

ANNUAL REPORT TO THE NATIONAL ASSEMBLY

On the activities of the Public Procurement Authority
between 1 January and 31 December 2016



PUBLIC
PROCUREMENT
AUTHORITY

2016



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Dear Reader,

The Public Procurement Authority, and its legal Predecessor the Public Procurement Council has enjoyed unchanged legal status since the adoption of the first Public Procurement Act; it is subordinated to the Hungarian National Assembly.

The main duty of the Authority is to support public procurement actors in applying the law. In order to execute this task efficiently, the Authority publishes guidelines, gives information and briefings, organises conferences and maintains a database.

In line with the principle of transparency and the Public Procurement Act, the Authority submits an annual report on its activities to the Hungarian National Assembly. The report provides information on the Authority's activities, its objectives, yearly results and general information on the trends of the Hungarian public procurement sector.



The report for 2016 has been renewed. Besides its new format it is important to note that the organisation provides information not only on the fulfilment of its obligatory duties but also on voluntarily tasks that go beyond the Authority's legal obligations; the Authority intends to act as a service provider to shape legal practice and to promote lawful conduct. In order to achieve this, the Authority organises conferences, implements IT development projects and promotes cooperation with various partners. Client-friendly public administration and reduction of administrative burdens are aspects expected of a modern budgetary organisation that have a significant impact on its functioning. The Public Procurement Authority organises the fulfilment of its duties according to these objectives. Furthermore, it plays a significant role in an increasing number of areas in order to support the Hungarian public procurement system.

I strongly believe that in the field of public procurement we can only build upon strong and committed institutions and experts.

I wish great success to all actors of the Hungarian public procurement system in their joint efforts to promote fair competition, accountability and efficient use of public funds.

László Kövér
Speaker of the National Assembly of Hungary



Dear Reader,

I would like to welcome you on behalf of the Public Procurement Authority to our renewed annual report. The new form and content of this publication is intended to reflect our new approach, which focuses on public service, efficient and supportive communication and innovation.

The year 2016 marked the renewal of the Authority from many perspectives. As a result of the new Public Procurement Act that entered into force 1 November 2015 we now have a wider range of competencies; among others, the legal institution of self-cleaning was introduced, a department responsible for the control of the execution and modification of public contracts was established, and there is a stricter monitoring of the negotiated procedures without prior publication in order to enhance competition, as a result of which the number of this kind of procedure dropped by 15%.



In addition to performing our existing duties we also focused on establishing practices in compliance with the new Act. The Authority actively supported the National Assembly in its legislative work by expressing opinion on the provisions of the Public Procurement Act and the connected decrees, by collecting the related experience in applying the law, by formulating recommendations on amending the legal framework as well as by continuously participating in the work of the Public Procurement Roundtable that was established by the ministry responsible for drafting public procurement legislation. We believe that our recommendations that are based on our experience contributed to defining the future direction of the legislation. Furthermore, the Authority is very committed to supporting and informing those applying the law, since one of our most important mission is to establish professional “good practices”. As a result of our efforts to create a high quality, client-friendly administration, we now enjoy an increased level of trust, which can be clearly demonstrated by the fact that in the current reporting period there were two and a half time more requests submitted to express our position and 50% more notification of public interest than in the previous year.

In the current reporting period, the objective of the Authority’s official controls of public procurement procedures and the execution of public contracts is to promote fair, efficient and verifiable management of public funds.

The Public Procurement Arbitration Board has also become more efficient, as a result of which the amount of revenues from fines in 2016 was five times the amount achieved in 2015. The increase of financial sanctions significantly contributed to deterring public procurement actors from violating the law.

In order to facilitate a fair, transparent and efficient public procurement practice, the Authority put emphasis on cooperation with Hungarian and national professional organisations. It is of major importance that in 2016, the Authority was once again involved in the work of the Green Public Procurement Working Group of the European Commission, since sustainability remains an area requiring improvement in Hungary. Furthermore, the Authority concluded several cooperation agreements; we believe that it is vital to establish active communication among the various actors in order to conduct simple and professional public procurement procedures. Cooperation agreements were concluded, among others, with the Hungarian Association of Young Entrepreneurs’, with the Hungarian State Treasury, the Association of Towns with County Status and the Hungarian Academy of Sciences.

In order to facilitate the dialogue between the legislator and those applying the law, the Authority organised a series of conferences entitled “Public Procurement Academy”. In 2016, ten free-of-charge conferences were held in Budapest and in the countryside; this provided the opportunity to offer solutions for problems in connection with the new public procurement regulations and to disseminate current information. We consider it a great success that all our conferences proved to be popular and fully booked; the average number of participants was 200, so, last year alone we were able to provide 2000 experts with relevant information.

In line with the intention of the legislator to reduce bureaucracy and to simplify and accelerate procedures, the Authority took on voluntarily tasks in 2016. Several IT development and consolidation projects were launched in order to facilitate public administration and case handling and make it more digital. Our objective to become more modern and keep up with the requirements of the digital age is reflected by an initiative of ours that in addition to improving our homepage (kozbeszerzes.hu), aims to develop a mobile phone application to provide up-to-date content for those interested in the area of public procurement.

Renewal was our mission in 2016, in 2017, the main focus is to enhance professional quality.

Csaba Balázs Rigó
President of the Public Procurement Authority



III. Obligatory tasks of the Public Procurement Authority

III.1. The Council operating within the framework of the Public Procurement Authority

The Council operating within the framework of the Authority (hereinafter Council) has the objectives to enforce the principles of Act CXLIII of 2015 on Public Procurement (hereinafter referred to as the PPA), to ensure the specific objectives in the public interest as well as the interest of contracting authorities and tenderers (Articles 182 to 184 of the PPA)

Members of the Council functioning in the framework of the Public Procurement Authority				
President	The person designated by the Minister competent in public funds	The person designated by the Minister competent in economic policy	The person designated jointly by the Minister competent in agricultural policy and the Hungarian Chamber of Agriculture, Food Economy and Rural Development	The person designated by the Minister competent in building matters
Rigó Csaba Balázs	Dr. Anita Boros	Dr. Péter Jármai	Dr. Zoltán Pál Kovács	Dr. Dániel Gergely Császár
The person designated by the Minister competent in public procurements	The President of the State Audit Office, or the person designated by him	The President of the Hungarian Competition Authority or the person designated by him	The President of the Government Control Office or the person designated by him	The Head of the Hungarian Authority for Consumer Protection, or the person designated by him
Dr. Balázs Reiniger	Anita Pljesovszki Mészárosné	Dr. László Bak	Dr. Szabolcs Barna Gaál	Dr. Gabriella Katalin Ádám
The Governor of the Hungarian National Bank, or the person designated by him	The person designated jointly by the national associations of local governments	The person designated jointly by the Hungarian Chamber of Engineers and the Chamber of Hungarian Architects	The four persons designated by the national employers' interest representation bodies and the national economic chambers	The person designated by the professional body of the accredited public procurement consultants
Dr. Kolos Kardkovács	Dr. Bernadett Paróczai	Dr. Rudolf Virág	Tamás Hódsági Géza Kelemen Péter Kemény Pál Nemesi	Unfilled position

In 2016, in line with the amendment of the PPA, the Council had the objective to support sustainability and social issues, to assist the legislator in reducing red tape and to play an active role in the establishment of the electronic public procurement system, therefore, the decision was made **to set up the following three working groups:**

- Working group on reducing red tape and supporting the legislative work,
- Working group on supporting the performance of public service tasks,
- Working group on eProcurement and IT activities.

The Council adopted the **updated Code of Conduct**, which has the main aim to give guidance to public procurement actors on how to act in an ethical manner during public procurement procedures, thus, contributing to the efficient use of public funds, to the protection of public assets and to the clarity of public procurement procedures.

In the reporting period, the Council approved the publication of several guidelines to support those applying the regulatory framework, about which more details are provided in the chapter entitled **Publication of guidelines and President's briefings.**

III.2. Supporting the application of law, promoting the legislative work

Publication of the Public Procurement Bulletin

Since 1 July 2008, the Public Procurement Bulletin, that is the official journal of the Authority, has been published exclusively in an electronic format, on the homepage of the Authority. The general rule is that the bulletin is published three times a week, every Monday, Wednesday and Friday; **in 2016, a total of 150 issues** were published. The Authority edits and manages the content of every issue of the Public Procurement Bulletin, furthermore, it is responsible for the publication of the official and authentic electronic version.

Publication of the Public Procurement Report in 2016

In cooperation with Wolters Kluwer Ltd., the Authority has been publishing a monthly journal titled Public Procurement Report (Közbeszerzési Szemle, hereinafter Report) since 2011; which was also continued in 2016.

The Report provides information to the actors of the public procurement market (such as contracting authorities, tenderers, monitoring bodies, training organisers, etc.), and those interested in the area of public procurement concerning the current legislative changes, thus, facilitating the application of public procurement regulations, providing answers to concrete law application questions, disseminating information on the most important decisions of the Public Procurement Arbitration Board, summarising the current international trends and challenges in the area of public procurements, providing information on education, as well as offering the opportunity to publish studies and articles by public procurement experts. In 2016, a total of 12 issues were published; issues No 1-2 were published as a double issue focusing on the new Public Procurement Act that entered into force on 1 November 2015 as well as on the connected implementation decrees.





Traditionally, the Report has the following chapters:

- **Public procurement updates:** information on the current changes of the regulations, news concerning public procurements, portraits.
- **Public procurement law application:** in the column “The current positions of the Public Procurement Authority” the Authority’s Department for Public Service and Support summarises Authority’s responses to the most frequently asked questions; in the column “Answers of experts”, public procurement experts, external professionals answer questions in relation to public procurements, and last but not least, the column “Current decisions of the Public Procurement Arbitration Board” analyses and publishes the most important decisions and the related court judgements every month.
- **Studies, articles:** this chapter deals with the Authority’s positions concerning international issues, the judgements of the European Court of Justice in the field of public procurement, furthermore, the most important sources of international and Community law and documents are discussed, and articles and studies of Hungarian public procurement experts are published.

Publication of guidelines and President’s briefings

In line with Article 183 (c) of the PPA, the Council operating within the framework of the Public Procurement Authority, consults with the minister competent in public procurements and, where appropriate, in collaboration with the national economic chambers and other trade organisations, **prepares guidelines with the aim of facilitating the application of the regulations applicable to public procurements** based on the experience acquired from the decisions of review procedures and the control of public contracts in practice and concerning practical information on public procurement, which **are published on the Authority’s homepage and in the Public Procurement Bulletin.**

The Public Procurement Authority and Council drafted and published **11 guidelines** in 2016, focusing on the following topics:

- states with which Hungary has an agreement on the avoidance of double taxation;
- Hungary’s and the European Union’s international agreements in the field of public procurements;
- the list of electronic, official registers according to Article 69 (11) of the PPA and their internet address;
- regulations in connection with suitability criteria;
- rules of public procurement procedures in connection with public works;

- the award criteria for the selection of the successful tenderer;
- application of the rules on supplying missing information and unacceptable tenders;
- questions in relation to the amendment and execution of contracts concluded as a result of a public procurement procedure to be compliant with the PPA;
- aspects of the negotiated procedures without prior publication;
- calculation of the estimated value, the prohibition on the splitting of public procurements and artificial combination of procurement needs, as well as
- the criteria for conducting a negotiated procedure.

In 2016, the Public Procurement Authority **elaborated an additional eight guidelines** focusing on the topics listed below that will be published in 2017:

- grounds for exclusion and evidence required;
- technical equivalence;
- specific selection criteria applicable for designers;
- design contests;
- methodologies for calculating life-cycle costs;
- insurances in connection with public works;
- “All risks” insurances; and
- asset and technical insurances.

The contents of the above-mentioned guidelines have been elaborated and are now subject to consultations with the chambers and professional organisations as well as with the Prime Minister’s Office.

In line with Article 180 (1) c) of the PPA the President of the Authority **issues a President’s briefing on practical information** related to public procurement procedures.

In 2016, the President of the Public Procurement Authority published **five briefings** in the Public Procurement Bulletin:

- on the public procurement thresholds, applicable from 1 January 2016;
- on the list of countries defined in Article 62 (1) k) ka) of the PPA (international organisations as well as WTO/GPA countries or overseas countries and territories specified in Article 198 of the TFEU);
- on the monitoring of negotiated procedures without prior publication;
- on the sending of annual statistical summary data concerning 2015; and
- the public procurement thresholds applicable from 1 January 2016 were modified once.



Expressing opinions

In line with Article 187 (2) m) of the PPA, the Public Procurement Authority expresses opinions on issues of interpretation in matters of principle in cooperation with the minister responsible for public procurements, if necessary, **in order to help contracting authorities** in the course of the preparation and conduct of procurement procedures. According to the basic duties defined by law, the Authority provides support to contracting authorities in preparing and conducting their procedures. Therefore, contracting authorities from such budgetary organisations or local governments frequently contacted the Authority with questions.

The number of requested Authority opinions were **nearly two and a half times higher** in 2016 than in 2015 (**from 306** in 2015, the number increased **to 710** in 2016).

The most frequently asked questions concerned the following areas:

- the issue of qualifying as a contracting authority;
- the material scope of the Public Procurement Act, that is, whether it necessary to conduct a public procurement procedure in a particular case;
- the prohibition on splitting of public procurements and the calculation of the estimated value of the procurement;
- the submission of the evidence;
- the application of negotiated procedures without prior publication;
- the rules on the payment of consideration;
- the application of the rules on contract modification;
- the highest number of questions focused on the so-called in-house contract as well as on the exceptions defined in Article 111 r) s) of the PPA.

Furthermore, recurring topics included **grounds for exclusion, suitability criteria, award criteria, supply of missing information, summary information**. Also, a high number of questions addressed the issue of **conducting public procurement procedures at national level, the negotiated procedure without prior publication as defined in Article 115 of the PPA** as well as **subcontractors**.

In order to facilitate the daily work of those applying the law, the Public Procurement Authority provides general information on any questions concerning the legal framework of public procurement procedures.

In the reporting period, the number of requests to express the opinion of the Public Procurement Authority increased significantly compared to previous years, which indicates that public procurement actors attach importance to obtaining guidance from an independent professional organisation, even if this does not eliminate their responsibility in connection with their decision.

Among the areas that are most frequently subject to requests for our opinions, the regulations on the following areas are impacted by the modifications of the legislation introduced on 1 January 2017: qualifying as contracting authority, the exceptions, submission of evidence and payment of compensation. These amendments address the deficiencies of the previous regulations; however, due to the fact that new provisions were introduced, further questions are to be expected.

The requests submitted to the Public Procurement Authority deliver continuous feedback from those applying the law, therefore **the Authority is in the position to contribute to the definition of the future directions of legislation by channelling in these information**.

To sum up, it can be stated that although the opinions of the Public Procurement Authority cannot substitute the expertise necessary for conducting public procurement procedures, they can provide guidance to contracting authorities and tenderers (for example SMEs) for a lawful execution of public procurement procedures and for the enforcement of rights.

Initiation of amendments of laws and participation in elaborating draft laws, formulating opinions

In line with Article 187 (1) of the PPA, the Authority is responsible for **effectively contributing to framing the public procurement policy and for forming and spreading lawful public procurement behaviour enhancing the public and transparent spending of public funds** while taking into account the public interest and the interest of contracting authorities and tenderers.

In 2016, the Authority

- expressed opinion on the **draft regulations in connection with the modifications that came into effect on 1 January 2017**, including the drafts sent by the Prime Minister's Office, which is responsible for public procurement legislation. These drafts included the amendment of the Public Procurement Act and the connected implementation decrees;
- **participated in the consultations on the Act XXX of 2016 on Defence and Security related Procurements and its connected implementation decrees that came into effect on 1 August 2016;**
- **by May 2016 drew up a recommendation package consisting of nearly 70 recommendations for modifications to the Public Procurement Act that entered**



into force on 1 November 2015. These recommendations were discussed at **the meeting of the working group “Reducing red tape and supporting legislation”** of the Council operating within the framework of the Public Procurement Authority held on 18 May 2016 as well as at the Council meeting held on the 25 May 2016.

- The recommendation package contained several points in the following areas: reducing administrative burden, increasing the effectiveness of public procurement procedures, reducing the risk of inefficient utilisation of EU funds, improving the transparency of the use of public funds as well as better compliance with the Directives.
- We were very pleased, that the **recommendation package elaborated by the Public Procurement Authority served as a basis for the roundtable discussion** organised by the Prime Minister’s Office, in the framework of which the experience in connection with the PPA and its implementation decrees were discussed with a wide range of stakeholders.
- Another positive achievement is that the **vast majority of the recommendations made by the Authority was included in the Public Procurement Act entering into force 1 January 2017.**

In line with Article 64 (1) of the PPA, despite the existence of any ground for exclusion other than those referred to in Article 62(1)(b) and (f), a tenderer, candidate, subcontractor, or an organization contributing to the certification of suitability

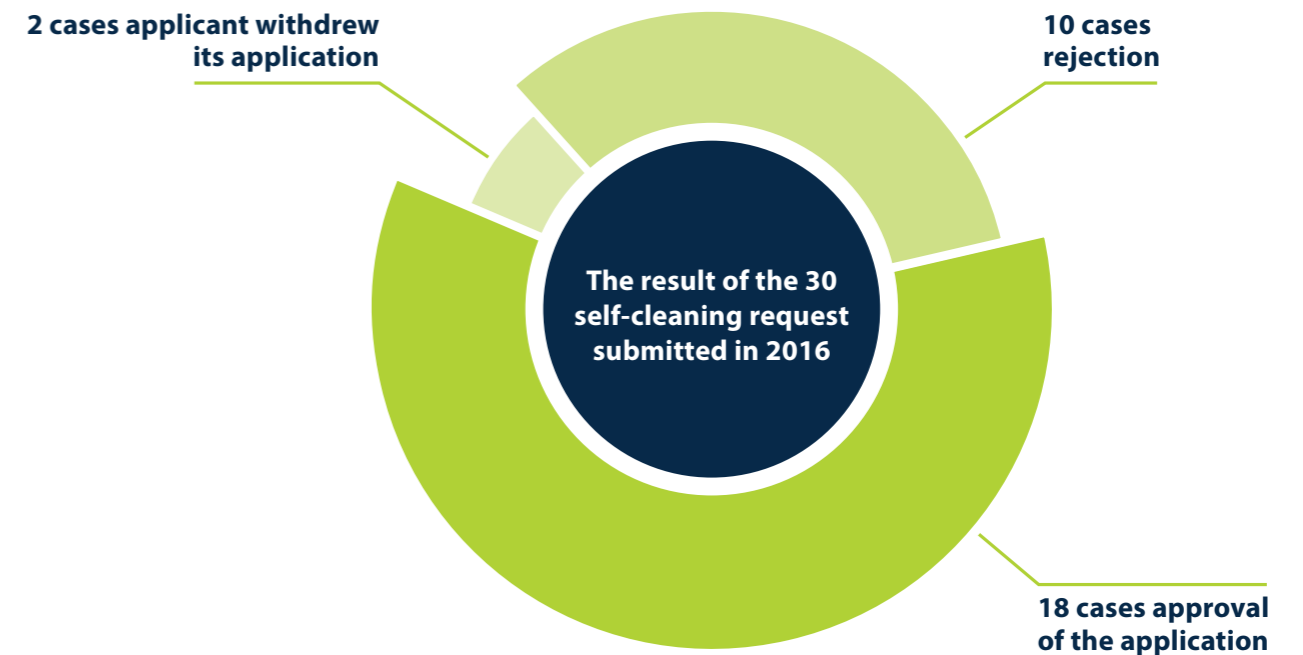
shall not be excluded from the procurement procedure, if the final decision of the Public Procurement Authority established that measures taken, prior to the submission of the tender or the request to participate, by the economic operator concerned are sufficient to demonstrate its reliability despite the existence of relevant grounds for exclusion.

Furthermore, if the final decision of the **Public Procurement Authority** specified in Article 188 (4) of the PPA or, in the case of a review thereof, a **final judicial decision** specified in Article 188 (5) of the PPA established that the economic operator subject to the given ground for exclusion is reliable, **the contracting authority shall accept it without any discretion.**

The economic operator subject to a ground for exclusion can demonstrate its reliability **if three cumulative conditions are fulfilled.** In line with Article 188 (2) of the PPA, in order to demonstrate its reliability, the economic operator subject to a ground for exclusion **shall prove** that

- a) it has paid or undertaken to pay compensation in an amount as agreed with the injured party, within a specified period, in respect of any damage caused by the

- criminal offence, misconduct or other infringement
- b) it has clarified the facts and circumstances in a comprehensive manner by actively collaborating with the competent authorities; and
- c) it has taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences, misconduct or other infringement.



Self-cleaning – our objective is to establish and spread an easy-to-follow practice

With the new PPA entering into force on 1 November 2015, a new legal institution, namely, self-cleaning was introduced, which **have not had any previous legal practice in Hungary.**

The **most frequent grounds for exclusion** subject to a self-cleaning application are the following:

- infringement of law established in a final decision of the Hungarian Competition Authority or, in the event of a review, by final court ruling subject to a fine according to Article 62 (1) n) of the PPA;
- serious infringement of environmental, social or labour law requirements according to Article 63 (1) a) of the PPA. Out of these areas the most frequent grounds for exclusions were due to fines related to safety at work; and
- serious breach of previous contractual obligations according to Article 63 (1) c) of the PPA.



In 2016, several economic operators used this newly introduced legal instrument and the number of applications is expected to increase. **A main objective of the Authority is to establish and conclude a self-cleaning legal practice** that is understandable, easy for clients to interpret and apply. This area is of major importance from the promotion of competition point of view.

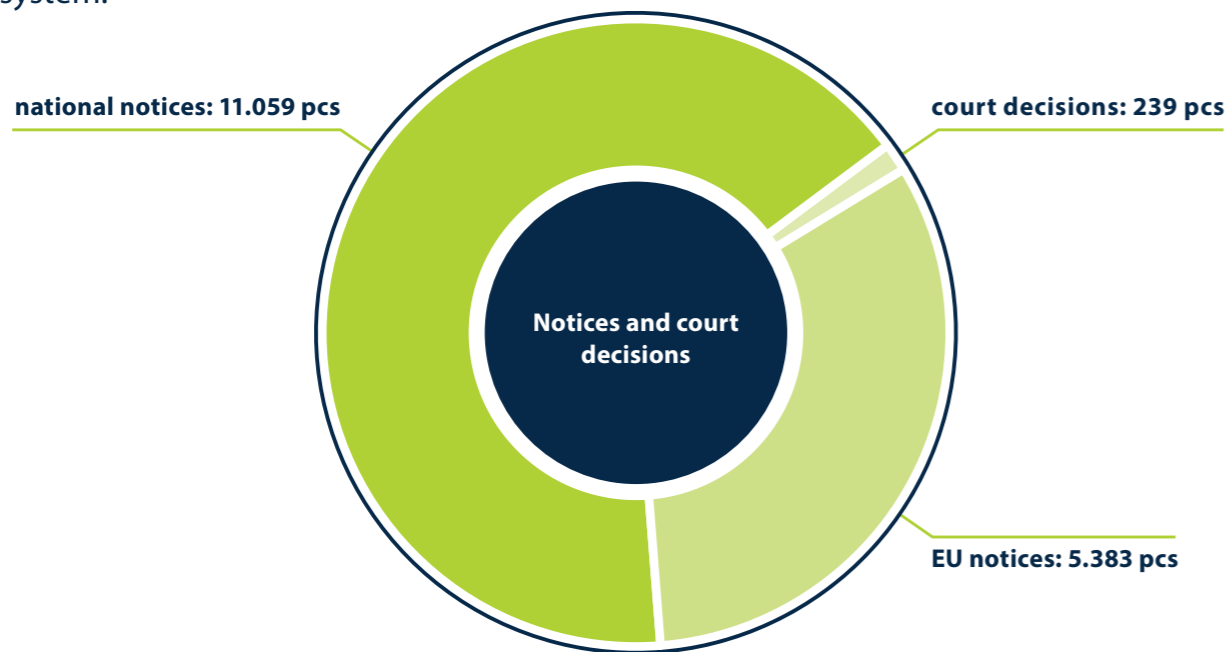
III.3. Notice examination duties

Notice examination duties – focus on prevention to facilitate successful procurement procedures

The notice examination is a multiple-step checking system embedded in the public procurement procedure process. **The aim of the examination is to check whether the notice is in compliance with the law and whether the content of the notice is coherent and deadlines are kept for publication.**

In the current reporting period, the Public Procurement Authority carried out a content and formal examination of notices published in the Official Journal of the European Union or in the Hungarian Public Procurement Bulletin either as a mandatory task or upon request.

In 2016, a total of **16.442 notices** and **239 court decisions** were registered and processed in our system.



The main task of the examination of notices is to carry out a formal and content check to filter out the typical or, in some cases, individual mistakes. **The contracting authorities usually corrected the mistakes indicated, therefore**

advance control prevented several cases, where public procurement law would have been violated or a notice would have been published that is unsuitable for conducting a public procurement procedure.

As regards to dispatching the notices, since 1 November 2015, since the introduction of the new PPA, **there has been an increasing number of requests to publish a notice in the Tenders Electronic Daily (TED)** operated by the Publications Office of the European Union as soon **as possible after dispatching the notice.** Therefore, the Authority keeps continuous contact with the TED call centre, as a result of which the Authority was able to regularly initiate urgent publication procedures, in most of the cases successfully.

Our new duty: Control of the execution of public contracts

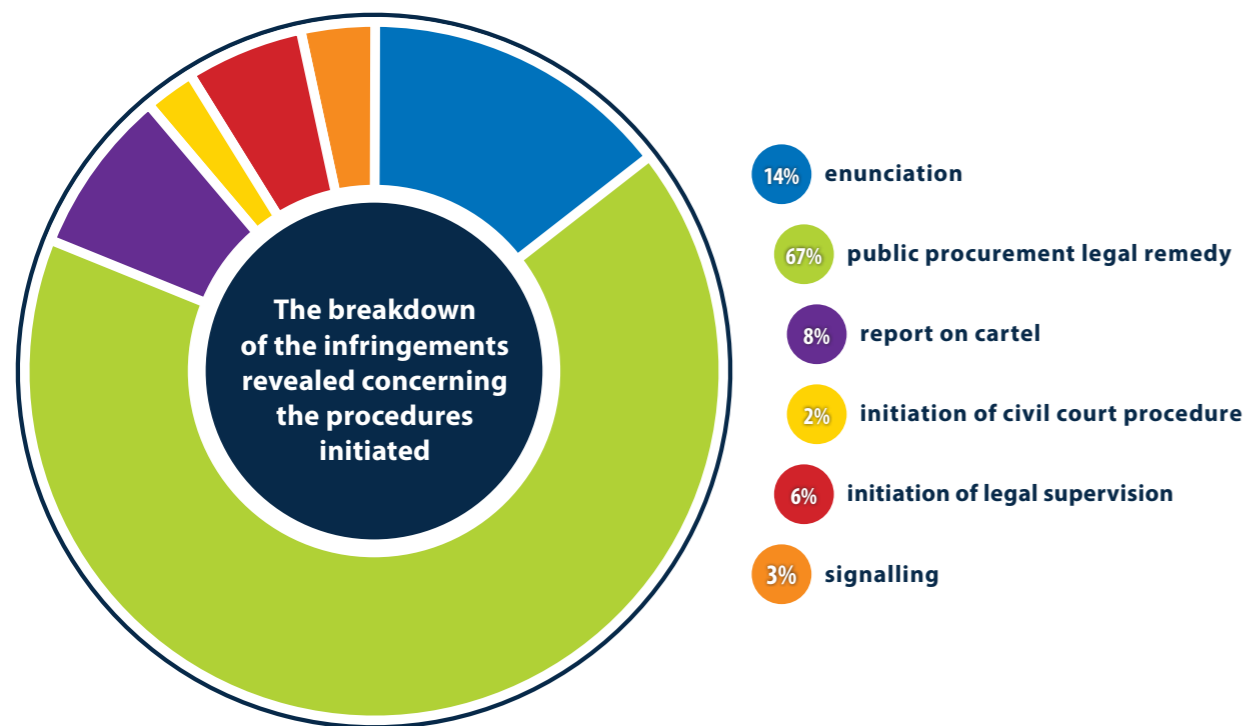
The Public Procurement Authority carries out its control activity partly based on an annual control plan that is elaborated and published on its homepage in line with Government Decree 308/2015 (27 October.) on the control activities of the Public Procurement Authority on the amendment and execution of public contracts concluded in the procurement procedure. The annual control plan contains the public contracts that are scheduled to be checked in the given year.



In addition to the above, the persons and organisation listed in Article 152 (1) of the PPA can initiate the control of a particular public contract through the Public Procurement Authority's President; therefore, the annual control plan does not limit the number of contracts to be checked.

The **President of the Public Procurement Authority** is also listed among the persons indicated in Article 152 (1) of the PPA; therefore, he/she is **entitled to launch a control procedure** ex officio without any external request. This primarily takes place based on an assumed violation of the law discovered by the Authority's Department for Control of Contracts.

The main method of the Authority's control activity is to gather and analyse data, but if need be, the Authority can **carry out on-the-spot checks** and **can also involve forensic experts.** Figure 3 summarises the measures introduced by the Authority in the current reporting period in the framework of the contract control activity.



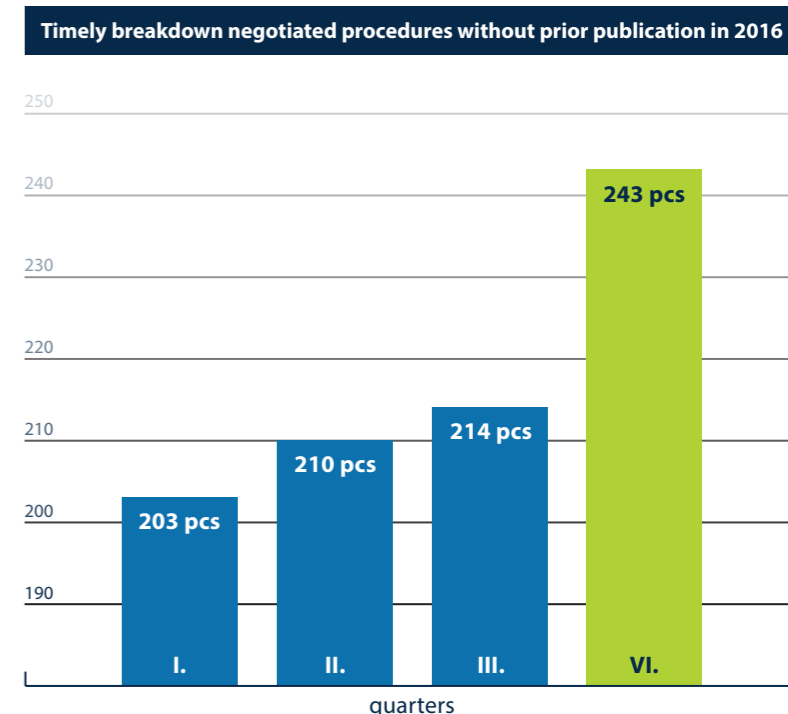
Negotiated procedures without prior publication – less and faster procedures

Since negotiated procedures without prior publication can only be applied if the exhaustive list of criteria defined by the Act are simultaneously fulfilled, they can only be **conducted lawfully with compliance control of the President of the Public Procurement Authority.**



In 2016, contracting authorities informed the President of the Authority in **870 cases** about launching negotiated procedures without prior publication.

The timely breakdown of the negotiated procedures without prior publication in 2016 were as follows:

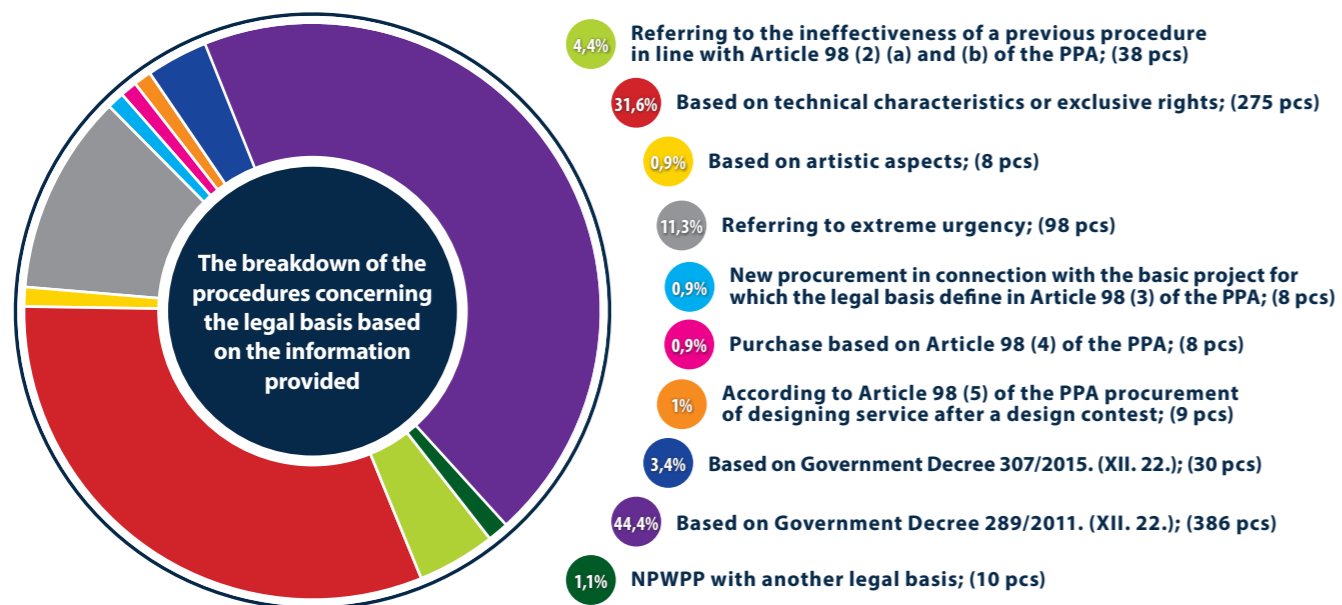


The contracting authorities justified the negotiated procedures without publication **most frequently** by

- technical reasons;
- protection of exclusive rights; or
- extreme urgency.

In line with Government Decree 289/2011 (22 December) on the specific rules pertaining to the public procurement in the utilities sector, **contracting authorities can lawfully conduct negotiated procedures without prior publication if the contract is concluded within a framework agreement** that was concluded as a result of a public procurement procedure carried out prior to 1 November 2015. In 2016, **384** negotiated procedures without prior publication were conducted on this legal basis. **The framework agreements serving as a basis for these kinds of procedures are expected to expire in the near future, which will result in a significant decrease in the number of negotiated procedures without prior publication in 2017.**

Act XXXIII of 2015 on the Facility development necessary for the implementation of the World Championship for Swimming, Diving, Water polo, Synchronised Swimming, Open water Swimming and High diving organised in Budapest (hereinafter the FINA Act) sets out that contracting authorities involved in the organisation of the world championships are entitled to conduct a negotiated procedure without prior publication on the ground of extreme urgency in line with Article 98 (2) e) of the PPA. **Based on the FINA Act**, contracting authorities notified the President of the Public Procurement Authority **53 times** about launching a negotiated procedure without prior publication.



The **President of the Public Procurement Authority examines** in its competence related to compliance control whether the legal conditions for the conduct of the negotiated procedure without prior publication are fulfilled. The information provided to the President of the Authority usually fulfil the criteria defined by law; however, **in many cases there is a need to supply missing information.** The **contracting authorities normally provide** the missing information **in full within the set deadline.** In 2016, **in 26 cases, contracting authorities withdrew their notices** after the receipt of a request for supply missing information and renounced their intention to conduct a negotiated procedure without prior publication due to doubts concerning the existence of legal grounds.

In 2016, **the President of the Public Procurement Authority initiated a review procedure in 46 cases against the negotiated procedures without prior publication.**

As a result of the review procedures, the Public Procurement Arbitration Board **stated 8 times that infringement had occurred and imposed a fine.**

The total amount of imposed fines in connection with negotiated procedures without prior publication was 11,200,000 HUF during the year.

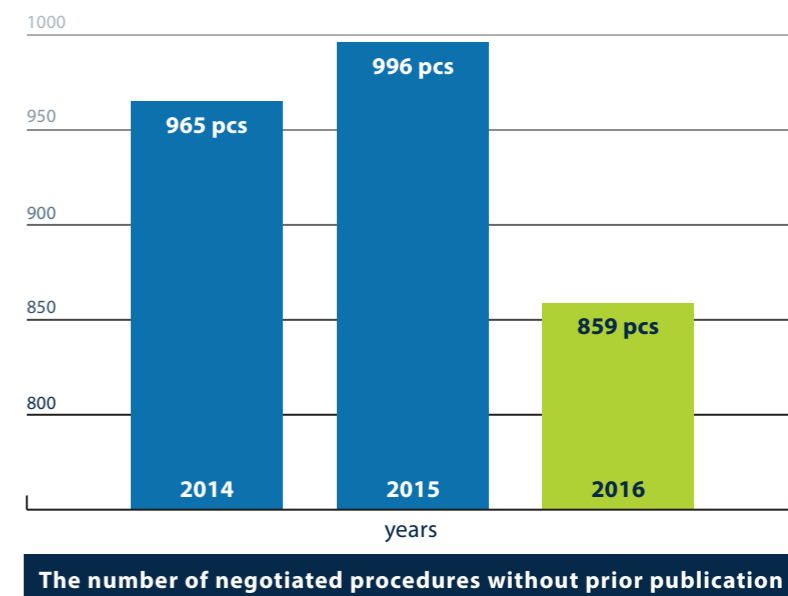
In 20 cases, the review procedure was terminated either due to the withdrawal of the notice or due to the withdrawal of the application initiating the review procedure, out of which 19 times the contracting authority withdrew its notice. The Public Procurement Arbitration Board

stated in 16 cases that no infringement has occurred in the course of a negotiated procedure without publication; and in 2 cases no review procedure was launched.

The number of negotiated procedures without prior publication was 15 percent lower in 2016 than in 2015.

In the future, the number of negotiated procedures without prior publication is **expected to further decrease** partly because of the above-mentioned expiry of the public service framework agreements but also due to the fact that the implementation deadline of the procurements based on the FINA Act expires in the first half of 2017.

In 2016, the President of the Public Procurement Authority had 10 days available to carry out the legality check of the negotiated procedures without prior publications. Within this 10 day period, missing information could be requested and, if necessary, the review procedure could be launched. In 2016, **the legality check was significantly faster than in previous years, even though the Authority applied stricter control.**



In the reporting period, an important focus of the Authority's activity was to support and inform contracting authorities, therefore, as a general rule, the **results of the legality check were sent directly to the contracting authorities.**

The Authority maintains a detailed, up-to-date database on the number of negotiated procedures without prior publication and their general trends.

The European Commission monitors the negotiated procedures without prior publication in each Member State. The database of the Public Procurement Authority is able **to provide accurate data within a short period of time to the European Commission upon request.**



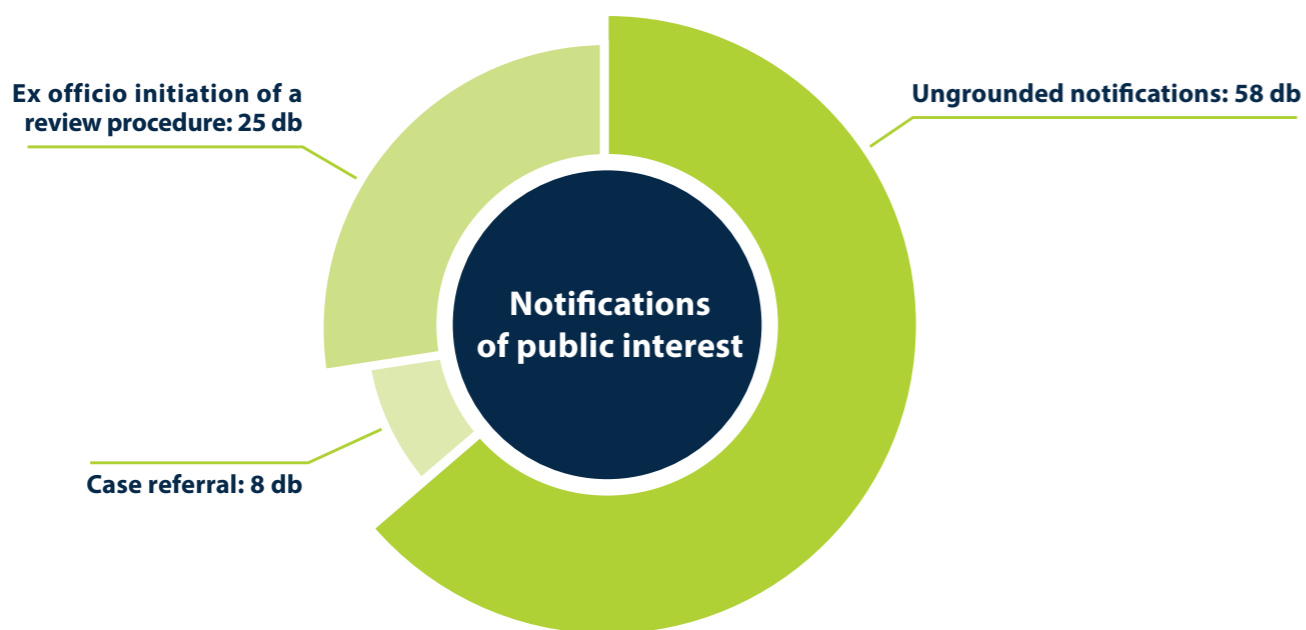
Notification of public interest – Every disclosure counts!

According to Article 152 (1) a) of the PPA, the **President of the Public Procurement Authority can initiate ex officio proceedings** of the Public Procurement Arbitration Board **on the grounds that he has, in the performance of his duties, learnt of any behaviour or default in the violation of the Public Procurement Act in connection with a public procurement procedure or any procurement.**



According to Act CLXV of 2013 on Complaints and Notifications of Public Interest anyone can submit a notification of public interest to the Public Procurement Authority if they suspect behaviour that violates the provisions of the Public Procurement Act during a public procurement procedure or any procurement. It is important to note, that **although the Act dictates that anonymous notifications can be disregarded, the President of the Authority will take the necessarily steps, even if some information is missing, in order to be able to conduct a substantial examination; therefore, the Authority's President assessed the notifications and initiated a review procedure of the Public Procurement Arbitration Board, if it was necessary.**

In 2016, a higher number of notifications of public interest was submitted to the Authority than in previous years; a total of 98 were submitted, of which in 91 cases the whistle-blower initiated the investigation of a public procurement procedure. Figure 7 shows the results of the submitted public interest disclosures.



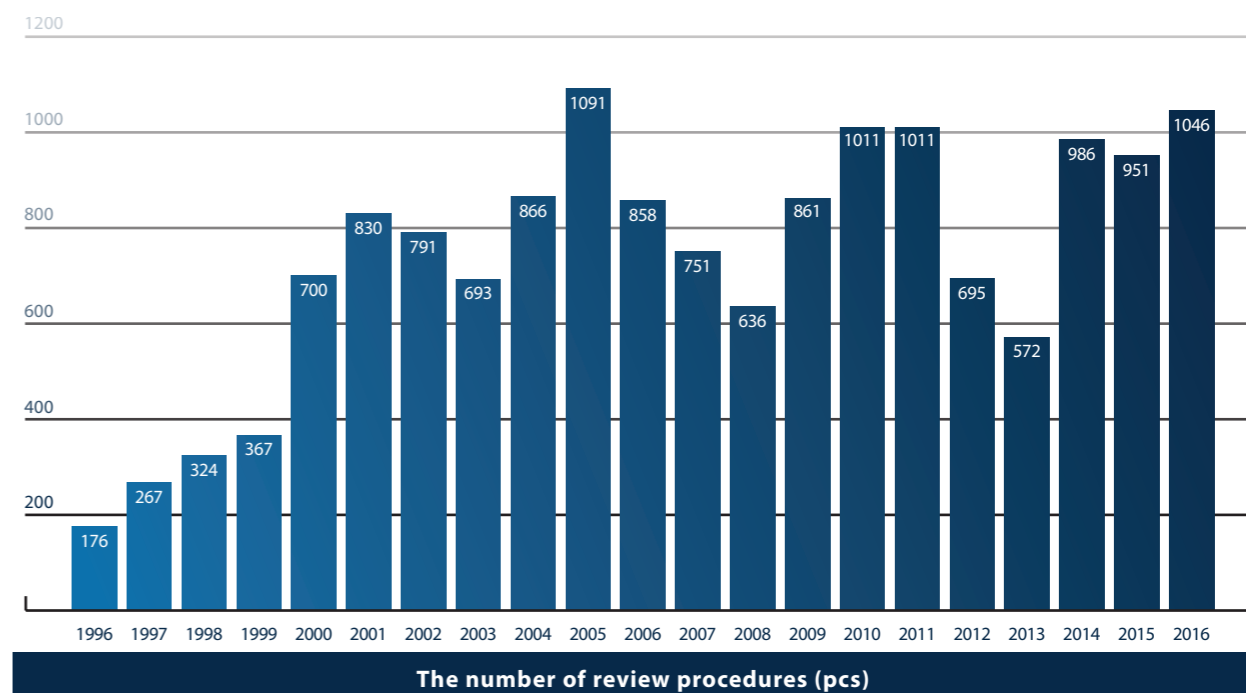
The President of the Public Procurement Authority initiated ex officio review procedures of the Public Procurement Arbitration Board in 25 cases. In 10 cases, the application for a review procedure was rejected due to the lack of infringement, whereas in 13 cases, the Public Procurement Arbitration Board stated that infringement occurred and imposed a fine; in 2 cases the Public Procurement Arbitration Board stated that infringement occurred but no fine was imposed and in 1 of these cases the Arbitration Board annulled its own infringement decision.

The Public Procurement Arbitration Board imposed fines amounting to 15,150,000 HUF in review procedures initiated ex officio based on notifications of public interest.

Review procedures – Public Procurement Arbitration Board

The legal basis for the review procedures of the Public Procurement Arbitration Board (hereinafter: Arbitration Board) are as follows: the directives on review procedures concerning the award of public contracts adopted by the European Parliament and Council (89/665/EEC and the 2007/66/EC on the modification of the 92/13/EEC Directive), the Public Procurement Act and its implementing decrees. The Arbitration Board uses the provisions of the directives and the judgments of the Court of Justice of the European Union as the legal sources for its work.

In 2016, a total of 1046 review procedures were launched, which represents a 10% increase compared to the number of procedures in 2015.



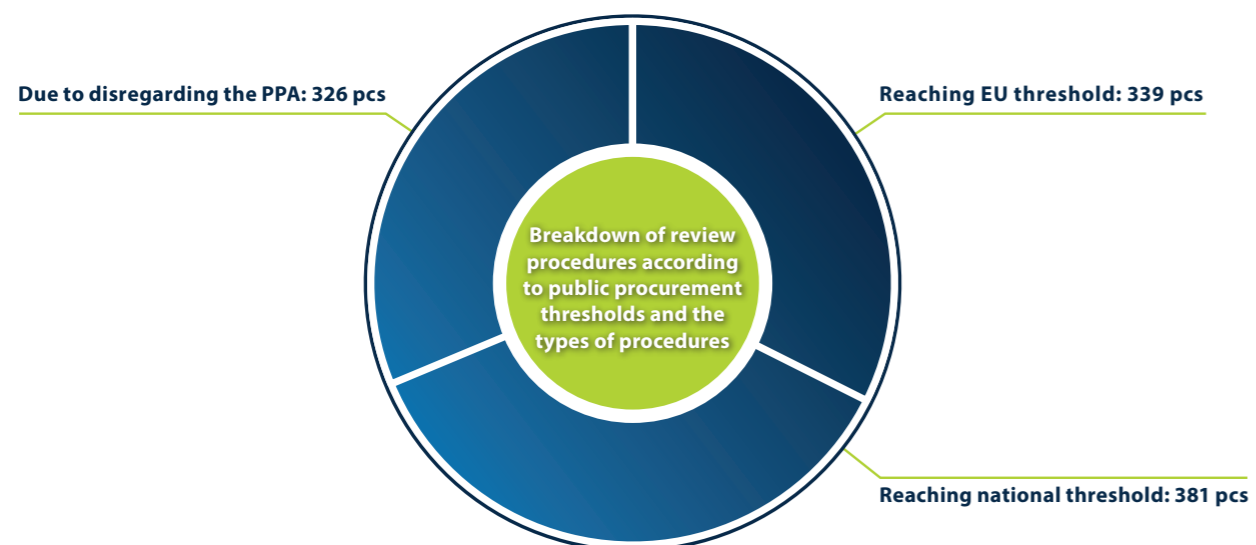


The vast majority of the legal disputes **initiated upon request** are launched by economic operators participating in a public procurement procedure as candidates or tenderers. **In most cases, the lawfulness of the contracting authorities' decision is contested.**

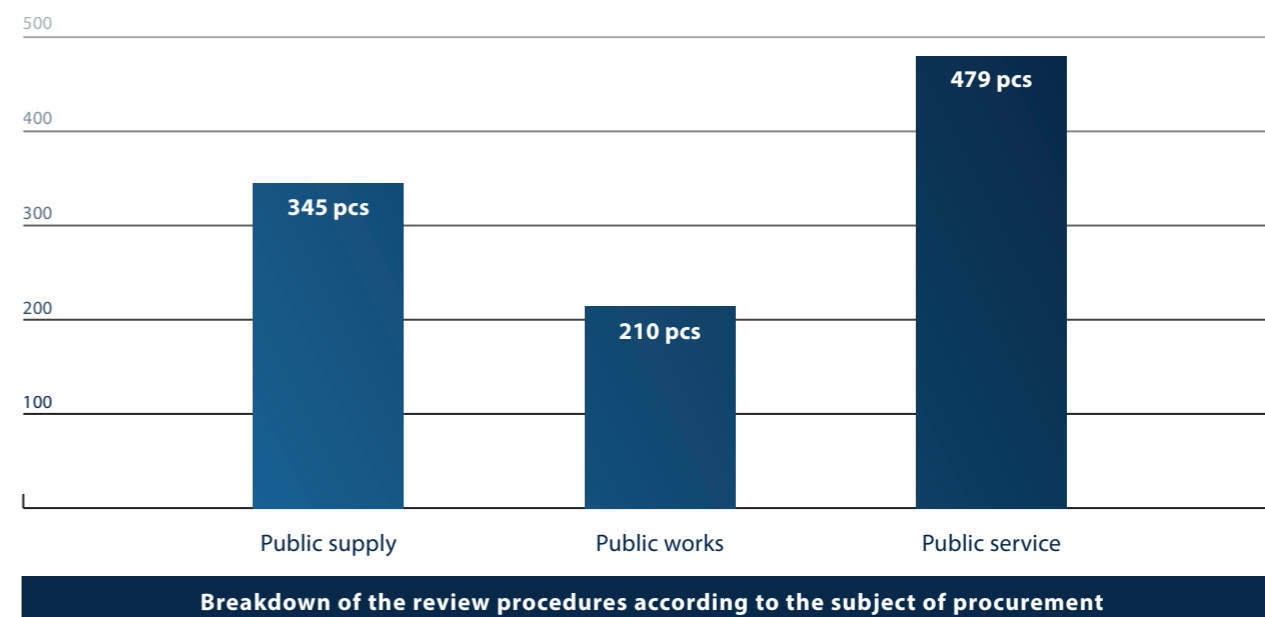
In 2016, **691 ex officio initiations were submitted by those who are entitled to do so, which is 31% higher** than in the previous year.



The highest number of review procedures were initiated by the Hungarian State Treasury, the President of Public Procurement Authority, the Chief Prosecution Service of Budapest, as well as entities granting support or acting as intermediate bodies. For the latter entities the time limit for initiating a review procedure has significantly expanded; therefore, a high number of ex officio initiation of a review procedure is expected in the future.



The **vast majority** of applications for review and ex officio initiations submitted to the Arbitration Board continues **to challenge open procedures**; the proportion of legal disputes concerning negotiated procedures has been in decline for years.



In 12 cases, the legal dispute concerned the obligation of contracting authorities to notify the Public Procurement Authority about their falling under the scope of the Public Procurement Act.

In the review procedures in the current reporting period, the type of public procurement **most frequently challenged was public service procurement.**

Stricter decisions- contribution to the central budget

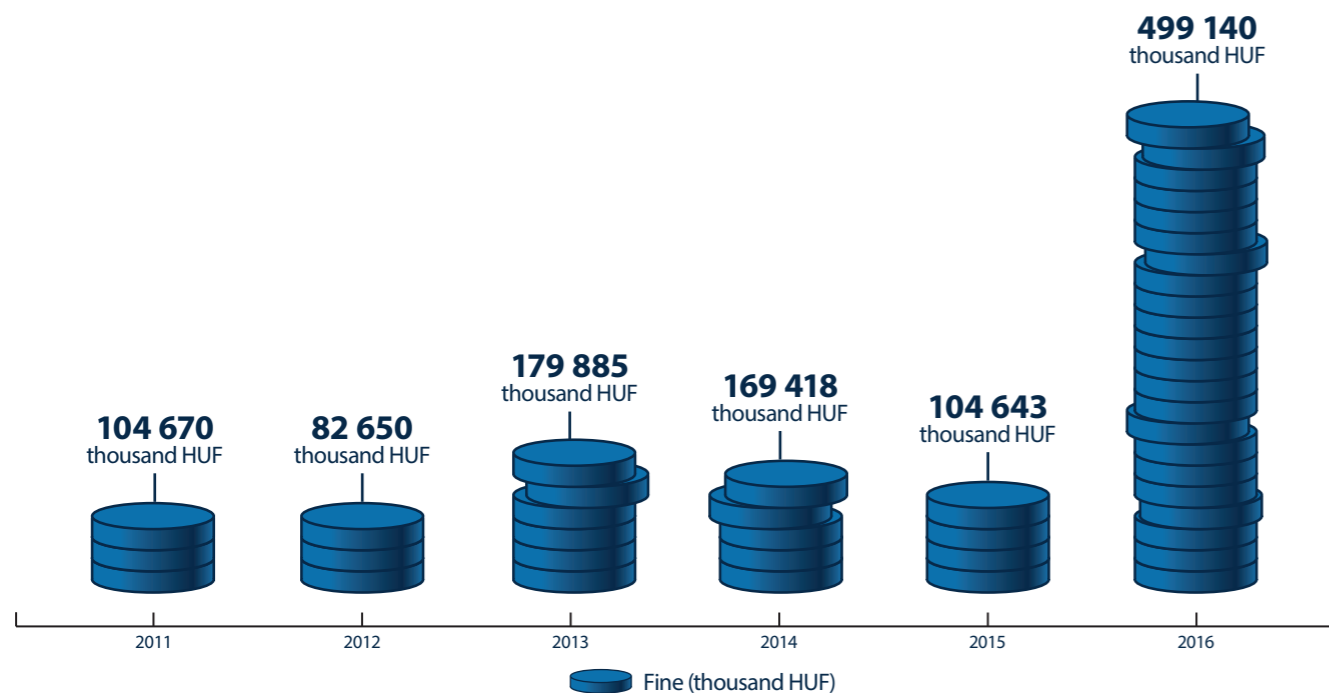
In 2016, the Arbitration Board closed 1046 review procedures; in 720 cases, it made a decision and in 371 cases the procedure ended in an order. As a result, **the proportion of substantial decisions increased by 16%.**

The Arbitration Board applied interim measures and suspended their public procurement decisions in 3 cases. Regarding the total of 13 requests to approve the conclusion of a particular procurement contract, in 2 cases the Board approved the contract conclusion on the grounds that it was justified by urgent and extremely important interest or by the protection of public interest and their benefits exceeded the drawbacks of concluding the contract.



This year, the Arbitration Board expanded the scope of the review procedure of a public procurement in 14 cases because the identified infringement violated fair competition, publicity, or the equal treatment of economic operators or had a substantial impact on the decision of the contracting authority.

In the majority of its substantial decisions, (namely, in 537 cases which amounts to 74.5%) the Arbitration Board stated that infringement occurred and applied legal consequences. In over 51.3% of all review procedures infringement was stated and legal consequences applied.



The fines imposed by the Arbitration Board and the generated income thereof was 2.5 times larger in 2016 than in previous years resulting in nearly 400 Million HUF income for the national budget. A further increase is expected for 2018; its forecasted amount is 500-1000 Million HUF.

In 46 cases, the legal remedy applications were dismissed because they were unfounded, which represents 6.4% of the substantial decisions and 4.4% of all review cases. A similar situation occurred when the Arbitration Board came to the conclusion that no infringement had occurred (137 cases) as a result of review procedures initiated ex officio (691 cases).

The Arbitration Board made a decision to prohibit an economic operator from participating in any public procurement procedure in connection with one case.

The most frequent infringements

Applicants and persons or organisations initiating a review ex officio usually contested the unlawful decisions or procedural actions of contracting authorities. Therefore, the Arbitration

Board decided primarily against contracting authorities when it concluded that infringement occurred. However, in connection with the execution and modification of contracts infringement decisions were also made against economic operators.

- In the reporting period, in the review procedures concerning **the violation of the legal basis for conducting a negotiated procedure without prior publication** the Arbitration Board **stated in 8 cases that infringement occurred.**
- Concerning the content of the notices, **the most frequent infringement occurred in connection with the method of certification and fulfilment of selection criteria.**
- In 2016, the Arbitration Board made **11 decisions** on infringement because of **overly demanding selection criteria**, and in **38 cases because of the infringement in connection with the provisions concerning the evaluation of the tenders.**

Compared to the number of review procedures initiated by economic operators to contest the notice initiating the procedure, a **lower proportion of reviews challenged** other basic documents of the public procurement procedure, such as the **tendering documents.**

- In 2016, the Arbitration Board stated in 21 cases that infringement occurred because contracting authorities **violated the provisions of the Public Procurement Act concerning the technical specifications, the technical equivalence or the documentation (public procurement documents).**

In the current reporting period, candidates and tenderers sought for legal remedy **because of the unlawful supply of supplementary information** as frequently as in previous years.

- The Arbitration Board stated in connection with 6 cases that contracting authorities violated the provisions of the Public Procurement Act concerning the supplementary information provision.
- In the contested cases, **the contracting authorities were not thorough enough** in the preparation phase of the public procurement procedure, therefore, they tried to remedy the shortcomings of the preparation by providing supplementary information, which, in some cases exceeded the legal framework thereof.

As regards **to the contract notices**, the applicants or those initiating a procedure ex officio typically contested

- the type of the procedure applied;
- the selection criteria defined in the contract notice
- the technical specification of the public procurement documents and the evaluation criteria.



The review cases contesting the final decision closing the public procurement procedures still represent the highest ratio.

- The vast majority of economic operators seeking legal remedy contested the legality of the decision of the contracting authority on the invalidity of the applicant's tender or request to participate.

Contracting authorities often do not provide sufficiently detailed information in their procedure closing summary on the grounds for invalidity, based on which the economic operators could judge the lawfulness of the Contracting Authority's decision on closing the procedure.

- The vast majority of applicants contested the tender of the winning tenderer or even the second-best tenderer.
- The main objective of some applicants is to be announced as the winning tenderer; another frequent objective was to declare the public procurement procedure unsuccessful and thus, to give the applicant a chance to resubmit the tender in a new public procurement procedure.

The Arbitration Board checked in each case whether the winning tender had shortcomings. It is important to note, that even if a shortcoming of the winning tender is revealed, it cannot serve as a basis for an automatic invalidity of the tender, because in this case, the tenderer must be given the opportunity to supply the missing information. In these cases, the Arbitration Board annuls the contested procedural action and returns the public procurement procedure to the contracting authority for conducting a lawful procedure to supply missing information.

In 2016, the Arbitration Board **stated in 10 cases that an infringement occurred because the provisions on the supply of missing information were violated and in 59 cases it came to the conclusion that contracting authorities unlawfully decided on the validity of the tender or the request to participate.**

- Regarding invalid cases, the majority of infringements concerned the contracting authority's decision on suitability.

In most cases, the review concerned the professional experience of experts, the minimum length of experience or the technical content of the references.

The Arbitration Board returned the case to the contracting authority for re-evaluation

in 74 cases; as a result of supplying missing information or clarification, these tenders could be made valid.

The increasingly fierce competition is demonstrated by the fact that **tenderers tend to offer lower prices** in order to win the tender. The Arbitration Board acknowledges that **the main objective is to ensure the most reasonable utilisation of public funds, however, this is counterproductive if a certain threshold is not achieved.** Especially in the case of services (e.g. security, cleaning), economic operators typically offer prices that are not only significantly lower than the market price and the price offered by the other tenderers, but lawful performance conditions are also doubtful.

Furthermore, the Arbitration Board is aware that **some contracting authorities do not fulfil the obligation of examining the abnormally low consideration**; the Arbitration Board has stated infringement in connection with 5 cases for this reason.

Although **contracting authorities seem to** have difficulties making a judgement on validity, **they are normally able to carry out the evaluation according to the award criteria.** This is mirrored by the fact that the number of infringements was relatively low in this reporting period.

In the framework of monitoring the implementation and modification of procurement contracts, as a result of ex officio reviews, the Arbitration Board made **a decision on infringement** against 19 tenderers in **33 cases**, as a result of which a fine was imposed.

In 326 cases, the Arbitration Board stated that an infringement occurred because no public procurement procedure was conducted,

and as a result, the Arbitration Board brought an action with a view to declaring the procurement contracts null and void, which is **3.6 times higher** than in the previous year.

In case of a procurement without the conduct of a procurement procedure, the Arbitration Board brings an action with a view to declaring the contract invalid and applying the legal consequences of invalidity. By the time of finalising the annual report, in 85 cases the binding decision was made stating that the contract was null and void.

In 2016, the Arbitration Board came to the conclusion **in 27 cases** that the basic principles of **public procurement were breached** due to the fact that no concrete piece of legislation could be identified that was violated.



The reasons for rejecting an application for legal remedy without substantial examination or dismissal without successful examination

Public procurement procedures can be contested by applicants seeking legal remedy or by persons and organisations entitled to initiate a review procedure ex officio as defined by law.

If an application for legal remedy is submitted after expiry of the **limitation period** the Arbitration Board shall dismiss it without substantial examination. If this fact can be stated at a later point of time, the review procedure must be dismissed. In 2016, the Arbitration Board stated in connection with 19 cases that the limitation period had expired.

The PPA defines **additional procedural requirements** for conducting substantial examination, the fulfilment of which must be examined by the Arbitration Board during the entire procedure.

In the reporting period, the Arbitration Board **rejected 139 applications for legal remedy without substantial examinations** and **dismissed 229 review procedures without substantial examination**. In a large proportion of cases (**35.2%**) **procedural obstacles** prevented the conduct of a substantial examination of the claim.

The highest proportion of cases (113 pc, 81.3%) were rejected because of **non-fulfilment of the request for supplying missing information**, which amount to over 30% of the claims submitted.

Some of the applicants submit their application for review without paying the administration service fee, which is often not paid in spite of a request or sometimes not paid in the amount defined by law and when receiving the information on the difference they are supposed to pay, they do not comply.

In 11 cases, the Arbitration Board stated that no substantial examination can be conducted because **the applicant does not have capacity to be a party**.

Regarding the capacity to be a party, the Arbitration Board needs to carry out a very thorough examination in order to state whether the applicant's interest was directly, legitimately harmed, which is a legal precondition to have the capacity to be a party. Therefore, in 9 cases, the review procedure was only dismissed after the initiation of the procedure.

Normally in these cases the unlawful behaviour of the contracting authority is not contested by the party whose interest is being harmed, but by a third party that is either not even participating in that particular public procurement procedure or submits the application on behalf of the impacted party.

However, the Act sets out that the party whose interest is being harmed must seek legal remedy himself.

The number of cases where the procedural obstacle is **the lack of the competence** of the Arbitration Board is on the decline. In 2016, the Arbitration Board stated in connection with 4 cases that it is not competent; this was typically the case when the clients (who are at the same time contracting parties) intended to make the Arbitration Board make a decision on a legal dispute that occurred during the execution of their contract.

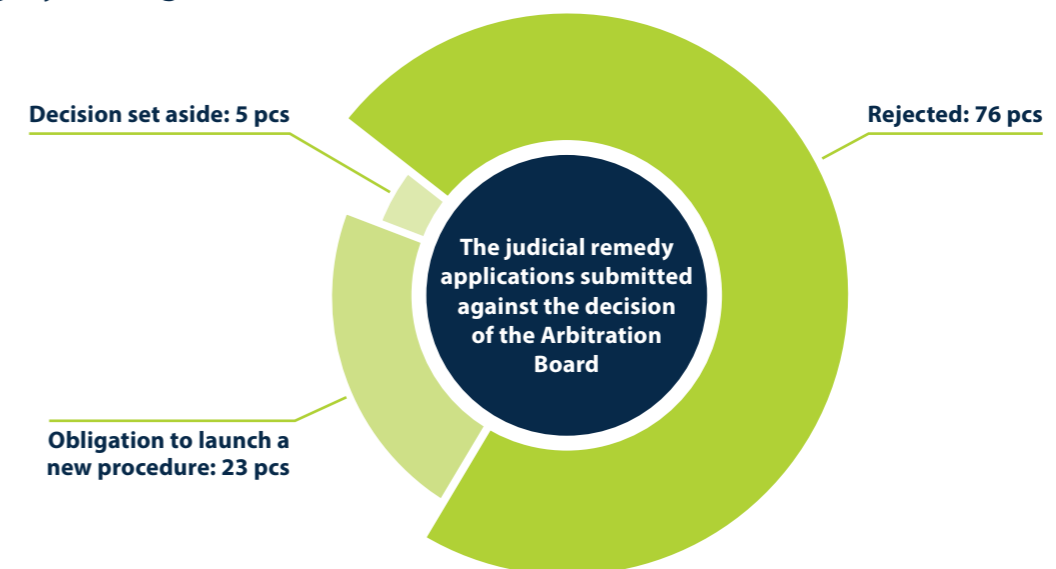
Last year, there were 22 cases in which the applicants for legal remedy and persons and organisations ex officio initiating review procedures withdrew their application for a legal remedy or their ex officio initiation, which represents 2.1% of the total number of legal remedy cases.

The **applications for legal remedy** are typically withdrawn either due to withdrawal by the applicants, or due to the tender notice, documentation or decision being modified in accordance with the content of the legal remedy application.

In the reporting period, there was an increase in the number of cases in which contracting authorities withdrew the notice initiating the contested procedure after the commencement of the legal remedy procedure but prior to expiry of the submission deadline for the tender. In 2016, contracting authorities withdrew their contested notice in 34 cases.

Experience with court review

There is no legal opportunity to appeal against the decision of the Arbitration Board in the framework of a public administration procedure; according to law, only court review is possible. **Out of the 1046 legal remedy cases initiated in or prior to 2016, 840 cases (80.3%) were final and legally binding.**





In 2016, 17.7% of the decisions made by the Arbitration Board was appealed against in court, which represents 13.8% fewer cases than in the previous year.

A total number of judicial reviews were 187, of which 122 were closed and had a binding decision at the time of writing this report.

In 72% of the cases, the court rejected the appeal against the decision of the Arbitration Board.

In 2016, the Arbitration Board was able to function in a very efficient manner demonstrating very high quality work despite the fact that the cases were very important and complex; the average duration of case handling was extremely short; only 26 days.

III.4. Organising conferences

According to Article 187 (2) l) of PPA, the Public Procurement Authority organises conferences in order to disseminate knowledge of public procurement regulations. To this end, the Authority **used to organise two conferences annually and an additional international conference every other year**, where the public procurement actors received information on the current

public procurement legislation trends and best practices and this also provided the opportunity for the participants to discuss current issues.

In 2016, based on the positive feedback and needs of the participants of previous conferences, the Authority made the decision to organise conferences much more frequently than twice a year. The objective is to provide an opportunity to participants to

receive answers to their questions concerning the interpretation of public procurement law and to receive information on the new developments and on the best practices elaborated by the public procurement institutional system as soon as possible.



In 2016, a series of events titled Public Procurement Academy was launched,

about which more details are provided in the chapter focusing on the Authority's voluntarily tasks.

III.5. Maintaining lists and registers

Maintaining the list of registered contracting authorities

In line with Article 26 (1) of PPA contracting authorities, with the exception of those referred to in Article 5(2) and (3), shall notify the Public Procurement Authority of their falling under the scope of the Public Procurement Act and any changes in their data within thirty days following the date from which they come under the scope of the Act or from the date of those changes.

Since 18 June 2012, the notification obligation concerning registration, modification of data and deletion can be fulfilled through the Central Registration System (hereinafter: CRS system). **In the CRS system, registered organisations can maintain their own data and contracting authorities can also manage their authorisations on this application.**

The Authority performs its duty of maintaining a database concerning the registered contracting authorities as defined by law in its IT system by approving requests for registration, modification and deletion.

Official list of approved tenderers

In line with Article 187 (2) a) and ab) of the PPA, **the Authority manages, updates and publishes on its homepage the official list of approved tenderers**, and in line with Article 187 (2) r) the Authority determines the approval criteria and method.

In line with the Article 187 (2) c) of PPA, the Authority assess the adequacy of conditions for being included as approved tenderer **in the list drawn up by the economic or professional chamber, as well as register the list**. In 2016, no list of approved tenderers was established by the Chambers.

Approved tenderers listed on the Authority's register **do not have to certify the fulfilment of any criteria that were considered by the Authority in the course of the certification approval process, if**



the economic operator in question can prove that it is in compliance with the criteria defined in the public procurement procedure by the fact it is included in the list of approved tenderers.

The Authority is responsible for making a decision on including an economic operator in the list of approved tenderers, as well as for renewing this status, deleting it, or for modifying some data.

In this reporting period, the demand for being included in the approved tenderer list has slightly increased. **On 31 December 2016, a total of 27 approved tenderers were on the list established and maintained by the Public Procurement Authority.**

Maintaining the list of economic operators excluded from participating in a public procurement procedure because of providing false data, and the list of tenderers prohibited from participating in public procurements

In 2016, the Public Procurement Authority maintained and published on its homepage the **list of economic operators excluded from a public procurement procedure because of supplying false data or making declarations containing false data**, as well as the **list of tenderers prohibited** from participation in procurement procedures as defined in Article 187 (2) ad) of PPA.

It is important to note that the list is drafted based on the information provided by contracting authorities, that is, they are not based on a decision made in the framework of a public administration or court procedure. Therefore, **the list merely serves the**

In 2016, the Public Procurement Authority included 7 organisations in the list of economic operators excluded from participating a public procurement procedure because of supplying false data.

purpose of information provision, and based on the experience of the Public Procurement Arbitration Board it does not relieve the contracting authority of its obligation to check whether the data provided in the framework of a public procurement procedure is true before making a decision on excluding a tenderer from a public procurement procedure.

In the list of economic operators prohibited from participating in public procurement procedures only those organisations are listed that have a binding public administration decision or binding court decision.

The Public Procurement Arbitration Board and the courts dealing with public procurement cases very rarely make a decision to introduce a sanction of prohibiting an organisation from participating in public procurement procedures. In 2016, the Authority did not register any new organisations in the list and one organisation was deleted because of the expiry of the duration of prohibition; therefore, **at the end of the reporting period no organisations were listed.**

Maintaining a list of official public procurement consultants and the list of accredited public procurement consultants

As a result of repealing Act on CVIII of 2011 on Public Procurement as well as the Decree of the Minister for National Development number 93/2011. (XII. 30.) on the Activities of Official Public Procurement Consultant, the legal institution of official public procurement consultants was discontinued. Instead, the new Public Procurement Act introduced the legal institution of **accredited public procurement consultants from 1 November 2015.** When the new regulations came into effect **622 experts were included in the official list of public procurement consultants.** The consultants are entitled to be involved in public procurement procedures launched before 1 November 2015, as long as they are still eligible consultants. Although, the regulations on official public procurement consultants were repealed, **the list of consultants as such was not discontinued. Therefore, maintaining the list of official public procurement consultants as well as the deletion of their names from the list after the expiry of their eligibility still represents a tasks for the Authority. Last year, 139 official public procurement consultants were deleted** from the list.

According to Article 27 (3) of the PPA the contracting authority must involve an accredited public procurement consultant in certain public procurement procedures. The request for inclusion in the list of accredited public procurement consultants had to be submitted to the Prime Minister's Office in line with the Decree of the Minister of the Prime Minister's Office No. 46/2015. (XI. 2.) on the preliminary registration of accredited public procurement consultants until 25 June 2016 and afterwards according to the Decree of the Minister of the Prime Minister's Office No. 14/2016. (V. 25.) on the activities of accredited public procurement consultants. If the documents were in compliance, the Prime Minister's Office forwarded the preliminary registration and the decision on the request to the **Public Procurement Authority.** The Authority **then published the list of accredited public procurement consultants on its homepage.**

As a result of the two different legal sources, the Authority simultaneously maintains two lists of consultants, since the list of consultants according to the Decree of the Minister of the Prime Minister's Office No. 46/2015. (XI. 2.) was not discontinued. **In the list based on the Decree of the Minister of the Prime Minister's Office No. 46/2015 there are 875 consultants, whereas in the list of consultants based on the Decree of the Minister of the Prime Minister's Office No. 14/2016. (V. 25.) there were 824 consultants on 31 December 2016.**



III.6. International relationships – in 2016 we continued to play an active role at international level

Article 187 (2) n) of the PPA sets out that the Authority has the duty to maintain international relationships, based on which it is in the Authority’s competence **to keep contact with the public procurement organisations in other EU member states**. Primarily, the Prime Minister’s Office is responsible for the communication with the international organisations, therefore, the Authority continues to maintain close cooperation with them in performing its duty of international contact-keeping.



Tasks derived from EU membership

Task carried out in various EU bodies

Due to Hungary’s EU membership, the work carried out in various EU bodies and working groups continued to represent an important task in 2016.

The Authority participated in the work of the following organisations:

- Advisory Committee on Public Contracts;
- Commission Government Expert Group;
- e-Certis Editorial Team; or
- the Economic and Statistics Working Group of the Advisory Committee on Public Contracts.

Since September 2011, the Advisory Committee on Public Contracts (ACPC) has been performing its task in a dual form: partly in the framework of the Commission Government Expert Group (EXPP) and partly in the framework of the Advisory Committee on Public Contracts (ACPC). The Advisory Committee on Public Contracts is exclusively responsible for comitology issues and all the other issues are discussed in the framework of the Commission Government Expert Group.

The general rule was that the member states had to transpose the public procurement directive package into the national legislation by 18 April 2016; the exemptions included the eProcurement, where the deadline is 18 April 2017 for central contracting authorities and 18 October 2018 in the case of any other contracting authorities.

In 2016, the meetings of the working groups in Brussels primarily served the purpose of preparing

the member states for the new regulations; the main focus was the transposition of the reform package and the changeover from paper to electronic based public procurement. The Commission Government Expert Group (EXPP), the Electronic Public Procurement Working Group and the Statistics Working Group met twice during the year and the e-Certis Drafting Committee held a meeting once.

At their meeting in March and June 2016, the **Commission Government Expert Group (EXPP)** discussed the **European Single Procurement Document (ESPD)** and the related online application in connection with the new directives.

The **DIGIWHIST project** and the special challenges of the healthcare public procurement sector were on the agenda at the meeting in March. In June, information was provided on the progress of the transposition of the EU directives after the deadline, followed by **a discussion on the proposal on the International Public Procurement Instrument (IPI)**.

The IPI was a component within the framework of the amended proposal for a regulation of the European Parliament and Council on the access of third-country goods and services to the Union’s internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. The original draft regulation was elaborated in 2012; after presenting the objectives the recommended modification compared to the previous draft regulation were summarised. For example, in the reviewed draft, the option of closing the market is not included anymore, only the introduction of price adjustments, as a regulatory measure. Furthermore, as a result of eliminating the decentralised pillar, the option for contracting authorities to make an independent decision on prohibiting the participation of foreign tenderers in their public procurement procedures is deleted. The Commission stressed that according to the proposal the price adjustment measure would not be applicable for European SMEs. In the future, the proposal will be discussed with the EU Member States in the Council’s working groups. The Commission stressed the importance of the proposal especially in light of the trade negotiations with the USA and Japan.

The **e-Certis Editorial Team** held its meeting in June 2016. According to Article 187 (2) n) of the PPA, the Authority is obliged to provide information concerning the certificates to be used in procurement procedures, the publicly available Hungarian databases, registers, ensure publication of the list of relevant registers in e-Certis. However, taking into account that the European Commission was continuously developing the e-Certis system in 2016, several interpretation and technical issues had to be solved to be able to upload the Hungarian data.

The Authority was one of the first ones among the Member States to update the national information in the e-Certis system.



At the e-Certis Editorial Team meeting, the Commission provided information on the expected future changes and developments of the e-Certis system. In the meantime, the main content of the database was translated into the languages of the member states. **The most important development was, however, the information provided on the interoperability of the e-Certis with the ESPD system.** Furthermore, the planned integration of the ESPD and Virtual Company Dossier (VCD) systems were also presented.

The **Economic and Statistic Working Group (ESWG)** held two meetings in 2016 (June and November). The main focus of the meetings was **the template document necessary for the fulfilment of the data delivery obligations in line with the new public procurement directives.** After having discussed the monitoring report template in June, the final version of the document was adopted at the meeting held in November. The new, postponed submission deadline of the report is April 2018.

The **Expert Group on e-Procurement (EXEP)** held two meetings in 2016 (June and October). The Expert Group started work in October 2014 and performs its duties in the following three subgroups:

- **IT solutions and interoperability;**
- **Management and capacity building;** and
- **Regulatory and interpretation issues.**

In 2016, the Authority participated in the first two subgroups. In its meetings, the expert group discussed the planned future developments of the ESPD system in 2016. As regards to the standard to be established in the field of e-procurement, an expert group was established within the framework of the European Committee for Standardisation (CEN). The objective of this body is to engender interoperability in the field of e-procurement based on EU standards. Furthermore, the Commission provided information on the progress of the work on e-Invoicing.

Participation in the work of the Public Procurement Network

In 2016, the Authority continued to participate in the work of the Public Procurement Network (PPN). Similarly to previous years, **several requests for information were submitted** to the Authority by other member states, in particular, concerning the following issues: definition of estimated value, fines in connection with the infringement of public procurement (Lithuania), the option of contract modification (Czech



Republic), transposition of the directives (Estonia), ethical public procurement (Sweden) and innovative public procurement (Finland). The Authority answered all of the questions and filled out questionnaires after the approval of the relevant ministry. The PPN forwards the answers of the member state to the other member states directly and publishes it on its homepage.

Requests for information from international organisations and from certain member states

Cooperation with the Organisation for Economic Co-operation and Development (OECD) in activities with public procurement relevance

In line with the practice of previous years, **the Authority played an active role in the cooperation with the OECD by filling out several questionnaires.** Based on the new public procurement recommendations of the OECD published in 2015, the data collection concerning the central governmental public procurement procedures of the OECD countries took place; the main focus points were the trends of these strategic public procurements, the progress in the field of e-procurement and the situation of central procurements.

OECD-Sigma requested information from some EU member states focusing on the selection procedures in the framework of the new Public Procurement Directives (such as grounds for exclusion, suitability check, compliance with the declaration principle, introduction of ESPD). The representatives of OECD-Sigma visited the Authority in October 2016 to discuss the results of the Sigma study.

Cooperation with the European Anti-Fraud Office (OLAF) in activities with public procurement relevance

In 2016, the Authority responded to the questions of the so-called **PIF questionnaire in the area of "Transparency of public procurement and public procurement corruption"**. In its report based on the questionnaire, the Commission, in cooperation with the member states submits a report to the European Parliament and the Council on the measures introduced for protection of the EU's financial interests.

Cooperation with the World Bank in activities with public procurement relevance

Similarly to previous years, in 2016, the **World Bank** sent its **questionnaire** to map and evaluate the public procurement situation in Hungary. The Public Procurement Authority answered the questions concerning tendering, remedy and public procurement integrity.



Requests from member states

During 2016, the Department working in the field of international relations within the Authority answered questions submitted in writing by public procurement organisations in other member states or by foreign private individuals.

Bilateral international relationships

Visit of the delegation of the Republic of Macedonia

As a result of a request sent through the Ministry for Foreign Affairs and Trade, the Public Procurement Authority hosted the **Public Procurement Authority of the Republic of Macedonia on 7 November 2016**. The presentation delivered by the Authority gave an overall picture to the delegation on the Hungarian public procurement regulations, on the amendments of the law and on the organisation of the public procurement system and the public procurement review system.

In addition to the Hungarian public procurement review system, the delegation was interested in understanding the Hungarian public procurement institutional structure and the regulatory framework as well as the following topics:

- main changes with the transposition of the new public procurement directives;
- the structure of the Hungarian regulatory framework;
- monitoring system;
- the system of monitoring procurement contracts;
- self-cleaning;
- Public Procurement Arbitration Board procedures.

Other tasks of international aspects

In 2016, the Public Procurement Authority attended **international public procurement conferences** and seminars, thus utilising the knowledge gained in their everyday work.

In the reporting period, the Authority took the necessary steps to publish the public procurement related judgements of the European Court of Justice on its homepage. The public procurement related decisions of the Court of Justice of the European Union and the General Court were made available to the Authority by the Ministry for Justice for this purpose.

III.7. Sustainability and innovation in focus

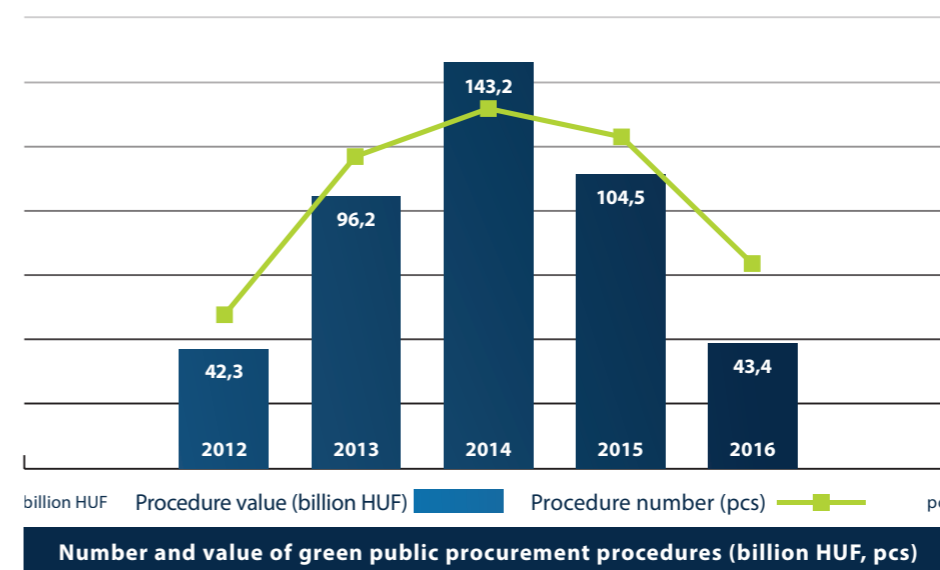
The Authority has paid special attention to the relationship between sustainability aspects and public procurements both in the context of international trends and in the changes of the Hungarian legislation. The adoption of the new public procurement directives reinforced the trend that **sustainability aspects must play an increasingly important role in public procurement**, thus, environmental, social and innovation objectives need to be promoted and criteria contributing to these objectives must be applied.

The Authority's objective is to raise awareness to the importance of green and social aspects, and to disseminate information on the opportunities to promote innovative public procurements, on relevant regulations and on best practices. Based on the above, in 2016, the Authority continued to actively participate **in the spreading of sustainability aspects by publishing relevant, up-to-date information and by organising conferences**.

Green procurements

Green procurements are public procurements, whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured. **By conducting green public procurement procedures, contracting authorities can influence the market by promoting the spreading of environmentally-friendly technologies and products.**

The new public procurement directives expand the contracting authorities' range of tools for green procurement; in addition, the current Hungarian Public Procurement Act also ensures that contracting authorities can take environmental aspects into account during their public procurement procedures (as part of the proposed conditions of the contract, evaluation criteria, technical description, selection criteria or as one of the grounds for exclusion).





The **electronic newsletter (GPP New-Alert)** edited and published monthly by the European Commission's Directorate General for Environment (DG Environment) is also accessible **on the homepage of the Public Procurement Authority**. Furthermore, the **green public procurement menu** of the homepage of the Authority provides information on the recently published green public procurements as well as related studies and publications.

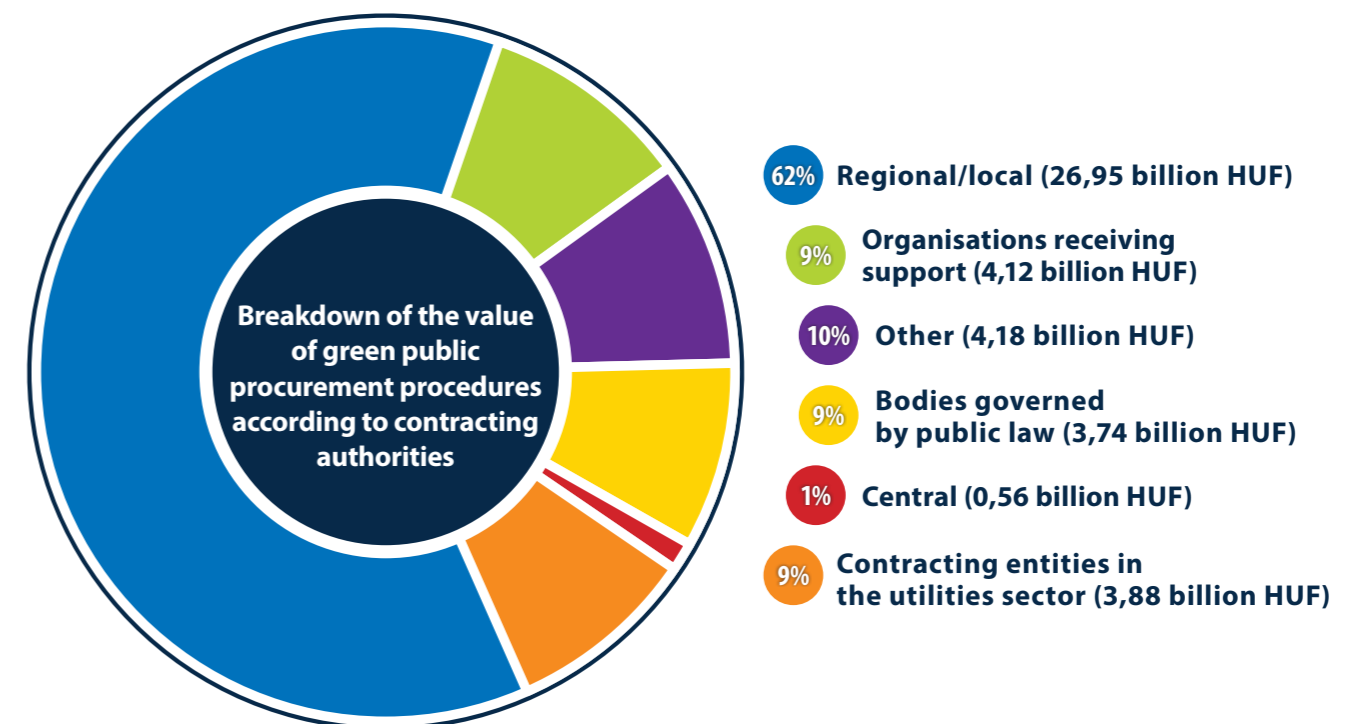
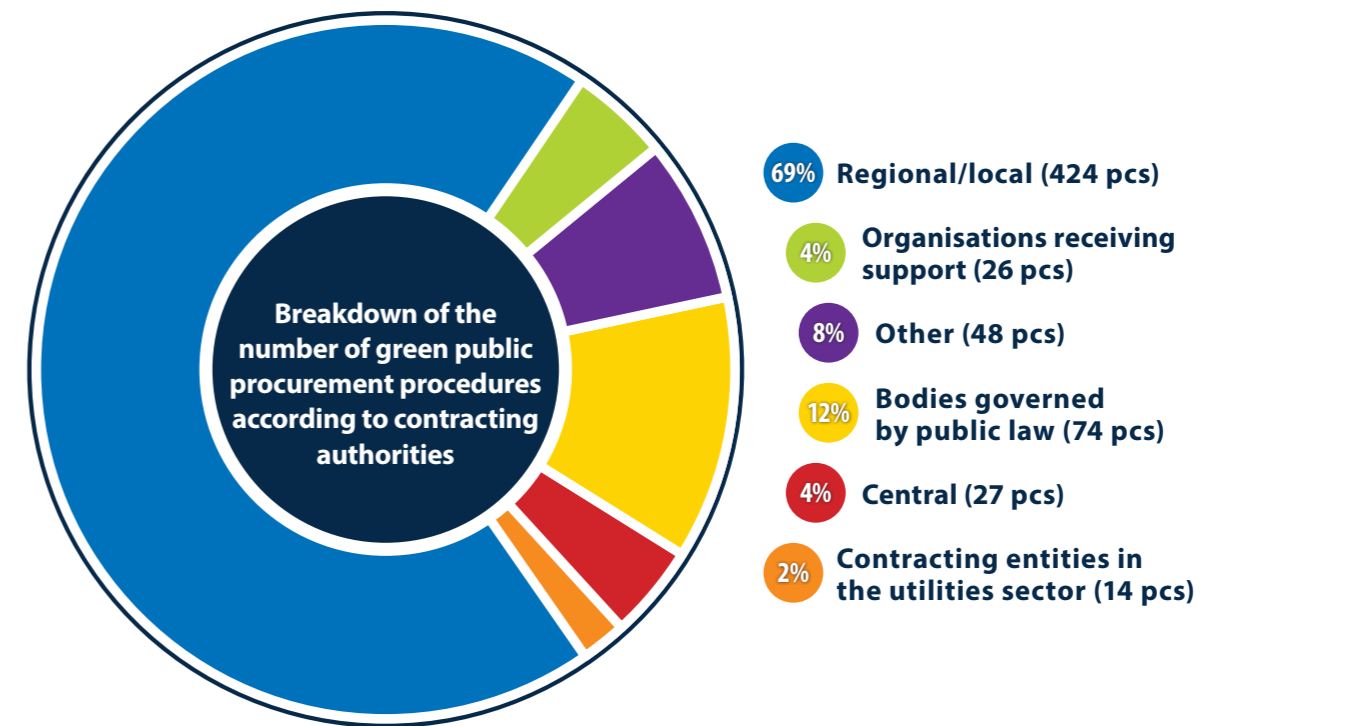
In 2016, the Authority continued to play an active role in the work of the Green Public Procurement Working Group of the European Commission and participated at the working group meetings held twice a year. The meeting in April focused on three major areas:

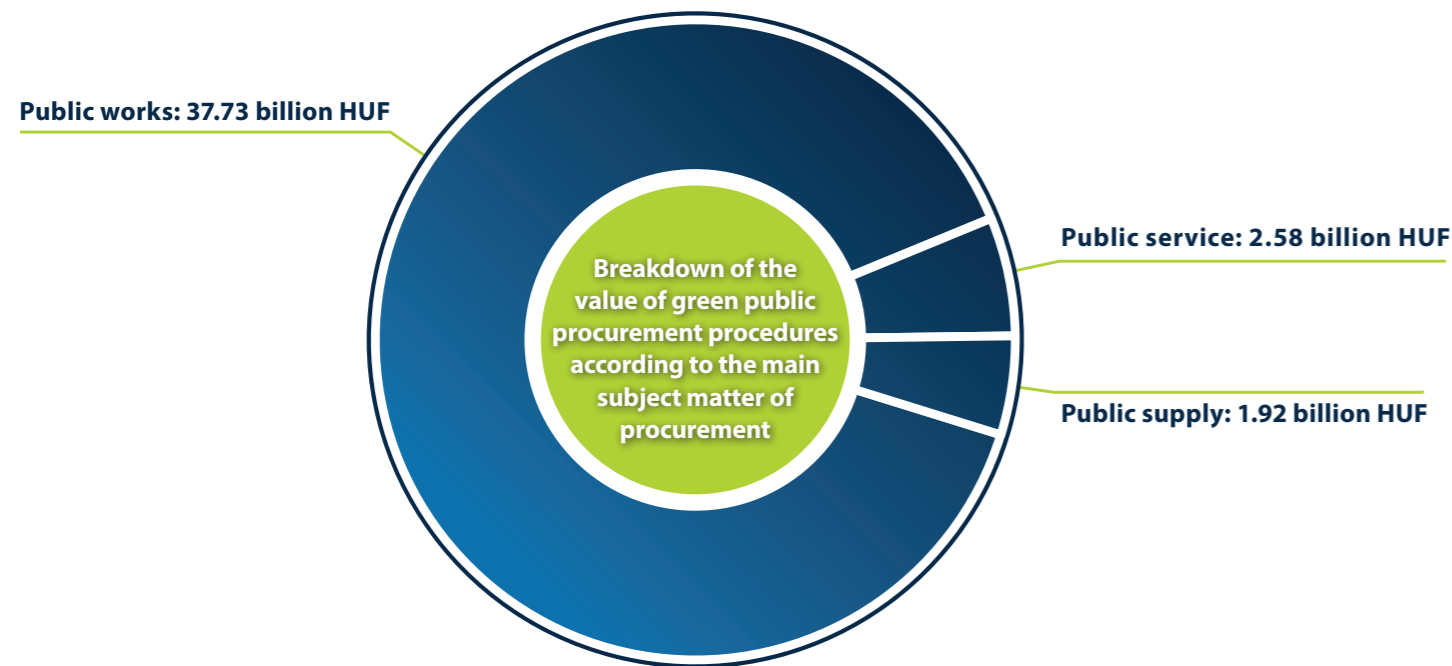
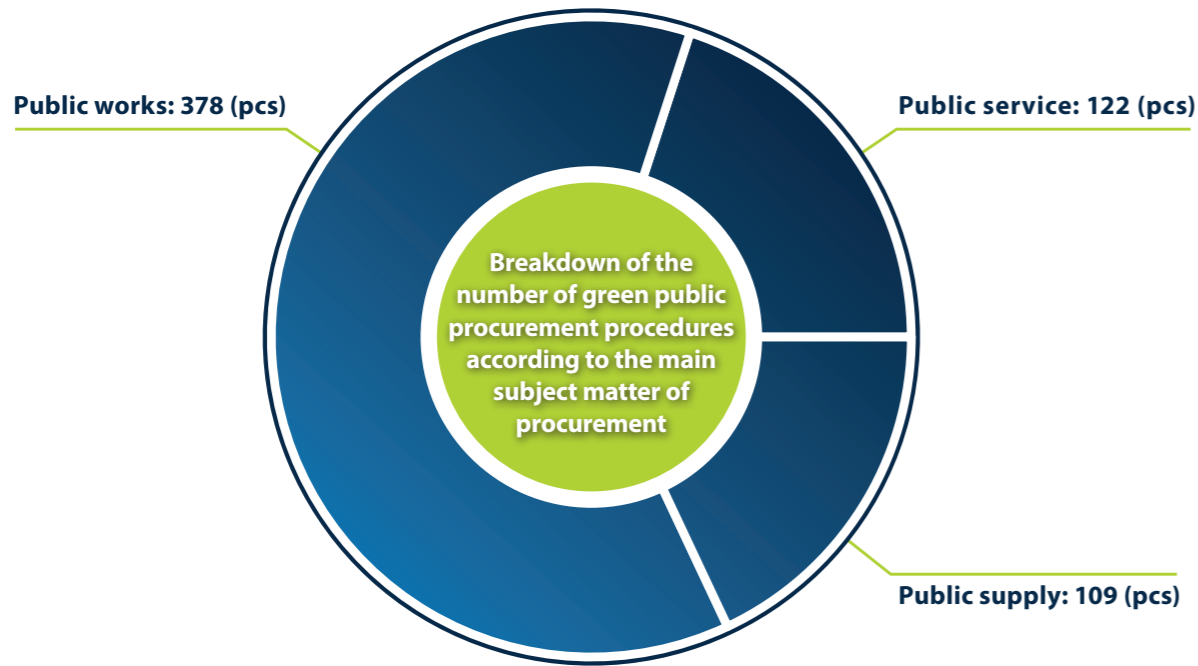
- new developments in the European Commission's environmental policy;
- the most recent information concerning the Commission's projects on the calculation of the life cycle costs; and
- the revision of the green procurement criteria (GPP).

At the expert group's second meeting, held in October, the main focus was the evaluation of the life cycle cost calculator supported by the European Commission about which the Public Procurement Authority delivered a presentation on the experience gained during application of life-cycle cost in Hungary.

In addition to the green procurement working group meetings, the Authority participated at international conferences and online seminars focusing on sustainable public procurement, in particular the life cycle cost calculation, organised by the European Commission.

In 2016, the Public Procurement Authority **elaborated the draft guideline for the calculation method of life-cycle cost**, as defined in Article 78 (4) of the PPA, which was published in March 2017. The main objective of the document is to provide support to contracting authorities in the application of the life cycle calculation in their evaluation process. Furthermore, it aims to give guidance to tenderers attending to participate in a public procurement procedures, where the contracting authorities decided to apply life cycle cost calculation. In line with the PPA, the guideline also describes whether (and to what extent) in certain subject matters of procurements mandatory EU life-cycle cost calculation methods are available.





In 2016, the Public Procurement Authority responded to several questionnaires surveying green or sustainable public procurement procedures; statistical data were provided to a survey carried out in the framework of the United Nations Environment Programme (UNEP) in 2016 that aimed at mapping the practice of green and social procurements, the monitoring solutions in particular.

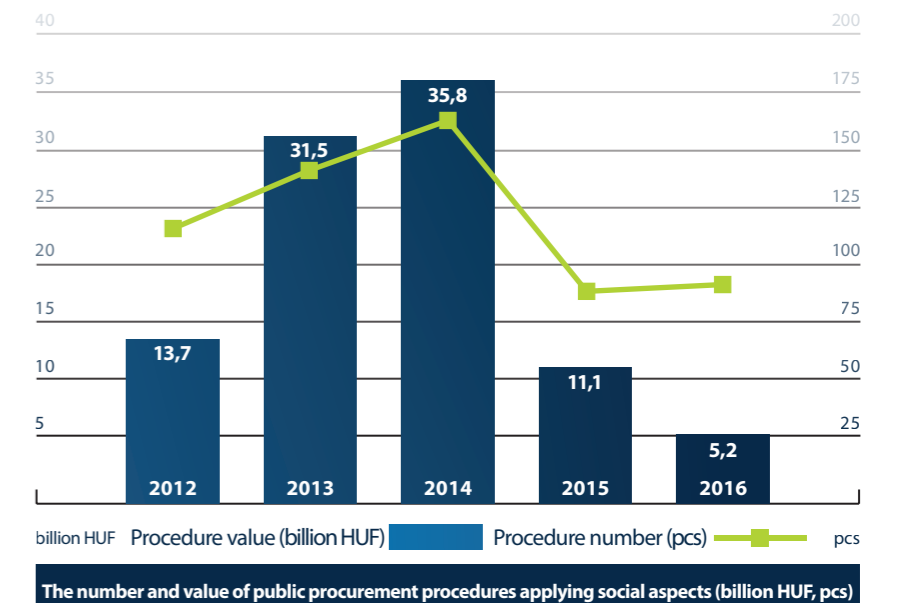
In 2016, in the free-of-charge conferences held by the Authority, green and sustainable public procurements were discussed in light of the introduction of the new Public Procurement Act; the regulatory changes and the new developments in connection with evaluations were addressed.

Social aspects in public procurements

One of the major statistical goals in the creation of the new Public Procurement Directives was to support social objectives (employment, job creation, social integration). According to the definition of the European Union, social (socially responsible) procurement is a public procurement activity, in the course of which at least one of the following social aspects is considered: job opportunity, decent work, respect for social and labour rights, social inclusion (including people living with disability), equal opportunities, accessibility for all users; furthermore, sustainability criteria are also assessed, including ethical trade and voluntarily corporate social responsibility (CSR), in line with the basic principles of the Treaty of the Functioning of the European Union (TFEU) and the public procurement directives.

Since 1 January 2012, the Public Procurement Authority has collected statistical data on the social aspects applied in the course of public procurement procedures.

Contracting authorities are obliged to indicate in the information summarising the results of a national procurement procedure, whether they have considered social aspects. In order to provide efficient information to all stakeholders, the Authority **continued to follow EU publications and international literature in 2016;** the current information are published on the Authority's homepage in a separate menu.





Innovative public procurements

Innovative public procurements serve the purpose of facilitating access of innovative products and services to the public procurement market. In order to enhance innovative solutions, the European Union pays special attention to promote innovative public procurement.

In the new Public Procurement Act effective since 1 November 2015, as a result of the transposition of the new Public Procurement Directives into the Hungarian law, **a new form of procedure was introduced, namely the innovation partnership.** The innovation partnership is a special type of procurement procedure that aims at the development of innovative products, services or works and the subsequent purchase of the resulting supplies, services or works, if they are in compliance with the performance level and costs jointly agreed upon by the contracting authority and the participants.

The Public Procurement Authority considers it very important to support and enhance innovative public procurements, therefore, it publishes (in a separate menu point) the practical tools, useful links and best practices of the European Union.

The National Research, Development and Innovation Office organised a conference in Szentendre in September 2016 with the main aim to follow the EU initiative to enhance the demand for innovative and sustainable building reconstruction solutions and to improve the success ratio of SMEs in public procurement procedures in this area. At this conference, the Public Procurement Authority delivered a presentation on the legal opportunities in the course of public procurement procedures. The main objective of this initiative was to strengthen Hungarian innovative enterprises.

In December 2016, the Federal Anti-Monopoly Service of the Russian Federation organised an international conference in Moscow titled "Anti-monopoly policies: science, education, practice", where international speakers gave presentations in several sessions. In the session "Innovation opportunities in public procurement procedures", the Authority had the opportunity to deliver a presentation on the experience gained in the field of Hungarian innovative public procurement.

In 2016, in addition to the above, the **employees of the Authority participated in several Hungarian and international platforms dealing with sustainability and innovation, both as participants and as speakers.**

At its free-of-charge conferences held in 2016, the Authority provided information on the law amendments in the field of innovative public procurements, and on the opportunities for contracting authorities in this area.

IV. Tasks of the Public Procurement Authority performed voluntarily

Wide range of information dissemination and sharing of knowledge

Public duties are connected to several of the Authority's activities, such as education, organisation of public procurement related events, participation in events in connection with public procurement issues, publication of articles and studies, etc. The Authority intends to function as a knowledge database and thus, promote the establishment and spreading of lawful public procurement behaviours.



The Authority's objective is to establish a modern service providing Authority that is in full compliance with the challenges of the legal framework and is in the forefront of the Hungarian public administration with its focus on client friendliness.

Public Procurement Academy

One of the most important goals of the Authority is to facilitate the application of public procurement law and to disseminate best practices. To this end, the Authority launched a series of events titled **Public Procurement Academy** in 2016; thus, the Authority



organised conferences and thematic training events for public procurement actors more frequently than in previous years. As a result, the Authority held a free-of-charge conference almost every month (all together 10 times in 2016) to address challenges of applying the new public procurement regulatory framework and to disseminate relevant information. As a national body, the

Authority not only provided an opportunity for a dialogue **in Budapest, but in several other towns**, such as Debrecen in March, and Kecskemét at the beginning of May. The conferences were held as follows:



- 27 January 2016 Budapest, National University of Public Service
- 25 February 2016 Budapest, National University of Public Service
- 16 March 2016 Debrecen, in cooperation with the Hajdú-Bihar County Chamber of Commerce and Industry
- 30 March to 13 April 2016 Budapest, organising 4 seminars based on the request of the Hungarian National Bank
- 18 April 2016 Budapest, at the request of the Hungarian National Asset Management Inc.
- 4 May 2016 at the request of the Kecskemét Town of County Right Local Council
- 16 June 2016 Budapest, ELTE University, Public Procurement Debate
- 20 October 2016 Budapest, the Cupola Room of the MOM Cultural Centre, in cooperation with the Prime Minister's Office
- 22 November 2016 Budapest, the Cupola Room of the MOM Cultural Centre, focusing on healthcare public procurements
- 1 December 2016 Budapest, in cooperation with IVSZ-ICT Association of Hungary.

We consider it as a great success that all our conferences proved to be popular and fully booked; the average number of participants was 200, therefore last year alone we were able to provide 2000 experts with relevant information.

The Authority's role in education

In order to perform its educational duties, the Authority publishes on its homepage (in line with earlier practice, in a separate menu point) **the most important information in connection with the vocational qualification of public procurement practitioners.**

In recent years, the Authority continued to provide help in training public procurement practitioners and assisted training events, the organisation of exams and the interpretation of exam requirements.

The Authority concluded a cooperation agreement with Eötvös Loránd University **to establish a framework to train public procurement lawyers.** In addition to collaborating on the training structure and curriculum, the Authority **also designated lecturers** to the university courses.

In the framework of the cooperation agreement concluded with the National University

of Public Service, some courses in Bachelor and Master Programmes **in the field of public procurement were jointly developed.**

Based on the cooperation agreement, the Authority provides internship opportunity to students to complement their theoretical knowledge with practical experience and enable them to apply their knowledge as set out in the education outcome requirement system.

Cooperation in the public procurement scientific sphere

The Authority pays special attention to its involvement in the scientific sphere, thus, facilitating the dissemination of public procurement information in a complex manner, as well as the better understanding of the legal framework and the theoretical and practical application of public procurement regulations. Therefore, in addition to editing the Public Procurement Journal, the **Authority was also involved in the elaboration of the commentary of the new Public Procurement Act.**

HelpDesk – call centre

In order to support the work of those applying the law, the Public Procurement Authority maintains a free-of-charge call centre to clarify general law application questions. This service was also popular in 2016 (there were 10 to 15 questions in an average working day).

The significance of the call centre support lies in the fact that when modifying the law the questions received by the call centre give direct feedback on the practical applicability of the new regulation.

Joining forces against corruption

The Authority pays particular importance to the transparency of public procurements, mapping public procurement corruption, identifying the necessary measures and to improving the Hungarian practice in this field. The European Union and the OECD also considers the fight against corruption, and within this, the fight against public procurement corruption as a major objective, therefore the Authority is actively involved in this work even at international level.

Our objective is to apply international and EU experience in Hungary and as a result, to contribute to the promotion of a clean public procurement market in Hungary.



In November 2011, upon the initiation of the State Audit Office, the Minister Responsible for Public Administration and Justice, the Prosecutor General, the President of the Supreme Court and the President of the State Audit Office made a joint declaration, in the framework



of which they made a moral commitment to strengthen anti-corruption attitudes and to improve the anti-corruption set of tools in their respective organisations. **In 2016, on the fifth anniversary of this declaration, the Public Procurement Authority was invited to join the anti-corruption cooperation; the President of the Authority signed the declaration to join efforts.**

In May 2016, the State Audit Office of Hungary assessed the integrity of Hungarian budgetary institutions for the sixth time. The objective of this survey is to identify the corruption risks in connection with the functioning of the public sector, to map the corruption resistance capabilities of these institutions as well as to support efforts mitigating these risks. In line with Government Decision No. 1336/2015 (V. 27.) on the adoption of the annual plans for 2015-2016, containing the measures of the National Anti-corruption Programme and the related measures, **the Authority continued to support the work of the State Audit Office of Hungary by filling out its integrity questionnaire.**

In line with Article 325 (5) of the Treaty on the Functioning of the European Union (TFEU), the European Commission, in cooperation with the Member States submits an annual report to the European Parliament and the Council on the measures introduced in order to protect the financial interest of the EU. The part of the report concerning member states is elaborated based on the responses of the so-called "Article 325 questionnaire". **A questionnaire developed by OLAF was also filled out by the Authority in 2016**, at the request of the OLAF Coordination Office of the National Tax and Customs Administration.

In 2016, the World Bank requested the Authority again to deliver information on Hungary's experience in the framework of the **"Public Procurement Evaluation 2017 Project"**. The World Bank's questionnaire surveyed the transparency and clarity of public procurements from the preparatory phase until the performance of procurement contracts and also evaluated the judicial review of public procurement procedures within the legal remedy system.

The so-called **"Redflag" signalling system** was jointly developed by Transparency International

Hungary, K-monitor and PetaByte Scientific Research and Development Nonprofit Ltd. with the support of the European Commission. The system was introduced in November 2015 as an innovative, interactive **online surveillance tool** with the aim to signal or, if possible, to prevent public procurement procedures that could be considered risky, or where corruption or unlawful behaviour can be assumed. **This newly developed tool (at the moment) monitors those Hungarian public procurement procedures that are published through the EU public procurement database (TED).**

In order to promote this tool, OLAF supported a project implemented by Transparency International. The aim of the project was to exchange experience, disseminate information and strengthen cooperation in Hungary, Slovakia, the Czech Republic, Lithuania and Latvia in the field of detecting, evaluating and analysing frauds impacting EU funds. **As a first step, in June 2016, training was held for the Hungarian authorities with the participation of the employees of the Public Procurement Authority.** In October, an international conference was organised, where the President of the Authority delivered a presentation on the Authority's anticorruption activities and measures. At the end of the project, a document will be elaborated summarising the experience gained in the application of the red flag tool in public procurement procedures.

In order to mitigate and prevent public procurement corruption, the Public Procurement Council operating in the framework of the Public Procurement Authority adopted the **Public Procurement Code of Conduct** at the end of 2012 that is accessible on the Authority's homepage. The Public Procurement Code of Conduct contains recommendations for actors to voluntarily follow, or it can serve as a basis for the elaboration of their own public procurement code of conduct. **The Public Procurement Authority maintains and publishes a continuously updated list of organisations adopting the Code of Conduct.**

Cooperation with monitoring organisations

The Authority **has a close collaboration with the National Tax and Customs Administration**; one of the most important achievements of this cooperation is that according to Article 54 (7 m) of Act XCII of 2003 on the Rules of Taxation, tax authorities now disclose confidential **tax information to the Authority upon request, which increases the efficiency of monitoring.** This provision serves as a basis for the Authority's initiative to modify the law in order to obtain authorisation to handle information that is considered to be confidential bank information and confidential business information in order to carry out more efficient procedures. This cooperation facilitates the forwarding of cases to the Tax Authorities, where the Authority suspects an economic or business related offense.



In addition to the above, **the Authority also has cooperation with the State Audit Office of Hungary** (hereinafter SAO), as a result of which the SAO can request information from the Authority in a more efficient manner. The Authority conducts controls in cases, where the SAO assumes infringement in order to promote the primary objective of both organisations, namely, the efficient, effective and regular utilisation of public funds. In the framework of this cooperation **the two organisations have regular consultations in order to avoid parallel controls** and also, to share experience.

The cooperation with the SAO serves as an example for a planned cooperation with the Government Control Office (hereinafter GCO); **the Authority has already contacted the GCO** with the aim of facilitating the positive decisions at our request for review and control procedures in accordance with Article 152 (1) c) of PPA.

In addition to the above, **the Authority collaborates with the Criminal Investigation Department of the National Police Headquarters**. If any other type of crime is detected during the control of a procurement contract, the Authority reports it to the Police and supports the investigation in a proactive manner; in the framework of this cooperation 14 complaints on suspected criminal activities were submitted in 2016.

Furthermore, the Authority also contacted the **Competition Authority**, as a result of which **employees of the Authority could participate in a training focusing on the special characteristics of public procurement cartels**. Capitalising on this training, cartel activities are detected during the contract control procedures in a more efficient way, which are then forwarded to the Competition Authority. In addition to detecting cartel activities, the **Authority is also committed to combat corruption; to this end, the Authority collaborates with the Ministry of Interior**.

In 2016, the Authority had continuous negotiations with the **Performance Certifier Expert Body** and the **Construction Innovation Non-profit Ltd.** in order to be able to establish a joint position on specific issues during control procedures of procurement contracts.

The Authority's cooperation with other organisations

In order to enhance the Authority's cooperation agreements and to make them more efficient, **new cooperation agreements were concluded with relevant organisations**, such as: the National Association of Young Entrepreneurs, the Hungarian State Treasury, the Association of County Towns, the Hungarian Academy of Science, the National Waste Management Coordinating and Asset Management Inc, the Hungarian Energy and Public Utility Regulation Office, the Association of ITC Enterprises, the Hungarian Official Public Procurement Advisors' Association, the National Archives of Hungary.

The Authority facilitates the exchange of information and best practices, holds presentations in the field of public procurement and promotes continuous dialogue in the framework of these cooperation.

V. 2016 in numbers

Duties in the field of statistics

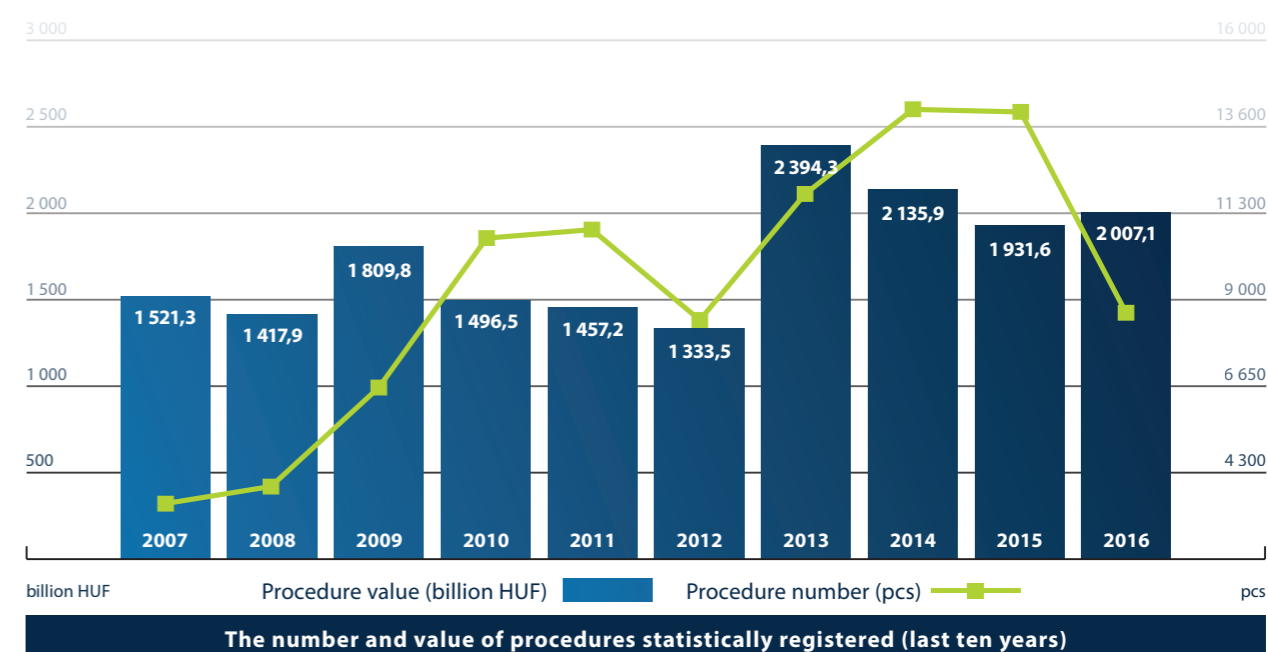
According to Article 187 (4) of PPA, the annual report submitted to the National Assembly on the Authority's activity must make statements regarding the **trends in the number and value of the procedures** and the financial situation of national tenderers including **micro, small and medium size enterprises**.

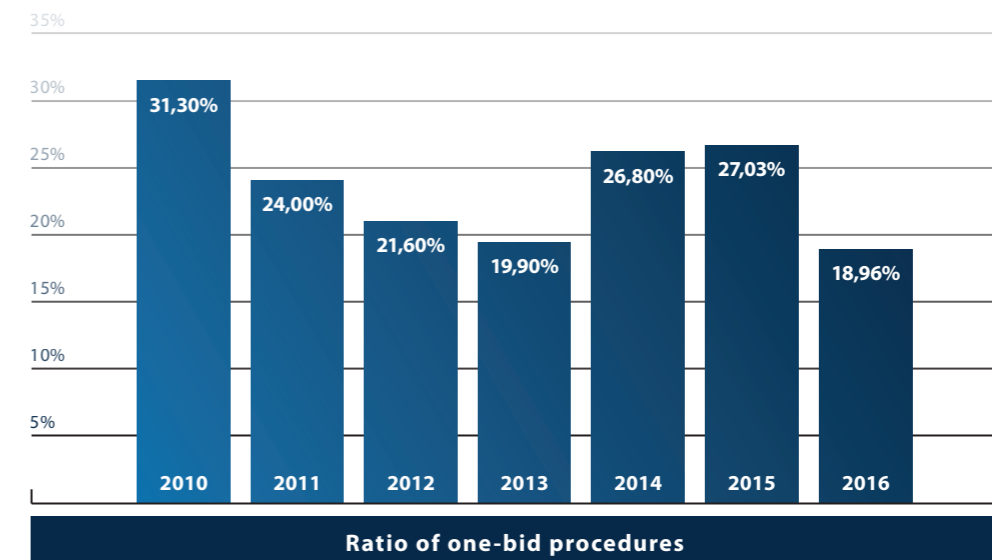
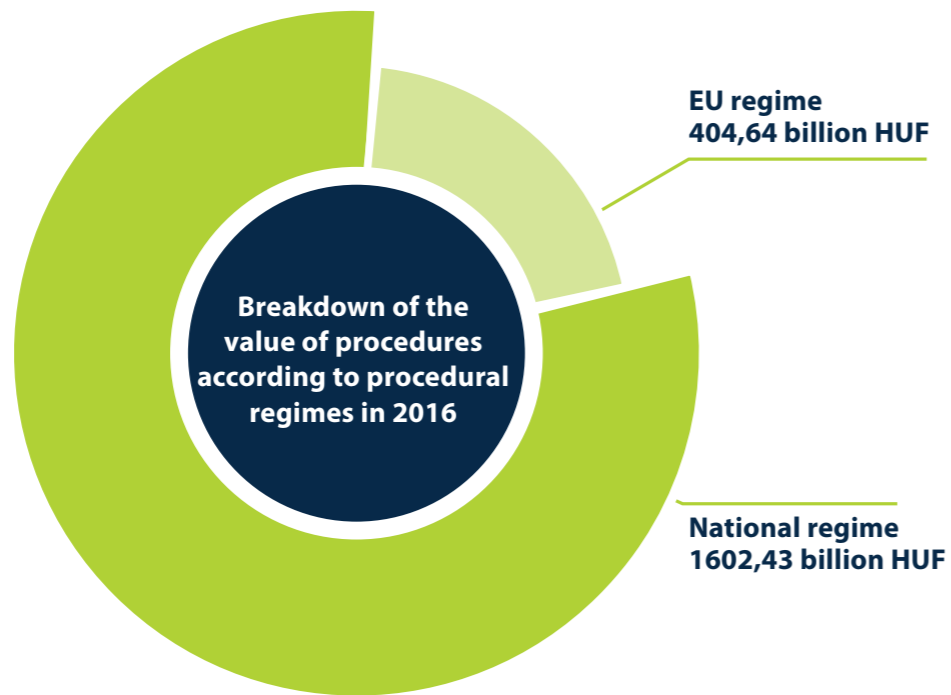
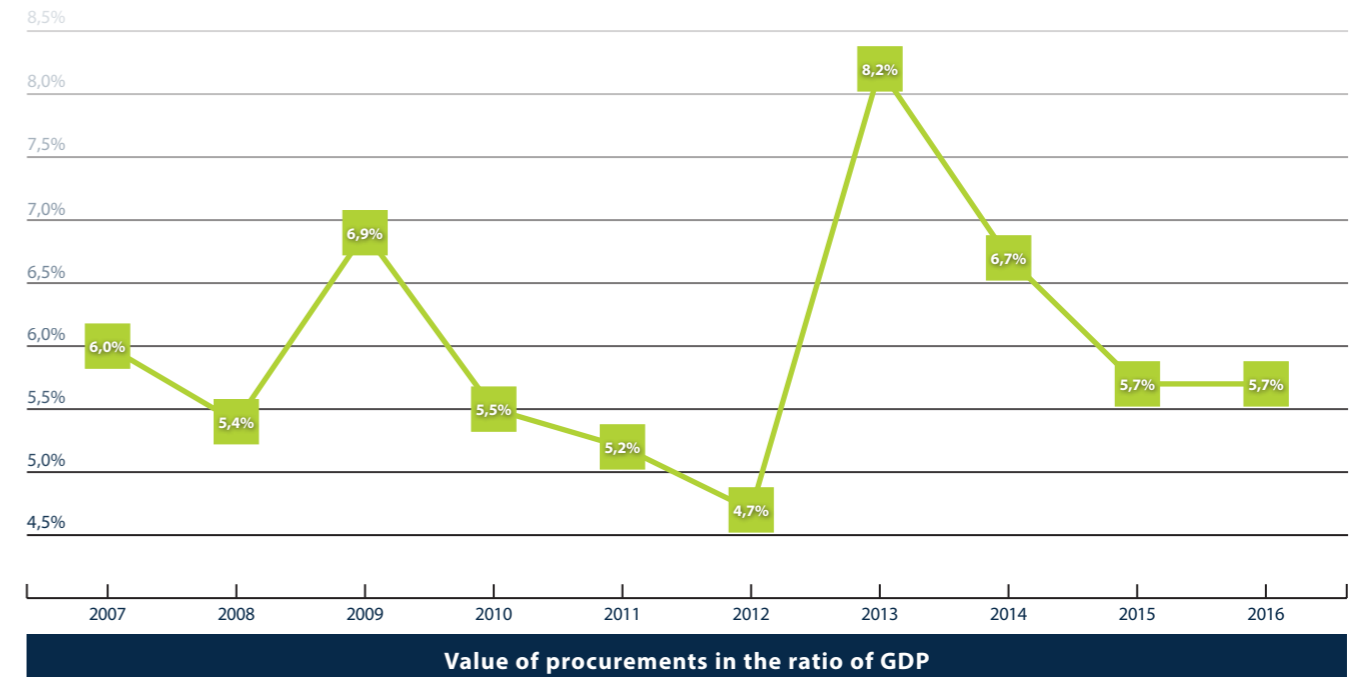
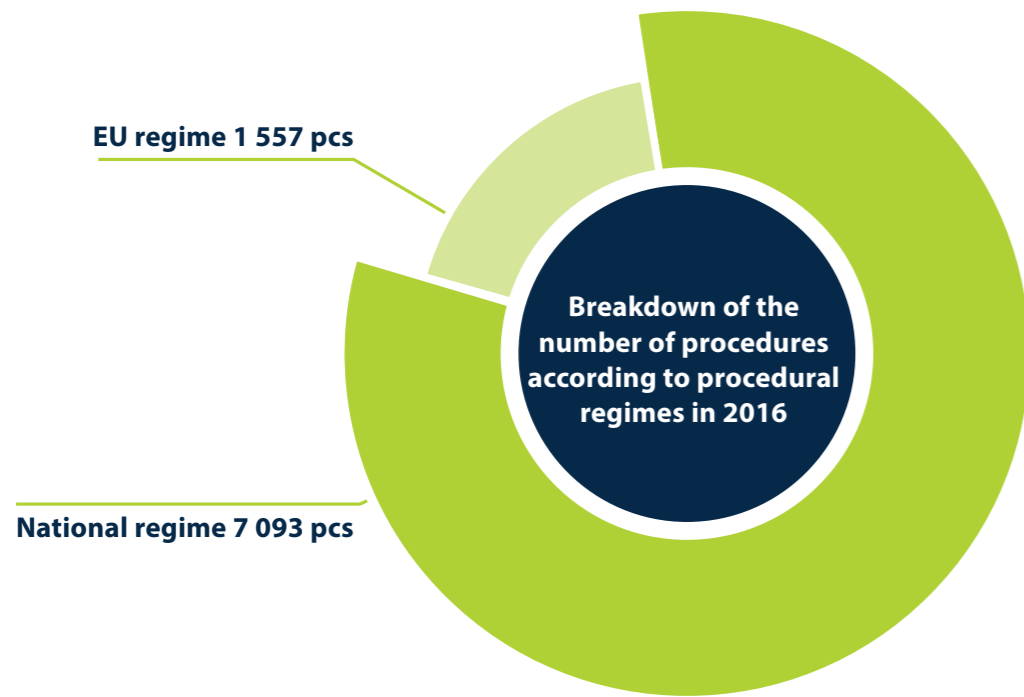
The **statistical data collection** is carried out in the IT system called the **Electronic Notice Handling System**, which was developed for this purpose. The data entered into this system are based on the information and data included in the notices on the result of procedures that were published in the **Public Procurement Bulletin**.

The query of detailed statistical data and the elaboration of **reports** can be carried out according to various aspects. The features of the reports are in compliance with the legal requirements or individual requests.

In addition to the obligatory tasks set out by the PPA, the Authority was able to deliver answers within a short deadline on **statistical questions** submitted by various bodies.

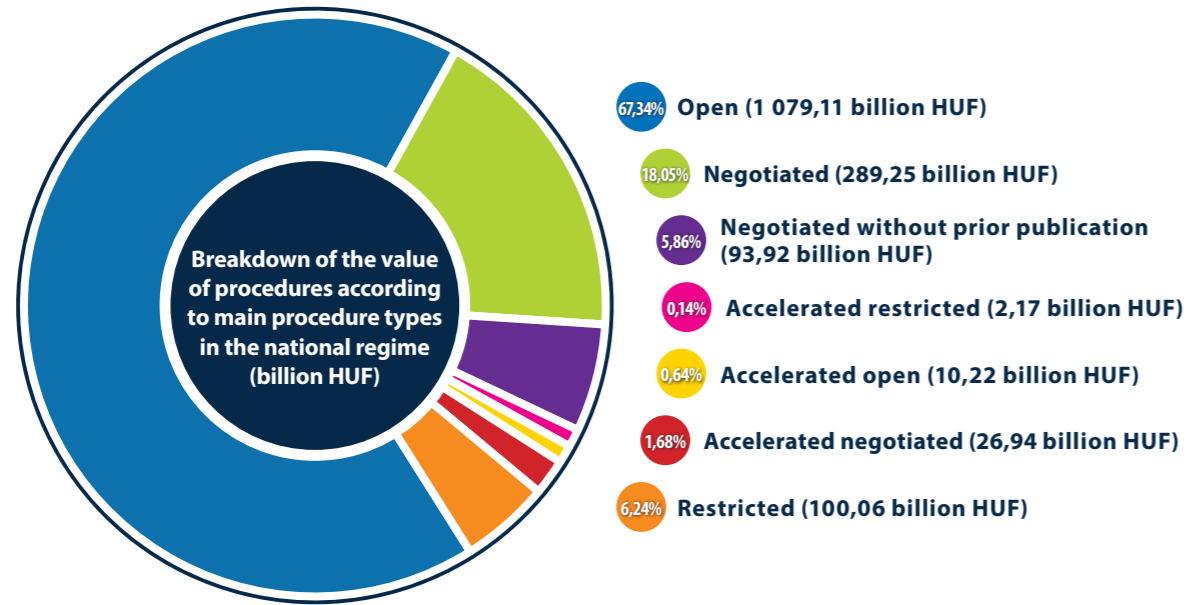
The preparation of price statistics in accordance with the Article 28 (2) f) and 187 (2) s) of the PPA cannot be carried out yet, because the **relevant implementation decree** is not in place yet.



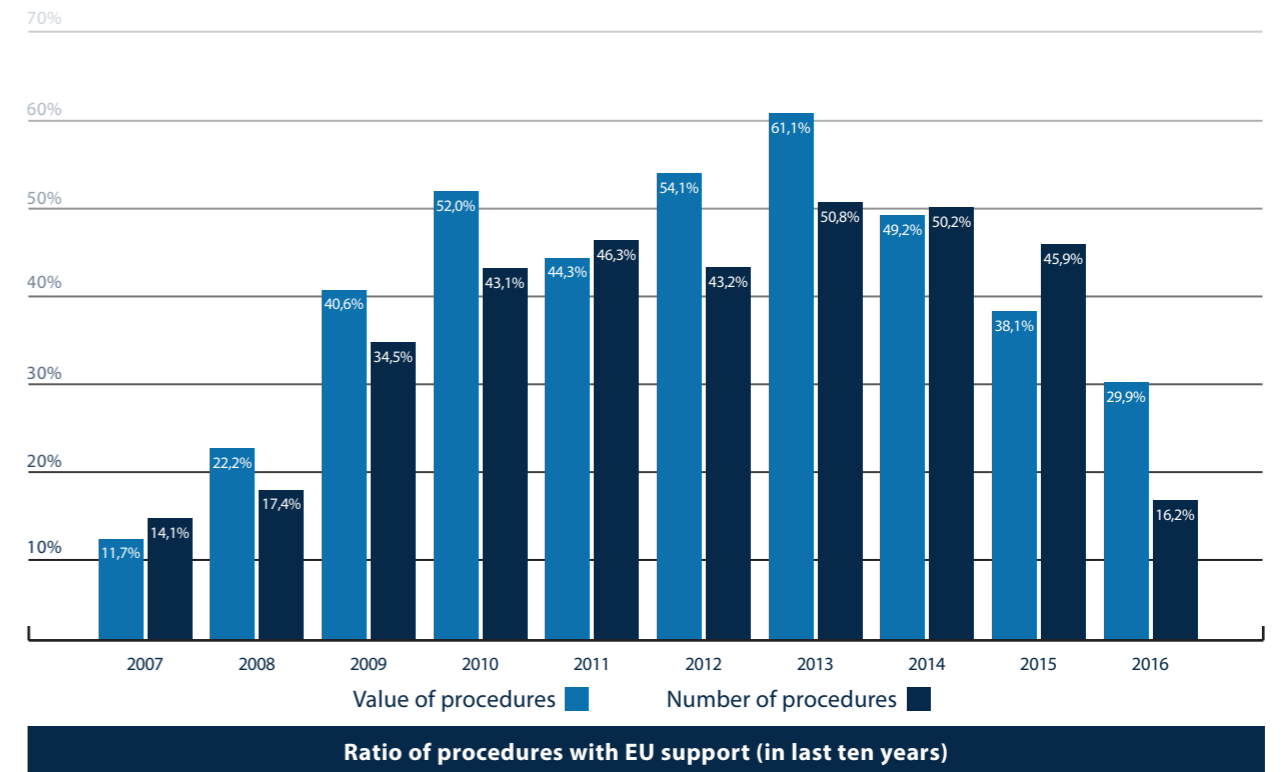
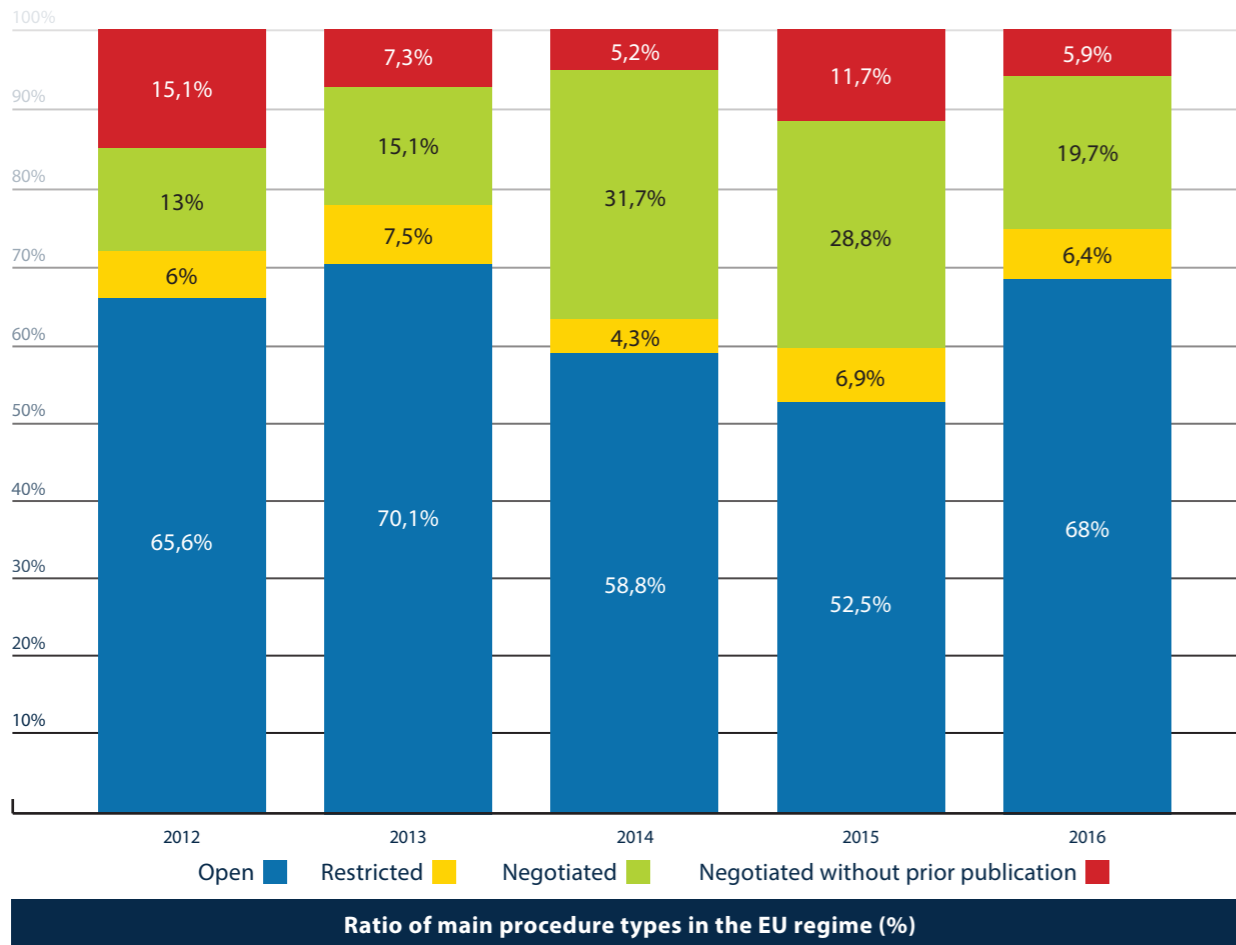
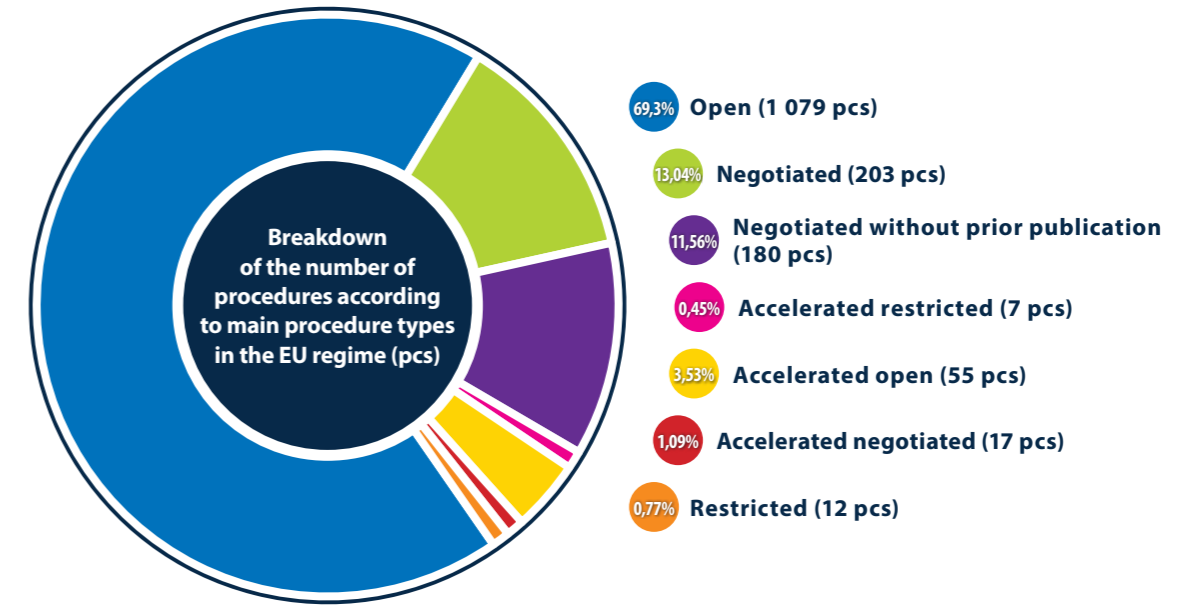


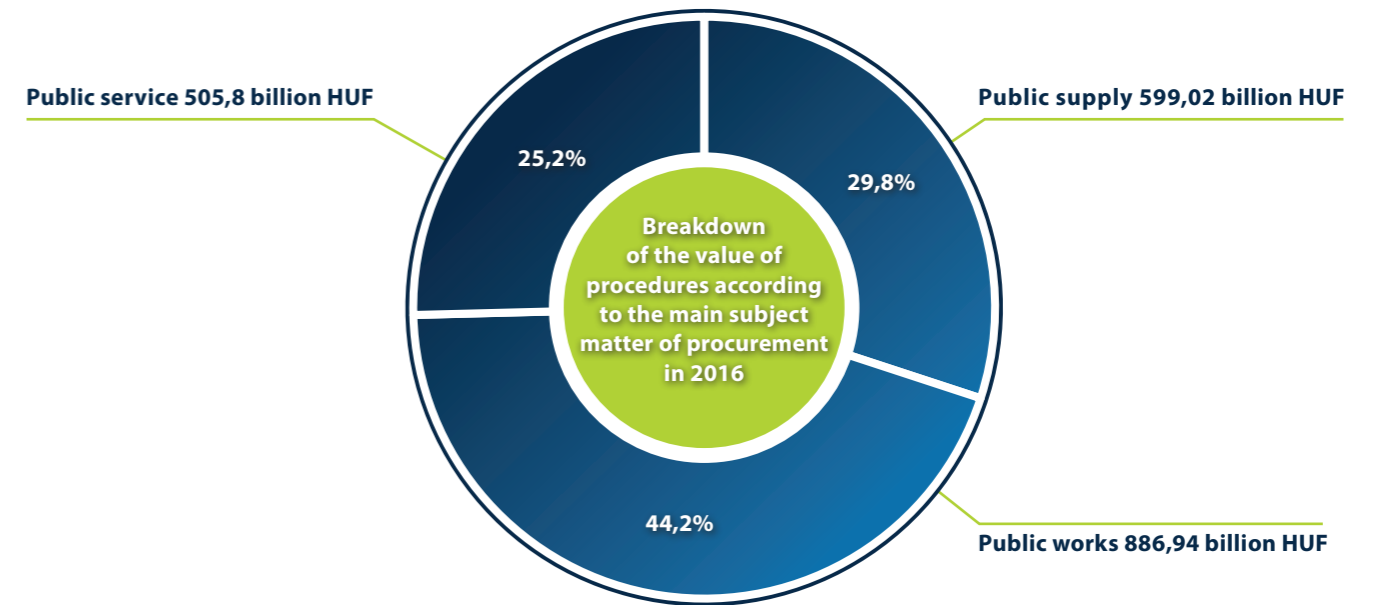
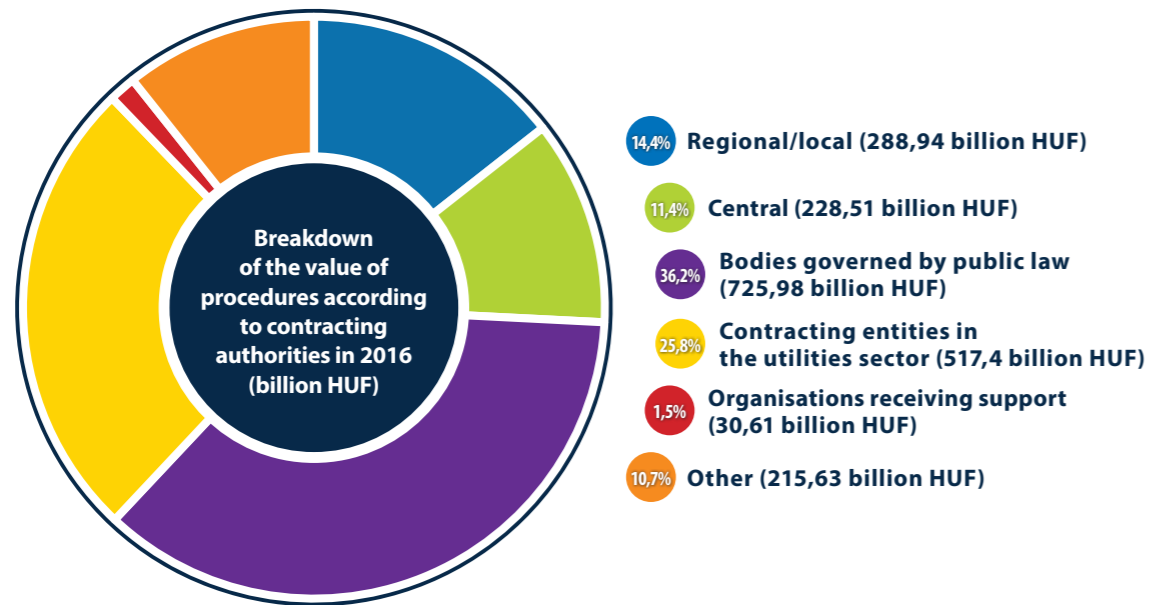
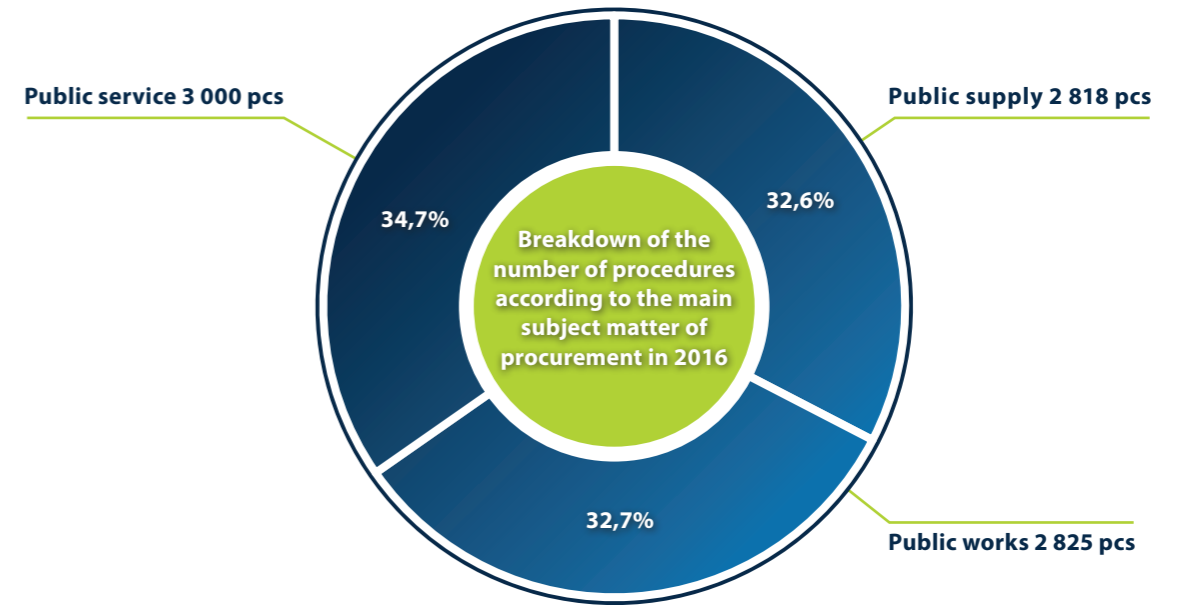
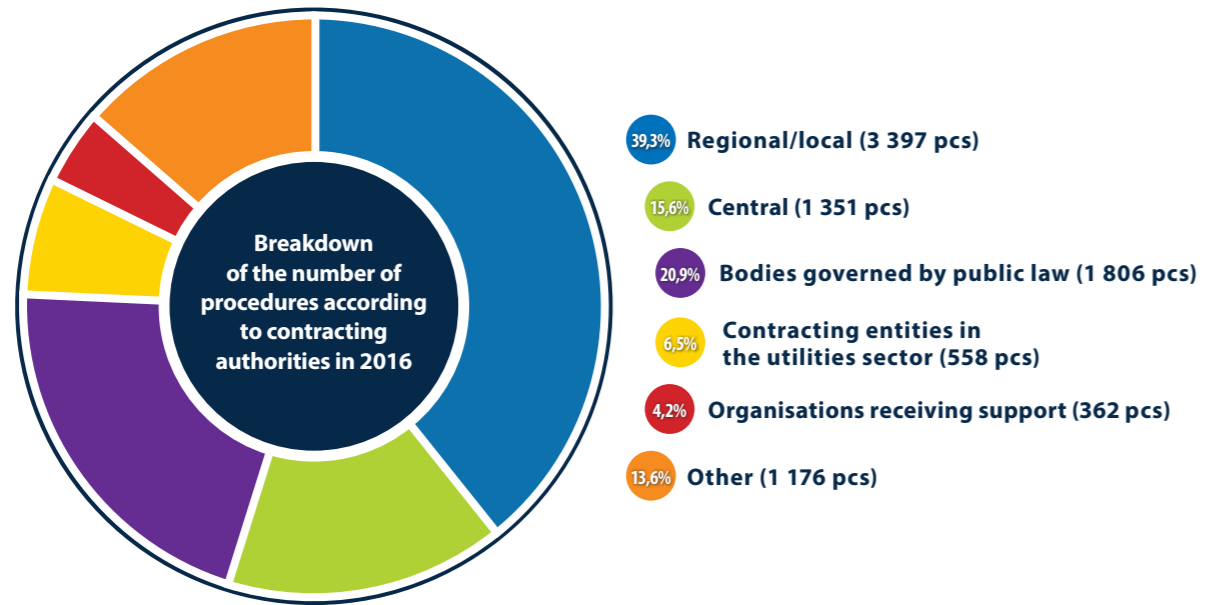


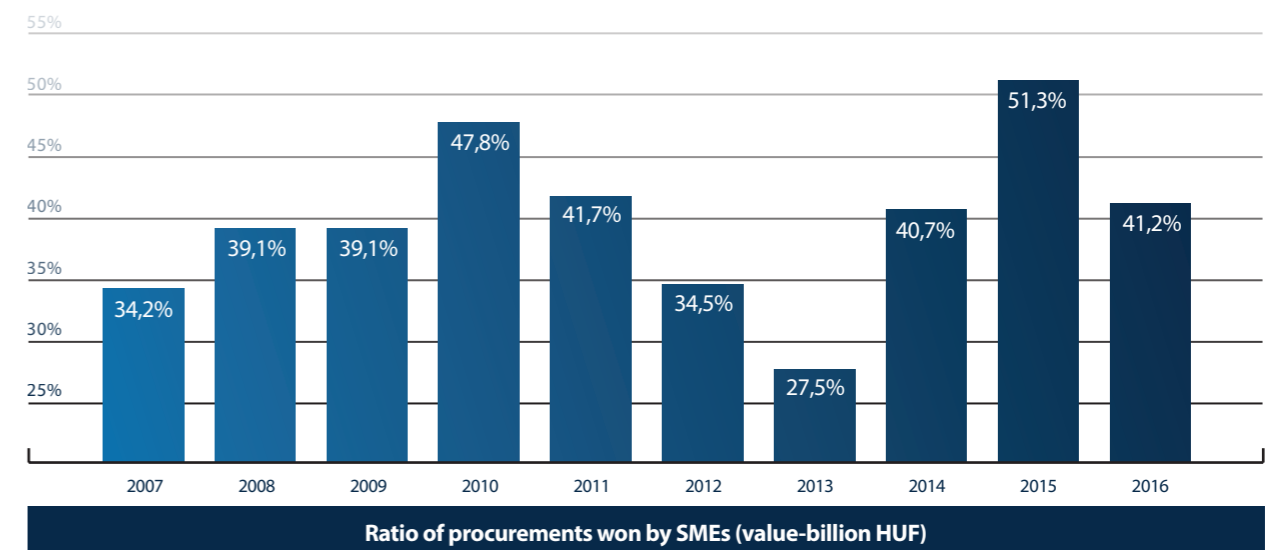
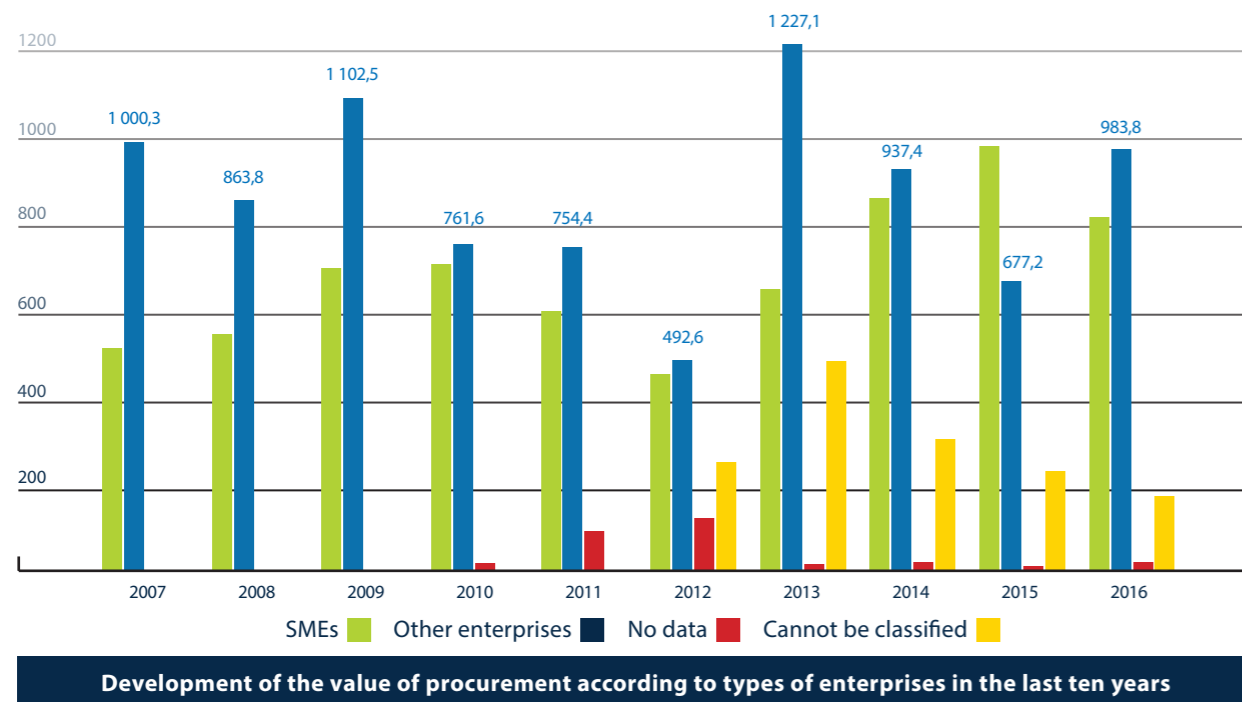
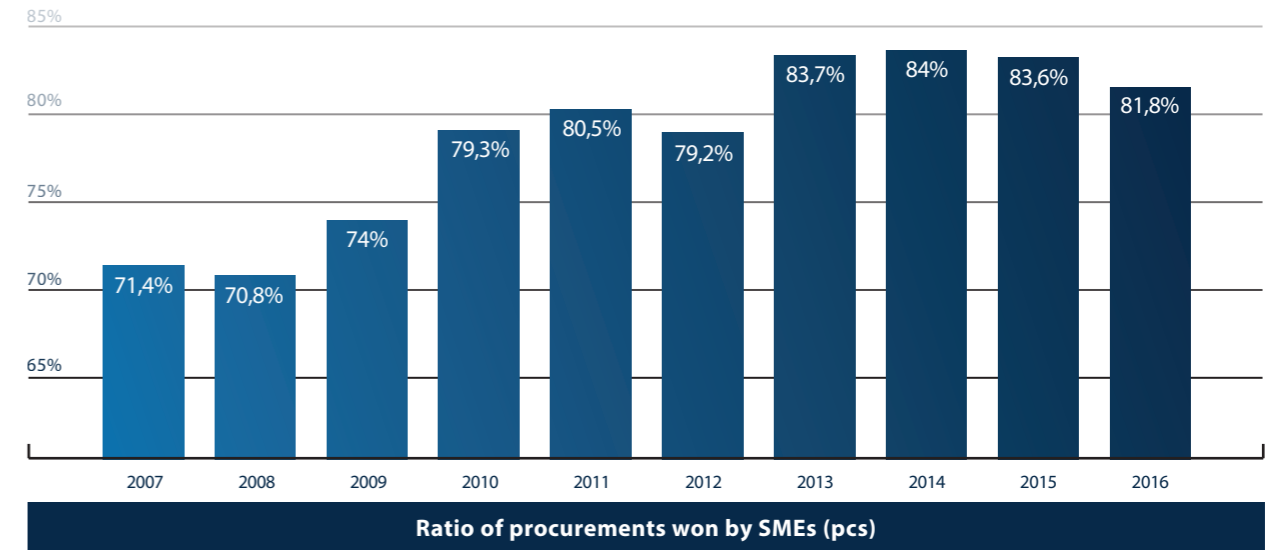
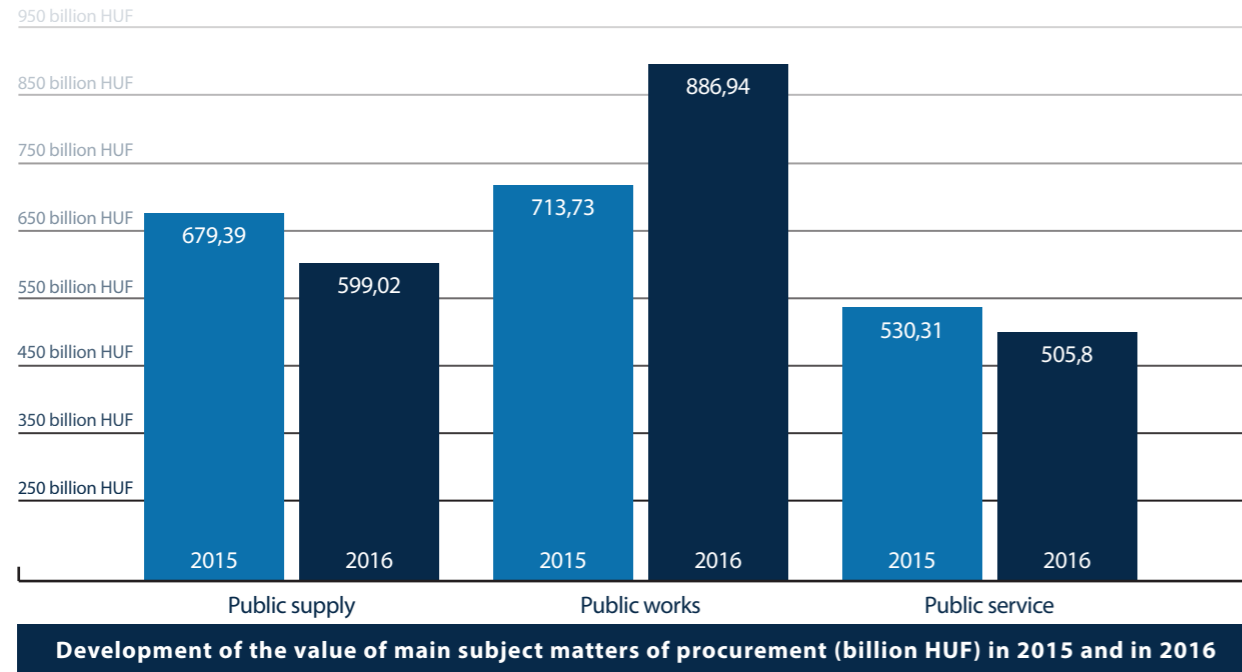
V. 2016 IN NUMBERS



V. 2016 IN NUMBERS









VI. Supporting professional work in 2016

IT System

The Public Procurement Authority's IT related tasks in 2016 were mainly related to the fulfilment of new obligations resulting from the legislative changes and to the shift towards electronic administration and case handling.



In the framework of the first area of tasks, in the Electronic Notice Handling System (ENHS) the standard notice forms were developed in line with new PPA (effective from November 2015) that correspond with the EU regulation defining standard forms of publication of notices. In the framework of this IT development project the systems dealing with the processing and display of these forms were subject to a cross-system development. In order to be able to close procedures launched earlier, some of the old notice forms are still available.

In order to replace paper-based registry of negotiated procedures without prior publication, a so-called HNT system was established, which will be integrated into the Authority's KBEJ system, resulting in fully digitalised contact keeping.

Similarly, in the framework of the IT development plans, the modernisation of the case handling programme supporting the work of the Public Procurement Arbitration Board that functions in the framework of the Authority is also to be highlighted. The objective of this IT project was to develop a standardised electronic surface for both clients and case handling personnel, which will significantly reduce the number of emails and phone calls received by the Arbitration Board. As a result of the integration of the HNT and the above described EJOG systems the administration of the review procedure of the negotiated procedures without prior publication will also be simplified.

As opposed to notices, the documents to be uploaded into the Public Procurement Database (PPDB) do not have detailed electronic forms that need to be filled out. In order to address this problem, a project was launched (and is nearly finished) that would enable data provision based on the document type titled "Summary of evaluation the tenders" that can be processed in the IT system. The project also develops the option to automatically upload the document based on the data of the form, which means that there will be no need to aggregate these data outside the system.

Thanks to the implemented IT development projects and the fine-tuning of the IT HelpDesk processes, there was a significant reduction in the number of technical problems reported to the Authority in 2016 compared to 2015.

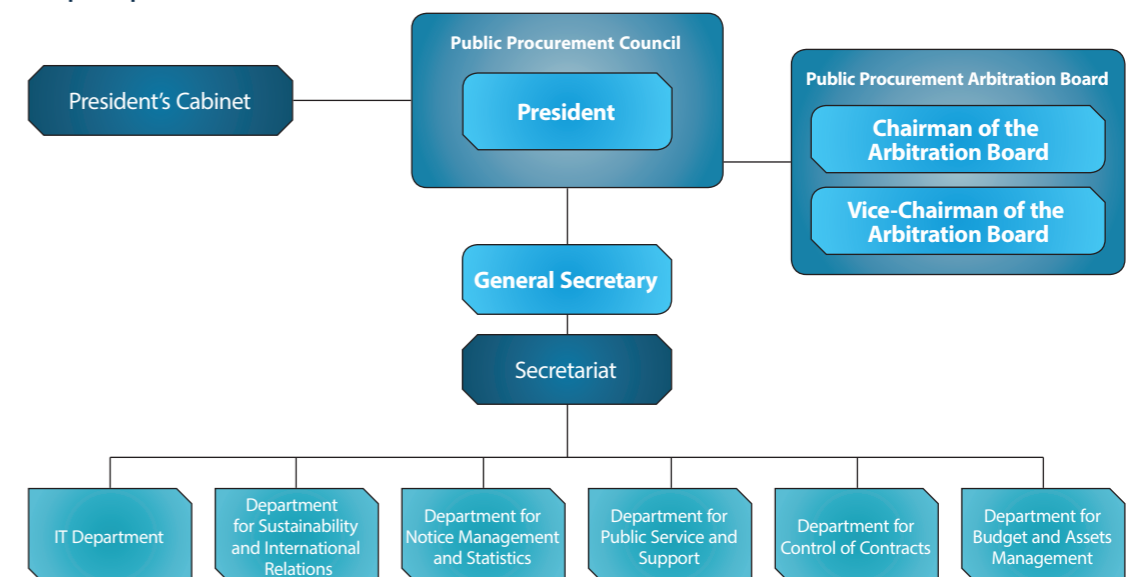
In addition to the above developments, the introduction of the e-Procurement system is going to have the largest impact on the public procurement sector. The Prime Minister's Office is responsible for the coordination of this project that has an impact on the Authority's IT system because of the integration obligation. The preparation for the integration is part of the strategy that, at the same time, also serves as a basis for the Authority's current IT developments in. In this process, the Authority provides IT support in the transfer of the current system's work processes and data provision opportunities.

With the aim of achieving a more efficient IT support for the Authority, the IT department launched several internal consolidation projects in 2016. In order to reduce administrative burden, a new self-developed procurement support system was introduced that is able to support the entire public procurement procedure from budget planning through procurement support to invoice handling.

In 2017, the IT consolidation projects will continue, in the framework of which both internal and external systems will be further developed. Linked to the development of the e-Procurement system, the necessary interfaces will be developed in order to support the Prime Minister's Office's objective to reduce data provision and administrative burdens of public procurement actors and to provide a one-stop shop public administration.

Human resources

The Authority's objective is to establish an efficient, service-oriented organisation as well as to renew the already existing structure; to this end, the Authority aims to recruit the best possible experts for open positions.





One of the most important goal of **restructuring was to reflect the tasks resulted from the changed legal environment, but also, to increase the Authority's efficiency.** An efficient and unified organisation can only be established if people with suitable skills and motivation are employed in positions that are ideal for them.

Handling of legal cases and law suits

General legal tasks

The traditional organisational tasks in connection with the Authority's functioning were performed by the Authority's senior legal advisor.

- Internal regulation
Due to the new PPA, new organisational and operational regulations were elaborated. Furthermore, to comply with the changing legal environment, the senior legal advisor reviewed and issued the rules on internal organisation that is in conformity with the effective regulations.
- Contractual relationships
In order to execute the contracts necessary for the functioning of the Authority and for the implementation of IT development projects, the legal compliance of the relevant public procurement procedures and the subsequent procurement contracts were checked and prepared in line with the law.
- Legal disputes, formulating opinions on regulations, liabilities
The senior legal advisor participated in the settlement of legal disputes occurred in the course of performing the Authority's basic duties, in handling liabilities and in formulating opinions concerning draft laws that have an impact on the Authority.

Law suits with a view to declaring the contract modification invalid

According to the Article 187 (2) j) of PPA, the Authority monitors any amendments to the contract concluded pursuant to procurement procedures. If on the basis of the outcome of this official control the Public Procurement Authority establishes that the contents of the contract are likely to violate Article 142 (3) of the Public Procurement Act, it brings an action with a view to declaring the modification of the contract invalid and applying the legal consequences of invalidity. In 2016, as a result of the procedures, **the Authority initiated a civil court law case in 2 cases** that are still unclosed.

Budget

In 2016, the Authority, as a budget chapter and institution, **had 1,295.3 Million HUF own revenues, 140.6 Million HUF allocation from the national budget** and a **balance allocation of 1,774.3 Million HUF** remaining from the year 2015 that was approved in 2016.

The **own revenues** were generated from notice control and publication fees, as well as **public administration service fees** in connection with Arbitration Board procedures and fees paid for listing approved tenderers. This revenue was solely spent on financing the Authority's basic duties.

The ratio of state support compared to own revenues amounted to 10.9% in the reporting period.

Among the revenues, the public power revenues are of major importance; this amount showed a significant decline in 2016 compared to 2015, amounting to only 57%.

The new PPA effective since 1 November 2015 and the connected implementation decrees **significantly decreased the Public Procurement Authority's revenues** compared to the revenues generated in the previous legal framework; both the notice monitoring and the remedy requests generate less revenue now. According to the Authority's forecast, a decline of 900 Million HUF in revenues were expected, out of which the notice monitoring fees amount to 700 Million HUF which, unfortunately, was confirmed by the fact data in 2016.

The Authority's **annual budget** for 2016 was subject to internal reallocations as a result of the utilisation of the balance funds from previous years and the demands in connection with the implementation of the budget.

The budget allocations **are presented in the following table:**

Description	Expenditure	Revenue	Support	Staff expenditure	Approved head count (persons)
Appropriation according to the Act C on 2015	2 099,9	1 959,9	140,0	788,7	127
Modifications according to budget items *					
Balances subject to liability from 2015 Government Decision No. 1401/2016. (VII. 22.)	377,7	377,7		0,9	
Free balance from 2015	1 396,6	1 396,6			
Salary compensation based on Government Decisions No. 400/2015. (XII. 15.) and No. 1226/2016. (V. 2.)	0,6		0,6	0,5	
Decreases of the appropriation due to less revenues in the national budget Article 30 (3) of Act CXCV of 2011	-664,5	-664,5			
Modified appropriation of 2015	3 210,3	3 069,7	140,6	790,1	127



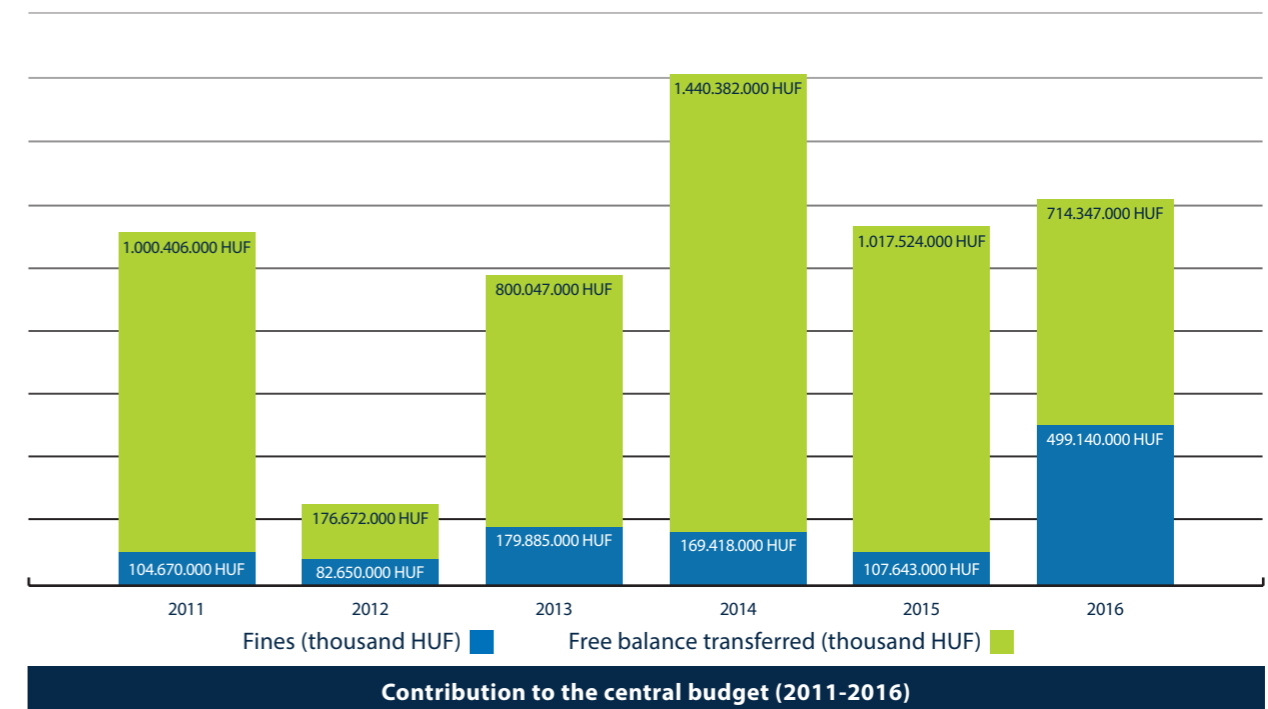
Description	Fact 2015	Original appropriation in 2016	Modified appropriation according to act in 2016	Modified appropriation in 2016	Fact 2106	5/1	5/4
	1.	2.	3.	4.	5.	6.	7.
	in Million forint, one decimal point					in percentage	
Expenditure	2 579,2	2 099,9	-	3 210,3	2 060,7	79,9	64,2
out of which staff expenditure	581,3	788,7	-	790,1	580,1	99,8	73,4
Revenue	2 512,3	1 959,9	-	1 295,3	1 295,3	51,6	100,0
Support	141,1	140,0	-	140,6	140,6	99,6	100,0
Allocation balance	1 774,3	0	-	1 774,3	1 149,6	64,8	64,8
Headcount (persons)	86	127	-	127	93	108,1	73,2

The original appropriation for the Authority's **headcount** for 2016 was 127, which remained unchanged during the year. The significant saving in the allocation to staff cost is due to the fact that the headcount was gradually increased during the year, in line with the number (and characteristics) and volume of the tasks to be performed.

The balance sheet total of the **assets and liabilities** declined by 26% compared to the previous year. The volume of funds decreased significantly. Based on the Government Decisions No. 1822/2016 (XII. 22.) and No. 1844/2016 (XII. 28.) on the reallocations of the appropriations a total of 620.7 Million HUF of balance appropriation not subject to debt were withdrawn from the Authority. As regards to liabilities, the value of own capital decreased with the amount of the negative balance sheet profit.

In 2016, the Authority generated 1,149.6 Million HUF **appropriation balance**, out of which 380.9 Million HUF is subject to liabilities, so, the free balance amounts to 768.7 Million HUF.

The **finer imposed** by the Arbitration Board, as discussed in Chapter "**Stricter decisions - contributions to the national budget**", is five times as much now as in previous years. 372.9 Million HUF has already been paid and **was transferred** by the Authority to the **central budget** by the end of the reporting period. The amount paid almost doubled in 2016 compared to 2015.



The Authority balanced off the significant drop in revenues resulted from the modification of the PPA by cost-cutting measures; the office rental costs were reduced by 20% from 1 June 2016, which can be considered as a significant saving on this market environment.

Furthermore, the balance not committed as set out Government Decisions No. 1049/2016 (II. 15.) and No. 1041/2016 (VII. 22.) in 2015, amounting to 784.2 Million HUF also covered some of the Authority's expenditures.

In line with Article 7 of Act XCII of 2013 on the modification of the Act CCIV of 2013 on the National Budget for 2013, a reserve for each chapter had to be created by 30 June 2013, which meant 8.2 Million HUF for the Authority.

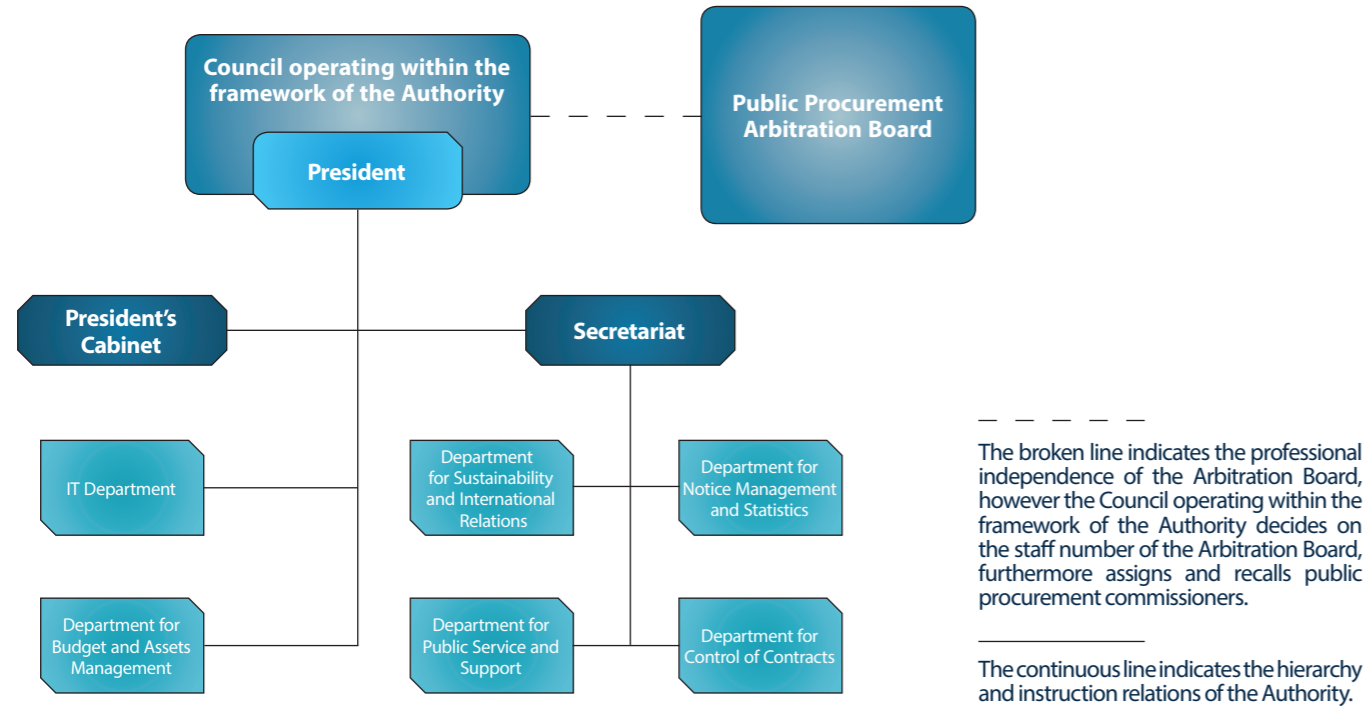
According to Act CCXXX of 2013 on the National Budget of Hungary for 2014, the reserve for the chapter remained 8.2 Million Forint.

The Hungarian National Assembly did not approve the utilisation of the chapter reserve in 2014 or in 2015; the total amount of the reserve was reported in both years as appropriation balance not committed.

In 2016, the amount of the not committed amount of the chapter reserve was withdrawn in line with Government Decision No. 1822/2016 (XII. 22.).

VII. Objectives for 2017

In order to achieve our goals in a more efficient way, the Public Procurement Authority has been functioning in the following structure since 1 January 2017.

**New development in the field of notice control activities**

In the case of some notice types, a **new form checking module will be developed and integrated** into the EHR system in 2017, which will facilitate the faultless technical completion of notices.

In order to create a more efficient data flow, the communication between the IT systems dealing with the data collection of existing statistics and handling of notices **will be made more automatic**, which will reduce the administrative burden of contracting authorities.

Enhancing the control of public procurement contracts – establishing capacity monitoring

In public procurement procedures, contracting authorities define financial, economic, technical and other **suitability criteria** in order to ensure that only tenderers participate who are able to meet the minimum criteria either based



on their own capacities or based on the capacities of an other economic operator.

Problems can arise if the capacities of an organisation are used by several organisations simultaneously, or the organisation commits itself in more public procurement procedures at the same time. This can later endanger the performance and the execution of the contract in an appropriate quality and within the deadline. Furthermore, in the case of EU financed projects, this situation can also cause problems with the financial settlement because of the advance payment. In order to reinforce the principle of responsible financial management of public funds, the Public Procurement Authority urges the modification of the regulatory framework that would provide tools for the Authority to be able to monitor the existence of the indicated capacity and the proper involvement of these capacities during the performance of the procurement contract.

In the course of the capacity control the following aspects are planned to be evaluated

- whether the economic operator, who based on its declaration fulfils the suitability criteria indicated in the given public procurement procedure, can actually possess the sufficient capacities;
- whether the economic operator, who based on its declaration fulfils the suitability criteria indicated in several public procurement procedures or in several parts of the same public procurement procedure in case of the division of the contract into lots, can actual possess the sufficient capacities;
- whether the economic operator proving the fulfilment of the suitability criteria that is involved in the performance of a contract pursuant to a public procurement procedure has the sufficient capacities, in particular in the case of procurement contracts that have timely overlapping;
- whether that economic operator is involved in the procurement contract which certified the fulfilment of the suitability criteria;
- whether during the evaluation of the tenders and the monitoring of the fulfilment of the contracts the contracting authority applied due diligence in assessing legal compliance.

In order to perform the above-mentioned control activity, the Authority has set the objective to establish a Capacity Control Department.

One of the objectives set for 2017, is to **organise internal trainings for the entire Authority** as well as holding meetings for the various departments to exchange experiences and to promote the professional development of the Authority's employees.



An important aim of the Authority is to carry out on-the-spot checks during the control of contract procedures in as many cases as possible or to involve a forensic expert.

According to experience, more serious infringements can be detected if not only in principle document-based checks take place.

Facilitating the lawful implementation of negotiated procedures without prior publication

One of the future objectives of the Authority is to change the current practice of sending a short request for the supply of missing documents in the course of the legality check of negotiated procedures without prior publications; instead, the Authority is planning to provide **some sort of a legal interpretation and guidance for the initiator of the procedure to facilitate the proper application of the law.**

The **publication of the decisions** on the procedures in connection with negotiated procedures without prior publications and the provision of detailed justification will serve the purpose of transparency and publicity as well as an improvement of the legal practice.

Restructuring the review procedure

In 2017, an important objective of the Arbitration Board is to **strengthen standardised application of law**; in order to achieve this goal, general council **meetings** will be held whenever necessary, but at least four times a year with the participation of the commissioners of the Arbitration Board, EUTAF, as well as the Deputy Secretariat Responsible for the Public Procurement Supervision within the Prime Minister's Office.

In addition to standardisation, the **simplification of the decisions of the Public Procurement Arbitration Board** is a planned for 2017, for which the first step is the elaboration of a so-called **style book**. The style book has the objective to make decisions more understandable and to promote standardised, usable and better structured decisions.

The **IT system development projects** aim at the **reduction of red tape and administrative burden** of clients and of the Arbitration Board.

In 2017, we need to prepare for the daily usage of the following acts entering into effect on 1 of January 2018: the act on general public administration procedures, act on public administration civil procedures and the new code of civil procedure.

The expansion of the Public Procurement Academy

In light of the great success of the Public Procurement Academy, the Authority will continue to organise monthly free-of-charge conferences together with the Prime Minister's Office in

2017. Considering the comprehensive modification of the Public Procurement Act entering into force on 1 of January 2017, at the beginning of the year we organise several events **not only in Budapest but also outside Budapest** on the request of the **chambers and government offices in the countryside** in order to provide information on the legal changes.

The Authority also plans to organise an international conference in autumn 2017.

V4+ Strategy and the improvement of international relationship

In 2017, we are planning to improve our international relationships with EU organisations, international organisations as well as bilateral relationships always representing Hungary's interest.



In 2017, the Authority set the objective to establish bilateral relationships with the public procurement organisations of the Visegrád countries.



VII. OBJECTIVES FOR 2017

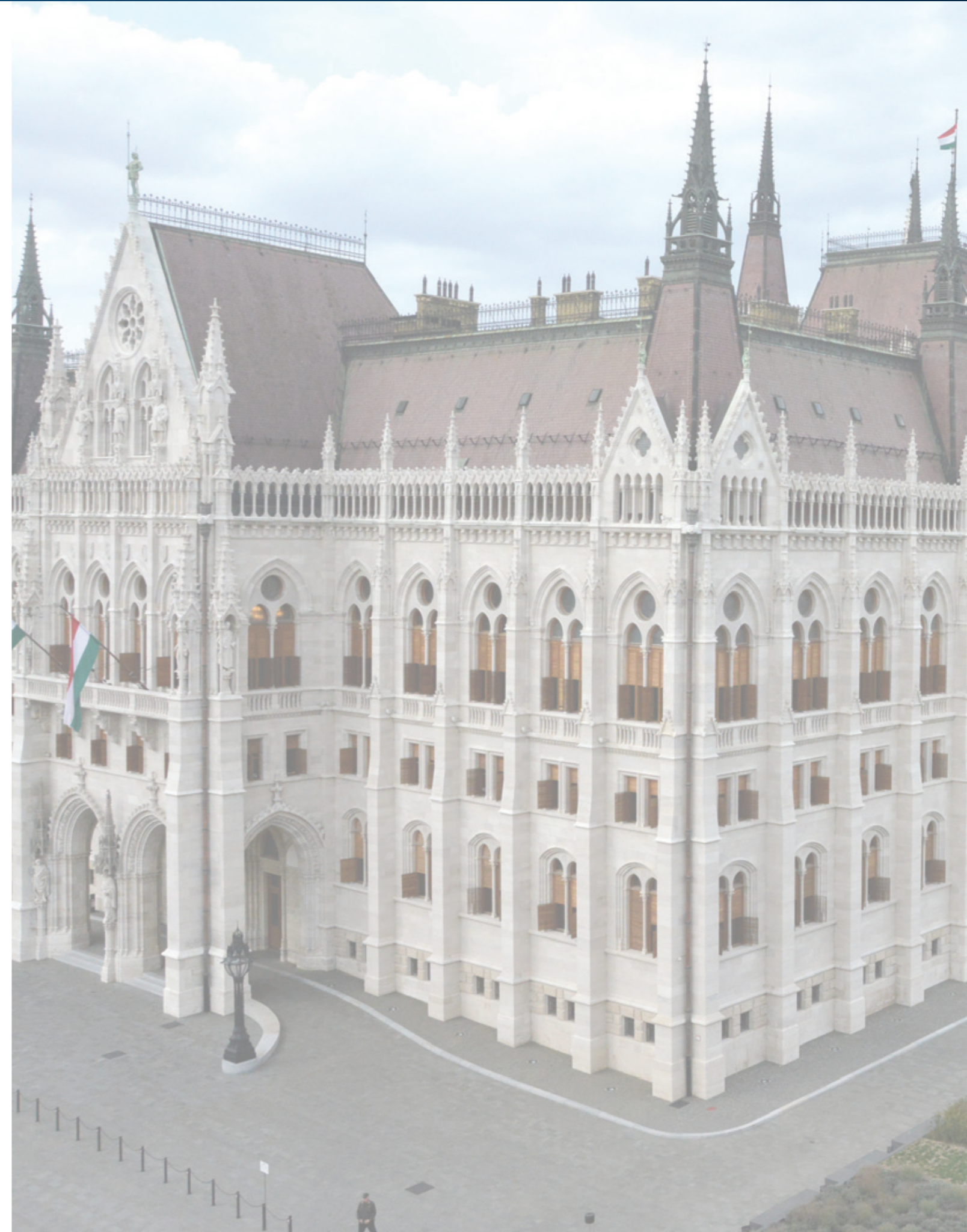
We think that cooperation with the Visegrad countries would improve Hungary's competitiveness on the public procurement market and would create export opportunities for Hungarian SMEs.

The V4 for public procurement cooperation initiated in 2017 by the Public Procurement Authority has the following objectives:

- strengthening and further deepening international relationships and cooperation in the field of public procurement;
- the exchange of experience of public procurement experts of the Visegrád countries, dissemination of best practices;
- discussing the current public procurement challenges impacting the V4 member states, in particular with regard to the public procurement directives and the shift towards e-procurement.

In the framework of the cooperation, during the Hungarian V4 Presidency, the Authority is planning to coordinate meetings with the President of the respective public procurement authorities and to organise an international conference.

In 2017, the Authority is planning to continue to participate in the working groups and expert groups of the European Commission and to actively cooperate with international organisations. Furthermore, the Authority will aim to further deepen the relationship with organisations and authorities performing similar duties in other Member States. In 2017, we are planning to participate at international conferences and meetings in order to be able to keep up with the most recent results and trends. An important task is to channel in **sustainable public procurement practice** and it is considered to be very important to share this knowledge in as many forums as possible.

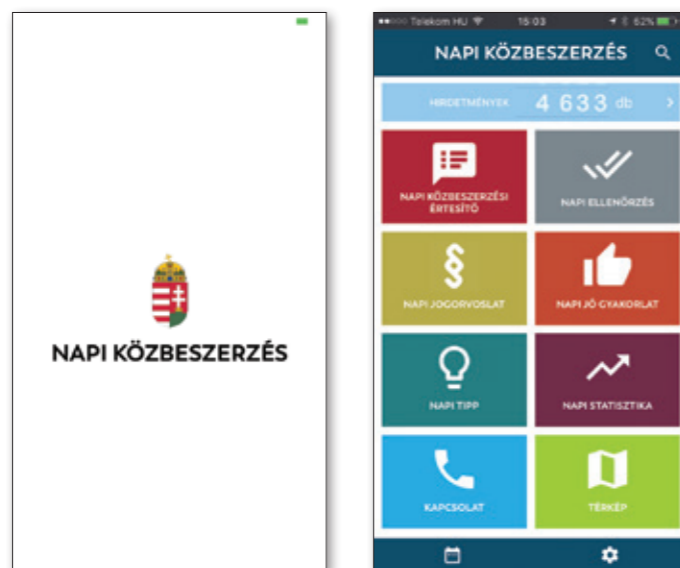


VIII. Imprint

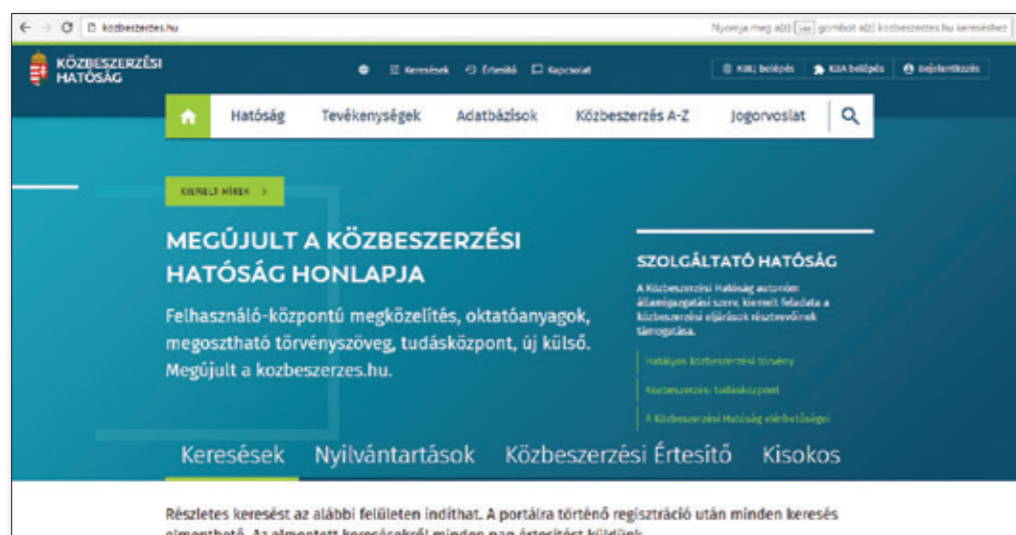
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