

Questionnaire on Public Procurement in V4 countries - Hungary

Country summary

On 20 June 2011 Act no. CVIII - commonly known as the Act on Public Procurement (hereinafter the Act) – was passed to replace the previous procurement act, in effect since 2003. The new act entered into force on 1 January 2012. The main reasons for launching a new regulatory package were to increase transparency and enhance stability and simplicity of the public procurement system in Hungary.

The new Act refers to four core principles: i) to make the PP procedures more flexible and simpler, ii) to fight back corruption, iii) to facilitate the participation of small and medium enterprises in the PP system and iv) to harmonize national legislation with the EU norms. To accomplish these aims the Act calls for changes in several areas such as:

- making procedures faster,
- renewing and increasing the flexibility of certain procedures,
- amending administrative rules of contracting,
- preventing companies of the public utility sector from avoiding public procurement with the help of their subsidiaries,
- changing the rules of conflicts of interest, and
- relaxing requirement on announcing results.

As a matter of fact, the new Act is shorter and more comprehensive than the previous one (183 *versus* 407 articles), and a number of technical and procedural provisions (e.g. governmental and ministerial decrees) were reviewed in accordance of the new act during 2011. The institutional framework is straightforward, but according to experts' critiques it lacks unquestionable (professional) independence and coherence in relevant competences (TI 2011, expert interviews). A specific authority and council is in charge of national administration and coordination, drafting regulation is assigned to a ministerial directorate (and the attached secretariat), and one special directorate is competent in tendering at the central government level.

Statistical evidence w.r.t. the share of public procurement in the national economy is contradictory. Based on the annual statistics published by the Public Procurement Authority, the sum of public procurements in Hungary amounted to 5,5 % of the GDP and the long-term share-value is around 6 % (KBT 2011). According to the OECD's 2011 *Government at a Glance* report, Hungary spent almost 13 % of the GDP on procurement in 2008, and the long-term average is around 10% (OECD 2011). The estimated value of tenders published in TED by Hungary was in itself EUR 5.52 billion in 2010, which comes around 5.57% of the GDP (EC 2011).

Several international comparisons point to the lack of considerable degree of public transparency – such as the lack of a central procurement website, no mechanism for tracking public procurement spending online or the modifications on contracts (OECD 2011, EBRD 2011, TI 2011). Most public procurement information is published on the Public Procurement Council official journal, *Public Procurement Bulletin*. (<http://www.kozbeszerzes.hu>). Tenderers are obliged to publish information on justifications for awarding a contract to a selected contractor, though their practice is scarcely monitored.

In the international comparative evaluation by the EBRD (2010), Hungary scored very high w.r.t. the compliance of public procurement (PP) legal framework (i.e., the extensiveness of PP laws) among the EBRD countries. At the same time, the EBRD review indicated a

considerable enforcement gap resulting in a critical assessment of the quality of the national PP practice (i.e., the effectiveness of the legal framework). All in all, EBRD (2010) and OECD (2011) suggest that Hungary is among the three worst performers (together with Albania and Montenegro) regarding the effectiveness of the legal framework and the transparency of the public procurement regime.

I. Legal framework

1. 1. Is there a separate body of law that regulates public procurement? (Y/N)	Y
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1. 2. Identify the relevant national-level regulations [primary/secondary law]. If possible, insert a reference to the official English translation of each act and decree in effect. Indenticate if there were any major changes in the regulatory framework recently.

On 20 June 2011 Act no. CVIII (commonly known as the Act on Public Procurement, (hereinafter the Act) was passed to replace the previous procurement act, in effect since 2003. The new act entered into force on 1 January 2012. One reason for launching a new act was to increase transparency and to simplify the implementation. As a matter of fact, it is shorter and more comprehensive than the previous act (*cf.* the 183 articles *versus* the 407 previous ones), and a number of technical and procedural issues are regulated in several governmental and ministerial decrees. The revision of the regulatory framework was completed in 2011.

The Act specifies the contracting authorities, the subjects of public procurement, guidelines on the thresholds and estimated values of public procurement, procedures of the contracting authorities and economic operators, and contains provisions on publication and communication, provisions related to public procurements reaching EU thresholds, provisions on national procedures, provisions on public procurement contracts and provisions on judicial remedies available for public procurement.

The relevant national regulations comprise:

The law itself:

- Act CVIII of 2011 on Public Procurement (see the non official English translation [here](#))

The related decrees:

- Governmental Decree no. 287 of 2011 on the amendment of certain public procurement Governmental Decrees
- Governmental Decree no. 288 of 2011 on the sanctions imposed by the Public Procurement Arbitration Board and the detailed rules of their application, and on the administrative fees payable for the processes of the Public Procurement Arbitration Board
- Governmental Decree no. 289 of 2011 on the specific rules of public procurement of public services agencies
- Governmental Decree no. 305 of 2011 on the rules of architectural design competition processes
- Governmental Decree no. 306 of 2011 on the detailed rules of public procurement of constructions
- Governmental Decree no. 310 of 2011 on the justification of adequacy or grounds for exclusion in public procurement processes and on the ways of determining the public procurement technical descriptions
- Ministry of National Development Decree no. 92 of 2011 on the rules of the posting, monitoring and disclosure of public procurement and architectural design competition

notices, on the samples and certain content elements of the notices and on the yearly statistical summaries

- Ministry of National Development Decree no. 93 of 2011 on the activity of the official public procurement consultants

The introduction of a new act on PP claimed to be based on four core principles: to make the PP procedures more flexible and simpler, to fight back corruption, to facilitate the participation of small and medium enterprises in the PP system and the harmonization of national legislation with the EU norms.

To accomplish all this, the Act calls for changes in several areas such as: fastening procedures, renewing and increasing the flexibility of certain procedures, amending administrative rules of contracting, preventing companies of the public utility sector from avoiding PP with the help of their subsidiaries, and changing the rules of conflicts of interest.

In practice, the new regulations of the Act on PP introduces several changes at the technical level. Some highlights:

- exclusion of off-shore companies from the PP procedures
- companies that participate in more than 25% in the fulfilment of the contract can not be considered subcontractors, they must be included in the tender as partners (i.e. a consortium must be formed)
- the court challenge to the decisions of the Public Procurement Arbitration Board is restricted to the court of 1st instance
- the administrative fees for starting a procedure at the Public Procurement Arbitration Board will now be calculated pro rata, Govt. Dec. 288/2011 raises considerably the maximum payable sum (from 800.000 HUF to 25.000.000 HUF)
- dissolution the institution of announcing results

(sources:

<http://www.mondaq.com/x/161444/Government+Contracts+Procurement+PPP/Important+Changes+In+The+Public+Procurement+Laws>

<http://www.fmkik.hu/index.php?id=4681>)

2.

2. Describe the scope of public procurement. Does it cover sub-national levels of government? Does it include coverage of all government procurement, including security and military procurement? Are there separate procurement rules established for parastatals?

According to the Act on PP, the aim of the legislation is to provide „a reasonable and effective use of public funds,” to guarantee the public control of public funds, and to ensure “fair competition in public procurement.” In addition, the purpose of this Act and the legislation based on its execution is to enhance access of small and medium-sized enterprises to contract award procedures, to promote sustainable development, social considerations of the State and lawful employment.

This Act does not apply to

- procurement that concerns classified data, and the fundamental security and national security interests of the country, or whose execution must be accompanied by special **security** measures;

- public supplies (arms, munitions and war material), services and works specifically designed for **military and public order** purposes („contract award procedure in the field of defence”);
- procurement specified by **international contracts**, related to „the stationing, passing through, deployment of **troops** (military forces), including the case of units deployed (transferred) or replaced to the operational area the procurements related to such deployment (transfer), replacement;”
- procurement made according to a „particular procedure laid down in an **international treaty**, concluded with a state outside the European Union, related to the **joint implementation** or exploitation of a project by the signatory States;”
- procurement made according to a particular procedure laid down by an **international organisation**;
- procurement, the purpose of which is exclusively to make it possible for the contracting authorities to **provide** one or more **public electronic telecommunication services**, or to use, or to **exploit a public electronic telecommunication network**.
- If the service concession falls under the scope of the Act on concessions (the Public Procurement Authority must be notified),
- if the service concession falls under the scope of the Act on Scheduled Passenger Transport by Means of Buses, or in the case of local public railway service by means of trams under the scope of the Act on Railway Transport (the Public Procurement Authority must be notified),
- agreements which are „concluded by a contracting authority defined in Article 6(1)(a)-(d) [state or state-owned] and an economic operator solely owned by that authority OR concluded by a contracting authority and an economic operator whose shares or business stake are exclusively owned by that contracting authority and by other contracting authorities defined in Article 6(1)(a)-(d) and which is supervised by the contracting authority and whose strategic objectives and substantial decisions can be fundamentally influenced by the contracting authorities” (i.e. **parastatals**), on condition that **at least 80 % of the annual net revenue** of that economic operator is **derived from** the performance of the contracts to be concluded with **the contracting authority** or authority members in the given business year, following the conclusion of the contract;
- „the provision of the obligatory **public educational task of the local government through a non-public institution** maintaining body pursuant to the Act LXXIX of 1993 on public education, and the transfer of the institution maintaining rights of a public educational institution to a non-public maintaining body”

In the case of public procurements concerning issues of national security and classified data, Governmental Decree no. 218. of 2011 must be applied. In the case of public service authorities Governmental Decree no. 289. of 2011 must be applied.

3.

3. 1. Was / is there any EU infringement case in progress against the government concerning PP? (Y/N)	N
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3. 2. Describe the cases briefly and indicate the violated EU regulations. (source: http://ec.europa.eu/eu_law/infringements/infringements_en.htm)

First of all, we should note that there is no comprehensive database/information source on cases subject to infringement – neither EU-wide, nor national. The only one EU online source covers exclusively cases reaching the sc. third phase of the infringement procedures.

In the case of infringements regarding PP none of the initiatives launched by the European

Commission (EC) reached the third stage. This means there was no classic infringement case in this area. There were, however, several pre/notifications put forward by the European Commission, but the majority of them were resolved in the consultative phase. In some cases, disputes were not resolved in the first round, so formal notifications reached the second phase. One excellent example was the development project of the sewage farm in Csepel co-financed by the EU. Due to irregularities in the co-finance on the part of the Hungarian Government, the Commission proposed an initial 40 million euro fine for not respecting PP regulations. (Source: <http://index.hu/belfold/szenny7214/> - 5 November 2008).

4.

4. 1. Please indicate if the following OECD principles are expressed by the national regulations. (Y/N)	
4. 1. 1. Transparency Actual wording: „respect the fairness, the transparency and the public nature of competition”	Y
4. 1. 2. Good management Actual wording: „effective and responsible management”	Y
4. 1. 3. Prevention of misconduct Actual wording: “act in good faith and in compliance with the requirements of honesty and proper practice of the law”	Y
4. 1. 4. Accountability and control Actual wording „This Act regulates contract award procedures and rules concerning the legal remedies related thereto for the sake of a reasonable and effective use of public funds and with the aim of providing for the public control thereof”	Y
4. 2. Are the following key recommendations of the OECD ensured by the relevant regulations? (Y/N)	
4. 2. 1. Providing an adequate degree of transparency throughout the whole procurement cycle in order to promote fair and equitable treatment for potential suppliers	N (in practice)
4. 2. 2. Maximising transparency in competitive tendering and taking precautionary measures to enhance integrity, in particular for exceptions to competitive tendering	N (in practice)
4. 2. 3. Ensuring that public funds are used in public procurement according to purposes intended	Y
4. 2. 4. Developing a set of professional standards to enhance the knowledge, skills and integrity of public procurement officials	N
4. 2. 5. Putting mechanisms in place to prevent risks to integrity in public procurement	N (in practice not effective)
4. 2. 6. Encouraging close co-operation between government and the private sector to maintain high standards of integrity, in particular in contract management	Y
4. 2. 7. Providing specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct in public procurement	Y
4. 2. 8. Establishing a clear chain of responsibility together with effective control	N

mechanisms	(in practice is blurred)
4. 2. 9. Handling complaints from potential suppliers in a fair and timely manner	Y
4. 2. 10. Empowering civil society organisations, media and the wider public to scrutinise public procurement	N
<p>4. 3. If you have any remarks on the above listed principles and recommendations please describe.</p> <p>Just as the EBRD report (2010) states, in Hungary there is a considerable gap between legislative framework and enforcement. That also means - even if the Act refers explicitly to principles, its application and guidance in practice is far from being automatic and self-enforcing.</p> <p>There are two caveats:</p> <p>1. In the new regulatory package there are several points vaguely drafted concerning implementation. Two remarkable examples: i. the Act states that the Public Procurement Arbitration Board cannot overview those cases in which the Economic Committee of Parliament decides on exemptions of the application of the law. The emergence of such situations and cases is however not specified in any relevant regulation. ii. The Act stipulates that the Government (the ministerial Directorate in charge) has the option to call for centralized PP, but it is not defined under what circumstances and in what cases.</p> <p>2. Though transparency was one of the guiding principles in the regulatory review, the public disclosure policy in this area in effect did not change. Some examples: basic, transaction-level data is not available, there is no comprehensive, machine-readable information source and database (the one maintained by the Public Procurement Authority is neither public, nor online and is far from being appropriate for detailed analysis, for problems w.r.t. access and quality of this 'official' database see in more detail: KKK 2011, KKK 2011b).</p> <p>Furthermore, there is no obligation to publish information on selection and evaluation criteria, contract award, tender documents, and justification for awarding contract to the selected contractor, or contract modifications in the way suggested by open government recommendations. Civil society organisations, media and the wider public face serious challenges when trying to access such information and data.</p>	
<p>4. 4. Indicate any other guiding principles expressed in the legal regulations.</p> <p>There are some, further principles expressed in the legal regulations concerning public procurement. The Art. 123. (6) of the Act proclaims non-discrimination and equal treatment. There are a number of special provisions included in the Act, such as</p> <ul style="list-style-type: none"> • Art. 3 specifying the use of the Civil Code regarding matters related to contracts which are not specified in the Act, • Art 2 (5) on EU economic operators and community goods or art. 2 (6) on the official language of contract award procedures. • Art. 2. (5) national treatment shall be applied to economic operators established in the European Union as well as to Community goods. As regards economic operators established outside the European Union and as regards non-Community goods, national treatment is to be applied in accordance with the international obligations assumed by Hungary and the European Union in the field of public procurement • Art. 2. (6) Contract award procedures shall be conducted in Hungarian. The contracting authority may make it possible to use another language instead of 	

Hungarian but it shall not be made compulsory.

- Art. 123. (6) 6. The contracting authority shall ensure all the economic operators established in the European Union equal access (right to participate), mutual recognition of diplomas, certificates and other evidence of formal qualifications, as well as provision of information on time limits suitable for the submission of tenders (requests to participate), drawing up of the regulations, making it possible to have preliminary information on the applicable procedural rules and respect of the principle of non-discrimination and equal treatment when the decision closing the procedure is taken.

5.

5. 1. Which procurement methods are allowed by the national regulation? (e. g. open, restricted, negotiated, accelerated). List them.

Governmental decree no. 289 of 2011 specifies the following procurement methods:

- Open procedure
- Procedure by invitation
- Negotiation procedure (with or without prequalification)
- Procedure based on a framework agreement

In practice, however, these methods are merged into other categories, they are commonly referred to as “sets of rules”. They are as follows:

- For classic contracting authorities
 - National procedure without notification
 - National procedure with notification
 - Community procedure

According to Community principles the classic contracting authorities are: the state, the regional and local governments, public law institutions (“közjogi szervezetek”), and associations formed by one or more of these entities.

- For special contracting authorities
 - National procedure with notification
 - Community procedure

Special contracting authorities are usually companies in the public utility sectors (‘közszolgáltató’).
(MKI, 2006)

5. 2. Are conditions for use of various procurement methods clearly established? (Y/N)

Y

See: Governmental Decree no. 289 of 2011 on the specific rules of public procurement of public services agencies

5. 3. Is there an explicit requirement that open competitive bidding is the preferred or default method? (Y/N)

N

There is no explicit statement as to open competitive bidding being the preferred method of PP, it is, however, implied by the Act. The Act defines the cases where negotiation procedure can be used – otherwise, open and invitation procedures are the default options (without stating it explicitly).

5. 4. Describe these.

5. 5. Specify the relevant thresholds by types (min/max) and relevance (goods, works, services). [Insert extra rows/columns if needed]

Classic contracting authorities						
	National procedure without notification (HUF)		National procedure with notification (HUF)		Community procedure (HUF)	
	*Min	Max	*Min	max	Min	Max
Goods	8.000.001	25.000.000	25.000.001	54.560.000	54.560.001	-
Services	8.000.001	25.000.000	25.000.001	54.560.000	54.560.001	-
Construction	15.000.001	150.000.000	150.000.001	1.364.000.000	1.364.000.001	-
Services concession	-	-	25.000.001	-	-	-
Construction concession	-	-	100.000.001	1.364.000.000	1.364.000.001	-
Special contracting authorities						
Goods	-	-	50.000.001	109.120.000	109.120.001	-
Services	-	-	50.000.001	109.120.000	109.120.001	-
Construction	-	-	100.000.001	1.364.000.000	1.364.000.001	-

*Contracts under first min. value in a certain row are not considered public procurement.

6.

6. Do legal provisions stipulate the use of new and innovative techniques in PP process (automatic or e-procurement)?

The Act does not mention the use of innovative techniques, but specifies the use of electronic means in communication. Article 36 also specifies that “procedural actions may also be carried out electronically. The method of carrying out the public procurement procedural actions by electronic means is laid down in a specific Government Decree”. The previous act on PP (CXXIX/2003 Act) was complemented by Governmental decree no. 257 of 2007 on electronic procurement. This decree was then modified by Governmental decree no. 287 of 2011 which lays out the rules of electronic procurement.

Nevertheless, in practice, e-procurement is effectively not in use. Based on our expert interviews, this is mainly due to economic reasons (lack of funds to be spent on a well functioning and secure online system) as well as due to the inherent contrary interest of the stakeholders involved (government authorities, public tenderers, as well as big bidders). In our view, one further reason for ignoring the potentials of e-procurement is mainly cultural. Neither contracting authorities nor tenderers are used to electronic services and methods. In general, there is low confidence in e-government solutions among government actors in general (Meyer-Sahling 2009) as well in the business sector (OECD 2011). One example: electronic signature – even though it is regulated and potentially applicable (what is more, soon it will be mandatory), it is seldom used. (OECD 2011)

7.

7. 1. Describe the system of administrative or judicial review/appeal. Is it fair and adequate?

The system of administrative and judicial appeal is regulated in the Act on PP art. 133 (2) and art. 134. (2). According to these, all legal disputes related to contracts, except the ones concerning contract amendment and contract breach regulated in the Act or related Governmental Decree, fall within the competence of the civil court. All other complaints regarding proceedings initiated against any infringement of the legislative provisions

applicable to public procurement are dealt with by the by Public Procurement Arbitration Board (PPAB).

The inclusion or deletion from the list of prequalified tenderers in the case of classified contract award procedures is a matter for the Public Procurement Arbitration Board.

The secondary instances of review are the courts.

In the case of classified contracts, the PPAB does not have the authority to review the preliminary decision of the competent Committee of the Parliament not to apply the regulations of the Act. In this case actors can turn to the court for judicial appeal.

The jurisdiction of the Public Procurement Arbitration Board extends to the whole territory of the state. (Act on PP art. 134 (7))

Art. 133 (2) The judgement of legal disputes related to contracts concluded pursuant to a contract award procedure – with the exception of legal disputes arising from a contract amendment or performance violating this Act or a Gov. Decree based on the empowerment of this Act –, and claims in civil law related to contract award procedures shall fall within the competence of a court.

Art. 134 (2) Proceedings initiated against any infringement of the legislative provisions applicable to public procurement, contract award procedures, qualified public procurements, qualified contract award procedures, procurements in the field of defence as well as contract award procedures in the field of defence, including the proceeding initiated against the rejection of the request for prequalification [...] shall fall within the competence of the Public Procurement Arbitration Board, with regard to the contract award procedure.

The Public Procurement Arbitration Board has the competence to institute proceedings against the amendment or performance of contracts, as well as against any misconduct or failure by the contracting authority

7. 2. Specify the legal sanctions (penalties etc.) of violating legal regulations regarding public procurements.

Sanctions are regulated by the Government in Governmental Decree no. 288 of 2011.

- Administrative fee – for requesting the Public Procurement Arbitration Board to initiate proceedings
 - If the procurement reaches the EU threshold: 1% of the value of the procurement, but at most 25 000 000 HUF
 - If the procurement does not reach the EU threshold: 1% of the value of the procurement, but at least 200 000, at most 6 000 000 HUF
 - According to the number of elements in the requirement, the fee rises as follows:
 - 1-3 elements: see above
 - 4-6 elements: 125% of the sum specified according to the above criteria
 - 7-10 elements: 150%
 - 10-15 elements: 175%
 - 16+ elements 200%
- Banning – for three years including all public procurement processes going on at the moment if
 - the tenderer gave false information
 - the Public Procurement Arbitration Board determined the tenderers offending behaviour at least two times in the past two years and publishes on its website the [list of banned tenderers](#) and the reason of banning,
- Fine
 - at most 15% of the value of the public procurement or (in case there was no

- public procurement) of the contract (in accordance with art 152 (4))
- at most 10% of the value of the public procurement art 152 (3)

8.

8. 1. Are there minimum time limits for the receipt of tenders required for public procurements below EU-threshold? (Y/N)		Y
Gov. Decree no. 289 of 2011		
8. 2. If so, specify by types and conditions of procurement. [Insert extra rows if needed]		
type of procurement	Days	
Open procedure	45 days, which can be reduced to 29 days from the day of appearance of the notice, in urgent cases can be reduced to 22 days	
By invitation and negotiation procedure (with or without prequalification)	At least 30 days, even in urgent cases can not be less than 15 days. The deadline for tender proposals can be agreed upon by the qualified tenderers and the contracting authority. If they do not agree, the contracting authority decides on the deadline, which should be within the consequent 24 days. The authority can shorten this deadline by 5 days if the documentation for tendering was made available online from the day of the publishing of the procurement notice If prequalification is used, the deadline is 37 days, in case of emergency it can be reduced to 22 days, and if the contracting authority sends the invitation by fax or online the deadline can be further shortened to 15 days.	
Negotiation procedure without notification	Must contact at least 3 tenderers and establish the deadline as considered to be sufficient for formulating their offers.	
Procedure based on framework agreement	Not specified	

9.

9. Is there a legal or regulatory requirement for public disclosure of procurements /related legal texts and statistical data? (Y/N)	Y
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10.

<p>10. Are there provisions regarding preferences for particular categories of suppliers (sp. preferential treatment of local bidders) and/or categories of goods, works and services (cf. private sector provision/operation of power, water or other infrastructure facilities)? If so, specify.</p> <p>There is a possibility to maintain the smaller contracts for small and medium-sized enterprises.</p> <p>Art. 122 (9) states that “the contracting authority may reserve the right to participate in a</p>

public procurement procedure for tenderers not reaching in the previous year in the case of public supply and public services a revenue HUF 100 million net of VAT, in the case of public works a revenue of HUF 1 billion net of VAT, who use subcontractors also complying with the condition set in this paragraph for the performance of the contract and who fulfil the defined suitability criteria with the support of the capacity of another entity also complying with the conditions set by this paragraph.”

11.

11. 1. Are there any explicit anti-corruption / transparency rules – as part of the framework regulation? If so, specify the essential features.

There are no explicit anti-corruption rules. Regarding transparency, Art. 2 (1) of the Act states, that “in the contract award procedure, the contracting authority shall ensure and the economic operators shall respect the fairness, the transparency and the public nature of competition.”

Law no. XXV. of 2011 states that the National Assembly authorizes the recognition of the Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization, adopted by the UN in September 2010.

The new Act does not call for the publishing of notices and dissolves the rule on the announcement of results. Articles 30 and 31 of the Act on PP list the documents that must be made published – a rather small range in international comparison (see above).

According to the OECD Government at a Glance report (2011), „currently, Hungary is one of the countries that publishes information on justifications for awarding a contract to a selected contractor (the majority of the OECD member countries rule the same way). However, Hungary does not allow tracking public procurement spending on line (as is done by 32% of OECD member countries), nor does it publish information on contract modifications.

Providing an adequate degree of transparency throughout the entire public procurement cycle would be especially critical in the case of Hungary to minimise risk of fraud, corruption and mismanagement of public funds (TI 2011). The effective oversight and control by the general public is very limited in Hungary (independent expert views).

As we mentioned above, it is promising that the government promotes the use of digital signatures and electronic filing in the public sector, relevant regulations are in place. Even more, it will be obligatory in the public sector to apply digital signatures by 2014, its application is, however, very limited. Public receptions on the transparency and legality

A public survey executed in 2009 suggests that the public perception on the transparency of PP procedures and integrity of the stakeholders is rather critical (GKI 2009). There is, however, no empirical study on the evidence and degree of corruption in PP.

National experts provide a long list of recommendations on how to increase transparency and integrity (GKI 2009, TI 2011, KKK 2011, KKK 2011b). We pinpoint here the TOP10 recommendations:

1. open access to user-friendly public databases on PP
2. periodic and systematic anti-corruption investigations
3. further simplification of public procurement procedures (more reliance on electronic procedures)
4. more and simpler guidelines, information and sample documents for contracting authorities and bidders
5. reducing the administrative burden of bidding, improving communication and

- co-operation between government agencies
- 6. launch of and open public consultation on a national anti-corruption strategy
- 7. review and evaluation of the national anti-corruption strategy every 4-5 years
- 8. publishing impact assessments and evaluatory reports on the efficiency and effectiveness of public procurements (above a threshold value)
- 9. enhancement of quality control among tenderers
- 10. publishing a "black list" of corrupt tenderers

11. 2. Is there a conflict of interest policy in effect? If so, describe the essential features.

According to art.24 (2) of the Act on PP, persons who have common interests (economic or other) with an economic operator participating in the contract award procedure are not allowed to participate in the procedure on behalf of the contracting authority.

Art 24. (2) Persons or organizations not being able to perform their functions in an unbiased and objective manner for whatever reason, in particular due to economic interests or any other common interest with an economic operator participating in the procedure, may not participate in the preparation and the execution of the procedure on behalf of the contracting authority, for that is qualified a conflict of interest.

II. Institutional framework

1.

1. 1. Name the institutions/authorities in charge of PP in your country. Describe their duties and responsibilities. Quote the legal sources of the institutional framework.

Public Procurement Authority ('Közbeszerzési Hatóság' - hereinafter, PPA)

- subordinated to Parliament.
- Duties:
 - monitors the application of the law and formulates its opinion on draft legislations,
 - makes guidelines (without legal force),
 - collects and publishes statistical data on public procurement,
 - edits the Official Journal of the Authority (the Public Procurement Bulletin, hereafter 'the Bulletin') verifies and publishes the notices related to the contract award and design contest procedures,
 - liaises with public procurement bodies of other states,
 - organises conferences, trainings, professional courses,
 - together with the minister responsible for public procurements the Authority takes part in elaborating the conditions related to the training of those who participate in the public procurement procedures.

Public Procurement Council ('Közbeszerzési Tanács' - hereinafter, PPC)

10 members

- President – independent civil servant, elected by the Council for a five-year-term service, may be re-elected once (in need substituted by a vice-president elected from among the members of the Council)
- designated by the major actors of public procurement: 3 members represent the public interests, 3 the general interests of the contracting authorities and 3 the general interests of the tenderers

Secretariat of the Authority ('Közbeszerzési Hatóság Titkársága' – hereinafter: the Secretariat)

- duties: coordination, preparation and for the implementation of the decisions of the Council, data collection, recording and administration

- activities.
- headed by the Secretary-General; the members of the staff are civil servants

Contracting authorities can be the ministries, the Prime Minister's Office, the State, local governments and all the public law institutions, public foundations, local and national self-governments of national minorities, associations of local governments, organisations designated by a local government, and organisations designated by more than one local government or by communities with a single common governing body.

Entities having legal capacity, set up to carry out non-industrial and non-commercial activities of general interest, over which one or more state or governmental body can exercise a dominant influence or are financed more than 50% by one or more state or governmental body also qualify as contracting authorities.

Economic entities solely owned by or whose shares or business stake are exclusively owned by a state or (local) governmental body and at least 80 % of their annual net revenue derives from contracts with this body, also qualify as contracting authority (act on PP art 6)

Organisational chart of the [Public Procurement Authority](#)

1. 2. Is the procurement system in your Country centralized or decentralized? (C/D)	D with exc.
1. 3. Is there a central tender board or authority? (Y/N)	Y
Public Procurement Directorate (Közbeszerzési és Ellátási Főigazgatóság, KEF – for further info - see: www.kszf.gov.hu)	

2.

2. 1. Is there an entity with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure.

The **Ministry of National Development**, more exactly the **Deputy State Secretariat for Public Procurement** is in charge of regulation and oversight. The duty of the State Secretariat is to develop the conditions and make the necessary legal arrangements for a simple, rational and corruption-free public procurement, and to coordinate the public procurements of the public authorities, central governmental agencies and other legal entities.

The State Secretariat deals only with the Public Procurements of the Central Government. The Government has the power to decide to use centralized public procurement in other situations as well. This, however, has not yet happened in practice. In the case of centralized PP, the contracting authorities must notify the Ministry 15 days prior to the announcement of the procurement. The Minister has the authority to name a supervisor to each PP procedure at any stage of the procedure. The details of the centralized public procurement procedure are regulated in governmental decree no. 46 of 2011.

(<http://www.kormany.hu/hu/nemzeti-fejlesztési-miniszterium/vagyonpolitikaert-felelos-allamtitkarsag/felelossegi-teruletek>)

The Public Procurement and Supply Directorate supports the State Secretariat. Among the main duties of the Directorate is to manage the centralized public procurement and to provide the conditions for the functioning of the ministries – except the Ministry of Defence and the bodies for external representation of the Ministry for Foreign Affairs.

In addition, Art. 172 (1) states that “the **Public Procurement Authority** shall be responsible for effectively contributing to framing the public procurement policy and for forming and spreading the lawful public procurement behaviour enhancing the public and transparent spending of public funds while taking into account the public interest and the interest of contracting authorities and tenderers”.

Art. 172 (2) states that **the Council** shall

- monitor the enforcement of the rules and initiate amendments
- review and comment on draft legislation and legislation concepts related to public procurement
- establish the number of members of the Public Procurement Arbitration Board
- appoint or recall the chairperson and deputy chairperson of the Public Procurement Arbitration Board and the public procurement commissioners; judge cases of incompatibility related to public procurement commissioners
- manage and publish on its homepage an up-to-date list of the contracting authorities falling under the scope of the legislation, the official list of approved tenderers, determine approval criteria and methods of certification, the list of official public procurement consultants, and the list of tenderers excluded from participation in contract award procedures, which list shall include the term of such exclusion as well,
- keep a registry of public procurements
- prepare annual consolidated statistical reports, which shall be sent to the European Commission by 31 October in the year following the year under review
- edit and publish the Public Procurement Bulletin - Official Journal of the Public Procurement Authority
- publish on its homepage, at the time of reception, the data of the application initiating the procedure of the Public Procurement Arbitration Board and of the ex-officio initiation of the procedure
- manage and publish on its homepage the public database of the decisions of review procedures, in which it ensures a free, full, electronic access for anybody to the decisions of the Arbitration Board and the court with the possibility of a keyword search
- in consultation with the minister responsible for public funds prepare guidelines facilitating the application of the regulations applicable for contract award procedures based on the experiment drawn from the decisions of review procedures, and about the practical information on public procurement; the guidelines shall be published on its homepage and in the Public Procurement Bulletin;
- monitor the amendment and performance of contracts
- facilitate the public nature of public procurement information, the spread of the use of electronic public procurement databases, furthermore the support of electronic administration and communication possibilities
- together with the minister responsible for public funds participate in the PP education
- maintain relationships with public procurement bodies of other states
- maintain and publish on its website an updated list with the wages and related charges of each sector
- approve its own organisational and operating regulations, and other internal regulations relating to its operations, especially the procedures for launching remedy procedure for the review of notices, and also its draft budget and annual budget report;

To put it simply, the Deputy State Secretariat for Public Procurement under the Ministry of National Development is the *de jure* legislator. *De facto* the Authority was involved in codification. Once the new Act is passed, this ‘common law’ is expected to be changing by restricting the informal legislative role of the Authority. The new Act on PP subordinates the

<p>Authority to the Ministry. Its activity seems to be more closely monitored by the government; e.g. it needs to consult with the state secretariat even on the publication of guidelines and presidential notices. Experts suggest that the Authority is to be a “fictive body” without essential power (see the Council and the Authority is headed by the same person).</p>	
<p>2. 2. Are procurement decisions overridden by higher governmental agencies? (Y/N)</p> <p><i>Note: At least, there is no evidence for such a case.</i></p>	<p>N</p>
<p>2. 3. If so, by whom?</p>	
<p>2. 4. Are the authorities relating to procurement clearly delegated to the entities carrying out the process?</p>	<p>De jure Y (de facto N)</p>
<p>2. 5. Are the applicable procedures clearly defined?</p>	<p>N</p>

3.

<p>3. 1. Are there any integrity and transparency guidelines or code of ethics for employees working with PP? (Y/N)</p> <p>Transparency International also notes the lack of integrity and transparency guidelines, or some sort of a code of ethics. (Tátrai, 2009)</p> <p>The Ministry of Justice is working on the elaboration of a new standardized code of ethics - effective in the whole government sector. It is expected to be released in 2012 within the framework Magyar Strategy, and no information is confirmed on plans regarding public consultation.</p>	<p>N</p>
<p>3. 2. What guidelines ensure integrity and transparency in PP? See answer to Q4.1.</p>	

4.

<p>4. What institutions have the power of supervision and control in the PP system? Name the key authorities, describe their rights and duties. Distinguish between internal management control and external audit.</p> <p>Internal audit is provided by the PP Authority and the Public Procurement Arbitration Board (see above), but only in such cases, when a review is requested during the PP procedure.</p> <p>The only public tenderer for whom internal audit is provided on a case-by-case basis is the National Development Agency, when dealing with EU co-financed development projects. In this case the Agency has the right to monitor PP and to establish what kind of documentation is needed from the contracting authorities.</p> <p>Comprehensive external audit is usually provided by the State Audit Office (<i>Állami Számvevőszék</i>) every 3 to 5 years. The State Audit Office published a yearly report on the monitoring of the functioning of the PP System,</p> <p>Up to 2010, the State Control Office (<i>Kormányzati Ellenőrzési Hivatal</i>) also provided external audit by its own discretion, but it no longer has the power to monitor PP.</p>
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5.

5. Describe how review and remedy is regulated in Public Procurement. Name the key authorities.

See answers to part I, Q7.1.

6.

6. Is there a national Public Procurement strategy? If so, describe its main objectives, targets and indicators. If it is publicly available, please add online reference.

There is no national PP strategy.

Two main strategic government documents refer to the “fundamental revision” of the PP regulation – without going into details. The Széll Kálmán Plan speaks about the reform of the PP system. According to the Plan, the new law on PP will change the previous “unclear, slow and corrupt system to a simple, quick and transparent one”. (Széll Kálmán Plan 2011: 43). The Plan emphasises that one of the greatest achievements of the new law will be the banning of the off-shore companies from the PP System.

The National Reform Program 2011 (based on the Széll Kálmán Plan) mentions the need for innovative strategies in the field of PP, thereby improving the business environment, stimulating competitiveness of the small- and medium sized enterprises sector, and promoting innovation, research, and development. The program, however, misses to provide a detailed action plan.

7.

7. 1. Can public procurement be outsourced?	Y
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7. 2. Do procurement agents or consultant / law firms take part in tendering?	Y
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7. 3. If so, under what circumstances? How are they selected?

Ministry of National Development Decree no. 93 of 2011 on the activity of the official public procurement consultant

The PP Authority keeps a registry with the names of the official public procurement consultants (persons or organizations). Only registered applicants can perform such consultancy. The registration is valid for three years, and it is renewable.

In the case of persons the conditions of registration are a higher education degree and at least three years practice in PP or a professional qualification provided by the state and at least two years practice in PP.

In the case of organizations, the condition of registration is that one of the members involved in its activities, one of its employees to be registered.

In both cases liability insurance is required.

Anybody who fulfils the above conditions can ask for registration, which is usually automatically granted, without any further preconditions. In practice, the fact that a consultant or a consulting firm has taken part in at least 20 PP procedures or that no proceedings were instituted against him, qualify him as an official procurement consultant, thus no quality control is provided. Even though there were initiatives to introduce a more thorough quality check, these have never been followed through,

7. 4. Describe the normal basis for compensation and contract duration.

There is no market information on these issues. Based on interviews, we got some anecdotal evidence on the practice. For example, there is mandatory liability insurance concerning consultants, thus every appeal regarding them falls under civil litigation. Expert views suggest, however, that most of the times, it is not easy to prove that the reason for a contract not being awarded to a tenderer was the fault of the consultant. The bar had the initiative to make it mandatory for consultants to be lawyers or at least jurists, but the initiative has not been followed through.

8.

8. 1. How are employees in PP institutions recruited? (Are vacancies publicly announced? What are the HR requirements – e. g. professional certificate, experience)

In order to become a PP rapporteur, one should successfully complete a professional exam, In order to qualify for the exam, a high school leaving examination is necessary. Preparation for the exam is provided by professional training organized by different institutions with the support and professional surveillance of the Council.

(Professional and examination requirements, 2010)

8. 2. How are PP employees trained? Are there regular training programs for entry- and higher level staff?

According to the Act on PP art. 379 (2), the Authority along with the Minister responsible for public procurement must be involved in developing the conditions for the education of those involved in public procurement procedures. Thus the Council cooperates with different institutions that provide professional training in PP, provides regular information about the changes in the training of PP rapporteurs, and asks for information about their training programs. The Council publishes on its website information related to the education of PP rapporteurs as well as teaching materials and previously used exam questions and answers.

III. Practice and performance

1.

1.1. What are the main performance indicators of the PP sector - for the year 2010?				
% of GDP Source: 2010 Annual Report of the Public Procurement Authority, OECD 2011, EC 2010.			Official statistics: 5,5%	
			International estimates: cca. 11 %	
1. 2. Please indicate the share of methods (% in volumes and cases) [Insert extra rows if needed]				
Required data is only partially available. Source: 2010 Annual Report of the Public Procurement Authority				
Methods (cf. open, restricted etc.)	in volume		Case	
	In %	Nominal value in PPP	%	TOTAL
Open	63	n.a.	n.a.	n.a.

By invitation	n.a.	n.a.	n.a.	n.a.
Negotiation	31,4	n.a.	n.a.	n.a.
Procedure based on framework agreement	n.a.	n.a.	n.a.	n.a.
TOTAL	100	n.a.	100	10 685
1. 3. Please indicate the share of PP types (works, goods, and services - % in volumes and cases)				
type (cf. goods, services, etc.)	in volume		Case	
	In %	Nominal value in PPP	In %	TOTAL
Goods	22,6	n.a.	30,2	n.a.
Services	23,6	n.a.	31,1	n.a.
Construction	52,6	n.a.	38,5	n.a.
Other (not specified)	1,2	n.a.	0.2	n.a.
TOTAL	100	n.a.	100	10 685

2.

2. 1. Are summaries of information about public procurement published? (Y/N)	Y
2. 2. Is there any comprehensive database on PP? (Y/N)	N (not public)
2. 3. What kind of data is available? Specify the format.	Y/N Format
2. 3. 1. number of received bids	Y pdf (yearly, from parlament.hu webpage)
2. 3. 2. number of contracts awarded	Y pdf (yearly, from parlament.hu webpage)
2. 3. 3. names of successful bidders / losing bidders	Y Electronic bulletin [Html (/pdf) unsearchable]
2. 3. 4. public advertisements közzétételi hirdetmény	Y Electronic bulletin [Html (/pdf) unsearchable]
2. 3. 5. prequalification documents (if used) minősítési dokuk	N
2. 3. 6. the prequalification evaluation report documenting any decisions not to prequalify certain potential bidders minősítés értékelési jelentés	N
2. 3. 7. the bidding documents ajánlattételi dokumentáció	N
2. 3. 8. record of any pre-bid meetings ajánlattétel előtti konzultációk	N
2. 3. 9. the bid opening minutes eredményhirdetés jegyzőkönyvek	N

2. 3. 10. final bid evaluation report beadott ajánlatok értékelésének jegyzőkönyve	N	
2. 3. 11. detailed record of the reasons used to accept or reject each bid kbt döntések indoklása	N	
2. 3. 12. copies of bids	N	
2. 3. 13. appeals against procedures or award recommendations	Y	
2. 3. 14. signed copy of the final contract	N (sometimes)	Contracting authorities should publish the contracts
2. 3. 15. any performance and advance payment securities issued részteljesítési biztosítékok??? Vagy mi ez, miből fordították?	N	
2. 3. 16. any changes in the final contract	Y	Electronic bulletin [Html (/pdf) unsearchable]
2. 3. 17. documents on contract performance/completion teljesítésigazolás	Sometimes	Electronic bulletin [Html (/pdf) unsearchable], from 2012 on c.a.'s webpage
2. 4. Is a timeline follow up of a tender possible? (Does a tender have a specific ID from the beginning to the end?) (Y/N) There is no common procedure in the ministries and governmental agencies for the follow-up of a tender. The only exception is the National Development Agency where the procedure for online following of a tender was introduced on 23 November 2011. This means that from 1 March 2012 the Agency will only accept tenders and proposals online and will ensure the online following of a submitted tender or the changes in a contract. (NFÜ, 2011)	N with one exception	
2. 5. Describe the access rules. Indicate if there are legal restrictions on the public availability of these data. Are data easily available to the general public? According to the Act on PP, the following information shall always be made available to the public:		
<ul style="list-style-type: none"> • The EU thresholds and the national thresholds concerning each subject-matter of public procurement at the beginning of each year in the Bulletin. • In case of legal services a contract award procedure is not conducted, but if the service reaches the EU threshold the contract notice must be published • An up-to-date register of contracting authorities must be published on the website of the Authority. • The contracting authority must publish (Act on PP art. 30, art 31, 2011) <ul style="list-style-type: none"> ○ the contract notice launching the open procedure, ○ the invitation to participate in case of restricted procedures, negotiated procedures and competitive dialogues, except direct invitations to participate in restricted and negotiated procedures , ○ if the case of procurement of goods and services does not reach the EU 		

threshold the contracting authority may choose its own rules of contracting. In this case the contract notice must be published.

- in the case of procedures where pre-qualification is needed, the pre-qualification notice,
- notice on the result of the procedures,
- notice on launching design contest procedures,
- notice on the results of design contest procedures,
- notice on contract amendments,
- public procurement plans and their amendments,
- closed contracts,
- preliminary dispute settlements,
- data on the review of a PP procedure (application and the decree of the PPAB),
- regarding the compliance of a contract: an annual statistical summary

must be public.

- The Council

- must keep and publish an up to date list of
 - contracting authorities,
 - approved tenderers, including the criteria for approval and the methods of certification,
 - official public procurement consultants,
 - tenderers banned from participation in contract award procedures, including the reasons of banning;
- must publish
 - requirements or *ex-officio* decisions of the PPAB to initiate proceedings, including the initiating document and decisions, and in case of court review, the decision of the court,
 - a database with the proceedings and decisions of the PPAB and the courts.

2. 6. Describe forms of publication (printed, electronic), scope and frequency. Does the country have a national gazette (or other similar publication) published in a timely fashion?

The two main means of publication are the official homepage of the Authority and the Official Journal of the Public Procurement Authority, referred to as the Public Procurement Bulletin (hereinafter 'the Bulletin').

Concerning the publication of lists mentioned above, the Act on PP specifies that they shall be up to date, but does not specify any timeframe for updating them.

The data concerning contracts (see above) must be published within fifteen business days following the fulfilment of the contract by both parties, and in the case of contracts concluded for a term over one year or for an indefinite period, the published data shall be updated annually following the signing of the contract.

The Bulletin appears three times a week; since 1 June 2008 the official form of the Bulletin is an online, electronically signed .pdf document, which can be reached free of charge on the [homepage of the Authority](#). The Bulletin includes all the notices concerning public procurement procedures, decisions of the PPAB and the courts, and all other documents regarding the activity of the Council (e.g. recommendations, information, legislation etc.). Since 2004 the contracting authorities have the option to submit their notices online to the Editorial Committee.

2. 6. Is there a public website available with comprehensive real time data? If so, please insert reference link.

There is none.

2. 7. Who handles public procurement data? Name the authority.

The data is handled by the Authority and is published in the Bulletin. There is no single, unified database on public procurement.

3.

3. 1. Do procuring entities have internal quality and control mechanisms? (Y/N)	Y
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3. 2. Are they regularly audited? If so, describe scope, frequency, who carries them out, etc.
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The external audit of PP authorities falls under the cognizance of the State Audit Office. The Office is the main economic and financial supervisory body of the National Assembly. It has the power to monitor public funds, and the management of state- and local government assets. (ASZ, 2011)

In the past, the State Control Office (*KEHI*) in charge of monitoring the finances of the government budget, the extra budgetary funds, the social security funds and the budgetary agencies of the central government (except those which are not under governmental control) was also active in monitoring public procurement. It was cancelled in the new political regime.

It should be noted that there is no legal provision on the regular evaluation of the efficiency and effectiveness of the Hungarian PP system.

3. 3. Is procurement monitoring and administration computerized? (Y/N)	N
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There is no standardized, unified electronic platform for PP.

3. 4. How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?
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Hungary does not publish information on selection and evaluation criteria, contract award, tender documents, Justification for awarding contract to selected contractor, or contract modifications and does not allow the tracking of procurement spending. (see Online availability of selected public procurement information in central governments - detailed table (2010) OECD survey)

3. 5. Do procurement units regularly update their information on prices for goods and works? (Y/N)	N
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3. 6. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items? (Y/N)	N
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3. 7. Are completion of contracts adequately monitored? (Y/N)	N
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3. 8. How frequently are contracts not completed on schedule? What is the major cause for slippage? Which sectors and which particular kinds of contracts are effected? Specify.

According to the 2010 annual report of the PP Authority one of the main causes of contract amendment by common agreement was the modification of the completion deadline of the contracts. To justify these amendments, the parts most commonly referred to are inadequate weather conditions – in the case of constructions, administrative delays of licensing authorities, and the necessity of ensuring a steady supply – in the case of procuring goods and services.

In the few cases of breach of contract, the main cause was the failure to meet deadlines. In most of these cases, the contracting authorities exercised their right to indemnity. (KBT 2010)

3. 9. How frequently are contracts not completed within the originally approved contract price? How frequently are clauses of the contract (quality/quantity of goods, services, work) modified? What is the major cause for modification? Which sectors and which particular kinds of contracts are affected? Specify.

The most common cause of contract amendment by common agreement is the modification of the agreed value of the contract. The parts usually referred to in the justifications are the financial constraints due to the economic and financial crisis, lack of funds and resources, and financial constraints for the recovery of the solvency of local governments. (KBT 2010)

4.

4. 1. Describe briefly the selection and contract awarding procedures. (per tender type). Take the checklist questions as a guideline

See part I.

4. 2. Are qualification criteria appropriate and clearly described? (Y/N)	Y
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4. 3. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application? (Y/N)	Y
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4. 4. Are time limits for the receipt of tenders fairly prescribed and sufficient for the preparation of bids? (Y/N)	Y
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Note: There is a lot of room to use regulation in a flexible way.

4. 5. Are bidders afforded sufficient time to revise their bids following a modification of the documents? (Y/N)	Y
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Note: see note of the previous point.

4. 6. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract? (Y/N)	Y
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4. 7. Is prequalification carried out when appropriate? (Y/N)	Y
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4. 8. Specify the types of contract prequalification is used for.

In every case of public procurement, the tenderer must prove its economic and financial adequacy.

Technical and professional adequacy must be proved in the case of the procurement of goods or services.

In the case of **goods**, the tenderer must report its main deliveries for the past three years, must describe its technical equipment and/or research methods including the taken quality assurance measures, must name the persons and/or organizations that will be involved in the process including their qualifications and professional experience, must describe the product, include a prototype or photos, and must prove with a certificate by an accredited organization that the product meets the required standards, If the product is complex or serves a special purpose, an external review of the tenderer's production capacity, research methods, and quality assurance measures is required. That can be delivered by the contracting authority or by another organization.

In the case of **services**, the tenderer must report its main service deliveries for the past three years, must describe the qualification and professional experience of those involved in the performance of the service, must provide an annual average statistical headcount of staff, must name the persons and/or organizations that will be involved in the process including their qualifications and professional experience, must describe the tools, equipment and technical facilities used in the performance of the service, must describe its research methods and the taken quality assurance measures, must specify the parts of the service that it desires to subcontract.

If the service is complex or serves a special purpose, an external review of the tenderer's production capacity, research methods, and quality assurance measures is required. It can be delivered by the contracting authority or by another organization.

The Council manages and publishes the official list of approved tenderers and determines – in consultation with the appropriate Chambers – the criteria for approval and the methods of certification. (310/2011 Korm. rend.)

4. 9. Who carries out the evaluations? Are evaluations conducted by qualified evaluating committees? Are evaluating committees appointed ad hoc for each evaluation? Describe the composition of evaluation committees.

Art. 22 of the Act on PP specifies the rules of evaluation. The contracting authority must name the persons and/or organisations acting on its behalf and their responsibilities in the preparation, carrying out and internal control of their contract award procedures. All those involved in these tasks “shall be required to possess adequate professional competence related to public procurement, in the field of public procurement, in the field of law and in the field of finance.” For the control and evaluation of contracts an evaluation committee of at least 3 members must be formed. “The work of the evaluation committee shall be documented by drawing up minutes, such minutes containing the members' reasoned evaluation sheets.” „The person taking the decision closing the contract award procedure in the name of the contracting authority may not be a member of the evaluation committee. In the case of a collective decision-making process, persons delegated by the decision-making body in the evaluation committee shall be entitled to have right of consultation.”

4. 10. What kind of information do bid evaluation reports contain? (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified) Describe.

Contracting authorities are obliged to determine the distribution of responsibilities for the preparation, carrying out and internal control of their contract award procedures, as well as the responsibilities of persons and organizations acting on their behalf or involved by them in such procedures. They also must specify the person, persons or bodies responsible for decisions made in the course of the procedure. The persons or organizations involved in the evaluation of tenderers must possess adequate professional competence related to public procurement, in the field of public procurement, law and finance. The contracting authorities shall set up an evaluation committee, at least three members strong, for the evaluation of

the tenders. The evaluation committee submits in writing its professional opinion and proposal for decision to the person or body making the decision in the contract award procedure. The work of the evaluation committee must be documented by minutes containing the committee members' evaluation sheets.
(Act on PP, art. 22 (3) (4))

4. 11. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily? (Y/N)	Y, depends on the procedure
4. 12. Are additional Government approvals required before contracts can be made effective? (Y/N)	N

5. Evaluate briefly the national public procurement system in your country. Identify the major problems and challenges. Is the system clear, comprehensive and consistent compared to EU framework?

The new act on PP in effect since 1 January 2012 modifies significantly the institutional framework. The fact that the new act transforms the Public Procurement Authority into a government bod, jeopardizes its independency from the Government (TI 2011). At this point in time this political risk is not diminished by keeping the Authority accountable to Parliament, because the Government parties have a supermajority there.

The new act on PP turned out to contain highly general framework regulation with a considerable degree of discretion left to implementation i.e., with a lot of freedom for (potential) political manoeuvring.

Transparency International - Hungary criticizes the Act by claiming that it tends to misinterpret the principle of flexibility, since it allows the contracting authorities to define their own rules of procedures for PP not reaching the EU threshold (TI 2011). Notably, in 2010 73,8 % of PP were under the EU threshold, which represented 26,5 % of the total value of procurements (cca. 400-500 B HUF).

The Hungarian office of Transparency International examined the expected compliance of the new regime with the international standards of integrity. They identified several contentious issues. First, there is the question regarding independence and the lack of guarantee for transparency and accountability of the PP institutions. The TI experts believe that there is a lot of deficiency in the activity of the PP Council, which can be attributed to the fact that the Council interprets its duties very narrowly and does not take part pro-actively in the development and implementation of legislation. The culture of Hungarian legislative process might also be the major contributing factor to the low degree of activism in the work of the Council.

A public PP database and effective e-procurement would support the Council's work in monitoring the PP procedures, but none of them is effectively promoted by the official authorities. According the our expert interviews, the Council is, expected to remain rather passive – there is little chance that it should take these strategic steps.

Second, the report highlights severe problems regarding public disclosure policies – in the case of all the interested government actors. These insights are in accordance with the

OECD's relevant country assessment on the availability of the PP documentations and information in Hungary (for further details, see OECD 2011). Third, the TI's report states that the contracting authorities in general spend around 10% of their budget on procurement below the PP threshold. This leaves significant room for corruption and misconduct, especially in the case of splitting procurements in order to circumvent strict regulations.

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