



Questionnaire

Part II

**Information provided by the Government of the Republic of Moldova
to the Questionnaire of the European Commission**

CHAPTER 5: PUBLIC PROCUREMENT

May 2022

The *acquis* on public procurement is based on the **general principles** deriving from the Treaties and from the jurisprudence of the European Court of Justice such as transparency, equal treatment, free competition and non-discrimination. These principles also apply to all procurement procedures including those falling outside the scope of the EU public procurement Directives, if the procurement presents a cross-border interest (for example, those below the EU public procurement thresholds).

In the EU, the rules on public procurement are set out in the following Directives: Directive 2014/24/EU on public procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal service sectors and Directive 2014/23/EU on the award of concessions contracts; Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the field of defence and security.

The first three Directives provide for electronic procurement including electronic means of communication. The Directives' rules are complemented by separate regulations on the Common Procurement Vocabulary (CPV) and on standard forms for publication¹.

Compliance with the public procurement directives requires an adequate implementation capacity. In particular, there is need for appropriate administrative structures at central level to ensure the key functions of policy-making, drafting of primary and secondary legislation, provision of operational tools, help-desk, monitoring and statistics as well as controls in a coherent manner for all areas related to public procurement. Moreover, contracting authorities/entities at all levels have to possess the necessary administrative capacities to allow for an effective implementation of the public procurement rules.

The effective application and enforcement of EU public procurement legislation depends on the existence of an appropriate administrative and judicial system in the Member States. The EU public procurement *acquis* consists of two directives on remedies: Directive 89/665/EEC for the public sector in general and Directive 92/13/EEC concerning specifically the utilities sector, both modified by Directives 2007/66/EC and 2014/23/EU, as well as the remedies rules included directly in Directive 2009/81/EC. The remedies directives contain requirements for the establishment of effective review procedures against any decision of contracting authorities/entities liable to produce legal effects in tenders covered by the directives. The procedures need to guarantee access to review bodies independent of the contracting authority/entity, including the powers to adopt interim measures and award damages. Review bodies have to be equipped with the adequate capacity to guarantee the effectiveness of the system as a whole. Furthermore, in line with the principle of judicial protection deriving from the Treaties, the availability of remedies is also required outside the scope of application of the directives.

The EU public procurement rules also require public procurement buyers to acceptance electronic invoices if issued in line with the rules provided by the Directive 2014/55/EU on electronic invoicing in public procurement.

¹ The contract notices information is also a good source for big data analysis - about digital procurement see: https://ec.europa.eu/growth/single-market/public-procurement/digital-procurement_en

I. REGULATORY FRAMEWORK

1. Please describe the legislative framework in the field of public procurement. Please provide an explanation about its compliance with the relevant EU legislation. Please provide the definitions used in the public procurement legislation, among others the definitions of public contract, contracting authority and contracting entity as understood under the EU public procurement rules.

The public procurement legal framework consists of the following legal acts:

- Law No. 131/2015 on public procurement², which transposes 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, published in the Official Journal of the European Union L 94/65 of 28 March 2014, as amended by Commission Delegated Regulation (EU) 2017/2365 of 18 December 2017 amending Directive 2014/24/EU of the European Parliament and of the Council as regards the thresholds of application for procedures for the award of public contracts, as well as Council Directive 89/665/EEC of 21 December 1989 on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, published in the Official Journal of the European Union L 395/33 of 30 December 1989;
- Law No. 74/2020 on procurement in the energy, water, transport and postal services sectors³, which partially transposes 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, published in the Official Journal of the European Union L 94/243 of 28 March 2014, with the amendments made by Commission Delegated Regulation (EU) 2017/2364 of 18 December 2017 amending Directive 2014/25/EU of the European Parliament and of the Council as regards the thresholds of application for public procurement procedures.

Implementation of Law No. 131/2015 on public procurement is ensured by the following normative acts:

- Government Decision No. 56/2021 on the approval of the Regulation on the organization and functioning of the central purchasing authorities;⁴

² Law No. 131/2015 on public procurement, available in Romanian at: [#https://www.legis.md/cautare/getResults?doc_id=129131&lang=ro](https://www.legis.md/cautare/getResults?doc_id=129131&lang=ro)

³ Law No. 74/2020 on procurement in the energy, water, transport and postal services sectors, available in Romanian at: [#https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro](https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro)

⁴ Government Decision No. 56/2021 on the approval of the Regulation on the organization and functioning of the central purchasing authorities, available in Romanian at: [#https://www.legis.md/cautare/getResults?doc_id=126209&lang=ro](https://www.legis.md/cautare/getResults?doc_id=126209&lang=ro)

- Government Decision No. 10/2021 on the approval of the Regulation on the activity of the working group in the field of public procurement⁵;
- Government Decision No. 778/2020 on the approval of the Regulation on the preparation and keeping of the public procurement file⁶;
- Government Decision No. 694/2020 on the approval of the Regulation on the framework agreement as a special way of awarding public procurement contracts;⁷
- Government Decision No. 638/2020 on the approval of the Regulation on public works procurement⁸;
- Government Decision No. 599/2020 on the approval of the Regulation on public procurement using the negotiation procedure⁹;
- Government Decision No. 1129/2018 on the approval of the Regulation on the periodic adjustment of the value of public procurement contracts with continuous execution, concluded for a term longer than one year¹⁰;
- Government Decision No. 987/2018 on the approval of the Regulation on the purchase of goods and services by requesting price offers¹¹;
- Government Decision No. 986/2018 on the approval of the Regulation on the way of keeping the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurements" (MTender)¹²;
- Government Decision No. 705/2018 on the approval of the Technical Concept of the Automated Information System "State Register of Public Procurement" (MTender)¹³;

⁵ Government Decision No. 10/2021 on the approval of the Regulation on the activity of the working group in the field of public procurement, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=125242&lang=ro

⁶ Government Decision No. 778/2020 on the approval of the Regulation on the preparation and keeping of the public procurement file, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=123807&lang=ro

⁷ Government Decision No. 694/2020 on the approval of the Regulation on the framework agreement as a special way of awarding public procurement contracts, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=123353&lang=ro

⁸ Government Decision No. 638/2020 on the approval of the Regulation on public works procurement, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=123036&lang=ro

⁹ Government Decision No. 599/2020 on the approval of the Regulation on public procurement using the negotiation procedure, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=122853&lang=ro

¹⁰ Government Decision No. 1129/2018 on the approval of the Regulation on the periodic adjustment of the value of public procurement contracts with continuous execution, concluded for a term longer than one year, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=109334&lang=ro

¹¹ Government Decision No. 987/2018 on the approval of the Regulation on the acquisition of goods and services by requesting price offers, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=109176&lang=ro

¹² Government Decision No. 986/2018 on the approval of the Regulation on the way of keeping the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurements" (MTender), available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=123223&lang=ro#

¹³ Government Decision No. 705/2018 on the approval of the Technical Concept of the Automated Information System "State Register of Public Procurement" (MTender), available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=113731&lang=ro

- Government Decision No. 339/2017 on the approval of the Regulation on the Common Procurement Vocabulary (CPV)¹⁴;
- Government Decision No. 1419/2016 on the approval of the Regulation on the planning of public procurement contracts¹⁵;
- Government Decision No. 1418/2016 on the approval of the Regulation on the way of drawing up the List of the prohibited economic operators¹⁶;
- Government Decision No. 665/2016 on the approval of the Regulation on low-value public procurement¹⁷;
- Order of the Minister of Finance No. 115/2021 on the approval of the Standard Documentation for public procurement of goods and services¹⁸;
- Order of the Minister of Finance No. 69/2021 on the approval of the Standard Documentation for the execution of public procurement of works¹⁹;
- Order of the Minister of Finance No. 145/2020 on the approval of the Declaration on the confirmation of the identity of the beneficial owners and their non-classification in the situation of conviction for participation in activities of a criminal organization or group, for corruption, fraud and/or money laundering²⁰;
- Order of the Minister of Finance No. 105/2020 on the approval of the Instruction on the modality, conditions and procedure for organizing and conducting the market consultation in order to prepare the public procurement²¹;

¹⁴ Government Decision No. 339/2017 on the approval of the Regulation on the Common Procurement Vocabulary (CPV), available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=99562&lang=ro

¹⁵ Government Decision No. 1419/2016 on the approval of the Regulation on the planning of public procurement contracts, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=96902&lang=ro

¹⁶ Government Decision No. 1418/2016 on the approval of the Regulation on the way of drawing up the List of the prohibited economic operators, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=96901&lang=ro

¹⁷ Government Decision No. 665/2016 on the approval of the Regulation on low-value public procurement, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=92984&lang=ro

¹⁸ Order of the Minister of Finance No. 115/2021 on the approval of the Standard Documentation for public procurement of goods and services, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=127989&lang=ro

¹⁹ Order of the Minister of Finance No. 69/2021 on the approval of the Standard Documentation for the execution of public procurement of works, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=126683&lang=ro

²⁰ Order of the Minister of Finance No. 145/2020 on the approval of the Declaration on the confirmation of the identity of the beneficial owners and their non-classification in the situation of conviction for participation in activities of a criminal organization or group, for corruption, fraud and/or money laundering, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=124192&lang=ro

²¹ Order of the Minister of Finance No. 105/2020 on the approval of the Instruction on the modality, conditions and procedure for organizing and conducting the market consultation in order to prepare the public procurement, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=122888&lang=ro

- Order of the Minister of Finance No. 72/2020 on the approval of the standard form of the European Single Procurement Document²².

The draft of the Government Decision on the approval of the Methodological Norms on the way of awarding sectoral procurement contracts / framework agreements in the energy, water, transport and postal services sectors²³ was elaborated for the implementation of Law No. 74/2020.

The definition of main notions used in the field of public procurement are provided at Art. 1 of Law No. 131/2015 and transpose the provisions set out at Art. 2 of Directive 2014/24/EU. The definition of main notions used in the field of sectoral procurement are provided at Art. 2 of Law No. 74/2020 and transpose the provisions set out in Art. 2 of Directive 2014/25/EU.

ancillary purchasing activities - activities consisting in the provision of support to purchasing activities, in particular in the following forms:

- technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;
- advice on the conduct or design of public procurement procedures;
- preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;

centralised purchasing activities - activities conducted on a permanent basis, in one of the following forms:

- the acquisition of supplies and/or services intended for contracting authorities,
- the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

central purchasing body (authority) - a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;

candidate - an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;

²² Order of the Minister of Finance No. 72/2020 on the approval of the standard form of the European Single Procurement Document, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=121980&lang=ro

²³ Draft of the Government Decision on the approval of the Methodological Norms on the way of awarding sectoral procurement contracts / framework agreements in the energy, water, transport and postal services sectors, available in Romanian at:

<https://mf.gov.md/sites/default/files/Norme%20Metodologice%20CSN%2020.06.21%20%281%29.pdf>

label requirements - the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.

life cycle - all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

design contests (solution contest) - those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

public supply contracts (public goods)- public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy. A public procurement contract which has as its object the supply of goods and which covers, in addition, assembly and installation works is considered a public procurement contract for goods.

public works contracts - public contracts having as their object one of the following:

- the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I;
- the execution or design and execution of a work, other than those provided in letter a);
- carrying out a work which meets the requirements laid down by the contracting authority which has a decisive influence on the type or design of the work;

procurement document - any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

label - any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

procurement service provider - any natural or legal person governed by public or private law who offers ancillary procurement activities on the market; 17 DUE

innovation - the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction

processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations inter alia with the purpose of helping to solve societal challenges or to support for smart, sustainable and inclusive growth;

a work - means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

electronic means - electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

tenderer - an economic operator that has submitted a tender;

economic operator - any natural or legal person, any public entity or association of such persons and / or entities which supplies goods, performs works and / or provides services on the market;

Public contract - a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities, which has as its object the purchase of supplies, the execution of works or the provision of services. The concept is defined at Art. 1 of Law No. 131/2015 and transposes the provisions set out at Art. 2 para. (5) of Directive 2014/24/EU.

Contracting authorities - the public authorities, defined in the legislation of the Republic of Moldova, legal persons governed by public law, associations of these authorities or persons. The concept is defined at Art. 13 of Law No. 131/2015 and transposes the provisions set out at Art. 2 para. (1) points 1 to 4 of Directive 2014/24/EU.

Contracting entity - either a contracting authority or a public undertaking that carries out one of the activities referred to in Art. 9-15 of Law No. 74/2020, or any legal person (including any economic operator entitled to carry out entrepreneurial activity in the Republic of Moldova) which also carries out one of the activities referred to in Art. 9-15 of the Law and which operates on the basis of special or exclusive rights, granted in accordance with the legislation by a competent authority. The notion is defined at art. 4 of Law No. 74/2020 and transposes the provisions set out at Art. 4 para. (1-3) of Directive 2014/25/EU.

2. Does the legislation cover concessions and private public partnerships (the latter not defined in the EU public procurement rules)?

The concessions and public-private partnership fields fall within the competence of the Government, Ministry of Economy and Public Property Agency.

Concessions are governed by Law No. 121/2018 on works concessions and service concessions²⁴, which partially transposes Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

Law No. 121/2018 sets out the modalities of establishing works and service concessions, sets the value threshold for awarding concession contracts, the duration of the concession (at least 5 years but not more than 35 years), as well as the method of calculating the estimated value of the concession at the stage of awarding the contract.

According to Art. 3 para. (6) of Law No. 131/2015 which transposed Art. 3 para. (4) of Directive 2014/24/EU, in the case of mixed contracts containing both elements of supply, works and service contracts and concessions, the mixed contract shall be awarded in accordance with that law, provided that the estimated value of the part of the contract representing the public procurement is at least equal to the threshold for application of the law.

The public-private partnership is regulated by the Law No. 179/2008 on the public-private partnership²⁵. Law No. 179/2008 sets out the basic principles of public-private partnership (PPP), the forms and modalities of its implementation, the procedure for its initiation and implementation, and the rights and obligations of the public partner and the private partner. Law No. 179/2008 was adopted against the background of a significant increase in the stock of PPPs in OECD countries in the early 2000s and defines the main contractual forms of implementation of public-private partnerships: contract for the provision of services; trust management contract; lease/rent contract; concession contract; commercial or civil partnership contract; other contractual forms not prohibited by law.

3. Please explain the reasons for eventual exclusion of other types of public contracts from the scope of the public procurement legislation of Moldova and how such provisions are in compliance with the relevant EU legislation. Please explain the different procedures foreseen in the legislation and rules governing the choice of these procedures.

Contracts exempted from the application of the provisions of Law No. 131/2015²⁶ are provided at art. 5, as follows:

- The public contracts awarded by the contracting authorities that are operating in the water, energy, transport and postal services sectors, are mentioned at Art. 5 para. (1) point a) which transposes the exclusions

²⁴ Law No. 121/2018 on works concessions and service concessions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=125211&lang=ro

²⁵ Law No. 179/2008 on the public-private partnership, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=125105&lang=ro

²⁶ Law No. 131/2015 on public procurement, available in Romanian at: [#">https://www.legis.md/cautare/getResults?doc_id=129131&lang=ro #](https://www.legis.md/cautare/getResults?doc_id=129131&lang=ro)

provided at Art. 7 of Directive 2014/24/EU. The way of awarding sectoral procurement contracts / framework agreements in the energy, water, transport and postal services sectors is regulated by Law No. 74/2020²⁷.

- Contracts for research and development services are provided at Art. 5 para. (1) point b) which transposes the provisions set out at Art. 14 of Directive 2014/24/EU. The reason for exempting these contracts is to stimulate innovation and research in order to achieve wider economic, social and environmental benefits by generating new ideas, translating them into innovative products and services and promoting sustainable economic growth.
- Public procurement contracts which have as their object the arbitration and/or conciliation services are mentioned at Art. 5 para. (1) point c) which transposes the exclusions provided at Art. 10 point c) of Directive 2014/24/EU. The reason for the exemption of such contracts is that the selection of bodies or persons providing arbitration, conciliation and other similar forms of alternative dispute resolution services cannot be subject to the rules for the award of public contracts.
- Contracts having as their object the provision of the following legal services, are mentioned at Art. 5 para. (1) point d) which transposes the exclusions provided at Art. 10 point d) of Directive 2014/24/EU. The reason for the exemption of such contracts is that these legal services are provided by bodies or natural persons designated or selected in a way that cannot be covered by public procurement rules.
- Public contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments, in particular the operations of accumulation of money or capital of the contracting authorities, are provided at Art. 5 para. (1) point e) which transposes the exclusions provided at Art. 10 point d) of Directive 2014/24/EU. The reason for the exemption of these contracts is determined by the fact that the financial instruments are regulated by the normative acts in the field and are supervised by the specialized authorities.
- The contracts for the printing of banknotes and the minting of coins and for the carriage of coins, are mentioned at Art. 5 para. (1) point f) , national provision, *which* transposes the exclusions referred at Art. 10 point e) of Directive 2014/24/EU. The reason for the exemption is the fact that the given contracts have a high degree of security and is regulated by the National Bank of Moldova normative acts.
- The contracts concluded by the National Bank of Moldova that have as their object the provision of legal and financial consultancy services, the contracts concluded by it in order to exercise the competences stipulated in the Law on the recovery and resolution of banks, as well as the contracts concluded by the National Bank with international financial institutions, with non-resident economic operators, according to which goods are

²⁷ Law No. 74/2020 on procurement in the energy, water, transport and postal services sectors, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

delivered, works and services that ensure the service of the automated interbank payment system, of the state and interbank securities market, the management of the foreign exchange reserves of the state, the servicing of the foreign exchange operations of the state, including the external debt, the external audit of the annual financial reports, accounts and registers of the National Bank of Moldova.

- services provided by the National Bank of Moldova, are mentioned at Art. 5 para. (1) point h) *which* transposes the exclusions referred at Art. 10 point e) of Directive 2014/24/EU.
- Public contracts declared secret, according to the legislation, if their execution requires special security measures, , are mentioned at Art. 5 para. (1) point i) *which* transposes the exclusions referred at Art. 15 of Directive 2014/24/EU. The reason for exempting such contracts is determined by the need to ensure essential security interests in order to protect the confidential nature of the information which the contracting authority makes available in the context of a contract award procedure.
- Employment contracts are mentioned at Art. 5 para. (1) point j) *which* transposes the exclusions referred at Art. 10 point g) of Directive 2014/24/EU. The reason for exempting these contracts lies in the fact that there is a regulatory framework regulating the field of work.
- Public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right available to them under a law are mentioned at Art. 5 para. (1) point k) *which* transposes the exclusions referred at Art. 11 of Directive 2014/24/EU. The reason for exempting such contracts is determined by the fact that a contracting authority or an association of contracting authorities may be the sole service provider in respect of the provision of which it enjoys an exclusive right under published laws, regulations or administrative provisions.
- Contracts for the procurement of products, works and services relating to the production of or trade in arms, munitions and weapons systems, are mentioned at Art. 5 para. (1) point l). The exemption of such contracts is a matter of national security and cannot be exposed to public proceedings. Also, the selection of suppliers of weapons, munitions and weapons systems is carried out following bilateral treaties with external partners.
- Public procurement contracts governed by different procedural norms and awarded on the basis of an international agreement concluded by the Republic of Moldova and one or more states on supplies or works necessary for the joint execution or exploitation of a work by the signatory states or on the services necessary for the joint execution or exploitation of a project by the signatory states; Public contracts awarded on the basis of an international agreement on troop stationing and commitments of the Republic of Moldova or a third country; public contracts awarded according to the specific procedure of an international organization. These contracts are specified at Art. 5 para. (1). point m) transposes the

provisions of Art. 9 of Directive 2014/24/EU. Thus, the contracting authority shall respect the conditions and the procurement rules established in the agreements concluded with the funders, which are different from those provided by public procurement law.,

- Public procurement contracts concluded by diplomatic missions and consular offices of the Republic of Moldova, if their value does not exceed for public procurement contracts of products and services – 2.300.000 MDL; for public works contracts – 90.000.000 MDL; for public contracts having as their object social services and other specific services listed in Annex. 2 – 13.000.000 MDL. These contracts are specified at Art. 5 para. (1) point n) and the provision was included in order to facilitate the procurement processes for the given institutions, which carry out activity abroad.
- Contracts having as their object the purchase or putting into use, by any financial means, of land, of existing constructions, of other immovable property or of the rights over such property. The exceptions given are mentioned at Art. 5 para. (1) point o) transposes the exclusions referred at Art. 10 point a) of Directive 2014/24/EU.
- Contracts relating to the purchase, development, production or co-production of programme material for audio-visual media services or broadcasting media services awarded by audio-visual media service providers or broadcasting contracts, as well as to contracts for broadcasting space or the provision of programmes awarded to audio-visual media service providers or broadcasting providers. The exceptions given are mentioned at Art. 5 para. (1) point p) transposes the exclusions referred at Art. 10 point b) of Directive 2014/24/EU. The reason for the exemption from the law is related to the need for direct award by media service providers, for the purchase, development, production or co-production of ready-to-broadcast programs and other preparatory services, such as those concerning scripts or other artistic performances necessary for the realization of the program.
- Public contracts whereby contracting authorities may make available or operate public telecommunications networks or provide the public with one or more telecommunications services to the public. These contracts are mentioned at Art. 5 para. (1) point q) *which* transposes the exclusions referred in Art. 8 of Directive 2014/24/EU.
- Contracts for printing ballot papers and other electoral documents, including teaching materials, for the supply of materials and equipment for electoral bodies during the electoral period, for carrying out the information campaign and for transport services in order to organize and conduct elections, including training seminars. These contracts are specified at Art. 5 para. (1) point r), and their exemption is related to the limited term that the Central Electoral Commission has for the timely supply to the lower electoral bodies with ballot papers and other electoral documents, with necessary materials and equipment. Also, the ballot

papers during the electoral period may undergo changes due to the change in the list of candidates, which usually occurs at the end of the election campaigns. (withdrawal from the race on one's own initiative or at the decision of the court)

- Contracts concluded by public authorities within the framework of measures, actions and instruments provided for in the Law on banks' recovery and resolution. The reason for the exemption of the contracts are mentioned at Art. 5 para. (1) point s) consists in the fact that Law No. 232/2016²⁸ and the reference normative acts of the National Bank of Moldova expressly establish the method of awarding contracts.
- Contracts relating to the purchase of medicinal products and parapharmaceutical products for university pharmacies for the purpose of carrying out the activity of teaching and pharmaceutical assistance. The direct award of the contracts mentioned at Art. 5 para. (1) point t) aims at avoiding the blockage to the procurement by the university pharmacies of the medicines through public procurements caused by the large size of the assortment of medicines, pharmaceutical products and parapharmaceuticals.
- Contracts relating to loans, whether or not they relate to the issue, sale, purchase or transfer of securities or other financial instruments. The exception, mentioned at Art. 5 para. (1) point u) which transposes the exclusions referred at Art. 10 point f) of Directive 2014/24/EU establishes that whether or not they are connected with the issue of securities or other financial instruments or other related operations, loans must be excluded from the scope of the law.
- Contracts having as their object civil defence, civil protection and hazard prevention services provided by non-profit-making organisations or associations and falling within the scope of CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, with the exception of ambulance services for the transport of patients. The reason for exempting from the law the contracts mentioned at Art. 5 para. (1) point v) which transposes the exclusions referred at Art. 10 point h) of Directive 2014/24/EU, consists in the possibility of ensuring from the State the protection of the population and property in the conditions of natural and ecological disasters, damages and catastrophes, epiphytes, epizootics, fires, as well as in the case of the application of modern destruction means.
- Contracts for public passenger transport services by rail are mentioned at Art. 5 para. (1) point w) *which* transposes the exclusions referred at Art. 10 point i) of Directive 2014/24/EU. The method of awarding public passenger transport service contracts by rail is set out in Code No. 19/2022 to rail transport²⁹.

²⁸ Law No. 232/2016 on the recovery and resolution of banks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=105797&lang=ro

²⁹ Code No. 19/2022 to rail transport, available in Romanian at:

- Contracts which have as their object the authorisation, without any selectivity, of all the economic operators concerned who fulfil the conditions laid down by the public authority to carry out certain tasks. The reason for the exemption of the contracts mentioned at Art. 5 para. (1) point x) is that, where all operators fulfilling certain conditions are allowed to carry out a certain task without any selectivity, such as systems giving consumers choice or voucher-based service schemes, they are not public procurement systems but authorisation schemes.

Public procurement procedures, as well as specific techniques and instruments for awarding public procurement contracts are provided by Chapter VII of Law No. 131/2015, entitled “Public Procurement Procedures”, which regulates the procedure for their initiation, carry out and application. This chapter transposes Art. 27-36 and Art. 74-82 of Directive 2014/24/EU.

The public contract may be awarded by the following procedures:

- open procedure;
- restricted procedure;
- competitive dialogue;
- negotiated procedures;
- request for tenders;
- design contest;
- the purchase of social services and other specific services;
- innovation partnership.

According to Art. 46 para. (2) of Law No. 131/2015, the basic procedures for awarding the procurement contract are the open tender and the restricted tender.

The contracting authority may use special arrangements for the award only in the cases expressly provided for by law:

- the framework agreement;
- the dynamic purchasing system;
- electronic auction;
- electronic catalogues.

Contracts exempted from the application of the provisions of Law No. 74/2020 are stipulated in Chapter III, as follows:

- Contracts awarded for resale or rental to third parties are mentioned at Art. 16 which transposes the provisions of Art. 18 of Directive 2014/25/EU. The provisions of this Law shall not apply to such contracts, provided that the contracting entity does not enjoy a special or exclusive right to sell or

to rent the object of such contracts, and other entities are free to sell or rent it under the same conditions as the contracting entity;

- Contracts and design contests awarded or organised for purposes other than for carrying out an activity foreseen or for carrying out such an activity outside the Republic of Moldova are mentioned at Art. 17 which transposes the provisions of Art. 19 of Directive 2014/25/EU. The reason for the exemption of these contracts is regulated by the activities clearly established at Art. 9-15 or for carrying out such activities outside the Republic of Moldova under conditions that do not involve the exploitation of a network on the territory of the Republic of Moldova;
- Contracts and design contests awarded or organised in accordance with the international rules are mentioned at Art. 18 which transpose the provisions set out at Art. 20 of Directive 2014/25/EU. This Law shall not apply to contracts and design contests of awarded or organized according to procurement procedures different from those provided for in this Law established under an international agreement, concluded between the Republic of Moldova and one or more states, on the goods or works necessary for the joint execution or exploitation of a work by the signatory states or on the services necessary for the joint realization or exploitation of a project by the signatory States and in accordance with the specific procedure of an international organisation;
- Contracts which have as their object the purchase or rental, by any financial means, of land, existing buildings, other immovable property or rights in such property. Financial services contracts concluded at the same time, before or after the conclusion of the procurement or putting into use contract, regardless of the form, are mentioned at Art. 19 para. 1) which transposes the provisions set out at Art. 21 point a) of Directive 2014/25/EU.
- Contracts having as their object arbitration and/or conciliation services are mentioned at Art. 19 para. 20 which transposes the provisions set out at Art. 21, point b) of Directive 2014/25/EU. The reason for the exemption of such contracts is that the selection of bodies or persons providing arbitration, conciliation and other similar forms of alternative dispute resolution services cannot be subject to the rules for the award of public contracts;
- Contracts having as their object the provision of the following legal services, are mentioned at Art. 19 para. 3) which transposes the provisions set out at Art. 21 point c) of Directive 2014/25/EU. The reason for the exemption of such contracts is that these legal services are provided by bodies or natural persons designated or selected in a way that cannot be covered by public procurement rules;
- Contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments, in particular the accumulation of money or capital operations of the contracting entity, are mentioned at Art. 19 para. 4) which transposes the provisions set out at Art. 21 point d) of Directive

2014/25/EU. The reason for exempting these contracts is determined by the fact that the financial instruments are regulated by the normative acts in the field and are supervised by the specialized authorities;

- Contracts relating to loans, whether or not relating to the issue, sale, purchase or transfer of securities or other financial instruments. The exception, mentioned in Art. 19 para. 5) transposing the provisions set out at Art. 21 point e) of Directive 2014/25/EU, establishes that whether or not they are related to the issue of securities or other financial instruments or to other related operations, loans must be excluded from the scope of the law;
- The employment contracts are mentioned at Art. 19 para. 6) which transposes the provisions set out at Art. 21 point f) of Directive 2014/25/EU. The reason for exempting these contracts lies in the fact that there is a regulatory framework that regulates the field of work;
- Public contracts for public passenger transport services by rail are mentioned at Art. 19 para. 7) which transposes the provisions set out at Art. 21 point g) of Directive 2014/25/EU. The reason for exempting these contracts lies in the fact that the object of the contract is regulated by the Railway Transport Code No. 19/2022;
- Contracts having as their object civil defence, civil protection and hazard prevention services provided by non-profit organisations or associations and falling within the scope of CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, with the exception of ambulance services for the transport of patients, are mentioned at Art. 19 para. 8) which transposes the provisions set out at Art. 21 point h) of Directive 2014/25/EU;
- Contracts for broadcasting space or the provision of programmes awarded to audio-visual media service providers or broadcasting providers. The exceptions given are mentioned at Art. 19 para. 9) which transposes the provisions set out Art. 21 point i) of Directive 2014/25/EU. The reason for the exemption from the law is related to the need for direct assignment by media service providers, for broadcasting space or the provision of programs.

Utilities procurement procedures, as well as specific techniques and instruments for awarding procurement contracts are provided by Chapter V of Law No. 74/2020, entitled “Utilities Procurement Procedures”, which regulates the procedure for their initiation, carry out and application. This chapter transposes Art. 45-56 and Art. 95-98 of Directive 2014/25/EU.

The utilities contracts may be awarded through the following procedures:

- open procedure;
- restricted procedure;

- competitive dialogue;
- negotiated procedures;
- design contest;
- innovation partnership.

The contracting entity may use special arrangements for the award only in cases expressly provided for by law:

- the framework agreement.
- the dynamic purchasing system.
- electronic auction.
- electronic catalogues.
- centralized purchasing activities.
- occasional joint procurements.

4. Please provide a table with the relevant thresholds stated in the legislation and a description of the procedure that shall be followed for each of them.

Law No. 131/2015 (Art. 2)	Procedure	Law No. 74/2020 (Art. 1)	Procedure	Comments
<p>The law applies to public procurement contracts whose estimated value, excluding value added tax, is equal to or higher than the following thresholds:</p> <p>a) for public procurement contracts for products and services, other than those mentioned at point c) – from 200.000 MDL;</p> <p>b) for public works contracts – from 250.000 MDL;</p> <p>c) for public contracts having as their object social services and other specific services listed in Annex no. 2 – from 400.000 MDL.</p>	<p>All procedures</p> <p>All procedures</p> <p>All procedures</p>	<p>The law applies to contracts for the procurement of products, works or services in the energy, water, transport and postal services sectors whose estimated value, excluding value added tax, is equal to or higher than the following thresholds:</p> <p>a) for the contracts for the procurement of products and services, as well as for the contests of solutions – from 800.000 MDL;</p> <p>b) for works contracts – from 2.000.000 MDL;</p> <p>c) for procurement contracts having as their object social services and other</p>	<p>All procedures</p> <p>All procedures</p> <p>All procedures</p>	<p>Below the thresholds mentioned in Law No. 131/2015, are applied the provisions of Government Decision No. 665/2016 on the approval of the regulation on public procurements of low value.</p>

		specific services listed in Annex No. 2 – from 1.000.000 MDL.		
Request for tenders (simplified procedure) (Art. 57 of Law No. 131/2015): ➤ for goods, services – not more than 800.000 MDL; ➤ for works – not more than 2.000.000 MDL.	Price offers request procedure Price offers request procedure			➤ Government Decision No. 987/2018 on the approval of the Regulation on the purchase of products and services by requesting price offers ➤ Government Decision No. 638/2020 on the approval of the Regulation on public works procurement

5. What are the types of information that the legislation requires to be included in notices of invitation to tender?

According to Art. 29 of *Law No. 131/2015*, the contracting authority shall publish in the Public Procurement Bulletin the contract notice. The contracting authority shall include in the notice at least the information contained in Annex No. 3 of Law No. 131/2015. Art. 29 and Annex No. Art. 3 transposes Art. 49 and Annex V of Directive 2014/24/EU.

Contract notice

1. Name, State identification number (IDNO), address, telephone number, fax number, e-mail and internet address of the contracting authority and, if different, those of the office from which additional information can be obtained.

2. The e-mail or internet address from which it will be possible to obtain free, direct, total and free access to the award documentation.

If, for the reasons provided in Art. 33 para. (11), free, direct, total and free access is not provided, an indication of how the award documentation may be accessed.

3. Type of contracting authority and main object of activity.

4. Where appropriate, an indication that the contracting authority is a central purchasing authority or that the procurement involves another form of joint procurement.
5. CPV codes; where the contract is divided into lots, this information must be provided for each lot.
6. Description of the procurement: nature and extent of the works, nature and quantity or value of the products, nature and extent of the services. Where the contract is divided into lots, this information must be provided for each lot.
7. Total estimated value of the contract(s); where the contract is divided into lots, this information must be provided for each lot.
8. Admission or prohibition of alternative offers.
9. Timetable for the delivery of supplies, the execution of works or the provision of services and, where possible, the duration of the contract:
 - a) in the case of a framework agreement, indicate the envisaged duration of the framework agreement, specifying, where appropriate, the reasons justifying a duration of more than 4 years. Indicate, where possible, the value or order of magnitude and the frequency of the contracts to be awarded, the number and, where appropriate, the proposed maximum number of economic operators to participate;
 - b) in the case of a dynamic purchasing system, the expected duration of that system shall be indicated; indicate, where possible, the value or order of magnitude and the frequency of the contracts to be awarded.
10. Conditions of participation, including:
 - a) where appropriate, it shall be noted that the public contract in question is reserved for sheltered workshops or that it can only be performed within the framework of sheltered employment programmes;
 - b) where appropriate, it shall be noted that the provision of the service is reserved to a particular profession by virtue of laws, regulations or administrative provisions; those laws, regulations and administrative provisions shall be mentioned;
 - c) a list and a brief description of the criteria on the eligibility of the economic operators that may lead to their abolition and of the selection criteria; the minimum level(s) of any requirements imposed, mention is made of the information requested (affidavits, documentation).
11. Type of award procedure; where appropriate, the reasons for using an accelerated procedure (in the case of an open tender, restricted tender and negotiation with prior publication of a contract notice).

12. Where appropriate, it shall be stated that they are:

a) a framework agreement;

b) a dynamic purchasing system;

c) an electronic auction (in the case of an open tender, restricted auction or negotiation with prior publication of a contract notice).

13. Where the contract is divided into lots, it shall be stated whether it is possible to submit tenders for a single lot, for several lots or for all lots. Indicate any possible limitations on the number of lots that can be awarded to the same tenderer. Where the contract is not divided into lots, the reasons shall be given, unless this information is provided in the report.

14. For restricted tenders, negotiation with prior publication of a contract notice, competitive dialogue or innovation partnership, where the option of reducing the number of candidates who will be invited to submit tenders, negotiate or participate in the competitive dialogue is used: the minimum number and, where applicable, the maximum number proposed by candidates and the objective criteria to be applied for the selection of those candidates.

15. For the negotiation with prior publication of a contract notice, the competitive dialogue and the innovation partnership, the use of a procedure that takes place in successive stages shall be indicated, where appropriate, in order to progressively reduce the number of tenders to be negotiated or of solutions to be discussed.

16. The special conditions to which the performance of the contract is subject, as the case may be.

17. Criteria to be used for the award of the contract or contracts. Unless the most economically advantageous tender is identified solely on the basis of price, the criteria corresponding to the most economically advantageous tender shall be mentioned and their weighting if they are not included in the specifications or, in the case of competitive dialogue, in the descriptive document.

18. Time limit for receipt of tenders (open procedure) or requests to participate (restricted tender, negotiation with prior publication of a contract notice, dynamic purchasing system, competitive dialogue, innovation partnership).

19. Address to which tenders or requests to participate are to be sent.

20. In the case of open procedure:

a) the period of time during which the tenderer must maintain his tender;

b) the date, time and place of the opening of tenders;

c) the persons authorized to be present at the opening.

21. Language or languages in which tenders or requests to participate must be drawn up.

22. Where appropriate, it shall be stated whether:

- a) the electronic submission of tenders or requests to participate shall be accepted;
- b) the electronic ordering system will be used;
- c) electronic invoicing will be accepted;
- d) electronic payments will be used.

23. It shall be specified whether the contract relates to a project and/or programme financed by European Union funds.

24. Name and address of the review body and, where appropriate, mediation. Precise information concerning the time limits for review proceedings or, where appropriate, the name, address, telephone number, fax number and e-mail address of the office from which such information may be obtained.

25. Date(s) and reference(s) of previous publications in the Official Journal of the European Union concerning the contract(s) to which that notice relates.

26. In the case of periodic purchases, the estimated timetable for the publication of future notices.

27. Date of publication of the notice of intent or, where appropriate, indication that no such notice has been published.

28. Date of transmission for publication of the contract notice.

29. It is specified whether the contract falls within the scope of the Government Procurement Agreement of the World Trade Organisation (only in the case of notices sent for publication in the Official Journal of the European Union).

30. Any other relevant information.

According to Art. 60 of *Law No. 74/2020*, the contracting entity shall publish in the Public Procurement Bulletin the contract notice. The contracting authority shall include in the notice at least the information contained in Annex No. 3 of Law No. 74/2020. Art. 60 and Annex No. 3 transpose Art. 99 and Annex V of Directive 2014/25/EU.

Contract notice

1. Name, State identification number (IDNO), address, telephone number, fax number, e-mail and internet address of the contracting entity and, if different, those of the office from which further information may be obtained.

2. The e-mail or internet address from which it will be possible to obtain free, direct, total and free access to the award documentation.

If free, direct, full and free access is not provided, a statement of how the award documentation can be accessed.

3. Type of contracting entity and main object of activity.

4. Where appropriate, an indication that the contracting entity is a central purchasing authority or that the procurement involves another form of joint purchasing.

5. CPV codes; where the contract is divided into lots, this information must be provided for each lot.

6. Description of the purchase: the nature and extent of the works, the nature and quantity or value of the products, the nature and extent of the services. Where the contract is divided into lots, this information must be provided for each lot.

7. Total estimated value of the contract(s); where the contract is divided into lots, this information must be provided for each lot.

8. NUTS code of the main place of execution of works, in the case of works, or NUTS code of the main place of supply or provision in the case of supplies and services.

9. Admission or prohibition of alternative offers.

10. Timetable for the delivery of products, the execution of works or the provision of services and, where possible, the duration of the contract:

a) in the case of a framework agreement, indicate the expected duration of the framework agreement, specifying, where appropriate, the reasons justifying a duration of more than 4 years. Indicate, where possible, the value or order of magnitude and the frequency of the contracts to be awarded, the number and, where appropriate, the proposed maximum number of economic operators to be involved;

b) in the case of a dynamic purchasing system, the expected duration of that system shall be indicated; indicate, where possible, the value or order of magnitude and the frequency of the contracts to be awarded.

11. Conditions of participation, including:

a) where appropriate, it shall be stated that the contract is reserved for sheltered workshops or that it can only be performed within the framework of sheltered employment programmes;

b) where appropriate, it shall be stated that the provision of the service is reserved to a particular profession by virtue of laws, regulations or administrative provisions; the respective laws, regulations and administrative provisions shall be mentioned;

c) a list and a brief description of the criteria for the eligibility of economic operators which may lead to their abolition and of the selection criteria; the minimum level(s) of any requirements imposed; mention the requested information (affidavits, documentation).

12. Type of award procedure; where appropriate, the reasons for using an accelerated procedure (in the case of open invitations to tender, restricted invitations to tender and negotiation with prior publication of a contract notice).

13. Where appropriate, mention shall be made of:

a) a framework agreement;

b) a dynamic purchasing system;

c) an electronic auction (in the case of open invitations to tender, restricted invitations to tender or negotiation with prior publication of a contract notice).

14. Where the contract is divided into lots, it shall be stated whether it is possible to submit tenders for a single lot, for several lots or for all the lots. Indicate any possible limitations on the number of lots that can be awarded to the same tenderer. Where the contract is not divided into lots, the reasons shall be given, unless this information is provided in the report.

15. Where applicable, any guarantees required.

16. The main methods of financing and payment and/or references to the provisions containing them.

17. For restricted procedure, negotiation with prior publication of a contract notice, competitive dialogue or innovation partnership, where the option of reducing the number of candidates who will be invited to submit tenders, negotiate or participate in the competitive dialogue is used: the minimum number and, where appropriate, the maximum number proposed by candidates and the objective criteria to be applied for the election of those candidates.

18. For negotiation with prior publication of a contract notice, the competitive dialogue and the innovation partnership, the use shall be made, where appropriate, of a procedure which is carried out in successive stages in order to progressively reduce the number of tenders to be negotiated or of solutions to be discussed.

19. The special conditions to which the performance of the contract is subject, as the case may be.

20. Criteria to be used for the award of the contract or contracts. Unless the most economically advantageous tender is identified solely on the basis of price, the criteria corresponding to the most economically advantageous tender shall be mentioned and their weighting if they are not included in the specifications or, in the case of a competitive dialogue, in the descriptive document.

21. Time limit for receipt of tenders (open procedure) or requests to participate (restricted procedure, negotiation with prior publication of a contract notice, dynamic purchasing system, competitive dialogue, innovation partnership).

22. Address to which tenders or requests to participate must be sent.

23. In the case of an open tender:

a) the period of time during which the tenderer must maintain his tender;

b) the date, time and place of the opening of tenders;

c) the persons authorized to be present at the opening.

24. Language or languages in which tenders or requests to participate must be drawn up.

25. Where appropriate, it shall be stated whether:

a) the electronic submission of tenders or requests to participate shall be accepted;

b) the electronic ordering system will be used;

c) electronic invoicing will be accepted;

d) electronic payments will be used.

26. It shall be specified whether the contract relates to a project and/or programme financed by European Union funds and/or from one of the Member States of the European Union.

27. Name and address of the body for the settlement of complaints and, where appropriate, of mediation. Precise information concerning the time limits for opposition proceedings or, where appropriate, the name, address, telephone number, fax number and e-mail address of the office from which such information may be obtained.

28. In the case of periodic purchases, the estimated timetable for the publication of future notices.

29. Date of publication of the notice of intent or, where appropriate, indication that no such notice has been published.

30. Date of transmission for publication of the contract notice.

31. Any other relevant information.

6. Please list the selection criteria, which may be deployed in tender procedures.

According to Art. 18 of *Law no. 131/2015*, the contracting authority shall apply proportional criteria of qualification and selection related to the object of the contract relating only to:

- the eligibility of the economic operator (Art. 19 of Law No. 131/2015 which transposes the provisions set out at Art. 57 of Directive 2014/24/EU);
- the ability to exercise the professional activity (Art. 22 of Law No. 131/2015 which transposes the provisions set out Art. 58 of Directive 2014/24/EU);
- economic and financial capacity (Art. 21 of Law No. 131/2015 which transposes the provisions off set out at Art. 58 of Directive 2014/24/EU);
- technical and / or professional capacity (Art. 22 of Law No. 131/2015 which transposes the provisions set out at Art. 58 of Directive 2014/24 / EU);
- quality assurance standards (Art. 23 of Law No. 131/2015 which transposes the provisions set out at Art. 62 of Directive 2014/24/EU);
- environmental protection standards (Art. 24 of Law No. 131/2015 which transposes the provisions set out at Art. 62 of Directive 2014/24/EU).

According to Art. 67 of *Law No. 74/2020*, contracting entities shall establish objective rules and criteria for the exclusion and selection of bidders or candidates relating only to:

- qualification data of economic operators (Art. 69 of Law No. 74/2020 which transposes the provisions set out at Art. 77 of Directive 2014/25/EU);
- the ability to exercise the professional activity (Art. 72 of Law No. 74/2020 which transposes the provisions set out at Art. 93 of Directive 2014/25/EU);
- economic and financial capacity (Art. 71 of Law No. 74/2020 which transposes the provisions set out at Art. 92 of Directive 2014/25/EU);
- technical and / or professional capacity (Art. 72 of Law No. 74/2020 which transposes the provisions set out at Art. 93 of Directive 2014/25/EU);
- quality assurance standards (Art. 73 of Law No. 74/2020 which transposes the provisions set out Art. 81 of Directive 2014/25/EU);
- environmental protection standards (Art. 74 of Law No. 74/2020 which transposes the provisions set out at Art. 81 of Directive 2014/25/EU).

7. What are the rules for defining the technical specifications?

Art. 1 of *Law No. 131/2015* defines the notion of technical specification, where:

- in the case of public works contracts, all the technical requirements, contained in particular in the award documentation, which define the characteristics which a material must have, a product supplied, so that it can be used for the purpose pursued by the contracting authority. These characteristics include levels of environmental performance, design for all types of users (including access for persons with disabilities) and conformity assessment, performance, safety or dimensions, including procedures for quality assurance, terminology, symbols, tests and test methods, packaging, marking and labelling, instructions for use, as well as production methods and processes at all stages of the life cycle of works. The characteristics shall also include the rules for the design and calculation of costs, the conditions for testing, inspection and acceptance of the works, as well as the construction techniques or methods and all other technical conditions which the contracting authority is in a position to lay down, in accordance with general or specific regulations, in respect of the completed works and their materials or components;
- in the case of supply or service public contracts, a specification included in a document to define the characteristics that a product or service must have, such as quality levels, environmental performance levels, design for all types of use (including access for persons with disabilities) and conformity assessment, performance, use of the product, its safety or dimensions, including the requirements applicable to the product as regards the name under which it is marketed, the terminology, symbols, testing and test methods, packaging, marking and labelling, instructions for use, processes and methods of production at all stages of the life cycle of the product or service, as well as conformity assessment procedures.

According to Art. 37 of Law No. 131/2015, the technical specifications of the products, works and services requested by the contracting authority will represent an exact and complete description of the object of the purchase, so that each requirement and criterion, established by the contracting authority, is fulfilled. Art. 37 of Law No. 131/2015 transposes Art. 42 of Directive 2014/24/EU.

Art. 2 of *Law No. 74/2020*, defines the notion of technical specification, where:

- in the case of works contracts, all the technical requirements, contained in particular in the tender documentation, which define the characteristics which a material, a supply, must have so that it can be used for the purpose pursued by the contracting entity. These characteristics include levels of environmental performance, design for all types of uses (including access for persons with disabilities) and conformity assessment, performance, safety or dimensions, including procedures for quality assurance,

terminology, symbols, tests and test methods, packaging, marking and labelling, instructions for use, as well as production methods and processes at all stages of the life cycle of works. The characteristics shall also include the rules for the design and calculation of costs, the conditions for testing, inspection and acceptance of the works, as well as the construction techniques or methods and all other technical conditions which the adjudicating entity is able to lay down, in accordance with general or specific regulations, in respect of the completed works and their materials or components;

- in the case of supply or service contracts, a specification included in a document to define the characteristics that a product or service must have, such as quality levels, environmental performance levels, design for all types of uses (including access for persons with disabilities) and conformity assessment, performance, use of the good, its safety or dimensions, including the requirements applicable to the product as regards the name under which it is marketed, the terminology, symbols, tests and test methods, packaging, marking and labelling, the instructions for use, the processes and methods of production at all stages of the life cycle of the product or service, and the conformity assessment procedures.

According to Art. 52 of Law No. 74/2020, the technical specifications of the products, works and services requested by the contracting entity will represent an exact and complete description of the object of the purchase, so that each requirement and criterion, established by the contracting authority, is fulfilled. Art. 52 of Law No 74/2020 transposes Art. 60 of Directive 2014/25/EU.

8. What are the award criteria used in tender procedures, and are they dependent on the type of procedure used? Please provide us with data about them. Please provide an overview table with the award criteria for each type of procedure.

The award criteria of the public procurement contract are regulated by Art. 26 of *Law No. 131/2015* which transposes Art. 67 of Directive 2014/24/EU.

The contracting authority awards the public procurement contract/framework agreement to the tenderer who has submitted the most economically advantageous tender in determining which he is entitled to apply one of the following award criteria:

- the lowest price;
- the lowest cost;
- the best quality-price ratio;
- the best quality-cost ratio.

Depending on the type of procedure, the contracting authority shall apply the following award criteria:

Procedure type	Award criteria applied
open procedure	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
restricted procedure, however,	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
competitive dialogue	<ul style="list-style-type: none"> ▪ the best value for money;
negotiated procedures	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
request for price offers	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
design contest	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
purchase in the case of social services and other specific services	<ul style="list-style-type: none"> ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
innovation partnership	<ul style="list-style-type: none"> ▪ the best quality-price ratio; ▪ the best quality-cost ratio.

The award criteria of the public procurement contract are regulated by Art. 76 of *Law no. 74/2020* which transposes Art. 82 of Directive 2014/25/EU.

The contracting entity awards the procurement contract/framework agreement to the tenderer who submitted the most economically advantageous tender in determining which it is entitled to apply one of the following award criteria:

- the lowest price;
- the lowest cost;
- the best quality-price ratio;
- the best quality-cost ratio.

Depending on the type of procedure, the contracting entity applies the following award criteria:

Procedure type	Award criteria applied
open tender	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
restricted tender, however,	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
competitive dialogue	<ul style="list-style-type: none"> ▪ the best quality-price ratio;
negotiated procedures	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
request for price offers	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
design contest	<ul style="list-style-type: none"> ▪ the lowest price; ▪ the lowest cost; ▪ the best quality-price ratio; ▪ the best quality-cost ratio.
innovation partnership	<ul style="list-style-type: none"> ▪ the best quality-price ratio; ▪ the best quality-cost ratio.

9. Does the legislation allow awarding public contracts considering criteria other than price? If so, which are the other criteria that can be used? Does the legislation foresee the possibility that contracting authorities and/or contracting entities (as understood under the EU public procurement rules) base their decisions on the most economically advantageous tender?

Law No. 131/2015 allows the award of public contracts with the application of criteria other than the price criterion. The award criteria of the public procurement contract are regulated by Art. 26 of Law No. 131/2015 which transposes Art. 67 of Directive 2014/24/EU.

The contracting authority awards the public procurement contract/framework agreement to the tenderer who has submitted the most economically advantageous tender in determining which he is entitled to apply one of the following award criteria:

- the lowest price;
- the lowest cost;
- the best quality-price ratio;
- the best quality-cost ratio.

Law No. 74/2020 allows for the award of utilities contracts with the application of criteria other than the price criterion. The criteria for awarding the utilities contract are regulated by Art. 76 of *Law No. 74/2020* which transposes Art. 82 of Directive 2014/25/EU.

The contracting entity awards the utilities contract/framework agreement to the tenderer who has submitted the most economically advantageous tender in determining which it is entitled to apply one of the following award criteria:

- the lowest price;
- the lowest cost;
- the best quality-price ratio;
- the best quality-cost ratio.

10. Does the legislation require a clear distinction between the exclusion, selection and award criteria?

Law No. 131/2015 provides for a clear distinction between the exclusion, selection and award criteria.

Thus, the exclusion criteria are regulated by Art. 19 of *Law No. 131/2015* which transposes Art. 57 of Directive 2014/24/EU.

The selection criteria are regulated at Art. 21-24 of *Law No. 131/2015* which transposes Art. 58 and Art. 62 of Directive 2014/24/EU. The general rules for the application of the selection criteria are described at Art. 17 of *Law No. 131/2015* and applies to the finding of eligibility and qualification data of economic operators.

The award criteria of the public procurement contract are regulated at Art. 26 of *Law No. 131/2015* which transposes Art. 67 of Directive 2014/24/EU. The award criteria are applied in order to determine the most economically advantageous tender.

According to Art. 68 of *Law No. 74/2020* which transposes the provisions of Art. 80 of Directive 2014/25/EU, the rules and objective criteria for the exclusion and selection of tenderers and candidates in open tendering, restricted tendering, negotiation, competitive dialogue or innovation partnership may include the grounds for exclusion provided for at Art. 19 of *Law No. 131/2015*.

The award criteria of the utilities procurement contract are regulated at Art. 76 of *Law No. 74/2020* which transposes the provisions set out at Art. 82 of Directive 2014/25/EU. The award criteria are applied in order to determine the most economically advantageous tender.

11. Are there any local, regional or national preferences schemes? If yes, what do they consist of?

According to Art. 16 of *Law No. 131/2015* and art. 29 of *Law No. 74/2020*, any economic operator, resident or non-resident, natural or legal person of public or private law or association of such persons, has the right to participate, under the terms of this law, in the procedure for awarding the procurement contract. The foreign economic operator, in the Republic of Moldova, benefits the same rights regarding the participation in the procedures for awarding public procurement contracts that the economic operators of the Republic of Moldova benefit from in the country where the foreign economic operator is resident. Thus, according to the national regulatory acts in the field of public/utility procurement, there is no basis to grant preferences to economic operators depending on their place of registration or activity.

12. How are corruption/conflict of interest aspects and related questions taken into consideration by existing legislation? Please list the exclusion criteria in this respect in the tender procedures and state whether they are mandatory or their deployment depends on the contracting authority.

According to the Law No. 131/2015, it is forbidden to exercise any influence in order to determine a member of the working group, as well as the certified specialist in the field of public procurement, to perform his duties contrary to the provisions of the law.

The contracting authority, according to Art. 19 of Law No. 131/2015, which transposes Art. 57 of Directive 2014/24/EU, has the obligation to exclude from the procedure for awarding the public contract any tenderer or candidate of whom it is aware that, in the last 5 years, he has been convicted, by the final decision of a court of law for corruption. At the same time, it applies if the person convicted by a final decision of a court of law for crimes is a member of the management or control body of the respective tenderer/candidate or has the power of representation, decision or control within it.

The contracting authority shall be obliged to exclude from the procedure for the award of the public contract any tenderer or candidate who is in a situation of conflict of interest which cannot be effectively remedied.

Also, according to Art. 42 of Law No. 131/2015 the contracting authority shall reject the bid if it finds that the economic operator that submitted it proposes or agrees to propose, directly or indirectly, to any person in charge or to any employee of the contracting authority a favour in any form, an offer of employment or any other service as a reward for certain actions, decisions or the application of a public procurement procedure to its advantage.

According to Art. 79 of Law No. 131/2015, which transposes Art. 24 of Directive 2014/24/EU, during the procedure of awarding the public contract, the contracting authority/procurement service provider has the obligation to take all necessary measures to avoid situations that could lead to a conflict of interest and/or distortion of competition. The natural or legal person who has provided opinions, suggestions or recommendations to the contracting authority at the stage of the market consultation or has participated in the preparation of the award documentation, including as part of consultancy services, has the right, as an economic operator, to be a tenderer/candidate, an associate tenderer or a subcontractor only if his involvement in the preparation of the award documentation does not distort competition. In such a case, the contracting authority shall communicate to the other tenderers/candidates the information which has been transmitted in the context of the participation of the natural or legal person in the preparation of the award documentation or resulting from such participation and shall set appropriate time limits for receipt of tenders. In such cases, the contracting authority has the right to exclude the natural or legal person if there is no other means of ensuring compliance with the principle of equal treatment, and the latter has failed to demonstrate that its involvement in the preparation of the procurement procedure does not distort competition.

According to Art. 67 para. (3) of *Law No. 74/2020*, the contracting entity has the obligation to exclude from the procedure for awarding the utility contract any tenderer or candidate of whom it is aware that, in the last 5 years, he has been convicted, by a final decision of a court of law, for corruption. It also applies if the person convicted, by a final decision of a court, for offences, is a member of the administrative, management or supervisory body of that tenderer/candidate or has the power of representation, decision-making or control within it.

According to Art. 34 para. (1) of *Law No. 74/2020*, which transposes Art. 42 of Directive 2014/25/EU, the contracting entity, during the application of the procurement procedure, is required to take all necessary measures to avoid situations that could lead to a conflict of interest and/or distortion of competition.

Also, according to Art. 35 of *Law No. 74/2020*, the contracting entity shall reject the tender if it finds that the economic operator which submitted it proposes or consents to propose, directly or indirectly, to any person in charge or to any employee of the contracting entity a favour in any form, an offer of employment or any other service as a reward for certain actions, decisions or the application of a sectoral procurement procedure to its advantage.

13. How does Moldova regulate the award of public contracts in the area of defence and security?

In the Republic of Moldova, the award of public procurement contracts in the field of defence and security is not regulated.

According to the Moldova-EU Association Agreement, it has not been established the obligation to transpose Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC³⁰. At the moment, the purchases in the field of defence and security are carried out as exceptions to the application of Law No. 131/2015, according to Art. 5 para. (1) point (i) and (l) and is performed in accordance with the rules specific to secret contracts.

14. Is there a public procurement strategy and action plan in place? If yes, please explain the scope and the timeframe of the strategy and the mechanisms for monitoring its implementation.

As an initial stage, among the first obligations to be fulfilled in the field of public procurement within the Association Agreement, Republic of Moldova adopted its first Strategy for the development of the public procurement system for the years 2016-2020 and its first Action Plan for the years 2016-2018 approved by Government Decision No. 1332/2016³¹.

The strategy aimed to reform the entire public procurement system, in line with the general principles of *Good Governance*, characterized by the rule of law, transparency, accountability, participation, fairness and inclusion, effectiveness and efficiency, to ensure sustainable development.

The actions and sub-actions provided in the Strategy are complex and feasible measures that were envisaged for the development of the public procurement system, respectively: harmonizing the legal framework in accordance with European Union Directives; improving central and local institutional capacities, the coordination mechanism and the implementation capacities at the level of contracting authorities; strengthening the integrity and fighting corruption in the field of public procurement.

The strategy established 4 areas of reform: legal harmonization, institutional development, e-procurement system, capacity building of contracting authorities and civil servants involved in public procurement.

³⁰ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, available in English at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0081&from=RO>

³¹ Government Decision No. 1332/2016 on the approval of the Strategy for the development of the public procurement system for the years 2016-2020 and the Action Plan for its implementation, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=96808&lang=ro

The implementation of actions for the areas of public procurement reform took place in 4 stages:

- Stage 1: nine months after the entry into force of the Association Agreement - Roadmap, basic standards governing the award of contracts and the institutional framework;
- Stage 2: five years after the entry into force of the Association Agreement (1 September 2019) - the basic elements of the Public Sector Directive and the Public Sector Remedies Directive; basic elements of the Utilities Procurement Directive and the Public Sector Remedies Directive), and other elements of the Public Sector Directive;
- Stage 3: six years after the entry into force of the Association Agreement (1 September 2020), the Concessions Directive;
- Stage 4: eight years after the entry into force of the Association Agreement (September 1, 2022) - other elements of the Utility Procurement Directive and the Utility Procurement Remedies Directive.

According to the Chapter 8. of the strategy, a supervisory board should be created within the Ministry of Finance responsible for monitoring and evaluating the implementation of the Strategy. The implementing institutions will report biannually to the Ministry of Finance on the implementation of the strategy, and the latter, in its turn, will present a consolidated annual report to the Government by March 1st. Currently, a new national program for the development of the public procurement system for the years 2023-2027 as well as the Action Plan for its implementation are in the process of elaboration, which will be finalized after the approval of the Strategy of public finance management.

II. INSTITUTIONAL SET-UP (ADMINISTRATIVE CAPACITY)

15. Please describe which domestic institutions are competent on public procurement policy, and their institutional set-up.

According to Government Decision No. 696/2017 on the organization and functioning of the Ministry of Finance, the central specialized body of the public administration that ensures the implementation of the government policy in the field of public procurement is the Ministry of Finance.³²

The Ministry of Finance regulates the state policy in the field of public procurement through its structural unit Public Procurement Division. The role of the Division consists in developing and promoting the regulatory framework governing the field of public procurement.

At the same time, the Public Procurement Agency, an administrative authority subordinated to the Ministry of Finance, according to its basic attributions, elaborates and submits to the Ministry of Finance proposals to amend and supplement the legislation in the field of public procurement.

16. What are the tasks and powers of these bodies? Do they have the necessary institutional capacity to carry out their tasks? Please provide their organisation chart and the number of staff employed.

According to the Internal Regulation on the Functioning of the Public Procurement Division, it has the following basic functions and attributions:

1. Ensuring and taking the necessary measures in the process of elaboration and promotion of the state policy in the field of public procurement, including its revision in order to improve and harmonize the European Union Directives and international standards.
2. Coordination of the processes of implementation of International Agreements in the field of public procurement to which the Republic of Moldova has a member status, as well as of the processes of accession to other agreements in the field concerned.
3. Coordination and preparation of notices on draft normative acts related to the field of public procurement, elaborated by other actors, which according to the legal framework have the right to legislative initiative.

³² Government Decision no. 696/2017 on the organization and functioning of the Ministry of Finance, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=119184&lang=ro

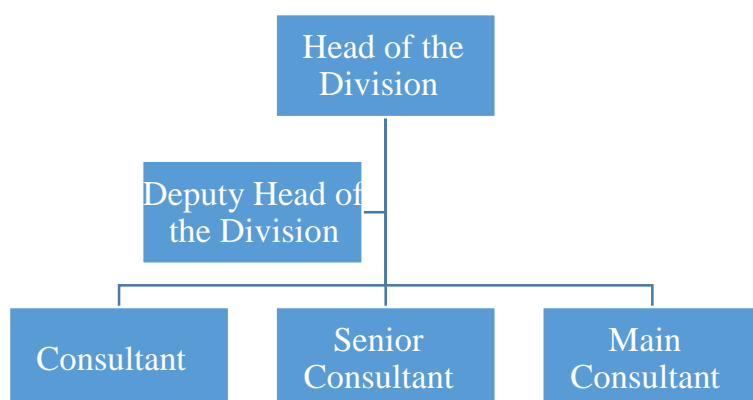
4. Ensuring the examination of the demarches received from the central and local public authorities, economic agents and civil society, aimed at the field of public procurement and ensuring the elaboration of the opinions on them.

5. Ensuring and taking the necessary measures in order to implement the Country Strategies, Action Plans of the Government and the Ministry of Finance, which concern the field of public procurement.

The Public Procurement Division according to the staff lists includes 12 units of which only 9 are currently occupied. The Division is headed by the head of the Division, appointed and dismissed in/from office by the Minister of Finance. The head of the Division reports to the management of the Ministry of Finance. The employees of the Division are subordinated and report to the Head of the Division. In the absence of the Head of the Division, his functions are exercised by the Deputy Head of the Division.

The organization chart of the Public Procurement Division has the following structure:

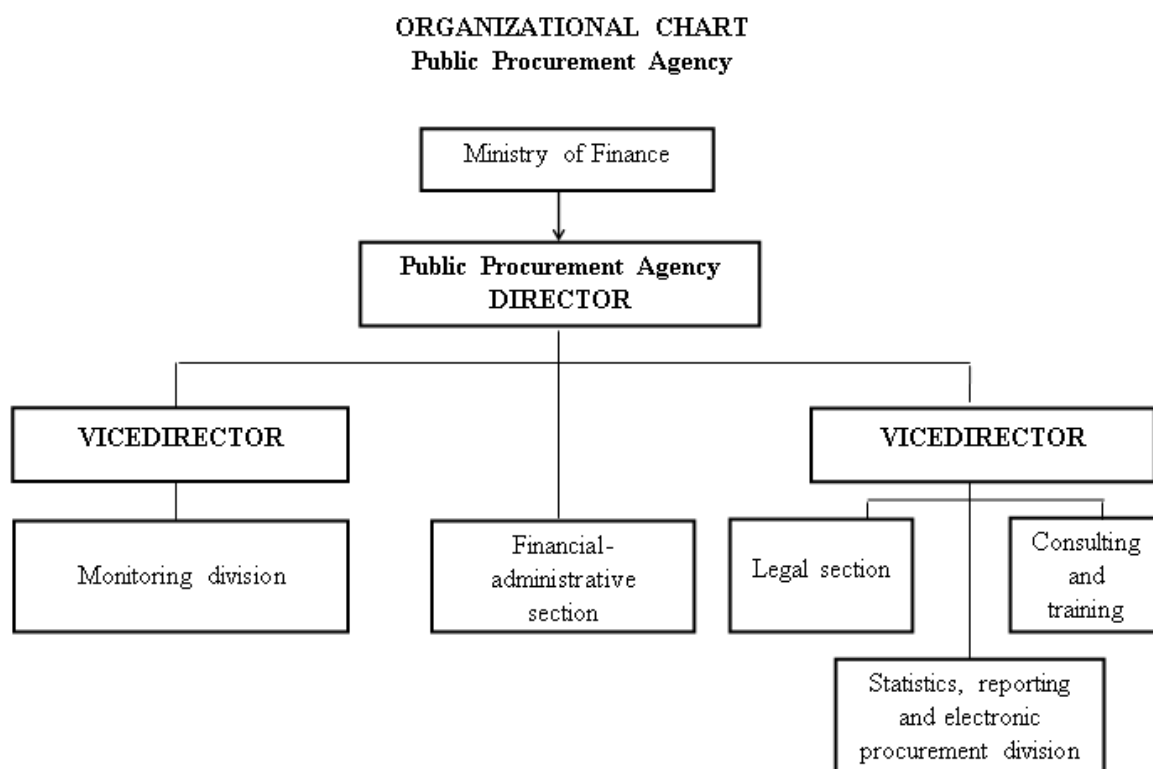
Public Procurement Division's Organisational Chart



Government Decision No. 134/2017 on the approval of the Regulation on the organization and functioning of the Public Procurement Agency and its limit staff, establishes the limit staff of the Public Procurement Agency in the number of 25 units, of which only 18 people currently work. The Agency, currently, has one director, two deputy directors and five heads of divisions. Appointment, modification, suspension and termination of service relations is made by the Minister of Finance³³.

³³ Government Decision No. 134/2017 on the approval of the Regulation on the organization and functioning of the Public Procurement Agency and its limit staff, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=120579&lang=ro#

The organization chart of the Public Procurement Agency has the following structure:



The Public Procurement Agency, taking into consideration the number of staff, the organisational structure and available resources, has the minimum necessary capacities to fulfil its tasks assigned by the existing normative framework. Due to this fact, the Public Procurement Agency is continuously working on making its procedures more efficient and risk oriented, therefore in the period 2020-2021 there is an increase of the main performance indicators regarding the attributions of the Public Procurement Agency, namely: total processed documents related to the conduct of public procurement procedures and the number of documents per year for a de facto employee responsible for monitoring; the number of public procurement contracts and additional agreements per year for a de facto employee; number of people trained.

17. Please inform about the responsibilities and activities related to monitoring of procurement procedures.

According to the provisions of Art. 10 point c) and c¹) of Law No. 131/2015, the *Public Procurement Agency* has basic tasks in order to monitor the compliance of the public procurement procedures and to carry out the analysis of the public procurement system, as well as exercise control over the compliance with the incompatibility regime of economic operators established at Art. 16 para. (6) of the Law. The monitoring of the public procurement procedures is carried out by

identifying deviations/nonconformities from the legal provisions in the field of public procurement and drawing up, in case of establishing the deviations/nonconformities, the monitoring reports that are transmitted to the contracting authorities for compliance.

Court of Accounts represents the supreme audit institution of the Republic of Moldova, which exercises control over the way of formation, administration and use of public financial resources and public patrimony by carrying out external public audit in accordance with the international standards of supreme audit institutions. The Court of Accounts under Law No. 260/2017 on the organization and functioning of the Court of Accounts of the Republic of Moldova³⁴ and in accordance with the Audit Work Program, which is approved annually, carries out financial audit missions that also concern the field of public procurement. In addition to financial audit missions, the Court of Auditors also carries out audit missions specialised in public procurement that assess the compliance of the entire procurement system.

Financial Inspection – the specialized administrative authority subordinated to the Ministry of Finance has the responsibility in the exercise of its functions to carry out financial inspections (controls) at the central and local public authorities and the institutions subordinated and/or founded by them, on issues related to the use of resources financed or contracted from the national public budget, grants and means provided by internal and external donors, reporting of public debt, public procurement procedures, as well as the compliant management of assets and liabilities according to item 6 point a) of Government Decision No. 1026/2010 on the organization of the financial inspection activity³⁵.

The Competition Council is the public authority that ensures compliance with competition law, through actions of anti-competitive practices, including rigged auctions in public procurement; the elimination of competitive infringements, including the strengthening of the competitive culture in accordance with Law No. 183/2012 of competition³⁶.

The State Treasury is a general division within the Ministry of Finance, responsible for the development and implementation of state policy in the field of management and transparency of public finances. The Regional Treasuries ensure the registration, within the limits of the approved budget allocations, of the public procurement contracts concluded, the verification and execution of the payment documents related to the concluded contracts.

³⁴ Law No. 260/2017 on the organization and functioning of the Court of Accounts of the Republic of Moldova, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=118293&lang=ro

³⁵ Government Decision No. 1026/2010 on the organization of the financial inspection activity, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=93936&lang=ro

³⁶ Law No. 183/2012 of competition, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=121240&lang=ro

The National Anticorruption Center is a national institution specialized in preventing and combating corruption, acts related to corruption and acts of corrupt behaviour, including in the field of public procurement, according to the provisions of art. 4 lit. a) and lit. f) of Law No. 1104/2002 on the National Anticorruption Center³⁷.

18. Are there centralised purchasing bodies? If so, please provide information on their setup and the activities conducted.

In the Republic of Moldova, the minimum requirements regarding the way of creating, initiating and conducting public procurement procedures in a centralized manner by the central procurement authority for the same (common) needs of the central and/or local public administration authorities of level II are regulated by the Government Decision No. 56/2021 for the approval of the Regulation on the organization and functioning of the central purchasing authorities³⁸. Therefore, according to points 2 and 3 of the above-mentioned Decision, the centralized procurement bodies may be set up either by the Government for the central public authorities or by the decision of the district or municipal council for the local public administration authorities of level II. Currently, 2 centralized procurement bodies are established in the Republic of Moldova, namely: 1) the Centre for Centralized Public Procurement in Health; 2) State Administration of Roads.

1. The Centre for Centralized Public Procurement in Health – is a non-profit public institution with financial autonomy that operates based on the principles of self-management, in which the Ministry of Health has the capacity of founder. The Centre as a centralized body of procurement in the field of health has the capacity to plan and carry out public procurement procedures, as well as to evaluate and supervise the execution of public procurement contracts for supply and services for the needs of the health system from the state budget means, budgets of administrative-territorial units, financial means of public institutions, means of mandatory health insurance funds and foreign loans in relation to direct or guaranteed state debts.

2. State Administration of Roads – is a state enterprise, founded for the management, maintenance, repair, modernization, development and operation of public roads for the purpose of conducting road traffic in conditions of traffic safety, fluency and continuity. In order to exercise the basic tasks, the State Administration of Roads carries out centralized public procurements in the field provided by the Statute of the Enterprise.

³⁷ Law No. 1104/2002 on the National Anticorruption Center, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=127720&lang=ro#

³⁸ Government Decision No. 56/2021 for the approval of the Regulation on the organization and functioning of the central purchasing authorities, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=126209&lang=ro

III. PUBLICATION

19. Where do contracting authorities and/or contracting entities (as understood under the EU public procurement rules) publish tender notices?

According to Art. 28 of *Law No. 131/2015*, which transposes Art. 48 and 51 of Directive 2014/24/EU, the contracting authority shall publish a notice of intent on the planned procurement in the Public Procurement Bulletin. In the case of public procurement supply and services contracts whose value is equal to or greater than 2.300.000 MDL, public works contracts whose value is equal to or greater than 90.000.000 MDL and public procurement contracts dealing with social services and other specific services whose value is equal to or greater than 13.000.000 MDL, the notice of intent shall also be published in the Official Journal of the European Union.

According to Art. 29 of *Law No. 131/2015*, which transposes Art. 49 and 51 of Directive 2014/24/EU, the contracting authority shall publish in the Public Procurement Bulletin the contract notice in all cases provided by law, according to the procurement procedure applied. In the case of public supply and services contracts whose value is equal to or greater than 2.300.000 lei, public works contracts whose value is equal to or greater than 90.000.000 lei and public procurement contracts that have as their object social services and other specific services whose value is equal to or greater than 13.000.000 MDL, the contract notice shall send in electronic form for publication in the Official Journal of the European Union. All contract notices are published in the national E-procurement system, at the initiation of the procurement procedure, at the same time as the award documentation.

According to Art. 30 of *Law No. 131/2015*, which transposes Art. 50 and 51 of Directive 2014/24/EU, the contracting authority shall send for publication in the Public Procurement Bulletin an award notice no later than 30 days from the date on which it will submit the information on:

- completion of the public procurement procedure – open tender, restricted tender, competitive dialogue, negotiation with/without prior publication of a contract notice, request for price offers – by awarding the public contract or by concluding the framework agreement;
- completion of a design contest by establishing the winning competitor;
- the award of a public contract through a dynamic purchasing system.

When awarding public procurement contracts concluded on the basis of a framework agreement or through a dynamic procurement system, the award notices are grouped quarterly. In this case, the contracting authority is required to send the award notices for publication within 30 days of the end of each quarter.

In the case of public supply and services contracts whose value is equal to or greater than 2.300.000 MDL, public works contracts whose value is equal to or greater than 90.000.000 MDL and public procurement contracts dealing with

social services and other specific services whose value is equal to or greater than 13.000.000 MDL, the award notice will be published by the contracting authority and in the Official Journal of the European Union.

According to Art. 76 para. (11) of Law No. 131/2015, which transposes Art. 72 of Directive 2014/24/EU, the contracting authority amending a public contract/framework agreement in the cases referred to in para. (7) point 1) and 2) of the same article, shall publish a notice in this regard in the Public Procurement Bulletin and, where appropriate, in the Official Journal of the European Union, according to Annex No. 3 of the law.

Law No. 74/2020 regulates the publication of notices by contracting entities in Chapter VIII. Publicity and Transparency (Art. 59 to 65).

Thus, according to Art. 59 of Law No. 74/2020, which transposes the provisions of Art. 67 of Directive 2014/25/EU, the contracting entity shall publish a notice of intent on the envisaged procurement in the Public Procurement Bulletin. The content of the notice of intent must correspond to the information contained in Annex No. 3 of this Law, with the possibility of completing the information considered useful by the entity. In the case of utilities procurement financed by European Union funds and/or one of the Member States of the European Union, the information notice will also be published in the Official Journal of the European Union. However, the publication of the information notice does not oblige the contracting entity to carry out the purchase in question.

As a result, according to Art. 60 of Law No. 74/2020, which transposes the provisions of Art. 69 of Directive 2014/25/EU, the contracting entity shall publish in the Public Procurement Bulletin the contract notice, in all the cases provided for by this Law, according to the procurement procedure applied. In the case of utilities procurements financed by European Union funds and/or one of the Member States of the European Union, the contract notice shall also be published in the Official Journal of the European Union.

The contracting entity is required to include in the contract notice at least the information contained in Annex No. 3 and, if necessary, other information deemed useful by it.

In order to ensure maximum transparency, the contracting entity has the right to publish the contract notice in other national or international media, but only after the publication of that notice in the Public Procurement Bulletin. The notice also published in other local, national or international media shall refer to the Public Procurement Bulletin in which the notice was originally published and shall not contain information other than that published in that bulletin.

According to Art. 61 of Law No. 74/2020, which transposes the Art. 70 of Directive 2014/25/EU, the contracting entity shall send for publication in the Public Procurement Bulletin an award notice no later than 30 days from the date on which it will submit the information on:

- completion of the utilities procurement procedure – open tender, restricted tendering, negotiation with or without prior publication of a contract notice, competitive dialogue, innovation partnership – through the award of the procurement contract or the conclusion of the framework agreement;
- completion of a design contest by determining the winning competitor;
- the award of a contract through a dynamic purchasing system.

In the case of utilities procurement financed by European Union funds and/or one of the Member States of the European Union, the award notice will also be published in the Official Journal of the European Union.

When awarding contracts concluded under a framework agreement or through a dynamic purchasing system, award notices are grouped on a quarterly basis. In that case, the contracting entity shall submit the award notices for publication within 30 days of the end of each quarter.

The award notice shall contain at least the information contained in Annex No. 3 and, if necessary, other information deemed useful by the contracting entity.

If the communication of information on the award of the procurement contract / framework agreement refers to the commercial secret or state secret according to the provisions of the Civil Code³⁹ or of Law No. 245/2008 on state secrecy⁴⁰ or could affect fair competition between economic operators according to the provisions of Competition Law No. 183/2012, the publication of this information is not mandatory.

According to Art. 82 para. (6) of Law No. 74/2020, which transposes the provisions of Art. 89 of Directive 2014/25/EU, when amending a procurement contract/framework agreement in the cases provided for in para. (2) points 1) and 2) of Law No. 74/2020, the contracting entity shall publish a notice in this regard in the Public Procurement Bulletin, according to Annex No. 3 to this law.

20. Are there publication obligations for award notices? If yes, do they apply for all types of award notices?

According to Art. 30 of *Law No. 131/2015*, which transposes Art. 50 and 51 of Directive 2014/24/EU, the contracting authority shall send for publication in the Public Procurement Bulletin an award notice no later than 30 days from the date on which it will submit the information on:

³⁹ Civil Code of the Republic of Moldova No. 1107/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro#

⁴⁰ Law No. 245/2008 on state secrecy, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=112337&lang=ro

- completion of the public procurement procedure – open tender, restricted tender, competitive dialogue, negotiation with/ without prior publication of a contract notice, request for price offers – by awarding the public contract or by concluding the framework agreement;
- completion of a design contest by establishing the winning competitor;
- the award of a public contract through a dynamic purchasing system.

When awarding public procurement contracts concluded on the basis of a framework agreement or through a dynamic procurement system, the award notices are grouped quarterly. In this case, the contracting authority is required to send the award notices for publication within 30 days of the end of each quarter.

In the case of public supply and services contracts whose value is equal to or greater than 2.300.000 MDL, public works contracts whose value is equal to or greater than 90.000.000 MDL and public procurement contracts dealing with social services and other specific services whose value is equal to or greater than 13.000.000 MDL, the award notice will be published by the contracting authority and in the Official Journal of the European Union.

If the communication of information on the award of the public procurement contract/framework agreement refers to the commercial secret or the state secret according to the provisions of the Civil Code or of the Law No. 245/2008 on state secrecy or could affect the fair competition between economic operators according to the provisions of the Law No. 183/2012 on competition, publication of this information shall not be compulsory.

The provisions of *Art. 61 of Law No. 74/2020*, which transposes *Art. 70 of Directive 2014/25/EU*, expressly establishes the obligation of the contracting entity to send for publication in the Public Procurement Bulletin an award notice no later than 30 days from the date on which it will submit the information on:

- completion of the utilities procurement procedure – open tender, restricted tendering, negotiation with or without prior publication of a contract notice, competitive dialogue, innovation partnership – through the award of the procurement contract or the conclusion of the framework agreement;
- completion of a design contest by determining the winning competitor;
- the award of a contract through a dynamic purchasing system.

When awarding contracts concluded under a framework agreement or through a dynamic purchasing system, award notices are grouped on a quarterly basis. In that case, the contracting entity shall submit the award notices for publication within 30 days of the end of each quarter.

If the communication of information on the award of the procurement contract/framework agreement refers to the commercial secret or state secret

according to the provisions of the Civil Code or of Law No. 245/2008 on state secrecy or could affect fair competition between economic operators according to the provisions of Competition Law No. 183/2012, the publication of this information is not mandatory.

21. Are there any legal requirements regarding the publication of signed contracts and contract amendments?

Signed contracts and agreements amending contracts shall not be published.

We mention that the Public Procurement Agency publishes on its official website, under the heading "Transparency ", the list of awarded contracts and amendments to the contracts, based on the reports sent by the contracting authorities⁴¹, which includes information on the name of the contracting authority/entity, the name of the economic operator designated as the winner, the object of the procurement, the date of the contract, the amount of the contract, the CPV code, procedure type, procedure number.

According to Art. 76 para. (11) of Law No. 131/2015, which transposes Art. 72 of Directive 2014/24/EU, the contracting authority amending a public contract/framework agreement in the cases referred to in para. (7) point 1) and 2) of the same article, shall publish a notice to this effect in the Public Procurement Bulletin and, where appropriate, in the Official Journal of the European Union, according to Annex No. 3 of the law.

According to Art. 82 para. (6) of Law No. 74/2020, which transposes Art. 89 of Directive 2014/25/EU, the contracting entity amending a procurement contract/framework agreement shall publish a notice to that effect in the Public Procurement Bulletin, according to Annex No. 3 to the Law.

22. Please provide information on the e-procurement applied in Moldova? Is there an electronic portal where the procurement opportunities are published?

In order to transpose Directive 2014/24/EU, the Law No. 131/2015 on public procurement was amended by Law No. 169/2018⁴². Thus, starting with October 1, 2018, according to Art. 33 of Law No. 131/2015, which transposes Art. 22 of Directive 2014/24/EU, all contracting authorities were obliged to use the automated information system "State Register of Public Procurement" for the

⁴¹ List of awarded contracts and amendments to the contracts, available in Romanian at: <https://tender.gov.md/ro/contracte-atribuite>

⁴² Law No. 169/2018 on the amendment of Law No. 131/2015 on public procurement, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=105525&lang=ro

publication of invitations/notices of participation, for the submission and evaluation of tenders, the award of public contracts⁴³.

The system creates a unitary information space and an official source of data on the public procurement procedures carried out and the results of their organization. At the same time, the functionalities of the electronic purchasing system are aimed at promoting transparency and developing a competitive market in the Republic of Moldova, being available to all local and international users.

The MTender is a multi-platform networking digital procurement IT service, comprise a government-operated web portal and the Open Data central database unit and is networking with several procurement electronic platforms which support electronic tendering procedures for public sector and commercial clients.

The owner of the central data unit is the Ministry of Finance, which ensures the implementation, operation and development of the System in accordance with the legislation and international agreements to which the Republic of Moldova is a party.

The holder and the technical-technological operator of the central data unit of the System is the Public Institution "Center of Information Technologies in Finance", responsible for the maintenance of the unit, maintenance and development of the single governmental online access portal and ensuring the interoperability of the System with the common governmental technological platform "MCloud", as well as integration with relevant state information resources and government electronic services available in the Republic of Moldova.

Public Procurement Agency, provider and recipient of System data, coordinates, monitors and assesses through system functionalities based on risk indicators, the manner in which contracting authorities comply with public procurement and award procedures.

National Complaints Settlement Agency, provider and recipient of System data, records complaints submitted by participants in public procurement procedures and records the results of the examination of the complaints submitted by the participants in the public procurement procedures.

At the moment, we are working on the implementation of a new e-procurement system within the project of the European Union Delegation of "Technical assistance on developing e-procurement system in the Republic of Moldova"⁴⁴ in order to enhance the compliance with the national and European rules and procedures and make the procurement activities more efficient for all users. .

⁴³ Public Portal <https://mtender.gov.md/>

⁴⁴ Project "Technical assistance on developing e-procurement system in the Republic of Moldova
"http://amp.gov.md/aim/viewActivityPreview.do~public=true~pageId=2~activityId=13345~language=en

23. Please provide data on the features (only publication of notices or e-submission etc.) and the use of these portals, in particular the number and type of notices published.

At the moment, automated information system "State Register of Public Procurement" ensures:

- initiation of the procedure (publication of the contract notice, publication of the award documentation);
- electronic communication in the process of clarifications;
- electronic submission of tenders;
- the award of contracts.

In 2021, 3137 procedures were initiated through SIA RSAP with the publication of the contract notice.

During the same period, the contracting authorities sent for publication in the Public Procurement Bulletin 1535 notices of intent, 1928 award notices and 1176 notices of modification of public contracts.⁴⁵

⁴⁵ Public Procurement Bulletin, available in Romanian at:
<https://tender.gov.md/ro/bap>

IV. REMEDIES

24. Please outline the review system in, including the appeal bodies. What review procedures are available in the event of an infringement of public procurement rules? When and to whom are they available? Are there any fees applicable? Is standstill period and automatic suspension of the award procedure in case of the review applicable?

By signing the Moldova-EU Association Agreement, the Republic of Moldova has assumed the obligation to transpose into national legislation the provisions of Directives 2014/23/EU 2014/24/EU, 2014/25/EU, at the same time being transposed the provisions of Directive 2007/66/EC related to remedies, being created in this respect the National Agency for the Solving Complaints, which represents an administrative body with powers of dispute resolution in the field of public procurement, works and services concessions, including those relating to the award of utilities contracts.

The procedure for solving appeals is a quasi-judicial procedure that is carried out according to the principles of legality, speed, adversariality and the right to defence, the decisions of the Agency being subject to judicial review.

The National Agency for the Solving Complaints examines from the point of view of the legality and merits of the contested act and may pronounce a decision by which it cancels it in part or in whole, obliges the contracting authority/entity to issue an act or orders any other measure necessary to remedy the acts affecting the award procedure. Any person interested in obtaining a contract and who considers that an act of the contracting authority/entity has infringed a right recognised by law may lodge an objection to the claim of infringing rights, however, the opposition is to be lodged in compliance with the limitation periods provided for by national law governing public procurement, the award of works and services concessions and the award of contracts in the energy, water, transport and postal services sectors.

The appeal to the National Agency for the Solving Complaints does not imply the payment of any fees or guarantees. In order to initiate an appeal against acts of contracting authorities deemed to be unlawful, it is sufficient to lodge a complaint.

The submission of an appeal does not automatically lead to the suspension of the award procedure, and in duly justified cases and in order to prevent an imminent damage, the National Agency for the Solving Complaints, until the resolution of the merits of the case, may order, by decision, within 3 days, including at the request of the interested party, the suspension of the public procurement procedure. However, the contracting authority does not have the right to conclude the public procurement contract until a final decision on the appeal is issued by the National Agency for the Solving Complaints. Therefore, the lodging of the appeal has a suspensive effect only on the renewal of the contract, not on the award procedure.

25. Are all types of public procurement contracts, including concessions and public private partnerships, and of all values, covered by the public procurement review system? If not, what are the available means for review for the contracts that are not covered by the public procurement review system?

The public procurement contracts, works and services concessions, as well as contracts in the energy, water, transport and postal services sectors are covered by the national system of remedies. Public-private partnerships are not covered, disputes arising on them are settled, mainly amicably, at the choice of the parties being provided as mechanisms mediation and arbitration, for these, however, a special procedure, an independent mediation body or a certain arbitration court is not provided for. The national system of remedies covers contracts of all values (above the EU thresholds, as well as up to them) except for small value contracts.

26. Which body is responsible for the public procurement review? Is there one body or more bodies deciding on different aspects of the public procurement review? Are they of administrative or judicial nature? Are there any formal means of coordination between the institutions? How is their independence from the contracting authorities ensured? Do they have sufficient institutional capacity to carry out their tasks (number of staff, document management systems in place, etc.)?

The competences related to the settlement of appeals in the field of public procurement belong only to the National Agency for the Solving Complaints, which is an autonomous public authority and independent from other public authorities, from individuals and companies, not being another administrative entity with equivalent competences in terms of appeals.

The Agency shall settle the appeals lodged within the public procurement procedures, with the estimated value which is equal to or higher than the thresholds set out in Law No. 131/2015. The Agency does not examine disputes relating to the award of low-value contracts. In those cases, the parties whose rights have been harmed may appeal against the decisions of the authorities in court.

The procedure for dealing with appeals is of an administrative nature. The Agency's decisions may be appealed against by the parties to the courts.

According to the legal framework, the National Agency for the Solving Complaints has organizational, functional, operational and financial independence, being responsible to the Parliament for presenting the performance reports on its activity.

The Parliament of the Republic of Moldova has established the limit-effectiveness of the National Agency for the Solving Complaints in a number of 30 staff. Currently, the 30 staff include 7 councillors for the settlement of appeals with the status of public dignity, 21 civil servants and 2 auxiliary staff. Since its foundation until now, the limit number has not been completed 100%, at the same time, the

number of appeals is increasing. Thus, a challenge is to optimize and streamline the process of examining appeals, while increasing the positive impact of the resolution activity.

In order to manage the documents related to the process of solving appeals at the level of the National Agency for the Solving Complaints, the electronic document management register is implemented, which also includes a module that ensures the random distribution of the submitted appeals.

27. What powers are conferred on these review bodies? What type of measures/actions can they take? Is it possible for them to take interim measures, set aside or ensure setting aside of decisions taken unlawfully, award damages to persons harmed by an infringement or consider a contract ineffective?

The National Agency for the Settlement of Appeals solves the complaints submitted within the public procurement procedures, utilities procurements and award procedures for services and works concessions.

As measures which may be taken following the initiation of an appeal, the Agency shall decide on the continuation or cancellation of the public procurement procedure, including the cancellation of the public contract. At the same time, the Agency may take note, at any time during the settlement of the appeal, of the waiver thereof by the appellant.

The Agency may, by decision, cancel, in whole or in part, the contested act of the contracting authority/entity. The agency's decision shall be binding on the parties and the public procurement contract concluded with the non-observance of the Agency's decision shall be null and void.

The Agency may order the suspension of the public procurement procedure, other provisional measures the legal framework does not provide for them to be applied. At the same time, the granting/non-granting of compensations to the injured persons as well as the consideration of an ineffective contract do not represent duties that can be exercised by the Agency.

28. Please provide data on the decisions of the public procurement review body for the last two years (number of complaints received, type of complaints, value etc.). Please provide data on court judgments regarding cases brought against the public review body decisions, if applicable.

During 2020, were submitted 1282 complaints on public procurement procedures with an estimated value of 6.716.077.233,50 MDL, and during 2021, were submitted 1095 complaints, of which 1087 on public procurement procedures and 8 on utilities procurement, with a total estimated value related to the 1095

complaints of 5.313.540,94 MDL. These amounts constitute an essential amount of the national public budget allocations for public procurement⁴⁶.

Information on appeals filed and decisions adopted in the years 2020-2021

Description	Year 2020	Year 2021
Number of decisions	1003	900
Number of appeals, including	1282	1095
• on the outcome of the procedure	1077	921
• on the award documentation	205	174

Information on the type of appeals (submitted on the outcome of the procedure or on the tender documentation) is presented in the table above.

In most cases, participants in public procurement procedures comply with the Decisions of the National Agency for the Solving Complaints, and in cases where decisions are appealed in courts (only 3,8% of the Agency's decisions are appealed), in most cases the courts maintain the Agency decisions as legal.

Out of the total number of decisions (3432) issued by the Agency from the foundation until the end of 2021, only 3 decisions were annulled by the courts through final and irrevocable acts, which represents less than 0.1% of the total number of issued decisions. At the same time, out of the total number of summonses (131) since the creation of the Agency, the 3 Decisions of the Agency annulled by final and irrevocable acts, represent 2,29% of the total number of summonses.

29. Are the decisions of the review body systematically published?

The decisions of the National Agency for the Solving Complaints can be accessed on the official website www.ansc.md⁴⁷ or on the governmental web portal for online access: www.mtender.gov.md by accessing the "appeal procedure" section for each procedure.

⁴⁶ National Agency for Solving Complaints performance reports for 2020-2021, available in Romanian at: https://www.ansc.md/sites/default/files/document/attachments/raport_2021_ansc_0.pdf
https://www.ansc.md/sites/default/files/document/attachments/raport_2020_final.pdf

⁴⁷ The National Agency for the Solving Complaints official website, available in Romanian at: <https://www.ansc.md/ro>