



NATIONAL AGENCY FOR PUBLIC PROCUREMENT

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# **National Agency for Public Procurement (NAPP/**ANAP**)**

## **Monitoring and Supervision of the Public Procurement System**

**December 15, 2022**



## Role of ANAP in the Institutional System

- ▶ **National Agency for Public Procurement (NAPP/ANAP)**
  - regulating body in the field of public procurement
  - main activities:
    - elaboration of policies and laws,
    - methodological coordination and operational support,
    - ex-ante verifications (tender documentation and tenders' evaluation process),
    - conciliation procedure with the ex-ante verified contracting authorities;
    - **monitoring and supervision of the public procurement system.**



## Set up of ANAP

- ▶ Following the recommendation of the European Commission, ANAP was set up by the Romanian Government in May 2015 by merging:
  - former UCVAP (structure entitled to “ex-ante” verification the procedural aspects related to the award process of public procurement contracts) and
  - former ANRMAP (structure entitled to “ex ante” verification of the tender documentation, regulation of the public procurement field and monitoring the results of the process of awarding public procurement contracts)
- ▶ under the authority of the Ministry of Finance.
- currently ANAP is [under the authority of the General Secretariat of the Government.](#)



## Reforming public procurement

The public procurement system was reformed starting from 2015, following the measures assumed by the Government in the **National Public Procurement Strategy**, which:

- aimed at improving the system by transposing the new European directives into national law, reforming the institutional framework and ensuring the functioning of the system.
- represented horizontal ex-ante conditionalities.



## **General Overview**

# **Romanian Legislation in the Area of Public Procurement – in a nutshell**



## Transposition of the new European Directives

Legislative framework, in force since May 26, 2016:

▶ Primary legislation

- ❑ Law no. 98/2016 for classic PP (transposing Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC )
- ❑ Law no. 99/2016 for utility contracts (transposing Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC)



## Transposition of the new European Directives

### ▶ Primary legislation

- ❑ Law no. 100/2016 for concession contracts (transposing Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts)
- ❑ Remedies' law no. 101/2016 (transposing Directive 89/665/CEE and the Directive 92/13/CEE )

! *Lessons learned:* Unlike previous European Directives on public procurement that were transposed at the national level into a single law, these new Directives are transposed distinctively, each Directive having its own correspondent law



## Transposition of the new European Directives

### ▶ Secondary legislation:

- ❑ G.D. no. 394/2016 for the approval of the methodological norms for the application of the provisions regarding the award of the sectorial contract/ framework agreement of Law no. 99/2016 on sectorial procurement, with subsequent amendments and additions;
- ❑ G.D. no. 395/2016 for the approval of the methodological norms for the application of the provisions regarding the award of the public procurement contract/ framework agreement of Law no. 98/2016 on public procurement, with subsequent amendments and additions;
- ❑ G.D. no. 867/2016 for the approval of the methodological norms for the application of the provisions regarding the assignment of works concessions and service concessions of Law no. 100/2016 on works concessions and service concessions.



## Transposition of the new European Directives

- ▶ **Web-based guide on public procurement** (<https://achizitiipublice.gov.ro/home>)
  - ❑ The web-based guide (WBG) is available for public access since December 2016 and was progressively developed in four stages by 2019 under the RAS Agreement signed with World Bank on 01.09.2016.
  - ❑ The guide provides information and support tools, such as frameworks, covering the following stages: procurement planning, organization of the procedure and contract award, contract execution and performance evaluation.
  - ❑ The standardized tender documentation for works, supply, design services and intellectual services are uploaded in the online guide.
  - ❑ Information provided by the web-based guide is available in Romanian and in English.
  - ❑ **Proved efficient in ensuring more transparency in public procurement and reducing illicit practices by creating awareness**

## CONCEPT

- ▶ The National Strategy in the field of Public Procurement (SNAP), adopted in 2015 by GD no. 901, provides for the development of the monitoring function and the introduction of the supervisory function of the public procurement system
- ▶ **IT tools for collecting the data necessary** for the performance of the monitoring function and the inter-institutional cooperation necessary for the implementation of the results of the supervision function are essential for the efficiency of the public procurement system.
- ▶ **The monitoring function** is based for the most part on the data from the records of the Electronic Public Procurement System (SEAP), the data related to CNSC decisions and those of court decisions on complaints against CNSC decisions received at the ANAP level.
- ▶ **The supervision function** is mainly based on the support provided by the monitoring structure within ANAP, as well as on the data provided by the structures responsible for exercising ex-ante control, reconciliation and on information received from other sources.
- ▶ Supervision involves the analysis of the entire public procurement process, from the publication of the announcement/invitation to participate until the completion of the public/sectoral procurement contract, in order to identify systemic problems (dysfunctions/irregularities) and propose measures to eliminate them.
- ▶ Through the supervision activity, ANAP must intervene in the case of systemic dysfunctions through corrective and not punitive measures, ensuring at the same time a quick reaction to possible cases of irregularities.

## Exercising the monitoring function at the ANAP level

- ❖ Calculate specific performance indicators and expected impact of the public procurement system - structured into five interest groups:
  1. Size and characteristics of the market
  2. Intensity of competition
  3. Monitoring of economic activities
  4. Efficiency of public procurement, including implementation of contracts
  5. Misbehavior/Irregularities



- ▶ **Starting with 2016**, these performance indicators of the public procurement system in Romania are published **on the ANAP website, based on** annual or semester values : <http://anap.gov.ro/web/analize-si-rapoarte-statistice/> .
- ▶ ***These indicators are adapted whenever there are*** :
  - legislative changes in the field of public procurement;
  - new technical facilities within SEAP that allow an expansion of the input of new data within the system, which can be collected and processed,
  - adjustments due to the need to monitor new data and information related to the public procurement process, identified at the national and European level.

Analyze și rapoarte statistice – A | x +

Not secure | anap.gov.ro/web/analize-si-rapoarte-statistice/

ANAP | PROIECTE LEI | LEGISLAȚIE | TRANSPARENTĂ DECIZIONALĂ | INFORMAȚII PUBLICE | MEDIA | CONTACT

## Analize și rapoarte statistice

Date recente din activitatea ANAP, centralizate și analizate în cadrul direcțiilor tehnice din Agenție. Vezi cele mai interesante cifre care arată cum evoluează sistemul de achiziții publice...

### Raport statistic privind procedurile de atribuire a contractelor de achiziție publică / sectoriale inițiate în cadrul sistemului electronic de achiziții publice prin publicarea de anunț / anunț de participare simplificat / invitație de participare – trimestrul I 2021

01 iulie 2021

Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic...

#### Lista procedurilor de atribuire incluse în programul de verificare ex-ante

01 iulie 2021

Agenția Națională pentru Achiziții Publice pune la dispoziția tuturor celor interesați „Lista procedurilor de atribuire incluse...”

### Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic de achiziții publice prin publicarea de anunț/anunț de participare simplificat/invitație de participare – anul 2020

01 februarie 2021

Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic...

### Raport – Indicatorii de monitorizare a eficienței procedurilor de achiziție publică finalizate prin contract în anul 2019

01 noiembrie 2019

Raport – Indicatori de monitorizare a eficienței procedurilor de achiziție publică finalizate prin contract în anul...

### Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic de achiziții publice prin publicarea de anunț/anunț de participare simplificat/invitație de participare – semestrul I 2020

01 noiembrie 2020

Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic...

### Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic de achiziții publice

01 noiembrie 2020

Raport statistic privind procedurile de atribuire a contractelor de achiziție publică/sectoriale inițiate în cadrul sistemului electronic...

### Raport statistic aferent anului 2019 privind procedurile de atribuire a contractelor de achiziție publică inițiate prin publicare de anunț/invitație de participare/anunț de participare simplificat în cadrul SEAP

01 noiembrie 2020

Raport statistic aferent anului 2019 privind procedurile de atribuire a contractelor de achiziție publică inițiate prin...

### Indicatorii de monitorizare a eficienței procedurilor de achiziție publică finalizate prin contract în anul 2018

01 noiembrie 2018

Indicatorii de monitorizare a eficienței procedurilor de achiziție publică finalizate prin contract în anul 2018

### Raportul statistic aferent semestrului I al anului 2019 privind procedurile de atribuire a contractelor de achiziție

### Monitoring function - Measures and actions taken :

- ▶ ensuring the collection of data available mainly in the Electronic Public Procurement System (SEAP) [www.e-licitatie.ro](http://www.e-licitatie.ro) ;
- ▶ periodic processing of data and information;
- ▶ creation of IT tools necessary for data collection (reports drawn up on the basis of predefined models);
- ▶ analysis of statistical data in order to calculate relevant and measurable indicators;
- ▶ collaboration Protocols:
  - between ANAP and the Authority for Digitization of Romania - exchange of information and support in the implementation of technical facilities for the efficiency of procurement processes and the reduction of the administrative burden;
  - between ANAP and the National Council for Solving Legal Disputes - exchange of information regarding the existence of deficiencies in the legislation and non-unitary solutions in institutional practice;
  - approaches to the ADR for the harmonization of SEAP' facilities, necessary for the proper exercise of the function of monitoring the technical system in accordance with the legislation in the field of public procurement and with the reports that ANAP is obliged to draw up, improvements/updates of functionalities of the public procurement system:

**Sources of data** for drawing the reports, situations and calculation of indicators:

- ▶ data from SEAP: information transmitted within the system by the contracting authorities/entities; ANAP obtains this data following the request made to the SEAP operator:
  - data available in SEAP at the level of contract notices
  - predefined reports within the SEAP application;
- ▶ Own ANAP records, which include data/information extracted from the reports containing **decisions of the National Council for Solving Legal Disputes (CNSC)**;
- ▶ own records, established at the ANAP level, as well as from the reports containing **decisions, issued by the appeal courts, regarding the complaints formulated against the decisions of the CNSC, which must be sent to the ANAP**;
- ▶ data requested and transmitted by the National Council for Solving Legal Disputes about the **appeals submitted**.

- ✓ In 2020, ANAP in collaboration with the Authority for the Digitization of Romania (ADR) carried out the following necessary steps regarding the fulfillment of the criteria related to the horizontal favorable condition in the field of public procurement, in terms of securing the permission to collect data and calculation:
  - ✓ the quality and intensity of competition
  - ✓ the participation of SMEs as direct bidders
  - ✓ the final price after the completion of the contract
- ✓ stage: the activity is developing based on the assistance agreement signed by ANAP with the World Bank

Extract from the *Report of indicators for monitoring the efficiency of public procurement procedures completed by contract*

#### CHAPTER " SIZE AND CHARACTERISTICS OF THE PUBLIC PROCUREMENT MARKET "

Public procurement procedures initiated through contract notices and completed by awarding a contract in 2020 - 2021

**16,255** – number of public procurement procedures finalized by awarding the contract

The type of procedure assigned, in the years 2020 - 2021

**16,204** – number of public procurement procedures finalized by awarding the contract

Procedure type - 2020	Number of procedures
Open procedure	3,560
Accelerate open procedure	57
Restricted procedure	7
Competitive negotiation	18
Simplified procedure	12,574
Request for offers	38
Competitive dialogue	1
<b>TOTAL</b>	<b>16,255</b>

Procedure type - 2021	Number of procedures
Open auction	4,182
Accelerate open procedure	71
Restricted procedure	20
Competitive negotiation	-
Simplified procedure	11,918
Request for offers	12
Competitive dialogue	-
<b>TOTAL</b>	<b>16,204</b>

CHAPTER " SIZE AND CHARACTERISTICS OF THE PUBLIC PROCUREMENT MARKET "  
 The number and type of public procurement contracts awarded, depending on their type,  
 in the years 2020-2021

**25,751** – public  
 procurement  
 contracts  
 awarded in 2020

Contract type - 2020	Number of contracts
<b>Supply</b>	<b>12,601</b>
<b>Works</b>	<b>5,573</b>
<b>Services</b>	<b>5,861</b>
<b>TOTAL</b>	<b>24,035</b>

**26,374** – public  
 procurement  
 contracts  
 awarded in 2021

Contract type - 2021	Number of contracts
<b>Supply</b>	<b>15,189</b>
<b>Works</b>	<b>5,159</b>
<b>Services</b>	<b>6,026</b>
<b>TOTAL</b>	<b>26,374</b>

## CHAPTER "EFFICIENCY OF PUBLIC PROCUREMENTS (INCLUDING IMPLEMENTATION OF CONTRACTS) "

**The duration of the resolution of appeals** – measured by the number of days between the receipt of an appeal and the issuance of a decision (judgment) adopted by a remedy body, in the years 2020 -2021

### 2020

Average duration of appeals resolution (days)	Average time to resolve complaints (days)
<b>29</b>	<b>34</b>

### 20 21

Average duration of appeals resolution (days)	Average time to resolve complaints (days)
<b>31</b>	<b>32</b>

### The result of the appeals settlement procedure, in the years 2020 -2021

The results of appeals submitted to the CNSC in 2020 and their share	Number of appeals	Weight appeals
Cancellation of the public procurement procedure	54	2.02%
Application of remedial measures	992	37.02%
Rejection of appeals	816	30.44%
Appeals being resolved on 31.12.2020	118	4.40%
Exceptions	700	26.12%
<b>TOTAL Appeals</b>	<b>2,680</b>	<b>100.00%</b>

The results of appeals submitted to the CNSC in 2019 and their share	Number of appeals	Weight appeals
Cancellation of the public procurement procedure	71	3.27 %
Application of remedial measures	1,174	<b>54.16%</b>
Rejection of appeals	923	<b>42.57</b>
Appeals being resolved on 31.12.2020	172	
Exceptions	697	
<b>TOTAL Appeals</b>	<b>2, 865</b>	<b>100.00%</b>

## Supervising function at ANAP level

- ✓ SNAP, approved by GD 901/2015, provided for the need to establish within ANAP a dedicated direction for supervising the entire public procurement system, in order to:
  - ensure administrative capacity to identify systemic irregularities in the public procurement process
  - propose measures aimed at correcting deficiencies
- ✓ In 2018, the ex-post control in the field of public procurement, which implied the detection of contraventions and the application of sanctions were transferred to the Court of Accounts of Romania,
- ✓ **the organizational structure of ANAP has been modified, the Ex-Post Control Directorate becoming the “System Supervision Directorate (DSS)”.**

- ✓ Supervision activity analyze the whole procurement process, from publication the contract notice until contract award, including contractual changes,
  - ✓ In order to identify specific problems of the public procurement system, the supervision analysis can relate to :
    - the type of contracting authority ( ministries , agencies , schools , town halls aso ),
    - types of contracts ( supply , services, works),
    - sectors of activity ( classical , utilities, concessions ),
    - areas ( water , sewage , waste , construction , etc...),
    - source of financing , aso.
- ***supervision consist in the analyze of the conduct of contracting authorities .***

### Triggers for a supervisory activity can be:

- ✓ collection , processing and evaluation of information transmitted / published by the others departments of ANAP as well as information from previous supervisory actions;
- ✓ complaints received from the others institutions with a role in the the public procurement system;
- ✓ **notifications from the public authorities, public institutions (police, prosecutor 's office, etc), requiring a rapid check thorough ;**
- ✓ notifications from natural or legal persons, if they refer to system problems that correlate with other triggers ;
- ✓ alleged irregularities identified as a result of media monitoring or notified by a public institution/natural or legal person;
- ✓ other relevant triggers, such as : reports of Courts of Accounts, reports of Control Body of the Prime Minister , etc.
- ✓ decision of the president of ANAP;
- ✓ ex officio , by selecting a sample from award procedures that were not selected for the ex-ante control.

- ✓ **Findings of the supervision activity**, at the level of the authority / entity contracting and/or globally :
  - *Organizational or management problems* ( e.g. lack of staff, need for training , etc. ) ,
  - *missinterpretation of the legal provisions of the public procurement legal framework* ,
  - lack of public procurement planning,
  - red flags regarding the preparation by the contracting authority of the documents from the public procurement file after the procurement,
  - *breaches of public procurement law*, such as advertising rules, dividing the object of the contract, etc. ).
  
- ✓ **The findings of the supervision actions represents a feed-back that is disseminated:**
  - **to other relevant institutions in the field of public procurement, together with the proposal of remedial measures**
  - **to the public authorities which requested the rapid verifications**

### Examples of supervision actions:

- ✓ reasons for canceling the public procedures procedures initiated in SEAP;
- ✓ organizing procedures into lots;
- ✓ public procurement procedures with the participation of only 1 economic operator;
- ✓ the duration of public procurement procedures
- ✓ accuracy of reasons for conducting negotiations without prior publication of a contract notice

- ✓ Supervision is a specific support for authorities involved in criminal investigation.
- ✓ These are specific cases that require **detailed operative checks**
- ✓ Such cases do not include complaints submitted by economic operators or parties interested parties as part of the remedy process , ex ante control, audit carried out by CCR

### **Measures proposed following the supervision actions :**

- need for amending the public procurement law,
- elaboration (by ANAP) of guides, guidelines, notifications regarding the interpretation and application of legislation in the field of public procurement

In cases in which it was considered that the irregularities are contraventions, *The Court of Accounts of Romania or the Competition Council were notified*

ANAP was supported by the World Bank in the development a framework for **warning indicators (red flag type)** and methodology related for detection of IRREGULARITIES, both at the level or at the level of contracting authorities, within the SIPOCA 45 and 625 projects

*!!!*

*Data availability – essential for monitoring activity*

*Indicators that can be applied from SEAP data*

*Indicators that can be applied based on additional data*

### ***Indicators that can be applied from SEAP data***

**1 . identical offers submitted by different economic operators; winning offers that have a price a lot bigger than the estimated values or than the prices related to other or previous bids ;**

Method : Processing data regarding :

- ✓ Financial proposal
- ✓ Estimated value
- ✓ financial proposals of similar public procurement procedures

**2. The rotation of the winners regarding the place, date, type of product , etc.**

- ✓ This indicator can be assessed at the level national or at the sector level with the scope of identifying any possible atypical pattern.

**3. The same bidders participate always together and the same bidders win and lose always;**

- ✓ indicator can be assessed at the level national or at the sector level with the scope of identifying any possible atypical pattern. Withdrawal of the lowest price

4. An unusually large number of contracts awarded to the same economic operator by the same authority, compared to the "media"
  
5. A high percentage of contracts awarded to the same economic operator by the same contracting authority ( compared to the number of bids received ; e.g., an economic operator wins 9 out of 10 award procedures ).

## ANAP and the National Anti-Corruption Strategy

Since 2015, ANAP has adhered to the values and principles of the National Anti-Corruption Strategy (NAS).

Through this approach, it undertook and implemented a series of measures that strengthened institutional integrity over the years.

### The **Integrity Plan of ANAP**

- represents an institutional instrument that transposes the measures provided for in the National Anti-Corruption Strategy 2021-2025 and through which ANAP participates in strengthening the national system for preventing and combating corruption.

- contains measures aimed at strengthening both **institutional integrity**, and also **the public procurement system**.

-The specific Objective no. 4.4 of the NAS provides for the following measures

· **Elaboration of a national risk map**, with the purpose of identifying the functions involved in public procurement that are vulnerable to corruption, the areas in which public procurement is more exposed to corruption and the stages of public procurement procedures in which indications of corruption appear (responsible Ministry of Justice, the Prosecutor's Office, DNA and ANAP) – term 2024

· Analysis of judicial practice in the matter of public procurement, useful analysis for the unification of practice, including for the promotion of appeals in the interest of the law (responsible MJ and PÎCCJ) - 2023

- Attracting and maintaining in the public procurement system the staff specialized in public procurement, including by strengthening their status, professionalizing the staff and ensuring an adequate protection regime against attempts at intimidation or corruption (ANAP, MDLPA and ANFP responsible) - 2023



Thank you for your attention!

National Agency for Public Procurement

Website:

[www.anap.gov.ro](http://www.anap.gov.ro)