



# **THE EFFICIENCY OF THE PUBLIC PROCUREMENT LEGAL FRAMEWORK**

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# INTRODUCTION

- Criticism: public procurement → very expensive (for bidders and procurers too)
- Rules under constant review
  - EU level
  - Hungarian level

*?: correlation between modifications and the effectiveness of the rules*



# THE CURRENT REFORMS AND THEIR OBJECTIVES ON EU AND HUNGARIAN LEVELS

- Green Paper on the modernisation of EU public procurement policy towards a more efficient European procurement market
- legislative proposals
- Hungary: Act CVIII of 2011 on Public Procurement
- and several implementing decrees
- (previously: Act CXXIX of 2003 on Public Procurement)



# THE CURRENT REFORMS AND THEIR OBJECTIVES ON EU AND HUNGARIAN LEVELS

- EU (Green Paper):
  - Pp key role in Europe 2020 strategy
  - Efficacy, effectiveness of EU pp system demanded: more flexible, simpler, cheaper procedures
  - Value for money
  - Innovation
  - Sustainability,
  - Legal certainty
- HUNGARY(2011 HPPA):
  - Improve flexibility, simplification
  - Less administrative burden
  - More understandable procedures
  - Easy access for SMEs
  - Prevent circular debts
  - Legal certainty



# PREVIOUS REFORMS AND THEIR OBJECTIVES ON EU AND HUNGARIAN LEVELS

- EU (2004/18/EC):
  - “which [new rules] are necessary to meet requests for **simplification** and **modernisation** made by contracting authorities and economic operators alike in their responses to the Green Paper adopted by the Commission on 27 November 1996, the Directives should, **in the interest of clarity**, be recast”
- HUNGARY (2003 HPPA):
  - faster, cheaper procedures
    - (- no obligatory employment of an official pp consultant
    - no obligatory examination of notices
  - SMEs in favour
    - breaking up tenders into lots
    - prevention of circular debts by new rules on performance of contract)



*Shall we focus on implementation and how these rules are being applied rather than reframing the legislative framework?*

**THE KEY TO EFFICACY AND SUCCESS:  
- PREPARATION OF PROCEDURES  
AND  
- PROFESSIONALISM**

Success of a contract award procedure dependant on preparation and the preparedness and competence of staff (bidders and public authorities as well).



Current EU Directive: no rules on those participating in the procedure on behalf of public authority

Proposal on the directive: „knowledge centres”

*“In many cases, contracting authorities do not have the internal expertise to deal with complex procurement projects. Appropriate and independent professional support by administrative structures could considerably improve procurement outcomes by expanding the knowledge base and the professionalism of public procurers and delivering assistance to businesses, notably SMEs. The proposal obliges therefore **Member States to provide support structures offering legal and economic advice, guidance, training and assistance in preparing and conducting procurement procedures.** Support structures or mechanisms exist already at national level, although organised in very different manners and covering different areas of interest for contracting authorities. Member States will therefore be able to use these mechanisms, build on their expertise and promote their services as an appropriate and modern tool capable to provide appropriate support to contracting authorities and economic operators.”* Proposal for a Directive of the European Parliament and of the Council on public procurement by the European Commission, Brussels, 20.12.2011 COM(2011) 896 final 2011/0438 (COD), p. 12; See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0896:FIN:EN:PDF>; accessed: March 8, 2012

# HUNGARY

- Support mechanism already:

## Public Procurement Authority

*“each year the Secretariat responds approximately 250 to 300 written, and each day about 30 to 40 verbal queries providing legal opinion. It has to be emphasized that **the opinion of the Secretariat does not have a binding nature and that problems relating to specific cases shall not be solved.** The Secretariat prepares Authority guidelines, which facilitate the application of the regulations applicable for contract award procedures based on experiences drawn from the decisions of review procedures, and which involves practical information on public procurements.” See:*  
[http://kozbeszerzes.hu/nid/Basic\\_information](http://kozbeszerzes.hu/nid/Basic_information) ; accessed: 9 March, 2012



# CONCLUSION

- Too many goals, too many rules to apply  
→ costly procedures; value for money not secured
- Room for better application of existing rules, but change is necessary
- Changes must be done carefully in order to avoid legal uncertainty

# PROPOSAL

- *NEED TO IMPROVE:*
  - *PREPARATORY STAGE OF PP PROCEDURES AND*
  - *PROFESSIONALISM*

*“An ounce of prevention is worth a pound of cure.”*



**Thank you for your attention!**

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