INTRODUCTION

Public procurement is among those spheres in the management of the public sector in Bulgaria which are characterized by the highest corruption risk. Generally speaking, the abuses in this sphere relate to the awarding of a public procurement contract to a pre-selected supplier **to the detriment of the public interest through violation of the principles of competition for the purpose of gaining personal benefit.**

Corruption in public procurement can hardly be put into the neat subdivisions of the conventional dichotomy of big and small corruption. The public sector purchases goods and services at all levels in various volumes and at different value of the supplies, starting from paper clips and other office materials to infrastructure projects. The favoritism with regard to a specific supplier, which is harmful to the public interest, can be observed anywhere from the smallest day-to-day supplies to the biggest tendering procedures directly supervised and controlled by senior government officials. The personal benefit can take the form of cash, power, jobs in the private or public sector, etc.

This study focuses on large-scale corruption in the public procurement field with the goal to fine-tune the policy tools used to minimize the level of corruption. This type of corruption covers all transactions and procedures which fall or should fall within the scope of the public procurement legislation. These are most of the supplies the price or qualitative parameters of which are subject to **negotiation** between the contracting authorities in the public sector and the suppliers from the private sector. Exceptions to this rule are the supplies of consumables, materials or services which are only occasional and cannot possibly be subject to budget planning in parameters that would make it possible to conclude framework agreements for larger volumes. Such consumption of goods and services in the public sector, which cannot be planned and aggregated for the purpose of economic benefit, should be rather limited. It is below the thresholds prescribed by the law for holding public procurement procedures. However, when this direct off-the-shelf consumption is to intentionally circumvent the legislation, even small-scale purchases (below the statutory thresholds which require transparent procedures) could provide personal benefit to the lower levels of the administration in this particular case.

Despite the existence of corruption risk at all levels of government, this paper is interested in the abuse in public procurement mainly as **the objective and tool of large-scale corruption**. Two aspects of the problem can be identified. The first is **the economic** one. It is related to the economic and fiscal cost of the abuse,

as well as to the respective institutional prerequisites and barriers in the system applied to the management of public spending. In this context, the emphasis is placed on the losses sustained by society from the negotiated supply of goods and services to the public sector under terms and conditions which are **worse than the market ones**, i.e. either at higher prices than the market levels or of inferior quality. This is a case of inefficient use of public funds, where decision-makers receive undue personal benefit. In brief, this is the most logical question that any taxpayer would ask him/herself in order to assess the actions of those who manage public resources. If they were buying the respective good or service for themselves, would they accept the same terms and conditions? This question synthesizes the logic of the **economic efficiency** criteria in public procurement. It comes down to the **principles of expediency** in the control and counteraction of corruption in this sphere.

The second aspect of the problem is a **legal** one. It is related to the issue of what regulatory barriers could stop such actions and make them illegal and to what extent they are applied effectively. The emphasis here is on the statutory checks and balances and the application of the **principles of legality.** However, one cannot always seek the administrative responsibility or penal liability of decision-makers for purchasing under unfavourable terms and conditions. In many cases they harm public interests without breaking the law. Such examples can be seen at all levels of contracting - from the purchase of office materials to the purchase of nuclear reactors. **This has recently become the reason for the emphasis to shift from the efforts aimed exclusively at improvement of the legal framework to control over the expediency of the actions of budget spending units.** The big challenge here is that legality is established in adversarial court proceedings according to clear-cut codified rules, while expediency is a more amorphous category with less clearly defined rules and therefore it is more exposed to the threat of administrative discretion.

This study is intended to build **a bridge between the economic and legal levers** to counteract corruption in public procurement. Regardless of whether there is a violation of the existing regulations, the contracting authority **has restricted competition in one way or another,** which has harmed the public interest in terms of the price and quality of the respective public services or goods. Precisely this opportunity for suppliers to compete in public procurement serves as the point of departure for the review of the legal framework in this sphere in Bulgaria. It is also the main criterion applied to the assessment of the corruption risk and the relevant anti-corruption measures.

In this context, the task to bring together the economic and legal tools in combating corruption in public procurement can be expressed as an answer to the following question: **if the objective is to ensure as much free and fair competition as possible in public procurement, what is the institutional and regulatory framework for its attainment, which is optimal from the economic perspective?**

The goal of the analysis is, first and foremost, to identify the normative and institutional prerequisites for the most common corrupt practices in public procurement and to suggest anti-corruption measures. Furthermore, it expands

the conventional approach in two aspects. First, it emphasizes the economic assessment of the effect of regulations and, second, it directs risk assessment and control to use objective expediency criteria. Chapter 1 outlines corruption in the public procurement as a main driving force and tool of political corruption. Chapter 2 presents the most common corrupt practices and abuses in Bulgaria and tries to give an approximate estimate of the magnitude of the phenomenon and the damage it causes. Chapter 3 focuses on the sectoral dimension of the problem based on the example of a sector with one of the highest corruption risks, i.e. energy. Chapter 4 connects the economic and legal aspects of the prevention of corruption and financial abuse in the public procurement sector. It contains a critical analysis of the way in which the anti-corruption policy and institutions have faced these challenges so far. The chapter traces out and reviews the structural reforms in the public procurement sphere in the light of the EU accession process, the changes in the Bulgarian legislation and administrative practices, as well as the control over the implementation of contracts. The conclusion summarizes the main findings and suggestions with regard to the anti-corruption policy.

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