**ROMANIA**

**PUBLIC PROCUREMENT MONITORING REPORT IN ACCORDANCE WITH THE DIRECTIVES 2014/23/EU, 2014/24/EU AND 2014/25/EU**

**April 2021**

**The report was elaborated in the context of Directives 2014/23/EU, 2014/24 /EU and 2014/25/EU and contains information and quantitative and qualitative data on the public procurement system in Romania for the period between January 1, 2018 and December 31, 2020.**

**The quantitative data presented in sections I and IV refers to public/sectoral procurement procedures/works and services concessions of an estimated value above the value thresholds for which transmission to the OJEU is mandatory.**

**The qualitative data presented in sections II, III and V refers to public/sectoral procurement procedures/works and services concessions regardless of the estimated value.**

1. **Key quantitative indicators**

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| **I.1. The number of procurement procedures**  **Information to be provided on a yearly basis:**   * **the number of notices announcing a call for competition and,** * **the number of awarded contracts.** * **the number of contract award notices**   **The numbers should be reported separately for:**   * **above EU thresholds procurement (i.e. procurement covered by the directives) and,** * **below EU thresholds (i.e. procurement, which would have been covered by the directives if its value had exceeded the relevant thresholds).** | **1. Number of contract notices:**  Above the thresholds for which it is mandatory to send for publication to OJEU:   * **2018: 4,230 contract notices;** * **2019: 5,280 contract notices;** * **2020: 4,987 contract notices.**   In accordance with the legal provisions in force, the contracting authorities/entities have the obligation to send for publication a contract notice, when initiating a public procurement procedure, concession, launching a dynamic procurement system, or organizing a design contest.  Contract notices shall be sent for publication, by electronic means, in the Electronic Public Procurement System (SEAP), at national level, and in the Official Journal of the European Union (TED), in addition, in the case of public procurement whose estimated value, without VAT is above the thresholds provided for in Directives 2014/23/EU, 2014/24 /EU and 2014/25 / EU.  In the context of the information specified above, the data presented reflect the number of notices of initiation of public/sectoral procurement procedures, works and services concessions,of an estimated value above the value thresholds for which transmission to the OJEU is mandatory,published by the contracting authorities/entities in Romania, in the reference years 2018 - 2019 – 2020.  Values also shown in Annex 2.  **2. Number of contracts awarded (including framework agreements)**  Above the value thresholds for which it is mandatory to send for publication to OJEU:   * **2018: 28,211 contracts and framework agreements;** * **2019: 25,212 contracts and framework agreements;** * **2020: 24,210 contracts and framework agreements.**   The contracting authorities/entities have the obligation, according to the provisions of the legislation in the field of public procurement, to conclude the public/sectoral procurement/concession/framework agreement with the successful tenderer following the completion of the award procedure.  Contracting authorities/entities have the obligation to send for publication a contract notice within 30 days from the date of conclusion of the public/sectoral/concession/framework agreement following the completion of the procurement procedure or the completion of a design contest.  The above data refer to the number of public/sectoral/concession contracts and framework agreements awarded/concluded in the reference years 2018-2019-2020 related to the procedures for awarding public/sectoral/concession contracts by prior publication of notice whose estimated value was greater than or equal to the thresholds set out in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU (initiated after the national transposition of the Directives - May 2016), published by the contracting authorities/ entities in Romania until 09.02.2021.  Values also shown in Annex 2.  The monitoring indicators presented in this section are based on information derived exclusively from public procurement procedures whose estimated value is above the mandatory publication thresholds in the OJEU. |
| **I.2. The total value of procurement**  **Information to be provided on a yearly basis (chose one from below, depending on which one will produce the most reliable estimate):**   * **the total value of awarded contracts.**   **Or**   * **the total value of contract award notices.**   **The value should be reported separately for:**   * **above EU thresholds procurement (i.e. procurement covered by the directives) and,** * **below EU thresholds (i.e. procurement, which would have been covered by the directives if its value had exceeded the relevant thresholds).** | * **Total value of awarded contracts (including framework agreements)**   **Above the value thresholds for which it is mandatory to send for publication to OJEU:**   * 2018: **46,686,887.69 Thousand Lei** * 2019: **59,234,783.13 Thousand Lei** * 2020: **75,928,525.62 Thousand Lei**   The above data refer to the total value of the products/services/works purchased by the Romanian contracting authorities/entities related to the concluded public/sectoral/concession contracts and the awarded framework agreements (previously calculated indicator) related to the award procedures whose estimated value was above the thresholds set out in Directives 2014/23/ EU, 2014/24/EU and 2014/25/EU.  The monitoring indicator presented in this section is based on information derived exclusively from public procurement procedures whose estimated value is above the mandatory publication thresholds in the OJEU.  Values also shown in Annex 2. |

**II. Most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules**

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| **II.1. Qualitative reporting on application of public procurement rules** |  |
| **Main sources of wrong application or of legal uncertainty** | **Most frequent cases of wrong application** of legislation are identified and manifested, as follows:  **In the planning-preparation stage** of the award procedures:   * Incorrect application of contract estimation rules that can lead to artificial division of the public procurement contract (all types of contracts); * Improper/inadequate division into lots of the subjects of contracts for products (especially those in the medical field); * Insufficient definition of the characteristics regarding the work, service or product which is the subject of the procurement; * Inadequate enunciation of technical and professional capacity criteria, especially in contracts for intellectual services and large-scale works, with significant estimated values (eg.fractionary request for similar experience of the candidate/tenderer in the case of service/works contracts by reference to subcategories of services/works included in the subject of the contract); * Using the lowest price criterion in the case of procurement regarding the provision of some services of intellectual nature; * Excessive use of the negotiated procedure without prior publication, which is not provided with a sufficient description in the legislation and good practice guidelines.   **In the initiation stage** of the award procedure:   * Affecting the principle of transparency by not publishing contract notices in the Official Journal of the European Union (OJEU), in circumstances such as:   + Re-launch of some contract award procedures, having their estimated individual value at the time of re-launch at a level bellow the mandatory threshold for the publication in the Official Journal of the European Union;   + Insufficient details provided at the level of the prior information notice.   **In the bid evaluation stage:**   * Difficulties in the tender evaluation process, mainly in the management of the requests for clarifications of tenders and the answers associated with them, distortions of competition caused by not requesting or requesting and misinterpreting clarifications, being frequently identified. * Poor evaluation of tenders/applications based on the capabilities of other entities, in particular, on demonstrating access to the resources in question; lack of examples of types of documents/information that should be requested by contracting authorities/entities from third party supporters so that they reasonably ensure adequate capacity to support the implementation of the contract; * Evaluation of unusually low price; * Assessment of the evaluation factors concerning, in particular, the qualification and experience of the staff designated to perform the contract; * Management of evidence/means of evidence submitted by tenderers/candidates in connection with exclusion criteria.   **In the post-award stage:**   * Late publication of some public procurement contract award notices; * Wrong interpretation and application in contractual changes of non-substantial type, regulated by the primary legislation, with the tendency to frame the situations under the provisions of art. 72 (1) (b) and (c) of Directive24/2014/EU.   **The main causes** of wrong application of rules and of legal uncertainty, including their relative importance, and the circumstances that explain their occurrence, we consider to be correlated with:   * Frequent and non-harmonized changes in the national legislation issued by other institutions affecting public procurement that have generated a different approach in the market regarding planning and conducting public procurement contracts. * Different interpretations of the authorities in the public procurement system, especially of those with control attributions, regarding the provisions of the legislation on public procurement, due to some excessive regulations that generated parallel sources of recommendations, some limiting, others extended, depending on the legal reference points to which were reported (legislative provisions from certain economic sectors, tax legislation, etc.), which led to a non-unitary practice; * The shortage of specialized staff in the field of public procurement at the level of public institutions/authorities; low pay compared to high liability; significant staff turnover in procurement departments. * Lack of the establishment and publication of case law and guidelines of good practice with the aim of guiding authorities in the conduct of exceptional procedures and in the management of contractual changes.   **The policies and administrative documents used** to anticipate and expand support for resolving issues in relation to the main sources/causes of wrong application of rules or of legal uncertainty, were based on the inclusion to the agenda of each institution in the public procurement system of the requirement to notify in real time the non-unitary interpretations, allowing to ensure the decision-making process from a collective perspective as well, not only at the institutional level.  **During the reference time frame, the following collaboration protocols were signed:**   * Collaboration protocol signed between the National Agency for Public Procurement and the Agency for Financing Rural Investments - support for drafting standardized documentation for the award of investment contracts financed through the European Agricultural Fund for Rural Development (EAFRD); * Collaboration protocol signed between the National Agency for Public Procurement and the Romanian Court of Accounts - exchange of information and support in carrying out professional training programs for auditors; * Collaboration protocol signed between the National Agency for Public Procurement and the The Authority for the Digitalization of Romania - exchange of information and support in the implementation of technical facilities for streamlining procurement processes and reducing the administrative burden; * Collaboration protocol signed between the National Agency for Public Procurement and the National Council for Solving Complaints (CNSC) - exchange of information regarding the existence of deficiencies in legislation and non-unitary solutions in institutional practice - obligation included in the special provisions of Law no. 101/2016 on public procurement remedies. |
| **Specific legal provisions (from EU or national law) which appear to raise significant problems of application** | 1. Insufficient regulation at the level of the Directives of the concept of similar products which can be awarded by lots and of clarifying information regarding the division of services and works into lots; 2. Difficulties in interpreting the method of calculating the estimated value of public works contracts (art. 5, paragraph 7 of Directive 24/2014/EU); 3. The concept of mixed contract; 4. Difficulties in interpreting the notion of *no suitable tender* and the phrase “*the initial conditions of the contract are not substantially altered*” (art. 32, paragraph 2, letter a) of Directive 24/2014/EU); 5. Using negotiated procedure without prior publication of a contract notice (extreme urgency and exclusivity); 6. Article 42 (3) (b) of Directive 24/2014/EU – provision transposed in national legislation by Article 156 of Law no. 98/2016 – regarding the requirements of mandatory use of the reference ‘or equivalent’ in drafting technical specifications; 7. Insufficient/vague information on the use and evaluation of the tender variants (art. 45 of Directive 24/2014/EU); 8. Art. 27 -28 -29 - of Directive 24/2014/EU - provision transposed in the national legislation by art. 74 paragraph (2) of Law 98/2016 - Clarification of the mandatory information to be included in the prior information notice, their correlation with each type of procedure, including with the information required in the sections of standard forms in the Regulation. Clarification of the phrase "*so far as that information was available at the time the prior information notice was published*". 9. Art. 72 (1) (e) of Directive 24/2014/EU - provision transposed in the national legislation by art. 221 para. 1 (e) of Law no. 98/2016 - the tendency to modify the framework agreements and contracts without a value limitation. 10. Insufficient information related to the creation of official lists of approved economic operators and certification by bodies established under public or private law; 11. Difficulties in applying specific national legislation to the assessment of certificates/authorizations/attestations of economic operators and experts from other Member States. |
| **An assessment of patterns and behaviours that are not illegal or non-compliant, but still indicate possible problems** | See the **Public Procurement System Performance Indicators Report** available at:  http://anap.gov.ro/web/wp-content/uploads/2019/09/Indicatori-de-monitorizare-2018\_final-23Sep2019.pdf  http://anap.gov.ro/web/raport-indicatorii-de-monitorizare-a-eficientei-procedurilor-de-achizitie-publica-finalizate-prin-contract-in-anul-2019/ |
| **II.2 Supporting documents** |  |
| **Please provide any available evidence of the issues identified under section II.1.** | * **A summary of the main violations from public procurement rules** is presented in the section of the Audit Authority within the Annual Public Report of the Court of Accounts of Romania available at the internet address:   [*http://www.curteadeconturi.ro/Publicatii.aspx?niv1=1*](http://www.curteadeconturi.ro/Publicatii.aspx?niv1=1)   * Activity reports of the National Agency for Public Procurement available at:   <http://anap.gov.ro/web/wp-content/uploads/2019/10/Raport-activitate-ANAP-2018-FINAL-final.pdf>  <http://anap.gov.ro/web/wp-content/uploads/2021/02/Raport-activitate-ANAP-2019-final.pdf>  <http://anap.gov.ro/web/wp-content/uploads/2021/01/Raport-activitate-ANAP-2020-final.pdf>   * Activity reports of the National Council for Solving Complaints available at:   <http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf>  <http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf>  **Reports on the most common requests for guidance**  **The National Agency for Public Procurement**, as the only institution with competences in the regulation of public procurement, provides methodological advice to contracting authorities/entities as well as other stakeholders, aimed to facilitate the official knowledge and interpretation of public procurement law and also the transfer of theoretical knowledge and practical skills to various cases, in order to anticipate and overcome problematic situations, using both traditional (written) and electronic communication channels. Between 2018 and 2020, ANAP provided guidance in the case of over 14,000 requests, of which 9,500 were registered through the Heldesk IT platform.  The most frequent requests, representing over 70% of their total, concerned the interpretation of the legal provisions regarding the modification, execution, termination of the contract/framework agreement and guidance on how to carry out, communicate, clarify the contract award procedures (see activity reports of ANAP 2018 - 2020 - [www.anap.gov.ro](http://www.anap.gov.ro)).  In order to ensure transparency regarding the professional reasoning applied by external public auditors during audit missions, the **Court of Accounts of Romania** - which has the role of controlling the use of state and public sector financial resources, through the *Commission for unitary application of legal provisions related to the activityof the Court of Accounts*, issues opinions in the case several legal or natural persons request guidance regarding the same aspect, which is approved by the Plenum of the Court of Accounts and is published on the website of the institution [www.curteadeconturi.ro](http://www.curteadeconturi.ro), in the Guidance/Solutions/Unitary practices section.  **Good practice guidelines published in order to clarify legal issues**  In addition to methodological advice, ANAP circulates, through the Online Guide, the results of its activities, to promote good practices in public procurement and, through the module *"Case Library",* hereby maintaining in the spotlight the approach of ANAP regarding various issues in the field, between 2018 - 2020 being **published over 500 new cases**.  Another tool used successfully, through which ANAP communicates the lessons learned following the analysis of practices used by different contracting authorities of different sectors, is represented by the - ***notification on the interpretation in practice of legislative provisions***, explanatory and guiding document for the contracting authorities/entities but also for the economic operators.  Between 2018 and 2020, notifications were published on the following recurring issues:   * Notification on the use of the framework agreement - (2018) * Notification of issues to be considered when using the execution schedule as a requirement related to the approach to drafting the technical proposal for public works contracts - (2018) * Notification on the use by contracting authorities of the information introduced in e-Certis - (2019)   <http://anap.gov.ro/web/notificare-cu-privire-la-utilizarea-de-catre-autoritatile-contractante-a-informatiilor-introduse-in-e-certis/>   * Notification regarding the use of ESPD integrated in SEAP - (2019)   <http://anap.gov.ro/web/notificarea-privind-utilizarea-duae-integrat-in-seap/>   * Notification on good practices in the procurement related to public works contracts for the construction/modernization of investment objectives - (2019)   <http://anap.gov.ro/web/notificare-privind-bunele-practici-in-realizarea-achizitiilor-aferente-contractelor-de-lucrari-pentru-constructia-modernizarea-obiectivelor-de-investitii/>   * Notification of the joint opinion issued by the President of ANAP and the President of the Competition Council - (2020)   <http://anap.gov.ro/web/notificare-cu-privire-la-opinia-comuna-emisa-de-presedintele-anap-si-presedintele-consiliului-concurentei/>   * Notification regarding the procurement of social services and other specific services as a result of the legislative provisions adopted by Government Emergency Ordinance no. 114/2020 - (2020)   <http://anap.gov.ro/web/notificare-cu-privire-la-achizitia-serviciilor-sociale-si-altor-servicii-specifice-ca-urmare-a-prevederilor-legislative-adoptate-prin-o-u-g-nr-114-2020/>  **Other good practice guidelines published**  **Tertiary legislation: INSTRUCTIONS**   * Instruction no. 1/2018 of October 26th, 2018 regarding the approach on the interpretation of the application of the provisions of art. 31 of Law no. 98/2016 on public procurement (art. 12 of Directive 24/2014/EU);   *The issues that could have led to legal breaches in the situation of awarding public procurement contracts to a controlled private or public legal entity, have been clarified. The instruction was primarly based on the interpretations provided by the European Court of Justice (CJEU) regarding awarding public contract falling under ”in-house” rules: C-107/98 - Teckal Srl vs. Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia, C-340/04 - Carbotermo SpA and Consorzio Alisei vs. Comune di Busto Arsizio and AGESP SpA, C-295/05 - Asociación Nacional de EmpresasForestales (Asemfo) vs. Transformación Agraria SA (Tragsa) and Administración del Estado, C-324/07 - Coditel Brabant SA vs. Commune d'Uccle and Région de Bruxelles-Capitale*  <http://anap.gov.ro/web/instructiunea-nr-1-2018-din-26-octombrie-2018-privind-modul-de-interpretare-a-aplicarii-prevederilor-art-31-din-legea-nr-98-2016-privind-achizitiile-publice/>   * Instruction no. 2/2018 of December 21st, 2018 regarding the adjustment of the price of the public/sectoral procurement contract   *As a result of the need to clarify the meaning of the legal provisions on adjusting the contract price in order to ensure a transparent, predictable and uniform framework both for the participation of interested economic operators in public procurement/sectoral contract award procedures and as well for ensuring the application, by the contracting authorities/entities, of an unitary treatment for the same factual situations, also for the avoidance of some interpretations that contradict the principles in the field of public/sectorial procurement.*  <http://anap.gov.ro/web/instructiunea-nr-2-2018-din-21-decembrie-2018-privind-ajustarea-pretului-contractului-de-achizitie-publica-sectoriala/>  **ORDERS of the President of ANAP and JOINT ORDERS signed by ANAP together with other institutions**   * Order of the President of ANAP no. 2376/2020 of December 4th, 2020 on the content, way to fill in and way of using the standard document “INSTRUCTIONS for BIDDERS/ CANDIDATES” and “SPECIFICATIONS” for the award of the framework agreement/ public/sectoral procurement contract having as subject SANITARY USE PROTECTIVE MASKS OF TYPE II, II R, FPP2, FFP3   *The essential documents for the procurement of compliant protective masks were made available to the contracting authorities/entities, but also to the economic operators, under the constraint of reducing the procedural costs for drawing up the procurement documentation.*  <http://anap.gov.ro/web/ordinul-presedintelui-nr-2376-2020-anap-privind-continutul-modalitatea-de-completare-s%cc%a6i-modul-de-utilizare-a-documentelor-standard-instructiuni-pentru-ofertanti-candidati-si-caie/>   * Order no. 45/315/2020 of January 13th, 2020 on the revision of the up-to-date rate to be used in public procurement contracts in 2020 which is used to calculate the costs over the life cycle of the procurement within the procedures for awarding public procurement contracts/framework agreements which have the "lowest cost" award criterion   <http://anap.gov.ro/web/ordin-nr-45-315-2020-din-13-ianuarie-2020-privind-revizuirea-ratei-de-actualizare-ce-va-fi-utilizata-la-atribuirea-contractelor-de-achizitie-publica-in-anul-2020/>   * Order no. 1894 of 08.07.2019 on the approval of checklists related to the exercise of quality and legality control of the process of awarding contracts/framework agreements for public/ sectoral procurement and works concession/service concession contracts   *These lists also contributed to a unified approach in the public procurement verification process carried out by authorities with responsibilities in ex-post audits.*  <http://anap.gov.ro/web/ordin-nr-1894-din-08-07-2019-privind-aprobarea-listelor-de-verificare-aferente-exercitarii-controlului-de-calitate-si-regularitate-al-procesului-de-atribuire-a-contractelor-acordurilor-cadru-de-achiz/>   * Order no. 131/1401/2019 of April 17th, 2019 on standard documents and the framework agreement contract to be used in the procedures for delegating the management of the public passenger transport service   *Misinterpretations and misapplications of the relevant legal provisions have been eliminated and the correct tools for delegating the management of the public passenger transport service have been made available to the contracting authorities.*  <http://anap.gov.ro/web/ordinul-nr-131-1401-2019-din-17-aprilie-2019-privind-documentele-standard-si-contractul-cadru-care-vor-fi-utilizate-in-cadrul-procedurilor-de-delegare-a-gestiunii-serviciului-public-de-transpor/>   * Order no. 1017 of 20.02.2019 on the approval of the structure, content and manner of use of the standard procurement documentation of the public/sectoral procurement contract for products, as well as the manner of filling in the contract notice/simplified contract notice.   *The manner of drawing up the procurement documentation for public/sectoral procurement of products has been standardized and the correct way of establishing the requirements and criteria has been clarified. In this manner, the premises were created to ensure a transparent, predictable and unitary framework for the participation of interested economic operators in public/sectoral procurement contracts.*  <http://anap.gov.ro/web/ordin-privind-aprobarea-structurii-continutului-si-modului-de-utilizare-a-documentatiei-standard-de-atribuire-a-contractului-de-achizitie-publica-sectoriala-de-produse-precum-si-a-modalitatii-de-com/>   * Order no. 2717/318/2018 of 27.12.2018 regarding the revision of the up-to-date rate that will be used for the award of public procurement contracts in 2019   <http://anap.gov.ro/web/ordinul-nr-2717-318-2018-din-27-12-2018-privind-revizuirea-ratei-de-actualizare-ce-va-fi-utilizata-la-atribuirea-contractelor-de-achizitie-publica/>   * Order no. 1068/1652/2018 of October 4th, 2018 for the approval of the *Green Public Procurement Guide* which includes the minimum requirements on environmental protection for certain groups of products and services required at the level of specifications   <http://anap.gov.ro/web/ordinul-nr-1068-1652-2018-din-4-octombrie-2018-pentru-aprobarea-ghidului-de-achizitii-publice-verzi-care-cuprinde-cerintele-minime-privind-protectia-mediului-pentru-anumite-grupe-de-produse-si-servic/>   * Order 1581/2018 on the approval of the standard forms of the interim evaluation minutes related to the public procurement/framework agreements contract award procedures, sectoral contracts/framework agreements and works concession/service concession contracts   *The forms used in public procurement procedures have been standardized, thence ensuring a uniform practice among contracting authorities/entities, which has also contributed to streamlining the public procurement process.*  <http://anap.gov.ro/web/ordinul-1581-2018-privind-aprobarea-formularelor-standard-ale-proceselor-verbale-intermediare-de-evaluare-aferente-procedurilor-de-atribuire-a-contractelor-acordurilor-cadru-de-achizitie-publica-a-co/>   * ORDER no. 19/37 of 2018 of the Minister of Agriculture and Rural Development and of the President of the National Agency for Public Procurement regarding the approval of the standardized documentation for awarding contracts/framework agreements for the supply of fruits, vegetables and dairy products and bakery products within the Program for Schools of Romania - 2018   **GOOD PRACTICE GUIDES**   * **ONLINE GUIDE** [http://anap.gov.ro/web/prezentare-ghid/](http://anap.gov.ro/web/prezentare-ghid/%20)   <https://achizitiipublice.gov.ro/home>   * Good Practice Guide for the Use of Evaluation Factors in the Procurement of Products (2019)   <http://anap.gov.ro/web/wp-content/uploads/2020/02/ghid-Catalog_factori_produse_ANAP.pdf>   * Methodological Guideline for formulating criteria related to standards in the procurement documentation – (2019)   <http://anap.gov.ro/web/wp-content/uploads/2019/08/Indrumar-ANAP-final_august2019.pdf>  **Other supporting tools:**  **STANDARD DOCUMENTATIONS**   * Procurement documentation for Intellectual services   <https://achizitiipublice.gov.ro/matrix/cell/71/1>   * Procurement documentation for awarding the Execution of works   <https://achizitiipublice.gov.ro/matrix/cell/72/1>   * Procurement documentation for the Supply of products   <https://achizitiipublice.gov.ro/matrix/cell/76/1>   * Procurement documentation for Design services   <https://achizitiipublice.gov.ro/matrix/cell/77/1>   * Procurement documentation for Petrol and Motor Fuel   <https://achizitiipublice.gov.ro/matrix/cell/79/1>   * Procurement documentation for awarding Security services   <https://achizitiipublice.gov.ro/matrix/cell/80/1>   * Procurement documentation for Car maintenance and repair services   <https://achizitiipublice.gov.ro/matrix/cell/167/1>   * Procurement documentation for Equipment maintenance services   <https://achizitiipublice.gov.ro/matrix/cell/398/1>   * Procurement documentation for Cleaning services   <https://achizitiipublice.gov.ro/matrix/cell/397/1>   * Procurement documentation for Services for the collection, transport and final disposal of medical waste   <https://achizitiipublice.gov.ro/matrix/cell/402/1>   * Set of supporting documents in the preparation of documentations for the award of public works contracts related to investments under the framework of the National Programme for Rural Development 2014 - 2020 - agreed with the representatives of the Agency for Financing Rural Investments (AFIR). |
| **II.3 Quantitative indicators** |  |
| **Indicators about the national review system** | 1. **Number of decisions** of first instance review bodies - This includes all decisions provided at first instance level - CNSC or Court - See the indicators specified in Annex III to this report on how the indicators relating to the national system of complaints are presented.   Annex III presents the number of decisions of the first-level review bodies as follows: they were issued by the CNSC because of the submission of a contestation and by the court because of the submission of a complaint.  For information on the resolutions provided by CNSC, the type of contested procedure or others, see the CNSC reports published at the web addresses:  [**http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf**](http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf),  [**http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf**](http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf).  In the case of the indicator reflecting the number of cases resolved on the merits, as a result of a complaint, are presented the decisions issued by the courts during the reference timeframe, having public procurement as the litigation subject, without a distinction based on other criteria (such as *thresholds for mandatory sending for publication to the Official Journal of the European Union, the stage of submitting the complaint to the court or criteria regarding the subject of the complaint*).   1. **Average duration for issuing a decision** by the first level review bodies (CNSC) - The duration is defined as the number of calendar days between the time of contestation and the date when the decision is issued.   See the indicators specified in Annex III to this report on how the indicators relating to the national system of complaints are presented.  Annex III presents the average timeframe for a decision to be issued by the first level review bodies, as follows:   * In the case of CNSC - The average duration is related to the number of calendar days between the moment of registering the contestation and the date of issuing the decision; * In the case of courts, the average length of settlement because of complaints is calculated from the time the case is submitted to the first instance court and the time of statistical closure of the ruling by that court.  1. **Number of decisions issued by first instance review bodies** (CNSC or Court) **that have been challenged in the next higher court and their results**– includes rulings issued by the Courts of Appeal against decisions/rulings issued at first instance level (CNSC or Court), both on the merits and on exception. See the indicators specified in Annex III to this report on how the indicators relating to the national system of complaints are presented.   **Regarding the number of decisions issued by the first-level review bodies** (CNSC and the Court) **that were challenged in the next higher court and their results**, it reflects **the number of first-level decisios challenged**: the number of cases at the appeal stage, included on the agenda of the courts, during the reference timeframe.  **Depending on the resolution ruled by the Court of Appeal, the information is structured as follows:**  - number of (first level) decisions **confirmed**: the number of cases resolved in the appeal, by **maintaining the rulings/decisions of the first instance court/CNSC**;  - number of (first level) decisions **overturned**: the number of cases resolved in the appeal, **by overturning the rulings/decisions of the first instance court/CNSC**;  - number of resolutions - **in other situations**: the number of cases solved in the appeal, whose rulings are other than those of maintenance, respectively overturning the rulings/decisions of the courts/CNSC.  **Methodology**  There are no other elements available in order to split the available data according to other criteria (such as *thresholds for mandatory sending for publication to the Official Journal of the European Union, the stage of submitting the complaint to the court or criteria regarding the subject of the complaint*, *number of cases exercised as a result of contestations or the number of cases exercised ex officio*).  Law no. 101/2016 *on remedies related to the award of public procurement/sectoral/works and services concession contracts, as well as for the organization and functioning of the National Council for Solving Complaints* transposing the *Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts* and *Council Directive 92/13/EEC of 25 February 1992 on coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,* **does not provide for ex officio notification**. CNSC and the Courts are empowered following the submission of a contestation/complaint.  Annex III was filled up based on the results calculated and made available by the National Council for Solving Complaints (CNSC), the Ministry of Justice and the Superior Council of Magistracy. |

**III. Prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interests and other serious irregularities**

The following public institutions in Romania contributed data and / or information for the elaboration of Chapter III: the Department for Anti-Fraud, the National Integrity Agency, the Competition Council and the National Agency for Public Procurement

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| **III.1. Qualitative reporting on fraud, corruption, conflict of interests etc.** |  |
| **Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities including fraud and corruptionand conflicts of interests.** | **III.1.1. THE ORGANIZATION OF THE INSTITUTIONAL SYSTEM**  **The Anti-Fraud Department (DLAF)**is the liaison body with the European Anti-Fraud Office - OLAF within the European Commission. The department performs the following functions:  a) the function of coordinating the fight against fraud, in order to ensure an effective and equivalent protection of the financial interests of the European Union in Romania;  b) the control function, in order to identify irregularities, frauds and other illicit activities that harm the financial interests of the European Union in Romania;  c) the regulatory function, which ensures the elaboration of the normative and institutional framework necessary for ensuring the protection of the financial interests of the European Union in Romania;  d) the function of representation, which ensures Romania's participation in advisory committees, working groups and communication or information exchange networks, in the matter of protection of the financial interests of the European Union.  **The National Integrity Agency (ANI)**verifies potential conflicts of interest in the procedures for awarding public procurement contracts and manages the PREVENT system (integrated IT system for preventing and identifying potential conflicts of interest). Through the PREVENT system, databases are queried to establish the existence / non-existence of presumed relations between persons from the contracting authorities (persons who have the obligation to complete and submit declarations of assets and interests) and persons who hold a quality / perform a function in within the economic operators participating in the public procurement procedures.  **The Competition Council**is the only authority responsible for enforcing competition rules, with the main mission of protecting consumers from practices that may distort the functioning of the free market. The activity of the Competition Council is carried out on two components: a preventive one, for monitoring and supervising the markets, and a corrective one, for sanctioning the deviations from a normal competitive behavior.    **The National Agency for Public Procurement (ANAP)**- the regulatory authority in the field of public procurement - has among its main attributions: the elaboration and implementation of public policies; elaborating legislation; methodological coordination and operational support; ex-ante control of the process of awarding public procurement contracts / framework agreements, sectoral contracts / framework agreements and works concession and service concession contracts and, respectively, amendments to these contracts / framework agreements; monitoring the results of the process of awarding public procurement contracts, based on information provided by contracting authorities; supervising the functioning of the public procurement system; carrying out conciliation activities between ANAP and the contracting authorities subject to ex-ante control.  Through the ex ante control function, ANAP verifies the remedial measures adopted by the contracting authority after the communication to ANAP of the integrity warning / notification issued by the National Integrity Agency.  **III.1.2. FIGHT AGAINST FRAUD**  Anti-Fraud Department (DLAF) has aimed to accomplish its functions by *direct actions*or *actions*of *national coordination,* which dealt with legislative and administrative measures, resulted inclusively by the cooperation with the European Anti-Fraud Office or anti-fraud coordination services / other competent authorities of the Member States.  National and European public policies for the protection of EU financial interests carried out in the period 2018-2020:   * *Implementation of the National Anticorruption Strategy 2016-2020:*DLAF is a member of the Platform for Cooperation of Independent Authorities and Anticorruption Institutions, coordinated by the Ministry of Justice and, as such, constantly reports on the evolution of internal anti-corruption mechanisms, shares good practices with other institutions and participates in periodic meetings of the Cooperation Platform, organized by the Ministry of Justice. Also, according *to the DLAF Sectoral Action Plan (DLAF Internal Anti-Corruption Strategy)*for the implementation of the National Anti-Corruption Strategy for 2016-2020 (SNA) and the *Inventory of Anti-Corruption Preventive Measures and Evaluation Indicators at DLAF*, through the Legal Affairs Directorate, DLAF coordinates , monitors and reports annually to the Ministry of Justice on the developments of the anti-corruption behavior of DLAF staff, as well as the internal measures taken in this regard; all self-assessment reports can be found on the SNA portal, administered by the Ministry of Justice. Within SNA, between August and September 2019, DLAF was evaluated from the perspective of implementing institutional transparency and corruption prevention measures at the level of independent authorities and anti-corruption institutions, as part of the project "Strengthening the administrative capacity of the Technical Secretariat of the National Anticorruption Strategy 2016-2020 to support the implementation of anti-corruption measures ”(SIPOCA code 62), funded by the Operational Program Administrative Capacity 2014 - 2020. Also, in the context of SNA implementation, during August-October 2019, DLAF was interviewed within the Project“Effective mechanisms for administrative control and corruption prevention”, implemented by the General Secretariat of the Government in partnership with the Ministry of Justice and co-financed by the European Social Fund through the Operational Program Administrative Capacity”. * *EUROJUST*- European Union Agency for Cooperation in Criminal Justice: The Head of DLAF is the national correspondent of EUROJUST and has participated throughout the reference period in the meetings of the members of the Eurojust National Coordination System, in order to strengthen judicial cooperation with EU Member States. * *The National Coordinator for Romania's relationship with the OECD:*in 2019, in the context of efforts to strengthen Romania's relationship with the OECD to gain candidate status for accession, DLAF was co-opted to analyze the observations and proposals made by OECD experts on the first draft Action Plan submitted to the Organization in the form approved by the Memorandum “Approval of the elaboration and agreement of a consolidated Romania - OECD Action Plan entitled“Consolidated cooperation plan between Romania and OECD with a view to gaining membership”; in 2020, DLAF continued cooperation with the National Coordinator for Romania's relations with the OECD on its area of expertise in the context of efforts to strengthen relations between Romania and OECD for obtaining the status of a candidate state for membership. * *Participation in the Working Groups:*in 2018, DLAF was co-opted, as an expert, in the Working Group for the elaboration of the normative act transposing *Directive no. 2017/1371 on combating fraud against the financial interests of the Union by means of criminal law*, organized at the level of the Ministry of Justice and in 2019 in the Working Group for the elaboration of the normative act ensuring the application of *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing a form of consolidated cooperation on the establishment of the European Public Prosecutor's Office (EPPO)* , managed by the Ministry of Justice.   Actions and results from the reporting activity between 1 January 2018 and 31 December 2020   * *Romania's annual report on the protection of the EU's financial interests - the fight against fraud:* Article 325 of the Treaty on the Functioning of the European Union imposes the standard of close and regular cooperation between the Member States and the European Commission and of the adoption of effective and equivalent measures for the protection of the EU's financial interests; consequently, each year the European Commission, in cooperation with the Member States, submits a report[[1]](#footnote-2) to the European Parliament and the EU Councilon on the protection of the European Union's financial interests - combating fraud *(PIF Report)*, detailing the measures taken at European and national level in the fight against fraud and its results. In its capacity as national coordinator for the fight against fraud, DLAF has developed, in cooperation with the national institutions involved, and submitted Romania's contribution to the PIF Report for the years 2018, 2019 and 2020 respectively, which contains the legislative, administrative, organizational and operational measures, adopted at national level, in the reference year, to protect financial interests of the European Union, as well as the progress report on the recommendations made by the European Commission in the previous year. * Romania's response to the EC recommendations in the Annual Report on the Protection of the EU's Financial Interests - Fight against Fraud: in its capacity as national coordinator of the fight against fraud, DLAF developed, in cooperation with the national institutions involved, and sent Romania's responses to the EC recommendations in Reports on the protection of the EU's financial interests - Anti-Fraud for the years 2018, 2019 and 2020 respectively *(Follow-up of recommendations)*containing legislative, administrative, organizational and operational measures, adopted at national level, in the reference year, to protect the financial interests of the European Union, as well as the progress report on the recommendations made by the European Commission in the previous year. * Cooperation instruments for the protection of the EU's financial interests.   Given the need to develop partnerships with other institutions involved in the protection of the EU's financial interests, DLAF was co-opted to participate in the development of external studies, such as:   1. PricewaterhouseCoopers study conducted in 2018 in collaboration with DG Employment, Social affairs and Inclusion, DG Maritime Affairs and Fisheries and DG Regional and Urban Policy, on “Anti*-fraud measures implemented by the Managing Authorities responsible for managing European Funds*". The study was conducted to provide support to the authorities, establishing improvement measures in this area and ways to prevent acts of corruption. 2. Study on the analysis and interpretation of the provisions of Regulation (EU) 2017/1939 for the operationalization in Romania of the European Public Prosecutor's Office - DNA project financed by HERCULE III on the implementation of the European Prosecutor's Regulation - DLAF being co-opted in the Working Group set up within the project, which was responsible for drafting a study on identifying the most important needs for amending, adapting national legislation, rules of procedure, working methodologies relevant to the judiciary system and the law enforcement agencies that will need to be implemented to make the institution of the European Prosecutor operational in Romania (2018); 3. *"Methodology for country profiles in the anti-fraud"*developed within the Fraud Prevention Working Group, a methodology whose impact contributes to a faster analysis of the concrete results obtained by each EU Member State on the obligation to protect the financial interests of Union (2018); 4. Cooperation with the Organization for Economic Co-operation and Development (OECD) in a research project that addressed the risks of fraud and corruption that may arise in the cycle of an ESIF project (2019); 5. Cooperation with World Bank experts in conducting two studies on the evaluation of the national public procurement system (2019 and 2020); 6. Extension of the Cooperation Protocol concluded between DLAF and the Ministry of European Funds - in order to strengthen partnerships with the institutions involved in the protection of the EU's financial interests.  * Professional training for the protection of the EU's financial interests:  1. International activities - during 2018 DLAF representatives participated in a number of **34 international activities**(meetings, conferences, seminars, courses, study visits, exchange of experience, lecturing activities); during 2019, DLAF representatives participated in a number of **10 international activities**(meetings, conferences, seminars, courses, study visits, exchange of experience, lecturing activities); during 2020, DLAF representatives participated in a number of **27 international activities**, events organized online in the context established by the COVID-19 pandemic (meetings, conferences, seminars, courses); 2. Activities in **Romania**- during 2018 DLAF representatives participated in a number of **85 activities**at national level (lecturing activities, workshops, conferences, seminars, meetings, debates, public consultations, study visits, lectures); during 2019, DLAF representatives participated in a number of **28 activities**at national level (lecturing activities, workshops, conferences, seminars, meetings, debates, public consultations, study visits, lectures); During 2020, DLAF representatives participated in a number of **12 activities**at national level, online events in the context of the COVID-19 pandemic (conferences, seminars, meetings, debates, public consultations). 3. Based on the partnership started in 2014, with the National Institute of Magistracy - INM, DLAF held, in 2018 and in 2019, 2 seminars for continuous professional training of magistrates in the field of protection of EU financial interests. In 2020, in the new context of the COVID-19 pandemic, the two partner institutions decided to postpone the organization of the 2 events included in the INM Program for continuous training for magistrates. 4. DLAF has concluded collaboration agreements with higher education institutions, considering that prevention through education is the first step in reducing the phenomenon of fraud, such as with the Faculty of Political, Administrative and Communication Sciences (FSPAC), Babeș-Bolyai University where DLAF representatives contributed in delivering courses in the Postgraduate Program in Public Procurement, Concessions and Public Private Partnership. 5. As part of the " *Meeting of the Anti-Fraud Partners of Member States*" project funded by POAT (Technical Assistance Operational Program), the Department prepared a brochure in English containing the presentation of AFCOS structures from all MS, their relevance in the FESI system, and the conclusions of the international event organized by DLAF under the auspices of the PRES ROUE 2019, the brochure being printed in 100 copies that were disseminated to the AFCOS structures but also to the central authorities in Romania.   In fulfilling the control function in order to identify frauds and other illegal acts that harm the financial interests of the European Union in Romania, in the period **2018-2020**, DLAF found, following the controls performed, a number of **20 cases of fraud regarding the development public procurement procedures**and **5 situations of conflict of interest sanctioned by the Criminal Code**.  In carrying out its functions, DLAF fulfills attributions related to ensuring, coordinating and monitoring in reporting irregularities that affect the financial interests of the European Union in Romania, between national institutions and the European Commission according to European legislation. In this sense, Romania, through DLAF, transmits to OLAF, by the means of the integrated system AFIS – IMS, the irregularities, suspicions of fraud and frauds found by the authorities managing the non-reimbursable European funds. Depending on the categories of violated legal provisions, in *2018,* the following were submitted: 30 cases of irregularities and 4 cases of suspected fraud in the application of national legislation on public procurement and one case of suspected fraud on non-compliance with legal provisions of ethics and integrity in the application of national public procurement law. In *2019,* DLAF submitted: 61 cases of irregularities and 18 cases of suspected fraud in the application of national legislation on public procurement. In *2020,* 95 cases of irregularities and 6 cases of suspected fraud in the application of national public procurement legislation and one case of suspected fraud regarding non-compliance with ethics and integrity in the application of national public procurement legislation were submitted.  **III.1.3. CONFLICT OF INTEREST IN PUBLIC PROCUREMENT**  **Specific mechanisms regarding the regime of conflicts of interest**  Internal reporting /registration mechanism specific to each public procurement procedure. In accordance with national public procurement law, contracting authorities / entities are required to mention in the award reports, the identified conflicts of interest and the measures taken. Another legal obligation for internal reporting, on the prevention of conflicts of interest, is to record the communications with the economic operators participating in public procurement procedures, who are required to provide a point of view on potential conflicts of interest in which they would be involved.  Internal ex-post verification mechanism , given that situations of conflict of interest may arise at any time in the public procurement process, the efforts to identify them by contracting authorities / entities must be made at all stages, including after completion of implementation the contract, if there are reported alarm signals, denunciations, journalistic investigations appeared in the media. The ex-post verification by the contracting authority / entity usually focuses on the declaration of conflict of interest (updated by the signatories including in the last stage of the public procurement process), which will be examined in the light of information other than that in the time of the initial verification, such as: external information ( information on the existence of a potential conflict of interest provided by persons from the external environment, who have nothing to do with the situation that generated the conflict of interest); controls carried out on certain situations presenting a high risk of conflict of interest, carried out on the basis of internal risk analyzes or alert signals.  Internal mechanism for reporting violations of laws  The scope of the law on the protection of whistle-blowers is very wide: it covers all public institutions at central and local level, including state-owned companies. Whistle-blowers can report a variety of irregularities in their organization, from criminal behavior to, but not limited to, corruption, conflicts of interest, procurement irregularities, political partisanship, lack of transparency, lack of integrity and negligence. The whistle-blower can choose between following the hierarchical route and complaining within the organization or to report on other entities - parliamentary commissions, trade unions, judicial bodies, bodies managing the conflicts of interests, NGOs or the media. The *whistle-blowers report*benefits from the presumption of good faith, and the whistleblower cannot be sanctioned for reporting irregularities. If a sanction is applied despite this ban, the courts can abolish it.  However, there have been only a few cases where public sector employees have openly used this mechanism to expose wrongdoing within their organizations.  The new EU directive on the protection of whistle-blowers resulting from the need to capitalize on the potential of public warning as a component of ensuring compliance with Union law is likely to raise the profile of this mechanism on the public agenda and require regular reviews of the effectiveness of warning arrangements.  Mechanism for preventing conflicts of interest in public procurement procedures  Following the establishment and implementation of the IT system called PREVENT, managed by the National Integrity Agency (ANI), possible conflicts of interest are identified at the level of public procurement procedures carried out by contracting authorities, by detecting alleged relationships between persons employed in contracting authorities, in this case decision-makers and members of the tender evaluation committee, and persons who hold a quality / perform a function within the tenderers registered in the award procedure in question, issuing in this respect an INTEGRITY WARNING .  PREVENT applies to both public procurement procedures financed from national public funds and those financed from European funds, published in SEAP. ANI continues to monitor the consequences of warnings issued to verify whether situations of conflict of interest have been remedied, otherwise fail to notify and notify other institutions: National Anticorruption Directorate (DNA), Department of Anti-Fraud (DLAF), criminal investigation bodies, etc.  It is important to note that the absence of an integrity warning from ANI does not relieve the contracting authority of its liability and active obligation to identify conflicts of interest. An integrity form is completed in the electronic procurement system as a mandatory step for all procurement procedures. The integrity form covers all persons involved in the public procurement process on behalf of the contracting authority. This allows ANI to identify potential conflicts of interest between contracting authorities and economic operators participating in the procurement procedure. To this end, the PREVENT system automatically verifies this information with information from the database of documents related to citizenship, the trade register, the database of declarations of assets and interests for civil servants who have the obligation to submit these declarations, as well as other public databases. If a potential conflict of interest is identified, an integrity warning is generated and sent to the head of the contracting authority who has 48 hours to resubmit the new forms showing the steps taken to eliminate the potential conflict of interest (which decision maker or which bidder was removed). The head of the contracting authority shall decide what measures to take to eliminate a potential conflict of interest.  The overall effectiveness of PREVENT depends on the quality of the data included in other public databases (for example, if the citizenship database does not include correct kinship information, the red flag in PREVENT will not be activated). Every three months, ANI sends reports on public procurement from European funds, to the Ministry of Regional Development and Public Administration, the Ministry of Agriculture and Rural Development, the Ministry of European Funds and other institutions with competences for managing European funds.  The advantage of PREVENT is that, in most cases, procurement with conflicts of interest is stopped before contracts are awarded. As such, it avoids lengthy and cumbersome proceedings before the courts to prove conflicts of interest, to obtain the annulment of the contract and to recover damages to the state budget. After the implementation of the PREVENT system (June 2017) the cases of conflict of interest found decreased by 35% in the first year and 52% in the second year.  The PREVENT IT system analyzes other presumptive relationships, issuing, through integrity inspectors, NOTIFICATIONS OF RELATIONSHIPS / IRREGULARITIES, the latter being sent to the National Agency for Public Procurement, as the competence of ANI does not cover persons who do not have the obligation to complete and submit declarations of wealth and interests.  ANI evaluates, through the PREVENT system, presumptive relations between persons from the contracting authority and persons from the economic operators participating in the procurement procedure, being covered the risk of collusion from the perspective of preventing conflicts of interest. Alleged conflicts of interest that may lead to collusion risks are also assessed ex post. Both the ex ante evaluation, performed by the PREVENT system / integrity inspectors within the Analysis and Prevention Service, and the ex post evaluation, performed in terms of instrumentation of works that have as object a presumed conflict of interests, can be done exclusively for persons who have the obligation to complete and submit the declarations of assets and interests, persons provided in art. 1 of Law no. 176/2010.  Also, from the perspective of the ex ante evaluation, we mention that ANI issued between January 1, 2018 and December 31, 2020 a number of 119 Integrity Warnings, meaning that in only one case were no measures taken to remove the alleged conflict of interests detected, in which case a note with a proposal for referral ex officio was drawn up in order to verify the conflict of interests *ex post.* Moreover, during the same period, there were generated and sent for competent resolution by the National Agency for Public Procurement, a number of 62 integrity warnings and 28 notifications of irregularities.  ANI's balance sheet regarding the investigation of integrity incidents has gradually improved, the results being constantly improved, so that, after the establishment of this mechanism to prevent conflicts of interest in the procedure for awarding public contracts, by exporting goods practices and strengthening cooperation with institutions in the field of preventing and combating corruption as well as by implementing the measures and objectives contained in the National Anticorruption Strategy (SNA) 2016 - 2020, in the integrity plan and in the strategic document "Strategy for preventing and sanctioning conflicts of interest, of incompatibilities and unjustified assets (2016 - 2020) ”, developed by ANI, there was a downward trend in the number of integrity warnings confirmed at the end of 2020.  Furthermore, ANI has taken a series of measures in the direction of prevention and awareness, the integrity inspectors carrying out:  - actions for advising the responsible persons within the public entities, these steps materializing, during the reporting period, to a number of over 600 minutes.  - training sessions for persons from public institutions designated with the implementation of legal provisions on declarations of assets and interests, on filling in and submitting electronic forms of declarations.  **III.1.4. PREVENTION OF COLLUSIVE TENDERING**  In relation to public procurement, the Competition Council has two main areas of approach - fraud in procurement procedures and anti-competitive practices between tenderers. The Council does not intervene in the public procurement process. However, contracting authorities may decide to exclude tenderers from procedures on the basis of an opinion of the Competition Council, although opinions are not binding. The Competition Council receives on average about 40 requests for opinions per year and about two in terms of auction fraud.  With regard to the prevention of fraud in procurement procedures, the powers of the Competition Council relate, inter alia, to the development of guidelines to assist contracting authorities in assessing plausible indicators and economic operators participating in a joint tender in a public procurement procedure. Thus, the following documents / guidance materials were developed:   * *Recommendations on the captive effect (lock-in) in sensitive sectors in the field of public procurement, IT and medical equipment / apparatus*- are addressed to both contracting authorities and companies participating in public procurement procedures (2018). * *Guide on compliance with competition rules by business associations*- is addressed to business associations, as they are defined for the purpose of applying the regulations in the field of competition (2019-2020); * *The Joint Opinion of ANAP and the Competition Council regarding the evidence that an economic operator can provide to the contracting authority in order to demonstrate credibility,*according to the provisions of art. 171 of *Law no. 98/2016 on public procurement,* with subsequent amendments and completions, of art. 184 of *Law no. 99/2016 on sectoral procurement,* with subsequent amendments and completions and of art. 84 of *Law no. 100/2016 on works concessions and service concessions,* with subsequent amendments and completions (2020).   Also, the Competition Council organized, in collaboration with the American Chamber of Commerce in Romania - AmCham, the seminars " *Competition in public procurement - practical aspects"*and "*Competition in public procurement - Market sharing in tenders",*participating as a lecturer.   * In 2019, the Competition Council organized, in collaboration with the American Chamber of Commerce in Romania - AmCham, the seminar " *Competition in public procurement - Competitive risks and practical remedies" - "The look-in effect in the field of IT and medical equipment"*, participating as a lecturer. * In 2020, the Competition Council organized, in collaboration with the American Chamber of Commerce in Romania - AmCham, the seminar “Competition in public procurement - Competitive risks and practical remedies", with the theme of the Joint Opinion of the Competition Council and the National Agency for Public Procurement, on exclusions in public procurement due to infringements of competition rules.   Also, the Competition Council participated in the Conference launching the project implemented by ONAC (National Office for Centralized Procurement), "*Development and implementation of integrated electronic mechanisms for the development and monitoring of centralized procurement*".  During 2016-2020, the Competition Council was a partner of the Ministry of Administration and Interior - General Anticorruption Directorate, within the *Project Effective Mechanisms for Preventing and Combating Corruption in Public Administration,* participating as a lecturer in seminars organized throughout Romania. |
| **III.2. Supporting documents** |  |
| **Please provide any available evidence on the actions/mechanisms and measures described under section III.1. above demonstrating compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities and conflicts of interests.** | **III.2.1. Supporting documents regarding III.1.2. FIGHT AGAINST FRAUD**  *Law no. 61/2011 on the organization and functioning of the Department for the fight against fraud - DLAF, with subsequent amendments and completions, available at the following link:* [http://www.antifrauda.gov.ro/new/wp-content/uploads/2016/11/Lege-61-2011-1.pdf](http://www.antifrauda.gov.ro/new/wp-content/uploads/2016/11/Lege-61-2011-1.pdf%20%20%20)  *DLAF activity report for 2018,*available at the following link:<http://www.antifrauda.gov.ro/new/wp-content/uploads/2018/10/rap-EN-2018-final.pdf>  *DLAF activity report for 2019,*available at the following link: <http://www.antifrauda.gov.ro/new/wp-content/uploads/2018/10/raport-activitate-2019-en.pdf>  *EC report on the protection of the European Union's financial interests - combating fraud in 2018,*available at the following link:  <https://ec.europa.eu/anti-fraud/sites/antifraud/files/pif_report_2018_en.pdf>  *EC report on the protection of the European Union's financial interests - combating fraud in 2019,*available at the following link:  <https://ec.europa.eu/anti-fraud/sites/antifraud/files/pif_report_2019_en.pdf>  *National Anticorruption Strategy 2016 - 2020,*document available at the following link:  <https://sna.just.ro>  **III.2.2. Supporting documents regarding III.1.3. CONFLICT OF INTEREST IN PUBLIC PROCUREMENT**  *Law no. 78/2000 for the prevention, discovery and sanctioning of corruption,* available at the following link:  <https://www.integritate.eu/Files/Files/legislatie/098%20Legea%2078%20din%202000%20pentru%20prevenirea_%20descoperirea%20si%20sanctionarea%20faptelor%20de%20coruptie%20actualizata.pdf>  *Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignity, public office and in the business environment, the prevention and sanctioning of corruption ,* available at the following link*:*[https://www.integritate.eu/Files/Files/legislatie/097\_Legea\_161\_2003.pdf](https://www.integritate.eu/Files/Files/legislatie/097_Legea_161_2003.pdf%20)  *Law no. 286/2009 on the Criminal Code,* available at the following link: <http://legislatie.just.ro/Public/DetaliiDocument/109855>  *Law no. 184/2016 on the establishment of a mechanism to prevent conflicts of interest in the procedure for awarding public procurement contracts ,* available in English at the following link:  <https://www.integritate.eu/Files/Files/legislatie/087a%20%20Legea_184_din_2016_EN.pdf>  *Law no. 98/2016 on public procurement,*available at the following link:  [http://legislatie.just.ro/Public/DetaliiDocument/178667](http://legislatie.just.ro/Public/DetaliiDocument/178667%20)  *Law no. 99/2016 on sectoral procurement,*available at the following link:  [http://legislatie.just.ro/Public/DetaliiDocument/178661](%20http:/legislatie.just.ro/Public/DetaliiDocument/178661)  *Law no. 100/2016 on works concessions and service concessions,*available at the following link:  <http://legislatie.just.ro/Public/DetaliiDocument/178689>  The results of the PREVENT system <https://www.integritate.eu/PREVENT.aspx>  *Law no. 571/2004 on the protection of personnel from public authorities, public institutions and other units that report violations of the law,*available at the following link:  <http://legislatie.just.ro/Public/DetaliiDocumentAfis/57866>  *GEO no. 66/2011 on the prevention, detection and sanctioning of irregularities in obtaining and using European funds and / or national public funds related to them , available at the following link:*  <http://legislatie.just.ro/Public/DetaliiDocument/129701>  *Regulation on the organization and functioning of the National Integrity Agency,* published in the Official Journal of Romania, Part I, no. 841 of October 16, 2016, within the meaning of the distinct attributions of the integrity inspectors within the Analysis and Prevention Service. The document is available at the following link:: <https://www.integritate.eu/A.N.I/Organizare.aspx>  *ANI brochure,* available in English at the followinglink: <https://www.integritate.eu/Files/Files/Brosura%20ANI/001%20Brosura%20ANI%20-%20ENGLEZA.pdf>  *The guide of the person designated with the implementation of the provisions regarding the declarations of assets and declarations of interests ,* available at the following link:  <https://www.integritate.eu/Files/Files/Ghiduri%202013/00_Ghid%20persoane%20desemnate.pdf>  *Guide for completing wealth and interest declarations,* available at the following link: <https://www.integritate.eu/Files/Files/Ghiduri%202013/000_GHID%20COMPLETARE%20DAI.pdf>  *Guide to incompatibilities and conflicts of interest ,* available at the following link:  <https://www.integritate.eu/Files/Files/Ghiduri%202013/000_ghid%20incomp%20si%20conflicte.pdf>  *Collection of cases relevant to the central public administration regarding conflicts of interest, incompatibilities and unjustified wealth ,* available at the following link:  <https://www.integritate.eu/Files/Files/Ghiduri%202013/002%20Culegere%20de%20spete_2020_LINC.PDF>  **III.2.3. Supporting documents regarding III.1.4. PREVENTION OF COLLUSIVE TENDERING**    *Guide on compliance with competition rules by business associations -* is addressed to business associations, as they are defined for the purpose of enforcing competition regulations. The guide is available at the following link:<http://www.consiliulconcurentei.ro/wp-content/uploads/2021/02/Ghid-FINAL-ian-2021-SITE.pdf>  *The Joint Opinion of ANAP and the Competition Council regarding the evidence that an economic operator can provide to the contracting authority in order to demonstrate credibility,*according to the provisions of art. 171 of *Law no. 98/2016 on public procurement,* with subsequent amendments and completions, of art. 184 of *Law no. 99/2016 on sectoral procurement,* with subsequent amendments and completions and of art. 84 of *Law no. 100/2016 on works concessions and service concessions*, with subsequent amendments and completions, opinion available at the following link:  <http://www.consiliulconcurentei.ro/wp-content/uploads/2020/08/Opinie-comuna-CC-ANAP.pdf>  *Recommendations on the captive effect (lock-in) in sensitive sectors in the field of public procurement, IT and medical equipment / apparatus*- are addressed to both contracting authorities and companies participating in public procurement procedures. The recommendations are available at the following link:  <http://www.consiliulconcurentei.ro/wp-content/uploads/2019/03/recomandari_lock-in_it_si_aparatura_medicala.pdf> |
| **III.3. Quantitative indicators** |  |
| **Quantitative assessment of collusion risks** | The Competition Council finalized and sanctioned in the period 2018-2020, the following arrangements[[2]](#footnote-3):   * In 2018, the Competition Council completed 2 investigations regarding the violation of competition law in the context of tender procedures, being imposed fines amounting to about 19.4 million lei to a number of 16 companies, of which 4 admitted committing anti-competitive acts. The investigations concerned: * public procurement procedures organized by SNTGN TRANSGAZ SA Mediaș, in 2011, for awarding works contracts on the market for pipeline construction works for natural gas transmission and related works in Romania[[3]](#footnote-4); * open tender procedure with final phase of electronic tender, having as object the acquisition of modernization and maintenance services for naval mobility technique, organized by the General Inspectorate of the Border Police[[4]](#footnote-5); * the procedure for capitalizing the shaped wood material organized by Romsilva - Neamţ Forestry Department, on the market of the acquisition of the shaped wood material, resulting from the exploitation of the lots coming from the forest fund, public property of the state[[5]](#footnote-6). * In 2019, the Competition Council has completed 3 investigations regarding the violation of the competition legislation in the context of the tender procedures, being imposed fines amounting to about 8.7 million lei, to a number of 10 companies, of which 3 admitted committing anti-competitive acts. The investigations concerned: * public procurement procedures organized by the National Company for Road Infrastructure Management in Romania, in order to award current winter maintenance services for national roads and highways under the management of the Regional Directorate of Roads and Bridges Cluj, for the period 2013 – 20152015[[6]](#footnote-7); * public procurement procedures regarding road signs, organized in the period 2014 - 2016, by the National Company of Motorways and National Roads of Romania SA, currently the National Company for Road Infrastructure Management in Romania, on the market of vertical road signs and on the market for the sale of horizontal road signs[[7]](#footnote-8); * the public procurement procedure organized by the Hunedoara Forestry Directorate, as a contracting authority, in order to award the service contract, in 2017, on the security services market[[8]](#footnote-9). * In 2020, the Competition Council completed 4 investigations with the finding of the violation[[9]](#footnote-10)competition legislation in the context of the tender procedures, being imposed fines totaling about 168 million lei, a number of 40 companies, of which 19 acknowledged committingthe anti-competitive acts. Investigations concerned: * public procurement procedures organized by the Botoșani County Council, for the period 2015-2018, on the market for the supply of dairy products and apples within the school programs; * the public procurement procedure organized by the Piteşti Public Domain Administration, in 2018, on the market of street rehabilitation works in Piteşti; * procedures organized by TRANSGAZ[[10]](#footnote-11), on the market of pipeline construction works for natural gas transmission and related works in Romania, TRANSGAZ having the quality of facilitator of the unique and continuous concerted understanding and / or practice. |
| **Risk of undiscovered conflict of interest** | With regard to the ex ante assessment of alleged conflicts of interest, the analysis was carried out in real time, thus preventing the occurrence of no less than 118 cases of conflict of interest, while in one case the ex post verification was ordered, by drawing up a note with a proposal for ex officio notification.  Regarding the ex post verification, the data and information regarding the investigation of the presumed conflicts of interests can be found in the ANI Activity Reports, related to the period January 1, 2018 - December 31, 2020, these being available, exclusively in Romanian, on the website of ANI, Reports and Audit Section, respectively <https://www.integritate.eu/A.N.I/Rapoarte-%C8%99i-audit.aspx>.  Also regarding the ex post verification of the presumed conflicts of interests, ANI started the analysis of the direct procurement procedures, in the sense of verifying the administrative-territorial units in the first phase and, subsequently, starting with 2020, the hospitals entered the analysis. |

1. **Level of SMEs' participation in public procurement**

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| **IV.1. Qualitative reporting on SME participation** |  |
| **New developments** | **The information should focus on the new developments regarding the participation of SMEs in public procurement since the previous reporting exercise, and especially on the new measures taken in the respective Member State in order to support the participation of SMEs in public procurement.**  **These measures could include:**   * ***policy and legislative initiatives launched to support SMEs participation in public procurement;*** * ***measures targeting SME participation in different techniques for aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities);*** * ***measures targeting the participation of start-ups and scale-ups in public procurement;*** * ***measures ensuring that payment for public contracts are made on time, especially in the case of SMEs;*** * ***measures addressing the payments to subcontractors;*** * ***guidelines or instructions for contracting authorities on how to treat grouping (e.g. consortia) of SMEs;*** * ***guidelines for contracting authorities on the application of 'divide or explain' principle;*** * ***targets for SME participation in public procurement.***   **The information could also include the difficulties still existing in the Member State, concerning SMEs’ participation in public procurement.** |
| **IV.2. Quantitative indicators** |  |
| **Please provide, when available, any quantitative data (statistics, etc.) regarding SMEs’ participation in public procurement** | ***• SMEs that win contracts with a value above the EU public procurement threshold:***  ***1.******the number of contracts awarded to SMEs in the total number of contracts awarded, regardless of the tenderer's size class:***   * 2018: **20,147 contracts and framework agreements awarded to SMEs** * 2019: **17,794 contracts and framework agreements awarded to SMEs** * 2020: **17,239 contracts and framework agreements awarded to SMEs**   **“Number of contracts awarded to SMEs”** reflects the number of public/sectoral/concession contracts and framework agreements awarded/concluded by the Romanian contracting authorities/entities in the reference years 2018-2019-2020, following the award procedures of public procurement/sectoral/concession contracts by prior publication of a notice, the estimated value of which was greater than or equal to the thresholds set out in Directives 2014/23 / EU, 2014/24 / EU and 2014/25/EU (initiated after transposition of Directives - May 2016), published until 09.02.2021, with Romanian and foreign economic agents with the status of small and medium enterprise.  Reported to the results of the indicators in section I.2:   * For 2018, the share of public procurement contracts awarded to SMEs was 71% (out of a total of 28,211 contracts and framework agreements). * For 2019, the share of public procurement contracts awarded to SMEs was 71% (out of a total of 25,212 contracts and framework agreements). * For 2020, the share of public procurement contracts awarded to SMEs was 71% (out of a total of 24,210 contracts and framework agreements).   ***2.******the value of contracts awarded to SMEs in the total value of contracts awarded regardless of the size class of the tenderer:***   * 2018: **25,599,028.38 thousand lei** * 2019: **36,878,541.33 thousand lei** * 2020: **37,863,346.77 thousand lei**   **“Value of contracts awarded to SMEs”** reflects the total value of contracts and framework agreements (indicator calculated above) awarded/concluded by the contracting authorities/entities in Romania with economic operators with SME status.  Reported to the results of point I.2:   * From the value point of view, for 2018 the share of contracts and framework agreements entrusted to SMEs was at a level of 55% of the total value of contracts and framework agreements - 46,686,887.69 thousand lei. * From the value point of view, for 2019 the share of contracts and framework agreements entrusted to SMEs was at a level of 62% of the total value of contracts and framework agreements - 59,234,783.13 thousand lei. * From the value point of view, for 2020 the share of contracts and framework agreements entrusted to SMEs was at a level of 50% of the total value of contracts and framework agreements - 75,928,525.62 thousand lei.   *Calculation methodology*  *The participation of* ***SMEs in the field of public procurement*** *was measured by calculating the above indicators. We mention that those contracts awarded to several economic operators were also taken into account if at least one of them was an SME.*  *The monitoring indicators presented in this section are based on information derived exclusively from public procurement procedures whose estimated value is above the mandatory publication thresholds in the OJEU.* |

**V. Information on the practical implementation of national strategic procurement**

The following public institutions from Romania have contributed with data and/or information in order to draft Chapter V: National Agency for Public Procurement; Ministry of Environment, Waters and Forests; Ministry of Labour and Social Protection and Ministry of Education and Research.

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| **V.1 Green procurement ('GPP')** |  |
| **V.1.1 Qualitative reporting** |  |
| **Key challenges encountered** | Between 2018-2020, the endeavour of involving public authorities in using the environmental requirements has faced a number of **challenges**:  1) cultural - Green Public Procurement (GPE) involves a rethinking of the way in which the procurement department of a contracting authority is functioning because it involves the collaboration between this department and the various strategic directions, especially those of environmental protection at the level of the institution, in order to define the most relevant ecological criteria for the various categories of products and services, which support the respective institution to achieve its organizational environmental objectives;  2) organizational - the procurement need of a public institution is defined in the APPP (Annual Public Procurement Plan), which implies the necessity to plan and define in advance the GPP within an authority;  3) systemic – in the absence of a legislation with certain “obligations” regarding GPP, their practice should be encouraged by facilitating the exchange of good practices.  Through the constant involvement of the National Agency for Public Procurement (ANAP) and the Ministry of Environment, the integration of environmental considerations in the procurement procedures from Romania has been achieved progressively, based on sources of information and additional guidance available both at European and national level. The staff acquired practical knowledge in drafting the ecological criteria, especially in the procurement procedures for products and services, reffering to the methodological advice and operational tools available in the Online Guide of ANAP, the difficulties encountered being, in particular, those related to the way of evaluating the documents for the demonstration of the “green” characteristics of the offers of products/services in relation to the stated environmental requirements, but also the introduction of specific clauses in contracts, associated with these requirements.  Regarding the monitoring of green public procurement, Romania is in the process of introducing GPP implementation monitoring systems at national level by establishing specific procedures to be followed for collecting information. These are to be achieved, after the revision of Law no. 69/2016 on green public procurement, when the Ministry of Environment will draft, through an extensive consultation process in intra-institutional and inter-institutional technical working groups, the National Green Public Procurement Plan which will set mandatory multi-annual targets for the contracting authorities, for the horizon 2021 - 2024.  Since public procurement is carried out entirely through the Electronic Public Procurement System (SEAP), based on the facilities provided by its operator - The Authority for the Digitalization of Romania, monitoring is intended to be carried outin the simplest way possible,in order to not increase the administrative burden for the public buyers.  **Measures taken to overcome them:**  In Romania, the inclusion of ecological criteria in public procurement has been practiced since the publication of the ***Law no. 69/2016 on Green Public Procurement***, being created favorable conditions at national level to promote environmental protection and sustainable development by encouraging the development and application of clean and environmentally friendly technologies.  In 2018, in application of the National Action Plan on GPP - Ministry of Environment and ANAP issued the ***Joint Order no. 1068/1652/2018*** for approving the content of the **Green Public Procurement Guide** which imposes mandatory standards for certain sectors and types of contracts. It provides contracting authorities/entities with information on the mandatory minimum requirements regarding environmental protection that must be taken into account when drafting, in accordance with the law, the documentation for awarding green public procurement contracts/framework agreements related to certain categories of products and/or services such as: copy and graphic paper, new indoor and outdoor furniture, furniture renovation/refurbishment services and end-of-life cycle furniture stockpiles collection and reuse services, food and catering services, motor vehicles, cleaning products and services and office IT equipment (by reference to the European GPP criteria drafted by the European Commission: <http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm>).  When drawing up the tender specifications for the procurement of products and/or services provided in the Guide, **contracting authorities/entities are required** to insert the technical specifications and indications regarding the basic rules settled by this Guide, but not limited to it, so that the potential bidder can draw up the technical and financial proposal accordingly, while respecting the conditions for the protection of the environment.  Other supporting instruments:   * In order to enable the understanding of the specific criteria for green public procurement for the priority groups of products included in the above mentioned Joint Order, in December 2019, ANAP developed a ***Good Practice Guide for the Use of Evaluation Factors in the Procurement of Products***, that include recommendations for formulating the ecological assessment factors, but also examples of requirements and impact assessment factors based on the key provisions of Directive 24/2014/EU which reffer specifically to the ways in which social considerations are incorporated into the procurement process. * ***Guide for formulating criteria related to standards in the award documents***, developed by ANAP in collaboration with the Romanian Standardization Association, which includes examples of strategies to follow and practical suggestions in formulating environmental management requirements (published in August 2019);   In order to promote the inclusion of sustainable food products in procurement procedures, ANAP together with the Ministry of Agriculture and Rural Development (MADR), by **Joint Order 19/37/2018** updated in 2020 - on the approval of standardized documentation for awarding contracts/framework agreements for the supply of fruits, vegetables, dairy products and bakery products within the framework of the Romanian School Program - have created opportunities for the development and expansion of the market with environmentally friendly products, encouraging the introduction of quality criteria in the procurement of food, which allows taking into account the best balance between price and quality (specific characteristics of PDOs (Protected Designation of Origin), TSGs (Traditional Specialties Guaranteed), PGIs (Protected Geographical Indication), certified organic products, low transport footprint, traceability, short supply chain.  In accordance with *Commission Regulation (EU) 2019/1780 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (‘eForms’)*, the use of the new electronic standard forms associated with notices in the field of public procurement published at European level, will become mandatory starting with November 14th2023. In order to fulfill this obligation, the National Agency for Public Procurement has taken the following steps:   * By the Order of the President of the National Agency for Public Procurement no. 946/04.05.2020 was set up the Working Group on establishing decisions concerning the national implementation of the electronic forms – eForms, within which the decisions underlying the model for the national implementation of the electronic forms were discussed, these being communicated to the European Commission within the questionnaire sent via letter no. 4770/07.05.2020; * The National Agency for Public Procurement ensured the participation in the working meetings of the eForms subgroup within EXEP (Expert Group on eProcurement), managed by the European Commission - DG GROW, two representatives from ANAP being appointed; * In November 2020, the National Agency for Public Procurement submitted the funding application “Implementation of eForms at national level” through the CEF mechanism - Connecting Europe Facility, managed by the European Commission via INEA - Innovation and Networks Executive Agency, aiming the implementation at national level of the standard forms for the publication of notices in the field of public procurement - eForms. The funding application was submitted by the association formed by The Authority for the Digitalization of Romania, as beneficiary - coordinator, the National Agency for Public Procurement being included in the funding application as a project partner, together with NTT Data Romania, private partner. * The implementation of new eForms at national level, in particular of notices regarding social, green and innovation public procurement will allow the National Agency for Public Procurement to monitor strategic public procurement and develop public policies with the aim of increasing the administrative capacity of contracting authorities/entities to carry out such public procurement processes.   Through the SIPOCA 625 Project and the technical assistance agreement signed between the National Agency for Public Procurement and the World Bank, several documents which will be the basis for the professionalization of the staff responsible for public procurement, have been developed. In this context, in 2020, two competency frameworks for the public functions of public procurement counselor and public procurement system counselor were developed. These competency frameworks are taking into consideration competencies regarding **sustainable development**, a core competency specific to the procurement managerial function at the level of the contracting authority. This competence was also taken over in the proposal for the revision of the occupational standard for the occupation of public procurement expert, as well as in the theoretical and practical training syllabus that accompanies this document. Therefore, the revised occupational standard will take into account the use of the requirements, tools and techniques supporting sustainable development objectives in public procurement by practitioners and their training through a module dedicated to procurement that promotes horizontal policies. |
| **V.1.2. Supporting documents** |  |
| **Please report any available evidence or supporting document for point V.1, illustrating the measures, achievements or challenges faced, relating to the use of green public procurement.** | In accordance with the provisions of Law no. 69/2016 on green public procurement, *green public procurement is the process by which the contracting authorities use criteria regarding environmental protection alowing to improve the quality of services and optimize costs with public procurement in the short, medium and long term.*  The document is available at the following link:  <http://legislatie.just.ro/Public/DetaliiDocumentAfis/177918>  Order of the Ministry of Environment and the National Agency for Public Procurement no. 1068/1652/2018 *for the approval of the* ***Green Public Procurement Guide*** *which includes the minimum requirements regarding environmental protection for certain groups of products and services, requested at the level of specifications.*  The document is available at the following link:  <http://anap.gov.ro/web/ordinul-nr-1068-1652-2018-din-4-octombrie-2018-pentru-aprobarea-ghidului-de-achizitii-publice-verzi-care-cuprinde-cerintele-minime-privind-protectia-mediului-pentru-anumite-grupe-de-produse-si-servic/>.  ***Good Practice Guide for the Use of Evaluation Factors in the Procurement of Products – 2019.***The document also addresses impact assessment factors in favour of the environment. The evaluation factors have been structured on three levels of interest: climate change/CO2 emissions, air and water quality, resource use and waste management, and cover seven product groups: agri-food products; electrical and electronic healthcare equipments; IT equipment: fixed, portable computers, monitors and printers; copy paper and graphic paper; textiles; electric vehicles; fuels.  The document is available at the following link:  <http://anap.gov.ro/web/wp-content/uploads/2020/02/ghid-Catalog_factori_produse_ANAP.pdf>  ***Guide for formulating criteria related to standards in award documentations***, developed by ANAP in collaboration with the Romanian Standardization Association.The document is available at the following link:  http://anap.gov.ro/web/wp-content/uploads/2019/08/Indrumar-ANAP-final\_august2019.pdf |
| **V.1.3. Quantitative indicators** | - |
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| **V.2 Socially responsible public procurement ('SRPP')** |  |
| **V.2.1 Qualitative reporting** |  |
| **Key challenges encountered** | **Key challenges encountered in promoting socially responsibile public procurement**  Unlike green public procurement defined by *"sense of responsibility towards the environment"* especially those reserved for product categories with a major impact on the environment, enjoying a well-defined regulatory framework (from national strategy, legislative norms to guides of good practice), socially responsible public procurement and, implicitly, social inclusion criteria, have not received the same level of attention from the institutions with regulatory responsibilities in the field.  Although the fields of activity of the sheltered workshops are diversified including both production (metal, cardboard packaging manufacture, textile, decorations and handicrafts manufacturing, etc.) and services (accounting, secretarial, archiving, printing, organizing events, activities in the IT field, etc.), the use of procedures regarding the reserved procurement/contracts between 2018 and 2020 was very low in Romania. According to the provision of the national procurement legislation, reserved contracts can be applied on a much larger scale so that the impact on the social inclusion of people with disabilities or those from vulnerable groups to be much greater.  The main challenges of implementing the provisions of the legislation on public procurement regarding the reserved contracts in the time frame 2018-2020 were related to:  - the low level of professionalism of public procurement practitioners and the large number of contracting authorities/entities having a low budget allocated to expenditures on public procurement, which perform routine public procurement, are barriers regarding the use of both environmental and social criteria as well as innovation in public procurement processes. As a rule, contracting authorities/entities carrying out public procurement processes with a significant budget, having regional and/or national level coverage tend to see the strategic potential of public procurement;  - low knowledge of the legal provisions regarding the reserved procurement/contracts, both by the public authorities and by the NGOs which are providers of social services of general interest, as well as by those that manage sheltered workshops or social insertion enterprises;  - contracting authorities/entities have no longer identified the benefits for awarding reserved contracts to sheltered workshops, in the context of the August 2017 amendment to the legislation on the protection and promotion of the rights ofpersons with disabilities. The amendment consisted in canceling the possibility for public institutions or legal entities, public or private, which have at least 50 employees and did not employ people with disabilities in a percentage of 4% of the total number of employees, to opt for the procurement of products/services offered through the own activity of the disabled persons employed in the sheltered workshops;  These new provisions have led to a dramatic decrease in the activity of the sheltered workshops, because the market for their products has been substantially reduced given that their production costs are higher than those of other economic operators and cannot be competitive on the market. At the same time, the conditions for setting up the sheltered workshops were changed, so that sheltered workshops had to re-authorize and did not do so;  - reluctance on the part of public authorities to carry out socially responsible public procurement, due to a perception of the control institutions/courts to consider them as favoring certain organizations/economic operators, which makes them not to be open to apply social criteria.  **Measures taken to overcome the challenges:**   * In order to facilitate social inclusion of vulnerable people as well as to create adequate communication channels and specific measures to strengthen administrative capacities, ANAP started in 2018 a dialogue with the Ministry of Labor and Social Protection, with the General Directorates of Social Assistance and Child Protection and with non-profit organizations that have collected relevant data from research on the implementation of legislative provisions on reserved procurement. The results of the dialogue and collaboration between the parties have contributed to the publication of the **Guide on awarding reserved contracts and contracting social services** developed by the Center for Nonprofit Legislation (CLNR) within the framework of the project "Promoting reserved procurement contracts", implemented by CLNR between April 2018 and May 2019 , with the financial support of the Fund for Civic Innovation, a program developed by the Foundation for Civil Society Development in partnership with the Romanian-American Foundation, supported by Enel Romania, Raiffeisen Bank and Ursus Breweries. * **In 2019**, the representatives of the National Agency for Public Procurement (ANAP) participated at the conference ***Concrete Opportunities to Acquiring Social Value in and through Public Procurement - Between Law and Praxis*** where they held a presentation on the subject “*From the decision to procure to the completion of the procurement - different ways to pursue social objectives through public procurement* ”. The presentation focused on the stages of public procurement in which social considerations can be introduced, as follows: elaboration of the policy regarding procurement with social impact at the level of the contracting authority/entity; planning and organizing public procurement, execution and monitoring of contract implementation. The event was organized by ENSIE (European Network of Social Integration Enterprises), with the support and guidance of the European Commission - DG GROW, and by RISE Romania (Romanian Network of Social Integration Enterprises). The conference was organized in the context of the implementation of the European project "Buying for Social Impact". This project aims to encourage contracting authorities to use public procurement to pursue social objectives and to enhance market opportunities for social economy enterprises. * Through the SIPOCA 625 project and the technical assistance agreement signed, on May 24th 2019, between the National Agency for Public Procurement and the World Bank, were drafted several documents which will be the basis for the professionalization of the staff responsible for public procurement. In this context, two competency frameworks for the public positions of public procurement councelor and public procurement system councelor, have been developed. The competency frameworks take into account the component regarding **sustainable development**, a core competency specific to the procurement managerial function at the contracting authority level. This competence has been taken over in the proposal for the revision of the occupational standard for the occupation of public procurement expert and in the theoretical and practical training syllabus that accompanies this document. Therefore, the revised occupational standard will take into account the use of requirements, tools and techniques that support sustainable development objectives in public procurement by practitioners and their training through a module dedicated to procurement that promotes horizontal policies. * **In 2019** ANAP had developed the *Good practice guide for the use of evaluation factors in the procurement of products*. The document also targets the impact assessment factors in promoting and/or increasing social inclusion based on the three main priorities of the Europe 2020 Strategy: * smart growth: developing an economy based on knowledge and innovation; * sustainable growth: promoting a more efficient, greener and more competitive economy; * inclusive growth: encouraging an economy with a high level of employment, providing social and territorial cohesion.   The good practice guidelines included in the guide are offering to the contracting authorities the opportunity to require, in addition to the established social requirements (accessibility for people with disabilities or related to the employment of the unemployed), other requirements as well, such as: banning child labor, equal opportunities, facilitating access to the labor market, reconciling work and private life, etc. The document also includes templates of forms for tracking social clauses during public procurement contracts, since it is known that the lack of specific clauses to verify compliance with these social requirements or sanctions for non-compliance would lead to failure to achieve the expected results.   * **In 2020,** ANAP operated legislative amendments in the field of public procurement regarding the award of contracts/framework agreements that concern **social services and other specific services** (see EMERGENCY ORDINANCE no. 114/09.07.2020 on amending and supplementing certain regulatory documents with an impact in the field of public procurement) which aimed to place them in a flexible regime ("light-touch regime"). * **In August 2020**, by Law no. 193/21.08.2020, were made amendments to the legislation regarding the protection and promotion of the rights of persons with disabilities, related to the authorization of sheltered workshops.Through these, the possibility that **half of the value of payments from legal entities for non-employed disabled persons to be used for the procurement of products and services from sheltered workshops** had been reintroduced. Therefore, public authorities and institutions, legal, public or private entities, which do not employ persons with disabilities under the conditions provided by law, may opt for one of the following obligations:   *a) to pay a monthly amount to the state budget, representing the minimum gross basic salary guaranteed in payment at national level, multiplied by the number of jobs in which they did not employ people with disabilities;*  *b) to pay a monthly amount to the state budget, representing the equivalent of at least 50% of the minimum gross basic salary guaranteed in payment at national level multiplied by the number of jobs in which they did not employ people with disabilities, and with the amount representing the gap up to the amount provided in para. a) to procure, on a partnership basis, products or services made through the own activity of the disabled persons employed in protected shelters.*   * In the project of the **Ministry of Labour and Social Protection** (MMPS) related to the *Action plan for the implementation of the national strategy for inclusion and poverty reduction for the time frame 2021-2027,* which is under public debate, following the proposals resulted from the public debates, measures were included for this purpose, such as:   a) Facilitating the application of the instruments provided by law for contracting social services, by concluding contracts for the procurement/concession of social services between administrative territorial units and social service providers, respectively the approval of the *Joint Order of the Minister of Labor and Social Protection and the President of the National Agency for Public Procurement for approving indicative models of the contracting authority's own procedures, in the award of procurement contracts for providing social services*;  b) Promoting the instrument of reserved procurement/social clauses which can be performed by the public authorities from social insertion enterprises according to the legislation in force; National campaigns/actions carried out among public authorities regarding the application of public procurement legislation regarding reserved contracts;  c) Development of a training program for public authorities in performing reserved procurement or with social clauses included in the specifications;  d) Elaboration of the study on specific measures that can contribute to the development of the social economy in the community: financing/subsidy schemes, granted by local fiscal and non-fiscal facilities, reserved procurement/social clauses in a certain percentage of the annual procurement budget, concession activities etc.   * The Ministry of Labour and Social Protection requested to include the subject of contracting social services in the control plan of the National Agency for Payments and Social Inspection: the obligation of local public administration authorities to set up, in the specialized apparatus of the County/Mayor’s Council, the department responsible for contracting social services, approval of the *Annual Action Plans on social services* and contracting social services with public and private providers in order to ensure the right to social assistance, according to the law. * **The Ministry of Labour and Social Protection** has supported the endeavours of the National Agency for Public Procurement and the NGOs regarding the drafting of a set of operational tools to support the incorportation of social conditions in award documentations for public procurement contracts as well as drafting a guideline on procedural rules applicable to the procurement of social services and reserved contracts, during the year 2020, the first draft of this guideline being drawn up**.** * From the perspective of **monitoring responsible public procurement contracts**, we assess that the social aspects cannot be effectively measured in the short term. Monitoring is extemelly important because no qualification/selection criteria or evaluation factors can be imposed which, however, cannot be verified, if the contracting authority/entity have no intention to verify them.   Because of these considerations, ANAP considers that a unitary approach should be ensured at national level and the competent authorities, at central and local level, should decide which are the priorities, providing information on the risks related to economic sectors, in order to ensure that the proposed measures would have a direct impact, could be measured and would be sustainable.  **On the other hand, the implementation of new eForms at national level, in particular of notices regarding social, environmental and innovation public procurement, will allow the National Agency for Public Procurement to monitor strategic public procurement and to develop public policies in order to increase the administrative capacity of contracting authorities/entities to carry out such public procurement processes.**  In the same context, starting from the fulfillment of the obligation to apply the provisions of *Commission Implementing Regulation (EU) 2019/1780 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (‘eForms’)*, The National Agency for Public Procurement has taken the following steps:   * By the *Order of the President of the National Agency for Public Procurement no. 946/04.05.2020* was set up the Working Group on establishing decisions concerning the national implementation of the electronic forms – eForms, within which the decisions underlying the model for the national implementation of the electronic forms were discussed, these being communicated to the European Commission within the questionnaire sent via letter no. 4770/07.05.2020; * ensured the participation in the working meetings of the eForms subgroup within EXEP (Expert Group on eProcurement), managed by the European Commission - DG GROW, two representatives from ANAP being appointed; * In November 2020, submitted the funding application “*Implementation of eForms at national level*” through the CEF mechanism - Connecting Europe Facility, managed by the European Commission via INEA - Innovation and Networks Executive Agency, aiming the implementation at national level of the standard forms for the publication of notices in the field of public procurement - eForms. The funding application was submitted by the association formed by The Authority for the Digitalization of Romania, as beneficiary - coordinator, the National Agency for Public Procurement being included in the funding application as a project partner, together with NTT Data Romania, private partner.   **Difficulties that still exist in the Member State**  Among practitioners there is risk aversion, resistance to change and fear of personal and institutional responsibility, which affects public procurement performance and the freedom to innovate in sectors such as social or environmental. |
| **V.2.2. Supporting documents** |  |
| **Please report any available evidence or supporting document for point V.2.1 illustrating the measures, achievements or challenges faced, relating to the promotion of SRPP.** | Guide on awarding reserved contracts and contracting social services  <https://www.clnr.ro/wp-content/uploads/2019/06/II.-Ghid_contracte_rezervate_SO_final_machetat.pdf>  Good practice guide for the use of evaluation factors in the procurement of products - <http://anap.gov.ro/web/wp-content/uploads/2020/02/ghid-Catalog_factori_produse_ANAP.pdf>  Emergency Ordinance no. 114/09.07.2020 regarding the amendment and completion of some regulatory documents with impact in the field of public procurement  <http://anap.gov.ro/web/wp-content/uploads/2020/07/ORDONANTA-de-URGENTA-nr.-114-09.07.2020.pdf> |
| **V.2.3. Quantitative indicators** |  |
|  |  |
| **V.3 Public procurement of innovation** |  |
| **V.3.1 Qualitative reporting** |  |
| **Key challenges encountered** | **Key challenges encountered in promoting innovation procurement**  Despite the possibilities offered by innovation-related public procurement legislation, there are still uncertainties across the whole public administration that affect the practical application of innovation solutions. At national level, innovative public procurement is a little known concept, national guidance and debate being needed regarding the establishment/assumption of strategic objectives at European level and especially their connection to the field of public procurement.  ANAP can contribute to the identification of the organizational barriers and those related to the limited expertise/experience of contracting authorities, which is affecting the initiating of innovative public procurement.  In order to become able to understand and encourage the new approaches necessary to solve the complex problems of society, contracting authorities must primarily acquire new tools, knowledge, skills and connections with the aim to identify appropriate opportunities to manage the innovation process in field of public procurement.  Achizițiile de cercetare și inovare sunt văzute ca antrenând bugete semnificative, astfel că procedurile și documentațiile de atribuire încă nu sunt pregătite să includă explicit inovarea ca o cerință esențială.  Research and innovation procurement is seen as involving significant budgets, so that award procedures and documentations are not yet ready to explicitly include innovation as a key requirement.On the other hand, the special situation provided in art. 36 of Law no. 98/2016 (art. 14 of Directive 24/2014/ EU) must be clarified, so that the contracting authorities/entities are guided on the manner of action in the situations where they do not fall within the cumulative requirements of the above mentioned article.  No information is available on the objectives of contracting authorities/entities regarding the inclusion of **innovation criteria** in public procurement processes, nor on the level of achievement of these objectives. In the electronic public procurement system (SEAP), there are currently no filters for retrieving information on innovation public procurement, therefore ANAP cannot monitor the extent to which contracting authorities/entities use innovation criteria and, at the same time, cannot properly substantiate the related public policies.  **Measures taken to overcome the main challenges**   * In 2020, ANAP considered it opportune to start the activities of **elaboration and promotion of a policy document in the field of public procurement, on all three identified sectors: environment, social and innovation, following to elaborate a new strategy in the field of public procurement**, taking into account the powerful impact of the COVID - 19 crisis on all activities that have substantially changed the strategies and behavior of economic operators in terms of sustainability and responsible investment. * Through the SIPOCA 625 Project - *Support on the implementation of the National Strategy for Public Procurement (SNAP) by strengthening the administrative capacity of ANAP and the contracting authorities* and the technical assistance agreement signed between the National Agency for Public Procurement and the World Bank on May 24th2019, several documents which will be the basis for the professionalization of the staff responsible for public procurement, have been developed. In this context, in 2020, two competency frameworks for the public functions of public procurement counselor and public procurement system counselor were developed. These competency frameworks are taking into consideration the competency regarding **public procurement promoting innovation,** a core competency specific to the procurement managerial function at the level of contracting authority. This competency was also taken over in the proposal for the revision of the occupational standard for the occupation of "public procurement expert", as well as in the theoretical and practical training syllabus that accompanies this document. Therefore, the revised occupational standard will take into account the use of the requirements, tools and techniques in public procurementthrough which innovative solutions can be procured by practitioners and their training through a module dedicated to procurement that promotes horizontal policies. * In 2018, ANAP and the World Bank organized in Bucharest the 14thedition of the PRIMO Forum - Procurement, Integrity, Management and Openness. The subject of the forum was "Public Procurement, Innovation and Strategy". Public procurement specialists from Europe and Asia shared their experiences and best practices in public procurement reform, with a focus on innovative procurement systems that can support national development priorities. The event brought together about 100 representatives from the field of public procurement, from 24 countries, including: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Georgia, Kazakhstan, Serbia, Slovenia, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan and Bulgaria. The event was organized by ANAP and the World Bank, in collaboration with the European Investment Bank (EIB), SIGMA, OECD,UNCITRAL and co-sponsored by the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the Islamic Bank for Development (ISDB).   <https://www.worldbank.org/en/events/2018/05/08/14th-procurement-integrity-management-and-openness-primo-forum#5>   * In 2019, ANAP and the Ministry of Research, Innovation and Digitalisation disseminated the European Commission's initiative on European Assistance for Procurement in Innovation, through which free support is provided to public procurers from all EU Member States regarding the implementation of public procurement of innovative solutions; * In 2020, the Agency for Regional Development Bucharest - Ilfov, partner within the iBuy project - “Fostering the role of public authorities as demanders of innovation through public procurement”, elaborated the **Practical Guide on Innovative Public Procurement (IPP).**   **Difficulties that still exist in the Member State**   * lack of predictability in terms of research, development and innovation (RDI) funding; * lack of project competitions dedicated to innovation and procurement of innovation services for RDI activities; * lack of programmes dedicated to funding continuous professional training courses in order to develop IT-specific skills (innovation manager, technology broker, intellectual property specialist, etc.) and business models for the human resources involved in RDI activities; * insufficient financial measures in order to boost research-development and innovation entities and units, aiming to increase innovation and create new highly specialized jobs; * unsustainable measures and policies for the creation of an entrepreneurial culture, open to the implementation of local research results; * insufficient measures and policies that would lead to the increase in awareness of the potential innovative environment in Romania on the importance and necessity to use innovative processes and to protect the intellectual property rights resulted from these processes. |
| **V.3.2. Supporting documents** |  |
| **Please report any available evidence or supporting document illustrating the measures, achievements or challenges faced, relating to the promotion and implementation of innovation procurement.** | *Practical Guide on Innovative Public Procurement - the document can be found at the following link:*  <https://www.interregeurope.eu/fileadmin/user_upload/tx_tevprojects/library/file_1590771615.pdf> |
| For purchases made under the EU thresholds, please report any information or document demonstrating that purchase of innovative solutions have been made (e.g.: innovation partnerships or the use of the innovation criterion). | |

**VI.** **Information on monitoring and reporting bodies**

The National Agency for Public Procurement (ANAP) is a public institution and functions as a specialized body of the central public administration, with legal personality, subordinated to the General Secretariat of the Government, being fully financed from the state budget, through the budget of the General Secretariat of the Government. The main objectives of ANAP are the elaboration, promotion and implementation of the policy in the field of public procurement, the establishment and implementation of the system of verification and control of the unitary application of legal and procedural provisions in the field of public procurement, and the monitoring of the efficient functioning of the public procurement system.

**VII.** **Replicability**

|  |  |
| --- | --- |
| **Links to datasets used to prepare the report** | **The Commission recommends publishing the source data as open data, e.g. as is the case for the Tenders Electronic Daily database at** <http://data.europa.eu/euodp/cs/data/dataset/ted-csv>.  [www.e-licitatie.ro](http://www.e-licitatie.ro)  If individuals or legal entities are interested in reproducing the quantitative results presented in the report and use other sources of information than the one presented above, (eg www.data.gov.ro) they must ensure that these sources do not contain material errors, which can significantly alter the results obtained. |
| **Files used to obtain the results from the datasets** | **This section should include for example the scripts or code for the relevant statistical software or the Excel files used.**  The data sets used to obtain the quantitative indicators in this report come from the following public institutions:  - **Authority for the Digitization of Romania (ADR)**, institution that manages the public utility site SEAP available at https://www.e-licitatie.ro: reports generated for the period subject to analysis.  The data sets used are attached to the e-mail by which the monitoring report was submitted (see Excel file RO\_Contracts\_2018\_2019\_2020). |
| **Other complementary data** | The submission of any other disaggregated datasets (e.g. flat files containing below EU threshold contracts) is encouraged. |

**Note:**

The data were taken from the Electronic Public Procurement System, as they were published by the contracting authorities / entities in Romania. We mention that the accuracy of the data may be affected by material errors registered when completing / publishing them by the contracting authorities / entities within the Electronic Public Procurement System.

**Annex I: Value thresholds for the application of procedures for the award of public / sectoral procurement contracts / framework agreements, works** **concessions contracts and service concessions contracts**

|  |  |  |
| --- | --- | --- |
| Article from national legislation | Threshold value between 01.01.2018 - 31.12.2019 | Threshold value from 01.01.2020 |
| Art. 7 of Law 98/2016 transposes art. 4 of Directive 2014/24 / EU. | **648.288 lei**  **144.000 euro**  Products and services | **649.895 lei**  **139.000 euro**  Products and services |
| Art. 12 of Law 99/2016 transposes art. 15 of Directive 2014/25 / EU. | **1.994.386 Lei**  **443.000 Euro**  Products and services | **2.001.114 lei**  **428.000 euro**  Products and services |
| Art. 7 of Law 98/2016 transposes art. 4 of Directive 2014/24 / EU. | **994.942 lei**  **221.000 euro**  Products and services -  local contracting authorities | **1.000.557 lei**  **214.000 euro**  Products and services -  local contracting authorities |
| Art. 7 of Law 98/2016 transposes art. 4 of Directive 2014/24 / EU. | **24.977.096 lei**  **5.548.000 euro**  Works | **25.013.925 lei**  **5.350.000 euro**  Works |
| Art. 12 of Law 99/2016 transposes art. 15 of Directive 2014/25 / EU. | **24.977.096 lei**  **5.548.000 euro**  Works | **25.013.925 lei**  **5.350.000 euro**  Works |
| Art. 7 of Law 98/2016 transposes art. 4 of Directive 2014/24 / EU. | **3.376.500 lei**  **750.000 euro**  Social services and other specific services | **3.506.625 lei**  **750.000 euro**  Social services and other specific services |
| Art. 12 of Law 99/2016 transposes art. 15 of Directive 2014/25 / EU. | **4.502.000 lei**  **1.000.000 euro**  Social services and other specific services | **4.675.500 lei**  **1.000.000 euro**  Social services and other specific services |
| Art. 11 of Law 100/2016 transposes art. 8 para. (1) of Directive 2014/23 / EU. | **24.977.096 Lei**  **5.548.000 euro**  Works concessions or service concessions | **25,013,925.00 lei**  **5.350.000 euro**  Works concessions or service concessions |

**Annex II:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **2018** | **2019** | **2020** |
| **Number of notices announcing a call for competition above thresholds** | 4,230 | 5,280 | 4,987 |
| **Number of notices announcing a call for competition below thresholds** | - | - | - |
| **Number of awarded contracts above thresholds** | 28,211 | 25,212 | 24,210 |
| **Number of awarded contracts below thresholds** |  |  | - |
| **Total value of procurement above EU thresholds (EUR/National currency)** | 46,686,887.69 Thousand lei | 59,234,783.13 Thousand lei | 75,928,525.62 Thousand lei |
| **Total value of procurement below EU thresholds (EUR/National currency)** | - | - | - |

**Annex III**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **2018** | **2019** | **2020** |
| **Number of decisions** |  |  |  |
|  |  |  |  |
| **On the subject of the complaint** | Information about this indicator can be found in the CNSC report published at:  [**http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf**](http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf) | Information about this indicator can be found in the CNSC report published at:  [**http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf**](http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf) | For 2020, CNSC has not published the activity report until this date. |
| **upon a contestation** | **3186** | **2351** | **2453** |
| **upon a complaint** | **1823 \*** | **975 \*** | **626 \*** |
| ***ex officio*** | \*\* | \*\* | \*\* |
| **Comments** | \* The statistical data available in the databases, which are managed by the Ministry of Justice, are updated quarterly, based on the data that are entered into the ECRIS system available at each court level by specialized court staff, based on the nomenclature of objects related to this system.  There are no other elements available to disaggregate the available data according to other criteria (such as the thresholds for which it is mandatory to send for publication to the Official Journal of the European Union, the stage of filing the complaint in court or criteria on the subject of the complaint, number of cases exercised as a result of appeals or the number of cases exercised ex officio).  \*\* *Law no. 101/2016 on remedies and appeals in the matter of awarding public procurement contracts, sectoral contracts and works concession and service concession contracts, as well as for the organization and functioning of the National Council for Solving Complaints* transposing *Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Council Directive 92/13 / EEC of 25 February 1992 on the coordination of laws, regulations and administrative provisions relating to the application of Community rules on public procurement procedures of entities operating in the water, energy, transport and telecommunications sectors* **does not provide for ex officio notification. CNSC and the court are invested as a result of filing a decision / complaint**. | | |
| **Median length of the review** |  |  |  |
| **upon an a contestation** | **25 zile \*** | **25 zile \*** | **25 zile \*** |
| **upon a complaint** | **205 zile \*\*** | **231 zile \*\*** | **234 zile \*\*** |
| ***ex officio*** |  |  |  |
| **Comments** | \* According to Art. 24 of Law no. 101/2016 CNSC solves on the merits the contestation within 20 days from the date of receipt of the public procurement file and in duly justified cases the term for resolving the contestation may be extended by 10 days. The average duration of the settlement as a result of the contestations is calculated from the date of filing the contestation and the date of issuing the decision by CNSC.  \*\* The average duration of the settlement as a result of the complaints is calculated from the moment of the submission of the file in the first instance and the moment of the statistical closing of the court decision by this court. | | |
| **Number of review decisions challenged**  (Total number of decisions issued by CNSC and of the decisions of the courts challenged at the Courts of Appeal) | **1905** | **1316** | **1050** |
| **Number of decisions (primarily) upheld** (Total number of decisions issued by the Courts of Appeal against CNSC decisions and court decisions with a confirmation solution) | **917** | **521** | **277** |
| **Number of decisions (primarily) rejected**  (Total number of decisions issued by the Courts of Appeal against CNSC decisions and court decisions with cassation solution) | **186** | **174** | **100** |
| **Number of decisions - other** (Total number of decisions issued by the Courts of Appeal against CNSC decisions and court decisions with another type of solution) | **436** | **356** | **190** |
| **Comments** | Information about this indicator can be found in the CNSC report published at:  [**http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf**](http://www.cnsc.ro/wp-content/uploads/2019/raport/Raport.2018.RO.pdf)  **- the situations transmitted by the Ministry of Justice, the Superior Council of Magistracy, Courts of Appeal**  There are no other elements available to disaggregate the available data according to other criteria (such as the thresholds for which it is mandatory to send for publication to the Official Journal of the European Union, the stage of filing the complaint in court or criteria on the subject of the complaint, number of cases exercised as a result of contestations or the number of cases exercised ex officio). | Information about this indicator can be found in the CNSC report published at:  [**http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf**](http://www.cnsc.ro/wp-content/uploads/2020/raport/Raport.2019.RO.pdf)  **- the situations transmitted by the Ministry of Justice, the Superior Council of Magistracy, Courts of Appeal**  There are no other elements available to disaggregate the available data according to other criteria (such as the thresholds for which it is mandatory to send for publication to the Official Journal of the European Union, the stage of filing the complaint in court or criteria on the subject of the complaint, number of cases exercised as a result of contestations or the number of cases exercised ex officio). | For 2020, CNSC has not published the activity report until this date.  **- the situations transmitted by the Ministry of Justice, the Superior Council of Magistracy, Courts of Appeal**  There are no other elements available to disaggregate the available data according to other criteria (such as the thresholds for which it is mandatory to send for publication to the Official Journal of the European Union, the stage of filing the complaint in court or criteria on the subject of the complaint, number of cases exercised as a result of contestations or the number of cases exercised ex officio). |

1. For the 2018 report see <https://ec.europa.eu/anti-fraud/sites/antifraud/files/pif_report_2018_en.pdf>,

   For the 2019 report see <https://ec.europa.eu/anti-fraud/sites/antifraud/files/pif_report_2019_en.pdf> [↑](#footnote-ref-2)
2. 2The decisions are available on the Competition Council's website. Regarding the sanctions applied in 2020, after publication, the decisions will be available on the Competition Council's website. [↑](#footnote-ref-3)
3. The decision is available on the Competition Council's website: <http://www.consiliulconcurentei.ro/wp-content/uploads/2020/07/Decizie-pt-publicare-var-neconfidentiala-fara-semnatura-presedintelui.pdf> [↑](#footnote-ref-4)
4. The decision is available on the Competition Council's website:http://www.consiliulconcurentei.ro/wp-content/uploads/2019/07/decizia\_nr\_74-2018.pdf. [↑](#footnote-ref-5)
5. The decision is available on the Competition Council's website:http://www.consiliulconcurentei.ro/wp-content/uploads/2019/02/decizia\_cc\_nr\_56-2018.pdf. [↑](#footnote-ref-6)
6. The decision is available on the Competition Council's website: <http://www.consiliulconcurentei.ro/wp-content/uploads/2020/01/decizie_deszapezire_site.pdf>. [↑](#footnote-ref-7)
7. The decision is available on the Competition Council's website: <http://www.consiliulconcurentei.ro/wp-content/uploads/2020/08/decizie_90_neconf_finala_site.pdf>. [↑](#footnote-ref-8)
8. The decision is available on the Competition Council's website: http://www.consiliulconcurentei.ro/wp-content/uploads/2020/07/Decizie-78-din-2019-publicare-site.pdf. [↑](#footnote-ref-9)
9. After publication, the decisions will be available at: http://www.consiliulconcurentei.ro/documente-oficiale/concurenta/decizii/. [↑](#footnote-ref-10)
10. NATIONAL NATURAL GAS TRANSPORT COMPANY TRANSGAZ S.A. [↑](#footnote-ref-11)