EXPERIENCE OF PUBLIC PROCUREMENT UNDER COVID-19

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Abstract: 2020 has become a global societal challenge for the whole world. The global pandemic, caused by COVID-19, has become threatening to the well-being of society and its sustainable development in virtually all spheres of human activity. The sphere of public procurement is not an exception only in Ukraine, but also in European countries. The new conditions of social reality set such conditions for the implementation of public procurement, for which the world was not ready, but they required the necessary and urgent transformations. The article examines the experience of Ukraine and the European Union in the formation of public procurement and its operation under COVID-19 and strict quarantine restrictions. The Ukrainian economy was largely unprepared for the new social realities, but it was the sphere of public procurement, the development of which occurred in the last 5 years, that surprised with its functional and regulatory security. The author draws attention to the peculiarities of the implementation of the system of electronic public procurement, their gradual formation and transformation. The analysis and qualitative differences of the new system of public procurement, which allowed to ensure the necessary transparency and publicity of the state order in the medical sphere, are given. A comparison of the Ukrainian system of functioning of public procurement and European transformations in this sphere is given. Because the experience of European countries in the difficult transition phase of the society of the pandemic era is very important for the countries of the post-Soviet space, as the countries of the European Union are in many respects the example to follow for such countries. The author cites the key features of the transformation and improvement of the public procurement system in accordance with the critical conditions of society.

Keywords: public procurement, state order, COVID-19, quarantine restrictions, pandemic, Prozorro.

1. Introduction

The transformational tendencies of the society of the 21st century, especially exacerbated during the reign of the global pandemic, caused by COVID-19. Society is facing a real threat to its stable, sustainable and happy existence. The current situation required real quick and effective steps to prevent and counteract the onset of coronavirus disease. The medical industry has become particularly vulnerable, regardless of the level of development of any country. New algorithms of action were required by the medical industry, especially in terms of providing itself not only with human resources, but also with material and technical means. It is to these challenges that the countries of the European Union in general and Ukraine in particular had to respond with dignity. Therefore, the mechanism, algorithm of implementation, operation and adaptation of public procurement to the challenges of today has become a priority for solution, implementation and research. In our opinion, the study of steps that have helped to avoid social collapse in terms of providing all necessary medical care and other important areas in the fight against the pandemic is an interesting experience and an example to avoid other dangers in the future.

The legal framework of the Ukrainian legislation and the European Union in the field of public procurement functioning was investigated in the work. In particular, the changes that took place in the Law of Ukraine "On Public Procurement" [1] and in the Directive of the European Parliament, which regulates the procurement process [2], were analyzed. Regulatory documents were also examined, which became a guide to ensure the most important areas of public life in a pandemic, namely the letters of the Ministry of Economic Development, Trade and Agriculture of Ukraine [3–5] and «Guidance on using the public procurement framework in the emergency situation related to the COVID-19 crisis» [6], developed by the European Commission in response to a pandemic situation. An important work in the context of our study was the publication of Rita Beuter [7], which characterizes the activities of public procurement in the European Union, taking into account the new bidding procedures.

The purpose of the study is to present Ukraine’s experience in establishing an electronic public procurement system and the benefits of its operation during the global pandemic, as well as to examine the experience of transforming the European Union procurement process in today’s emergency requirements.

2. Methods

The solution of the set tasks is actualized through the application of the following research methods: the method of complex and systematic analysis in considering the phenomenon of "public procurement", the specifics of using the electronic system of public procurement as an innovative mechanism in public administration; method of comparative analysis – in the study of European and Ukrainian practice of public procurement and their application in the improvement and development of the health care system. In addition, the historical method was used in the work, which provided an opportunity to characterize the development of public procurement in Ukraine.

3. Results

The main results of the study are to consider the formation of public procurement in Ukraine and its operation under quarantine restrictions. Another important aspect is the comparison of just the European experience of adapting the procurement process to the emergencies, caused by the global COVID-19 pandemic. The main result of the study is to examine the changes that have taken place in record time in the legislative initiative of the European Union and Ukraine regarding the conduct of bidding and the study of relevant mechanisms that have prevented social collapse. This work is an illustrative study of the practice of implementing effective measures in critical moments of society existence (Table 1).
The European Commission has published a „Guide to Opportunities and Flexibility for Member States in the EU Public Emergency Procurement System“. A breakthrough was the adoption on June 1, 2010 of the Law of Ukraine "On Public Procurement" and the allocation of priority goods and services for the medical industry.

- Introduction of a new simplified algorithm of the procurement process for medical needs.
- Further development of the electronic public procurement system Prozorro.
- Implementation of the procurement process for the medical industry under the simplified procedure and authorized persons.

**4. Discussion**

Sustainable development of society in the conditions of quarantine, caused by the global pandemic COVID-19, is a priority for every country. The challenges we face today have become a test that can demonstrate the ability of society to counter threats, the mobility of world economies, the effectiveness of state mechanisms and more. The practice of implementing public procurement in the European Union in general and in Ukraine in particular is already ingrained and effective, but given the new challenges required additional implementation mechanisms and new algorithms.

It is worthwhile to dwell in more detail on the practice of the Ukrainian community, as today the country uses the latest tools for public procurement in the implementation of information and digitalization policy, namely, uses an electronic public procurement system Prozorro.

The formation of the public procurement industry in Ukraine was quite difficult. There are two main stages: post-Soviet and modern. After Ukraine gained independence in 1991, the country began its active formation and reforming of legislation, the trajectory of development in the direction of the European Union. The first steps, taken in the legislation of Ukraine, are the consolidation of norms on the aim of the Ukrainian state to involve the international community in the implementation of the state order. The main shortcomings we had to deal with were corruption, the reluctance of the authorities to promote European integration changes and imperfect legal regulation of the public procurement process.

A breakthrough was the adoption on June 1, 2010 of the Law of Ukraine "On Public Procurement" [8], which identified a qualitatively new step towards the implementation of the European development strategy of Ukraine as an equal partner and a promising democracy, and helped to stabilize the situation in public procurement, not regulated by law.

Working together within the strategy of harmonization of relations between Ukraine and the European Union has led to the creation of one of the best public procurement systems in Europe and the introduction of an innovative and, importantly, effective electronic platform "Prozorro" for public procurement. As a result, all purchases, made through the state budget, should take place only within a certain electronic system. Reforming the system of public administration in Ukraine is taking place in extremely difficult socio-political conditions – it is a systemic economic crisis, and military confrontation in the East, and reforming not only the economic and legal sphere, but also social. Therefore, the adoption in 2015 of the Law of Ukraine "On Public Procurement" [1] (hereinafter – the Law) led to qualitative changes in the fight against corruption, cost-effectiveness of the state budget, the desire for honesty, transparency, equal opportunities for all participants in public procurement and representatives business. It should be noted, that the introduction of the e-procurement system has significantly simplified the bidding procedure, increased efficiency and virtually eliminated the risk of corruption in electronic tenders. This is primarily due to the fact that it eliminates most opportunities for wrongdoing, such as extortion of bribes to obtain privileged conditions, which may occur when using paper-based procurement systems.

This historical retrospective contributed to the fact that at the time of the spread of the pandemic and the first quarantine restrictions (marked by a total lockdown), Ukraine was ready for a remote mode of public procurement. The electronic platform, developed and implemented in 2015, allowed to carry out the procurement process in an uninterrupted mode and to ensure the state order in the medical field in full. It is also worth emphasizing, that the advantages of conducting the procurement process electronically allow not only to avoid corruption risks, but also to comply with quarantine restrictions. However, the issue of legislative formulation of the regulations of actions

### Table 1

Comparative analysis of changes in the regulatory and legal support of the procurement process of Ukraine and the European Union

| Name | Measures, implemented to the procurement process | Advantages | Shortcomings |
|------|-----------------------------------------------|------------|--------------|
| Europe | The European Commission has published a „Guide to Opportunities and Flexibility for Member States in the EU Public Emergency Procurement System“. | 1. Determining the priority financing of the medical sphere, which allowed to fully provide hospitals and medical institutions and to avoid collapse. 2. Remote procurement process and reducing the risk of infecting a large number of citizens. 3. Simplified procurement procedure, which significantly accelerated the bidding process and provision of medical institutions with material and technical means of | 1. The minimum waiting period of ten days between the award decision and the conclusion of the contract has previously been applied in these cases. The Guide does not specify a specific duration of urgency, and this may create some uncertainty for procurement authorities, especially those that rely on EU funding. If temporary restrictions are not applied correctly, it can lead to financial adjustments. |
| Ukraine | 1. Amendments have been made to the Law of Ukraine "On Public Procurement" and the allocation of priority goods and services for the medical industry. 2. Introduction of a new simplified algorithm of the procurement process for medical needs. 3. Further development of the electronic public procurement system Prozorro. 4. Implementation of the procurement process for the medical industry under the simplified procedure and authorized persons. | 1. Procurement authorities may contact potential contractors directly, hire agents who know the market directly, or send representatives to the countries concerned to ensure delivery and contact potential suppliers to increase or resume proceedings. 2. Using an open accelerated procedure. In this case, the procurement authorities may reduce the minimum deadline for submission of bids to 10–15 days in case of urgency. 3. Contractual procedure without prior publication | 1. Reducing funding for medical needs not related to preventing the spread of coronavirus disease. 2. Increasing the possibility of corruption risks through the introduction of simplified public procurement procedures for priority goods and services and the procurement process by authorized persons. |

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in the conditions of COVID-19 and fixing the sphere of financing of the medical sector and procurement for medical needs as a priority remained unresolved.

Therefore, the Ministry of Economy, Trade and Agriculture of Ukraine amended the Law, given the entry into force of the resolution of the Cabinet of Ministers of Ukraine “Some issues of procurement of goods, works and services, necessary to implement measures to prevent the emergence and spread, localization and elimination of outbreaks, epidemics and pandemics of coronavirus disease (COVID-19) on the territory of Ukraine ” [9] of 20.03.2020 No. 225 (hereinafter – Resolution No. 225). "The changes concern the removal from the scope of the Law of procurement of goods, works or services, necessary for the implementation of measures, aimed at preventing the occurrence and spread, localization and elimination of outbreaks, epidemics and pandemics of coronavirus (COVID-19) in Ukraine. The list of such goods, works or services and the procedure for their purchase shall be approved by the Cabinet of Ministers of Ukraine. Based on the results of such procurement, the customer shall publish in the electronic procurement system a report on the concluded contracts, the procurement contract and all annexes thereto, a report on the performance of the contract in accordance with Article 10 of this Law. Thus, the purchase of goods, works or services, necessary for the implementation of measures, aimed at preventing the occurrence and spread, localization and elimination of outbreaks, epidemics and pandemics of coronavirus disease (COVID-19) in Ukraine, is carried out in accordance with Law No. 530 according to Resolution No. 225 " [9].

All other purchases of goods, works or services that were previously planned are carried out in accordance with the current legislation.

The Ministry of Economic Development, Trade and Agriculture of Ukraine has developed an algorithm for implementing in the electronic procurement system in accordance with the requirements of the Procedure for procurement of goods, works and services necessary to implement measures to prevent the emergence and spread, localization and elimination of outbreaks, epidemics and pandemics according to Resolution No. 225:

– the customer through a personal account on the authorized electronic platform (further – the Site) creates the plan of purchases and uploads in the plan object all necessary information on technical, qualitative and other characteristics of a subject of purchase, term of delivery of goods or performance of works or services, etc. [5];

– the site provides information to suppliers signed for procurement under the relevant CPV codes [5];

– the customer negotiates with the supplier and not earlier than in 48 hours publishes the Report on the concluded contract with the sign COVID-19 with its obligatory connection to the previously published plan [5];

– the site when compiling the Report on the concluded contract with the sign COVID-19 issues a warning to the Customer of the following content: “Please note that the publication of the Report on the concluded contract according to Resolution No. 225 may take place not earlier than 48 hours after the publication of the relevant line of the plan” [5].

Thus, Ukraine has taken a number of steps to prevent the spread of coronavirus disease and provide medicine with all necessary goods and services. Now the focus of our research should be on adapting and transforming the procurement process in the practice of state order realization by the European Union.

In the midst of the global pandemic, caused by COVID-19, the European Commission is developing and publishing «Guidance on using the public procurement framework in the emergency situation related to the COVID-19 crisis» [6] (hereinafter - the Guide), taking into account the counteraction to the pandemic threat and the establishment of supply, provision of the medical sector. The European Commission noted the need for decisive action and measures, aimed at the effective functioning of society in the global crisis. It was also noted, that hospitals and medical institutions are becoming a priority area for funding and prioritizing the necessary goods, works and services, needed to combat the spread of coronavirus disease. Public institutions must respond as quickly as possible to the challenges, posed by COVID-19, so this guide is aimed at encouraging public authorities to use the flexibility, mobility of the entire regulatory mechanism to meet priority needs. In order to emphasize the importance of public procurement for the economy, it is worth quoting the data of the European Commission, published on their website: "Every year, more than 250,000 government agencies in the EU spend about 14 % of GDP (about 2 trillion euros a year) on services, works and materials. Improving public procurement can save money, even increase efficiency by 1 %, and can save € 20 billion a year [10].

Rita Beuter notes that the European Commission’s emergency response options include the following: “Three options for public procurement to respond to the current COVID-19 emergency: alternative solutions and market interaction; use of accelerated procedures; negotiated procedure without publication “ [7]. That is, the European Commission offers several options for rapid response to the current situation. The Guide provided opportunities for the interpretation of normative documents in the context of the global pandemic, which were previously adopted, namely the EU Public Procurement Directive 2014 (Directive 2014/24/EU) (hereinafter – the Directive) [2]. This Directive has allowed in some cases to conduct procurement under the simplified open procedure at an accelerated time, but in the context of quarantine restrictions, this may be a reason for corrupt manipulation, which requires stricter regulation and clear algorithms. Management interprets this as "it will allow for faster contracts to meet the needs of the COVID-19 pandemic. Referring to Article 32 (2) of Directive 2014/24/EU procurement authorities may only use this procedure to the extent strictly necessary, if the name of the extreme needs, caused by the events, regardless of the contracting authority, provides a time frame for open or restricted procedures or competitive procedures with negotiations may not be compatible. The circumstances, imposed to correct the deadlines, should in no case depend on the contracting authority "[6]. Thus, the European Commission has issued a normative document which provides opportunities for rapid response to emergencies and properly interprets existing normative documents to avoid undersupply in the medical field and, correspondingly, the spread of the disease.

Thus, the Ukrainian experience and the experience of the European Union in the implementation of public procurement have their advantages and disadvantages, which are reflected in Table 1, presented in the research results.

### Table 1

| Table 1 | Presented in the research results |

#### 5. Conclusions

Legislation in the field of public procurement in Ukraine is constantly being improved in line with social challenges (military conflict in eastern Ukraine, the need to combat the global pandemic, caused by COVID19, global transformations, etc.), which requires rapid response and effective decisive action. Today, it is becoming clear that change is continuous and necessary, so the response must be swift and expedient.

Thus, European trends and Ukrainian practice in the implementation of the public procurement system demonstrates
examples of adaptation of existing public procurement systems in accordance with the needs of a certain era. The challenges, faced by the world in 2020, must be accompanied by perfect transformational transformations and the development of effective mechanisms and appropriate algorithms for action. In our opinion, the steps, taken by the European Union and Ukraine, have made it possible to adequately provide the medical sector with everything it needs and to avoid the potential threats, posed by the COVID-19 pandemic. That is why measures to improve existing systems and mechanisms should not be underestimated, as their demand in the future may be unexpected. This proves the need for continuous improvement of legal requirements and mechanisms, both in theoretical and practical understanding of the field of public procurement, the ability to present themselves in the market not only in Ukraine but also in the world.

The presented experience should be an example of rapid response (of Europe) and the gradual formation of the historical basis and, accordingly, successful legislative consolidation of effective mechanisms for public procurement (Ukraine), even in a global crisis to take into account future challenges.

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