounded applications for review procedure, the introduction of mandatory preliminary dispute resolution prior to the submission of formal legal remedies could be considered). The Authority recommends that the administrative service fee be waived at least in the event of a timely dispute of the public procurement documents, provided that the applicant has also initiated a request for preliminary dispute resolution prior to the submission of the application. The deadlines for submitting requests for preliminary dispute resolution are regulated differently in the PPA in respect of the call for tenders, the tender documents, and subsequent decisions taken in the procedure. As a general rule, in the context of public procurement documents, the EU procedure allows requests to be submitted up to ten days before the tender deadline in order to avoid unnecessary and abusive obstruction of public procurement procedures. During the public procurement procedure, and regarding the decisions taken as part of its conclusion, the PPA sets a three-business-day deadline for submitting the request, a time frame deemed appropriate from the perspective of both the contracting authority and the tenderer (it does not delay the procedure, but at the same time ensures the opportunity to prepare a request with content in line with legal requirements).

Any interested economic operator, or chamber of commerce or advocacy group with activities related to the subject of the public procurement may submit a request for preliminary dispute resolution concerning the tender documents, but

the latter is not applied in practice – typically only interested economic operators submit requests for preliminary dispute resolution to contracting authorities. After the tender/participation deadline, only tenderers/candidates may submit a request for preliminary dispute resolution in the procedure.

The contracting authority must respond to a request for preliminary dispute resolution within the three-business-day deadline set out in the PPA, or within seven business days if the evaluation or assessment is reopened. In 2023, the PPA was amended in such a way that the contracting authority may, in addition to the previously mentioned evaluation acts (discrepancy resolution, request for clarification, correction of calculation errors, justification of disproportionately low prices), invite economic operators to submit any document or information necessary for the evaluation or assessment, thus extending the scope of procedural errors that may be corrected in the context of a preliminary dispute resolution. If the assessment is reopened, it makes it more difficult to meet the deadline if the contracting authority has to order several assessment actions (e.g. discrepancy resolution following a request for clarification or a request for a supplementary estimate following a price quotation). It is therefore advisable to revise the time limits for contracting authorities to respond, while maintaining consistency with the time limits for legal remedies (including the extension of the contracting moratorium), so that the right of the economic operators in question to legal remedy are not jeopardised by these changes.

Based on the interpretation of the law already established by the Arbitration Board, the amendment to the PPA has made it clear that as a continuation of the preliminary dispute resolution procedure or procedures, the summary may be amended even if the twenty-calendar-day deadline set in section 79(4) of the PPA may have expired earlier. The amendment is required to ensure that the preliminary dispute resolution can fulfil its purpose. However, it is advisable to monitor whether it leads to disproportionate delays in public procurement procedures (in particular, given the typically long duration of the evaluation process), taking into account the relaxation of rules on the amendment of the summary in 2023.

A fundamental condition for the effectiveness of the legal institution of the preliminary dispute resolution procedure is the provision in the PPA which stipulates that if a tenderer has submitted a request for preliminary dispute resolution with contents in line with the PPA regarding the document created by way of the procedural action following the opening of the tenders, the contracting authority may not conclude the contract – or, if partial tendering was possible, the contract relating to the part of the procurement concerned – until the expiry of a period of ten days from the date of submission of the request and the date of dispatch of its

response, even if the contracting moratorium would otherwise have expired by that date. This means that, in this case, the contracting moratorium effectively restarts from the date of the contracting authority's response to the request for preliminary dispute resolution. In the meantime, economic operators may consider whether to submit a formal application for review procedure to the Public Procurement Arbitration Board.

As already mentioned above, it could increase the willingness of contracting authorities to cooperate if imposing fines in remedy proceedings also became mandatory in cases where the contracting authority fails to respond completely or within the specified time frame to the request for preliminary dispute resolution, or if it submits its position on the infringement but does not take any other action, and the economic operator that has initiated the request for preliminary dispute resolution turns to the Arbitration Committee, which subsequently confirms the infringement. Therefore, reviewing the regulations is recommended.

According to feedback received during the interviews, the effectiveness of requests for preliminary dispute resolution in the context of EU-funded public procurement is also enhanced by the fact that, since public procurement procedures are controlled by the PPSD and managing authorities, contracting authorities also consider, when replying, how the control authority will assess the illegalities alleged by economic operators, which increases their willingness to cooperate. A preliminary dispute resolution procedure can fulfil its function as alternative dispute resolution if the contracting authority fully discloses its arguments already in this procedure, considering that this is crucial for those requesting a preliminary dispute resolution procedure to effectively exercise their rights to legal remedies. This position has already appeared in the legal practice of the Arbitration Board as well.

The contracting authority is required to publish the information on preliminary dispute resolution in the EPPS immediately upon receipt of the request for preliminary dispute resolution. In the context of the obligation for contracting authorities to inform contracting entities of a preliminary dispute resolution, consideration may be given to clarifying in the PPA, in a manner modelled after the rules on requests for supplementary information, that this should be done in an anonymous manner, without revealing the identity of the person making the request. Since section 80(2) of the PPA does not regulate the disclosure of the identity of the economic operator submitting a request for preliminary dispute resolution, and thus, in light of the principle of fair competition – and the conventions of the Public Procurement Act – the Authority believes that, even under the current legislation, it is questionable for the contracting authority to indicate which economic operator has initiated the procedure. Obviously, these do not apply

after the tender/participation deadline, as the tenderers/candidates already know the identities of the economic operators participating in the procedure.

Furthermore, we believe that the effectiveness of the preliminary dispute resolution may be weakened if the contracting authority knows the identity of the person making the request. Considering that electronic public procurement systems can ensure the anonymity of economic operators submitting requests, we propose amending the PPA and developing the EPPS in this regard.

In almost all cases, requests for preliminary dispute resolution concerning the outcome of the procedure – where the tenderer does not wish to challenge the contracting authority's decision on its own tender, or not exclusively – are preceded by a request for access to the contracting authority's file. Ensuring that the right of access to the file is properly guaranteed is fundamental to enforce the right to legal remedy. Despite the fact that public procurement procedures have been completely electronic in Hungary since 2018, the PPA still does not require contracting authorities to provide electronic access to documents. In fact, although the provision excluding it has been removed from the PPA, contracting authorities are still required to ensure access to documents in the EPPS by having the economic operator's representative appear in person, in accordance with section 20(1) of Government Decree 424/2017 (December 19) on the Detailed Rules of Electronic Public Procurement, which was issued on the authority of the PPA. Therefore, since public procurement procedures are carried out in the EPPS, personal access to the file is still the general rule. As contracting authorities are required to provide access to the file within two business days following receipt of the request (which, from the tenderers' point of view, means that they must appear in person at the time specified by the contracting authority within two business days if they do not wish to miss out on the opportunity), the administrative burden on tenderers' participation in the procedural action could be significantly reduced if contracting authorities were required to provide electronic access to documents for content not classified as trade secrets, if requested by the tenderer. Therefore, it is advisable to give tenderers the right to choose whether to make use of the possibility to consult the documents in person or through the EPPS or other electronic public procurement systems.

Procedure of the Public Procurement Arbitration Board

The Public Procurement Arbitration Board's procedure may be initiated upon request or ex officio. The laws define who is eligible to submit applications and initiatives.

In remedy proceedings initiated upon request, a request may be submitted by the contracting authority, the tenderer, any tenderer in a joint tender, the candidate, any candidate in a joint request, or any other interested party whose rights or legitimate interests are being infringed upon or threatened by an activity or failure in violation of this Act. Any chamber or advocacy group whose activities are in line with the subject-matter of procurement can submit an application for review procedure due to the illegal nature of a contract notice, invitation to tender, invitation to participate, public procurement documents, or a modification to any of these.

According to the Public Procurement Arbitration Board, chambers and advocacy groups have not submitted an application for review procedure since 2019, including the year 2023. As there is no interpretative provision in the PPA regarding advocacy groups, it would be advisable to define it in such a way as to ensure CSOs' right to legal remedy. Section 150(2) of the PPA only exempts chambers from the obligation to pay the administrative service fee. The Authority proposes expanding this exemption to advocacy groups and CSOs (we believe that the budgetary impact would be minimal, and so the measure would not jeopardise the balance of the budget).

The eligibility of applicants submitting an application for review procedure is subject to very strict scrutiny by the Public Procurement Arbitration Board. For instance, under the current legal practice, a tenderer who submits an invalid tender is not eligible to challenge the invalidity of the winning tender, even if only two tenders were submitted in the procedure. In the Authority's opinion, considering the fundamental principles of equal opportunity and equal treatment, the tenderer should have the right whereby the contracting authority treats all tenders equally in the procedure, which means that it declares all tenders invalid if they are rejected due to invalidity under the PPA. The eligibility of the applicant cannot be deemed non-existent on the grounds that it is uncertain whether, in the event of the unsuccessful outcome of the procedure, the contracting authority will reopen the procurement procedure or whether the applicant tenderer will win the contract. It is crucial that the Arbitration Board does not apply a restrictive approach in cases of serious violations, including remedy cases initiated because of the unlawful disregard of the PPA. As explained above, public procurement legislation in Hungary also ensures the possibility for a number of organisations to initiate ex officio remedy proceedings, which contributes significantly to the orderly functioning of the public procurement market.

According to the Public Procurement Arbitration Board, the distribution of ex-officio initiatives in recent years has been as follows:

Initiating proceedings ex officio	2019	2020	2021	2022	2023
President of the Public Procurement Authority	82	117	123	143	111
- KH President Contract Audit Department			71	76	73
- KH President other			52	67	38
Other ex officio initiators	277	155	211	150	143
Distribution of initiators of other ex officio procedures					
Ministry of Finance	26	47	116	27	-
Government Control Office (GCO)	74	-	-	1	3
Prime Minister's Office	15	-	1	109	122
Széchenyi Programiroda Nonprofit Kft.	2	5	6	2	-
Ministry of Human Capacities	122	69	43	3	-
Ministry of Agriculture (Rural Development Programme Managing Authority)	18	21	39	1	2
Minister responsible for public procurement	-	-	-	6	3
Digitális Kormányzati Ügynökség Zrt.	-	-	-	1	-
Ministry for Innovation and Technology	17	8	5	-	-
Minister of the Prime Minister's Office	-	-	1	-	-
Directorate General for Public Procurement and Supply (KEF)	-	3	-	-	-
State Audit Office (SAO)	2	2	-	-	2
Integrity Authority					11

It is clear that the most active bodies in terms of ex officio initiatives, typically in the context of their audit activities, are the Public Procurement Authority and the bodies involved in the audit of EU-funded public procurements (the range of audit bodies involved in the use of European Union funds has been constantly changing over the past years, as illustrated in the table above). It can be noted that, in addition to the procedures initiated by the Public Procurement Authority, the audit of procurements funded domestically has led to very few procedures initiated by the State Audit Office or the Government Control Office. This indicates the necessity for additional investigations regarding audits.

If, in the course of its proceedings, the Public Procurement Arbitration Board discovers violations beyond those examined based on the request or initiative before taking a substantive decision [section 165 of the PPA], it may also take action ex officio in this regard. The procedure may be expanded if the discovered violation is detrimental to the fairness or publicity of the competition, equal opportunities for tenderers, or has had a significant impact on the contracting authority's decision. The expansion of the procedure is decided by the competent council. The Arbitration Board opts for expansion only in exceptional cases.

The Public Procurement Arbitration Board takes its decisions on the basis of the evidence provided by the parties. The Public Procurement Arbitration Board ensures that the applicant, the initiator, and the opposing party are informed of any new facts, requests and statements submitted during the procedure and are able to express their views on them.

In accordance with the applicable legal provisions, the Arbitration Board makes decisions on public procurement cases without a hearing, unless it is strictly necessary, especially for the exercise of the parties' rights, clarifying the facts of the case, and making a professional decision that considers all relevant circumstances.

Under the regulations on electronic communications, it is possible for a meeting of the Arbitration Board to be held via an electronic communication network. This, however, is only an option and not an obligation for the Arbitration Board.

The Public Procurement Arbitration Board held in-person hearings 69 times in 2019 and 40 times in 2020. Hearings via an electronic communication network took place 44 times in 2021, 62 times in 2022, and 84 times in 2023. Only one in-person hearing was held in 2023.

Although the number of hearings increased in 2023, the Public Procurement Arbitration Board held hearings for only 22% of the remedy proceedings that led to a substantive decision that year, with just one case being conducted in person.

Feedback suggests that a larger number of law enforcers would require a hearing, preferably in face-to-face format rather than via an electronic communication network, as they find face-to-face hearings more efficient in terms of enforcement. The low number of hearings may further increase the business risk associated with high administrative service fees [see details under sub-indicator 13(b)]. This is because clients feel more restricted in their capacity to fully present their arguments and engage with diverse perspectives.

In accordance with the provisions of the PPA, hearings are public, while the Arbitration Board shares information about the hearings on the Public Procurement Authority's website.

In view of the above-mentioned points and the fact that remedy cases before the Public Procurement Arbitration Board are usually quite complex, it would be appropriate to stipulate in the PPA that, in line with the previous regulation, if the applicant or initiator requested a hearing, the Arbitration Board would be bound to hold one. In other cases, it would be possible to maintain the current regulatory approach: that is, to leave it to the discretion of the Arbitration Board to decide whether it is warranted to call a hearing.

Undoubtedly, there may be cases where it is more convenient for the applicant/initiator not to have to attend the hearing in person. Therefore, when it comes to participating in person or through an electronic communication network, it would be appropriate to let the applicant/initiator choose how they want to participate in the hearing (if they wish to have one). Feedback suggests that conducting hearings in person would also have a positive influence on participants' trust in the Arbitration Board.

Partly to adhere to EU law, one of the amendments to the PPA in 2023 changed the previous approach of applying both objective and subjective deadlines for remedy proceedings initiated through application or initiative. As a general rule, the PPA currently sets subjective deadlines for procedures initiated through application, while setting objective deadlines for initiating ex officio procedures to minimise the risk of delay.

The duration of deadlines for procedures initiated upon request has been differentiated based on the stages of the procedure. This regulation aims to prevent remedy proceedings from unduly delaying the conduct of public procurement procedures, considering the duration of the contracting moratorium.

If an application for review procedure is lodged for a public procurement procedure, the contract (regarding the partial tender concerned, where applicable) may not be concluded until the substantive decision or the decision closing the procurement case has been taken, unless the Public Procurement Arbitration Board – or the court in an administrative action against the decision of the Public Procurement Arbitration Board – authorises the conclusion of the contract (contracting moratorium).

In addition, as an interim measure, the Public Procurement Arbitration Board may order the suspension of the procurement procedure or require the contracting authority to include the applicant in the procedure.

Violating the contracting moratorium, if this also entailed depriving the tenderer of the possibility of a pre-contractual legal remedy and also infringed upon the rules on public procurement in such a way as to affect the tenderer's chances of winning the public procurement procedure, results in the nullity of the public procurement contract. It is presumably due to this provision that there are no violations of the contracting moratorium.

The Public Procurement Arbitration Board makes enforceable decisions that are binding on the parties and are final unless the decision is challenged in an administrative court case. The Arbitration Board may apply different legal consequences in its decisions as a result of the remedy proceedings. If an infringement is confirmed, the Public Procurement Arbitration Board may, before the end of the procurement procedure, call upon the infringer to comply with the procedure set out in the PPA or make the contracting authority's decision conditional. The Public Procurement Arbitration Board may nullify the contracting authority's decision taken in the course of the procurement procedure or the decision closing it if the contract has not yet been concluded on the basis of that decision, may order the removal of the tenderer from the official list of classified tenderers, and impose fines.

A significant advantage of legal remedies before the Public Procurement Arbitration Board with short deadlines while maintaining the contracting ban is that a significant part of the violations confirmed can be remedied by annulling the contracting authority's decisions.

In the case of certain illegalities, the Public Procurement Arbitration Board is required to impose a fine on the infringing organisation or person, and the person or organisation responsible for the infringement is required to stop the infringement outlined in section 137 (1) of the PPA, to declare the contract null and void or, if the conditions set out in section 137(3) of the PPA apply, to declare that the contract in question is not null and void. In the event of a contract declared null and void due to an infringement as defined in section 137 (1) of the PPA, the Public Procurement Arbitration Board 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 Public Procurement Act.

It is advisable to review the legal provisions on fines for priority infringements and to return to the regulatory approach of minimum rather than maximum penalties.

The Public Procurement Arbitration Board provided the following information regarding penalties imposed:

	2019	2020	2021	2022	2023
Penalty imposed (in million HUF)	776	704	1.111	734	775
Average penalty per legal remedy (in million HUF)	1.4	1.3	2.0	1.4	1.6
Average penalty per infringement decision (in million HUF)	2.3	2.3	3.9	2.0	3.5

After a decline in 2022, the average amount of penalties per legal remedy or per infringement decision increased again in 2023. It is warranted to examine trends in imposing penalties (e.g. penalties imposed in application and ex officio proceedings, possible differences in the level of penalties imposed in the different ex officio proceedings initiated by the different parties), and whether the imposed penalties achieve the effect desired by the review body and are proportionate to the infringements uncovered, particularly in the case of remedy proceedings initiated in connection with the performance of public procurement contracts. (As regards the imposed penalties, the Arbitration Board does not keep any further records, according to the information provided.)

The Authority recommends that the Public Procurement Arbitration Board publishes a prospectus setting out the principles on the application of penalties and a more detailed analysis of the application of penalties, including the aspects listed above. There is a case for adequate and consistent enforcement of accountability and sanctions in the event of breaches of the law affecting public procurement. The prospectus could help to avoid violations and promote adherence to public procurement rules by law enforcers.

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

This sub-indicator assesses remedy proceedings and the conditions for a fair and equitable procedure.

Public procurement commissioners

In order to ensure the impartial and independent functioning of the Public Procurement Arbitration Board, the president, the vice-president and the public procurement commissioners are appointed and dismissed by the Public Procurement Council, which also decides on any conflict of interest case involving the public procurement officers. It is also the seventeen-member Council (whose

members represent the fundamental principles of the PPA, objectives of public interest, the contracting authorities and tenderers, advocate for their interests, and include amongst them the representatives of the main audit bodies) that determines the number of members in the Public Procurement Arbitration Board.

Act CVII of 2019 on Bodies of Special Legal Status and on the Legal Status of their Employees ("Legal Status Act") shall apply to the civil service status of public procurement commissioners with the derogations provided for in the PPA. In addition to the Legal Status Act, the PPA establishes additional conflict of interest requirements for arbitrators acting in remedy cases: procurement arbitrators – with the exception of scientific, educational, artistic, proofreading, editorial, intellectual activities protected by law, and employment as foster parents – may not accept any other assignment, engage in any other gainful occupation, be members of a company with an obligation to personally contribute, or be executive officers or members of the supervisory board. Under the PPA, arbitrators are required to have a higher education degree, a minimum of three years of professional experience, and either passed a qualifying exam in public administration or law, or obtained a specialised qualification in public administration or government studies. Arbitrators may not participate in any capacity in public procurement procedures and related processes.

The PPA 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 given instructions in the decisions they take.

The operation of the Arbitration Board, which operates as part of the Public Procurement Authority, is provided from the budget of the Public Procurement Authority, in accordance with section 192(2) of the PPA.

In addition to providing staffing figures, the Public Procurement Arbitration Board did not answer the question of whether it considers the staffing of 26 public procurement commissioners (including the president and vice-president of the Arbitration Board), 1 public procurement secretary and 6 administrative staff members as of 2021 to be adequate to carry out its tasks.

Legal fee

In the case of remedy proceedings initiated upon request, the applicant is required to pay an administrative service fee for the proceedings of the Public Procurement Arbitration Board. Pursuant to a 2023 amendment to the PPA, the amount of the administrative service fee is fixed in the PPA. In 2023, considering the recommendation made also in the Integrity Authority's Annual Analytical Integrity

Report, lawmaker reduced the administrative service fee for remedy proceedings; however, as the Integrity Authority explained in its comments on the proposed amendment, the level of reduction cannot be considered sufficient to eliminate the restrictive impact on competition of the legal fees (which restrictive impact on competition was also confirmed by the survey related to the performance measurement framework). The reduced fees are still amongst the highest in the European Union.

Although the administrative service fees for documents related to the launching of public procurement procedures have been halved, they are still too high not to constitute an obstacle to challenging public procurement documents containing unlawful, anti-competitive terms (see in particular suitability, evaluation, contract award conditions) by means of legal remedies. Given the low incidence of remedy cases against the opening documents, the Authority considers it appropriate in this area to decouple the administrative service fee from the estimated value and, in light of the practice in several EU member states, to set a fixed, low fee at least in this case. For instance, a basic fee of HUF 300,000 would be acceptable in the national procedure, as it is in the EU procedure for supplies and services, but a slightly higher fee (e.g. HUF 500,000) may be eligible in the EU procedure for public works under the EU procedure.

We do not consider it appropriate, not even in general, to maintain fees that increase according to the number of application elements (see below), but this is particularly exceptionable in the case of documents instituting proceedings. Further changes to the rules are also necessary in this area.

If the contracting authority has ensured tendering for parts in the procedure and the identical specifications in the contract notices and related procurement documents, which are considered unlawful, have been prescribed in identical terms for all or several parts, we consider it unjustified to charge multiple fees for the remedies sought to challenge the specifications, depending on the number of parts challenged.

The Authority also considers it necessary to set out a specific rule for framework agreements, dynamic procurement systems, and framework contracts (both for the documents initiating the procedure and for legal remedies against violations during the evaluation and assessment) that the basis for the legal fee should not be the estimated value provided by the contracting authority but only the value subject to the obligation to call down/provide the service (and indicated as such in the call for tenders) (if this is not indicated in the calls for tenders, only the basic fixed fee should be applied).

In the case of general legal remedies (i.e. not related to the opening documents), the amendment changed the maximum administrative service fee. This means that, in contrast to previous numbers, the maximum fee for the EU procedure has been set at HUF 25,000,000, up from the previous HUF 17,500,000 (the change of the maximum limit is important for public procurement that exceeds the estimated value of HUF 3,500,000,000). Similarly, in the national procedure, the maximum fee has been changed to HUF 5,000,000 from HUF 6,000,000. (the maximum fee is relevant for public works, building and service concessions, and public service contracts under Annex 3 to the PPA that exceed HUF 1,000,000,000; for public supply and other services, public procurements with a value of HUF 1,000,000,000 or more can only be legally implemented under the EU procedure). However, the basis of the fee (0.5% of the estimated value) has not changed.

The reduction is therefore only noticeable – particularly in the EU procedure – in the case of particularly high-value public procurement remedies, but has no impact on the supply and service contracts of classical contracting authorities in the national procedure with a view to reaching the EU procurement thresholds. All in all, the impact of the amendment can be considered marginal.

Considering that feedback suggests that the enforceability of the right to legal remedies is an essential element in strengthening tenderers' trust in public procurement and that Hungary is still one of the poorest performing countries in terms of single-tender procedures in the EU, further fee reductions seem essential to increase the willingness of economic operators to tender.

Therefore, the Authority suggests further lowering the maximum tariff levels (e.g. in line with the tiered fee in Austria). The Authority does not find it acceptable to warrant maintaining higher fees based on the argument that in the past, when administrative service fees were lower and fixed, some bidders resorted to legal remedies strategically, as the revised regulations resulted in different structural issues in the public procurement market.

In this context, the Authority also finds the amount of the administrative service fee to be unreasonably high, considering the average fines imposed on contracting authorities in public procurement remedy proceedings: under current practice, when dealing with high-value procurement, the tenderer must risk a significantly higher amount when seeking remedy proceedings compared to the potential risk faced by the contracting authority, even in cases of severe violations.

The Authority continues to propose the abolition of the regulation depending on the number of application elements, in general as well. However, the current approach could potentially be sustainable with the following two guarantee changes:

- on the one hand, it is warranted to increase the number of application elements in the "basic" category to five elements; many applicants are prevented by the three elements from identifying further relevant violations,
- on the other hand, it is warranted to clarify in the interpretative provision on the element of application in the PPA, but at least to stipulate in a general council's decision that violations alleged in connection with the same act of assessment (e.g. the assessment of an unreasonably low price) constitute one application element (irrespective of the number of grounds on which the applicant claims that the act of assessment is unlawful).

The amount of the administrative service fee is considered high by most participants in public procurement procedures. As stated in the analysis of the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office titled "Results of the Performance Measurement Framework for Assessing the Efficiency and Cost-effectiveness of Public Procurement 2019-2022": "Based on the results of the questionnaire survey, there are a number of factors that act as a disincentive to seeking legal remedies, of which the combined effect of the uncertainty of the outcome of the remedy and the amount of the legal fee can be significant". The 2023 analysis titled "Results of the Performance Measurement Framework for Evaluating the Efficiency and Cost-effectiveness of Public Procurement" highlights, in addition to these two factors, the potential for longer-term conflicts with the contracting authority as a deterrent to remedy proceedings. Therefore, the amount of the administrative service fee represents a significant business risk for the decision of the tenderer, as the amount of the administrative service fee will not be returned to the applicant if the request is deemed unfounded by the Public Procurement Arbitration Board. Uncertainty is also heightened by the fact that even if the Arbitration Board upholds any (even if the most significant) of the applicant's elements of application, if it is dismissed in respect of the other application elements, the applicant will still lose the portion of the legal fee corresponding to those application element(s) that is (are) considered unfounded, which also poses a substantial business risk. Furthermore, the principle of proportionality may be violated if the contracting authority that committed the violation is required to pay a lower fine than the one the applicant must bear due to the partial rejection of the application for review procedure, provided that the Arbitration Board enforces the legal consequence of the fine.

We find it important to stress that since most legal remedies initiated by the President of the Public Procurement Authority concern the audit and modification of public procurement contracts, and legal remedies initiated by audit bodies typically concern procedures that have already been concluded with the

finalisation of contracts, ex officio initiatives are not suitable replacements for legal remedies initiated upon request, which provide the opportunity for reparations.

Representation in remedy proceedings

We have already stated in our Integrity Risk Assessment Report published in 2023 that mandatory representation may further complicate and increase the cost of initiating remedy proceedings. At the time of preparing last year's report, the PPA still regulated the circle of those eligible for representation by stipulating that representation by accredited public procurement consultants, registered in-house legal counsels, or attorneys is mandatory in remedy proceedings before the Public Procurement Arbitration Board. Considering the preparation and expertise of public procurement arbitrators, the Authority already deemed the requirement for mandatory representation as professionally unjustifiable.

However, as already presented in sub-indicator 11(a) regarding the transformation of the public procurement profession, the amendment to the PPA concerning accredited consultants also abolished the representation rights accredited public procurement consultants (although the register of consultant will be maintained until 2026) and authorises only state public procurement consultants, along with legal counsels and attorneys, to act as representatives before the Public Procurement Arbitration Board. The amendment is completely unfounded from a technical point of view, and there are also constitutional concerns about the withdrawal of the right. The future discontinuation of the APPC institution does not mean that the professionals on the list will not be as well equipped to carry out their representational tasks as before.

Taking into account the amendments, the Authority considers it even more warranted than before to abolish mandatory representation (which, nevertheless, is not a general requirement in EU member states) or, as a minimum, to promptly extend the scope of those entitled to provide representation to accredited public procurement consultants, public procurement lawyers and other professionals with a higher education degree or professional qualification in public procurement (including, for example, public procurement officers and procurement specialists).

Rules of remedy proceedings

The legal requirements and, also according to the feedback from the interviews, the procedural rules on legal remedies are clearly defined and publicly available.

Deadline to conclude remedy proceedings

The Public Procurement Arbitration Board must conclude the remedy proceedings within fifteen days of the start of the administrative deadline for the submission of the case, if the case has not been heard. The PPA sets two exceptions to this rule:

- if the Public Procurement Arbitration Board has held a hearing in the case, it is required to terminate the procedure within twenty-five days from the beginning of the administrative deadline for the submission of the case, except for the case specified in section 164(3) of the PPA;
- pursuant to section 164(3) of the PPA, in the case of an amendment or performance of a contract concluded on the basis of a public procurement procedure that is in violation of the PPA, in the case of a decision to dispense with the public procurement procedure, and in cases where the proceedings of the Public Procurement Arbitration Board are initiated ex officio and the contract has already been concluded in the public procurement procedure subject to the legal remedies, it is required to complete the proceedings within sixty days of the initiation of the proceedings.

A single ten-day extension to the administration deadline is permissible, with mandatory notification to the parties.

The average duration of remedy proceedings over the last four years is 29 days:

	2019	2020	2021	2022	2023
Average duration of remedy proceedings (days)	27	27	30	29	30

Therefore, considering the duration of remedy proceedings, it is confirmed that the Public Procurement Arbitration Board's procedure meets the requirement for effective and swift legal remedies. However, as mentioned previously, the administration deadline begins once the Public Procurement Arbitration Board receives all available documents relating to public procurement or procurement, rather than from the day following receipt of the request or initiative. Further analysis is required to confirm the exact number of days it actually takes for arbitration board proceedings to conclude starting from the receipt of the application for review procedure or initiative.

Assessment of the Public Procurement Arbitration Board

As mentioned above, the Public Procurement Arbitration Board sets out, as a principal requirement of the PPA, that the president and vice-president of the Public Procurement Arbitration Board, and public procurement officers are appointed and

relieved by the Public Procurement Council in order to ensure the impartial and independent functioning of the Public Procurement Arbitration Board, just as the Council adjudges eventual cases of conflict of interest pertaining to public procurement officers. Similarly to the entire public procurement institutional system, there is a need to strengthen trust in the legal remedy institutions and their operations. It is important to stress that no excuse or observation came up with regard to the expertise and preparation of arbitrators. This expertise is a substantial piece of evidence of the functioning of the public procurement system.

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

This sub-indicator assesses the degree of autonomy that the appeals body has from the rest of the system, to ensure that its decisions are free from interference or conflict of interest.

Administrative proceedings relating to public procurement

Administrative proceedings may be initiated against the substantive decision of the Public Procurement Arbitration Board. In accordance with section 170(1) of the PPA, those who are authorised to initiate ex officio proceedings have the right to file a case. This means that the legislator has extended the preposition of the plaintiff to all initiators of ex officio proceedings. Violations of the law by the Public Procurement Arbitration Board is not the only way to justify launching an administrative proceeding; circumstances wherein the plaintiff believes that the Public Procurement Arbitration Board did not properly evaluate and classify the claimee's previous proceeding and decision, in line with the rules set out in the PPA, can also be used as justification. Administrative proceedings concerning public procurement fall within the remit of the Budapest Metropolitan Court. If the court chooses to exercise its right to modify in cases of public procurement, an appeal may be lodged against the decision of the Budapest Metropolitan Court, which is reviewed by the Budapest-Capital Regional Court of Appeal. Petitions for review submitted against the decisions of the Budapest Metropolitan Court and the Arbitration Board of the Budapest-Capital Regional Court of Appeal made in cases of public procurement concerning their resolutions are reviewed by the Curia.

Based on the information received, the percentage of administrative proceedings initiated against the decisions of the Public Procurement Arbitration Board is confirmed to be between 10-15% annually, considering the percentage of all legal remedies. Based on feedback from lawmakers, the fact that the contracting moratorium no longer applies during the judicial review may play a major role in

this. This means that the contracting authority can conclude the public procurement contract following the Arbitration Board's decision. Therefore, opting for a judicial review is less appealing for parties seeking legal remedies. The Authority recommends that the judicial review allows for the option to request the suspension of the ongoing procurement procedure and seek an appeal against the court's decision.

The data from the judicial review confirms that courts prefer to use the instruments of abrogation or ordering new proceedings over modification.

The decisions of the courts are based on information which is relevant to the case.

The interviews and surveys suggest that responders, excluding those without experience in this field, have given positive feedback on the impartiality and independence of courts as well. Judges' training in public procurement requires further investigation.

Submitting requests for preliminary ruling

Courts initiated preliminary ruling proceedings in three cases back in 2017 regarding the decisions of the Public Procurement Arbitration Board (unified case no. C-496/2018., D-497/2018. and C-263/2019). Since then, no preliminary ruling procedure has been put forth by Hungarian legal remedy institutions. The Public Procurement Arbitration Board has not submitted a request for preliminary ruling since Hungary's accession to the European Union.

Accessing the decisions of the Public Procurement Arbitration Board

Usually, both substantive and non-substantive decisions of the Public Procurement Arbitration Board are fully accessible on the Public Procurement Authority's portal within a reasonable time frame (clarification is needed as to the reason for the exceptions that may occur). Whether the decision has been challenged in an action must also be disclosed in relation to the decision. Once the case is closed, the Public Procurement Arbitration Board discloses the final judgement as well. However, finding these judgements is problematic, and not all of them appear directly in amongst the data of a specific arbitration board case. Procurement stakeholders are satisfied with the availability of judgments, but interviewees suggested that a separate database of court judgments could help to keep track of them.

As regards the possibility of searching through the decisions of the Public Procurement Arbitration Board, since the search interfaces were not improved in 2023, the Authority upholds its proposal, which is based on observations from public procurement law enforcers, suggesting the need to improve the application in order to enable reliable search options for certain attributes of decisions and

judgements (subject matter, violated legal provisions, etc.). In 2023, the Captcha application was added to the search interface of the Public Procurement Arbitration Board's decisions too, making it difficult to gain access to the decisions. The application of other, less restrictive solutions, which can also help reduce information security risks, is recommended.

The search interface could make it easier to track the Public Procurement Arbitration Board's decisions. This is because, based on feedback from law enforcers, parties often refer to relevant arbitration board or court decisions in remedy proceedings. (Furthermore, even the Public Procurement Arbitration Board often refers to the legal practice of the high court in its decisions.) Furthermore, the Authority recommends the designation of violated or investigated legal provisions on the data sheets prepared in connection with the search interface of public procurement remedy proceedings. This will facilitate efficient searching through decisions.

Making it easier to review the emerging legal practice in the decisions could, on the one hand, promote law-abiding behaviour and, on the other hand, further strengthen trust in remedies forums.

Decision of the general council

Section 168 of the PPA regulates the system of the general council's decision to ensure the unity of the Public Procurement Arbitration Board's decision-making. In accordance with section 168 of the PPA, if the competent panel and the council or general council reach an agreement, the Public Procurement Arbitration Board will publish information about the new decision of the general council and any amendments thereof on the Public Procurement Authority's website. Law enforcers have requested an increase in the number of decisions made by the general council, as they provide significant help in understanding lawful solutions to complex legal issues. It can be assumed that simplifying the rules for disclosing the decisions of the general council could help their disclosure. Therefore, when modifying the rules, the Authority recommends ensuring that the Public Procurement Arbitration Board's position is the sole prevailing one in the decisions.

It is worth mentioning that the Public Procurement Authority's website has recently published a number of key findings of principled court judgements. It would be advisable to make the judgments cited directly available from these news.

MAPS Indicator 14: Ethical and anti-corruption provisions

Indicator summary

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

Findings

Anti-corruption laws define illegal practices and corresponding sanctions. According to SCSIAP statistics, the effectiveness of the competent authorities in corruption cases is above average, and according to Eurostat data, the situation regarding corruption offences is not significantly different from the European average, but the high public perception of corruption (e.g. based on Eurobarometer, Corruption Perceptions Index - CPI) is still significantly different from the picture painted by the statistics.

On the one hand, this is due to a broader interpretation of corruption by the media and the public compared to the legal definition, which increases the public's perception of corruption. On the other hand, there is a low willingness to report corruption offences, which could result in a decrease in the number of documented corruption offences in crime statistics. In the case of the public procurement system under investigation, the latter may stem from a lack of knowledge, distrust in the system and the institutions involved, and fear of potential retaliation. This is also linked to the finding that the number of civil servants and professionals working in public procurement who undergo regular and compulsory training on ethics, integrity, fraud prevention and anti-corruption is currently insufficient.

In terms of anti-corruption provisions, the main issue with the public procurement system is ensuring that the existing legal framework is complied with and enforced. This difficulty mainly arises from the features of the control system outlined in indicator 12. While the system has several anti-corruption procedures, they are not systematically applied in a coherent, risk-based, coordinated system. Furthermore, the public procurement framework does not regulate certain aspects of integrity. For example, there is no requirement to include rules on fraud, corruption and other prohibited practices in public procurement contracts, while the control concerning grounds for exclusion is ineffective on the contracting authority's part.

Government Decree No. 50/2013 (25 February) on the System of Integrity Management at Public Administration Bodies and the Procedural Rules of Receiving

Lobbyists and Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies represent significant progress in the creation of integrity-based operations, both generally and in the area of public procurement. However, there are shortcomings in the application of both, with compliance still limited to formal, checklist-based fulfilment of requirements. The system's effectiveness is reduced also because only contracting authorities are currently required to operate integrity systems.

In its Case Report on Asset Declarations[37] published on 14 December 2023, the Authority thoroughly explains that the asset declaration system can only achieve its objectives (e.g. transparency, accountability, prevention of corruption, and detection of illegal asset accumulation), as outlined in the Asset Declaration Act, through an effective, automated control system that includes content verification.

Summary of the substantial deficiencies and recommendations of Indicator 14

Substantial deficiencies	Risk classification	Recommendations
The asset declaration system (including verification) is ineffective, while sanctions for non-compliance are not sufficiently dissuasive, effective and proportionate	high	While it is welcome that a review of the asset declaration system (including, for example, the sanctions system) is currently underway, as informed by the Ministry of Justice and the NACS 2024-2025, the Authority upholds the provisions of the Case Report on Asset Declaration Report[38] which state: - the application area of inspections of asset accumulation need to be expanded to include cases where corruption offenses are suspected; - legal consequences for cases involving violations of the obligation to declare assets need to be more severe; - there is a need to create a dedicated central audit body to verify asset declarations, which considers the risk classification of the declarations during the inspections and have automatic data links to different databases.
The integrity training system connected to the public procurement system is incomplete for public procurement professionals	average	Expanding the range of regular, compulsory training courses on integrity issues for public procurement professionals to complement more comprehensive ethics and integrity training courses.
Colleagues involved in public procurement on the contracting authority's part often lack adequate training to identify grounds for exclusion. There is no systematic and thorough monitoring and prevention of conflicts of interest, and the public procurement control system does not include inspecting this activity.	average	It is reasonable to connect the inspection of conflict of interest declarations to an audit system and lay down the relevant provisions in the procurement regulations of contracting authorities. Requiring mandatory inspections of the network of business relations, affiliated companies, and other interests of executives in respect of the economic operator submitting tenders.

[37] https://integritashatosag.hu/wp-content/uploads/2023/12/Integritas_Hatosag_Vagyonnyilatkozatok_Eseti_Jelentes_2023-1.pdf
[38] https://integritashatosag.hu/wp-content/uploads/2023/12/Integritas_Hatosag_Vagyonnyilatkozatok_Eseti_Jelentes_2023-1.pdf

		Developing effective guidelines and tools, as well as a training and advanced training programme that is more effective and compulsory over a broader spectrum for public procurement professionals working on the contracting authority's part.
Only the contracting authority is required to operate integrity systems. The control system needs to be strengthened regarding the internal and external monitoring of the application of the Integrity Decree and the Company Internal Control Decree; the institutions of integrity advisors and compliance advisors are not strong enough	average	A mandatory requirement for both the contracting authority and the tenderer to operate integrity systems in order to participate in public procurement. Developing a risk-based and more comprehensive control methodology – which does not focus solely on formal compliance – in respect of the implementation of the Integrity Decree and the Company Internal Control Decree. Developing educational materials and guidelines for major stakeholders for the development of integrity tools customised for the specific organisation. Continued advanced training for internal auditors, sharing experience from the private sector with internal auditors in the public sector in the context of advanced training and professional organisations (IIA Hungary). External audits (SAO) with deeper content compared to previous ones and effective feedback.
There is no requirement to include rules on fraud, corruption and other prohibited practices in public procurement contracts	average	Mandatory integration of provisions on corruption, fraud and other prohibited practices in public procurement documentation. Accordingly, the modification of relevant legal provisions and guidelines to be applied by contracting authorities and economic operators submitting tenders.

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

This sub-indicator assesses the existence of legal provisions that define fraudulent, corrupt and other prohibited practices and set out the responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

Prohibited practices and exclusion grounds in public procurement

In managing public funds and national assets, the Fundamental Law of Hungary (25 April 2011) establishes transparency in state operations, integrity in public life, and the application of a preventive approach in general, as the fundamental principles of good governance and good public administration. The definition and prohibition of fraud, corruption, money laundering, anti-competitive behaviour and other prohibited practices in public procurement are set out in legislation.

In the area of public procurement, the rules on mandatory grounds for exclusion are set out in section 62 of the PPA, and the rules on optional grounds for exclusion

are set out in section 63 of the PPA for tenderers, candidates, subcontractors or entities involved in the attestation of suitability. In the case of absolute grounds for exclusion as defined in section 62 of the PPA, the economic operator concerned, who is not self-cleaned, must be excluded from the public procurement procedure irrespective of any other circumstances. The grounds for exclusion are linked to criminal offences, many of which concern the integrity of economic operators, such as fraud, corruption, money laundering, or other criminal offences, undue interference with the decision-making process of the contracting authority, competition law violations (e.g. cartels), or conflicts of interest.

The provisions of section 62(1)a) of the PPA concerning grounds for exclusion relating to integrity refer to Title VII of Chapter XV (crimes against the integrity of public life) and Chapter XVII (offences against property) of Act IV of 1978 on the Criminal Code (previous Criminal Code; abrogated on 1 July 2013) and corruption offences, budget fraud, and agreement in restraint of competition in public procurement and concession procedures as defined in Act C of 2012 on the Criminal Code (Criminal Code). Chapter XXVII of the Criminal Code regulates corruption offences, which include Active Corruption (section 290 of the Criminal Code), Passive Corruption (section 291 of the Criminal Code), Active Corruption of Public Officials (section 293 of the Criminal Code), Passive Corruption of Public Officials (section 294 of the Criminal Code), Active Corruption in Court or Regulatory Proceedings (section 295 of the Criminal Code), Passive Corruption in Court or Regulatory Proceedings (section 296 of the Criminal Code), Indirect Corruption (section 298 of the Criminal Code), Abuse of Function (section 299 of the Criminal Code), and Failure to Report Corruption Offences (section 300 of the Criminal Code). The Criminal Code distinguishes between corruption offences related to operation or interference, corruption offences related to officials, economic organisations or public proceedings, active or passive corruption offences, and corruption offences committed in Hungary or abroad. The criminal offence of budget fraud is regulated by section 396 of the Criminal Code, while the offence of agreement in restraint of competition in public procurement and concession procedures is regulated by section 420 of the Criminal Code.

The mandatory grounds for exclusion under section 62 of the PPA also apply to the economic operator, the executive of the economic operator, member of the supervisory board, company director, or sole member of a company if they have received a final judgement for a criminal offence as defined above within the past five years and have not been relieved of the disadvantages of prior conviction.

Definitions of fraud, corruption and other prohibited practices in public procurement can also be found in other normative acts. However, these definitions

are sometimes broad and not always align with the laws in force. For instance, the strategy against fraud and corruption for the 2021-2027 programming period and for the implementation of the Recovery and Resilience Plan uses a broad definition of[39] corruption ("any abuse of power for private purposes"), while fraud is defined in the same document as fraudulent practices that violate the financial interests of the Union,[40] as specified in Directive (EU) 2017/1371. The NACS 2024–2025 and the action plan concerning its implementation were published on 14 February 2024. This also uses a broad definition of corruption ("abuse of power granted for other objectives to pursue private purposes"), while defining fraud by citing other, more specific pieces of legislation ("criminal offence under section 373 the Criminal Code and any irregularity under Article 3(2) of Directive (EU) 2017/1371").

Government Decree No. 50/2013 (25 February) on the System of Integrity Management at Public Administration Bodies and the Procedural Rules of Receiving Lobbyists, Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules on the Notification of Abuse (Complaints Act), Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies, Act CLII of 2007 on Certain Obligations Related to Asset Declaration, Act XXXVI of 2012 on the National Assembly, and Act CLXXXIX of 2011 on Local Governments in Hungary are also amongst the relevant legal acts.

The Integrity Authority Act, which established the Integrity Authority and the Anti-Corruption Task Force, brought about important changes in the investigated area. This objective of this act is to improve the efficiency of the institutional system responsible for using and controlling the utilisation of European Union funds, in line with the measures proposed in the procedure under Regulation (EU) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. The Integrity Authority Act does not use any independent definition of corruption. Instead, it uses

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

[40] In accordance with Directive (EU) 2017/1371, the following actions are considered fraudulent practices that violate the financial interests of the European Union:
In respect of expenditure, any intentional act or failure relating to:
- the use or presentation of any false, incorrect or incomplete statement or document that leads to the illegal obtaining or withholding of funds from 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 above;
- illegal use of such funds for purposes different from the original ones that formed the basis for the decision;
In respect of income, any intentional act or failure relating to:
- the use or presentation of any false, incorrect or incomplete statement or document that leads to the illegal reduction of the general budget of the European Communities or funds from the budget managed by or on behalf of the European Communities;
- withholding information and thereby breaching a specific obligation, with the same consequences as above;
- illegal use of legally obtained benefits, with the same consequences as above.

the definitions of "corruption" and "criminal offences related to corruption". With regard to the discharge of the Integrity Authority's functions, the act uses a broader specification with "fraud, conflict of interest, corruption, and other illegalities or irregularities". Section 50(1) of the Integrity Authority Act, which outlines the tasks of the Anti-Corruption Task Force, refers to the corrupt practices under Article 4(2) of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, the criminal offences as defined in Chapter III of the United Nations Convention against Corruption, and the criminal offences as defined in Chapter XXVII of the Criminal Code.

On 3 May 2023, the European Commission proposed[41] a draft directive aimed at harmonising penal measures against corruption through measures such as:

- Improving the prevention of corruption, promoting the creation of a culture of integrity;
- Harmonised criminal offences would include misuse of funds, commercial influence, abuse of authority, illicit enrichment, and obstruction of justice in corruption cases;
- Introducing common definitions for additional corruption offences beyond the already harmonised bribery (e.g. misappropriation of funds, abuse of function, abuse of authority, obstruction of justice, prohibited enrichment associated with corruption offences, etc.);
- Introducing coordinated minimum criminal sanctions and penalties for various criminal offences;
- Increasing and coordinating the statute of limitation concerning the punishability of corruption offences;
- Providing adequate investigative tools and resources to law enforcement agencies and public prosecutors to combat corruption.

Changes to the rules of the PPA relating to conflict of interest

Section 81 of the Integrity Authority Act has redefined the conflict of interest rules of the PPA, specifically detailed in sub-indicator 14(b), to bring them in line with European Union law. The amendment to the PPA has clarified that it is the general obligation of the contracting authority to prevent and detect conflicts of interest

[41] According to the plans, the directive will substitute Council Framework Decision 2003/568/JHA, which outlines the requirement of punishability regarding corruption in the private sector, and substitutes Convention of 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union. It would also modify the PIF Directive (Directive (EU) 2017/1371). https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52023PC0234

and to resolve them if such situations arise. Furthermore, the obligations of the contracting authority, the general rule of conflict of interest, and the cases of presumed conflict of interest, which typically involve a breach of the impartiality of the persons concerned, have also been established. To this end, all individuals acting on behalf of the contracting authority and involved by the contracting authority in activities related to the procedure or its preparation must make a conflict of interest declaration in relation to all procurement processes they are involved in. Where there is a risk of conflict of interest, the contracting authority has a duty to verify whether there is a conflict of interest. The new regulations have maintained the rules introduced in 2015 on the disqualification of dignitaries and set out the general consequences of conflicts of interest, as well as the consequences in cases where an economic operator has participated in the preparation of the procedure. The Public Procurement Authority's guide analysing the new conflict of interest rules has been published[42]; its revision is currently underway. Besides the provisions of the PPA, additional, detailed rules on conflicts of interest can be found in various laws and government decrees that also concern public procurement. For example, the creation, duties and termination of the legal relationship of civil servants are regulated by Act CXCIX of 2011 on Civil Servants (Act on the Civil Service Officers). This law also contains the regulations on professional ethics and conflict of interest and indirectly the provisions limiting the revolving door phenomenon between the public and private sectors with regard to civil servants. However, there are no rules for managing eventual conflicts of interest and related risks that may occur following the termination of the legal relationship. This lack of rules raises the risk of the revolving door phenomenon.

According to the interviews with stakeholders, one major obstacle to the implementation of the anti-fraud and anti-corruption strategy in public procurement is the lack of systematic preventive action in this area on the part of the contracting authorities and the absence of an evaluation of the existence and effectiveness of such action as part of the public procurement control system. The application of provisions on conflicts of interest and the violation of fair competition is made more difficult by the fact that the bidding economic operator's affiliated companies and other interests of the owners and executives are not adequately monitored. For instance, according to Government Decree No. 321/2015 (30 October) on the Way of Certifying Suitability and the Non-Existence of Exclusion Grounds as well as the Definition of Public Procurement Technical Specifications in Contract Award Procedures, contracting authorities are required to verify data that can be requested electronically and free of charge from the company information

[42] https://kozbeszerzes.hu/kozbeszerzesek-az/magyar-jogi-hatter/a-kozbeszerzesi-hatosag-utmutatoi/a-kozbeszerzesi-hatosag-kereteben-mukodo-tanacs-utmutatoja-az-osszeferhetetlenseggel-kapcsolatban/

and electronic company registration service (company information service), but there is no requirement to verify the company network in addition to data from the company register. In this context, it should be stressed that, under the new conflict of interest rules referenced above, the conflict of interest declarations regarding persons acting on behalf of the contracting authority must cover the members, executives, supervisory board members, directors and employees of the tenderers, candidates, subcontractors, and organisations involved in the verification of suitability. In the absence of significant practice, an analysis of the practical experience of the new conflict of interest provisions of the PPA can take place at a later date.

The application of provisions concerning conflicts of interest and the violation of fair competition is also hampered by the frequent lack of professional capacity and additional, adequate guidelines and tools (e.g. beneficial owner database) for contracting authorities. Finally, ensuring that operating harmonised compliance systems is a mandatory requirement for both the contracting authority and the tenderer in order to participate in public procurement is crucial for the implementation of the anti-fraud and corruption strategy.

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

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include references on fraud, corruption and other prohibited practices, conflict of interest and unethical behaviour, as defined in the law in the procurement and contract documents. Instructions could include a requirement for bidders to issue a self-declaration assuring that the bidder has not engaged in any prohibited practices and has not been prosecuted or convicted of fraud, corruption or other prohibited practices.

Properly regulating conflicts of interest is essential for good governance overall and fair competition in public procurement. As an obligation stemming from Hungary's membership in the EU, legal approximation dictates that public procurement legislation must be aligned with Community law and public procurement rules, while law enforcers must interpret domestic legislation in accordance with EU regulations. The EU rules on conflicts of interest directly applicable in the Member States in relation to the EU budget are set out in Article 61 of the EU's Financial

Regulation, which entered into force on 2 August 2018.[43] These rules apply whenever EU funds are used. Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC and Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC set out the conflict of interest rules to be considered in the context of public procurement procedures. Furthermore, domestic regulations must also comply with the provisions of the World Trade Organization's Agreement on Government Procurement[44] (GPA).

The legislative amendments relating to conflicts of interest are presented in sub-indicator 14(a). With regard to the implementation of the amended rules, it is worth stressing that, as indicated in the ministerial motivations for the amendment, European Commission Notice 2021/C 121/01, titled "Guidance on the avoidance and management of conflicts of interest under the Financial Regulation" regarding the use of EU funds (Commission Notice of 2021 on the interpretation of conflicts of interest), points out that the use of conflict of interest declarations is effective if accompanied by checks to identify false declarations. These checks can be done particularly by cross-checking with other information sources. Therefore, based on publicly available data from the company register, the contracting authority can verify connections amongst the individuals participating in the procedure on its side and the tenderers, or it can also request more detailed declarations about the individuals – e.g. about their business interests. The contracting authority may define in its public procurement regulations the way in which the veracity of the declarations is to be checked."

According to the Authority, meeting EU requirements on the prevention, detection, and management of conflicts of interest necessitates enforcing the previous points. It is therefore necessary that contracting authorities outline in procurement regulations the criteria for controlling conflicts of interest.

Furthermore, since the system of conflict of interest rules is complex, it is essential to provide stakeholders with adequate information and training. This will enable them to identify conflicts of interest, make appropriate declarations, and identify

[43] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046

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

and manage the indicated conflict of interest risks on the contracting authority's side.

In respect of individuals impacted by conflicts of interest, it is advisable for the legislator to adopt a more uniform approach, i.e. to use the term "relatives" instead of "relatives living in the same household" for individuals listed in section 25(6) of the PPA, as defined in section 25 of the PPA.

There are no clear and comprehensive definitions of prohibited practices in public procurement. The PPA does not determine the contents of public procurement documents. Therefore, it does not require the inclusion of declarations regarding fraud, corruption and other prohibited practices in public procurement contracts either. These declarations are not part of the model declarations included amongst the Public Procurement Documents available on the Tenders[45] portal either. Although the legislation does not include specific requirements, public procurement documents sometimes include provisions concerning prohibited practices. Similarly, anti-corruption clauses do not constitute a mandatory part of the documentation. The Authority recommends the mandatory implementation of this provision.

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

This sub-indicator concerns the enforcement of the law and the ability to demonstrate this by actions taken.

Reporting corruption offences

The Public Procurement Authority and the contracting authority are required to report any instances of corruption or attempts thereof by the representative of the tenderer or the contracting authority to the competent authority. Secondary legislation includes similar requirements. However, it is not entirely clear how to fulfil this requirement in practice. Furthermore, general rules concerning illegal practices, corruption offences and other abuses are also to be enforced. These are regulated by the Criminal Code, Act XC of 2017 on the Code of Criminal Procedure ("Code of Criminal Procedure"), Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules on the Notification of Abuse (new "Complaints Act") and by other legal acts, such as Act CLXIII of 2011 on the Prosecution Service, Act XXXIV of 1994 on the Police, and the Integrity Authority Act. Organised by year and grouped based on the chapters and facts of the Criminal Code, the data from the Standard Criminal

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

Statistics of Investigation Authorities and Prosecutors ("SCSIAP") are publicly available on the website of the Office of the Prosecutor General, with the latest data available up to the year 2023. The SCSIAP does not contain information on the percentage of corruption offences connected to public procurement. Therefore, the Authority could not formulate a conclusion in this regard. The data available to the Authority show that the number of initiated proceedings is increasing year on year (271 in 2020; 358 in 2021; 357 in 2022; 384 in 2023). Amongst these proceedings, those initiated for active corruption increased the most (58 in 2020; 103 in 2021; 126 in 2022; 160 in 2023).

According to data provided by the Office of the Prosecutor General in 2023, competent authorities have shown above-average effectiveness in detecting corruption cases, as the dismissal rate of complaints related to corruption offences is lower than the average rate of reporting and dismissing such cases. Additionally, the percentage of proceedings terminated and cases closed with an indictment with regard to corruption cases is notably lower compared to the entire scope of corruption offences. This statistic does indeed portrays a positive picture of the effectiveness of competent authorities, but it is important to stress that the most effective means of detection in cases of corruption offences is the use of covert information-gathering. Therefore, and as explained in sub-indicators 14(a) and 14(b), it can be concluded that the situation in Hungary is not significantly different from the European average in terms of the number of identified corruption offences, as also indicated by Eurostat data. It is important to note, however, that the perception of corruption is inconsistent with this due to, amongst other reasons, the above-mentioned limitations to the usefulness of the statistics and the public's tendency to interpret other economic crimes as corruption. Perceptions of corruption, and perceptions of integrity in public life in general, are also adversely impacted by the increase in the incidence of abuse of function. In general, the willingness to report corruption offences is low, which may be the result of several factors. In 2023, a significant issue pointed out by our respondents was the failure to report corruption and corrupt practices in public procurement, which stemmed from a lack of necessary knowledge to identify such instances, distrust in the authorities and jurisdiction, and concerns about the potential adverse outcomes for the reporting person or economic operator. Therefore, it can be concluded that there is often a lack of preparedness amongst employees in public procurement, especially on the contracting authority's part, to identify potential exclusion grounds, and that a training and advanced training programme that is more effective and compulsory over a broader spectrum would be needed to facilitate this. Furthermore, measures enhancing the willingness to report would be needed.

This can be achieved primarily by improving whistleblower protection and boosting trust in the system.

Motion for revision

The Code of Criminal Procedure prescribes specific procedural rules for investigating corruption offences. This is because, in the case of offences falling under section 30(f) of the Code of Criminal Procedure, only the public prosecutor's office carries out investigations while taking into consideration the gravity of the offences and the typically higher level of difficulty in proving them. However, from the perspective of the sub-indicator, it is important to emphasise the amendment to the Code of Criminal Procedure, which came into effect on 15 November 2022 under the conditionality mechanism. This amendment allows motions for revision to be filed against the decisions of the public prosecutor's office or the police department dismissing complaints or terminating investigations in cases involving suspicions of serious criminal offences relating to the exercise of public authority and the management of public property, as defined in section 817/A(1) of the Code of Criminal Procedure. This has put an end to the practice, previously criticised by the European Commission, of not allowing judicial remedies for cases dismissed or closed by the investigative authorities.

Section 817/A of CHAPTER CV/A of the Code of Criminal Procedure includes the criminal offences, as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (the so-called PIF Directive). However, the scope of criminal offences has been defined across a broader spectrum in many aspects.

The scope of criminal offences in question includes corruption offences, except for less severe offences that do not involve misconduct. Moreover, abuse of authority, except for "administrative-level" offences of minor danger to society. From amongst offences against property, criminal offences against or damaging national assets or assets managed by public trust funds exercising public functions – essentially, cases over HUF 5 million or, in some cases, over HUF 500,000 –, along with misappropriation of funds without threshold. Budget fraud, basically in the case of an offence above HUF 5 million or, in certain cases, above HUF 500,000. Furthermore, as appropriate, budget fraud in connection with excise goods, in accordance with paragraph (3) to (5) of section 396 of the Criminal Code (including also the criminal offence of omission of oversight or supervisory responsibilities in connection with budget fraud). This also includes the criminal offence of agreement in restraint of competition in public procurement and

concession procedures. Furthermore, participation in a criminal organisation linked to the above-mentioned criminal offences, money laundering.

In accordance with section 27/A of the Integrity Authority Act, the Integrity Authority has the right to file a motion for revision or a repeated motion for revision in criminal proceedings initiated on or after 1 January 2023. This applies to cases concerning serious criminal offences related to the exercise of public authority or the management of public property if the public prosecutor's office or the investigative authority dismisses the complaint or terminates the proceedings.

Within one month following receipt of the notification of the decision dismissing the complaint or terminating the proceedings, the victim or the complainant may lodge a motion for revision. Within five working days of the expiry of the deadline, the investigative authority shall publish the anonymised decision pursuant to section 817/B(1) or the anonymised case file on its central electronic information website for one month.

With the exception of the victim and the complainant, the person lodging a motion for revision may, before lodging a motion for revision, have access only to the anonymised decision and the anonymised case file from the case documents, which introduced rules to deal with issues relating to the protection of fundamental rights, including the protection of personal data, by safeguarding the accessibility of the data of persons who may be involved in criminal proceedings.

Access to the case files in criminal proceedings will therefore be granted only as a last resort, when it is procedurally justified, following judicial control, immediately before submitting the indictment, to ensure that it is well substantiated.

Secondly, the protection of the "accusable" persons (presumption of innocence) should be ensured to the fullest extent possible. Furthermore, it must be ensured that the new legal institution does not become a tool for abusing the law. Nonetheless, it should be done without making it impossible to operate. Therefore, unlike in a substitute private prosecution procedure, a separate court decision is required after the submission of the indictment in order to initiate the trial with the person now charged.

Any natural or non-natural person may lodge a motion for revision, with the exception of the suspect, the defence, the victim, and the complainant.

The legislator has set up a sort of "staggered" procedure at the explicit request of the European Commission: since, in the beginning, only the complainant and the victim can submit a motion for revision. This means that, once they have received the decision on the dismissal of the complaint or termination of the proceedings,

these participants in the proceedings have one month to lodge a motion for revision. This gives a sort of “priority” to these participants within the proceedings, meaning that if they file a motion for revision, no other individual – external to the proceedings – can later file a motion for revision or an indictment (even if the victim or complainant who filed the motion for revision does not file an indictment). The second element of the "staggered" procedure allows for individuals not involved in the procedure to take action if the complainant and victim do not file a motion for revision.

In accordance with the Fundamental Law, the provisions of the Code of Criminal Procedure stipulate that the state and bodies exercising public authority, with the exception of the Integrity Authority, are not authorised to file a motion for revision, even if they are involved in the proceedings as a complainant or victim. The motivations for the law point out that the rule of the new special procedure have introduced a completely new procedural mechanism that is without precedent. The most important participant in the proceedings is a person who, from a procedural perspective, is completely external to the proceedings, has no direct private interest in the criminal offences in question but aims to act in the public interest; an individual who, authorised by law, can intervene in proceedings involving offences which are otherwise public offences in order to ensure a successful investigation and, if necessary, to ensure the offender’s guilt is determined by a court.

After the submission deadline has lapsed, the decision-making public prosecutor’s office or investigative authority assesses the motion for revision, and if found to well-substantiated, nullifies the decision and orders the investigation or the continuation of the proceedings. Otherwise, within three days after the deadline for filing a motion for revision has lapsed, the motion, the attached documents, and the case files must be submitted to the public prosecutor’s office if the decision was made by the investigative authority, or to the superior public prosecutor’s office if the decision was made by the public prosecutor’s office.

In case the submitted motion for revision is well-substantiated, when the decision was made by the investigative authority, the public prosecutor’s office or, when the decision was made by the public prosecutor’s office, the superior public prosecutor’s office nullifies the decision and orders the investigation or the continuation of the proceedings. Otherwise, the motion, the attached documents, and the case files, together with any observations on the motion, are sent to the court within eight days following receipt of the motion. The investigating judge of the Investigative Judge Department of the Central District Court of Buda has national jurisdiction.

The court makes a decision on the motion for revision within one month of its arrival to the court. The court can extend this deadline by up to two months.

It is an essential rule of guarantee that the court re-examines the contested decision irrespective of the grounds for the motion for revision. To this end, it fully examines the case files and the data, documents and statements attached by the petitioner which, in the petitioner's opinion, are capable of proving the facts to be proven in the case.

If the court has annulled the decision dismissing the complaint, the investigation is opened without a separate decision, while if it has annulled the decision terminating the proceedings, the proceedings continue without a separate decision.

In the event of an investigation being initiated or proceedings being carried forward, the public prosecutor's office or the investigative authority must carry on with the proceedings based on the grounds specified in the court order or, in cases of uncovered aspects, by attempting to rectify the deficiencies set out therein.

In determining the lines of investigation, the public prosecutor's office is guided but not bound by the shortcomings identified in the court order. The requirement for dividing the procedural functions, which is rooted in the Fundamental Law, would not be enforceable if the court could make conclusions of instructional nature in its decision concerning the conduct of the investigation [Cf. Decision No. 166/2011 (20 December) of the Constitutional Court; Decision No. 14/2002 (20 March) of the Constitutional Court; Decision No. 72/2009 (10 July) of the Constitutional Court].

Repeated motions for revision is a special legal institution, which may be filed only by the person who previously filed the motion for revision, if the public prosecutor's office or investigative authority terminates the proceedings in accordance with section 398 (1)a)-d) or i) or (2)a) in proceedings conducted under section 817/G.

The person who has previously submitted a motion for revision may file a new motion for revision against the decision within one month following receipt of the termination decision.

With regard to its constitutional framework, from a doctrinal and procedural standpoint, the regulation is closest to the substitute private prosecution procedure. Therefore, in designing the new mechanism, the legislator paid particular attention to the constitutionality aspects elaborated by the Constitutional Court regarding the substitute private prosecution procedure.

If, in such a case, the court decides that filing an indictment is permitted and orders an investigation or continuation thereof (section 817/I of the Code of Criminal

Procedure), any natural or non-natural person, with the exception of the Integrity Authority, can file an indictment. The state and bodies exercising public authority are not authorised to bring an indictment or to act as a person entitled to represent an indictment.

However, the subjective legitimacy aspect of filing an indictment has become more restricted, as it is no longer possible for anyone to join this stage of the procedure, except for those who have previously filed a motion for revision. These persons are designated as persons entitled to lodge an indictment. However, this group of persons is not the same as the group authorised to represent the indictment and the group of persons with prosecutorial rights. While multiple individuals can file a motion for revision, only one person, who is authorised to represent the indictment, has the legal possibility to review the case files and file the indictment. The competent person for the latter position must be picked through consensus or, if that is not feasible, by appointing one of the competing authorised candidates.

In accordance with the Commission's requirement established during the technical consultations, the complainant is listed first in the order, followed by the victim, and then any other individual who have submitted a review, other than the victim and the complainant. When establishing the order, the fact that the victim and the complainant are also parties to the proceedings under the general rules had to be taken into consideration. Other persons involved in the criminal proceedings may typically suffer less violation of interest if they are the only ones involved in the proceedings. The order between the victim and the complainant can be explained by the fact that, when offences are committed against legal persons by their representatives, the victim's representative (even if he or she is not the person responsible for the offence) may have a greater or lesser interest in the case's development and uncovering any irregularities in the company's operations. The complainant is likely to enforce this interest more effectively.

In this context, we should note that individuals are unlikely to have sufficient capacity to apply legal remedies. On the one hand, legal representation is mandatory in the case of motions for revision, and private individuals must pay the costs in advance. On the other hand, the applicability of legal remedies by individuals is also weakened by the fact that the public prosecutor's office and the investigative authority publish their decisions dismissing a complaint or terminating proceedings on their websites in an anonymised form for a period of one month. Therefore, their identification requires more resources. In order to ensure full access to the anonymised decision, the anonymised register and related documents, the Authority has made a proposal for a legislative amendment to the competent body.

Legal expertise plays a key role in the proceedings, as it provides legal remedies for those who are external to the proceedings, which may ultimately result in the accused person being subject to criminal proceedings. Therefore, similarly to a substitute private prosecution, it requires mandatory legal representation for persons seeking to contest a decision made by the investigative authority or public prosecutor's office dismissing a complaint or terminating the proceedings.

It is also important to point out that, at the explicit request of the European Commission, it stipulates, in deviation from the general rules of criminal procedure, that a person seeking to intervene in a separate procedure may submit written petitions or motions only through his or her legal representative. At the same time, subject to section 131(1) of the Code of Criminal Procedure, the authorities may communicate with the person seeking action only through the legal representative, whereby communication in the new procedure may therefore take place through a single channel and by electronic means, taking into account the mandatory electronic communication of legal representatives.

Civilians have criticised the "excessively short procedural deadline (one month in the case of a motion for revision or a repeated motion for revision, and two months in the case of an indictment"), describing it as a circumstance that could hamper the application of legal remedies.

In 2023, the Integrity Authority processed a total of 315 anonymised decisions, of which 235 were delivered by the public prosecutor's office, 76 by the police department, and 4 by the National Tax and Customs Administration. The public prosecutor's office or investigative authority dismissed the complaints in 91 percent of the decisions, while in the remaining 9 percent, it decided to terminate the investigation.

Amongst the investigated decisions, the Integrity Authority submitted a motion for revision in 6 cases by 31 December 2023, of which 4 cases involved the use of European Union funds as well. The Integrity Authority publishes on its website[46] concise summaries of the motions for revision, repeated motions for revision it has filed, and the decisions made by the public prosecutor's office and the court in response to them.

SCSIAP

In accordance with section 1(1) of Decree No. 12/2018 (7 June) of the Minister of the Interior on the Standard Criminal Statistics of Investigation Authorities and Prosecutors and on the Detailed Rules for Data Collection and Processing, the

[46] https://integritashatosag.hu/ugyek/felulbiralati-inditvanyok/felulbiralati-inditvanyok-2/

SCSIAP gathers – including the planning and execution of data registration – statistical data of criminal procedures, the actions serving as basis for the criminal procedures, as well as the perpetrators and the victims. The two substantively distinct subsystems of data collection are the collection of data on initiated criminal proceedings and the collection of data on all monitoring units completed by the investigative authority and the public prosecutor's office as defined in the course of criminal proceedings.

Registries of companies excluded from public procurement procedures

Registries maintained by the Public Procurement Authority

The registry of tenderers disqualified for submitting false data[47] includes economic operators that have been excluded by contracting authorities from public procurement procedures they are conducting. The list is drawn up based on notifications from contracting authorities and is not a public register. Therefore, it is for information purposes only. It contains the factuality, description and summary of the relevant circumstances surrounding the contracting authority's decisions that may serve as exclusion grounds in accordance with section 62 (1) (i) and (j) of the PPA, along with the number of decision of the arbitration board and the court, the electronic address of the decision (if available), and the date of the decision that have served as exclusion grounds in accordance with section 62 (1) (i) and (j).

It is connected to the exclusion ground under section 63(1)(c) of the PPA; therefore, it is necessary to mention the registry of defaulting winning tenderers maintained by the Public Procurement Authority. In accordance with the provisions of the PPA, in the event of a violation of the winning tenderer's contractual obligations confirmed by a final court decision, the contracting authority is required to report the factuality, description, and essential features of the contract violation to the Public Procurement Authority, including cases where the contract violation has led to the termination of or withdrawal from the contract, claim for damages, or the enforcement of other sanctions applicable under the contract, along with cases where the winning tenderer has demonstrated such a behaviour, for which it is liable (whether partially or entirely), that has led to the impossibility of the performance of the contract. Based on the notifications, the Authority maintains and publishes the relevant registry in the EPPS.[48]

[47] https://ekr.gov.hu/kh-gvh-nyilvantartasok/hu/kizart-ajanlattevok
[48] https://ekr.gov.hu/kh-gvh-nyilvantartasok/hu/szerzodesszegesek

Registry maintained by the Integrity Authority

As mentioned in sub-indicator 14(a), Chapter IV of the Integrity Authority Act imposes on the Authority the obligation to maintain a registry of economic operators excluded from public procurement procedures. In accordance with normative legal provisions, in exercising such powers, the Integrity Authority acts by exercising official authority and carries out the registration procedure ex officio. However, if it becomes aware of the data giving rise to the opening of the registration procedure on the basis of a complaint or report, it has the obligation to issue a request to the competent authority.

The registry has a double objective: on the one hand, determining the duration of exclusion by the Authority; on the other, the registry serves as a method of verification as well, where the contracting authorities can check, during the public procurement procedure, whether there is an exclusion ground concerning the given economic operator in accordance with the PPA.

Based on last year's experience, the Integrity Authority has encountered obstacles to the availability of the data required to perform its record-keeping tasks. In this regard, the Authority has held several consultations with government actors managing the records to plan and design the necessary legal, technical, development, and administrative tasks. In doing so, the Integrity Authority has concluded that the registry can only be made operational once the necessary legislative changes have been made.

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

This sub-indicator attempts to verify whether an anti-corruption framework is in effect, and if so, its extent and nature and any other special measures in place, such as integrity training programmes that can help prevent and/or detect fraud and corruption specifically associated with public procurement.

International surveys conducted on corruption

According to the European Commission's thematic Eurobarometer survey on corruption from 2023, a very high percentage, namely 88% of Hungarian respondents said that corruption was widespread in the country (the EU27 average is 70%), 51% said that corruption levels had increased in the last three years (the EU27 average is 45%), and for almost all other indicators, respondents rated the corruption situation worse than the EU average. It is worth noting, however, that the percentage of respondents who think corruption levels have increased in the past three years has decreased by 10 percentage points compared to the 2022 survey.

Based on the 2023 Flash Eurobarometer survey on corruption amongst businesses, 77% of respondents said that corruption was widespread in the country (EU27 average: 65%). Respondents identified nepotism (bias towards acquaintances and/or family members in business) as the most common corrupt practice in business (Hungary: 49%, EU27 average: 46%) and public institutions (Hungary: 39%, EU27 average: 48%). When it comes to the use of sanctions, 22% of responding companies said that individuals and companies involved in bribing senior officials were properly punished (EU27 average: 30%), with 25% saying that anti-corruption measures are applied impartially and without ulterior motives (EU27 average: 37%). With regard to corruption in public procurement, however, respondents gave similar answers to the EU27 average (has corruption prevented you or your company from winning a public tender or public procurement procedure in the past three years: Hungary: 27%, EU27 average: 26%).

According to the European Union Agency for Criminal Justice Cooperation's (Eurojust) report on corruption cases registered with the agency in the 2016-2021 period,[49] Hungary ranks mid-range in the EU with a total of 34 registered corruption cases.

Setting up the National Anti-Corruption Framework

In the area of government anti-corruption activities, a major organisational restructuring of the justice system took place in autumn 2014, resulting in the current structure. The Ministry of Interior is responsible for coordinating the government's anti-corruption activities and overseeing the National Protective Service (NPS). The NPS is a state, armed law enforcement agency of the police department responsible for internal crime prevention and detection[50], including the reduction of corruption. The Corruption Prevention Department (CPD) is responsible for anti-corruption activities within the organisation. Within this framework, the CPD carries out strategic planning, methodological support, analysis and evaluation, coordination activities, participates in the development of the integrity management system, prepares information and awareness-raising measures, and contributes to the fulfilment of obligations stemming from international cooperation. The CPD is also responsible for cooperation within the Government and the evaluation of the anti-corruption strategy and action plans.

[49] 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

[50] Government Decree No. 293/2010 (22 December) on the designation of the police agency performing internal crime prevention and detection tasks and the detailed rules of the performance of such tasks, the lifestyle monitoring and integrity checks

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 NPS are responsible for the comprehensive coordination of the strategy's implementation. Usually, the scope of this anti-corruption strategy is limited to promoting the integrity of public administration and does not include strategic policy coordination in important anti-corruption areas, such as lobbying, the "revolving door phenomenon", asset declaration systems, and campaign and party financing. There is no publicly available information on the implementation of the strategy and its milestones or a detailed description of related activities, reducing the opportunities for public monitoring and accountability.

According to the amendment of December 2021[51] to the government decision adopting the National Anti-Corruption Strategy, the deadlines for most of the relevant measures have been extended to the end of 2022 and the first half of 2023. According to Hungary's Recovery and Resilience Plan, the main elements of the strategy that had not been completed yet had to be implemented by 31 March 2023, while the entire strategy had to be completed by 30 June 2023.

The Government published the Medium-Term National Anti-Corruption Strategy for 2024-2025 (NACS 2024-2025) and Action Plan for its Implementation with significant delay on 14 February 2024[52]. The general objective of the NACS 2024-2025 is "to address systemic risks and weaknesses concerning the transparency, integrity and accountability of public administration in order to prevent and reduce corruption", but it is not clear from the text how the risks – and the related objectives – were identified, if the competent authorities carried out systemic risk assessments, or how the existing risk assessments were taken into account (e.g. the Anti-Corruption Task Force's 2022 Report, the Integrity Authority's 2022 Integrity Risk Assessment Report on the Hungarian Public Procurement System and the first Annual Analytical Integrity Report). A key shortcoming in assessing effectiveness is that neither the strategy nor the related monitoring matrix connects inputs with intended impacts, meaning that it does not show how the actions foreseen will achieve the strategy's stated objectives. It is also unclear how the NACS 2024–2025 fits in with the rule of law conditionality mechanism and the implementation of the related so-called milestones. The individual measures of the NACS 2024-2025 are assessed under the relevant sub-indicators.

[51] Government Decision No. 1328/2020 (19 June) on the Adoption of the Medium-Term National Anti-Corruption Strategy for 2020-2022 and the Related Action Plan (as effective on 16 February 2023)

[52] Government Decision No. 1025/2024 (14 February) on the adoption of the action plan relating to the implementation of the Medium-Term National Anti-Corruption Strategy for 2024-2025

Integrity control system of state administrative bodies, internal control system

In February 2013, the government introduced an integrity control system with Government Decree No. 50/2013 (25 February) on the System of Integrity Management at Public Administration Bodies and the Procedural Rules of Receiving Lobbyists ("Integrity Decree"). For the purposes of the Integrity Decree, integrity is "the orderly operation of a state administrative body in accordance with the objectives, values and principles defined by the head of the state administrative body and the governing body" (section 2a) of the Integrity Decree), while the integrity management system related to integrity is "the functional subsystem of the control and management system, which is designed to ensure the integrity of the organisational unit by coordinating the activities of persons and groups involved in setting up integrity-based operations and by defining the values, principles, objectives and rules, providing the necessary guidance and advice for their implementation, monitoring and, where necessary, enforcing compliance (point b) of section 2 of the Integrity Decree), in accordance with the control environment under Government Decree No. 370/2011 (31 December) on the Internal Control System and Internal Audit of Budgetary Bodies (Internal Control Decree)."

In accordance with section 3 of the Internal Control Decree, the head of the budgetary authority is responsible for creating, operating and developing 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. In accordance with section 4 of the Internal Control Decree, the internal control system includes all the principles, procedures and internal rules that ensure that the activities and objectives of the budgetary authority are in line with the requirements of normality, regularity, economy, efficiency and effectiveness, and that there is no wastage, abuse or misuse in the management of assets and resources. The internal control system is also responsible for ensuring that there is adequate, accurate, and up-to-date information available about the functioning of the budgetary authority and that the legislation on the harmonisation and alignment of the internal control system is implemented.

Section 5 of the Integrity Decree requires the appointment of an integrity advisor in state administrative 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 organisation's operations, and providing information and advice on professional ethical issues to the organisation's executives and employees. The integrity advisor may also have additional responsibilities and, while carrying out these tasks, may

receive instructions from others. However, this must not compromise the performance of his or her duties as integrity advisor.

Within the integrated risk management system under the Internal Control Decree, when it comes to state administrative bodies, the corruption risks related to the operations of the bodies must be assessed on a yearly basis, an annual action plan must be drawn up to address the risks, and a general procedure must be set up for receiving and investigating reports of abuse, irregularities and corruption risks related to the operations of the body.

The rules on the internal control system of publicly owned companies have been modified from 2021[53]: for instance, the top executive of a publicly owned company establishes an internal control system that can ensure the enforcement of ethical values and integrity in all activities and effectively prevent corruption and abuse [section 4(7) of the Company Internal Control Decree].

The pandemic hindered the implementation of the Savings Act and the Company Internal Control Decree. Although the relevant report published by the SAO in 2021[54] highlights that "in 2021 the majority of the companies in question improved the establishment of the basic conditions and the quality of the content of the integrity-conscious regulatory environment", only 35 of the 148 companies examined had already ensured "the establishment of the basic conditions for accountable management and an integrity-conscious regulatory environment" in 2020. Also published in 2021, a similar report[55] shows that out of the 208 majority state-owned companies audited, 17 have a low integrity risk. This is because in 2020, they established the appropriacy rules, which are part of the integrity environment, as required by law. However, the latter report points out that 79% of the audited companies took measures to develop and improve their appropriacy rules in 2021, which are part of the integrity environment, as required by law. According to a similar SAO report published in 2023,[56] "56.3% of audited companies (94 companies) under Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies and 53.7% of audited companies (123 companies) under Government Decree No. 370/2011 (31 December) on the Internal

[53] The amendment to Act CXXII of 2009 on the More Economical Operation of Publicly Owned Companies ("Savings Act"), which was also supplemented by the modification of the rules concerning the internal control system of publicly owned companies [Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies (Company Internal Control Decree)] took effect on 1 January 2021.

[54] SAO: Audit of the integrity of majority state-owned companies – 148 companies, December 2021, Available at: www.aszhirportal.hu/storage/files/files/jelentes/2021/21089.pdf

[55] SAO: Audit of the integrity of majority state-owned companies – 208 companies, December 2021, Available at: www.aszhirportal.hu/storage/files/files/jelentes/2021/21092.pdf

[56] Audit of companies with majority state and local government ownership Monitoring the integrity of companies with majority state and local government ownership – 1574 companies https://www.asz.hu/dokumentumok/23011.pdf

Control System and Internal Audit of Budgetary Bodies had […] integrity regulations in place as required by law. The State Audit Office has reported the revealed errors and shortcomings to the executives authorised to represent the audited companies. As a result of the measures taken by the executives, 91% of companies (152 companies) under Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies, 83.8% of companies (192 companies) under Government Decree No. 370/2011 (31 December) on the Internal Control System and Internal Audit of Budgetary Bodies, and 80.8% of companies (952 companies) that are not required by law to set up an internal control system had accounting rules, remuneration rules and integrity regulations in place. The accounting rules, remuneration rules and integrity regulations did not meet the content requirements set out by the legal regulations at 54.4% (857 companies) of the companies audited. The SAO report found that the higher the regulatory requirements set in legislation and the greater the scale of assets, the better the audited companies have built in the statutory and integrity-enhancing appropriacy regulations.

Based on the first period's experience, Government Decree No. 132/2023 (18 April) on the Modification of Certain Government Decrees Concerning the Internal Controls in Public Finances amended and clarified certain provisions of the Internal Control Decree and the Company Internal Control Decree on 3 May 2023, mainly with the aim of facilitating their practical application. However, several stakeholders highlighted in the interviews and the questionnaire responses that there were many gaps in the implementation of the Savings Act and the Company Internal Control Decree, compliance is often maintained only on paper through checklists, and the integrity advisory and compliance advisory institutions need further strengthening.

The current checklist-based approach to the implementation of the Integrity Decree and Company Internal Control Decree must be abandoned and the practical application of the regulations must be brought to life. A risk-based and more comprehensive system of controls and sanctions that do not focus only on formal compliance would facilitate implementation. This requires the development of detailed guidelines for key stakeholders, continued advanced training for internal auditors, regularly sharing experience from the private sector with internal auditors in the public sector in the context of advanced training and professional organisations (IIA Hungary), more comprehensive monitoring and effective feedback from the SAO, and consistent implementation of an adequate sanctions system.

Investigative powers related to uncovering corruption offences

In the investigation of corruption offences, powers are differentiated based on the subject of the investigation. As the general investigative authority, the police department acts in cases of corruption and corruption-related economic offences, while the responsibility of investigating corruption offenses under Section 30(f) of the Code of Criminal Procedure lies exclusively with the public prosecutor's office. Comprehensive cooperation and effective information flow are achievable amongst the public prosecutor's office, investigative authorities and intelligence agencies.

Corrective measures of the conditionality regulation

It has introduced several important regulatory changes (and is expected to introduce further ones) in the form of a consultation with the European Commission and the procedure under the conditionality regulation, known as corrective measures, which was launched on 27 April 2022. These measures include strengthening the anti-corruption framework, creating an anti-fraud and anti-corruption strategy for European Union funds, and developing a new National Anti-Corruption Strategy and Action Plan.

According to the Commission Decision C(2023) 8999 of 13 December 2023[57], Hungary has not yet fully implemented the corrective measures set out in Council Implementing Decision (EU) 2022/2506 of 15 December 2022. The assessment has identified the following weaknesses, risks and gaps, amongst others, that still need to be addressed to successfully complete the conditionality mechanism: Clarifying the Integrity Authority's sphere of authority, amending the asset declaration system, clarifying information disclosure for contracting authorities, addressing weaknesses in public trust funds, expanding the application of motions for revision, tightening up data disclosure concerning real estate, making the public prosecutor subject to court decisions overturning the public prosecutor's office's decisions.

Anti-corruption training and advanced training

Preventing and detecting fraud and corruption, managing irregularities, and integrity are crucial aspects of the training framework within the institutional system for development policy.

[57] Commission decision of 13 December 2023 on the reassessment, on the Commission's initiative, of the fulfilment of the conditions under Article 4 of Regulation (EU, Euratom) 2020/2092 following Council Implementing Decision (EU) 2022/2506 of 15 December 2022 regarding Hungary – https://commission.europa.eu/system/files/2023-12/C_2023_8999_1_HU_ACT.pdf

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

In order to identify, assess and manage the risks of violations of professional ethics and professional rules and to raise awareness of fraud and fight corruption, the training course called "Integrity Basics" introduced by the Ludovika 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 advanced training obligation for government officials.

It is evident that, in general, the training and advanced training system for the public sector and colleagues working in the public procurement sector includes training courses on ethics, integrity, fraud prevention and anti-corruption. However, the available information and the interviewees' opinion indicate that the range of participants in regular or compulsory training on these subjects is still not broad enough. Therefore, there is a need to reassess and broaden the training system, making more efficient use of existing training capacities, primarily under the Ludovika University of Public Service.

As also highlighted in the NACS 2024-2025, "systemic improvement and changes in organisational culture, regardless of the number of participants, cannot be expected from these training courses, while social malpractices can be detected in the institutional system for development policy." Therefore, regular integrity training for political leaders, senior and professional managers is crucial. In this context, the NACS 2024-2025 assigns the Minister for Public Administration and Regional Development the task of "equipping, by 30 November 2025, political and professional senior managers involved in the decision-making process of development policies with integrity knowledge elements necessary for their functions, using innovative knowledge management tools while also ensuring good practices are made available across the government organisational system." Besides these progressive action plans, the Authority upholds its proposal, suggesting the application of more effective, in-class training courses with increased participation, along with the training of a larger number of trainers through programmes known as "Train the trainer" to resolve the aforementioned

points primarily in the context of training and advanced training on integrity and ethics.

Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

> *This sub-indicator assesses the strength of the public and the private sector in maintaining a sound procurement environment. This may be made manifest in the existence of respected and credible civil society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social control.*

In Hungary, there is a relatively small number of professional and civil society organisations actively involved in public procurement. In the area of public procurement, the activities of these bodies generally include: carrying out analyses and studies; formulating proposals for policy development; participating in consultations on the preparation of regulatory changes; assessing public perceptions of the transparency, efficiency and integrity of the public procurement system; training stakeholders in public procurement procedures (contracting authorities, economic operators, etc.); and developing guidelines for stakeholders in public procurement procedures.

Civil society organisations (CSOs)

Civil society organisations involved in the area of public procurement, usually at the national level, include atlatszo.hu, the Budapest Institute for Policy Analysis, K-Monitor, and Transparency International Hungary.

Based on the experience of the interviews with civil participants and the analysis of media appearances, there is limited cooperation between the government and civil participants involved in public procurement. According to the interviewed CSOs, the Hungarian government usually does not view their professional opinions as objective and is not receptive to their suggestions, while the general opinion of government representatives in the media is that CSOs exceed their role by formulating political opinions rather than providing professional recommendations. In recent years, this self-perpetuating process has led to the almost complete disappearance of trust-based, objective professional collaboration.

By the very nature of their activities, CSOs have limited market support and orders. In developing their CSR strategy, companies typically seek to minimise risks and avoid divisive and sensitive social issues.

In the context of the ongoing conditionality mechanism against Hungary, the European Commission is paying particular attention to wider social consultation

and the involvement of CSOs in public procurement. In accordance with the needs expressed by the Commission, there is a tendency for the wider involvement of CSOs by the government, particularly in the monitoring committees of operational programmes, other technical committees (e.g. transparency, fundamental rights) and other task forces (e.g. performance measurement framework, Anti-Corruption Task Force). Civil society organisations have limited participation in the work at the moment.

Established in December 2022, the Anti-Corruption Task Force, an independent body that conducts analyses, makes proposals, provides opinions, and carries out decision preparatory tasks, is an important new forum for cooperation with civil society actors. As stipulated by section 49 of the Integrity Authority Act, non-governmental actors actively engaged in the fight against corruption must be involved in the Task Force's activities to ensure their full, organised and effective participation. This was also achieved through the participation of representatives of the CSOs mentioned above. The Task Force has published its first two reports (for the years 2022 and 2023), suggested amendments – based on its activities of the past year – to the law (Act XXVII of 2022) that brought about the Task Force, and is still working on its plan of record for 2024.

Professional organisations

Established by Government Decree 478/2023 (31 October), the Professional Organisation of Public Procurement Advisors, whose operations are ensured by the minister responsible for public procurement, is the most important organisation in the public procurement profession. Similarly to the Professional Organisation of Accredited Public Procurement Consultants established in 2019 by Government Decree 257/2018 (18 December), the nine-member organisation is responsible for monitoring the professional work of consultants and evaluating relevant legal regulations. The organisation delegates one person to the Council that operates as part of the Public Procurement Authority.

As detailed in indicator 11(a), the public procurement profession went through significant changes in 2023 due to the Investment Act mentioned earlier, which practically abolished the institution of accredited public procurement consultants and introduced the idea of state public procurement consultants.

HOPPAA, operating as an association since 2004, is the professional organisation that is actively involved in the field of public procurement in Hungary. The organisation is a member of the Professional Organisation of Public Procurement Consultants through two of its experts and delegates one member each to the Performance Measurement Framework Task Force and the Anti-Corruption Task

Force. The Professional Organisation of Public Procurement Advisors delegates a member to the Public Procurement Council. As a result, HOPPAA plays an indirect role in decision-making concerning the public procurement system.

Furthermore, HOPPAA signed a cooperation agreement with the Public Procurement Authority in 2019, through which it contributes to the preparation and assessment of materials to facilitate the implementation of the law. According to HOPPAA representatives, the authority and the government maintain real professional cooperation: some of the recommendations and observations discussed in the professional consultations are taken into account in the legislative process.

Moreover, according to the national register of CSOs, there are other self-organised professional organisations in public procurement. (WOPPAA Foundation for the International Distribution of Public Procurement Culture, Hungarian Association for Healthcare Public Procurement, Public Procurement Research Institute Foundation, Central European Innovative Public Procurement Network, Association for "Public procurement quality", National Association of Public Procurement Tenderers). However, their activities are insignificant.

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

This sub-indicator assesses the following: i) whether the country provides, through its legislation and institutional set-up, a system for reporting fraudulent, corrupt or other prohibited practices or unethical behaviour; and ii) whether such legislation and systems provide for confidentiality and the protection of whistleblowers. The system should be seen to react to reports, as verified by subsequent actions taken to address the issues reported. In case a reporting intake system is established and data is generated indicating 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 public interest reports has a long history in domestic law. Section XXV of Hungary's Fundamental Law, in force since on 1 January 2012, guarantees the right of every individual to file requests, complaints, or recommendations to any public authority organisation, either independently or in cooperation with others. The right to lodge a request, complaint, or recommendation is therefore a fundamental, constitutional subjective right.

The current, uniform and comprehensive regulation of public interest reports and complaints was introduced by Act CLXV of 2013 on Complaints and Public Interest Disclosures ("Complaints Act"), effective starting 1 January 2014. Adopted in view of our commitment to EU legal approximation, complaints and public interest reports, including their management, are currently subject to regulation by Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules on the Notification of Abuse (new "Complaints Act").

In practice, the Complaints Act also requires the consideration of numerous other sectoral laws.

According to the definition in the Complaints Act, a public interest report draws attention to a circumstance, the resolution or elimination of which is in the interest of the community or society as a whole. In contrast, a complaint is a request that aims to resolve the violation of an individual's rights or interests, which is not subject to any other procedure, such as judicial or administrative ones. Public interest reports and complaints may include recommendations too.

In accordance with the Complaints Act, the commissioner for fundamental rights is responsible for operating the secure electronic system for filing and registering public interest reports. According to the provisions of Act CXI of 2011 on the Commissioner for Fundamental Rights, the commissioner for fundamental rights provides information on his or her activities in protecting fundamental rights in an annual report, including details of his or her work related to the investigation of public interest reports in separate chapters. According to the 2022 activity report[58], 515 petitions were submitted through the electronic system set up for the submission of public interest reports in 2022 (537 in 2021, 316 in 2020). This is 70% higher than the average of the last 5 years. In reality, public interest reports made up nearly 60% of the petitions. The report describes the typical cases of public interest reports in 2022 in an illustrative and thematic manner, without mentioning any notification related to corruption offences or public procurement, which suggests that such notifications are common in the institution's practice.

The new Complaints Act sets out more detailed procedural rules compared to the WB Directive[59], especially in the area of data management. It overall enhances the

[58] REPORT ON THE ACTIVITIES OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY AND HIS DEPUTIES – 2022 Available at: https://www.ajbh.hu/eves-beszamolok

[59] On the recommendation of the European Commission, the Council of the European Union and the European Parliament adopted the directive on the protection of persons who report breaches of Union law [(EU) Directive 2019/1937, "the WB Directive"] on 23 October 2019, the provisions of which member states were required to incorporate into national law by 17 December 2021. The Directive sets up a comprehensive legal framework, establishes common minimum standards for protecting whistleblowers, and requires member states to provide

protection of whistleblowers by expanding the personal scope of the former whistleblower protection framework.

In accordance with section 46(2) of the new Complaints Act, whistleblower protection does not include individuals who provide information under section 6 of Act CIV of 2010 on the Freedom of the Press and Fundamental Rules on Media Content. This means that whistleblowers who approach the press are not protected under the current system. According to K-Monitor and Transparency International Hungary, this is contrary to the provisions of the WB Directive. As a result, on 21 December 2023, they filed a petition with the European Commission to initiate an infringement procedure[60].

The Integrity Authority's reporting system

In accordance with section 4(4) of the Integrity Authority Act, the Integrity Authority operates a reporting interface to receive notifications and complaints, safeguarding the anonymity of reporting persons and complainants and enabling confidential communication.

Anyone can report cases of irregularity, corruption, fraud, or conflict of interest concerning European Union funds by emailing panasz@integritashatosag.hu. This email address has been active since the foundation of the Integrity Authority. In June 2023, the Integrity Authority also introduced an abuse reporting system available through its website[61]. The Integrity Authority reviews every notification and takes action in accordance with the provisions of the Complaints Act.

Between its foundation and 31 December 2023, the Integrity Authority received 215 reports, of which 148 were sent via email, and 67 were submitted through the anonymous reporting interface launched in June 2023.

In November and December 2023, the Integrity Authority held a nation-wide awareness-raising campaign, with the objective of promoting the reporting system and helping bring about change in the business culture to create the social foundations of zero tolerance against corruption. Within 2 months of launching the campaign, the Authority received 25 reports that fell within its remit.

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internal and external channels for confidentially reporting violations of Union law, along with ensuring effective protection for whistleblowers. The scope of the WB Directive covers abuse in both the public and private sector 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.

[60] https://m.blog.hu/k/k/file/k-monitor_transparency-int-hu_letter_to_com_on_transposition_of_whistleblower_directive_21122023_1.pdf

[61] https://integritashatosag.whispli.com/lp/bejelentes?locale=hu

Other reporting systems of public interest

With regard to abuse in the public procurement system, the Public Procurement Authority currently offers the possibility to make a public interest report by completing a specific form on its website and submitting it through the Official Gateway (Hivatali Kapu), or by sending it to kozerdeku@kt.hu. These options, however, are not anonymous. As previously explained in sub-indicator 11(c), anonymous notifications can only be made via the Public Procurement Anonymous Chat (PPAC), which has been available since 16 September 2020. However, this platform does not allow for tracking the actions taken in response to the notifications. Furthermore, the Public Procurement Authority does not provide feedback on the notification, except only in justified cases. Furthermore, a notification submitted through the PPAC does not require the Public Procurement Authority to carry out an inspection procedure or to initiate remedy proceedings with the Public Procurement Arbitration Board.

Protecting whistleblowers

Furthermore, it is worth pointing out that the Code of Criminal Procedure does not set out specific procedural rules for detecting and investigating corruption offences and protecting whistleblowers. Instead, it formulates these rules in general terms that apply to all criminal proceedings. The protection of whistleblowers and witnesses is set out in Chapters XIV and XV of the Code of Criminal Procedure. In accordance with section 98(1) of the Code of Criminal Procedure, the court, the public prosecutor's office, and the investigative authority ensure that protected data managed in criminal proceedings is not disclosed unnecessarily and that personal data is protected. As an additional protection, section 98(2a)(c) of the Code of Criminal Procedure stipulates that in order to protect the whistleblower, as defined in the Complaints Act, the file containing the public interest report must be kept confidential until the whistleblower is interrogated. The court, public prosecutor's office, and investigative authorities may also order restricted data handling ex officio in order to protect individuals requiring special treatment. Competent authorities may order restricted data handling ex officio at the request of stakeholders or their assistants, or to protect individuals requiring special treatment.

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

This sub-indicator assesses 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, Hungarian law and order has a so-called integrity approach that extends beyond the criminal law approach, as broadly described in sub-indicator 14(d) in the context of public sector integrity.

Codes of ethics for civil servants

The norms of professional ethics, the violation of which has civil service consequences, are codified in the Civil Servants Act and the Code of Ethics of the Hungarian Government Officials' Corps (MKK), which is binding for government officials (previously: Code of Professional Ethics of the Hungarian Government and State Officials' Corps).[62] Established by the Civil Servants Act with effect from 1 July 2012, the MKK is a self-governing, administrative, advocacy public body of government officials, with responsibilities that include drafting detailed rules of professional ethics, developing the ethical procedural system, and conducting procedures. The MKK operates with mandatory membership and carries out its duties with elected officials through its national and regional organisations.

The MKK's Code of Professional Ethics sets out the conduct requirements (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 out of its rules.

Most central authorities have developed and approved their civil service codes of conduct with internal instructions. Certain local authorities have also approved similar codes of conduct. Those public administrative bodies that have developed and approved codes of conduct have largely adopted the provisions of the MKK Code of Professional Ethics. According to a SAO report published in April 2020, 65% of the 4,002 public sector institutions surveyed had ethical regulations or a code of ethics in place. 100% of government organisations have a code of ethics in place, compared to 56% of local authorities and 36% of other administrative institutions.

[62] Code of Professional Ethics of Hungarian Government Officials Available at: https://mkk.org.hu/node/485 [Effective from 18 December 2020]

However, the 100% result by government organisations is somewhat overshadowed by the fact that only 9 such organisations took part in the survey.

Under the NACS 2024–2025, codes of conduct are expected to be applied over a broader spectrum, while existing codes of conduct will be supplemented, primarily with the addition of conflict of interest rules. The NACS 2024–2025 includes several measures in the areas of legislative integrity, judicial integrity, and integrity of public sector bodies in relation to codes of ethics and related training courses. Therefore, its plans include amending the Code of Professional Ethics of the Hungarian Government Officials' Corps (MKK) to avoid and handle conflicts of interest in accordance with the detailed rules on contacts with lobbyists and the revolving door phenomenon, in line with the recommendation of the Committee of Ministers of the Council of Europe on codes of ethics for civil servants, building on the integrity advisors' discharge of functions. The NACS 2024–2025 also includes that the bodies in question develop codes of ethics by 31 December 2024 and hold training courses based on the codes of ethics regarding integrity-consciousness by 30 November 2025 for top-level executives, their advisors, Members of Parliament, and employees at the Office of the National Assembly – especially in conflict of interest issues, acceptance of gifts and other benefits – in order to increase integrity-consciousness covering the procedural rules on restrictions after termination of employment (revolving door phenomenon), the rules of maintaining contact with lobbyists, the employment of their relatives, referral for employment, and enforcement mechanisms.

Public Procurement Code of Ethics

The Public Procurement Code of Ethics of the Public Procurement Authority, in force since 11 February 2022, regulates[63] "situations that go beyond the legislation governing public procurement and the provisions of the legislation in line with the objectives and principles of the law", i.e in general, ethical conduct, transparent information flow, and integral cooperation amongst participants in public procurement procedures. The Public Procurement Code of Ethics is a recommendation; stakeholders can voluntarily subscribe to it or develop their own public procurement code of ethics. Despite its permissive rules, only 53 organisations and individuals have joined the initiative so far, according to a list published on the website.

[63] Public Procurement Code of Ethics. Available at: https://www.kozbeszerzes.hu/hatosag/kozbeszerzesi-hatosag/kozbeszerzesi-etikai-kodex/ [Effective from 11 Februrary 2022]

Asset declaration system

Publishing civil servants' asset declarations can be an important tool in preventing corruption and identifying illicit asset accumulation. Furthermore, it can indirectly 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 Related to Asset Declaration ("Asset Declaration Act") in a uniform framework. The stated objective of this act is to ensure the impartial and unbiased enforcement of fundamental rights and obligations, shield integrity in public life, and prevent corruption. In addition to the Asset Declaration Act, there are more than twenty other legal acts regulating the obligation of certain persons performing public functions to declare their assets, including Act XXXVI of 2012 on the National Assembly, Act CLXXXIX of 2011 on Local Governments in Hungary, and the Privacy Act.

Based on the level of accessibility, it is important to make a distinction between non-public asset declarations, which can be accessed upon individual request (e.g. asset declarations by mayors, deputy mayors, and local government representatives) and those which are subject to mandatory disclosure (e.g. asset declarations by government officials, constitutional judges, and Members of Parliament). The Asset Declaration Act includes rules concerning non-public asset declarations. Public employees, civil servants and government officials working in roles listed in the Asset Declaration Act are required to make asset declarations to establish employment, positions, or perform responsibilities, either before or upon their termination. Furthermore, individuals holding positions listed in the act and authorised to make recommendations, take decisions, or exercise control are also required to make asset declarations at specified intervals (annually or biennially). This latter also includes individuals who are not civil servants and who, individually or as members of a body, are authorised to make recommendations, take decisions, or exercise control in the public procurement procedure. Asset declarations also include details about the income, interests, and assets of the obligor and his or her relatives residing in the same household. Any person who refuses to comply with the obligation to submit an asset declaration must have his or her mandate or employment, which necessitates the submission of an asset declaration, terminated. Furthermore, such individual will be excluded from entering employment in civil service, government service, public service, tax or customs service, or performing any work, function, activity or position that requires the submission of an asset declaration under this act for a period of three years following the termination of his or her employment. The person responsible for the custody (typically the employer) may conduct an asset accumulation audit

procedure (investigation) within one year of the termination of the position, or if, according to a notification on the obligor's financial situation, there are reasonable grounds to believe that his or her asset growth cannot be verified based on his or her income from the legal employment on which the declaration is based or from other legal sources known to the person responsible for the custody.

The regulations on the asset declaration system were amended several times in 2022. All in all, these changes have not contributed to the consolidation of the system. In fact, they have weakened it in terms of several aspects of transparency. However, the system has been strengthened by the fact that, in accordance with the Integrity Authority Act, the Integrity Authority may, to the extent necessary, examine asset declarations in the course of its duties, conduct an investigation procedure on asset declarations, and initiate proceedings on asset declarations based on the results of such investigations. However, the Integrity Authority has not yet been able to launch these investigations owing to the absence of necessary authority, as outlined in its Case Report on Asset Declarations.

In the NACS 2024–2025 action plan, the Government appoints the Minister of Justice, with the involvement of the Head of Cabinet of the Prime Minister, to enable the completion and management of asset declarations electronically and in digital form across the public sector by 31 May 2024. Furthermore, there is a need to strengthen the legal consequences (a sanctions regime including criminal law elements) for breaching the obligation to declare assets in order to ensure that the sanctions imposed are truly deterrent, effective and proportionate. In this context, the NACS 2024–2025 set a deadline of 30 April 2024 for the Minister of Justice to propose the introduction of a system of administrative and criminal sanctions for material breaches of obligations subject to the asset declaration system. Furthermore, the NACS 2024–2025 tasks the Minister of Justice with investigating the possibility of expanding the obligation to declare assets in respect of senior officials and certain key positions in public bodies by 30 November 2025.

It is clear that not even the NACS 2024–2025 includes content verification in asset declarations, suggesting little progress in this domain. As the Integrity Authority detailed in its Case Report on Asset Declarations published on 14 December 2023, the asset declaration system can only achieve its objectives stated in the Asset Declaration Act with an effective, i.e. automated, audit system that includes content verification. In practise, the current audit of asset declarations, as well as its anticipated continuation in 2024-2025, is solely centered on verifying that individuals fulfill their declaration responsibilities, lacking a centralised, risk-based content audit.

According to the NTCA, under the current regulatory framework, the scope for ordering investigations into asset accumulations is relatively limited[64], and therefore these investigations have little impact on the fight against corruption. In order to make the asset declaration system more effective, it would be advisable to expand the scope of investigations into asset accumulations to cases of suspected corruption offences subject to Chapter XXVII of the Criminal Code. While there has been no progress in this area compared to the previous year, the information at hand indicates that both the Ministry of Finance and the NACS 2024–2025 are exploring the possibility of expanding the scope of investigations into asset accumulations.

[64] In accordance with section 87(1) of Government Decree No. 465/2017 (28 December), the NTCA may only conduct an investigation into asset accumulations in cases where the investigative authority suspects criminal offences as defined in Chapters XXXVI, XXXVIII, XXXIX, XL and XLI of Act C of 2012 on the Criminal Code. In such cases, the state tax and customs authority must estimate the amount of income the natural person required to cover the growth in wealth and living expenses, taking into account both known and taxed income.

Annex no. 1 – Summary of substantial deficiencies and recommendations

Indicator	Sub-indicator	Substantial deficiencies	Risk classification	Recommendations
Indicator 11 Transparency and civil society engagement strengthen integrity in public procurement	Sub-indicator 11(a): An enabling environment for public consultation and monitoring Sub-indicator 11(b): Adequate and timely access to information by the public Sub-indicator 11(c): Direct engagement of civil society	The lack of transparency and the risk of collusive practices under section 115 of the PPA	high	Terminate procedures under section 115 of the PPA; instead, as a general rule, announce procedures.
		Low level of competition in public procurement procedures, including the issue of single tender procedures	high	Examine the effectiveness of measures implemented thus far and identify additional solutions.
		Restricted access to data outside the Electronic Public Procurement System (EPPS) concerning centralised purchases made primarily by central purchasing bodies; the lack of transparency with regard to purchases within centralised public procurement; the practice of establishing the quotas used in centralised framework agreements	high	Make data concerning purchases under the second phase of the procedure as defined by the framework agreement accessible and searchable; review the practice of utilised quota; use procurement methods that deviate from framework agreements.
		An increasing number of central purchasing bodies and the fragmentation of centralised procurement	high	Conduct an impact study and preliminary analyses prior to integrating new procurement categories into centralised procurement and admitting new operators; review existing subject-matters of procurement while considering their impact on the market.
		Reforming the public procurement profession; abolishing the institution of accredited public procurement consultants; abolishing the right of accredited public procurement consultants to legal representation	high	It is warranted to review the abolition of the institution of accredited public procurement consultants, expand the circle of individuals who can be added to the register with training and advanced training obligations, and provide accredited public procurement consultants and other public procurement professionals the right to legal representation in an expedited manner.
		The lack of structured databases and limited search functions	average	Standardise data formats to make data automatically integrable without data cleansing; establish data links (e.g. NTCA, HCSO); improve search functions; provide the possibility of analysing data series pertaining to longer periods.

		The absence of social consultation in legislative processes, particularly in the civil sphere, and the lack of civilian oversight in procedures	average	Create and promote a more gradual integration of appropriate civilian oversight channels into the monitoring of public procurement processes, for example, by utilising integrity pacts; transparent and searchable disclosure of laws submitted for social consultation; direct contact with professional organisations for significant legislative amendments.

Indicator	Sub-indicator	Substantial deficiencies	Risk classification	Recommendations
Indicator 12: The country has effective control and audit systems	Sub-indicator 12(a): Legal framework, organisation and processes of the control system Sub-indicator 12(b): Co-ordination of controls and audits of public procurement Sub-indicator 12(c): Enforcement and follow-up on findings and recommendations Sub-indicator 12(d): Qualification and training to conduct procurement audits	Several stages in the control process lack a risk-based methodology	high	Developing a risk-based control methodology that can be applied throughout the entire control process (the universal control of the riskiest projects)
		Domestic and European Union control practices differ from each other	average	Holistic consideration and rationalisation of the control process, separation of duties
		Methodological/practical guidelines of certain bodies are not developed in view of the entire control process, are not harmonised	average	Single source of truth methodological guidelines containing continuously updated audit results, cases with practical examples adapted to different control levels, continuous follow-up with educational materials and training opportunities
		The lack of communication of control aspects followed by certain control bodies	average	Publishing supporting materials, methodological guidelines based on the control practice and updating them at specified intervals.
		The information on public procurement projects is incomplete and fragmented	average	Designing the collection of control information/data in a holistic approach – traceability, possibility to review the whole process in each case, introduction of unique external and internal identifiers. Analysing a database like this would assist in future inspections and help develop methodological guidelines.
		Inspection capacity shortage	average	Managing capacity shortages; and training and recruiting professionals, or engaging them as external experts, who can effectively examine professional and content (e.g. technical) issues. Investigating conflict of interest when engaging external experts.

Indicator	Sub-indicator	Substantial deficiencies	Risk classification	Recommendations
Indicator 13: Appeals mechanisms in public procurement are efficient and effective	Sub-indicator 13(a) Process for challenges and appeals Sub-indicator 13(b) Independence and capacity of the appeals body Sub-indicator 13(c): Decisions of the appeals body	The number of applications for review procedure initiated upon request is constantly low, which can still be attributed mainly to the high administrative service fee.	high	Reviewing the amount of the administrative service fee once again, abolishing its dependence on the estimated value of the public procurement and number of requests, and further mitigating or, in certain cases, removing the fees are recommended.
		Considering that legal remedy cases submitted to the Public Procurement Arbitration Board are usually fairly complex, stakeholders would need to have meetings, preferably in person.	average	It would advisable to make the organisation of in-person or online meetings dependent on the declaration of the requester and initiator.
		Representation by state public procurement consultants, registered in-house legal counsels, or attorneys in remedy proceedings before the Public Procurement Arbitration Board is obligatory.	average	Considering the level of preparation and expertise of public procurement officials, it is advisable to consider abolishing mandatory representation or, at least, extending the circle of those eligible for representation (giving particular consideration to the abolition of the APPC's right to representation back in 2023).
		In respect of the Public Procurement Arbitration Board's resolutions, search options do no provide reliable results and court judgements are not published in a single database.	average	Improving the search interface and creating a separate, comprehensive database for court judgements are recommended.
		In respect of preliminary dispute resolutions, it is warranted to apply mandatory fines in cases where a contracting authority fails to reply completely or within the specified time frame to the contents of the preliminary dispute resolution, or where a contracting authority fails to take action to remedy the infringement.	average	Reviewing the regulations is recommended in this regard.
		In the context of the obligation for contracting authorities to inform contracting entities of a preliminary dispute resolution, consideration may be given to clarifying in the PPA, in a manner similar to the rules on requests for supplementary information, that this should be done in an anonymous manner, without revealing the identity of the person making the request. The effectiveness of the preliminary dispute resolution may be weakened if the contracting authority knows the identity of the person making the request.	average	Reviewing the regulations and reforming the EPPS to ensure the anonymity of the person requesting a preliminary dispute resolution is advised.
		During the judicial review, the contracting moratorium is no longer enforced. This means that the contracting authority can conclude the public procurement contract after the Arbitration Board's decision.	average	The Authority recommends that the judicial review allows for the option to request the suspension of the ongoing procurement procedure and seek an appeal against the court's decision.

Indicator	Sub-indicator	Substantial deficiencies	Risk classification	Recommendations
Indicator 14: Ethical and anti-corruption measures	Sub-indicator 14(a): Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties Sub-indicator 14(b): Provisions on prohibited practices in 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): Stakeholder support to strengthen integrity in public procurement Sub-indicator 14(f): Secure mechanisms for reporting prohibited practices or unethical behaviour Sub-indicator 14(g): Codes of conduct/codes of ethics and financial disclosure rules	The inspection of the asset declaration system lacks effectiveness, the sanctions for violating the obligation are not adequately deterrent, efficient, or proportionate.	high	While it is welcome that a review of the asset declaration system (including, for example, the sanctions system) is currently underway, as informed by the Ministry of Justice and the NACS 2024-2025, the Authority upholds the provisions of the Case Report on Asset Declaration Report which state: - the application area of inspections of asset accumulation need to be expanded to include cases where corruption offenses are suspected; - the legal consequences for cases involving violations of the obligation to declare assets need to be more severe; - there is a need to create a dedicated central audit body to verify asset declarations, which considers the risk classification of the declarations during the inspections and have automatic data links to different databases.
		The integrity training system connected to the public procurement system is incomplete for public procurement professionals	average	Expanding the range of regular, compulsory training courses on integrity issues for public procurement professionals to complement more comprehensive ethics and integrity training courses.
		Colleagues involved in public procurement on the contracting authority's part often lack adequate training to identify grounds for exclusion. There is no systematic and thorough monitoring and prevention of conflicts of interest, and the public procurement control system does not include inspecting this activity.	average	It is warranted to connect the inspection of conflict of interest declarations to an audit system and lay down the relevant provisions in the procurement regulations of contracting authorities. Requiring mandatory inspections of the network of business relations, affiliated companies, and other interests of executives in respect of the economic operator submitting tenders. Developing effective guidelines and tools, as well as a training and advanced training programme that is more effective and compulsory over a broader spectrum for public procurement professionals working on the contracting authority's part.
		Only the contracting authority is required to operate integrity systems.		A mandatory requirement for both the contracting authority and the tenderer to operate integrity systems in order to participate in public procurement. Developing a risk-based and more comprehensive control methodology – which does not focus solely on formal compliance – in respect of the implementation of the Integrity Decree and the Company Internal Control Decree. Developing educational materials and guidelines for major stakeholders for the development of integrity tools customised for the specific organisation.

				Continued advanced training for internal auditors, sharing experience from the private sector with internal auditors in the public sector in the context of advanced training and professional organisations (IIA Hungary). External audits (SAO) with deeper content compared to previous ones and effective feedback.
		The control system needs to be strengthened regarding the internal and external monitoring of the application of the Integrity Decree and the Company Internal Control Decree; the institutions of integrity advisors and compliance advisors are not strong enough	average	Mandatory integration of provisions on corruption, fraud and other prohibited practices in public procurement documentation. Accordingly, the modification of relevant legal provisions and guidelines to be applied by contracting authorities and economic operators submitting tenders.

Annex no. 2 – List of abbreviations

PIFC MTC - Public Internal Financial Control Methodological and Training Center

Public Finances Act - Act CXCV of 2011 on Public Finances

SPPC - State public procurement consultant

SAO - State Audit Office

SAO Act - Act LXVI of 2011 on the State Audit Office of Hungary

Code of Criminal Procedure - Act XC of 2017 on the Code of Criminal Procedure

Investment Act - Act LXIX of 2023 on the Order of State Public Works

DIAI - Directorate for Internal Audit and Integrity

IAHUFOR - Hungarian Internal Auditor's Forum

IIA Hungary - Institute of Internal Auditors Hungary

Internal Control Decree - Government Decree No. 370/2011 (31 December) on the Internal Control System and Internal Audit of Budgetary Bodies

Criminal Code - Act C of 2012 on the Criminal Code

Arbitration Board - Public Procurement Arbitration Board

EPPS - Electronic Public Procurement System

SCSIAP - Standard Criminal Statistics of Investigation Authorities and Prosecutors

EUFÁT - State Secretary for European Union Development Projects

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

Eurojust - European Union Agency for Criminal Justice Cooperation

DGAEF - Directorate General for Audit of European Funds

Contract Award Notice - a notice on the awarding of contracts concluded through public procurement procedures

APPC - Accredited Public Procurement Consultants

Company Internal Control Decree - Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies

HCA - Hungarian Competition Authority

Legislation Act - Act CXXX of 2010 on Legislation

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

Authority - Integrity Authority

NPwPP - Negotiated public procurement procedure without prior publication of a contract notice

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

Integrity Decree - Government Decree No. 50/2013 (25 February) on the System of Integrity Management at Public Administration Bodies and the Procedural Rules of Receiving Lobbyists

PPAC - Public Procurement Anonymous Chat

PPA - Act CXLIII of 2015 on Public Procurement

PPAB - Public Procurement Arbitration Board

GCO - Government Control Office

PPSD – MPARD - Public Procurement Supervision Department

DSS PPS – MPARD - Deputy State Secretariat for Public Procurement Supervision

KH - Public Procurement Authority of Hungary

CPD - Corruption Prevention Department

ICFPF - Internal Control Forum of Public Finances

HOPPAA - Hungarian Official Public Procurement Advisors' Association

HCSO - Hungarian Central Statistical Office

IB - Intermediate Body

MPARD - Ministry of Public Administration and Regional Development

Civil Servants Act - Act CXCIX of 2011 on Public Service Officials

Legal Status Act - Act CVII of 2019 on Bodies of Special Legal Status and on the Legal Status of their Employees

MAPS - Methodology for Assessing Procurement Systems (OECD)

MKK - Hungarian Government Officials' Corps

Task Force - Anti-Corruption Task Force

NTCA - National Tax and Customs Administration

NTCA ITHC - National Tax and Customs Administration Institute of Training, Health and Culture

MNE - Ministry for National Economy

NACS 2024-2025 - Medium-Term National Anti-Corruption Strategy for 2024-2025 and Action Plan for its Implementation

NPS - National Protective Service

OECD - Organisation for Economic Co-operation and Development

OLAF - European Anti-Fraud Office

Complaints Act - Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules on the Notification of Abuse

Decree of the Minister of Finance - Decree No. 22/2019 (23 December) of the Minister of Finance on the Register and Mandatory Professional Advanced Training of Persons Performing Internal Auditing Activities at Budgetary Bodies and Publicly-Owned Companies and on the Mandatory Advanced Training of Executives and Financial Executives at Budgetary Bodies Relating to Internal Control Systems

ProcurCompEU - European competency framework for public procurement professionals

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

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

SAMO - State Aid Monitoring Office

Asset Declaration Act - Act CLII of 2007 on Certain Obligations Related to Asset Declaration

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

Annex no. 3 - Applicable legislation

The Public Procurement Act and other related laws, public law regulatory instruments:

Act CXLIII of 2015 on Public Procurement

Act XXX of 2016 on Procurement for Defense and Security Purposes

Act XXXII of 2021 on the Supervisory Authority for Regulatory Affairs

Act LXIX of 2023 on the Order of State Public Works

Government Decree No. 168/2004 (25 May) on the Centralised Public Procurement System and the Functions and Powers of the Central Purchasing Body

Government Decree No. 16/2012 (16 February) on the Specific Regulations for the Public Procurement of Medications and Medical Devices

Government Decree No. 109/2012 (1 June) on the Detailed Regulations for Procurements within the NATO Security Investment Program

Government Decree No. 317/2013 (28 August) on the Selection of the Public Service Provider and on the Waste Management Service Contract

Government Decree No. 307/2015 (27 October) on the Specific Regulations Relating to the Public Procurement of Contracting Entities Operating in the Utilities Sector

Government 308/2015 No. (27 October) on the Public Procurement Authority's Control of the Performance and Amendment of Public Contracts Concluded Based on Public Procurement Procedures

Government Decree No. 310/2015 (28 October) on the Rules Governing Design Competition Procedures

Government Decree No. 321/2015 (30 October) on the Way of Certifying Suitability and the Non-Existence of Exclusion Grounds as well as the Definition of Public Procurement Technical Specifications in Contract Award Procedures

Government Decree No. 322/2015 (30 October) on the Detailed Rules of Public Works Contracts and the Related Design and Engineering Services

Government Decree No. 323/2015 (30 October) on the Modification of Certain Government Decrees Relating to Public Procurement

Government Decree No. 226/2016 (29 July) on the Specification of the Detailed Parameters of Military Equipment and Services Subject to Act XXX of 2016 on Procurement for Defense and Security Purposes

Government Decree No. 424/2017 (19 December) on the Detailed Rules of Electronic Public Procurement

Government Decree No. 257/2018 (18 December) on the Activities of Accredited Public Procurement Consultants

Government Decree No. 276/2018 (21 December) on the Rules for the Forecasting of Expected Pension Benefits Provided by Occupational Pension Providers

Government Decree No. 301/2018 (27 December) on the National Council for Telecommunications and Information Technology, the Digital Government Agency Private Limited Company and the Centralized Public Procurement System for IT Procurements of the Government

Government Decree No. 162/2020 (30 April) on the Legal Status of the National Office of Communications and Government Procurement relating to Communications

Government Decree No. 676/2020 (28 December) on the Special Rules Applicable to Public Catering Procurement Procedures

Decree No. 44/2015 (2 November) of the Minister of the Prime Minister's Office on the Rules of the Dispatch, Control and Publication of Public Procurement and Design Contest Notices, on Standard Forms and Their Certain Content Items and on the Annual Statistical Summary

Decree No. 45/2015 (2 November) of the Minister of the Prime Minister's Office on the Administrative Service Fee to be Paid for the Procedure of the Public Procurement Arbitration Board

Decree No. 19/2016 (14 September) of the Minister of Defence on contract notices applicable to defence and security procurement, on the rules for their dispatch and publication, on the models of assessment summaries, and on the annual statistical summary of procurements

Government Decree No. 396/2023 (24 August) on Government Procurement Relating to Training and Education

Government Decision No. 1425/2022 (5 September) on the Development of Performance Measurement Framework for Assessing the Efficiency and Cost-Effectiveness of Public Procurements

Government Decision No. 1118/2023 (31 March) on the action plan for measures aiming to increase the level of competition in Public Procurement (2023–2026)

Other applicable legal regulations, public law regulatory instruments:

Act IV of 1978 on the Criminal Code (old Criminal Code)

Act XXXIII of 1992 on the Legal Status of Public Employees

Act XXXIV of 1994 on the Police

Act XIX of 1998 on Criminal Proceedings (old Code of Criminal Procedure)

Act LXXX of 2003 on Legal Aid

Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing

Act CLII of 2007 on Certain Obligations Related to Asset Declaration

Act CLXXXI of 2007 on the Transparency of Subsidies Awarded from Public Funds

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

Act CLXIII of 2009 on Safeguarding Fair Proceedings and the Related Legislative Amendments

Act CXXII of 2010 on the National Tax and Customs Administration

Act CXXX of 2010 on Legislation

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 on the Freedom of Information

Act CLXIII of 2011 on the Prosecution Service

Act CLXXXIX of 2011 on Local Governments in Hungary

Act CXCV of 2011 on Public Finances

Act CXCIX of 2011 on Public Service Officials

Act I of 2012 on the Labour Code

Act XXXVI of 2012 on the National Assembly

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

Act CL of 2016 on the Code of General Administrative Procedure

Act XC of 2017 on the Code of Criminal Procedure

Act CVII of 2019 on Bodies of Special Legal Status and on the Legal Status of their Employees

Act LXXXIX of 2021 on the Foundation of Hungary's Central Budget for 2022

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 Acts Adopted at the Request of the European Commission to Ensure the Successful Conclusion of the Conditionality Procedure

Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules on the Notification of Abuse

Government Decree No. 355/2011 (30 December) on the Government Control Office

Government Decree No. 370/2011 (31 December) on the Internal Control System and Internal Audit of Budgetary Bodies

Government Decree No. 50/2013 (25 February) on the System of Integrity Management at Public Administration Bodies and the Procedural Rules of Receiving Lobbyists

Government Decree No. 272/2014 (5 November) on the Rules Governing the Use of Grants from Certain European Union Funds in the 2014–2020 Programming Period

Government Decree No. 339/2019 (23 December) on the Internal Control System of Publicly Owned Companies

Government Decision No. 1328/2020 (19 June) on the Adoption of the Medium-Term National Anti-Corruption Strategy for 2020-2022 and the Related Action Plan

Government Decree No. 256/2021 (18 May) on the Rules Governing the Use of Grants from Certain European Union Funds in the 2021-2027 Programming Period

Decree No. 28/2011 (3 August) of the Minister for National Economy on the Register and Mandatory Professional Advanced Training of Persons Performing Internal Auditing Activities at Budgetary Bodies and on the Mandatory Advanced Training of Executives and Financial Executives at Budgetary Bodies Relating to Internal Control Systems

Decree No. 12/2018 (7 June) of the Minister of the Interior on the Standard Criminal Statistics of Investigation Authorities and Prosecutors and on the Detailed Rules for Data Collection and ProcessingGovernment Decree No. 293/2010 (22 December) on the designation of the police agency performing internal crime prevention and

detection tasks and the detailed rules of the performance of such tasks, the lifestyle monitoring and integrity checks

Decree No. 22/2019 (23 December) of the Minister of Finance on the register and mandatory professional advanced training of persons performing internal auditing activities at budgetary bodies and publicly-owned companies and on the mandatory advanced training of executives and financial executives at budgetary bodies relating to internal control systems

Government Decision No. 1025/2024 (14 February) on the adoption of the action plan relating to the implementation of the Medium-Term National Anti-Corruption Strategy for 2024-2025

European Union directives and regulations:

Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 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 and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

Directive 2014/24/EU of THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

Directive 2014/25/EU of THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/E

Directive (EU) 2017/1371 of THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

Directive (EU) 2019/1937 of THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons who report breaches of Union law

Regulation (EU) 2020/2092 of THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2020 on a general regime of conditionality for the protection of the Union budget

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1780 of 23 September 2019 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (eForms)

Annex no. 4 - Interviewees of the survey

Organisation	Date
National Association of Public Procurement Tenderers	13 February 2024
Transparency International Hungary	22 February 2024
Anti-Corruption Task Force – civil member	23 February 2024
K-Monitor Közhasznú Egyesület	26 February 2024
Hungarian Official Public Procurement Advisors' Association	26 February 2024
Corvinus University of Budapest	05 March 2024
Government Transparency Institute	8 March 2024; 11 March 2024