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CREATING A GOOD LOCAL ECONOMY THROUGH PROCUREMENT

Case Study 1 - Hungary prepared by

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Presented to

Procure network partners and URBACT



1 CASE STUDY 1 – RESPONDING TO EUROPEAN AND NATIONAL LEVEL LAW: THE EXAMPLE OF HUNGARY

1.1 Introduction

The first transnational meeting of the Procure network took place in [Lublin, Poland](#)¹ on Tuesday 28th and Wednesday 29th June 2016. The focus was upon European and National level law around public procurement and generally what cities can do around innovative procurement in both process and practice terms. The meeting looked to address six key questions (these have been previously identified by the partners during the baseline stage):

- ❑ What is the content of the new EU Procurement Directives?
- ❑ What are the expectations of national procurement law in each city?
- ❑ How can EU, national, and local level requirements be balanced?
- ❑ How can corruption be recognised and limited?
- ❑ What are the regulations around engaging SMEs?
- ❑ What scope is there for innovation in procurement?

The findings of this have been written up into a post meeting briefing note. To supplement the briefing note, this case study looks specifically at the example of Hungary and particularly how the European Procurement Directives have been transposed into National level law, and subsequently the consequences for the City of Nagykálló (one of our Procure network partners).

1.2 A reminder about the European Procurement Directives

[The EC Treaty of 1957](#)² (also known as the Treaty of Rome) first introduced the principle of a 'single market' and a unified Europe when it came to the movement of goods, services, workforces and finance. The Treaty effectively sought to ensure a Europe wide commitment to enabling the movement of such commodities freely between countries and a commitment to supporting the economic development of all member countries through trade between countries. Under this principle of a 'single market', the EC Treaty effectively outlawed anti-competitiveness in the process of procurement that favoured national or local suppliers.

This emphasis upon a single market is also reflected in the latest iteration of the [EU Procurement Directives](#) (Directive 2014/24/EU which repealed Directive 2004/18/EC), which is focused upon the procurement of public services. The new Directives, however, do allow for some flexibility when it comes to wider benefits being achieved through procurement. There are three new Directives for public procurement around public contracts, utilities, and concessions with the Directives framed by five objectives and trade-offs:

- ❑ **Simplification and flexibility** which focuses upon making the process of procurement simpler and enabling more negotiations;
- ❑ **E-procurement** which is seen as a 'game-changer' and is linked to wider EU policy agendas around digitalisation;
- ❑ **Better access** to opportunities which focuses upon Small to Medium Sized Enterprises (SMEs) and cross border procurements;

¹ <http://lublin.eu/en/lublin/news/>

² http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf

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- ❑ **Strategic Procurement** which includes the development of the European Single Procurement Document (ESPD) which places greater emphasis in the procurement process upon innovation and addressing social and environmental issues;
 - ❑ **Governance** which focuses on the professionalisation of the process of procurement and adopting sound procedures.

The Directives are intrinsically linked to the [Europe 2020 Strategy](#)³ and the emphasis upon balancing the achievement of smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. Within the EU, procurement policy and strategy, largely sits within [DG Growth](#)⁴ (Internal Market, Entrepreneurship and SMEs) with [four respective areas of responsibility](#)⁵: G1 – Public Procurement Strategy; G2 – Access to Procurement Markets; G3 – Procurement Legislation and Enforcement; and G4 – Innovation and E-Procurement.

1.3 Transposition to Hungarian Law

The European Procurement Directives were transposed into Hungarian law in 2015 in Act CVLIII on Public Procurement. The 2015 Act directly replaced the previous Acts of 1995, 2003, and 2011. The reasons for developing the new Act were down to both the need to transpose the European Procurement Directives; and as a result of national judicial practice. The Act was accompanied by a number of special decrees including (for example):

- ❑ Government Decree 321/2015 (X.30.) on public works, as well as detailed rules relating to public works in construction design and engineering services for public procurement;
- ❑ Government Decree 308/215 (X.27.) on the control of the Public Procurement Authority on the amendment and performance of contracts entered into as a result of the procurement process;
- ❑ MVM Decree 44/2015 (XI.2) on procurement and design contest tender notices dispatched, checked and publication of rules and notices of patterns and individual content items, and the annual statistical summary.

The Public Procurement Act is based around six key goals. First, it is framed by ensuring that all procurement activities are undertaken in a **transparent manner**. This includes considerations around: new grounds for exclusion including around undue influence attempts and attempts to obtain confidential information; and more responsibility for fulfilling the contracts including around contract amendments and performance.

Second, it details a goal around achieving **more results** through the process of procurement. This includes considerations around: ensuring procedures lead to more thorough preparation including preliminary market consultation; and that new procedure types are utilised including cross-border procurement and electronic catalogue usage. Third, it is framed by **simplification**. This includes considerations around: acceleration of procurements through the reduction of bidding deadlines; more flexible eligibility criteria; and simplifying evaluation.

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>

⁴ <http://ec.europa.eu/growth/>

⁵ <http://ec.europa.eu/growth/>

Fourth, and linked specifically to the European Procurement Directives, it seeks to **position SMEs** for engagement in public procurement. This includes considerations around: simplification of procedures and reduction of administrative burdens and relieving eligibility requirements. Fifth, it seeks to **strengthen strategic considerations** including around environmental protection and social aspects. This includes the inclusion of life cycle cost evaluation criteria; and integration with bids reserved for disadvantaged people. And sixth, it seeks to enable **innovation** through new procedure types and innovative partnerships.

The thresholds for the Public Procurement Act are determined by the European Commission on a two yearly basis and are detailed in the Hungarian Central Budget. They apply to the following subject matters:

- ❑ Public supply (goods);
- ❑ Public works (constructions);
- ❑ Public works concessions;
- ❑ Public services;
- ❑ Service concessions.

The Public Procurement Act also presents a number of procedures and methods for public procurers to undertake purchasing in alternative ways. These include around (for example): innovation partnerships; dynamic purchasing systems; electronic auctions; and competitive dialogue.

Historically, public procurement in Hungary has been undertaken on a lowest price basis. However, the 2015 Public Procurement Act changes this and states that lowest price as the sole evaluation criteria can only be utilised when:

- ❑ Specific quality requirements are defined with the relevant goods or services;
- ❑ The selection of the economically most advantageous offer is not influenced by quality characteristics;
- ❑ Low price does not apply to: design, engineering and construction services and public works.

In addition to lowest price, the Act encourages two other means of evaluation. First, that of **lowest cost** (such as life cycle cost), which is calculated by applying a cost-benefit methodology specified by the contracting authority. Second, **best price-quality**, whereby factors such as the following are also considered alongside price or cost: quality, technical merit, social and environmental factors, and qualifications and experience of staff.

1.4 Applying EU and National Level Law in Nagykálló

The City of Nagykálló obviously needs to respond to the requirements of EU and National Level Law around public procurement. Procurement in Nagykálló is the responsibility of the Department of Economy. The City of Nagykálló has a relatively small procurement budget at around Euro 8 million. The City of Nagykálló does however have a procurement strategy of its own and also publishes a plan of upcoming opportunities on an annual basis for above threshold opportunities.

As part of its strategy it seeks to engage local and small businesses, particularly in below threshold tender opportunities. For tenders below the threshold of Euro 26k for services and Euro 48k for construction, three quotes are required from prospective tenderers to deem the process competitive. The City of

Nagykálló have been doing and are undertaking a range of further activities relating to the principles of the Directives and Hungarian Level Law. In particular they have:

- ❑ Strengthened strategic considerations in procurement through linking the process to the wider corporate priorities of the City of Nagykálló;
- ❑ Enabled innovation in procurement through reflecting community need in the design of services;
- ❑ Simplified the process of procurement through streamlining requirements in documentation;
- ❑ Strengthened strategic considerations in procurement through utilising social and environmental criteria;
- ❑ Sought to position SMEs through undertaking engagement work with business networks in the development of procurements and as part of market testing.

They do however also face challenges relating to the principles of the Directives and Hungarian Level Law:

- ❑ A lack of practical experience in implementing principles around value for money and life cycle costing in evaluation criteria;
 - ❑ No experience of measuring procurement spend and where it goes in geographic terms and subsequent impact;
 - ❑ A lack of knowledge around SMEs in the locality and their capacity to bid for and deliver procurement opportunities;
 - ❑ No experience positioning local SMEs in the legal framework of public procurement rules.
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