E-PROCUREMENT IN POLAND, BULGARIA AND ROMANIA AN ANALYSIS OF LEGAL ASPECTS

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Summary

Nowadays, the majority of companies use electronic procurement for B2B (business-to-business), B2C (business-to-consumer), B2G (business-to-government) purchase and the sale of supplies, work and services through the Internet, as well as other information and networking systems, such as EDI (electronic data interchange) and ERP (enterprise resource planning). The paper contains an analysis of legal aspects of the electronic procurement sphere, including a description of Poland, Bulgaria and Romania. The authors of this paper are citizens of these three countries. That is why these three countries are chosen. The authors of this paper have made content analysis on the basis of public available online resources in English and their native language. This approach allows them to have a deeper look on the available literature. Moreover, as we are in the midst of a reform regarding public procurement in the EU, the European context will be also discussed. The main research method is content analysis on the basis of online documents. As a result of the analysis this paper gives some guidelines concerning the creation of a European knowledge repository and improving the decision making process in e-procurement.

Keywords: e-procurement, public organizations, transparency, rights and reliability

Introduction

It is hard to imagine a world without economic rules and legal provisions to guide you to a suitable approach to social relations in a wide range of activities, to defend your rights and establish your obligations during social activities. This is why it is very important to know where to look for the legislation in the sphere and to be able to apply it in order to complete activities properly and to get the security feeling.

Doubtless, law is present in all areas, but the most frequent operation we all do almost daily is procuring, which also involves selling and these operations together mean commerce. As nowadays the majority of us use Internet and electronic alternatives, it is important to focus on electronic commerce when talking about human beings. When there is at least one company involved, especially government institutions or other public sector organizations, we refer to public procurement and electronic procurement.

Electronic procurement (or e-procurement) is a term used in many publications. According to Kabuchi [24] “Electronic procurement or e-procurement essentially means using some sort of digital, typically web-based platform to post tenders and receive bids”. Sitar [25] discusses different forms of e-procurement: e-sourcing, e-tendering, e-reverse auction, e-informing. According to Singh and Punia [26] the e-procurement system is mainly adapted in public sector. Some authors write about the “e-procurement system”. Other authors (Priya, et. al.) [27] focus on the “e-procurement process”. They highlight that the supplier selection process is part of the e-procurement process. They give a diagram of the e-procurement process.
Different aspects of e-procurement are discussed in literature so far. Legal aspects are not widely discussed. Most of the recent studies focus on e-procurement in the public sector of just one country. That is why the purpose of this study is to describe some of the legal aspects of e-procurement in Poland, Romania and Bulgaria. These three countries are part of EU, but we do not plan to make comparisons between them, because they have their own legislation, history and culture. But being part of the EU, they have common legislative procedures that have to be adapted on a regional level.

Communication in supply chains means sending information between partners. Specific communication about sending invoices and payments has legal regulation about the form and the detailed information in electronic invoices. E-procurement means the electronic sending of offers, quotes, sample invoices, product specifications and inquiries. That is why e-procurement is concerned with complex business negotiations and document flow among partners.

According to the definition of e-procurement, “E-procurement refers to the use of electronic communications by public sector organizations when buying supplies and services or tendering public works [6], [31]. We think that the definition may be extended because e-procurement is used not only in the public, but also in the private sector.

The main idea behind making legislative changes concerning e-procurement is simplifying the process of procurement [36]. Apart from simplifying the process of procurement, e-procurement leads to inventory and contracts transparency and cost reduction by choosing the best offer. Greater competition among suppliers leads to lower prices for buyers. Authorities, who have adapted e-procurement, state that they have made savings of between 5% and 20% of their total costs. A lot of case studies for successful adoption of e-procurement in public sector are available (governments in Portugal, France, Netherlands and others).

Accordingly, a considerable issue in e-commerce, especially in the area of e-procurement is to have knowledge of legal aspects, because there are legal provisions in domain. So, a brief summarization of these aspects would be very useful.

In order to realize this summarization, Poland, Bulgaria and Romania have been taken as examples and a description of their legislature would be interesting, because all of them are quite new EU countries and they are developing and they must adapt, as all other European countries, to the considerable changes which will be implemented by the public procurement reform.

E-procurement and “public procurement” are different terms. They should not be used as interchangeable terms.

1. Literature review

In the current economic imbedded climate, public procurement is a key element to stimulate innovation and economic development and an important instrument for the maintenance of the Single Market, as outlined by the European Commission in the recent Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Region “towards a Single Market Act for a highly competitive social market economy” [22], [32]. Withal, the research in the domain reveals that internet based procurement systems help firms to improve their intra- and inter-organizational process integration capabilities which, in turn, create conditions for efficiency sustained gains in organizational performance [37].

E-Procurement has been a common theme of many organizations in order to promote transparency and good governance in procurement for many developed and developing nations. Some of the early adopters began to implement e-procurement or e-tendering systems almost 20
years ago, before the rise of Internet and Web services became a main medium for the exchange and dissemination of information [19]. It has been proven that e-procurement is one of the most effective and efficient tools to bring optimum governance to the procurement process in many member states. E-procurement initiatives have received considerable financial support from the community including the World Bank, the Asian Development Bank, the Inter-American Development Bank and the African Development Bank. Various initiatives have already taken place, to define the most effective practices and strategies for the implementation and development of e-procurement systems. Many countries have already introduced e-procurement into their business practices through various business models and approaches [19]. The adaption of e-procurement systems in practice needs not only financial support, but also methodological support on the application of IT in e-procurement.

Increasing electronic procurement usage is of strategic importance for achieving the smart and sustainable growth objective of the EU 2020 Strategy. Firstly, it can significantly simplify the way procurement is conducted, generate better procurement outcomes and save costs by improving the efficiency of public expenditures. Additionally, it is able to improve the transparency and accessibility of tender opportunities and thereby increase the participation of SMEs in public procurement procedures. Finally, it can contribute to greater competition across the Single Market and generate new sources of economic growth and jobs [4].

Free movement of goods through the member states is one of the main objectives of the EU. Inadequate procurement legislation at national level creates obstacles to international trade and a significant amount of this is linked to procurement. Disparities among and uncertainty about national legal regimes governing procurement may enforce a partial limitation on the extent to which governments could access the competitive price and quality benefits available through international procurement. At the same time, the ability and willingness of suppliers and contractors to sell to foreign governments is cumbered by the inadequate or divergent state of national procurement legislation in many countries [32]. Accordingly, UNCTRAL managed to realize a model law on public procurement, beside the European Commission directives.

The EU expects all European countries to make legal changes concerning e-procurement until 2016. These issues are discussed by some authors [28]. Interviews with managers in Portugal are carried out. These interviews try to find the barriers for adopting e-procurement in Portugal. According to a PhD student Shakya [29] the implementation of e-procurement system is an obligation of public authorities. The European Commission has a strict policy in e-procurement [30]. These authors state that technology solutions are developed. Now is the time to adapt the legal framework of the EC in each member state. That is why we need to describe EU legislation in e-procurement in several aspects: (1) as a whole for the EU and (2) studying each member state. Since EU27 contains many countries, we have narrowed our research focusing on Poland, Romania and Bulgaria.

2. The European Union’s legal provisions

As e-procurement refers to the use of electronic communications by public sector organizations when buying supplies and services or tendering public works, the European Commission believes that increasing the use of e-procurement in Europe can generate significant savings for European taxpayers [6]. These savings would maximize the efficiency of public spending in the actual context
of fiscal constraints. Moreover, e-procurement can provide a new important source of economic growth and jobs, including by facilitating access to public procurement contracts by SMEs.

Therefore, on April 2012 the European Commission adopted a communication setting out a strategy to make the use of electronic procurement the rule in the EU by mid-2016 [7].

Step by step, in January 2012 the European Commission formed an Expert Group on e-Tendering (e-TEG) to advice on how to fully benefit from the widespread use of information and communication technologies (ICT) in public procurement. The e-TEG met 8 times in 2012 and in February 2013 in order to issue the report (The e-Tendering Expert Group) [33]. The e-TEG report's starting point is the definition of an unimpeachable e-tendering operation, a "blueprint" to which e-procurement platform managers and service providers should take into consideration converging in the medium term so as to establish e-procurement procedures that are streamlined, user-friendly, interoperable, SME-inclusive and widely accessible across borders. The designed system would overcome the major limits to e-procurement take-up, i.e. on the one hand market fragmentation, and on the other, participants' reluctance to embrace e-procurement. e-TEG's advice targets all the e-procurement involved actors, including the policy makers at EU and national (and regional) level, when realizing strategic decisions affecting e-procurement rules, contracting authorities when deciding on a platform to use, economic operators when using platforms to submit tender responses, service providers when outlining their operations, software makers when designing their applications, etc [33]. In particular, Part I of this report provides high level strategic advice, including:

• the need for e-Procurement governance. Member States (hereafter MS) should set up their own national strategies towards common EU goals. The Commission should offer a coordination framework, including a permanent virtual EU Forum, and keep providing resources for the creation of common EU assets and infrastructure;

• the need for all the procurement players to report to standards for interoperability, legal compliance, security, transparency and accessibility;

• support for the latest generation of e-Procurement platforms. e-Submission systems should increasingly lead tendering information as structured contents, to enable reusing information for both contracting authorities (CAs) and economic operators (EOs) and to help EOs to accomplish compliant responses. In parallel, a submission model should be pursued to enable EOs for preparing tender responses independently of the submission platform, so that EOs are free to use the tools of their own choice without it being necessary to learn how to use a multitude of platforms;

• the need for ample dissemination of information on procurement opportunities. Easy and free presentation should be granted to tendering specifications;

• the need to reduce the difficulty of EOs when accessing new platforms. Platforms should preserve user registration requirements to a minimum until an EO makes the decision to give a tender response and starts to send business information to the platform;

• support for an accessible qualification process based on a streamlined set of third party statements provided by e-CERTIS1. The process would necessitate submission of evidence at the final stage of evaluation and enable submission of e-materialized information;

1The information system that helps identify the different certificates and attestations frequently requested in procurement procedures.
the need for a platform to implement an adequate security policy that takes account of the high security requirements of certain process stages but without introducing unnecessary burdens or blocking factors;

- freedom for CAs, within the limits of their national rules, to set up their own digital signature policies, provided that no access barriers are raised for foreign tenders. An interoperable framework which is based on the trusted list maintained by the Commission is suggested for a qualified digital signature for those CAs that need/opt to use to any type of advanced digital signature.

Part II offers operational and technical advice on how to design, choose, operate and use electronic procurement systems. It is logically structured as per the steps of the e-Procurement process [7].

The objective of implementing a Digital Single Market in the European Union represents a major priority for the European Commission [15]. Accordingly, the European Commission launched in May 2015 an EU strategy on the Digital Single Market, focused on six major objectives, starting from the key issues the Union is facing in this sector [2]:

- personal privacy
- reform of the regulatory framework for electronic communications
- changing of copyright legislation in order to reflect new technological trends
- simplifying the legislation regarding e-commerce
- supporting innovators in starting their own businesses
- development of digital skills.

Until the legal framework regarding e-procurement is completed and about to be applied, there are common rules concerning procurement, especially public procurement and e-commerce. So, by Directive 2014/24/EU [38] regarding public procurement, the European Parliament held that the award of public procurement contracts by or for the authorities of the member states should respect the principles of the Treaty on the Functioning of the European Union (TFEU), in particular the free movement of goods, freedom of establishment and freedom to provide services and the principles deriving from them, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency [34]. Moreover, for the public procurement contracts, provisions should be developed for coordinating national procurement procedures, in order for those principles to be transposed into practice and public procurement to be opened up to competition [9].

For a better perception of the meaning of public procurement, the directive includes an explanation of the concept, such as how it should be interpreted broadly, as obtaining benefits from the work, goods or services in question, without involving a necessary transfer of ownership to the contracting authorities. Furthermore, the simple funding of an activity (especially through grants) usually corresponds with the obligation to repay the amounts received when they are not used for their intended purposes and is not usually regulated by public procurement rules. In the same way, the situations when all operators (who meet certain conditions authorized to perform a certain task, without any selectivity, as in the case of the systems which give consumers the possibility to choose or services systems based on vouchers) should not be understood as public procurement services, but as simple licensing systems [9].
In order to achieve an eligible e-procurement process, the provisions for public procurement should be associated with the rules regarded to e-commerce. Any retailer that operates an e-Commerce store and sells goods and/or services to consumers in the European Union must be within the legal limits on distance selling, including online sales. Recently, laws on consumer rights have become more detailed and prescriptive. Under the new regulation, some information concerning the supplier has to be available for the consumer before the acquisition is completed, including the information that the consumer has the right to cancel the order within 14 days [14]. Moreover, the information is required to be submitted to the consumer also after the transaction is contracted by e-mail or in person. Also, the retailer has to expound a list showing the consumer once again the description of the goods, the seller's identity and the total price, including transport [12].

Online shops need to include the following information on their web site. An online transaction leads to the obligation of paying for the ordered goods or services. If the online shops do not include this information, they can be brought to trial.

Regarding the protection of a credit card’s data, any data collected by an online retailer will be subject to laws under the Data Protection Act and similar legislation in other EU countries. Retailers must be sure that the data protection policy is clearly written on the site. In order to disclose the consumer’s personal data to a third entity, the online retailer must have the consumer’s written consent. If a retailer directly collects and processes card payments, he must comply with the standards set by the Payment Card Industry Data Security, which includes, among others, obligations regarding security and encryption [39].

Other obligations of online retailers refer to:
- The trader must clearly specify who will cover the transport costs in the case of returning;
- Specify the company's registered address and available phone number;
- The trader is obliged, in the case of software or hardware products, to specify their compatibility with the systems in the market;
- The right to cancel a purchase is not available in some cases, such as CDs, DVDs, Blue-Rays with software which was unsealed and used, perishable consumption goods, customized or made to order products, underwear or earrings;
- The calls to the online shops should not exceed normal tariffs;
- Regarding distance selling over EU, the products should reach the consumer within 30 days from when the order was made, if there is no other specification [8].

3. An analysis of selected aspects of e-procurement in Poland, Bulgaria and Romania

Section 4 of this paper reveals the result of a content analysis of legal aspects of e-procurement. As we stated before, e-procurement has many aspects. One of them is the legal one.

Analysing the legal aspects, new directions have been found. Legal aspects are very specific and tools cannot be used to make ontologies. That is why summarizing some of the directions of legal aspects in the following table is relevant. The table shows the directions of legal aspects of e-procurement in the member countries in question. Making a comparison between these three countries would be worthless considering the fact that they all follow the European regulations applied according to their needs. The analysis of selected aspects of e-Procurement in Poland, Bulgaria and Romania is shown in the table 1 below:
### Table 1. The directions of legal aspects of e-Procurement in Poland, Bulgaria and Romania

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<th>Poland</th>
<th>Romania</th>
<th>Bulgaria</th>
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<tr>
<td>National Plans for e-Procurement</td>
<td>There is not a plan for e-Procurement. Currently, the new proposal for e-procurement strategy is under the evaluation of the Committee of Digitalisation. It is assumed that all public procurement procedures will be carried out electronically by 2016.</td>
<td>There is no active plan, but there is Public Procurement Reform Strategy approved by the Government’s Decision in 2005. Currently, the applicable law is the Government Emergency Ordinance no. 34 of 2006, which was updated several years ago.</td>
<td>Further steps in e-procurement are included in the national programme “Digital Bulgaria 2015”. A national strategy will be elaborated. Electronic procurement (at least to the e-submission phase) will be operational by 2016.</td>
</tr>
<tr>
<td>Incentives/facilitations for contracting authorities to use e-procurement</td>
<td>The Public Procurement Office made available to awarding entities a free-of-charge IT system used to conduct electronic auctions and electronic bidding.</td>
<td>Nothing specific.</td>
<td>Contracting authorities send their notices for publication on the PP Register through electronic means and or provide full access via electronic means to the documentation for participation in the procedure. All the functionalities described above are provided by the PPA free of charge.</td>
</tr>
</tbody>
</table>
| e-Notification Under the EU Threshold | It is mandatory to use the one-stop information portal of the Public Procurement Office:  
  - For all contracting authorities  
  - For all goods, services and works  
  - For open procedure, restricted procedure, negotiations without announcement, competitive dialogue, electronic auctions, framework agreements, DPS  
  - For purchases above €14,000. | It is mandatory on the national platform e-licitatie.ro:  
  - For all contracting authorities  
  - For all types of goods, services and public works  
  - Open, restricted, e-auction, negotiated and request for quotation: over €29,000 for supply and services and over €193,000 for public works. | It is mandatory to use the National Public Procurement Register:  
  - For all contracting authorities/entities  
  - Goods, services and public works, all types  
  - All procedures  
  - Goods and services over €10,000 and public works over €30,000. In these cases, only public invitation is published and a simplified procedure is conducted. |
<p>| e-Submission | It is voluntary. | Contracting authorities must use electronic | In Bulgaria there is no public platform offering e-submission. |</p>
<table>
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<tr>
<th>Monitoring of e-Procurement</th>
<th>Poland</th>
<th>Romania</th>
<th>Bulgaria</th>
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<tr>
<td>The Public Procurement Office is obliged to report monitoring data collected about e-procurement. The policy maker does not declare any information gap because it collects all the data.</td>
<td>All contracting authorities are obliged to report their e-procurement activities to the national government. The policy maker does not highlight any information gap, since relevant data is already collected.</td>
<td>The national government does not monitor the use of e-procurement by contracting authorities. The production of monthly reports is an internal procedure of the Public Procurement Agency, based on the usage of e-procurement.</td>
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Own elaboration based on ([3], [5], [10], [11], [13], [16], [17], [18],[20],[21], [23], [35]).

4. Discussion

The legal aspects of e-procurement may be studied in different directions. One of them is the national plans for e-procurement. Since there is no strict regulation on national plans for e-procurement, each country through its Government has the possibility to organize the public e-procurement according to their social needs. After organizing it and several years of real working of the e-procurement system, case studies and good e-procurement practices may be published. The legal freedom gives a free market niche for software companies to create their web-based systems.

Public procurement offices in each country may extend the legal aspects of e-procurement by defining reasonable changes in laws. These agencies may create a common software system for e-procurement using the financing of Horizon 2020. E-procurement systems may be created as part of Government-to-business applications. The decision making process in public organizations concerning e-procurement may be improved. A European knowledge repository may be created. But its structure and functionality may be discussed in future publications.

After the adaption of a working e-procurement system, public procurement offices may think about metrics and key performance indicators (KPIs) to monitor the e-procurement system performance. After creating the European knowledge repository it will be easy to create KPIs for monitoring legal aspects of e-procurement. Some articles in the legislation acts may be unclear, other – ambiguous, other – contradictory. Using a system with KPIs will help solving legal problems of misinterpretation of legal acts.

Since this research is focused on three countries, future research may focus on other countries or even on software aspects of e-procurement or other legal aspects of e-procurement.

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2 It is an interesting way of forcing partners to use e-Submission. It resembles a similar strategy used in Singapore about twenty years ago. Results were spectacular. Singapore has become a global leader in Electronic Data Interchange and Electronic Commerce.
5. Conclusions

A review of the literature on e-procurement shows that the functioning regulations in Poland, Romania and Bulgaria are similar. Moreover, it is noted that there are similarities concerning e-procurement in these countries, which shows how these three young EU members are developing.

In the context of implementing e-procurement as a rule in the EU, the mentioned Member States have started internal processes for identifying their national priorities and circulated their own contributions to be taken into consideration in future European Commission documents. The main circumstances to be taken into consideration while making an electronic purchase enforced by European and national legislations have been highlighted.

Despite the improvements that e-procurement has undergone, there are still many other levels that need development and will be improved, due to the demand of stakeholders. The most important points that are predicted to be of interest are a better use of data, wider financial analyses, diversity, dynamism, complexity and speed. All these matters considered we, the clients, will be provided with better services [40].

The decision making process in public organizations concerning e-procurement may be improved. A European knowledge repository may be created. But its structure and functionality may be discussed in future publications. After creating the European knowledge repository it will be easy to create KPIs for monitoring legal aspects of e-procurement. Some articles in the legislation acts may be unclear, other – ambiguous, other – contradictory. Using a system with KPIs will help solving legal problems of misinterpretation of legal acts.

Bibliography


E-zamówienia w Polsce, Bułgarii i Rumunii
Analiza aspektów prawnych

Streszczenie

Słowa kluczowe: e-zamówienia; organizacje publiczne; transparentność; przeporczyłość; prawa i niezawodność

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