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Public procurement culture after accession to the EU – The case of a Central European transition country

Tünde Tátrai

Abstract

Understanding and implementing European public procurement directives does not mean that countries that joined the European Union at a later stage were immediately able to adjust to their logic. It is not necessarily a problem of skills; cumbersome and slow learning is due much more to cultural differences, and lack of practice and knowledge of the interpretation of law by the European Court of Justice. This article sums up the results of four surveys presenting the changes in Hungary's public procurement culture over 10 years, which has a useful message for other more recent Member States.

Keywords:

public procurement, culture, transition country, European Union

1. Introduction

Let us assume that we can talk about culture also in relation to public procurement. If we search for the meaning of culture in this environment, we also assume that *Culture* is the characteristic and knowledge of a particular group of people, the social behaviour and norms found in human societies. It is worthwhile to study the elements of public procurement culture, which researchers of the field have already raised, to explore characteristics which are decisive in identifying a public procurement culture. This article has no intention to explore or qualify the differences between public procurement cultures, rather it calls attention to changes in the approaches and opinions of market agents, which also demonstrates the changes and development of public procurement culture.

The literature on public procurement is not replete with writings about cultural changes reaching the public procurement market. Preuss (2009) refers to organisational culture, Moon (2005) to managerial culture, Erridge (2007) mentions risk avoidance culture, but public procurement literature does not really delve into general cultural changes. Edler et al (2005) regards good culture as an important factor, expressly laying the foundations for innovation, Caldwell et al (2004) highlights the importance of culture in relation to the decisions of procuring entities. Smith (2008) underlines the importance of corruption culture in relation to public procurement.

Researchers apply a manifold of approaches, some of which relate to sustainability, innovation, some to corruption and efficiency or to the level of preparedness of market agents. Lawyers and economists address cultural aspects in a variety of ways and they place emphasis on different aspects accordingly.

In the course of this research, it has already been possible to explore some questions in the questionnaire. Tátrai-Nyikos (2012) examined what set of objectives Hungarian contracting authorities need to adhere to when doing their procurement. The frequently contradictory objectives and EU strategic directions call attention to the fact that it is not possible to quickly achieve fundamental cultural changes in a diverse system of objectives. For instance, the incorporation of the sustainability objectives into everyday dealings is not decided at the level of regulations. Tátrai reinforced this (2015), when she wished to examine the level of development achieved by Hungarian public procurement based on the 7-stage model by Telgen et al (2007). Although the seven stages of development are built on one another, yet it is not necessary for public procurement markets,

regions or countries to reach these levels one after the other in the course of their development. The first steps generally result in defining the existing demands and the development of a legal background, after which the focus shifts to criteria of efficiency, value-orientation and accountability. The difference between the last two steps lies in the depth and genuineness of the realisation of broader government objectives. Levels of development go beyond issues of general regulation; the model intends to take market movements and capabilities into consideration rather more substantially than the desires and plans formulated in words and policies.

Table 1 – The 7-stage model [Telgen et al, 2007]

Stage 1	Sourcing and delivery of goods and services
Stage 2	Compliance with legislation/regulation
Stage 3	Efficient use of public funds
Stage 4	Accountability
Stage 5	Value for money
Stage 6	Supporting of broader government policy objectives
Stage 7	Delivery of broader government objectives

In the course of research affecting Hungary, Tátrai (2015) draws the conclusion that “the European Member States having an advanced procurement culture would only be able to reach stage 7, i.e., the level of sustainable procurement where public procurement genuinely becomes the engine of economic growth, if they set up their own guidelines, help the contracting authorities and develop their practices taking into account their cultural differences and data.” [Tátrai, 2015. pp. 285.)

The implementation of the new rules of public procurement implying new approaches and logic for which Member States will be accountable has been implemented in several countries that have become Member States of the European Union. The process has not been smooth in any one of them. The introduction of the European regulation led gradually to their true understanding and to changes in the opinion of the market agents. The regulation and its impact can best be analysed in the course of a research project where the questions of a technical questionnaire are answered by stakeholders of the public procurement market.

2. Methodology

In the course of our research, we conducted questionnaire surveys in Hungary following the transition to a market economy (1989), accession to the EU (2004) and the implementation of the EU directives. The four questionnaire surveys between 2009 and 2018 follow the changes in the opinions of economic operators, the gradual evolution of demands and expectations in a country that had public procurement practised from the 1990s. Yet, getting used to the set of rules developed in line with European regulations and understanding the system began with the control of public procurement under projects implemented using EU funds and debates over increasingly complex issues. Becoming acquainted with the decisions of the European Court of Justice, shedding light on major cases of corruption, getting to know electronic public procurement and the appearance of foreign bidders gradually changed the approach of economic operators. Research has demonstrated changes in approaches over 9 years and it has perhaps brought a promise of development. We assume that the approach to competition, corruption and sustainability are criteria which fundamentally determine the public procurement culture of a country which also constitutes part of the EU Public Procurement Priorities [Public Procurement Communication, 2017].

Corvinus University of Budapest and Transparency International Hungary have monitored the Hungarian public procurement market since 2009; the Hungarian rules harmonised with the directives were enacted between 2004 and 2006. The first few years enabled economic operators to gradually get used to their public procurement obligations. On-line questionnaires were used in 2009, 2011, 2013 and 2018 to explore the opinions of contracting authorities, bidders, consultants and legislators of the public procurement market. The on-line questionnaires are accessible at www.kozbeszkut.hu; the research summaries were published on each occasion.

The number of responses received was between 100 and 106. The respondents included contracting authorities, utilities, bidders, legislators and public procurement consultants. Over 50% of the respondents have been engaged in public procurement for more than 5 years.

By comparing the four questionnaires, we underline the most important changes and challenges in relation to competition and efficiency, ethics and corruption and sustainability and innovation.

3. Research results

Below, we focus on three important areas based on the responses given to the questionnaires and draw our conclusions. The first group is competition and efficiency, the second is ethics and corruption, and the third is innovation and sustainability, of which we highlight the relevant message and experience, which goes beyond the Hungarian example.

3.1. Competition and efficiency

Generally speaking, market players understand a great deal by the level of development of the public procurement market and their views have not changed all that much over almost a decade. Albeit their assessment improved a little, but as the market has evolved, expectations increased too, thus the opinion on development does not signify genuine changes.

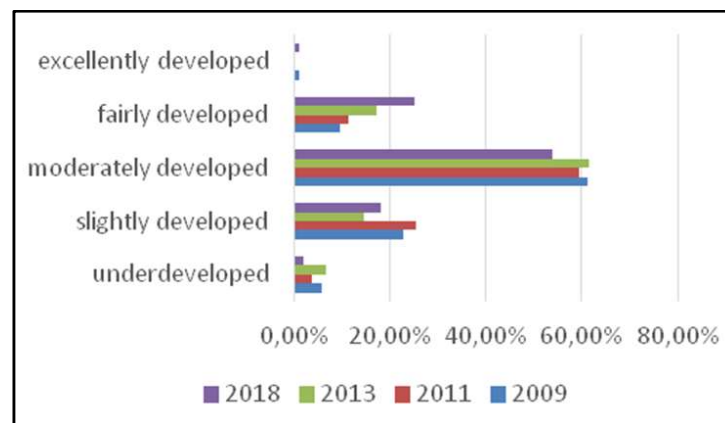


Figure 1 – How do you assess the level of development of the public procurement market?

In terms of efficiency, economic operators have a better opinion of the potential of the public procurement market, yet practically three-quarters of the respondents cannot imagine the achievement of the efficiency of procurement in the profit-oriented sphere in public procurement. In other words, they regard public procurement not as a regulated procurement process in the traditional sense, but as procurement under increasingly difficult conditions.

Hungarian public procurement procedures are subject to a large number of mandatory fees, such as the announcement control fee, the fee for using the electronic public procurement system, the administrative service fee in the case of legal remedies; it is also mandatory to engage an independent accredited public procurement consultant under the EU regime and in cases specified in other legal

regulations. Economic operators attach great importance to the costs of the procedure from the aspect of the efficiency of public procurement, but their resistance is not strong, they have become used to it, despite the fact that the extent of costs directly burdening the procedure is outstanding relative to the other Member States of the European Union. The fees charged to finance the institutional system have not decreased over the past 10 years, greatly restraining the competitiveness of Hungarian public procurement public.

The actors are more tolerant when they state their opinion on the regulation of public procurement comparing the costs of public procurement to other legal regulations. They have become used to the high costs and they tend to handle this rather neutrally, with regard to the fees directly burdening public procurement procedures as increasingly acceptable, which for instance exceed EUR 1,000 per procedure only for controlling the announcements under the EU regime.

Economic operators are, however, more critical of the regulation. Every year, it has been regarded as excessively regulated by as much as 64% of its users, and this rate rose to 80% by 2013. At the same time, the number of those who regarded public procurement as an activity requiring economic, technical and IT skills in addition to legal knowledge also increased.

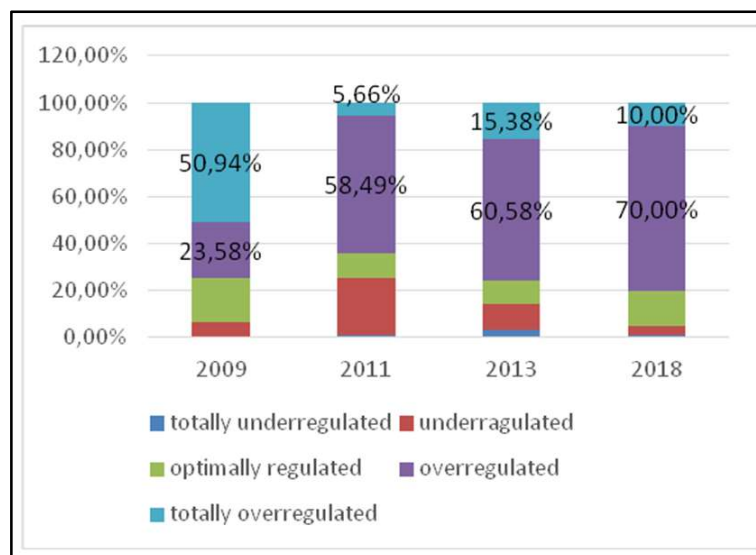


Figure 2 – To what extent is the Hungarian public procurement market regulated?

Responses to the question of to what extent public procurement allows market processes to prevail provide a thoroughly qualified picture. Public procurement appears as an impeding factor in the opinion of economic operators, irrespective of whether they are contracting authorities or bidders.

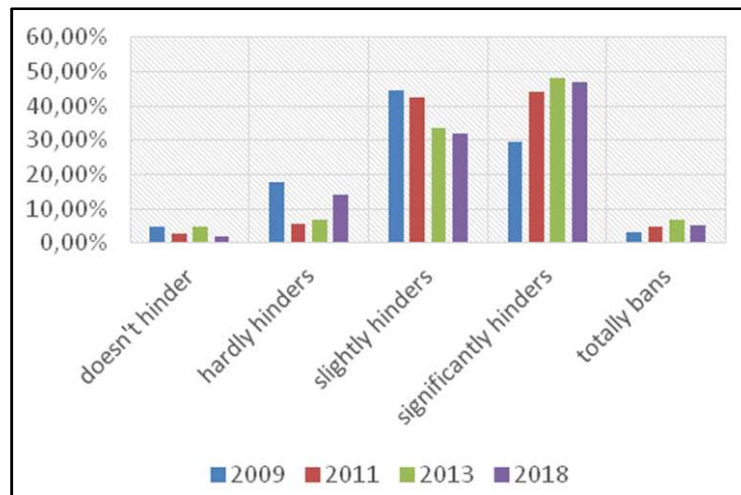


Figure 3 – To what extent regulations allow market processes to prevail?

While regulations leave less scope for market processes, contracting authorities seem to turn towards the least bureaucratic solutions, open procedures and a choice of simple evaluation criteria, and there is a stronger interest for longer term and more rational solutions, such as choosing the framework agreement procedure. The complicated regulatory environment impedes creativity, but despite initial uncertainties, contracting authorities are gaining on courage. This, however, does not mean that they would be happy to opt for evaluation criteria that are hard to quantify, sustainable elements, dynamic procurement systems or innovation partnerships.

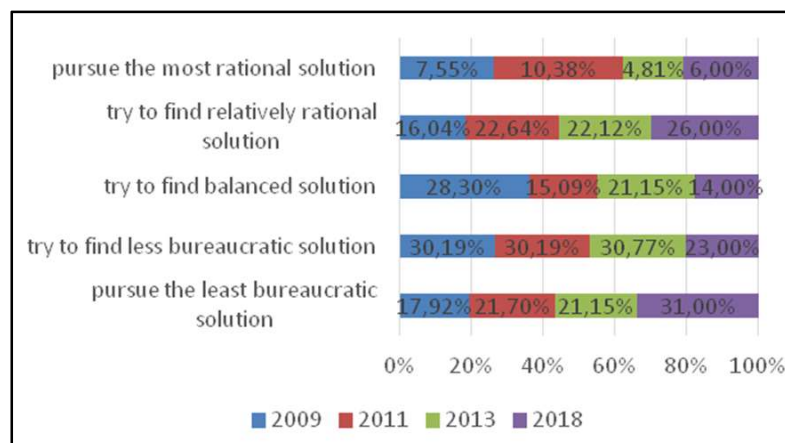


Figure 4 – In your opinion, will actors turn towards more complex and more rational solutions from the viewpoint of procurement (e.g. choosing the framework agreement procedure or the lowest cost) or would they prefer less complicated, less flexible solutions (e.g. choice of an open procedure or using the lowest price as evaluation criterion) with regard to the administration of procurement?

As to the question of how to improve the efficiency of public procurement, three-quarters of respondents supported the adoption of project culture every year, while the development of public procurement culture takes the lead among the responses to the same question. Whatever it may mean, economic operators would prefer to have a culturally more advanced market because it would certainly be more efficient.

1	Efficient spending of public money
2	Fight against corruption
3	Transparency
4	Supporting SMEs
5	Decreasing go-round debt
6	Increasing employment
7	Supporting environmental protection
8	Supporting social considerations
9	Easing up the fiscal crisis by slowing down public procurement

Table 2 – The order of importance of the declared objectives of public procurement implemented through public procurement based on the opinion of respondents (2018)

The determination of the order of importance is in harmony with additional opinions, which show – also with regard to earlier years – that sustainability aspects or the objectives of the government impeding public procurement and using public procurement to resolve the crisis receive much less support. Supporting SMEs is the only element not linked to corruption or efficiency enjoying relative support. Respondents regard efficiency and combating corruption as the most important objectives based on all the previous questionnaire surveys. They call the government to account for ensuring competition and for excessive regulation, but they accept that they themselves have to finance the institutional system via the fees.

3.2. Ethics and corruption

The research projects posed a large number of questions concerning the ethical attitudes of the individual stakeholder groups. Ethical behaviour improved in every stakeholder group, be they contracting authorities, utilities or bidders. Yet, when they were asked to state their opinion on regulations, the results were worse year after year and more and more of them believe that regulations cannot put an end to unfair competition. That is why they do not believe in excessive regulation and do not regard it as a solution leading to efficiency.

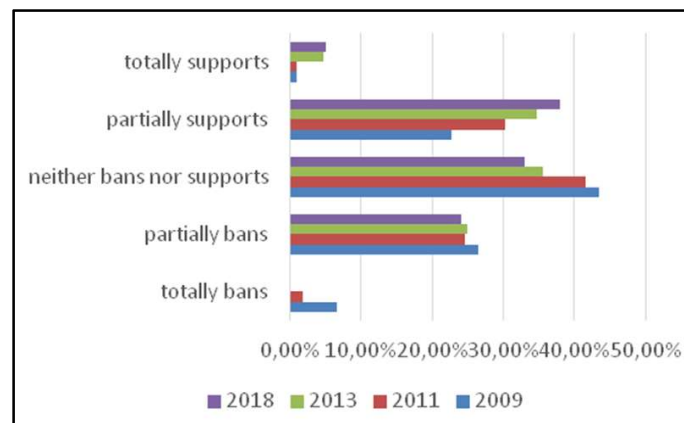


Figure 5 – In your view, to what extent can the regulation of public procurement put an end to unfair competition (banning unsuitable bidders, giving illegal advantage to bidders, corruption)?

Of the individual subjects of procurement, infestation by corruption is clearly the highest in the case of works contracts, where close to 90% of the respondents declare that this is the subject of procurement, which is directly affected by corruption. Naturally, this perception may arise from the fact that characteristically cases of corruption involving a higher value arise in relation to works contracts as the value limit as well as the estimated values are *ab ovo* higher in this category. At the same time, the exploitation of subcontractors, the omission of engaging the promised experts and problems of quality arise most frequently in the case of works contracts.

It is indicative that respondents see low value public procurements being increasingly infested by corruption. The diagram clearly indicates deteriorating opinions as well as the spill-over of forms of corrupt behaviour to the relatively small projects.

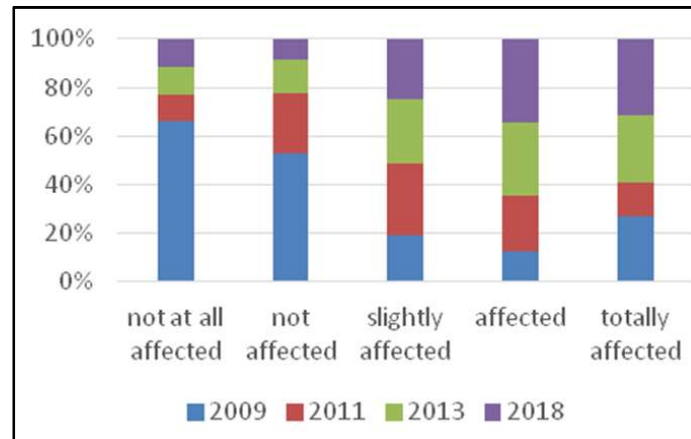


Figure 6 – To what extent do you believe low value public procurements are infected by corruption?

Of the various phases and the acts of the procedure, respondents clearly regarded the preparation of the procedure as the most infested by corruption, and negative opinion on performance also gained ground. Accordingly, the struggle for efficiency through stringent control of the procedures and their regulation is less suitable to reduce corruption because preparation and performance fall outside the scope of the administration of the procedure in a legal sense.

3.3. Sustainability and innovation

Based on the opinions of economic operators, the prevalence of sustainability is practically negligible. In spite of compliance with the direction of EU strategy, development can be perceived only very poorly with regard to the prevalence of both green criteria and social criteria. The results below show responses to two questions demonstrating the exceedingly restrained application of these criteria and a lack of change. The *usually* or *always consider* responses are hardly measurable, but in all cases, they are below 5%.

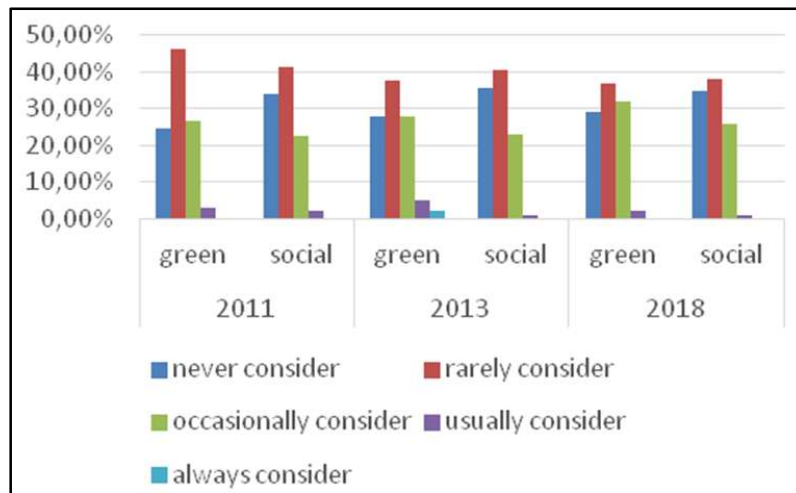


Figure 7 – To what extent can our public procurement be regarded as green/social, that is, in your view, to what extent do contracting authorities take criteria of environment protection/social aspects into consideration when developing the subjects of procurement and the evaluation criteria?

Public procurement as a factor impeding innovation is continuously in the crossfire of the opinions of economic operators. Their opinion is increasingly negative, in spite of the fact that in the course of implementing the new directives of 2014, the new innovation partnership and non-price-evaluation criteria were introduced. The market has not yet reacted to the regulation, it fails to utilise the opportunities.

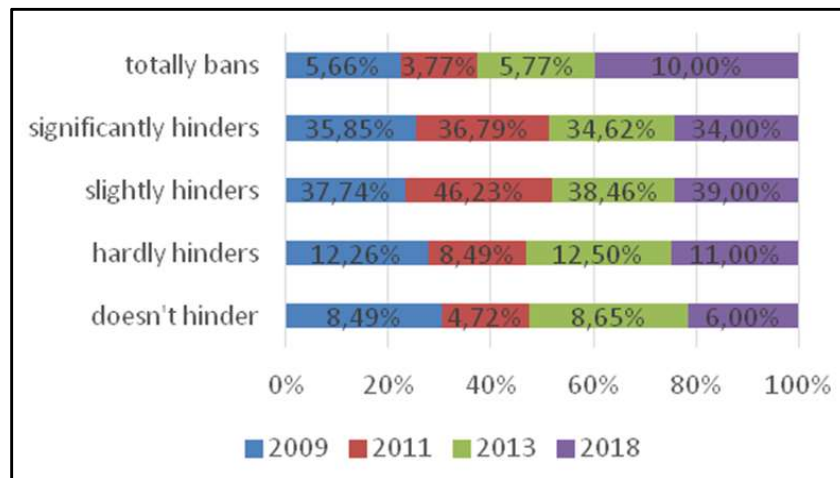


Figure 8 – To what extent can public procurement impede innovation?

Practically, the attributes carrying European modernity in public procurement, such as innovation, sustainability and creative evaluation criteria hardly appear, moreover a comparison of the sets of objectives reveals that they are clearly subordinated.

Based on the accumulated experience in the implementation of the Public Procurement Directives, the greatest expectations were on competition, efficiency gains, reduction of corruption and the emergence of innovative elements. Public procurers follow the needs of regulation, but this indicates a moderate cultural change. The mandatory introduction of the Electronic Public Procurement System in 2018 is expected to have an impact on the attitudes of stakeholders, which should be considered in the future.

4. Summary

Tátrai-Nyikos (2012) mapped out the objectives, for which public procurement is applied in Hungary. The individual and contradictory objectives included the issues that are also subject to this research. The research revealed that the individual objectives may extinguish one another, or they may have effects in opposite directions. Diverse sets of criteria in the EU Public Procurement policy priorities [EU Public Procurement Communication, 2017] and the Public Procurement Directives (23/2014/EU, 24/2014/EU, 25/2014/EU) did not automatically result in enhancing the openness of economic operators. The document itself [EU Public Procurement Communication, 2017. pp.2] also mentions the need for immediate cultural change. In a Member State where stakeholders have been getting to know the logic of the EU Directives since 2004, the new environment of the 2014 Directives has an impact on the market at least of a magnitude that equals that of the implementation of the 2004 Directives (17/2004/EC, 18/2004/EC). Change is necessary – this, however, does not necessarily mean striking, clear and rapid cultural development.

Getting used to the many types of controls, accepting the costs, the passive attitudes and the lack of information on European examples, adjusting to a continuously changing environment goes actually faster but it does not result in any improvement in the creativity of the stakeholders. This supports the ideas of Telgen et al (2007) concerning the stages of development in public procurement, assuming that the individual stages develop back to back. So long as economic operators are preoccupied with primarily ethical issues, additional mainly sustainable elements and policies appear less often in everyday practice, i.e. not at the level of the rules. A common public procurer definitely follows the EU's direction at the level of words and plans, in reality however he does not get to this point, he will only fight the elements, resolve the everyday administration issues and struggle with ethical challenges.

It is not the public procurement market that hinders development and a more balanced cultural change, but society and general culture and approaches, which do not enable fair competition in public procurement. It is worthwhile to take the opinion of economic operators seriously, one should not set unrealistic expectations for those having a less advanced public procurement culture, one should take into consideration that it is not possible to automatically require the same standards for states newly acceding to the EU and to call them to account for compliance. For cultural change in public procurement, more is needed than drafting new directives and strategies.

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