

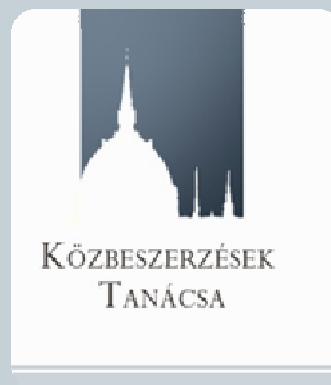
# The rules pertaining to public procurements using support



**Dr. Róbert HOMOLYA**

**Executive Vice-President, National Development  
Agency**

**Vice President of the Public Procurement Council**



# Monitoring of public procurements financed using EU support

## 1. The reasons for forming and reforming the system

1

### A) A considerable proportion of contract award procedures is realised using support from the funds of the European Union:

In 2009, approximately one-third of contract award procedures was connected to European funds,

- in numbers it means **2279** contract award procedures out of 6611,
- and by value it is **40.6%** of the overall value of public procurement.

In 2010, the upward tendency continued

- and **4600 contract award procedures** out of 10685 conducted procedures were connected to EU funds,
- which amounts to **52%** of the overall value of public procurement,
- HUF 778.5bn by value.

# Monitoring of public procurements financed using EU support

## 1. The reasons for forming and reforming the system

2

B) The use of EU funds is subject to **special community and national rules**, which impose extra obligations on the beneficiaries, the contracting authorities, and grant extra rights to the bodies supervising the use of the resources (the managing authorities of the National Development Agency, intermediate bodies, the Directorate General for Audit of European Funds (EUTAF)).

Article 2(7) of the Council Regulation (EC) No 1083/2006 of 11 July 2006 (laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999) creates the notion of irregularity, which is

any infringement of a provision of Community law resulting from an act or omission by an economic operator **which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.**

In the case of an irregularity, the managing authorities, the intermediate bodies are bound to apply the appropriate legal consequences.

# Monitoring of public procurements financed using EU support

## 1. The reasons for forming and reforming the system

3

**C) The legal consequences not provided for in the PPA:** financial correction = withdrawal of the resources

The guidelines of the European Commission for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement, COCOF 07/0037/02-FR

In case of infringement of the principles and rules of public procurement, the withdrawal of the total amount of the support (a correction of 100%) may as well be imposed.

**The prevention of the withdrawal of resources constitutes a primary national, national economic interest.**

# Monitoring of public procurements financed using EU support

## 1. The reasons for forming and reforming the system

4

D) The problems in the system in place before 08 December 2010:

- the monitoring **was not harmonized**, it was made by several different bodies, without clear determination of the responsibilities and uniform principles for monitoring
- The intermediate bodies attached to different operative programmes had different practices
- the monitoring was not integrated in a process, the subsequent controls interfered with the execution of the project and the payment

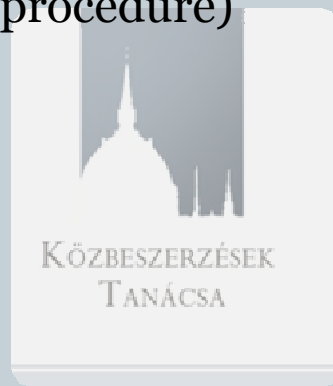


## Monitoring of public procurements financed using EU support

### 2. The direction and the objective of the revision of the system

5

- Direction: the introduction of the so called "one window" monitoring system
- Objective: the monitoring - integrated in a process - of the contract award procedures financed using support be made by **one body**,
  - which ensures an integrated and effective monitoring
  - increasing the transparency of the procedures
  - simplifying the execution of the projects which receive support (the time of the monitoring of the contract award procedure is not detached from the period of the conduct of the procedure)



# Monitoring of public procurements financed using EU support

## 2. The direction and the objective of the revision of the system

6

### ➤ further objectives:

- clear and **shorter deadlines**
- a clear separation of the tasks and the determination of responsibilities
- **a monitoring aligned with the public procurement thresholds** and procedures
- the opinion expressed by the body carrying out the examination be made obligatory for the beneficiaries
- the extension of the scope of the procedures subject to the monitoring process (in case of public works, the procedures reaching HUF 300 million are subject to the monitoring integrated in a process)

**The results:** Title 23 of the Gov. Decree N 4/2011

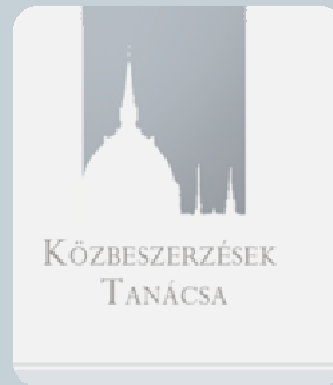
# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

7

### The steps of the monitoring of contract award procedures realised using support:

- quality control
- regulatory control
- assessment of amendments of contracts
- *ex-post* control





# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

8

### **A) monitoring of the contract award procedures below community thresholds, in the case of public works contracts the monitoring of the procedures below HUF 300 million**

- an *ex-post* control is carried out
- the examination is made by the intermediate body
- notification 5 days before the announcement of the results (dispatch of the summary)
- the dispatch of the documents to the intermediate body not later than 5 days after the announcement of the results
- the examination is carried out not later than 7 days after the receipt of the documents
- if the intermediate body establishes any irregularity in the course of the *ex post* control, it conducts an irregularity proceeding or initiates a review procedure
- the National Development Agency has the right to carry out the *ex post* control itself

# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

9

### monitoring of the contract award procedures equalling or exceeding community thresholds, in the case of public works contracts the monitoring of the procedures equalling or exceeding HUF 300 million

- a monitoring integrated in a process
- the carrying out of the monitoring falls within the exclusive competency of the Public Procurement Supervisory Department
- results in a more effective, swifter and clearer system, which, at the same time, creates unambiguous procedural deadlines and responsibilities



# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

10

### B.1) control carried out during the preparation of the procedures

- quality control - first round
  - Initiated by the beneficiary through sending the documents of the procedure to the Public Procurement Supervisory Department (PPSD), 20 days before the envisaged launching of the procedure
  - only the **technical-professional contents** shall be checked in advance with the intermediate body
  - the PPSD keeps contact with the beneficiary only
  - The PPSD issues a quality control report and it sends it to the beneficiary within 7 days (may be extended once by 7 days)

KÖZBESZERZÉSEK  
TANÁCSA

# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

11

- quality control - second round
  - the public procurement documentation is amended by the beneficiary on the basis of the report
  - if the beneficiary does not agree with the contents of the report, it shall draw up a detailed justification
  - the amended documents shall be sent back to the PPSD, within 5 days
  - the PPSD issues a CERTIFICATE not later than 5 days after the receipt of the observations, amendments
  - **the beneficiary is obliged to take into account the observations**
  - **the procedure may only be commenced if the PPSD has issued the CERTIFICATE on the examination of the documents**

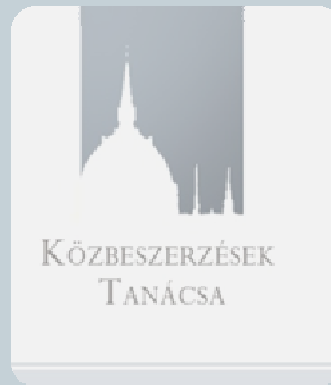


# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

12

- the beneficiary is obliged to send the final document launching the procedure to the PPSD
- the PPSD examines that document and, if it has an objection, it decides on **the conduct of an irregularity procedure or a review procedure**



# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

13

### **B.2) control carried out during the conduct of the procedure**

- ensuring compliance with the rules
  - the beneficiary notifies the PPSD of the date of the opening of tenders (at least 15 days before), also sends a notification of the subsequent procedural acts in due time and in writing and also sends the documents drawn up
  - The PPSD designates an observer in the procedure, who
    - participates in the meetings of the awarding committee or
    - examines the documents related to the contract award procedure in the course of the procedure
  - the observer only keeps contact with the beneficiary
  - Before the announcement of the results, the PPSD draws up a report on the compliance with the pertaining rules

# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

14

- the effects of the report on the compliance with the pertaining rules:
  - the decision-maker is obliged to take into account the contents of the report
  - the results of the procedure may only be announced if the procedure has been examined by the PPSD and a **CERTIFICATE** has been issued concerning the carrying out of the examination
  - at the time of the announcement of the results, the beneficiary sends the written summary of the procedure to the PPSD
  - if beneficiary does not agree with the contents of the report on the compliance with the pertaining rules, it draws up a detailed justification and sends it to the PPSD
  - **if the PPSD establishes, on the basis of the summary, that beneficiary did not act in compliance with the pertaining rules in the course of the announcement of the results, it decides on the conduct of an irregularity procedure or a review procedure**

## Monitoring of public procurements financed using EU support

### 3. The presentation in detail of the new monitoring system

15

#### **B.3) The examination of the amendment of public procurement contracts**

- It covers all the contracts concluded as a result of a contract award procedure equalling or exceeding community thresholds, in the case of public works contracts equalling or exceeding HUF 300 million
- beneficiary initiates the amendment (30 days before)
- the followings shall be attached:
  - the original contract
  - the draft-amendment
  - its justification and the documents supporting it
  - the document containing the *ex ante* legal opinion of the intermediate body
- the examination covers Article 125 (3)(a) and Article 303 of the PPA
- the examination is carried out by the PPSD (it sends its report within 15 days)
- the examination is carried out with respect to compliance with the public procurement law
- the beneficiary is obliged to take into account the opinion of the PPSD




# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

16

- **the consequences of the report concerning the amendment**
  - beneficiary sends back the documents amended on the basis of the report to the PPSD (within 7 days)
  - The PPSD informs the beneficiary on its further observations (7 days)
  - beneficiary sends the amended contract to the PPSD
  - **if the PPSD establishes that finally - and contrary to the contents of the report - beneficiary did not act in compliance with the pertaining rules in the course of the amendment of the contract, it decides on the conduct of an irregularity procedure or a review procedure**



KÖZBESZERZÉSEK  
TANÁCSA

## Monitoring of public procurements financed using EU support

### 3. The presentation in detail of the new monitoring system

17

#### **B.5) The countersigning of public procurement contracts by the intermediate body**

- It covers all the contracts concluded as a result of a contract award procedure equalling or exceeding community thresholds, in the case of public works contracts equalling or exceeding HUF 300 million
- the support may be provided only with respect to the costs to be incurred according to the contract countersigned by the intermediate body
- the condition for countersigning: the supporting certificate of the PPSD (no need to issue a new certificate)
- the intermediate body has the right to refuse countersigning:
  - if an objection occurs with respect to eligibility for support or it is not in compliance with the aim of the project set forth in the support contract
  - in such a case the intermediate body draws up a written justification and sends it to the PPSD

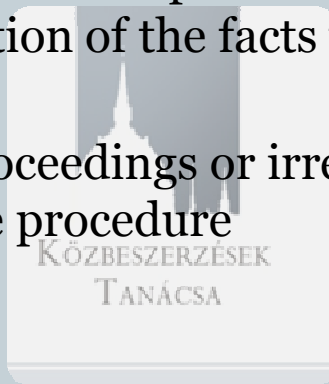
# Monitoring of public procurements financed using EU support

## 3. The presentation in detail of the new monitoring system

18

### **B.6) General rules**

- beneficiary sends all documents by electronic means to the PPSD
- if the PPSD fails to meet the deadlines the control shall be considered as **completed**
- the deadline does not include the followings:
  - the period of supplying missing information
  - the period from the request for provision of information on the data needed for the clarification of the facts to the provision of the requested information
  - in the case of review proceedings or irregularity proceedings, the period of the suspension of the procedure



**Thank you for your attention!**

