

Assessing Public Procurement Practice in Hungary - 2017

General Description of the Public Procurement System

X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

Please provide the answer in a maximum of 5-10 sentences.

Comment: The public procurement system is basically managed by the Public Procurement Authority. The operation of the electronic procurement portal and also some control functions are maintained by the Prime Minister's Office. This responsibility for the e-system is due to power struggles within the system, the control mechanisms are also connected to the fact, that the Prime Minister's Office is overseeing the distribution of EU funds. This means that informally the Prime Minister's Office makes the strategic decision on procurement policy and infrastructure, but officially the PPA is the main responsible. This also shows to what extent the PPA is subordinated to state and therefore can hardly be considered as independent.

X. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

Please provide the answer in a maximum of 3-4 sentences.

Comment: Paper tenders are only allowed in case of rare exceptions, such as procurement of arts since April 15 2018.

X. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

Please provide the answer in a maximum of 3-4 sentences.

Comment: There is one central portal where procurements are conducted: ekr.gov.hu run by the Prime Minister's office, it's use is mandatory. The bulletin and the old database are maintained by the PPA at kozbeszerzes.hu

X. If there is a register of suppliers, what is the number of registered suppliers in it?

If possible, please provide a comparison with several (at least 5) previous years?

Comment: No. There is only a register of qualified suppliers that contains 22 companies at the moment.

X. What is the total number of competitive procedures?

If possible, please provide a comparison with several (at least 5) previous years.

Comment: There is a debate between the PPA and some experts what procedures can be considered as competitive. The PPA considers procedures under the national regime that are based on invitation but publicly announced in a separate webpage and can theoretically joined by non-invited suppliers during a short application period as open/competitive, while critics consider only real open procedures or open procedures with negotiation as competitive. In the last graph on this link: <https://infogram.com/kozbeszerzesi-eljarasok-1h9j6qm38m3v4gz> you can find the number of open / non open procedures according to the number and the volume (HUF). Blue is under EU regime, red under national. Lighter shades are the open procedures.

X. What is share of public procurement in the country's GDP?

Comment: 10% in 2017. That is the highest ratio ever, as the amount spent through public procurement has increased by 80% from 2016 to 2017. In previous years this number varied between 5-8%.

X. What are the monetary thresholds for single source procurement (works, goods, services)? _____

Is the monetary threshold acceptable? Why or why not?

Comment: The lowest threshold is HUF 15m for goods and services (EUR 47 000) and and HUF 25m for construction (EUR 78 000) in the national regimes. Higher thresholds apply to utility providers and concessions. Since electronic procurement has to be applied and the national procurement regime allows very flexible procurement procedures, we don't see why these thresholds are not drastically lowered.

Public Procurement Scope and Spending Breakdown

X. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? N/A

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment:

X. What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? 6,25% under the EU regime, 9,36% under the national regime

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).

Comment: EU 2016: 5,86%; national 2016: 9,35%; EU 2015: 11,68% ; national 2015: 20,6% ; EU 2014: 5,2%; national 2014: 19,8%; EU 2013: 7,3%; national 2013: 39,5%; EU 2012: n/a ; national 2012: 33,97%. The EU is very strict regarding the acceptance of negotiated procedures without publication, therefore the numbers under the EU regime never exceeded 10%, countries with high numbers receive criticism and more investigations in such cases. The PPA also has stricter controls for these procedures. In the national regime the decrease of the high ratio is most probably due to the introduction of another type of invitation procedures with limited transparency. This procedure became dominant for national level procurements in the recent years.

X. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? n/a

Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).

Comment: There is no such data published.

X. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : ____ share: ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: I don't know of any unreasonable exceptions by law.

X. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: _____ share: _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: No such data is made public, neither the names of the companies that are qualified for secret or defense procurement.

Competitiveness

X. What is the average number of bidders? 7,94 / 3,2 in 2017

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.

Comment: The PPA publishes two types of data on the average number of bidders. 1) regarding all procedures and 2) average number of bidders for tenders where bidding for slots is not possible. It also emphasizes that the latter data is to be considered as informative. For 2017 there was only a breakdown for pp in construction (3,7) and regimes: EU 2,62, national: 3,34); In previous years no breakdown was published, only the averages: 2016: 5,98 / 2,91 2015: 4,46 / 2,9; 2014: n/a / 2,5 2013: 6/2,6; 2012: 7,2/2,9. We consider these numbers as low and have the assumption that it is due to tenders tailored to certain bidders, where competitors already know that they have no chance or competition is simulated to avoid single bidding on paper.

X. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? n/a

If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.

Comment: Stats are only publishes regarding the number: 16,6% in 2017. However, it is not specified whether this number relates to all procedures or only competitive ones. According to research on previous years the ratio of single bidding in EU level procedures was around 36-37% in 2014-2016. All this means that the ratio regarding the value may be higher than the official statistics for the quantity.

X. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? n/a

If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.

Comment: no such data released.

X. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? n/a

Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?

Comment: No such data released, however, this doesn't seem to be a problematic field regarding Hungary.

X. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? n/a

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: no such data released.

X. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? n/a

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: no such data released.

Efficiency

X. What is the share (%) of failed tenders in the total number of tenders? n/a

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.

Comment: no such data released.

X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? n/a

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: no such data released.

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? n/a

If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.

no such data released.

X. What is the share (%) of non-executed contracts in the total number of contracts? n/a

If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.

Comment: no such data released.

Accountability

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

Comment: This is the English language summary of the process on the PPA's website: "... the Public Procurement Arbitration Board is empowered to conduct proceedings initiated against any infringement of the legislative provisions applicable to public procurement or contract award procedures, including the proceeding initiated against the rejection of the request for prequalification specified in a separate act of legislation and the deletion from the prequalification list. The Arbitration Board may open a procedure upon a claim or ex officio. The claim can be submitted by a contracting authority, a tenderer, in the case of a joint tender any of the tenderers, a candidate, in the case of a joint request to participate any of the candidates, or any other interested person whose right or legitimate interest is being harmed or risks being harmed by an activity or default which is in conflict with the PPA. The chambers or interest representation organizations with an activity related to the subject-matter of procurement may submit an application regarding the illegal nature of the contract

notice, the invitation for submission of tenders, the invitation to participate, the documentation or the amendment thereof.

Before launching the proceeding of the Arbitration Board in case the tenderer does not agree with a decision by the contracting authority it can apply for a review procedure directly at the contracting authority (preliminary dispute settlement). After the opening of tenders in case the tenderer has initiated the preliminary dispute settlement the contracting authority is not allowed to conclude the contract within 10 days from sending its answer. Proceedings of the Arbitration Board – as a main rule – have to be launched within 15 days from becoming aware of the infringement of the PPA, but in case the claim is related to the closure decision of the contract award procedure the proceeding can be launched within 10 days. 90 days after the occurrence of the infringement there's no possibility to submit a claim.

The application has to include all the relevant information as stipulated in Article 149 (1) of the PPA and an administrative service fee has to be paid. The Arbitration Board may take interim measures, upon request or ex officio, before the conclusion of the contract, if there is indicative evidence that an infringement of the rules of the contract award procedure has been committed or a risk thereof is detected. As an interim measure the Arbitration Board may:

- order the suspension of the public procurement procedure
- request the contracting authority in charge of the contested procedure to invite the applicant take part in the procedure.

The Arbitration Board holds a hearing if it considers that it is required for the clarification of the cause of action. The hearing is held in public. During the proceedings only interested parties have access to the documents of the procedure.

The Arbitration Board may impose a fine – from 50.000 to 500.000 HUF (*EUR 150 – 1500*) on the applicant or any other person taking part in the review procedure if they:

- disclose wrong or false data, relevant to the judgment of the case
- fail to supply information at all or within the deadline
- hinder access to documents related to business or public procurement activities
- make a clearly unsubstantiated statement with respect to exclusion, or make a repeated unsubstantiated statement against the same public procurement commissioner during the same procedure.

The Arbitration Board's decisions have to be taken within:

- 15 days, if hearing is not held
- 25 days, if a hearing is held
- 60 days, if the proceedings initiated against the amendment or performance of public procurement contracts, in a manner violating the PPA.

An additional 10 days extension can be granted if justifiable circumstances arise.

Decisions are delivered to the parties and other interested parties. They are also published in the Public Procurement Bulletin.

The Arbitration Board can take the following decisions (Article 165 of the PPA):

- dismisses any unfounded applications;
- in proceedings launched ex officio states the lack of infringement;
- states that an infringement has occurred;
- states that an infringement has occurred and
 - before the closure of the contract award procedure, calls upon the person who committed the infringement to act in conformity with the rules laid down in the PPA, or orders that the contracting authority may take its decisions only subject to certain conditions;
 - declares void any decision made by the contracting authority either during the contract award procedure or as a decision closing that procedure, provided that no contract has been concluded yet on the basis of the decision in question;
 - orders the removal of the tenderer from the official list of approved tenderers;
 - imposes a fine – as a general rule – on any organization (person) which has violated the PPA or on any person or organization that is liable for the infringement and has a legal relationship with the person or organization liable for the infringement in question.
- states that an infringement has occurred, and imposes a fine
- states that an infringement has occurred and shall prohibit the tenderer, the subcontractor or another entity (person) who or which participated in the contract award procedure from participating in the contract award procedure, according to the stipulations of a separate act of legislation.

The application of the legal consequences required by the PPA does not preclude the application of the Civil Code, according to which a contract, awarded in violation of the PPA, can be declared void.

Procedure of the Court

No direct appeal can be lodged against the Arbitration Board's decisions. The courts can review these decisions only if so requested in the form of a statement of claim. The reason for reviewing the decision of the Arbitration Board can be not only the infringement of the law, but also the fact if the plaintiff has found that the Arbitration Board – in accordance with the PPA – had assessed, qualified the previous proceeding in an appropriate way. The court's procedure can be launched according to the following procedure:

- a statement of claim is submitted to the Arbitration Board within 15 days from the service of the decision
- the statement does not have a suspending effect on the enforcement of the Board's decision, however if the application contains a request for the suspension of the enforcement of the decision, the court takes a decision within 5 days following the receipt of the documents at the court and it shall send its decision to the parties without delay.
- the Arbitration Board sends the statement and the documents of the proceeding to the court in 5 days
- the court serves the statement of claim within 8 days, simultaneously it informs the plaintiff

and the parties involved, in case they wish to intervene.

The court may overrule the Arbitration Board's decision or it may annul the decision and order a new procedure to be conducted by the Arbitration Board. Furthermore the Regional Court reviews decisions of the court if the PPA allows further remedy.

The decision of the Arbitration Board may not be annulled by the court unless an infringement of the substantial rules on legal remedy proceedings having an effect on the substance of the case occurred in the proceeding of the Public Procurement Arbitration Board."

The fee that applies for a procedure is 0,5% of the disputed slot of a procurement, but at least 200.000 HUF and maximum 25.000.000 HUF (625 EUR to 78.000 EUR). The share of the fee above HUF 200.000 is returned if the complaint turns out to be justified.

Our main concern regarding the Arbitration Board's operation is that it rarely imposes high fines or declares contracts void. Press almost daily reports of problematic tenders, some of those reaching even the Arbitration Board. Even if it finds irregularities, it's decisions are rather symbolic.

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)?

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: 2017: 684 (447 ex-officio), 2016: 1046 (691 ex-officio), 2015: 951 (490 ex-officio), 2014: 986, 2013: 572, 2012: 695, 2011: 1011. In 2011 a new PP Act was adopted that influenced the PPAB procedures, amendments to the act led to significant change in procedures in 2014.

X. What is the share (%) of disputed tenders in the total number of tenders? N/A

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: We can provide an own calculation based on the ratio of all tenders of 2017 and all disputed tenders in 2017. This won't be exact because probably some of the disputes files in 2017 affect tenders of 2016 and some tenders of 2017 were only reported in 2018. Moreover disputes affect slots of tenders not the whole tenders, which means that there can be several disputes for one procurement. So, if 8811 procurements were conducted in 2017 and 684 cases brought to the PPAB, the ratio would be 7,8%.

X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? 45,6%

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: Out of 684 cases the PPAB found in 312 cases a breach of law. 237 cases were issued by reports, 447 cases were launched ex-officio.

X. What share of decisions of the Dispute Resolution Board have been taken to courts? 17,1%

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: According to the PPA's annual report, 17,1% of the PPAB decisions were taken to courts. The courts rejected 90% of the appeals.

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? N/A

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: no such data is available.

X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? N/A

If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?

Comment: no such data available.

Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

no

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

Obligatory control of pp forms are in place, however our experience is that data quality remains an issue.

X. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

Data Transparency Table - Access to Public Procurement Related Documents							
Type of document	Is this information required to be public by law?	Is this information publicly available?	Is the database complete?	Electronic	Machine-readable *	Free of charge	Exact format
PPL documents	yes	yes	n/a	yes	varies	yes	Pdf, word
Annual public procurement plans	yes	yes	No	Varies (yes for those in the e-PP database)	Rather not	yes	Mostly pdf
Notices of intended procurement	yes	yes	yes	yes	yes	yes	html/pdf
Amendments to tender documentation	yes	yes	n/a	yes	varies	yes	varies
Tender candidate applications	Not proactively	no	no	yes	n/a	Fees may apply for the fulfillment of data requests	varies
Bids	summary	summary	yes	yes	yes	yes	pdf
Tender commission decisions	summary	summary	yes	yes	yes	yes	pdf
Information on	Only yes /	yes	yes	yes	yes	yes	pdf

subcontractors	no regarding involvement						
Procurement contracts	yes	yes	yes	yes	no	yes	pdf
Contract amendments	yes	yes	n/a	yes	n/a	yes	pdf
Contract performance information	yes	n/a	n/a	n/a	n/a	n/a	n/a
Payment receipts	no	no	no	n/a	n/a	n/a	n/a
Inspection and quality control reports	Not proactively	no	no	n/a	n/a	n/a	n/a
Complaints	no	no	no	n/a	n/a	n/a	n/a
Dispute resolutions	decisions	yes	yes	yes	yes	yes	pdf
Internal and external audit reports	no	no	no	n/a	n/a	n/a	n/a

* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

In the comment box below, please elaborate on any irregularities or important details related to the above table.

Comment: filled out for data on fresh procurements. The archive includes less documents. As the new database includes only tender from 2018, we were unable to assess whether documents regarding performance / fulfillment are published. In the old database such documents are published for some tenders, but the database is incomplete.

X. In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

A new database was introduced in 2018 that does not include tenders prior to 2018, neither search option for documents (only procedures, tenders). The old database is incomplete regarding pp documents.

Major Strengths and Weaknesses

X. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: Despite having a PP Act that complies with EU legislation and has no extreme flaws, the PP system is abused to channel public funds to pre-selected suppliers. OLAF investigated several procurements / projects from the last 10 years and found severe irregularities. Journalists report on problematic procurements on the daily base, showing cases where the same close circle of business enriches themselves from public funds. Not only legal loopholes allow them to do so, but support from government institutions and the lack of independent control and sanctions.

Recommendation: The monitoring of procurements has to be strengthened through independent institutions that have sufficient capacities and the power to impose high fines, cancel contracts and ban companies from procurements. Through better data disclosure journalists and NGOs could more easily check a report problematic tenders.

2.

Gap: Partially because of the complex regulation, procedures are often too complicated and inexperienced procuring entities have difficulties in conducting procurements, while SME-s struggle to bid for work.

Recommendation: As this mainly affects procurements under the EU threshold, simplification of procedures is needed in the national regime that is accompanied by a high level of transparency and training.

3.

Gap: No procurement data published in bulk. Procurement documents are hard to find both in the old and the new database.

Recommendation: The PP e-system has to be improved offering and API and the possibility to export data in sheets. Moreover, documents should be uploaded in machine readable, structured formats with metadata that improves searchability. A new search engine should assist in that.

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: Despite having a PP Act that complies with EU legislation and has no extreme flaws, the PP system is abused to channel public funds to pre-selected suppliers. OLAF investigated several procurements / projects from the last 10 years and found severe irregularities. Journalists report on problematic procurements on the daily base, showing cases where the same close circle of business enriches themselves from public funds. Not only legal loopholes allow them to do so, but support from government institutions and the lack of independent control and sanctions.

Recommendation: The monitoring of procurements has to be strengthened through independent institutions that have sufficient capacities and the power to impose high fines, cancel contracts and ban companies from procurements. Through better data disclosure journalists and NGOs could more easily check a report problematic tenders.

2.

Challenge: Low competence of procuring entities regarding planning, tendering, needs assessment is at least as big problem as corruption. This also leads to serious price increases, contract modifications and extensions.

Recommendation: Training, supervision, involvement of external experts should be provided to smaller procuring entities. Moreover, the creation of database of references could help to identify best practices and good suppliers.

3.

Gap: No procurement data published in bulk. Procurement documents are hard to find both in the old and the new database.

Recommendation: The PP e-system has to be improved offering and API and the possibility to export data in sheets. Moreover, documents should be uploaded in machine readable, structured formats

with metadata that improves searchability. A new search engine should assist in that.

X. What are the 3 major strengths / successes of the country's public procurement system as a whole?
Please provide a brief description of each in a maximum of 4-5 sentences.

1.

It is hard to praise a system that serves as a main channel of a corruption in Hungary. The legal framework is conform with EU legislation and provides flexibility for national level procurements.

2.

Procurements are relatively well documented and finally electronically available.

3.

National regime procurements offer more easy procedures for tenderers and bidders, that could serve as a positive example if it would be accompanied by transparency and proper controls.