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## PREVENTING CORRUPTION IN PUBLIC PROCUREMENT IN EUROPEAN UNION

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**Abstract:** This article highlights the organization, methodology, and practice of public monitoring and control of public procurement to counteract corruption. The object of the study is the EU countries and their agencies, which are engaged in the control of public procurement. The purpose of the study is to evaluate the work of monitoring organizations and control of public procurement in the direction of combating corruption. The results obtained showed that different countries have their own characteristic techniques of corruption in different directions. Based on the study results, conclusions about methods of improving public monitoring and control over public procurement were made.

**Keywords:** Public Procurement, Corruption, Public Monitoring

### 1 Introduction

Every country has a limited number of spending funds ways to carry out its functions and achieve its goals. One such tool is public procurement, used to attract commercial market companies to fulfill state and municipal plans. For this reason, the efficient spending of budgetary funds becomes the main task on the way to becoming a state that provides quality services and ensures a high standard of living for the population. According to the Organization for Economic Cooperation and Development, government procurement accounts for 13% of total GDP in member countries. However, through the fact that public procurement always takes place for large sums, the system is most prone to fraudulent and corrupt practices. Thus, according to the World Bank, the volume of world bribes and inappropriate spending in the system of contractual relations is estimated at \$1 trillion per year. As the practice of European countries shows, the modern model of public partnership implies the participation of citizens in monitoring and taking active measures in the sphere of state and municipal orders. Public monitoring and control allow the creation of effective tools to counteract corruption (Carausan, 2017; Basheka, 2009; Ksonzhyk & Dubinina, 2017). Today, it is safe to say that public monitoring systems work in a more sophisticated way in developed countries, which reduces the level of corruption. In turn, developing countries, which are characterized by a sufficient level of corruption in all government structures, have such a problem in the process of public procurement. In order to transfer the experience of more successful countries, which have found their tools to counter corruption, it is necessary to analyze methods to combat corruption and evaluate their effectiveness. As a result, it can help to make a model of adaptation and reorganization of corrupt public procurement models into more effective ones, saving public funds and developing the economy on equal competitive terms.

### 2 Literature review

Before conducting a study of anti-corruption instruments in EU public procurement, it is necessary to understand the essence of these instruments. To this end, we will study the categories of &quot;monitoring&quot; and &quot;control&quot;. The Oxford English Dictionary defines the verb &quot;monitor&quot; as &quot;to observe&quot;. According to this dictionary, the root of the verb comes from the Latin &quot;monit&quot;, which means &quot;warned&quot; (Hellawell, 1991)

Monitoring makes sense only when the desired condition is predetermined if there are planned indicators. The role of monitoring is to assess whether such goals have been met. Monitoring and control are different methods of evaluation and analysis. Thus, monitoring consists of repetitive research using a standard methodology over some time. Monitoring activities can provide valuable information but do not determine whether the goals or standards have been met. For the purposes of this study, &quot;monitoring of public procurement&quot; includes absolutely all systematic observations of the public procurement system, based on the evaluation of the functioning and development of this system and the achievement of the goals set by the authorities of the states.

There is no definition of the term &quot;monitoring&quot; in the EU Public Procurement Act. Current EU directives on public contracts do not provide specific requirements for the monitoring of public procurement. The only reference to monitoring in the text of the Public Sector Directive is in the title of Article 81 – &quot;Monitoring mechanisms&quot;. This article states: &quot;Under Council Directive 89/665/EEC of 21 December 1989 on the harmonization of laws, regulations and administrative provisions relating to the application of control procedures, Member States shall ensure, through effective mechanisms, implementation of this Directive.

For that purpose, they may set up independent bodies to monitor public procurement. For this purpose, the organizers of public procurement shall prepare reports for:

- Organizers of tenders – duties to prepare separate reports on specific procurement procedures;
- EU Member States – duties to submit statistical data on contracts awarded during a given year to the European Commission.

The issues of organization of monitoring of public procurement have not only sufficient regulation system at the legislative level. Problems are well studied at the scientific level as well. The issue of the anti-corruption significance of public procurement is a hot topic for many researchers. In particular, many studies are devoted to e-procurement, which will take place on specialized sites with the possibility of public monitoring (Neupane et al., 2014). The relevance and necessity of monitoring are also sufficiently covered in the studies of Carausan, 2017; Ksonzhyk & Dubinina, 2017; Mamedova, 2015; Basheka & Bisangabasaija, 2009; Harland et al., 2009; Fazekas & Blum, 2021 and other researchers. Despite the fact that the issue of public procurement has been studied widely enough, the issue of monitoring and control of corruption is not highlighted enough. This makes it possible to form the purpose of our study. The purpose of the research is to study the effectiveness of instruments of public monitoring and control over corruption in public procurement of EU countries.

### 3 Materials and research methods

As a rule, the monitoring of public procurement includes such activities as data collection, analysis, dissemination of information on various aspects of public procurement (such as its transparency, openness, competitiveness, and efficiency). The monitoring results provide the basis for an empirical study of the procurement system's functioning, particularly for recommendations and proposals for its further development. As a result of the analysis of these reports, information on the

effectiveness of regulatory authorities in the field of public procurement was obtained. This information was systematized and grouped according to standard features. As a result of the analysis by the method of average values, a ranking of states by the level of corruption in public procurement was compiled.

#### 4 Results

In order to examine the tools of anti-corruption in public procurement, first, it is necessary to assess the main types of corruption. The main areas of corruption related to public procurement are shown in Fig. 1.

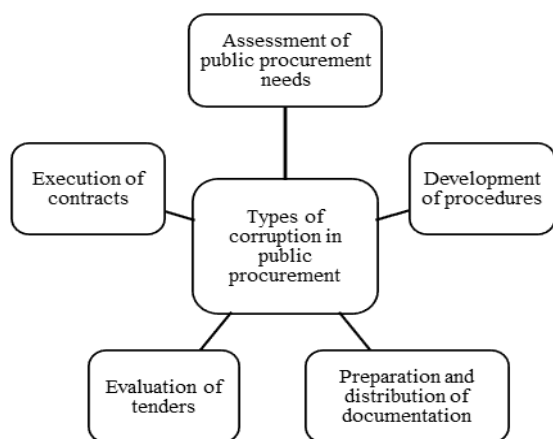


Figure 1 – Corrupt Practices in EU Public Procurement

Let us consider each area of corruption in more detail.

**Exaggeration of actual needs.** Procurers may order goods and services that are unnecessary for them or products in excessive amounts and quantities compared to actual need (Heggstad & Froystad, 2011). Shaping needs in favor of a particular supplier's products. Purchasers can order goods and services in a form or with unnecessary qualities to meet actual needs, creating advantages for a specific supplier (International, 2006; World Bank, 2007).

**Procurement thresholds and exemptions.** In Europe, the application of public procurement laws and various procedures depends on a set threshold of expected contract amounts and some predetermined exceptions. The formation of exceptions is a field for the development of corruption (OECD, 2010).

**Formation of selection criteria for individual participants.** This method of corruption is one of the most widespread. Evaluation criteria are selected in such a way as to exclude unwanted tenderers, although, according to all requirements, they could become such tenderers. This fact can significantly hinder fair competition. (Báger, 2011; Grodeland, 2010; Heggstad & Froystad, 2011; Papanek, 2009; Soreide, 2006).

**Excessive or specific requirements for bidders.** Each bidder company must meet official requirements. They may be tailored to the specifics of a particular company that is a participant in the corruption scheme (Báger, 2011; Grodeland, 2010; Papanek, 2009).

**Ignoring the most favorable price in favor of product quality.** Purchasers usually select the winning bidder based on the price factor. But they have the right to select the winner not only based on the price offer but also on the quality of the products offered. Since the quality criterion cannot be traced back to documents, this creates room for corruption schemes (Lengwiler & Wolfstetter, 2006; Piga, 2011; Papanek, 2009). Selective provision of information. Some participants can obtain more information on demand and gather the necessary documents to

satisfy the customer's request for goods or services (Goldman et al., 2012; Grodeland, 2010; Papanek, 2009; Piga, 2011).

**Lack of bid notification and reduced notification period.** The invitation to participate in public procurements may be published in various places or not published at all. It reduces the number of participants in the procurement and makes participants with preliminary agreements the winner. Also, the shorter is the period of notification of the bidding starts, the fewer bids will be submitted. Thus, only prearranged companies will be able to prepare for the tender (Kenny & Musatova, 2010; OECD, 2007). Intentional modification of invitations to tender. Intentional changes in the invitation reduce the number of bidders to the required number because the others will not be able to prepare a complete package of documents or will not receive information about changes in requirements.

**Paid documentation package.** If there is a fee to access the documentation, some potential bidders may lose interest in the competition. In principle, the high price of the tender documentation package may be justified; however, it may exclude even very high-quality suppliers from the competition. Deliberate mistakes in the publication of tender documents. Even a small mistake or omission of information can have serious consequences. For example, an erroneous categorization of an invitation to tender according to the Unified Procurement Classification may exclude quality suppliers from the tender (OECD, 2009).

**Intentional cancellation of a tender.** If a certain company wins a tender with which no prior agreement has been reached, there are procedures for canceling the tender, which involves the formation of a new procedure. This is allowed in a number of countries (OECD, 2007). Repeated violations of the rules and regulations of public procurement procedures. Violation of laws and other regulations governing the public procurement procedure is the simplest and grossest type of corruption. Unless such violations are committed on a large scale, they may remain undisclosed, and as a result, the results of the tender appear to be perfectly legally correct (Ware et al., 2007).

**Intentional contract modifications.** The results obtained after a contract are often very different from what was originally intended when the contract was concluded. For example, corrupt rents can be obtained by increasing the prices included in the contract, extending the deadlines for performance, and reducing quality. All of these methods are regularly observed in a number of countries (Heggstad & Froystad, 2011; Kenny & Musatova, 2010; Ware et al., 2007).

**Abuse of supplemental contracts or contingency reserves.** After a contract award, there may be a need for additional goods or services related to initially provided in the contract. This serves as a basis for awarding one or more additional contracts. (Papanek, 2009). Breach of contract in the course of implementation. If the organizer of the tender and the contractor belong to the same corrupt group, it is quite easy to secretly deviate from the contractual obligations and make an additional profit as a result. This type of corruption violates the principle of accountability and can be observed in many countries (Papanek, 2009; Transparency International, 2006). Manipulation of payment terms. Companies with corrupt ties may have a much higher level of confidence that they will be paid on time, even in circumstances in which the public organization does not have sufficient funds to pay all other suppliers on time.

In fact, in many countries, public monitoring organizations can trace the results of a tender and find the presence of corrupt schemes in each of them since the procurement takes place electronically. Today, most of the violations in the EU countries are related to the presence of one participant in the bidding, the lack of publications to attract more participants, and limiting access to different organizations. Let us consider the statistics on these facts of corruption schemes in Fig. 2.

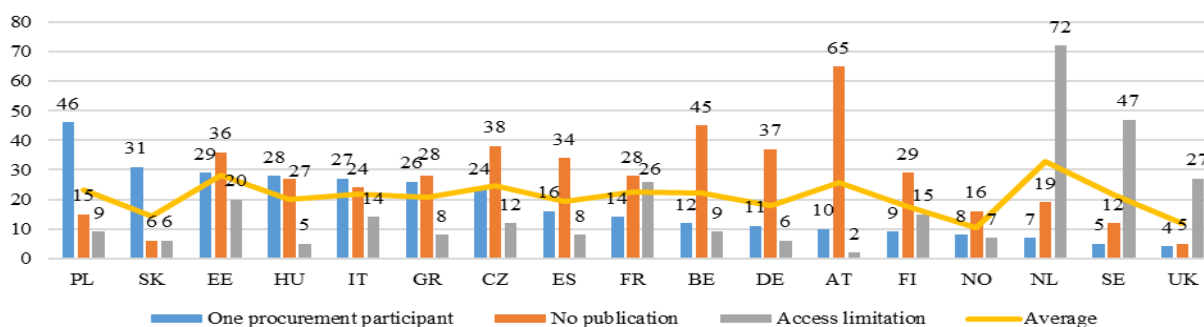


Figure 2 – Main violations in European public procurement during 2016-2019, %

Source: systematized by the author based on EC, 2019

From the statistics obtained, we can conclude that the largest number of violations associated with the participation of one participant in the procurement was recorded in Poland, Slovakia, Estonia. The largest number of violations in the area of lack of announcement was recorded in Austria, Belgium, the Czech Republic. In the Netherlands, Sweden, and the UK, most violations are related to the access restriction of procurement participants. Thus, by calculating the average of the compiled violations, we can identify the countries with more and fewer overall violations in public procurement (Fig.3)

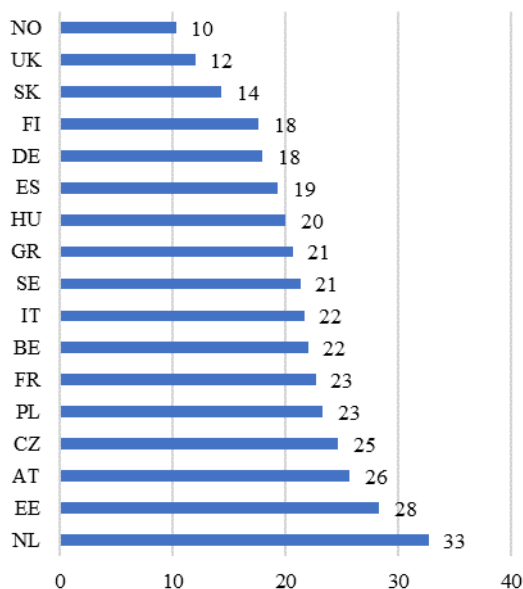


Figure 3 – Ranking of EU countries in the field of violations of public procurement procedures during 2016-2019

The least corruption factors are observed in Norway. Here the average number of violations is 10%. In the UK, the average figure is 12, Slovakia – 14. The highest figures are fixed in the Netherlands, Estonia, Austria, Czech Republic, and Poland.

In order to reduce corruption rates in European countries, the level of monitoring and control over public procurement needs to be increased. All the facts of monitoring are carried out by specially created organizations in different countries, which analyze procurement announcements and monitor the results of their implementation. Let's look at the work of the agencies in some countries.

Poland. In Poland, the Public Procurement Office prepares annual reports on the work of the procurement system, which are posted on the website of the GPO after their approval by the Council of Ministers. The results of the analyses are on [www.uzp.gov.pl](http://www.uzp.gov.pl).

Spain. In Spain, the Public Procurement Observatory disseminates information concerning public procurement from

both a domestic and international perspective, publishes the opinions and points of view of the experts participating in the Observatory, and develops and distributes newsletters containing proposals resulting from analyses and debates carried out by experts. Information is published at [www.obcp.es](http://www.obcp.es).

Italy. The Office of Public Contracts Oversight oversees the entire public procurement system at the state and regional levels. Through spot checks, it monitors the proper application of laws, verifies the compliance of contract award procedures with regulations, and the effectiveness of contract performance. Every year this agency reports to Parliament on its work. The reports can be viewed at [www.avcp.it](http://www.avcp.it).

Portugal. The Public Works Observatory is able to produce indicators, reports, and statistics based on the results of data processing, thus improving the level of awareness of the nature of the functioning of the procurement sector. The database collected in the Observatory is usually compiled on the basis of the reports submitted by the tender organizers.

Today, there are three forms of monitoring, which are actively used in the EU countries by almost all supervisory organizations: compliance audit, performance evaluation, compliance monitoring. Let us consider each form in more detail.

Compliance audits. Such monitoring is carried out through checks on the legality of actions taken by the organizers of tenders (e.g., qualification of business entities or determination of the winning bidder) or their inactivity (e.g., failure to publish a contract when the law requires such publication). Such inspections are not concerned with evaluating public expenditure in terms of good governance, efficiency, effectiveness, and impeccability. In addition, audits or inspections are not concerned with monitoring the implementation of government procurement rules. Nevertheless, carefully and correctly conducted audits can help achieve the objectives defined by the regulations of the law. Bulgarian Public Procurement Agency, the Polish Public Procurement Bureau, the Public Procurement Bureau in Slovakia, and the Romanian National Agency for Public Procurement Regulation and Monitoring are agencies conducting compliance audits.

Performance Evaluation. This type of monitoring focuses on assessing the procurement system's performance in terms of efficiency and effectiveness. The analysis of indicators provide information that allows the monitoring body to conclude the transparency of procurement, compliance with competition rules, the efficiency of procurement, procurement control, development of the public procurement system.

Compliance monitoring. At the central level, monitoring is usually carried out by public procurement bureaus (departments/bodies). One of their general functions is to monitor the compliance of tender organizers with the public procurement law. In particular, they check the compliance of specific procurement procedures with legal requirements. In turn, regulatory authorities do not usually get involved in the

systematic monitoring of public procurement. Their main function is an objective and independent review of appeals (complaints) filed during procurement procedures against the decisions of tender organizers. The task of the monitoring body is to resolve the dispute between the two parties (the organizer and the bidder whose rights are violated). However, even when supervisory bodies are not involved in monitoring public procurement, their decisions may be helpful in monitoring events in public procurement since they concern the same actions or inaction of tender organizers.

Let us look at practical examples of state-level monitoring on the model of some European countries.

Poland. The Polish Public Procurement Office is obliged to provide the Council of Ministers with annual reports on the performance of the public contracting system. These reports include statistical data on the procedures, a description of the activities of the procedures, and a description of the legal framework adopted.

Spain. The Bureau provides the public with statistical documents, a list of companies excluded from public procurement, and certified companies.

France. In France, there are at least two agencies at the central level with monitoring functions. The Directorate of Legal Affairs (Direction des Affaires juridiques – DAJ) is the Ministry of Economy and Finance division. The Department of Public Procurement under the DAJ is responsible for developing primary legislation and regulations, standard tender documents, and standard forms of contracts. In addition, it is in charge of drafting procurement rules and preparing related manuals and instructions. Monitoring at the level of tender organizers ensures the efficiency and effectiveness of their work, identifies weaknesses and strengths in the procurement system's work and determines the priorities for its development. In addition, it is a critical element of strategic and operational planning and management of the state customer

Thus, in general, we can say that the EU countries have created a code of regulations, which would allow effective control and monitoring of public procurement. But it is safe to say that the level of corruption in tender procurement generally depends on the level of corruption in the state. Therefore, corruption can be solved not only by involving the controlling state bodies but also the public. Furthermore, with the use of available means of information dissemination, it is possible to quickly summarize information about violations in public procurement and thus bring the problem of local corruption to the authorities.

## 5 Discussion

According to many researchers of public procurement in the EU (Ksonzhyk & Dubinina 2017; Carausan, 2017) the existing monitoring system is not perfect in many EU countries. It is still under reform and requires further improvement. One of the most effective ways is automated open monitoring, which is possible through special platforms and websites (Mamedova, 2015; Neupane et al., 2014). In most developing countries, there is a problem of openness of information on budgets. Public officials are reluctant to provide it, justifying it by the secrecy of information. It creates the conditions for corruption in the public procurement process. The organization of monitoring and communication is the primary tool to improve ethics in public procurement (Basheka, 2009).

In order to carry out public monitoring at an effective level, every interested subject should receive publicly available information about the use of public funds (Fazekas & Blum, 2021). At the same time, to reduce corruption and motivate the public to be interested in public procurement, it is necessary to:

- identify a range of public officials who could cooperate in the direction of obtaining information. Such people should support the initiative of the public to get information about

the use of funds of citizens of the country or residents of the municipality.

- develop regulatory legislation that would authorize the public to participate in public procurement.
- create a common information resource where interested bodies could get information about current public procurements and the result of tenders. For example, such sites should provide information on the number of applications submitted, eligibility requirements, and selection results using key parameters that were used to evaluate bidders.

But even if countries are willing to improve the level of public monitoring, information requests from the public may face many limitations, in particular, they may relate to national security.

## 6 Conclusion

Today, the procedure of electronic public procurement in many countries has become one of the most effective ways to combat corruption. But at the same time, in countries where the level of corruption is quite high at all levels of government and business, there always will be legislative bottlenecks that can be exploited for corruption. Despite the fact that in most EU countries, public procurement is regulated at a sufficiently high level, including establishing state controlling organizations that monitor budget spending efficiency, corruption is still present. At the same time, five main corruption channels and about 20 corruption schemes have been identified, which are related to the exaggeration of the needs of public organizations, imperfect procedures, problems with documentation, evaluation of bids, and contract performance. Such issues are recorded in the public procurement of almost all EU countries. At the same time, analysis of statistical information has shown the weaknesses of each country, which could be eliminated by directing public monitoring to this very problem. At present, the controlling state bureaus and agencies do not work efficiently enough in some countries. Thus, if the authorities wanted to fight corruption, the issue of control could be shifted to public monitoring by organizing tenders in electronic form with the possibility to control public procurement at all stages: preparation of the state request, evaluation of the list of participants, their documentation and proposals, justification of the choice of the winner, and control over the implementation of contracts. Such platforms should be created at the state's initiative with open access to such information for individual control groups. Public organizations interested in controlling public funds could quickly disseminate information through open channels, including social networks, involving the media and other controlling organizations in the procurement process. Thus, the improvement of the control of public procurement in the area of corruption would be most effectively accomplished through public monitoring.

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**Primary Paper Section: A**

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