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**TRANSPARENCY AND ACCOUNTABILITY  
IN PUBLIC PROCUREMENTS  
THE CASE OF VISEGRAD COUNTRIES**

# V4

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FINAL REPORT

2012. APRIL

V4

# TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC PROCUREMENTS. THE CASE OF VISEGRAD COUNTRIES.

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## :: PROJECT PARTNERS ::



## :: CONTRIBUTOR ::



This project was supported by Small Grant No. 11130018  
of International Visegrad Fund.

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## **:: INTRODUCTION ::**

Public procurement is a key policy instrument: researches reveal that it accounts for 10%-20% of GDP on average in EU countries (OECD 2011: 148, Beuter 2011:37, Bovis 2007:viii). Public procurement is one of the areas where local and central governments interact with the private sector given the fact that huge funds are relocated from public to private actors. Procurement can also serve as a mechanism to foster additional policy aims such as enhancing competition, innovation and social goals – which may lead to additional conflicts of interest regarding the original goals (EC 2011: 33–47, Bovis 2007:445).

Public procurement is therefore regarded as an area particularly vulnerable to corruption (OECD 2005A, 2007, 2009). However, the enhancement of transparency and accountability in contract awarding mechanisms as well as fair and adequate regulations may contribute to the efficiency of tendering practices (WTO: 2003).

The quality of procurements is thus a key aspect of good governance (OECD 2007). Nonetheless, information on various public procurement systems is scarce and fragmented and no OECD or even EU-wide database on the different regimes exists. Furthermore, as researches show (PPN 2010, OECD 2010, 2011, EBRD 2011), public procurement systems differ inherently. This is especially striking given the fact that public procurements above a certain threshold are to be governed by the same rules provided for in the 2004/18/EC and 2004/17/EC Directives in order to facilitate the establishment of the Single Market and a cost-efficient, strong European economy.

In this study, we attempt to assess the public procurement systems of the four Visegrad countries, Poland, the Czech Republic, Slovakia and Hungary respectively, in a comprehensive manner, with particular regard to transparency and accountability issues.

## **:: METHODOLOGY ::**

In the course of our research, we conducted a survey (see Annex) to reveal the legal and institutional framework and practice of public procurements as well as to map the key elements in national systems. Country experts evaluated the questionnaires during a workshop, where they analysed the similarities and differences between their national tender systems.



## :: HISTORICAL OVERVIEW ::

The legal history of public procurement systems in the Visegrad countries is quite turbulent. Regulations faced several challenges and were subject to many amendments in the past two decades: in this respect, the EU-accession in 2004 and the adaptation of the 2004 directive on public procurement can certainly be regarded as key formative steps (EBRD 2011:66–67, OECD 2010:8). The transposition of the directives is however not the only explanation for the quantity of rapidly changing acts in the Visegrad Countries – in most cases, corruption scandals also necessitated stricter and more comprehensive public procurement provisions in order to abolish legal loopholes (e. g. Allen & Overy 2011, Havlová – Šípová 2012, Papanek 2010).

The first Public Procurement Act in the Czech Republic was adopted in 1995, followed by a new legal framework in the beginning of 2004. As the new public procurement directives were adapted two months later, the law became obsolete very soon and the Czech Republic was obliged to enact the EU-conform rules in a completely new Act No. 137/2006 *Coll. on Public Contracts* (hereinafter referred to as CPPA). However, the CPPA has been extensively amended several times (in 2010 and 2012<sup>1</sup> respectively), partly due to the further development of EU-provisions and partly to strengthening rules of transparency.

The Slovak Republic has seen four different acts on public procurements (dating from 1993, 1999, 2003 and 2006). The actual regulation in effect is Act No. 25/2006 *Coll. of Laws on Public Procurement and on the Amendment of Certain Acts* (hereinafter referred to as SPPA), and several amendments have been made ever since – no year has passed without an amendment since the adaptation. The sectoral scope of the legislation has been expanded and rules have been strengthened to minimize the possibility of violating fair competition (Allen & Overy 2011).

In Hungary, Act no. 108/2011 *on Public Procurement* (hereinafter referred to as the HPPA) was passed to replace the previous procurement act in effect since 2003. (Both the first Act in 1995 as well as the second one in 2003 were adopted due to a regulatory pressure and were subject to numerous amendments. [Tátrai 2006: 155–161]) The new act entered into force on 1 January 2012.<sup>2</sup> The main goals of launching a new regulatory package were to

<sup>1</sup> The extensive amendment to the Public Procurement Act (act No. 55/2012 Coll.) was adapted on 24 February (Havlová–Šípová, 2012) in a course of a heated political debate, few days after the final period of our research. The Act is in effect since 1 April. We attempt to indicate the major procedural amendments relevant to this study, although statistics and general assumptions are based on the previous legislation.

<sup>2</sup> The new act significantly modified the conditions of particular public procurement procedures and merged the previous “simplified procedure” into different procurement categories. Since no statistical data is available on the rate of new procedures so far, we use the pre-2012 categories and names when analyzing statistics. In case of regulatory issues and concerns, we refer to the current and effective legislation.



increase transparency and enhance the stability and simplicity of the procurement system in Hungary (Explanatory Memorandum for HPPA, 2011: 96). As a matter of fact, the new act is shorter and more comprehensive than the previous one (see the 183 versus the 407 articles), and a number of technical and procedural provisions were reviewed. However, experts suggest that in case of contracts not exceeding the EU-threshold, the new act upsets the balance between the demand of flexibility and transparency at the expense of the latter (TIH 2011).

The Polish regulations on public procurement are relatively stable compared to other countries of the Visegrad cooperation: from 1994 to 2004, tendering was regulated by an act on public procurement from 10 June 1994 with several amendments. The effective law on public procurements (Public Procurement Law, hereinafter referred to as PPPA) was introduced on 29 January 2004. Major amendments took place in 2006 in order to transpose the EC directives.

## **:: NATIONAL STRATEGIES ON PUBLIC PROCUREMENT ::**

As public procurement is regarded as a key policy tool, examining broader policy frameworks may be important as well. National strategies on public procurements can reveal the future evolution of procurement systems – however, there is no comprehensive action plan for the development of public procurements except for Poland. The first Polish action plan regarding procurements was introduced to promote green procedures. From 2010 on, the new National Action Plan (NAP 2010) on sustainable public procurement is in effect for the period between 2010 and 2012.

The strategic document of the Hungarian government, the so-called “*Széll Kálmán Plan*” (2011: 20, 34) refers to the radical reform of the public procurement system and one of its aims is to ban off-shore companies thus making contract awarding more transparent. The *National Reform Programme 2011* contains a reference to the need for innovative strategies in the field of public procurements. Nonetheless, the program fails to provide a detailed action plan.

Whilst a project of the Czech government (“*Streamlining the management of public property and resources*”) as well as the country’s Anti-corruption Strategy (2011) contain elements related to public procurement, there is no specific strategy on public procurements in effect in Slovakia.



## :: GOVERNING PRINCIPLES ::

Since public procurement is regarded as a government activity “most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors” (OECD 2009), OECD developed a set of pillars and principles to enhance integrity in tendering practices.

The four basic pillars of integrity in public procurement are transparency, good management, the prevention of misconduct as well as accountability and control. Generally, these principles are expressed in the procurement law of each Visegrad country except the Czech legislation which contains no basic principles to avoid misconduct in public procurements.

Nonetheless, after examining specific principles recommended by OECD, a mixed set of impression unfolds: procurement laws either do not contain all the recommended guiding principles or they are expressed only formally but unsupported by detailed legal provisions.

OECD Recommendations in V4 states	CZ	HU	PL	SK
Providing an adequate degree of transparency throughout the whole procurement cycle in order to promote fair and equitable treatment for potential suppliers	Y	N*	Y	Y
Maximising transparency in competitive tendering and taking precautionary measures to enhance integrity, in particular for exceptions to competitive tendering	N	N*	Y	Y
Ensuring that public funds are used in public procurement according to purposes intended	Y	Y	Y	partly
Developing a set of professional standards to enhance the knowledge, skills and integrity of public procurement officials	N	N	Y	Y
Putting mechanisms in place to prevent risks to integrity in public procurement	N	N*	Y	partly
Encouraging close co-operation between government and the private sector to maintain high standards of integrity, in particular in contract management	Y	Y	Y	N
Providing specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct in public procurement	Y	Y	Y	Y
Establishing a clear chain of responsibility together with effective control mechanisms	N	N*	Y	partly
Handling complaints from potential suppliers in a fair and timely manner	Y	Y	Y	Y
Empowering civil society organisations, media and the wider public to scrutinise public procurement	N	N	Y	Y

\*=in practice

Source: questionnaires





The lack of a clear chain of responsibility and the high level of formalism are the key deficiencies mentioned by the country experts, which is especially striking in the case of Hungary and the Czech Republic.

## **:: THE SCOPE OF PROCUREMENT ACTS ::**

As mentioned above, all the Visegrad countries – similarly to other countries acceding to the EU in the course of the 2004 and the 2007 enlargement (PPN 2010: XVII) – adapted their unique public procurement laws, generally stipulating the framework for procurements both above and below the EU-threshold (OECD 2010). The European Commission has not broadened the scope of the directive, but a communication (EC 2006) has suggested that the rule of fair competition and anti-discrimination provisions also apply to all public procurements below the EU-threshold. Still there are different exemptions and facilitations in each country's public procurement act (alongside with other EU-regulations).

The Slovak Act on procurement can be considered as the most comprehensive one as even defence procurement falls within the scope of it (although with an exemption granted in the Article 296 of the EC Treaty when the subject relates to the production of “arms, munitions and war material” or trade in them.). Despite the fact that public procurement is not governed by secondary legal institutions (e.g. governmental or ministerial decrees) in the Czech Republic either, the scope of CPPA is considerably narrower than in Slovakia as it does not contain rules for procurements related to public utilities below the EU threshold. Moreover, the Czech Republic had one of the highest national thresholds in Europe until very recently (OECD 2010:14)<sup>3</sup> virtually leading to the fact that around 30% of public contracts were not considered to be public procurements at all (TIC 2008). In Slovakia, where the act on public procurement contains rules for all types of tenders, the Act itself contains special – and less transparent or rigorous – rules as well.

The new Hungarian Act follows a different logic: provisions on the procurements of utility services or issues of national security and classified data as well as provisions on design contests are regulated in governmental decrees. Public services (e.g. public transport, public education) are also exempt from the scope of the Act and are regulated by particular governmental decrees. Technical regulations concerning the procedure of public procurement are also determined by secondary legal instruments.

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<sup>3</sup> 2 000 000 CZK in case of supplies and services and 6 000 000 CZK in case of construction works, which amounts around 75 000 EUR and 235 000 EUR respectively (20012.01.01 historical rate.) Act 55/2012 halvened these thresholds but they may still be regarded as relatively high.



In this respect, the scope of the Polish Act is quite similar and can be regarded as a regulatory framework as well, since technical provisions on the details of public procurement processes (e.g. standard forms of notices, lists of types of documents which may be requested by the awarding entity) are regulated by prime ministerial regulations. In Poland, the Prime Minister has the authority to provide a list of so-called non-priority services.<sup>4</sup> For these types of services, the provisions of PPPL on time limits and other restrictions do not apply.<sup>5</sup>

In accordance with EU regulations, specific utilities markets in certain countries may be exempt from public procurement rules above the EU-threshold once it can be proved that the legal environment permits access to and competition in the sector concerned (see EU Single Market webpage<sup>6</sup>), and the utility operators of the respective market are subject to competitive pressure. Considering the number of its exempted markets, the scope of the public procurement legislation in the Czech Republic becomes even narrower. The following sectors are exempted from public procurements in the Visegrad Four:

Czech Republic	Hungary	Poland	Slovakia
Gas Storage			
Exploration for and extraction of coal	Certain financial services in the postal sector	Production and wholesale of electricity	none
Electricity production			

Source: [ec.europa.eu](http://ec.europa.eu)

## :: ANTI-DISCRIMINATION ISSUES ::

In case of the Hungarian and Czech regulations, we may also encounter certain preferences for particular suppliers. The aim of these provisions generally is to foster the enforcement of other government policies.

<sup>4</sup> Hotel and restaurant services, rail transport services, water transport services, supporting and auxiliary transport services, legal services, personnel placement and supply services, investigation and security, except armoured car services, education and vocational education services, health and social services, recreational, cultural and sporting services

<sup>5</sup> “The time limits for submission of requests to participate in a procedure or time limits for submission of tenders, obligation to demand deposit, obligation to demand documents certifying the fulfilment of conditions for participation in the procedure, prohibition to determine contract award criteria on the basis of the economic operator’s characteristics as well as preconditions for the selection of negotiated procedure with publication, competitive dialogue and electronic bidding shall not apply.”

<sup>6</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/rules/exempt\\_markets/index-en.htm](http://ec.europa.eu/internal_market/publicprocurement/rules/exempt_markets/index-en.htm)



In Hungary, contracting authorities may reserve smaller contracts for small and medium size enterprises (SMEs). As the HPPA states:

“the contracting authority may reserve the right to participate in a 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.” (HPPA 122 (9))

The Czech Act provides advantages for economic actors employing people with disabilities. In case of “below-the-threshold” public supply and service contracts,

“[if] suppliers employing more than 25 employees, out of whom more than 50 % are handicapped people, take part in open procedure or restricted procedure for awarding below-the-threshold public supply contracts or below-the-threshold public service contracts, the tender price offered by such suppliers shall be evaluated as the lowest one, if it does not exceed the lowest tender price submitted by the other tenderers, by up to 15 %.” (CPPA 101 (5))

## :: THRESHOLDS AND PUBLIC PROCUREMENT METHODS ::

Analysing the scope of public procurement acts leads us to one of the most essential features of the respective public procurement systems: the methods of procuring and their attached conditions. As mentioned before, all the public procurement systems in the V4 countries allow direct purchase below a particular estimated value of contract. It is more striking however how these cut of points for national procurement systems vary considerably in Visegrad Countries (in case of classic contractors).<sup>7</sup>

	Czech Republic	Hungary	Poland	Slovakia
public service and supply	39 050 EUR (1 000 000 CZK)	25 400 EUR (8 000 000 HUF)	14 000 EUR	10 000 EUR
construction work	117 150 EUR (3 000 000 CZK)	47 650 EUR (15 000 000 HUF)	14 000 EUR	20 000 EUR

*All exchange rates calculated as of 2012.01.01. historical rate*

The Czech figures are even more striking considering the fact that the mentioned values have actually been their *doubles* before the recent amendment of CPPA (Havlová – Šípová 2012). Nevertheless, Slovakia has the record for the most drastic reduction in the public

<sup>7</sup> The classic contracting authorities are: the state, the regional and local governments, public law institutions, and associations formed by one or more of these entities



procurement threshold: in 2011, a major amendment decreased the “below-threshold” level from 30 000 to 10 000 EUR in case of services and goods and from 120 000 to 20 000 EUR in case of construction works (Allen&Overy 2011).

Although direct purchase is easier and more flexible than specific tendering methods, extending the scope of public procurements and particularly shifting towards more open and transparent methods can imply higher levels of cost-effectiveness and may also result in the prevention of corrupt techniques related to illegal division of tenders and custom-tailored tender notifications. (Kameník et al. 2011, AR CZ 2010:17)

However, in several countries there are more than one thresholds: Slovakia and the Czech Republic have several bands below the level of the EU thresholds. In the Slovak public procurement system, the applicable procedures are basically the same (open, restricted, negotiated with or without publication and competitive dialogue) as defined in the EU framework, although various simplifications may take place particularly regarding time limits. Open and restricted tenders are the default procurement methods whilst all other methods have several attached conditions.

type	supply and services estimated contract value, EUR	construction works estimated contract value, EUR	minimum time limits for the receipt of tenders days
„low value”	<10000	<20000	none
„below the threshold”	10000–40000	20000–200000	20 days (from the date of the submission of the notification to the public procurement office)
„below the limit”	40000–125000*	200000–4 845 000	30 days in open method, 22 in other procedures
„above the limit”	>125000	>4 845 000	according to general regulations of EU-directives [basically 45 days, 30 days (in case of a pre-notice published in advance), 25 days (in case there is electronic access to documentation), 22 days minimum]

*\*In case of defence goods and certain telecom services: 193 000 EUR*

As for the Czech Republic, intermediate bands are particularly important because of a simplified “below-the-threshold” procedure. In this case, contracting authorities shall invite at least five candidates who have to prove their compliance with the qualification requirements. There are no time limit obligations. The procedure may be applied for the procurement of goods and services below the EU-threshold and for public works contracts



with an estimated value not exceeding CZK 20 000 000 (780 200 EUR). Practically, it means that the more rigorous EU-regime applies for all construction works above this limit.<sup>8</sup> Research shows that the system has several deficiencies, e.g. contracting authorities tend to overuse the simplified method. As Kulík et al. (2011) put it: “For 16 % of construction procurements, the expected value was set in the tight range of CZK 19 to 20 million, [*just below the limit*], which confirms a clear effort on the part of contracting authorities to make the tender procedure easier.” There are other regular methods of procuring however time limits may be significantly shorter.

New Hungarian regulations seem even more flexible (and thus more vulnerable to corruption), as awarding entities have the widest possibility to choose negotiated procedure without notification if the estimated value of public supplies or services does not reach HUF 25 million (79 400 EUR) or the estimated value of public works does not reach HUF 150 million (476 450 EUR). Though these provisions may facilitate procurement methods, they raise serious concerns about the decreased level of transparency in case of such (usually but not exclusively) small-value contracts (TIH 2011). Procedures may thus be accelerated, but reasons for the simplified process shall always be justified in the notification. (Still, reasoning the justification is regarded as merely a formal obligation.)

Another interesting feature of the Hungarian regulatory framework is that contracting authorities may develop “independent procedural rules – according to their choice – for the execution of public supplies and public services not reaching EU thresholds.” (HPPA 123 (1)) Rules concerning publication imply that new individual procedures should always be specific invitation procedures and previous publication of the contracting procedure is an obligation. At the time of writing this paper, information on individual procedures was hardly available and thus insufficient to draw significant conclusion on the new methods.

The Polish regulations also apply simplified procedures. The “request-for-quotations” method is similar to the simplified “below-the-threshold procedure” specified in the Czech legislation on procurements, but it may only be used under more rigorous conditions, i.e. if the objects of the contract are generally available supplies or services of fixed quality standards, where the contract value is less than:

- 130.000 EUR in case of contracts related to public finance sector,
- 200.000 EUR in case of other sectors
- and 400.000 EUR in case of utilities contracts. (PPPA 70, 11(8))

In special cases (e.g. design contests), Polish entities have the possibility to award a contract after negotiation with only one economic actors (PPA 67). The so-called single

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<sup>8</sup> Obviously, notifications on contracts not exceeding the EU-threshold which shall not be submitted to the EU Tender Bulletin.



source procurement may be regarded as a special type of negotiated procedure without publication.

Polish provisions provide the most generous accelerating options for procedures below the threshold: the time limit for the receipt of tenders in open and restricted procedures may be shortened to 7 days in case of supplies and services and 14 days in case of construction works. In case of negotiated publication with notification and competitive dialogue, the minimum time limit is 10 days (from the date of publication in the Bulletin). The Act does not contain concrete time limits for negotiated procedure without publication and simplified procedures.

However, it is worth looking at the statistics published in annual reports.<sup>9</sup>

	Czech Republic		Hungary		Poland		Slovakia	
	% in volume	% in case	% in volume	% in case	% in volume	% in case	% in volume	% in case
open and restricted method	40% (open 36%)	N/A	67%	66%	76% (open 60%)	85% (open 78%)	74%	87% (open 50%)
negotiated with publication	32%	N/A	18%	13%	3%	1%	0%	0%
simplified, without publication methods	26%	N/A	15%	21%	21%	18%	26%	13%

Source: annual reports, questionnaires

The table shows that whilst there are various procurement traditions, habits and procedures existing in the different V4 countries (see for example the rate of negotiated procedures), there is a steady share of around 20% of simplified, less transparent and thus more corruption-prone procedures.

## :: SELECTION AND TENDER EVALUATION PROCEDURES ::

Undoubtedly, custom-tailored qualification criteria pose the greatest threat to the fairness of competition and may be regarded as one of the most common corrupt techniques in public procurements (see OECD *Indicators*). Therefore, all V4 countries have restrictions on the inappropriate use of qualification criteria.

<sup>9</sup> Note that available statistical data dates back to 2010. There have been fundamental changes in the regulatory framework with regard to the thresholds and thus the scope of statistics in Slovakia and Hungary as well.



The Slovak and Czech contracting authorities may specify personal, technical, economic and financial criteria, all of which must be related and essential to the current subject of the public procurement. The abusive use of technical specifications may be contested by the tenderers. The Polish and Hungarian legislations also forbid inappropriate use of qualification and contract awarding criteria.

There is a rare and not quite explicable provision in the Hungarian act on public procurements which allows contracting authorities to require from tenderers to purchase qualification documentation. Since the act authorizes contract awarding authorities to determine the price of the document based „on the costs incurred in connection with their production and provision to the tenderers, considering the contract award procedure” (HPPA 52 (1)), tender documentations are regularly overpriced, deterring prospective bidders from taking part in the procurement. The provision is regarded as a particularly serious problem as such procedures restrict competition in a highly questionable way. In Slovakia and the Czech Republic, contracting authorities also have the right to claim reimbursement for the costs relating to the provision of the tender documentation, but the maximum price is restricted to the reproduction (i.e. copying) costs. (CPPA Art. 48. (4), SPPA Art. 34. (11))<sup>10</sup>

In all Visegrad countries, there are specific tender committees (composed of at least 3 people) to evaluate bids, whose members may be appointed in an *ad hoc* manner (such as in Slovakia). In Poland, permanent evaluation committees also exist. In the Czech Republic, there are two separate committees to evaluate tenders: the first opens bids and checks formal requirements while the second committee is composed of public procurement experts and representatives of the contracting authority. The latter one is responsible for the substantive evaluation of bids. The Slovak evaluating committee is generally composed of the employees of the awarding entity; less frequently external experts and NGOs are also invited. In Hungary, the members of evaluation committees must have proven professional competence in public procurements.

Concerning contract awarding, in Slovakia the selection criteria “economically most advantageous offer” is rarely used (89% of Slovak tenders are evaluated by price). Though it may seem as a technique significantly increasing the level of cost-efficiency, experts suggest that the lack of such criteria may lead to the decrease in quality of procured items and thus it can reduce the overall efficacy of public procurements. On the other hand, research shows that only 55,37% of contracts were awarded by the lowest price criteria in the Czech Republic – as a result, public contracts in the Czech infrastructure are 38% more expensive than average construction prices.

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<sup>10</sup> However experts suggest that tender documentations are generally free in both countries.



## :: ELECTRONIC PROCUREMENT ::

This study discusses electronic procurement in a separate section since it is not simply a type of procurement procedure but also a set of methods which is widely regarded as a key tool in enhancing the effectiveness of public procurement and the increase of transparency (TI EU: 2011). Besides e-auctions, electronic notifying methods may also contribute to creating a comprehensive database on public procurement as automatic software may easily sort out inappropriate, erroneous or even suspicious notifications, not only saving costs and reducing administration but also repelling corruption. The European Commission accepted the *Action plan for the implementation of the legal framework for electronic public procurement* in 2004, yet Visegrad countries are still facing challenges in the proper adaptation of these techniques. Although legal regulations allow the use of electronic auctions in every country, electronic procurement is not widely applied – except for Slovakia (Siemens Country Study 2010: 73, 156, 266, 302).

The Public Procurement Act of the Czech Republic introduced the method of electronic auctions (CPPA 96). They may be used in all kinds of procedures except for *negotiated procedure* and *competitive dialogue*, if the usage of electronic bidding and the specifications (quantifiable criteria) were indicated in a proper manner at the beginning of the procurement procedure. There are several restrictions in case of procurements involving certain intellectual property rights.

The new Hungarian Act on Public Procurement also facilitates the use of electronic means in communication. The possibility of carrying out the public procurement procedural actions by electronic means was introduced in the legal system in 2007. Although there has already been some progress in the modernisation of public procurements, completely electronic procurements are still only hypothetical options – electronic auction is not used effectively. According to experts, possible reasons may include the following: the lack of funds to provide a well-functioning and secure online system as well as a natural disinterest from the side of the stakeholders involved (government authorities, public tenderers and major bidders). In its 2010 Annual Report, the Hungarian Public Procurement Committee urged the Government to obligate the use of electronic auctions in certain procurements (AR HU 2010: 46-48).

Similar to the case of Hungary, the Polish awarding entities and market actors can provide statement requests and notifications by electronic means. Tenders may be submitted in electronic form with a secure and verifiable electronic signature using a valid and qualified certificate. The use of ICT solutions in public procurements are encouraged by the Public Procurement Office as well: contracting authorities and bidders have access to a wide range of free IT tools to facilitate further modernisation of the system.

Research shows that the Slovak Republic is pioneering in ICT solutions: electronic





auctions are now mandatory for all goods and services above 40.000 EUR and all works above 200.000 EUR which led to a significant decrease in prices (TIS 2011).

## :: SYSTEM OF APPEAL ::

The appeal systems are diverse in the Visegrad states; however, special authorities exist in all the four countries to resolve disputes related to public procurements. The transparency of appeal systems and broad access to the procedure is crucial: the inaccessibility of remedies opens up the door to unfair contract-awarding practices. Nonetheless, long and difficult appeal procedures can have a significant negative effect on the costs and flexibility of public procurements (EBRD 2010: 5).

In Slovakia, there is a three-tier appeal system: anyone can ask for the review of a contract awarding process. In the first phase, the awarding entity has the authority to modify its own decision. If the appeal is rejected, the applicant can turn to the Office of Public Procurement and as a conclusion, the Office may intersect or annihilate the whole contracting process. In case of unfavourable decisions, actors may turn to civil courts to enforce their claims. In most serious cases, financial sanctions up to 5 percent of the contract value (or the expected value) may be imposed for infringement. Contracting authorities can be fined from 300 to 30.000 EUR for administrative failures (SPPA 136–145).

Reviewing Czech procurements fall within the competence of the Office for Protection of Competition (the “Office”). Similarly to the Slovak regulations, actors shall submit their objections to the contracting authority in the first instance. In case the procedure does not lead to successful dispute resolution, the applicant may lodge a complaint to the Office for Protection of Competition. The Office can prohibit contracting (or in case of an existing contract, it may ban the performance of the contract), annihilate the decision or action of the contract awarding authority, or the whole contracting procedure. Tenderers who gave false information may be banned from public procurement processes and black-listed. Generally, the appeal deposit amounts 1%<sup>11</sup> of the bid price of the petitioner. The purpose of this is to prevent unjustified claims and to reduce the burden on the Office. If the proposal turns to be unjustified, the deposit goes to the state budget. The Office has no legal authority to review small scale procurements leading to massive infringement of transparency and anti-discrimination provisions. In these cases, applicants may not appeal but submit a complaint at the contracting authority or turn to general courts. (CPPA 110–124).

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<sup>11</sup> Minimum 50 000 CZK (EUR 1950) and maximum 2 000 000 CZK (EUR 78100) deposits are determined by the Act.



A similar two-tier system exists in Hungary, too. However, procedural rules are much more elaborated. As a basic rule, all complaints about infringement of public procurement provisions are handled by the Public Procurement Arbitration Board (hereinafter referred to as PPAB), an organisation operating in the framework of the Public Procurement Council. Actors may appeal for a judicial review of the decisions made by PPAB.<sup>12</sup> PPAB has the authority to commence procedures on its own initiative as well. Meanwhile, in case of classified contracts, the PPAB does not have the authority to review preliminary decisions of the competent Committee of the Parliament on not applying the regulations of the public procurement act; in such cases, actors can turn directly to competent courts. The PPAB may indeed impose retentive fines which may sum up to 15% of the procurement value (if there was no public procurement at all) or 10% in case of serious infringement. Tenderers may be banned from public procurements and blacklisted (HPPA 133–166).

The Polish review system differs fundamentally from the aforementioned ones since review authorities are organisationally detached from the responsible authority for public procurement. In case contracting authorities breach the regulations of the public procurement act, actors may appeal to the National Appeal Chamber. Members of the chamber have to meet high qualification requirements and are to be appointed by the Prime Minister of Poland. Interested parties of the appeal procedure can also make their complaints to the court against the Chamber's ruling. Nonetheless, there are several restrictions in the review system in case the value of the contract is under the EU thresholds – similarly to the Czech system. Appeals may only be submitted to the National Appeal Chamber in case of serious infringement actions (e.g. the exclusion of the applicant from procurement proceedings). In other cases – besides “informing” the awarding entity about the infringement –, economic actors have no legal tools to enforce their claims. This however does not necessarily mean a comforting resolution for applicants as awarding entities are not obliged to answer complaints.

Particularly serious infringements infer automatic financial sanctions, but unlike the Slovak and Hungarian examples, these fines are not expressed as a percentage of the contract value. There are three different categories (3000 PLN, 30000 PLN and 15000 PLN) determined by the value of contract. Fines can be significantly lower than those imposed in Hungary and Slovakia, however, in case the public procurement is related to a project

<sup>12</sup> Administrative fees for requesting the Public Procurement Arbitration Board to initiate proceedings have been raised significantly in the new Hungarian regime. The amount of the fee is very similar to that in the Czech Republic: 1% of the value of the procurement not exceeding 25 000 000 HUF (79 500 EUR) if the value of the procurement reaches the EU threshold and 1% of the value of the procurement, but at least 200 000 (EUR 635), at most 6 000 000 HUF (EUR 19 000). Fees may be doubled if further elements of the procedure are contested as well.



implemented from EU funds – which is usually the case –, a special financial penalty may be imposed on the awarding entity (PPL 179–203).

Beyond the problems outlined above, Polish and Slovak experts and economic actors often criticize the decisions of the review board for their incompetence and/or incoherence.

## :: ACTORS IN PP ::

Besides suppliers and contractors, other entities may also take part in the public procurement process – not to mention the so-called outsourced procurements. In such cases, the awarding procedure is delegated to private entities. As the organisational scope of public procurements gets broadened, it is more likely that smaller awarding entities have no requisite knowledge on how to use public procurements in a cost-efficient way. Consequently, procurers may enlist procurement experts as well. This method is widely criticized – especially in the Czech Republic – for the abuse of the public procurement system: instead of hiring experts and legal firms to conduct procurements in a more effective manner to enhance quality and reduce the costs of procurements, they are rather regarded as contributing to a more effective custom-tailoring of tender notifications.

Nonetheless, in order to enhance the transparency there are established state entities to ensure administrative and regulatory control over public procurements in all four Visegrad countries.

In the Czech Republic, the Ministry of Regional Development is responsible for harmonizing rules and monitoring compliance. As a subordinated entity, the Czech Post is administering the public procurement publishing system. Unlike other Visegrad countries, the Czech Republic does not have a central entity solely dedicated to public procurements – the Bureau for Protection of the Competition (*Úřad pro ochranu hospodářské soutěže*, UHOS) has administrative control over public procurements among its other duties. The Supreme Audit Office also possesses authority to control state institutions.

In Hungary, the Public Procurement Authority (*Közbeszerzési Hatóság*) operates subordinated to the Hungarian Parliament. Among its other duties, the PPA monitors the enforcement of the law, formulates opinion on draft legislations, develops guidelines (without legal force), collects and publishes statistical data on public procurement, edits the Official Journal of the Authority (the Public Procurement Bulletin), verifies and publishes the notices related to the contract-award and design contest procedures. A Council operates within the framework of the Authority, constituted of 10 members headed by an independent President (as a civil servant), while the members of the Council are designated by the



major actors of public procurement: three members represent the public interests, three the general interests of the contracting authorities and three the general interest of the tenderers (HPPA 168:1–3). The Ministry of National Development, more exactly the Deputy State Secretariat for Public Procurement is in charge of regulation and oversight, however, its responsibility is considerably narrower than that of his Czech counterpart. The duty of the State Secretariat is to develop the conditions and make 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.

Internal audit is provided by the PP Authority and the PPAB (see above), but only in case a review is requested during the procurement procedure.<sup>13</sup> Comprehensive external audit has been provided by the State Audit Office every 3 to 5 years. Until 2010, the State Control Office also provided external audit by its own discretion, but it does no longer have the power to monitor public procurements.

In Poland, the Public Procurement Office President is a central government body competent in matters concerning public contracts. The PPO President is more of a political position as he/she is subordinated to the Prime Minister who also has the authority to issue the statute of the organization. The responsibilities of the President of the PPO are similar to that of the Hungarian Public Procurement Authority (e.g. preparing drafts of normative acts on public contracts, deciding on individual issues stipulated in the PPPL, issuing the electronic Public Procurement Bulletin, preparing training programmes). He/she is responsible for the promotion of the uniform application of the procurement provisions and has the right to commence ex officio control of contract-awarding procedures. The President has control over the awarded contracts co-financed by the EU prior to the conclusion of the contract (ex-ante control), if the value or framework agreement is equal to or exceeds the PLN equivalent of EUR 20.000.000 in case of works and EUR 10.000.000 in case of supplies or services. These contracts are also audited by the agencies responsible for the reimbursement of EU-funds.

Polish awarding entities are also controlled by regional audit chambers, tax audit agencies and the Central Anticorruption Bureau.

<sup>13</sup> The only public tenderer where internal audit is provided on a case-by-case basis is the National Development Agency when dealing with EU co-financed development projects.



In Slovakia, the Office of Public Procurement – similarly to other Visegrad countries – conducts oversight over procurements, sanctions procurers for breaching procurement law, publishes guidance on tendering methods, keeps all the documentation on tenders, publishes procurement notices in the bulletin, issues procurement permits certifying individuals to carry out procurements, and once a year publishes analysis of the tender results in Slovakia.

## **:: HANDLING CONFLICTS OF INTERESTS ::**

Resolving conflicts of interest is a major issue in public procurement: partiality and clientelism not only threaten the fairness of tenders but also have a negative effect on the integrity of public life (OECD 2005B).

The Czech act on public procurement contains no specific regulation on the exclusion of certain persons or organizations from the procedure, but in order to enhance greater transparency, the Czech regulations stipulate that tenderers shall submit a list of their shareholders, members and employees whose previous jobs may raise concerns of conflict of interest. However, the *Act 159/2006 Coll. On Conflict of Interest* stipulate that a person who has dealt with the financial resources of public administration in a value exceeding 250 000 CZK or was directly involved in decisions concerning the award of public contracts shall not be employed at a corporation for one year after these activities, in case the corporation has been contracted with the previous employer of the public official in the last 3 years before the end of his/her public function. The provision aims not only to repel the revolving-door phenomenon but also the system of favours.

The Slovak act contains special regulations preventing conflict of interests in case of members of tender evaluation commissions and design contest juries: a person who was related to the tenderers and contesters (e.g. having been employed by one of the tenderers or its supervisory associations) one year prior to his appointment cannot hold such position. Moreover, former employees of the Public Procurement Office (the review body of public procurements) are excluded from the evaluation procedures (except for the procurements of the Office itself, obviously).



In this respect, the Polish act may be regarded as the most rigorous one. Exclusion from the *whole procedure* of contract-awarding applies for people who have been

“– competing for a contract;

– remain in matrimony, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or is related due to adoption, legal custody or guardianship with economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;

– during the three years prior to the date of the start of the contract award procedure they remained in a relationship of employment or service with the economic operator or were members of managing or supervisory bodies of economic operators competing for a contract;

– remain in such legal or actual relationship with the economic operator, which may raise justified doubts as to their impartiality;

– have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.” (PPPA Art. 17)

The Hungarian regulation is much vaguer: according to HPPA Art. 24 (2), people who have common (economic or other) interests with an economic actor participating in the contract award procedure are not allowed to participate in the procedure on behalf of the contracting authority.

## :: INTEGRITY GUIDELINES AND CODES OF ETHICS ::

Besides strict legislation, the integrity of public procurements may be fostered by softer tools as well. Codes of ethics and integrity guidelines are important devices to prevent corruption and misguidance.

In Slovakia, integrity guidelines exist as a tool to enhance compliance and clean criminal record is required for those working in the area of public procurement. In the Czech Republic, only some local municipalities have ethical codices. The code of ethics prepared by the “Platform for transparency in public procurement” is not widely used. Hungarian public procurement experts and NGOs have urged the introduction of a code of conduct for many years (TI 2011) and it is expected to be released in 2012. However, it may only be effective in the government sector. In Poland, the President of the Public Procurement Office prepares ethical and integrity guidelines for people working in the public procurement area.

It is still promising though that regular trainings and examination of public procurement experts are provided region-wide.



## :: ACCESSIBILITY OF PUBLIC PROCUREMENT DOCUMENTS AND NOTIFICATIONS ::

Transparency can be further measured if we analyse the content and accessibility of procurement notices and documents. For procurements above the EU-threshold, all the Visegrad countries use the same standard forms of notices, and similar standard forms are introduced in each country for procurements below the threshold as well.

Standard notices exist for initiating a public procurement procedure (in case of open, restricted and negotiated with publication procedures), and the results of procedures are published alike in local electronic bulletins.

A computer-readable, regularly updated database on the results of public procurements is essential to foster the transparency and to facilitate further, data-driven researches (and the work of anti-corruption agencies as well). Unfortunately, Slovakia is the only country where the electronic bulletin is published in a way to create an appropriate and accurate, machine-readable, automatic database on public procurement. This shift to structured data management made the creation of further computerised applications easier as well.<sup>14</sup> However, while a timeline follow-up of a tender is possible in the Czech Republic and in Poland (i. e. tenders have a specific ID from the beginning to the end), there is no similar tool in Hungary and Slovakia.

Whilst data-management is automatic in Poland, the built-in challenge-response test on the website of the Public Procurement Office makes the automatic re-use of public procurement data virtually impossible. In the Czech Republic, the database on governmental contracts is easily accessible, however, as a significant part of public procurements are conducted by local municipalities and sectoral contractors, the system can be considered as deficient (Siemens 2010A).

In this respect, the Hungarian publishing system may be considered as the least sophisticated: the Public Procurement Authority publishes the Electronic Bulletin in .pdf format.<sup>15</sup> The content of the bulletin is searchable for certain criteria, but data cannot be scraped in a structured form. The extremely poor quality of notices (such as the insufficient definition of the subject of contracts, typos or missing data) particularly in notification of tender results also create an obstacle to a transparent procurement system (BCE KKK 2012) – and raises the suspicion of deliberate misconduct, especially since many times procurement “experts” are regularly enlisted to conduct public procurement procedures.

<sup>14</sup> Transparency International Slovakia has developed an online tool to track the top public contracts. <http://tender.sme.sk/en/>

<sup>15</sup> It is available in html format as well.



Theoretically, other procurement documents (e.g. the copies of bids, evaluation reports, signed contracts) should be available for the public as well. Nonetheless, it is only Slovakia where procurement documents are proactively published on a central website. In Hungary, FOI legislation stipulates that awarding entities publish contracts and procurement plans on their website. However, this activity is rarely monitored and the form of publication is not determined: even on the central website of the government, we find different formats (web, html, .pdf, .zip). In Poland and the Czech Republic, access to procurement documents is mainly ensured by access to information regulation – however experts suggest that in the Czech Republic, access is in fact constrained.

Information accessibility in Visegrad Countries	Czech Republic	Hungary	Poland	Slovakia
number of received bids	Y	Y	Y	Y
number of contracts awarded	Y	Y	Y	Y
names of successful bidders / losing bidders	Y	Y	Y	Y
public advertisements	N**	Y	Y	Y
prequalification documents (if used)	N**	N	N**	Y
the prequalification evaluation report documenting any decisions not to prequalify certain potential bidders	N**	N**	N**	Y
the bidding documents	N**	N**	N**	Y
record of any pre-bid meetings	N**	N**	N**	N
final bid evaluation report	N**	N**	N**	Y
detailed record of the reasons used to accept or reject each bid	N**	N**	N**	Y
copies of bids	N**	N	N**	Y
appeals against procedures or award recommendations	N**	Y	N**	N
signed copy of the final contract	N**	Y*	N**	Y
contract modifications	N**	Y*	N**	Y
documents on contract performance/ completion	N**	N*	N**	N

\* partly \*\* may be accessed via FOI rules

Source: questionnaires





## :: CONCLUSION ::

This study tried to provide a comprehensive picture on the public procurement systems in the Visegrad countries. Nonetheless, since public procurement is a broad topic related to different policy issues, we tried to focus solely on the regulations and practices connected to anti-corruption and transparency.

Alongside with EU-regulations, the prevention of corruption has always been one of the main constitutive elements in the legislative framework of public procurements in the Visegrad countries. Corruption scandals led to recognition for the demand of more rigorous regulations. However, the legal framework itself is not able to repel corruption. Transparency, though, can reduce the misuse of procurement systems for criminal moneymaking.

Flexibility and transparency may be contestant requirements leaving serious loopholes in tendering practices. Experience shows that permissive regulations give way to corrupt techniques: accelerated procedures without proper justification (*Poland*), manipulation with the thresholds (*Czech Republic*) and negligent use of notifications (*Hungary*) are just a few examples.

The Slovak experience shows that a shift to proactive publishing systems as well as more open and transparent procedures – especially in electronic methods – can significantly repel the misuse of public funds, and may also lead to more effective and cheaper procurements. Changing publication practice and especially the publication formats for facilitating the re-use of procurement data may seem a small, but formative step in order to enhance transparency.

Applying these best practices in public procurement would be fruitful for all Visegrad countries: not only as it could drive back harmful tendencies, but could also contribute to making procurement data comparable and analysable region-wide.



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## :: ANNEX ::

### QUESTIONNAIRE ON PUBLIC PROCUREMENT IN V4 COUNTRIES<sup>1</sup>

Give a brief insight into the legal and economic background of establishing the PP (public procurement) systems, to see the challenges your country faced on this field in the last 20 years.

#### I. Legal framework

*Analysing the legal framework will be the fundamental part of this study. This part has to reveal the PP system of each country as a whole and identify similarities and differences between them, which may serve as the basis for further comparison. The legal framework defines the scope of each country's PP system.*

- I. 1. 1. Is there a separate body of law that regulates public procurement? (Y/N)
- I. 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. Indicate if there were any major changes in the regulatory framework recently.
- I. 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?
- I. 3. 1. Was / is there any EU infringement case in progress against the government concerning PP? (Y/N)
- I. 3. 2. Describe the cases briefly and indicate the violated EU regulations.
- I. 4. 1. Please indicate if the following OECD principles are expressed by the national regulations. (Y/N)
  - Transparency
  - Good management
  - Prevention of misconduct
  - Accountability and control
- I. 4. 2. Are the following key recommendations of the OECD ensured by the relevant regulations? (Y/N)
  - Providing an adequate degree of transparency throughout the whole procurement cycle in order to promote fair and equitable treatment for potential suppliers
  - Maximising transparency in competitive tendering and taking precautionary measures to enhance integrity, in particular for exceptions to competitive tendering
  - Ensuring that public funds are used in public procurement according to purposes intended
  - Developing a set of professional standards to enhance the knowledge, skills and integrity of public procurement officials

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<sup>1</sup> This questionnaire was elaborated following the major guidelines of the Country Procurement Assessment Report (CPAR) of World Bank.



- Putting mechanisms in place to prevent risks to integrity in public procurement
- Encouraging close co-operation between government and the private sector to maintain high standards of integrity, in particular in contract management
- Providing specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct in public procurement
- Establishing a clear chain of responsibility together with effective control mechanisms
- Handling complaints from potential suppliers in a fair and timely manner
- Empowering civil society organisations, media and the wider public to scrutinise public procurement

I. 4. 3. If you have any remarks on the above listed principles and recommendations please describe.

I. 4. 4. Indicate any other guiding principles expressed in the legal regulations.

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

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

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

I. 5. 4. Describe these.

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

	goods		works		services		other: [specify]	
	min	max	min	max	min	max	min	max
[type1]								
[type2]								
[type3]								

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

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

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

I. 8. 1. Are there minimum time limits for the receipt of tenders required for public procurements below EU-threshold? (Y/N)

I. 8. 2. If so, specify by types and conditions of procurement. [Insert extra rows if needed]

type of procurement	days
[type1]	
[type2]	
[type3]	



- I. 9. Is there a legal or regulatory requirement for public disclosure of procurements /related legal texts and statistical data? (Y/N)
- I. 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.
- I. 11. 1. Are there any explicit anti-corruption / transparency rules - as part of the framework regulation? If so, specify the essential features.
- I. 11. 2. Is there a conflict of interest policy in effect? If so, describe the essential features.

## II. Institutional framework

*The institutional framework introduces the public entities taking part in PP procedures, and the managerial framework.*

- II.1. 1. Name the institutions/authorities in charge of PP in your country. Describe their duties and responsibilities. Quote the legal sources of the infrastructural framework.
- II.1. 2. Is the procurement system in your Country centralized or decentralized? (C/D)
- II.1. 3. Is there a central tender board or authority? (Y/N)
- II. 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.
- II. 2. 2. Are procurement decisions overridden by higher governmental agencies? (Y/N)
- II. 2. 3. If so, by whom?
- II. 2. 4. Are the authorities relating to procurement clearly delegated to the entities carrying out the process?
- II. 2. 5. Are the applicable procedures clearly defined?
- II. 3. 1. Are there any integrity and transparency guidelines or code of ethics for employees working with PP? (Y/N)
- II. 3. 2. What guidelines ensure integrity and transparency in PP?
- II. 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.
- II. 5. Describe how review and remedy is regulated in Public Procurement. Name the key authorities.
- II. 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.
- II. 7. 1. Can public procurement be outsourced?
- II. 7. 2. Do procurement agents or consultant / law firms take part in tendering?
- II. 7. 3. If so, under what circumstances? How are they selected?
- II. 7. 4. Describe the normal basis for compensation and contract duration.
- II. 8. 1. How are employees in PP institutions recruited? (Are vacancies publicly announced? What are the HR requirements – e. g. professional certificate, experience)
- II. 8. 2. How are PP employees trained? Are there regular training programs for entry- and higher level staff?



### III. Practice and performance

The third part focusing on practical issues shows how Public Procurement systems operate in reality, how transparency and integrity are guaranteed, what deficiencies there are among them. This part plays a key role in analysing whether and how Freedom of Information prevails in the PP system.

III. 1.1. What are the main performance indicators of the PP sector - for the year 2010? (Or latest available statistics Indicate the year: .....)

% of GDP	
nominal value in PPP	

III. 1. 2. Please indicate the share of methods (% in volumes and cases) [Insert extra rows if needed]

methods (cf. open, restricted etc.)	in volume		case	
	in %	nominal value in PPP	%	TOTAL
[method1]				
[method2]				
TOTAL	100		100	

III. 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	%	TOTAL
[type1]				
[type2]				
TOTAL	100		100	

III. 2. 1. Are summaries of information about public procurement published? (Y/N)

III. 2. 2. Is there any comprehensive database on PP? (Y/N)

III. 2. 3. What kind of data is available? Specify the format.

- number of received bids
- number of contracts awarded
- names of successful bidders / losing bidders
- public advertisements
- prequalification documents (if used)





- the prequalification evaluation report documenting any decisions not to prequalify certain potential bidders
  - the bidding documents
  - record of any pre-bid meetings
  - the bid opening minutes
  - final bid evaluation report
  - detailed record of the reasons used to accept or reject each bid
  - copies of bids
  - appeals against procedures or award recommendations
  - signed copy of the final contract
  - any performance and advance payment securities issued
  - any changes in the final contract
  - documents on contract performance/completion
- III. 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)
- III. 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?
- III. 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?
- III. 2. 6. Is there a public website available with comprehensive real time data? If so, please insert reference link.
- III. 2. 7. Who handles public procurement data? Name the authority.
- III. 3. 1. Do procuring entities have internal quality and control mechanisms? (Y/N)
- III. 3. 2. Are they regularly audited? If so, describe scope, frequency, who carries them out, etc.
- III. 3. 3. Is procurement monitoring and administration computerized? (Y/N)
- III. 3. 4. How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?
- III. 3. 5. Do procurement units regularly update their informations on prices for goods and works? (Y/N)
- III. 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)
- III. 3. 7. Are completion of contracts adequately monitored? (Y/N)
- III. 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.
- III. 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.



- III. 4. 1. Describe briefly the selection and contract awarding procedures. (per tender type). Take the checklist questions as a guideline
- III. 4. 2. Are qualification criteria appropriate and clearly described? (Y/N)
- III. 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)
- III. 4. 4. Are time limits for the receipt of tenders fairly prescribed and sufficient for the preparation of bids? (Y/N)
- III. 4. 5. Are bidders afforded sufficient time to revise their bids following a modification of the documents? (Y/N)
- III. 4. 6. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract? (Y/N)
- III. 4. 7. Is prequalification carried out when appropriate? (Y/N)
- III. 4. 8. Specify the types of contract prequalification is used for.
- III. 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.
- III. 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.
- III. 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)
- III. 4. 12. Are additional Government approvals required before contracts can be made effective? (Y/N)
- III. 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?