Organisation of public procurement in state agencies

Does the structure of internal control systems and carrying out procurement procedures associated with the procurement activities of state agencies comply with the new Public Procurement Act?

Summary of the audit results

What did we audit?

In the course of the audit, the auditors of the National Audit Office inspected whether the internal control system established for the organisation of procurement procedures is functional, do the procurement rules established by state agencies comply with the new Public Procurement Act, and do state agencies comply with the Public Procurement Act upon the purchase of supplies, services and works.

In order to give an assessment on the structure of the internal control systems established by agencies, it was analysed whether the procurement rules of the area of government/agencies include all the essential stages of the procurement procedure and are these activities in accordance with the Public Procurement Act. The audit assessed whether the procurement rules clearly define the obligations and division of rights and liability of persons associated with the procurement as well as measures to avoid a conflict of interests. Agencies underwent random checks to determine whether the Public Procurement Act and the procurement rules have been complied with in the course of the public procurements organised. The National Audit Office determined the purchase of which goods and which services and construction works resulted in a situation where public procurement procedures were not carried out most often in the area of government and what are the most common mistakes in the procurement procedure. Additionally, interviews were conducted to determine the experience of agencies upon complying with the Public Procurement Act and what they think about the current organisation of public procurement.

Why is this important to taxpayers?

Agencies need to organise their work so that as contracting agencies they use public funds purposefully, economically, transparently, controllably and proportionately and treat persons equally, effectively taking advantage of competition by awarding public contracts based on the best price-quality ratio and avoiding a competition-distorting conflict of interest.

In the past, the National Audit Office has consistently made observations in its audits that agencies have purchased goods, services and construction works without carrying out a public procurement procedure (incl. simple procedure, procurement procedure, specific procedure of social and other specific services). Most recently, the National Audit Office audited carrying out public procurement procedures in the audits of the annual accounts of 2016.

In September 2017, the new Public Procurement Act entered into force, and in 2018, the new public procurement register was introduced. The National Audit Office investigated their impact on the procurement activities of state agencies.

Audit procedures were carried out in six areas of government where the auditors of the National Audit Office had previously observed the most problems. These were the Ministry of Defence, the Ministry of Rural Affairs, the Ministry of Economic Affairs and Communications, the Ministry of Education and Research, the Ministry of Culture, and the Ministry of the Interior. In order to avoid duplication, the procedures were not carried out in the agencies of the areas of government being inspected where the Ministry of Finance conducted supervision over the year 2017 (see a more detailed list of the agencies audited in appendix A).

What did we find and conclude from the results of the audit?

As a result of audit procedures, the National Audit Office concluded that there were fewer cases where procurement procedures had not been carried out (i.e. the procurement procedure had not been conducted at all). Compared to 2016 when the National Audit Office last audited the procurement activities of the agencies, the mistakes identified in the procurement procedures carried out are of a similar nature in the majority of areas of government. The following main conclusions were drawn in the course of the audit:

- Although one of the objectives of the new Public Procurement Act was to make the procurement procedure simpler, according to the users who rarely carry out public procurement, the new Act seems too voluminous, complicated and inconsistent and, as a result, mistakes are made. The use of the new public procurement register was also considered complicated.

- Mistakes are still being made in carrying out procedures even after the implementation of the new Public Procurement Act. For example, agencies are often unable to properly evaluate the estimated cost of things, services and construction works to be purchased and, as a result, the wrong type of procurement procedure is chosen. Mistakes are made both in breach of the Public Procurement Act as well as the requirements established in the procurement rules within organisation.

- In 2018, things, services and works were purchased without organising a procedure provided for in the Public Procurement Act for a total of at least 4.52 million euros.[1] To clarify, in 2018, the value of the 769 public contracts organised by the agencies audited constituted approximately 145.5 million euros according to the data of the public procurement register.

- Thermal energy and foodstuffs are purchased without a public procurement the most often. When it comes to procurement of thermal energy, the National Audit Office believes that organising a procurement procedure would not substantively help to improve competition or find the best tender economically, because the maximum price has been approved pursuant to the District Heating Act. The National Audit Office is of the opinion that the Ministry of Finance could in their communication with the European Commission pay attention to the practical need to initiate the amendment of the Directive of the European Parliament and of the Council in order to reduce the administrative burden.

- Procurement rules established by the agencies are generally up-to-date, comply with the Public Procurement Act and include essential components of internal control, but in order to ensure better organisation of procurement activities, the processes that, according to the law, should be governed within the agency (e.g. requirements for carrying out procurement below the threshold) should be described in more detail in the procurement rules.

- Data in the public procurement register may contain errors, because it was ascertained in the course of the audit that contract award notices have been submitted with a delay, contract values and deadlines have, in some cases, not been entered correctly, amendments to the contract have not been specified, etc. Errors have also occurred for technical reasons upon importing the data from the old register.

The National Audit Office is of the opinion that state agencies have failed to organise public procurement or have made mistakes in carrying out public procurement procedures foremost due to lack of competence, lack of knowledge and poor skills in interpreting the Public Procurement Act. Agencies who rarely organise public procurement tend to make a lot of mistakes compared to contracting agencies who organise them daily, because they are unable to orientate themselves in the

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[1] The amount includes thermal energy purchased through a negotiated procedure without prior publication of a contract notice, see clauses 68–73.

Public Procurement Act. They also do not know how to use the public procurement register and correctly select the pre-selections it offers. Agencies also intentionally did not organise the public procurement procedures required by law, because the agencies are of the opinion that it is unreasonable to organise a procedure in order to purchase a thing or service, the price of which is approved or established pursuant to the legislation (e.g. district heating).

What did we recommend as a result of the audit?

The National Audit Office sent a memorandum to the Minister of Education and Research, Minister of Defence, Minister of Culture, Minister of Rural Affairs, Minister of Foreign Trade and Information Technology, Minister of Economy and Infrastructure, summarising the results of the audit of each area of government and giving detailed recommendations. Among the most important recommendations, the National Audit Office advised obligating state agencies to supplement procurement rules and strengthen supervision by the Ministry over compliance with the Public Procurement Act in the agencies of their area of government. In addition, the National Audit Office recommended assessing the need for training, aggregating and analysing the purchasing needs of agencies, carrying out joint procurements and considering joining in central procurements.

The National Audit Office is recommending the Minister of Public Administration to

- Continue cooperation with agencies in drafting the draft legislation for the amendment of the Public Procurement Act in order to make the Public Procurement Act easier to understand for users and to look for ways to reduce the administrative burden.
- Continue making the public procurement register more user-friendly upon the development thereof, so that the user could understand the information provided therein easily and unambiguously. At the same time, the training need of users should be continued to be assessed and targeted training days should be provided in order to prevent the most common mistakes. Control over making entries in the public procurement register should also be improved, for example more automatic controls that enable assessing the integrity and accuracy of data entered should be implemented into the program.
- Enhance supervision by the Ministry of Finance over the procurement activity of state agencies and take the mistakes outlined in the report into account upon drawing up risk assessments. Provision of advisory services to areas of government should also be continued in order to ensure, among others, that the most complex and problematic procurements are carried out correctly.

The ministries audited generally agreed with the observations and recommendations presented in the memorandum communicated by the National Audit Office. The Ministry of Finance has promised that it would in cooperation with the agencies continue working on the amendments to the Public Procurement Act, developing the public procurement register and advising agencies. The Ministry of Finance is also considering the possibility of adding more agencies of areas of government into the supervision plan.

Response of the Ministry of Finance: Good cooperation between the Ministry of Finance and contracting agencies and undertakings is sure to continue. Despite the fact that several contracting agencies and tenderers were met prior to coming up with the intention to draft a bill for the amendment of the Public Procurement Act and all interested parties had the opportunity to give their opinion on the intention to draft the bill, ideas for simplifying the Public Procurement Act are still welcome. The plan is to meet the stakeholders before finalising the text of the bill in order to further discuss topics regarding which a common position on the intention to draft the bill has not been possible based on the feedback. The meeting is intended to find the best solutions for other topical issues, too. Everyone will also have the opportunity to express their opinion on the completed text of the bill.

The public procurement register (hereinafter register) assists contracting agencies and tenderers with pre-filled data forms, helpful additional information and automated controls. The new version of the register which has been in use for a little over a year has been developed in cooperation with end users. We have met with both contracting agencies and tenderers and collected feedback in the analysis, testing and deployment phases alike. Subject to financial availability, we will implement the proposals received on user convenience in the order of their priority and effect. Errors that occurred in the course of data migration have been eliminated or are being resolved on a case-by-case basis. Reviewers, supervisors and contracting agencies have access to contracting agency-based reports that help to identify inconsistencies in contract data or those in delay with the submission of data more concisely. In 2018–2019, the Ministry of Finance has carried out several information days and practical user training sessions to introduce the new register. One of the topics discussed at the information days was the most common mistakes. Training sessions will continue in the coming years.

The Ministry of Finance continues to conduct supervision over public procurement organised by state agencies, considers the possibility of adding more agencies of areas of government into the supervision plan, and takes into consideration the results of prior audits upon drawing up the sample pool for supervision proceedings by adjusting the risk criteria serving as a basis for establishing the sample pool every year.

The possibility of submitting a request for advice regarding public procurement is open to everyone, insofar as the Department of Public Procurement and State Aid of the Ministry of Finance answers the questions of contracting agencies, tenderers and interested persons alike. You can send in your question through the inquiry form on the website of the Ministry of Finance, by e-mail or by calling the advisory phone line, the working hours of which are published on the website of the Ministry of Finance.

Despite the fact that the requests for advice are requests for explanation, the objective of the Department of Public Procurement and State Aid of the Ministry of Finance is to respond to the inquiries within no later than seven working days in order to support the smooth and trouble-free conduct of public procurement. In 2018, the majority, i.e. 97.6%, of questions sent by e-mail received a response within seven working days. Longer response time was usually due to specifying the inquiry or adding further questions by the person who submitted the inquiry. In 2018, 1,387 inquiries were submitted by e-mail and 1,317 over the phone, so in total, the Ministry was contacted 2,704 times for advice.

Frequently asked questions with answers are presented in the frequently asked questions section on the public procurement subpage on the website of the Ministry of Finance. The Ministry of Finance is also regularly updating the summary of judicial decisions concerning public procurement, and the public procurement subpage provides various materials that help to organise public procurement in the best possible way.