

Chapter 3

Exchange of Experience in the Use of Digital Procurement Tools to Prevent Corruption in the Public and Business Sectors in Ukraine and V4

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3.1. Introduction

The problem of corruption is, without exaggeration, relevant for all countries of the world. Some economists even compare it to an additional tax for businesses and citizens. This article discusses the problems of corruption risks in public procurement in Ukraine, the measures taken by Ukraine to adapt its legislation to the EU legislation, and a comparison of key public procurement indicators in Ukraine and the Visegrad countries.

Corruption as a phenomenon exists in the vast majority of countries around the world. As the founder of reforms, not only economic, in Georgia and Ukraine, Kakha Bendukidze, claimed, corruption does not arise on equal grounds. It requires the coincidence of three factors: lack of control over officials, moral justification of corruption, craving for quick and easy money.

Ukrainian representatives of the international non-governmental organisation, Transparency International, added another factor – the total concealment of information (Khmara, 2014).

According to the World Bank, public procurement accounts for an average of 13 to 20% of GDP. Global procurement spending is estimated at almost USD 9.5 trillion, and according to the United Nations Office on Drugs and Crime, between 10 and 25% of the total value of a government contract can be lost to corruption. Governments have a strong incentive to maximise every penny of their budgets, which should be spent transparently and efficiently (World Bank, n.d.).

Digitalisation, opening of registers, and simplification of access are among the key aspects of public procurement reform in Ukraine and other European countries.

Thanks to the obligation to publish procurement plans in the public domain, hundreds of tenders that contained both signs of corruption and mismanagement have been cancelled in Ukraine, which has prevented billions of hryvnias from being wasted and most of them stolen before the procurement announcement.

The National Agency for Corruption Prevention of Ukraine identified the following corruption risks in public procurement, under martial law (NACP, n.d.):

- 1) conducting an open tender with only one tender offer;
- 2) possibility to submit tender offers at a price higher than the expected value;
- 3) increase in the purchase price as a material term of the contract;
- 4) abuse of procurement through an electronic catalogue;
- 5) corrupt practices through direct contracts;
- 6) inconsistency of decisions of the appeal body (lack of established/generalised practice);
- 7) impossibility to appeal against decisions, actions or omissions of procuring entities during procurement procedures, including simplified ones;
- 8) problems with enforcement of decisions of the appeal body and courts;
- 9) restrictions on the rights of participants in the course of consideration of complaints by the Antimonopoly Committee of Ukraine;
- 10) other (non-price) criteria for evaluating proposals;
- 11) the use of 'artificial obstacles' in procurement to favour a particular participant.

In the authors' opinion, similar risks are inherent in procurement in other countries, including the European Union and the Visegrad Four. This is confirmed by data from the statistical offices of the respective countries.

For example, in Slovakia, the e-procurement system has been in place since 2015, and in 2021, 32.3% of public procurement procedures were completed through the modernised electronic public procurement system, resulting in contracts that accounted for 46.9% of the monetary value of procurement (UVO, 2022).

The digitalisation of public administration, and not only in the area of public procurement, is a priority area of development in most countries. The transition to the use of services and data in electronic format can significantly simplify time-consuming processes and services, reduce administrative costs of the authorities, eliminate corruption and increase the competitiveness

of procedures in order to save money. The digitalisation of public administration includes the area of electronic public procurement, which actually opens up procurement data of individual business entities to the public and significantly simplifies tender processes for bidders through the use of automated calculations and the electronic submission of the necessary documentation.

In the process of reforming its public procurement legislation, the government of Ukraine has been paying attention to the standards set by EU directives in order to meet the requirements of the Association Agreement with the EU and increase the efficiency of the public sector.

It is important to note that Ukrainian and EU public procurement legislation have a common ultimate goal – to ensure the economic efficiency of public procurement and transparent tenders.

According to the OECD Public Governance Briefing Papers *Public Procurement Performance: A Framework for Measuring Efficiency, Compliance and Strategic Objectives* (OECD, 2023), public procurement accounts for 13% of GDP in OECD countries. The pressure on public spending, as well as the need for greater accountability, better monitoring of public policies and more effective risk management, make it increasingly important to measure public procurement performance. However, many countries have not yet established a formal performance management system with key performance indicators.

Moreover, the relevant EU legislation is designed to regulate much more complex relations than Ukrainian legislation currently regulates, primarily due to the deeper standardisation of procurement procedures in the EU. In this regard, the authors clarified the priority areas of development of legal support for the functioning of the national public procurement management system. In particular, they substantiated the expediency, taking into account the provisions of Directive 2014/24/EU, of changing the concept of ‘customer’ in the current legislation of Ukraine on public procurement, introducing new rules for filling in tender documents and tender procedures and announcements, updating the procedures for competitive dialogue and negotiations with several participants, expanding the practice of maintaining electronic catalogues, and regulating the rules of sub-threshold procurement. The authors also argued for the expediency of enshrining a new principle of proportionality of procurement for budgetary funds at the legislative level, regarding Article 36 of Directive 2014/25/EU.

3.2. Exchange of Experience in the Use of Digital Procurement Tools

The study then compared some procurement indicators of Ukraine and the Visegrad countries obtained from open sources, for example taking in consideration the figures for 2021, given that in 2022, Russia’s attack on Ukraine dramatically changed both the volume and nature and transparency of public procurement. The number and volume of procurements of goods and services for national defence has increased dramatically in Ukraine, and due to the circumstances, the vast majority of them are classified.

In 2021, the share of public procurement in Ukraine’s GDP was 17%. The official website of the Polish Central Statistical Office stated that in 2021, the value of public procurement contracts concluded with the application of the provisions of the Public Procurement Act was PLN 184.6

billion in 2021 (PLN 183.5 billion in 2020), approximately 7.04% of gross domestic product (GDP) in 2021.

In Hungary, the share of public procurement was 16.4%, in Slovakia – 12.4%, and in the Czech Republic – 14.1% (European Court of Auditors, 2023). Hence, this concerns large amounts of money that belong to fellow citizens, who, in turn, have the right to understand how they are used.

A report by the EU Court of Auditors (European Court of Auditors, 2023) stated that in 2021, 'no call for tenders' accounted for about 15.8% of all procurement procedures in the EU single market reported by Member States on Tenders Electronic Daily. The Chamber's analysis also showed that the share of direct contracts varied across EU member states. In 2021, the average rate of direct contracts ranged from 3.1% (Greece) to 42.3% (Cyprus), indicating significant differences in public procurement practices among EU Member States. Some of them reduced the use of direct contracts during the reporting period (e.g. Germany), while others remained stable (e.g. Ireland), or significantly increased the use of direct contracts (e.g. Cyprus). An absence rate of more than 10% is considered a red flag, and in 2021 most Member States (23 out of 27) fell into this category, including three Visegrad countries – Hungary, Poland and the Czech Republic. In case of Ukraine, this figure was higher.

It should be noted that the problem of public procurement has been studied in economic science for a long time.

From the historical point of view, the discourse on the functioning of the public procurement institution in the global economy began in the works of well-known international economists, such as Keynes, Buchanan, Stigler, Owen, Petty, Pigou, and others, yet their studies did not take into account the innovative impact of digital technologies on public finance.

Public expenditures are positioned in the works of Heller as an objective component of the fiscal space (Kravets et al., 2021), and the need for their implementation follows from the postulates of the theory of public welfare.

Fischer postulated the interdependence of public expenditure with the development of society. In his opinion, public spending in certain areas, such as telecommunications and road infrastructure, contributes to economic growth and accelerate social development (Fisher, 1997).

Besley & Persson emphasised that budgetary resources spent on public projects means expenditure on public goods and corruption rent-seeking, which are already included in the price of public goods by interested individuals or groups. Scholars stressed the value of digitalisation for interventions in procurement processes in order to reduce corruption and increase the efficient flow of budget expenditure to end users (Besley & Persson, 2013).

Joined initiative of OECD and EU (SIGMA – Support for Improvement in Governance and Management) has focused research on facilitating access to public procurement markets for small and microbusinesses (SMEs) in the European Union through the approval and implementation of the relevant EU Directives in 2014. In SIGMA view, electronic procurement systems are a crucial tool for engaging SMEs in public consumption. EU legislation removes the barriers that often hinder SMEs and requires that tools and devices are also used for electronic communication. Their technical specifications must be non-discriminatory and easily accessible (Sigma, 2016).

The work of German scientists Eßig & Glas explored the impact of dividing public contracts into smaller batches as a tool for attracting small businesses to public procurement. The main message of the study was that increased competition has a positive impact on the success of SMEs in public procurement, and that the involvement of SMEs increases the innovation and flexibility of the proposed solutions (Eßig & Glas, 2015).

Some scholars studied the methodology of successful bidding, for example, Plečić et al. (2018) proposed a multi-criteria methodology for selecting the optimal solution from the submitted bids within the tender.

Kolosok, Panchenko and Iordanov analysed the state of achievement of long-term goals set during the reform of the ProZorro procurement system in Ukraine. They studied the level of corruption, transparency and accessibility, as well as reliability, efficiency and elasticity of the public procurement system after the introduction of the ProZorro system, and identified systemic problems in the procurement process and outlined areas for improvement in Ukraine. In particular, the decentralised procurement system in Ukraine causes differences in the filtering and delivery of announcements to tenderers registered on different trading platforms. Legislative inconsistency in customer support and the variety of trading platform requirements may lead to unequal opportunities for business participants, which worsens competition in the procurement market. According to the authors, the number of non-competitive tenders has increased since the introduction of ProZorro. This situation may be caused mainly not by defects or problems of ProZorro, but by improper performance of the function of controlling bodies (Kolosok et al., 2017).

Ukrainian researchers pay considerable attention to the problems of organising and managing the public procurement system through the prism of European experience. Miniailo and Kostenko (2016) systemised the relevant public procurement procedures. The above publications analysed in detail the EU directives, in particular, on public procurement of goods, public procurement of works, and public procurement of services. Ukrainian experts emphasised that at one time, these documents created the necessary legal basis for the development of effective systems of procurement activities for budgetary funds, but now their provisions are already outdated to some extent, and some provisions are unclear and rather contradictory. As a result, there is still no coherent vision of the prospects for implementing and harmonising Ukrainian legislation with EU directives on public procurement management. This significantly complicates the process of reforming this management system in our country. In view of this, the purpose of the article is to analyse the provisions of EU legislation on public procurement management and to clarify the priorities for the development of legal support for their implementation in Ukraine.

There is diversity of public procurement procedures in certain EU countries.

The level of development of electronic public procurement in EU countries is determined by the use of electronic data processing methods at different stages of the bidding process, these include:

- e-Sourcing – collecting information about potential suppliers and contacting them;
- e-Notifications – publication of notifications and information about the start of trading in electronic format;
- e-Tendering – divided into e-Access (providing all necessary information on tender documents and standards with the possibility of feedback) and e-Submission (submitting a proposal in electronic format);

- e-Evaluation – evaluation of tenders for compliance with the criteria set by the government;
- e-Contract – the conclusion of a contract between tenderers;
- e-Order – placing an order in electronic format;
- e-Invoicing – issuance of an invoice (waybill) in electronic format in accordance with the standards of the Directives;
- e-Payment – payment by the customer for goods, works and services received (Prašat, 2019).

The introduction of full digitalisation of the public procurement cycle in the EU was planned by 2018: electronic publication of procurement notices was to become mandatory by 2016; electronic submission of proposals through the central procurement authority by 2017; submission of electronic proposals by 2018 and mandatory e-invoicing by 2019 (Tkachenko, 2016).

Table 3.1 shows the level of digitalisation (modernisation) of the public procurement process in some EU countries in 2019.

Table 3.1. Modernisation of the public procurement process in selected EU countries in 2019

EU country	The state of digitalisation of the e-procurement process					
	E-Alerts	E-Access	E-Submission	E-Assessment & E-Contract	E-Order	E-Invoicing
Austria	+	+	+	+	+	+
Belgium	+	+	+	+	+	+
Greece	–	–	–	–	–	–
Italy	+	+	+	+	+	+
Germany	+	+	+	+	+	–
Poland	+	+	+	–	+	–
Slovakia	+	+	+	+	–	–
Hungary	+	+	+	+	+	–
Finland	+	+	–	–	+	–
France	+	+	+	+	+	–
The Czech Republic	+	+	–	–	–	–
Sweden	+	+	+	+	+	+

Source: (Tkachenko, 2016).

Therefore, the level of digitalisation of the procurement process in each EU country is different. For example, in Austria and Belgium in 2019, the entire procurement process was conducted electronically; in some G7 member states (Italy, Germany and France), e-tendering was almost fully modernised, except for the e-invoicing stage in Germany and France. In Greece, as of 2019, there was no digitalisation of public procurement as such, which may be partly explained by its economic situation, whilst in the Visegrad countries (Poland, Slovakia, the Czech Republic and Hungary), the digitalisation process is unevenly developed.

The organisation of electronic public procurement in EU countries also differs. For example, in the Czech Republic a bidder must be registered either in the state-owned Tender Portal (NEN) or in one of the private platforms FEN (which offers additional services for a fee). In Hungary

there is a single platform, EKR, which is managed by the Office of the Prime Minister of Hungary. Up to now, Slovakia used ISEVO (Modernised Information System for Electronic Procurement), while other paid resources exist (Karlin, 2021). Differences are also manifested in the models of payment for services by e-platforms: in Portugal, the service fee is charged from tenderers, while in other countries it is the tenderers who pay for registration in the platform and further participation in the tender (Tkachenko, 2016).

Each EU country can independently determine the lower limit of procurement at the national level. For example, the Czech Republic and Poland have only one threshold, while Hungary has several above-threshold levels for national procurement (Karlin, 2021).

In most EU member states, centralised procurement organisations operate, which reduce the costs of bidding for procurement participants and save time on the entire procurement process. In Hungary, procurement through them is mandatory for central-level public institutions, while in Poland there is no such organisation at the state level (Karlin, 2021).

One of the particular characteristics of Slovakia in the field of public procurement is that it is one of the first countries to develop legislation for the introduction of 'green procurement', i.e. clear criteria for the availability of environmental certificates and the use of environmentally friendly production processes have been established (Karlin, 2021).

In order to determine the specifics of public procurement legislation at national level, it is worth considering the state of public procurement in Poland due to economic and political similarities with Ukraine. The legislative regulation of public procurement in Poland was reformed by the adoption of the Public Procurement Act of 11 September 2019, which came into force on 1 January 2021. The purpose of this reform was to increase the role of strategic procurement (generally related to the already mentioned environmental, social and innovation goals), the attractiveness of the public procurement market for the private sector and the creation of effective communication between sectors of the economy (Kania, 2023).

In Poland, several government agencies are responsible for controlling public procurement. The Polish Supreme Chamber of Control usually conducts post-contract procurement control. A separate central executive body is the Public Procurement Agency, which conducts both scheduled and unscheduled document inspections of tenders and analyses the procurement bulletin data. If a contracting authority disagrees with the Agency's conclusions, the Appeals Chamber makes the final decision. Public procurement is also monitored by the Office for the Protection of Competition and Consumer Rights in terms of collusion (Kania, 2023).

According to the Criminal Code of the Republic of Poland, the submission of false documents or false statements in order to obtain a public procurement order is punishable by imprisonment for a term of 3 months to 5 years. There is also a penalty for collusion with other bidders (Ustawa z dnia 6 czerwca 1997...).

In 2020, around 94% of contracts in Slovakia were awarded on the basis of the lowest price alone. This is significantly higher than the EU average of 64% and limits competition based on quality. It also reduces the possibility of using public procurement strategically to support other policies, such as green, social and innovation. In addition, the professional services sector remains highly regulated.

To sum up, the supranational standards set out in the EU Public Procurement Directives define the key requirements that each Member State must comply with when applying above-threshold procurement, while below-threshold procurement is carried out in accordance with

the laws of a particular country using its own mechanisms and models of organising the tender process, provided that they are harmonised with the Directives.

3.3. Conclusions

The chapter confirms the thesis that corruption is a major problem in most countries of the world, as evidenced by the statistics of international organisations. Taking into account the volume of public procurement and its share in GDP, the state, its citizens and institutions should comprehensively monitor the efficiency of spending taxpayers' money. In fact, electronic public procurement is an important element of protecting the interests of taxpayers and transparency of public procurement. The chapter shows that Ukraine and the Visegrad countries have many similarities in their approaches to public procurement, although each country is at different stages of implementing digital public procurement systems.

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