

Speech – opening of the conference “Public Procurement. An operational approach”

- Bucharest, March 20th, 2013 -

It is a great pleasure for me to welcome you to today's conference on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer foundation.

It is, obviously, a truism that there is a certain kind of relationship between corruption and public procurement, which needs to be countered.

The management of public procurement is a matter of primary importance for public policy - particularly in the context of fiscal consolidation and retrenchment in which most member states of the European Union must now manage public resources.

I have found different statistics but it seems that total public expenditure on goods, works, and services accounts for a large part of economic activity – amounting to about € 2 trillion annually, about 17 % of the gross domestic product in Europe. This money is spent by a very large and heterogeneous population of public authorities – over 250 000 contracting authorities in Europe managing procurement budgets of different sizes and possessing very different administrative capacities. The money is spent in a wide variety of ways and is disbursed via an enormous number of distinct procedures

In Germany public expenditure amounts to approximately € 380 billion annually, 17 % of our Gross Domestic Product. We have about 30,000 contracting agencies and 2.4 million public contracts annually. Only 1 % of those are published in the Official Journal (OJEU), in fact the public procurement market is rather national than European since over 98 % of contracts awarded according to EU rules are won by national bidders (approximately 96 % of total values).

Key objectives of public procurement legislation both at EU and at national level are:

-Regulate the conduct of the procurement procedure so as to give interested tenderers a fair chance.

-Ensure transparency both before and after award procedures, apply pre-announced criteria (in particular concerning the requirements to be met in order to participate as well as the award criteria - in particular the requirements to be met in order to participate as well as the award criteria that will be used to designate the “winner”; the awarding of the contract on the basis of objective criteria).

-Define the subject-matter of the purchase through non-discriminatory technical specifications, thereby limiting foreclosure of markets by reference to proprietary or idiosyncratic specifications.

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We have EU directives and we have strict national procurement laws in Germany, the question is whether the law is properly applied. It is relatively difficult to estimate how often corruption plays a role in public procurement, since criminal statistics cannot reflect the reality.

However, according to statistics in 2011 we had the following cases:

Taking bribes (section 331 of the German criminal code) 331 cases

Taking bribes meant as an incentive to violating one's official duties (section 332) 206 cases

Giving bribes (section 333) 92 cases

Giving bribes as an incentive to the recipient's violating his official duties (section 334) 328 cases

Aggravated cases (section 335) 52

I would like to highlight the fact that prosecuting those who give bribes is also taken very seriously in Germany – not only the prosecution of those at the receiving end.

However, these are only the reported cases. But when we are talking about corruption we must have in mind that in these cases there are no victims - there are only perpetrators who don't have an interest in reporting the case to the police, don't forget that society as a whole is the victim but no person involved in the individual case. Nevertheless, in the Transparency International Corruption Perception Index Germany usually scores 79 to 80 out of 100 possibly points, that means rank 13 or 14 out of 176 assessed countries.

What are the areas of increased corruption risk in the public procurement sector?

-Direct non-compliance is rare because of institutional control

-Circumvention of the law by breaking the supply into smaller parts, which fall below the tendering thresholds stipulated by the law allowing the public authority to go for direct awarding that means award a pre-determined bidder.

-Abuses in the definition of the parameters and technical specifications of public procurement procedures. As it has become increasingly difficult to ignore or circumvent the tender procedures prescribed by law other tools are used. One trick is to put down such parameters and specifications of the procured product or service in the bidding requirements, while though not essential for the quality of the public good provided, rule out some bidders from the competition or directly predetermine the outcome. As far as I know, such tricks have been used in Romania as well.

-Abuses in the definition of the selection criteria. That means selecting criteria that leave sufficient room for discretion and manipulation of results by enhancing the qualitative criteria at the expense of the quantitative ones, such as the price or other measurable technical parameters.

-Manipulation of the assessment and ranking. That means the desired final ranking is reached by adjusting or manipulating the scores of the individual criteria.

-Implementation of the contract. It happens that qualitative parameters of the contract or their outright neglect or even the price terms are renegotiated. Thus, the contractor who has paid a bribe is able to offer a much higher quality at a lower price in the bid, knowing that the bidding parameters are intended to beat the competition

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and can be changed in the implementation phase.

In other countries we also observe:

-Lack of transparency in the announcement of the bids and the ranking

-Limitation of participation in public procurement by artificial inflation of the costs for participation in the tenders to discourage "accidental" players.

-Cancellation or discontinuation of tender procedures when the victory of the preferred supplier cannot be ensured

-Limited opportunities for appeal.

So what are the counter strategies that have been developed? These are

- Development of codes of conduct and training of employees. The codes should be generated by the employees themselves and undersigned by everybody. Employees must know which factors facilitate corruption, which indicators for corruption exist. Furthermore, a spirit of integrity must be promoted.

-Staff rotation. If employees remain in the same position for a long time they are more at risk to be corrupted

-Strict observance of the four eyes principle. No supervisory function must rest entirely with one person

-Clear regulations for sponsorship and the acceptance of gifts

-Central Procurement Agency which can be supervised more easily than many competent departments

-Clear terms of reference

-Mandatory observance of the principle of publicity at invitations for tenders

-Bidding lists must remain confidential and offer documents must be opened at the same time, their subsequent manipulation must be prevented

-The entire procurement process must be documented, especially the contract awarding must be carefully justified

-Corrupt companies must be put on a nationally valid black list and excluded from future public procurement

-Re-examination of award decisions by independent oversight bodies.

Law enforcement, however, must be guaranteed also by police and public prosecution. Highly specialized units have been formed in Germany both at Länder and at regional level so that the risk of getting caught has become higher. And social control is high in Germany envy being a very German attitude. So if a colleague drives a bigger car, has an expensive watch or makes luxury trips that exceed his or her income rumours will automatically spread which will come to the attention of the authorities. You may hate this attitude but it has some positive side effects.

I sincerely hope that the discussions and exchanges of views during this event will translate into more efficient strategies and mechanisms to ensure the prevention of corruption and fraud in the future. Therefore allow me to wish you all fruitful debates and the greatest possible success.

Thank you for your attention.