



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF MOLDOVA'S PUBLIC PROCUREMENT SYSTEM

2021





MAPS

Methodology for Assessing
Procurement Systems

Moldova

Assessment of the public procurement system Volume I - Main report

The World Bank Group



Government of Moldova



Moldova: MAPS Assessment of the Public Procurement System

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Acronyms

ANI	National Integrity Authority
ANSC	National Agency for the Resolution of Complaints
ASD	State Road Administration
CAPCS	Centre for Centralised Public Procurement in Health
CA	Contracting Authority
CC	Competition Council
CJEU	Court of Justice of the European Union
CNA	National Anticorruption Centre
CoA	Court of Accounts
CoE	Council of Europe
CSO	Civil Society Organization
EBRD	European Bank for Reconstruction and Development
EO	Economic Operator
ESPD	European Single Procurement Document
EU	European Union
GPA	Government Procurement Agreement
MAPS	Methodology for Assessing Procurement Systems
MDB	Multilateral Development Bank
MDL	Moldovan leu
MoF	Ministry of Finance
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
PEFA	Public Expenditure and Financial Accountability
PPA	Public Procurement Agency
PPL	Public Procurement Law
PPP	Public-Private Partnership
SBD	Standard Bidding Document
SIA “RSAP”	Automated Information System “State Register of Public Procurement”
SIGMA	Support for Improvement in Governance and Management (EU and OECD)
SME	Small and Medium Enterprises
SOE	State-owned enterprises
SPP	Sustainable Public Procurement
TAG	Technical Advisory Group
WB	World Bank

Executive summary

The Ministry of Finance of the Republic of Moldova has requested the assistance of the World Bank with carrying out an assessment of the public procurement system and providing corresponding recommendations for reform. The assessment has been carried out by the World Bank in close co-operation with the competent national authorities, led by the Ministry of Finance, using the current (2018) version of the MAPS¹, the Methodology for Assessing Procurement Systems. It has involved interviews with the central and local contracting authorities, development partners supporting procurement reform in the country, training institutions and universities, professional bodies, and civil society organisations, as well as review and analysis of relevant documentation and data. The findings and recommendations have thus been derived from and validated with all key stakeholders.

The main development objective of the work has been to use the MAPS assessment tool to assess the quality and effectiveness of Moldova's public procurement system. In particular, the assessment has endeavoured to:

- 1) identify strengths and weaknesses of the public procurement system in Moldova, and benchmarking it with international best practices and standards;
- 2) identify any substantial gaps that negatively impact the quality and performance of the public procurement system; and
- 3) help the Government to prioritise efforts in public procurement reform by suggesting recommendations to enhance the public procurement system.

Special attention has been paid to the scope for completing and harmonising the legal and institutional framework; strengthening and promoting the procurement profession; enhancing the planning and preparation stages; improving the efficiency and transparency of the evaluation and award process; and strengthening contract management.

The assessment has covered central and local public authorities in general, in order to have a clear view of the common features of the public procurement system and to identify aspects and issues where reform initiatives could be expected to give results across the board. As a complement, at the request of the Minister of Finance, special attention has been paid to the health sector, including the work of the Centre for centralised procurement in the health sector, and to state owned enterprises, in particular as regards public procurement in the road sector. The findings and recommendations of the assessment have been reviewed and commented on by the authorities concerned, in particular the Ministry of Finance and the Public Procurement Agency, and by other stakeholders involved during the drafting and finalisation of the report. In addition, the World Bank's MAPS Global Team has thoroughly commented on the initial final draft. Comments from the MAPS Technical Advisory Group have been sought and were duly considered in preparation for the official presentation of the report to the Government and have been fully incorporated in the final version of the report.

The main issue encountered in the process has been the lack of effective access to complete and accurate data for describing and analysing the actual practices and outcomes in the public procurement system.

¹ See <http://www.mapsinitiative.org/about/>.

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Many of the existing systems and databases contain only incomplete or inaccurate information or are structured in such a way that relevant analyses are difficult to carry out. In many cases, if at all accessible, information is collected and archived only in the form of hard copy documents. A small enterprise survey with a total of 10 respondents and an analysis of 69 contract files have nevertheless allowed some quantitative data to be collected, used mainly to validate the findings of the qualitative analysis.

Moldova's legal framework for public procurement is being brought close to European Union (EU) standards in line with the obligations taken on by the country when concluding an association agreement with the EU. In application of the Association Agreement, Moldova adopted its first Strategy for development the public procurement system for 2016 – 2020. The public procurement law² now provides a largely satisfactory, basic regulatory framework incorporating the fundamental EU principles governing the award of public contracts but will require further amendments. State owned enterprises are not covered by the public procurement law, not even utilities. A separate law on procurement by utilities has been drafted and was adopted by Parliament on 21 May 2020 and published³ on 26 June 2020, but it will only enter into force 12 months after the date of publication. Procurement in the area of defence remains unregulated. The legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation, in particular the Concessions Directive⁴. A new strategy for the next five years will have to be adopted before the end of 2020, and the present MAPS assessment will provide essential elements for its preparation.

The main central government level institutions in charge of public procurement are the Ministry of Finance (MoF), in charge of policy development; the State Treasury (under the MoF), in charge of registering public contracts and paying corresponding invoices; the Public Procurement Agency (under the MoF), with a number of management and monitoring tasks for ensuring the smooth functioning of the public procurement system; and the National Agency for the Resolution of Complaints, in charge of reviewing and ruling on complaints from tenderers and other interested parties.

The main findings of the assessment reflect the situation with respect to the following critical issues, which should be duly considered in setting the priorities for further reform of the public procurement system:

- completing and harmonising the legal and institutional framework;
- strengthening and promoting the procurement profession;
- enhancing the planning and preparation stages of the procurement process;
- improving the adequacy, efficiency and transparency of the evaluation and award process;
- strengthening contract management and monitoring public procurement outcomes.

Enhancement of e-procurement would be one of the major means for addressing many of these points, which should be done in parallel with measures to raise transparency and improve integrity in public procurement.

The findings can be summarised as follows, with the observations grouped under the four main pillars that constitute the main structure of the assessment methodology. Given the broad picture of the

² Law no. 131/2015 on public procurement, as subsequently amended;

https://www.legis.md/cautare/getResults?doc_id=113104&lang=ro

³ Law no. 74/2020 on procurement in the energy, water, transport and postal services sectors;

https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

⁴ Directive 2014/23/EU

situation thus outlined, the assessment also leads to some corresponding, main recommendations, set out in *italics*, recapitulating the essence of the consolidated recommendations set out in Chapter 4. In each case, the detailed assessment in Chapter 3 gives further details, presented in strict accordance with the structure of the indicators, sub-indicators and corresponding evaluation criteria that compose each pillar.

Pillar I: Legislative and Regulatory Framework

- The primary legislation is well aligned with good international practice, but the corresponding secondary legislation is partly outdated and contradictory and requires revision

Continue amending the primary procurement legislation and update and revise all secondary legislation accordingly

- The public procurement law gives wide opportunities to select procurement procedures and award criteria appropriate to the individual case, but the e-procurement system does not allow the majority of them to be used

Ensure that the e-procurement system fully matches the requirements of the public procurement law

- Existing standard documentation⁵ is very detailed and prescriptive, but to the point of making it complicated to ensure formal compliance with all details and to adapt its use to the circumstances in ways that allow the focus to be put on the outcomes of the contracts to be concluded, especially on value for money

Simplify the form and contents of the standard documentation

- Publication of some procurement documentation⁶, in particular procurement plans, is not regulated in a way that ensures easy access and use

Require all public procurement documentation to be published and freely accessible on or through a central website in a machine-readable format

Pillar II: Institutional Framework and Management Capacity

- Procurement planning and execution is mostly carried out on an annual basis, with operations often starting well after the beginning of the fiscal year and being rushed through towards its end

Align the time horizon and the approach for procurement planning and adjust budget and disbursement regulations to allow procurement to proceed in a regular fashion throughout the year

⁵ Here and in the following, “standard documentation” refers to standard tender documents and other prescribed forms for notices and reports

⁶ Here and in the following, “procurement documentation” includes standard documentation (cf. above) as well as items like procurement plans, minutes of evaluation and other records of the procurement process, and complaints made and corresponding rulings

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- The definition of public procurement authorities is broadly in line with that in the EU directives, but leads to a large number of them (around 3 000), many with very limited skills and resources, and leaves the status of many state and municipally owned enterprises unclear

Address the lack of skills and resources in many small contracting authorities; review and categorise all public enterprises according to which procurement rules they should apply

- Within contracting authorities, public procurement is not carried out by a dedicated administrative (sub-)unit but by “working groups” set up for the purpose and composed by officials who mostly have other tasks in their primary, official positions

Replace the “working groups” for public procurement by a requirement for all contracting authorities either to use an administrative unit dedicated to public procurement or, possibly, and only for small contracting authorities, to assign the public procurement function to a duly knowledgeable and experienced staff member having this as his or her primary duty

- Correspondingly, public procurement is not officially recognised as a profession and, as a consequence, there are no specific public procurement positions with dedicated, matching approaches for engagement, management, training, evaluation and promotion of staff concerned

Recognise public procurement as a profession, including it in the official classification of occupations of the Republic of Moldova (Clasificatorul Ocupațiilor din Republica Moldova)

- Centralised procurement is little developed, and its use in practice (mainly for medical supplies and equipment) is hampered by regulatory problems (e.g., no provisions for framework agreements) and inadequate e-procurement systems

Examine the scope for improving the use of centralised procurement and start piloting it for standard specification items in wide demand by central authorities and/or municipalities

- Public procurement data is generated in ways that are not fully conducive to easy collection, compilation and analysis, with some aspects (e.g. small value contracts) hardly covered at all; as a consequence, there is not a strong evidence basis available for policy making

Identify the measures required for generating, collecting, compiling, analysing and publishing a full range of data on what happens in public procurement, in particular, through an up-to-date e-procurement system, and take corresponding actions

Pillar III: Procurement Operations and Market Practices

- Data on actual public procurement practices is limited, and it is therefore difficult to identify skill gaps and training needs and to take action to address them, as well as to improve documentation and tools for facilitating public procurement

Collect more detailed and reliable data on actual procurement practices, and use for improving policies and procedures as well as documentation, information and training

- A not exactly known but possibly significant number of otherwise competent enterprises may refrain from participation in public procurement because of perceived barriers, like administrative complexity, unfair competition or corruption

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Examine in further detail the reasons why economic operators would or would not participate in public procurement, and change policies and practices accordingly in order to raise the level of trust in the system and encourage wider participation

- As noted by the public procurement agency and the review body, there is room for improvement of the skills of contracting authorities in planning and preparing public procurement, evaluating tenders and awarding contracts, and managing contracts concluded

Raise contracting authorities' skills in preparing and carrying out procurement, e.g. through improved guidance materials and training

- The characteristics of the Moldovan supply market for items in demand in public procurement is only incompletely known and understood by central government and contracting authorities

Analyse the Moldovan supply market from the point of view of public procurement, and use the findings when developing economic policies and refining public procurement practices

Pillar IV: Accountability, Integrity and Transparency of Public Procurement System

- Several civil society organisations have an interest in public procurement and are trying to monitor it, but point to limited access to data and occasional lack of effective consultations

Take steps to allow civil society to effectively monitor all stages of the public procurement cycle, and offer corresponding training

- A significant number of institutions have various roles and responsibilities in supervising public procurement and auditing procedures and performance; however, in the absence of a broad, overarching policy to this effect, there are some conflicts of roles and gaps and overlaps in responsibilities

Strictly observe existing legal obligations for public consultations; ensure that objectives and regulations for supervision and audits are harmonised

- Internal audit is well regulated, with corresponding training and guidance materials, but remains little applied in practice, in particular to public procurement

Intensify the introduction and development of internal audit, especially with respect to public procurement

- Audits are still little focussed on outcomes and performance, and recommendations made are not always well followed up

Refocus the approach for auditing public procurement towards the outcomes and the performance of public procurement; this would include revising the rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts and for sanctioning any failure to abide by them

- Several supervisory and inspection agencies interpret and apply the public procurement law and corresponding secondary legislation when reviewing the operations of contracting authorities,

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but their approaches are not harmonised, so economic operators may face conflicting expectations and requirements

Institutionalise regular consultations between the policy making, advisory and supervisory institutions dealing with public procurement, so as to harmonise the understanding of the public procurement law and how it should be applied

- Formal measures for preventing, identifying and sanctioning fraud and corruption are in place, but handled by several institutions with partly overlapping roles; there is little evidence of effective sanctions being meted out, and the situation in public procurement is not quite clear

Review all measures in place for preventing, identifying and sanctioning fraud and corruption with a view to making them more efficient and effective; this would include raising the level of transparency of the review of declarations of conflicts of interest and of assets and of any corresponding sanctions

- A system for debarring delinquent tenderers is in place, but its operation is complicated, while other information on past performance of suppliers, contractors and service providers is difficult to find

Review the system for prohibiting economic operators from participating in public procurement, and introduce measures to make past performance more transparent

A tabular overview of findings of the MAPS assessment is given here below. The tables present a comparison between the public procurement situation in Moldova and the evaluation criteria under the indicators and sub-indicators in the MAPS assessment.

Assessment Result Summary: number of assessment criteria met, by pillar

Color Codes:

Criterion Substantially Met – Green

Criterion Partially Met – Yellow

Criterion Substantially Not Met – Red

Criterion Not Applicable - Blue

MAPS Pillar	Criteria Substantially Met	Criteria Partially Met	Criteria Substantially Not Met	Criteria Not Applicable	Total
Pillar I: Legal, Regulatory, and Policy Framework	35	28	4	0	67
Pillar II: Institutional Framework and Management Capacity	25	26	3	1	55
Pillar III: Public Procurement Operations and Market Practices	2	19	5	0	26
Pillar IV: Accountability, Integrity and Transparency of	30	27	5	0	62

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the Public Procurement System					
Total	92	100	17	1	210

Assessment Result Summary: level of compliance with assessment criteria, by sub-indicator

Color code:

Criteria substantially not met	Criteria partially met	Criteria substantially met	Criteria not applicable
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Please note that this table summarizes the situation for ease of reference. Consequently, a sub-indicator which is now indicated as being in partial compliance may contain, e.g., one assessment criterion which is not at all met and another one that may be fully met. Annex 6 presents further details of the level of compliance for each individual assessment criterion under each sub-indicator.

Pillar I		Pillar II		Pillar III		Pillar IV	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		4(b) Financial procedures and the procurement cycle		9(b) Selection and contracting		11(b) Adequate and timely access to information by the public
	1(c) Advertising rules and time limits		5(a) Status and legal basis of the normative / regulatory function		9(c) Contract management		11(c) Direct engagement of civil society
	1(d) Rules on participation	5. The country has an institution in charge of the normative / regulatory function.	5(b) Responsibilities of the normative / regulatory function	10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	12(a) Legal framework, organisation and procedures of the control system
	1(e) Procurement documentation and technical specifications		5(c) Organisation, funding, staffing, and level of independence and authority		10(b) Private sector's organisation and access to the public procurement market		12(b) Coordination of controls and audits of public procurement
	1(f) Evaluation and award criteria		5(d) Avoiding conflict of interest		10(c) Key sectors and sector strategies		12(c) Enforcement and follow-up on findings and recommend
	1(g) Submission, receipt, and opening of tenders		6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities and formal powers of procuring entities			12(d) Qualification and training to conduct procurement audits

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Pillar I		Pillar II		Pillar III	Pillar IV	
	1(h) Right to challenge and appeal		6(b) Centralized procurement body		13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of procurement information supported by IT technology			13(b) Independence and capacity of the appeals body
	1(j) Electronic Procurement		7(b) Use of e-Procurement			13(c) Decisions of the appeals body
	1(k) Norms for safekeeping of records and electronic data.		7(c) Strategies to manage procurement data		14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices etc.
	1(l) Public procurement principles in specialized legislation	8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice and assistance			14(b) Provisions on prohibited practices in documents
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures		8(b) Recognition of procurement as a profession			14(c) Effective sanctions and enforcement systems
	2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system			14(d) Anti-corruption framework and integrity training
	2(c) Standard contract conditions					14(e) Stakeholder support to strengthen integrity in procurement
	2(d) User's guide or manual for procuring entities					14(f) Secure mechanism for reporting prohibited practices or unethical behaviour
						14(g) Codes of conduct / codes of ethics and financial disclosure rules
3. The legal framework reflects the country's secondary	3(a) Sustainable Public Procurement (SPP)					

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Pillar I		Pillar II		Pillar III	Pillar IV	
policy objectives and international obligations	3(b) Obligations deriving from international agreements					

Spend Analysis: A separate report on this task is prepared, as a free-standing complement to the MAPS assessment. The report analyzes the efficiency and effectiveness of the public procurement system in Moldova using the available data to take a comprehensive look at the patterns of procurement outcomes by procuring entities and the firms that participate and win procurement contracts. The data analysis report assesses all public procurement data available in Moldova through the PPA and the MoF through the State Treasury (it should be noted that this data is incomplete, as variously discussed in the present MAPS report). The spend analysis report will include (but not be limited to) the analysis of the following indicators; a) Competition i.e. the rate of participation of firms in procurement processes, b) Open Procurement Methods i.e. the use of competitive methods in Moldova over closed or restricted participation methods, c) Procedural Timeliness i.e. the time it takes for a procurement process to complete under different procurement methods and d) Firm Characteristics i.e. the types of firms participating and winning contracts in Moldova (SME, Incumbents, Non-Local Firms etc). Further, the report will also analyze the use of thresholds in Moldova to sort higher value procurement into e-Procurement and its effects on procurement outcomes. The main objective of the data analysis report will be to identify areas of policy interest and provide data driven policy recommendations. The report will also provide recommendations on improving the quality and completeness of data maintained by the PPA and the State Treasury.

1 Introduction

1.1 Context and rationale of the assessment

Reflecting the ambitions of the Government of Moldova to improve public financial management, promote efficiency, integrity and transparency in public administration, and raise the relevance and quality of the services provided to the citizens by public institutions, and given the importance of taking full advantage of the country's participation in the Government Procurement Agreement and its Association Agreement with the European Union, the Ministry of Finance requested the assistance of the World Bank with carrying out an assessment of the public procurement system and providing corresponding recommendations for reform.

The public procurement chapter of the Association Agreement includes a number of formal obligations which should be duly reflected in Moldovan legislation and practices. Among these, it requires the preparation of strategies for the development of public procurement, with the next one due by the end of 2020 in order to cover the period 2021-2025. The assessment and its findings and recommendations would be a timely and important contribution to this work.

Reviewing the public procurement system with a view to carry out necessary reforms is important also for a number of other reasons. Public procurement constitutes an important share of public budgets and is a key element of public financial management. It is an essential means for meeting citizens' needs for public infrastructure and services and for ensuring that the authorities can do their work under favourable conditions. It has the potential to support sustainable development and constitutes an important market for local businesses, including SMEs. Well-regulated and managed, it is a means for reducing fraud and corruption and for enhancing probity in public administration in general.

Having in mind the main shortcomings that had already been tentatively identified, the assessment has paid special attention to the following critical issues, which should be duly considered in setting the priorities for further reform of the public procurement system:

- completing and harmonising the legal and institutional framework;
- strengthening and promoting the procurement profession;
- enhancing the planning and preparation stages of the procurement process;
- improving the adequacy, efficiency and transparency of the evaluation and award process;
- strengthening contract management and monitoring public procurement outcomes.

Enhancement of e-procurement would be one of the major means for addressing many of these points, which should be done in parallel with measures to raise transparency and improve integrity in public procurement.

The procurement assessment has been carried out using the current (2018) version of the MAPS¹, the Methodology for Assessing Procurement Systems, originally created by a joint initiative of the World

¹ See <http://www.mapsinitiative.org/about/>.

Bank and the OECD's Development Assistance Committee in 2003-2004 and updated in 2015-18 with a number of additional participants in order to match today's public procurement challenges.

The assessment has been carried out by the World Bank in close co-operation with the competent national authorities, led by the Ministry of Finance. It has involved interviews with the central and local contracting authorities, development partners supporting procurement reform in the country, training institutions and universities, professional bodies, and civil society organisations, as well as review and analysis of relevant documentation and data. The findings and recommendations have thus been derived from and validated with all key stakeholders.

1.2 Objectives of the assessment

The main development objective of the work has been to use the MAPS assessment tool to assess the quality and effectiveness of Moldova's public procurement system and on that basis create an evidence base for future reforms. In order to achieve this objective, the assessment has endeavoured to:

- 1) identify strengths and weaknesses of the public procurement system in Moldova, and benchmarking it with international best practices and standards;
- 2) identify any substantial gaps that negatively impact the quality and performance of the public procurement system;
- 3) help the Government to prioritize efforts in public procurement reform to enable:
 - a) balanced accountability mechanisms between the Government, citizens, and the private sector;
 - b) governance of risk management in the procurement cycle; and
 - c) integration of the public procurement system with the overall public finance management, budgeting and service delivery processes;
- 4) provide a comparative analysis of the country's two parallel procurement systems (Government and State-Owned Enterprises (SOEs)), between each other and against MAPS standards; and
- 5) suggest recommendations to enhance the public procurement system and jointly with the Government elaborate an action plan for reforms to continuously enhance the quality and performance of the procurement system;

In addition, and at the request of the Ministry of Finance, the assessment will include spend analysis which will help the Government reduce procurement costs and improve efficiency in public procurement to generate savings.

1.3 Assessment methodology and challenges

The procurement assessment has been guided by the MAPS analytical framework, constituted by four pillars with the following contents:

- (i) Legal, Regulatory and Policy Framework
- (ii) Institutional Framework and Management Capacity
- (iii) Procurement Operations and Market Practices, and
- (iv) Accountability, Integrity and Transparency.

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The pillars contain a total number of 14 main indicators covering the full range of public procurement principles, policies and practices, in turn subdivided into sub-indicators, each one composed by a number of assessment criteria which represent internationally accepted principles and practices of good public procurement. The assessment reviews the actual situation, compares it with the assessment criteria and describes it accordingly, identifies any gaps, examines the underlying reasons for them and, on that basis, prepares recommendations for the further development of the public procurement system.

In line with the methodology¹, the collection, compilation and analysis of the information needed for the assessment has been carried out in three main steps:

Steps	Assessment activity
Step 1	<ul style="list-style-type: none">• Review of the system applying assessment criteria expressed in qualitative terms.• Preparation of a narrative report providing detailed information related to this comparison (actual situation vs. assessment criteria) and on changes underway.
Step 2	<ul style="list-style-type: none">• Review of the system applying a defined set of quantitative indicators (applying at least the minimum set of quantitative indicators defined).• Preparation of a narrative report detailing the findings of this quantitative analysis.
Step 3	<ul style="list-style-type: none">• Analysis and determination of substantive or material gaps (gap analysis).• Sub-indicators that exhibit a “substantive gap” need to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system.• In case of identified reasons that are likely to prevent adequate actions to improve the system, “red flags” need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

Steps were taken to set up an Assessment Steering Committee led by the Ministry of Finance, including representatives from key ministries, other public institutions, civil society, private sector as well as donors to make it a multi-disciplinary team.

A stakeholder analysis was carried out by the World Bank office in the course of the preparation of the Concept Note for the assessment, where its findings have been reflected (see Annex 1). A separate, corresponding report has not been published.

For carrying out the work, an assessment team was set up, co-led by a senior procurement specialist at World Bank headquarters and a procurement specialist in the Moldova office of the World Bank and

¹ See further <http://www.mapsinitiative.org/methodology/>

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further composed by an international consultant and three local consultants engaged for the purpose. The assessment team has been supported with premises and administrative assistance at the World Bank office in Chişinău. This work was carried out during the period November 2019 – June 2020.

During its work, the assessment team compiled and reviewed relevant documentation, held working meetings with the stakeholder groups and collected inputs from them, interviewed individual authorities concerned, carried out a survey of economic operators, analysed available statistical data and examined samples of procurement files and decisions on complaints lodged with the review body.

Representatives of the main stakeholder groups identified – contracting authorities, civil society organisations, and the business community – were invited to a series of workshops for carrying out situation and gap analyses and making initial recommendations, while other key stakeholders were visited individually.

Drawing on the findings from stakeholder workshops, interviews with the competent authorities and an enterprise survey and supported by the collection and review of documentary evidence, drafting of the preliminary report was done principally during the period February – June 2020. Delays were encountered due to the effects of the COVID-19 pandemic, preventing the team from holding regular meetings with various stakeholders and other sources of information.

In order to assess sub-indicators 9 (b) and 9 (c), 69 contract files were randomly selected from those archived at the Public Procurement Agency (PPA) in 2017-2019 and reviewed in detail by the assessment team. They represent contracts awarded, according to the main types of procedure, to a cross-section of enterprises of different size and in different sectors. Further findings from their review are detailed in Annex 7. With the assistance of the Chamber of Commerce and Industry, an enterprise survey was launched in order to gain information on sub-indicators 10 (b), 13 (c) and 14 (c) and (d). The questionnaire and the 10 responses received are presented in Annex 8. Although the small sample sizes in both cases limit the possibility to make inferences, the information obtained fully supports the conclusions of the qualitative review.

Following the three assessment steps indicated above and the finalisation of the initial draft report, internal quality control and corresponding revisions were followed by a validation phase involving key stakeholders in Moldova as well as external reviewers, as further set out in Section 6 of the report.

The assessment has covered central and local public authorities in general, in order to have a clear view of the common features of the public procurement system and to identify aspects and issues where reform initiatives could be expected to give results across the board. As a complement, at the request of the Minister of Finance, special attention has been paid to the health sector, including the work of the Centre for centralised procurement in the health sector, and to state owned enterprises, in particular as regards public procurement in the road sector.

The main issue encountered in the process has been the lack of effective access to complete and accurate data for describing and analysing the actual practices and outcomes in the public procurement system. As a consequence, it has not been possible to calculate values for several of the quantitative indicators normally required by the methodology.

Many of the existing systems and data bases contain only incomplete or inaccurate information or are structured in such a way that relevant analyses are difficult to carry out. In other cases, information is

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collected and archived only in the form of hard copy documents (such as most of the reports on low value procurement submitted to the Public Procurement Agency) or spread out across all the contracting authorities (such as their annual procurement plans, which cannot be published in the current e-procurement system, so each entity publishes them on its own website). The resources available for the assessment have not allowed the comprehensive, systematic identification, collection and analysis of unstructured data from such other sources, if at all available and accessible.

The review of the public procurement regulations that have been supposed be adopted by each individual state-owned enterprise has been complicated by the fact that they have not been collected and held readily accessible at any central government body or the like and therefore would have had to be requested from each individual enterprise.

Finally, the review and assessment of actual practices has been rendered cumbersome by the sheer number of contracting authorities (around 3000), which has not been possible to determine with any accuracy, especially since in many municipalities, e.g., each one of a number of subordinate entities carries out public procurement on its own.

2 Analysis of Country Context

2.1 General situation of the country

2.1.1 Political situation

The Republic of Moldova is a small, economically and culturally open, lower middle-income country with 3.5 million people in 2018. It is landlocked between Romania to the west and Ukraine to the north, east and south. Although Moldova is the poorest country in Europe, it has made significant progress in reducing poverty and promoting inclusive growth since the early 2000s. The poverty rate declined from 26 percent in 2007 to 11 percent in 2014. Growth has been driven largely by consumption and poverty reduction mainly by remittances and pensions. Employment has declined because of emigration and falling labour force participation, so wage income has added little to improving living standards. Emigration of the working-age population and an annual population decline of around 1½ percent are adding to the country's economic, fiscal, and social fragility. Moldova is particularly vulnerable to changes in external demand and fluctuations of agricultural production (the experience of the previous years confirms a cyclical recurrence of drought every 3-4 years, with a profoundly negative impact). It is also at risk because of the high external debt and a legacy of political instability. Business confidence is low, and the macroeconomic framework remains vulnerable.

In the last several years, the Republic of Moldova has passed through a period of political uncertainty caused by the lack of a clear legislative majority after the parliamentary elections of 2014, with many parliamentarians shifting political affiliations after the elections. This resulted in the appointment of governments that did not fully reflect the outcomes of the popular votes and which did not display a clear commitment to address the much-needed reform of the judiciary system and also failed to vigorously pursue the required reforms. Despite some progress at technical level, resulting in approval of some progressive laws by Parliament, their implementation was poor. During the fifteen months following the November 2014 parliamentary election, there were seven substantive or acting governments, due partly to competition among oligarchic interests. In 2019, with a rank of 120 out of 180 countries, the Republic of Moldova dropped another point to score 32 out of 100 in Transparency International's Corruption Perception Index¹, indicating a widespread problem with perceived public sector corruption and continuing the decline from 2010.

More recently, the Moldovan authorities focused on political and electoral changes designed to maintain the political status quo by changing the electoral system and cancelling the results of Chisinau mayoralty elections held on 3 June 2018. One of the results was that, following a resolution² by the European Parliament, the EU suspended its macro-financial assistance and its justice sector budget support and scaled down its technical co-operation, including the suspension of the planned Economic Rule of Law Trust Fund, financed by the EU and intended to be managed by the World Bank. Adoption of the tax and capital amnesty package in 2018 further constrained support by key development partners, including budget support by the Bank. Following the February 2019 parliamentary elections and protracted

¹ See e.g., <https://www.transparency.org/en/countries/moldova#>

² https://www.europarl.europa.eu/doceo/document/RC-8-2018-0322_EN.html

negotiations, two parties from a very opposing political spectrum (leftist Socialist party and pro-reformist ACUM block) managed to form a situational coalition against the former ruling Democratic party, forming a government and declaring Moldova a captured state and adopting an important package of laws designed to de-oligarchize the country and resume foreign financing. The contradictory nature of this coalition with differing underlying interests led to the fall of a pro-reformist government, just after five months in power, over differing visions on how to pursue justice sector reforms.

The new government under Maia Sandu that took over in June 2019 set itself the challenging task to bring Moldova on the reforms track and restore country's credibility among the development partners. However, following its dismissal by Parliament after five months, yet another government led by Ion Chicu, a former finance minister, replaced the preceding one on 14 November 2019.

The fourth direct presidential election since independence in 1991 was held on 1 November 2020. After a second-round run-off, Maia Sandu was elected president, defeating the incumbent, Igor Dodon. The Chicu government resigned on 23 December 2020 following protests demanding early parliamentary elections. Ion Chicu was retained as acting prime minister but resigned and was replaced by Aurelio Ciucoi on 31 December 2020. Attempts by the president to nominate a new prime minister were not accepted by parliament but it is still uncertain if and when new parliamentary elections may be held, and a new government can be appointed by parliament.

2.1.2 International co-operation

Since its independence, the Republic of Moldova has joined several international and regional structures. Thus, it became a member of the United Nations on 2 March 1992, following the adoption by the UN General Assembly of Resolution A/RES/46/223. Currently, more than 20 specialized UN agencies, funds and programs have offices in Chisinau, or project offices to support activities to promote democracy, good governance, prosperity, human rights and the consolidation of a modern and European rule of law.

Among other international fora one may note the membership of the Republic of Moldova in the Council of Europe (CoE) on 13 July 1995, accession to the Conference for Security and Cooperation in Europe on 30 January 1992 and signing of the Helsinki Final Act on 26 February 1992. Likewise, the Republic of Moldova has been a full member of the World Trade Organization since 6 June 2001. Moldova is a party to the Government Procurement Agreement (GPA) since 14 July 2016 and has also concluded an Association Agreement with European Union (EU), signed on 27 June 2014.

The Republic of Moldova is actively involved in regional cooperation such as: the Central European Initiative (CEI), the Organization for Democracy and Economic Development (GUAM), the Black Sea Economic Cooperation (BSEC), the Regional Cooperation Council (RCC), the South East European Cooperation Process (SEECP). It is a member of the Black Sea Trade and Development Bank (BSTDB), the Council of Europe Development Bank (CEB), the European Bank for Reconstruction and Development (EBRD) and the World Bank. In 1994, the Republic of Moldova became a member of the Commonwealth of Independent States (CIS). The Republic of Moldova has also established co-operation with the North Atlantic Alliance (NATO), implementing various joint projects, and in 2017 the NATO Liaison Office was opened in Moldova. Moldova also has observer status in the Eurasian Economic Union since April 2017.

2.1.3 Economic situation

The Moldovan economy grew by an estimated 4.2% in 2019, which is comparable to previous year 2018, when the economic growth increased by 4%. Growth was primarily driven by investments which increased by around 16%. Amidst buoyant investment activity, the construction sector showed the highest growth rate among the main sectors of the economy, increasing by 19% in 2019. In recent years, the economy has been driven also by consumption and fuelled by remittances. The latter have accounted for up to a quarter of GDP, among the highest share in the world. External trade increased only slightly in 2019, following dynamic growth in the previous years. In 2019, exports reached 2.8 billion US dollars, an increase of 2.7% compared to 2018, and imports amounted 5.8 billion US dollars, an increase of 1.4%. The negative trade balance amounted 3,062.6 million US dollars, compared to 3,053.9 million dollars in 2018. The considerable difference in the evolution of exports and imports led to an accumulation in 2019 of a trade deficit amounting to 3.1 billion US dollars, an increase of 0.3%, compared to 2018. According to preliminary data from the National Bank of Moldova, in 2019, the current account of the balance of payments recorded a deficit of US\$ 1,159.30 million, the capital account registered a negative balance amounting to US\$ 52.08 million, and the financial account recorded a net capital inflow of US\$ 1,205.94 million.

Inflation increased to a relatively high 7.5% at the end of 2019 but was expected to decline again in 2020. The budget deficit amounted to only around 1.5% of GDP. The economic situation remained stable, despite having three different governments in 2019, including three months of coalition negotiations. Ageing population and large emigration flows are eroding already low labour participation. Boosting skills is another challenge to sustainable growth, job creation and poverty reduction.

2.2 The public procurement system and its links with the public finance management and public governance systems

2.2.1 Nature and scope of public procurement

The volume of the Moldova's annual public spending in 2019 was about MDL 69.5 billion, of which public procurement allocations reached MDL 8.9 billion (excluding small value procurement, for which data is incomplete), equivalent to 12.9% of the country's public expenditure. The amount of public procurement in 2019 decreased by 15% compared with 2018, when the public procurement volume reached MDL 10.5 billion. The share of public procurement in the country's GDP in year 2019 was about 4.7% while it was 5.53% in 2018. Of the total volume of public procurement, procurement of goods equalled MDL 3.3 billion (36.4%), procurement of works MDL 4.5 billion (50.0%), and procurement of services MDL 1.2 billion (13.5%). The highest share of public procurement as a percentage of GDP was registered in 2014 (9.67%); it then decreased significantly in 2015 due to unfavourable macroeconomic trends and insufficient internal and external financing to cover the budget deficit. Since 2015, the volume of public procurement has remained at about the same level, with a slight increase in 2017. The value of public procurement in 2017 was around MDL 9.3 billion, out of which MDL 7.6 billion spent on goods and works and MDL 1.7 billion on services. In 2018, the value of public procurement was around MDL 10.5 billion, which represented an increase by 22.11% compared with 2017.

2.2.2 Regulatory framework of public procurement

The Public Procurement Law (PPL) No. 131 of July 3, 2015 entered into force on May 1, 2016. It covers the procurement of goods, works and services (including non-consulting and consulting services) by contracting authorities at central, sub-central and local level, with certain exceptions specified in the law. Since its adoption, the PPL has been amended through fifteen amendments, the most recent one from March 11, 2019, following the country's commitments in the context of the Association Agreement between the EU and Moldova. In addition to the PPL, there are a number of regulations adopted by Government Decrees or Ministry of Finance Orders meant to guide contracting authorities throughout the procurement process.

The new law provides a satisfactory, basic regulatory framework and incorporates the fundamental EU principles governing the award of public contracts as per the EU Directives. However, some provisions are not yet fully compatible with EU requirements and will require further amendments. Procurement in the area of defence remains unregulated. The legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation.

The PPL applies, with several exceptions, to public procurement contracts estimated at a cost equal to or above the following thresholds¹: Goods and services – MDL 200,000, works – MDL 250,000 and social services and other services defined in the law – MDL 400,000 (all thresholds exclusive of VAT). All contracts estimated to cost less than the above thresholds are required to be procured in accordance with the Public Procurement Regulation for small-value public procurement contracts² (note that this regulation uses lower thresholds than in the PPL for the definition of small value contracts). Public procurement primary and secondary legislation, including the Standard Bidding Documents, are published on the website of the Public Procurement Agency and are easily accessible to the public.

SOEs are not subject to the PPL, not even those in the utilities sector. Until recently, SOEs were required to have their own internal procurement regulations, to be developed by the institutions themselves, but these were not assessed for quality and relevance by the PPA or any other relevant institutions. A new regulation on procurement by SOEs was adopted by the Government on 10 June 2020 and published on 10 July 2020, with immediate entry into force. It reflects basic principles of good public procurement but does not cater for the quite varying market positions of SOEs; those operating autonomously in a competitive market and subject to bankruptcy may not necessarily need to be obliged to follow specific procedures typical for public sector entities. However, its application will take some time and municipal enterprises are only recommended, not obliged, to apply it. The utilities sector has become regulated in line with the EU's Utilities Directive, except that the new law³ will enter into force only on 26 June 2021.

2.2.3 Institutional framework

The main public entities involved in one way or another in the management and supervision of public procurement are the ones listed below.

¹ PPL, Art. 2(1)

² https://www.legis.md/cautare/getResults?doc_id=92984&lang=ro

³ Law no. 74/2020; https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

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The *Ministry of Finance (MoF)*: its role in public procurement is to develop and promote policies in this area. For this purpose, a Directorate of public procurement was recently created, taking over staff positions formerly allocated to the Public Procurement Agency.

The *Public Procurement Agency (PPA)* is the institution, subordinated to the MoF, responsible for: (i) developing and submitting to the MoF proposals to amend and complete the public procurement legal framework; (ii) establishing, updating and maintaining the List of Debarred firms; (iii) monitoring the compliance of public procurement tenders with the national legislation and analysing the performance of the public procurement system; (iv) offering consulting and advisory services, as well as organizing various workshops on public procurement procedures; (v) developing and implementing mechanisms for certifying the specialists within contracting authorities responsible for conducting public procurement tenders; (vi) editing the Public Procurement Bulletin; (vii) maintaining the official website for public procurement; (viii) conducting quarterly and annual statistical analyses of public procurement; (ix) requesting from competent bodies any information required to perform its functions; (x) conducting communication campaigns on public procurement; (xi) issuing annual progress reports on public procurement system performance; and (xii) collaborating with international institutions and similar agencies in the area of public procurement.

Among the challenges facing the MoF and the PPA are the need to sort out any perceived discrepancies in their respective roles and responsibilities and, more importantly, to ensure that adequate staff and other resources are available and that they are properly allocated to the priority tasks at hand.

The *National Agency for the Resolution of Complaints (ANSC)* is an autonomous and independent institution, which examines complaints arising from public procurement tenders and issues corresponding decisions. The lack of a case management system and of a searchable data base of past decisions increases the efforts needed to ensure uniformity and consistency in its rulings.

The *State Treasury* is a General Directorate within the MoF responsible for development and implementation of the state policy in the field of management and transparency of public finances, including registration of public procurement contracts for payment purposes¹.

The *Financial Inspection* is an institution subordinated to the MoF which performs the centralized financial control on compliance with the legislation of operations and transactions related to the management of national public budget resources and public patrimony.

The *Court of Accounts (CoA)* is the Supreme Audit Institution which is responsible for financial and performance audits in Moldova's public sector. All its reports are publicly available but the facilities for monitoring and enforcing compliance with its recommendations are limited.

The *National Anticorruption Centre (CNA)* is the national institution specialized in preventing and combating corruption, acts related to corruption and acts of corrupt behaviour.

The *National Integrity Authority (ANI)* is the public authority that ensures integrity in the exercise of public office or public dignity and the prevention of corruption by controlling wealth and personal interests and compliance with the legal regime of conflicts of interest, incompatibilities and restrictions.

¹ Note that this applies to entities financed from the State budget and to local authorities, with the exception of SOEs and some autonomous public bodies, e.g. hospitals, which instead use commercial banks for handling payments to contractors

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The *Competition Council (CC)* is the public authority that ensures the observance of the legislation in the field of competition, through actions of anti-competitive practices, including bid rigging in public procurement; elimination of competitive infringements, including the consolidation of the competitive culture.

Common issues for the regulatory and supervisory authorities mentioned are a certain overlap of roles and responsibilities, leading to conflicts of competence and to gaps in enforcement, as well as a lack of harmonisation of their now varying and sometimes conflicting interpretation and application of the laws and regulations concerned.

The *Centre for Centralized Public Procurement in Health (CAPCS)*: its role, as a centralised procurement authority, is to plan and conduct tenders, award contracts and monitor contract execution for the supply of medicines, equipment and other medical products for health institutions.

The state enterprise “*State Road Administration*” (*ASD*) is responsible for the development, repair and maintenance of national public road network as well as for efficient management of the road fund and of external investments in the development of national public roads.

There are no other centralised purchasing bodies. Both agencies mentioned, in particular the CAPCS, have faced challenges through their partial reliance on outdated regulations and the lack of adequate tools for using modern procurement approaches, including for demand analysis and aggregation and for running framework agreements.

There are about 3,000 contracting authorities in the country, many of them quite small. There is no official list of them, and their exact number is not known. They perform their public procurement duties not through a dedicated administrative (sub-)unit but through a working group established for this purpose and formed of public servants and experts with professional experience in the field of public procurement from within the contracting authority. These staff members thus have procurement as a secondary task, in addition to the normal duties of their regular, official position.

2.2.4 The e-procurement system

As defined in the PPL, Art. 1 (Key notions), Moldova’s e-procurement system, the Automated Information System “*State Register of Public Procurement*” (SIA “*RSAP*” MTender) is an online electronic system, accessible via the Internet at a dedicated address, used for the electronic application of public procurement processes, for posting invitations /notices at national level, submission and evaluation of tenders, award, and electronic signing of public procurement contracts. The SIA “*RSAP*” owner is the Ministry of Finance. However, the current edition of SIA “*RSAP*” (“*MTender*”) is not fully aligned with all e-procurement provisions in the PPL.

At the same time, a previous e-procurement system is still functional and is being used by the Centre for Centralized Procurement in Health (CAPCS), mainly due to the lack of technical functionalities for centralized procurement within the new system. As prescribed by the law, the CAPCS intended to shift to the new e-procurement system starting January 1, 2021, and this change was made.

The MTender platform started being developed by the MoF with the support of the EBRD in the framework of a Memorandum¹ between the competent authorities, the private sector and civil society that was signed on November 30, 2016. The current MTender system started working at the beginning of 2017 as a pilot project for small value procurement. While the old system was still in place, the contracting authorities had the right to decide to carry out electronically small value procurement through the new system. A year and a half later, in October 2018, the new electronic system became mandatory for conducting procurement under the PPL, despite a number of technical shortcomings, including the limitation to only two of the procedures provided for in the PPL, carried out through electronic auctions with price as the only award criterion.

Efforts have nevertheless continued to improve the system so that it would cover the entire procurement cycle, from planning to contract management, allowing the contracting authorities to conduct any procurement activity or procedure regulated by the PPL. This requirement for complete coverage of the procurement cycle was already prescribed in the Government decree² on the approval of the technical concept of the e-procurement system but, as actually implemented, the system does not yet fully meet this requirement. The Ministry of Finance and the EU Delegation to the Republic of Moldova have started to work together for further development of e-procurement, so as to ensure that it becomes fully aligned with the PPL and, by extension, with the applicable EU Directives.

2.3 National policy objectives and sustainable development goals

European integration has anchored successive governments' policy reform agendas, but reforms that are good on paper have yet to turn into tangible results. A vulnerable political system, worsening corruption indicators, a polarized society, an adverse external environment, and skill mismatches in the labour market, along with climate-related shocks, remain among Moldova's biggest challenges.

Transparency, accountability, and corruption have been recurrent, crucial concerns of successive governments. They have been set as priorities in various national strategies, such as the National Integrity and Anti-corruption Strategy, the National Development Strategy "Moldova 2030"³, the Strategy for SME Development, the Strategy for Justice Sector Development and the Strategy for Development the Public Procurement System 2016-2020. A Government Action Plan⁴ for the years 2019 – 2020, adopted by the former provisional government of Maia Sandu, included some corresponding actions. The government which started its activity in July 2019 then repealed this action plan and adopted its own, new one⁵, covering the years 2020 – 2023. Continued economic stabilisation, advancement of key economic reforms, reduced corruption, and the creation of a rule-based environment for businesses should therefore be expected to remain the country's key goals in the economic field.

These objectives and reform initiatives are aligned with those set out in the Association Agreement between the EU and Moldova, where the parties aim, among other objectives, to strengthen democracy,

¹ See <http://old.mf.gov.md/newsitem/10582>

² Decree no. 705/2018; https://www.legis.md/cautare/getResults?doc_id=113731&lang=ro#

³ A corresponding draft law "Moldova 2030" was recently included in the parliamentary agenda: see <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5098/language/ro-RO/Default.aspx>

⁴ See <https://gov.md/ro/content/planul-de-actiuni-al-guvernului-pentru-anii-2019-2020>

⁵ See https://www.legis.md/cautare/getResults?doc_id=119405&lang=ro

reinforce the rule of law, and contribute to political, economic and institutional stability, as well as to support Moldova's efforts to develop its economic potential.

The most important reforms envisaged by the Government in place since July 2019 were related to justice reform, ensuring the rule of law, fighting corruption, reestablishment of the macro-financial assistance, increasing transparency in public procurement and spending, and enhancing the business environment. All of these were among the reasons behind the decision to carry out a MAPS assessment, whose outputs would be used for informing policy making, in particular reform efforts in all the fields mentioned.

The primary objectives of the new Government in place since late 2019 largely align with those of its predecessor. Public procurement reform is thus an integral part of the Government's broad efforts to modernise the country, develop the economy and enhance the well-being of its citizens. Correspondingly, some recommendations of the MAPS assessment go beyond the public procurement system itself, since some of the issues at hand will require measures also in related areas like public financial management, public administration, administrative procedures, and the combat against fraud and corruption.

2.4 Public procurement reform

In the years immediately following its independence from the Soviet Union in 1991, public procurement in Moldova was characterized by an uncertain legal framework and a lack of firm government control over the expenditure of public funds on the procurement of goods, works and services. While much of the state orders and contracts systems, which the country inherited from the old central planning model, were quickly abolished, they left a legislative and procedural vacuum that the Government began to fill on a piecemeal basis, firstly through a Resolution on State Orders in 1991 and, later, by a Regulation on public works in 1993. However, neither of these instruments came close to achieving the kind of competitive, rules-based public procurement system that Moldova would need as an integral part of its journey towards a market economy. With assistance from the World Bank, Moldova's first significant step towards subjecting government contracts to meaningful competition was achieved by the enactment of the Law on Procurement of Goods, Works and Services for Public Needs, dated April 30, 1997. Shortly after the enactment of the law, the Government established the National Agency for Government Procurement (NAGP) which was charged with implementing procurement procedures on behalf of the public procurement institutions.

The World Bank's first Country Procurement Assessment Report (CPAR) on Moldova, conducted in June 2003, came at a time when the country had publicly committed itself to the signal departure of acceding to the Government Procurement Agreement (GPA) under the WTO. The report included an agreed Action Plan with short-, medium- and long-term actions for public procurement reform in Moldova. Since the 2003 CPAR, the World Bank has continued to support the Government's efforts in this area with analytical work and technical assistance, including the preparation of a new CPAR, issued on 21 June 2010. The issues identified and the measures recommended focussed mainly on further aligning the legal framework with international practice, preparing matching, secondary legislation including related standard documents and guidelines, shifting responsibility for ensuring compliance with the legal requirements from the PPA to the contracting authorities, and ensuring the independence of the review function.

The EU, mainly through its SIGMA Programme, provided assistance with developing the national public procurement strategy in 2015/2016 and preparing the new public procurement law in connection with

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Moldova's accession to the GPA in 2016. It also provided other support and advice for further development of the public procurement system in connection with the preparations for concluding the association agreement between Moldova and the EU, in particular for building the capacity of the complaints review body. More recently, SIGMA assisted with drafting the new utilities law in 2019/2020 and developing a public procurement training program in 2020.

Moldova's legal framework for its public procurement system is thus being brought closer to EU standards. While the PPL already provides a largely satisfactory, basic regulatory framework and incorporates the fundamental EU principles governing the award of public contracts, some provisions are not yet fully compatible with EU requirements and will require further amendments. A law on procurement by utilities has been drafted and adopted but is not yet in force. Procurement in the area of defence remains unregulated, while the legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation.

Further revisions of the legislation will have to be made in application of the timetable for full alignment with the EU Directives on public procurement set out in the Association Agreement between the EU and Moldova. As an initial step, among the first obligations to be met in the public procurement field under the Association Agreement, Moldova adopted its first Strategy for development the public procurement system for 2016 - 2020 and its first action plan for the years 2016 – 2018 by Government Decision No. 1332 of 14 December 2016. It was developed for the purpose of implementing Title V, Chapter 8 of the Association Agreement between the EU and Moldova, as well as to enforce the provisions of the Government Procurement Agreement (Law No. 125 of 2 June 2016).

The strategy was developed to reflect a clear vision of reforming the entire public procurement system, in line with the general principles of good governance, so as to provide the basis for sustainable development in the country. At the same time, the strategy was expected to contribute to the achievement of the objective set out in the Government Strategy on Public Administration Reform, namely that "public procurement regulations meet EU standards, are harmonized with appropriate regulations in other areas and are effectively implemented." The strategy is also linked though its objectives and actions to other reforms related to the development of the private market, business sector, the rule of law, etc. Through this strategic document, the Government assumed the obligation to create a functional, competitive, accountable and transparent procurement system that generates and ensures the trust of Moldovan citizens and the international community in procurement. Nevertheless, it is important to note that the second action plan, required for the years 2019 – 2020, has not yet been approved, despite the short time left until the end of the implementation period of the strategy.

According to the schedule provided in the Association Agreement, the first action plan under the strategy envisaged four stages of reform implementation:

- Stage 1. Goods for the central government authorities - quarter IV 2016 - quarter IV 2017;
- Stage 2. Goods for the state, regional and local public law authorities and institutions; goods for all contracting entities in the utilities sector, service and works contracts for all contracting authorities - quarter IV 2017 - quarter IV 2018;
- Stage 3. Concessions for all contracting authorities - quarter II 2018 - quarter IV 2018;
- Stage 4. Service and works contracts for all contracting entities in the utilities sector - quarter II 2018 - quarter IV 2018.

While certain achievements have been made in this process, there have also been failures and delays, particularly in e-procurement reform and in that the new utilities law¹ has not yet entered into force and that regulations for concessions in line with the Concessions directive have not yet been drafted. A civil society assessment report² on the strategy implementation shows that around one third of the actions (36%) were implemented without deficiencies, while another 32% (9 actions) were implemented, but with certain deficiencies. At the same time, 21% (6 actions) were only partially implemented and the rest, 11% (3 actions), remained unfulfilled. Regarding the actions implemented, the assessment shows that only 18% of them had a major impact and more than half (57%) only had a medium impact. A low impact was found in the case of 4 actions (14%) and a complete lack of impact in the case of 11% of the actions.

A new public procurement strategy for 2021-2026 and a corresponding action plan, reflecting the subsequent alignment steps, will have to be adopted before the end of 2020. The findings and recommendations of the present MAPS assessment will provide some of the inputs for the preparation of this new strategy. Conversely, the MAPS assessment has paid due attention to Moldova's engagements with respect to public procurement set out in the Association Agreement.

The recommendations in the present MAPS assessment are also intended to reflect and support the broader reform objectives and initiatives set out in 2.3 above.

With respect to reform efforts aimed at combatting corruption in public procurement, a Sectoral Anti-Corruption Action Plan in public procurement for the years 2018 – 2020 was approved by Government Decree No. 370 of 21 April 2018. It was developed and approved under the National Integrity and Anti-Corruption Strategy 2017 – 2020, where public procurement was identified, among others, as one of the sectors most vulnerable to corruption.

With regard to the implementation of the Plan, a civil society monitoring report³ reveals that only 10% of the actions set out in the 2019 plan have been accomplished (that is one out of the 10 commitments, which aimed to inform potential bidders about opportunities to participate in public procurement procedures and curb anti-competitive practices). Another 40% were partially accomplished, while the remaining half of the actions (50%) were deemed unaccomplished.

The findings showed that no actions were initiated to assess the impact of centralization in some sectors or regions, nor were any normative acts developed to regulate centralized procurement. Other shortcomings refer to the development of a unique policy and regulation of procurement by SOEs and the review of the ex-ante and ex-post control, which were previously set out in the PPL as a responsibility of the PPA. Ex-ante control was completely excluded from PPA competences in April 2017, while ex-post control was excluded in October 2018 through amendments to the PPL. However, no replacement measures were taken to prevent law violations committed by contracting authorities in the procurement process.

Concerning the development of e-procurement, the report found a lack of development and integration into the system of tools for automatically generating reports based on pre-established criteria that would

¹ Law on utilities no. 74/2020; https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

²

See http://viitorul.org/files/Eval_Report.%20Strategy%20for%20the%20development%20of%20the%20public%20procurement.pdf

³ See http://viitorul.org/files/library/Raport%20de%20monitorizare%20Plan%20Anticoruptie%202018-2020_0.pdf

allow authorities to make real time statistics, to oversee the procurement processes and outcomes, as well as allow monitoring by civil society.

The shortcomings mentioned thus remain to be addressed in coming reforms of the public procurement system.

3 Assessment

This section of the main report discusses the findings of the assessment in relation to each of the pillars and indicators based on the qualitative review of the system and the application of quantitative indicators as defined in the MAPS methodology. It describes the main strengths and weaknesses and identifies the areas that show material or substantive gaps and require action to improve the quality and performance of the system. Substantial gaps are classified into categories by the risk they may pose to the system and actions are recommended to address these weaknesses. Factors that are likely to prevent appropriate actions to improve the public procurement system or that constitute conditions for their success are specifically identified, using the criteria in paragraph 24 of Section I of the User's Guide of MAPS 2018. These include factors that impede the main goals of public procurement but lie outside the sphere of public procurement. The detailed assessment results covering each sub-indicator and each criterion is given in Annex 5 of this Main Report in a matrix form as well as in the form of a separate table (Annex 6) summarising the assessment results by indicator, sub-indicator and assessment criterion. All other back-up materials and documentation in support of this analysis are given in the annexes to this main report. The assessment team has used the guidance and assessment criteria given in the Methodology for Assessing Procurement Systems (MAPS 2018)¹.

The assessments of the situation and of the gaps are based on documentary evidence, constituted by the applicable laws and regulations listed in Annex 4 and by the written information provided by the PPA and other stakeholders, as well as on interviews with key stakeholders, review of selected contract files, and analyses of the responses to the enterprise survey carried out.

3.1 Pillar I - Legal, Regulatory and Policy Framework

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Summary findings under Pillar I:

The regulatory framework of public procurement in Moldova is constituted by the public procurement law (PPL) as well as several items of secondary legislation. The public procurement law itself is broadly

¹ Available at <http://www.mapsinitiative.org/methodology/>

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aligned with internationally agreed principles, in particular with the public procurement directives of the European Union (EU). This reflects the engagement by Moldova under its Association Agreement with the EU to successively align its legislation with that of the EU. This process is still ongoing and is due to be completed by 1 September 2022, eight years from the entry into force of the Agreement, according to the timetable set out in the annexes to the Association Agreement.

The PPL is complemented by a number of Government decrees, some of them dating to before the adoption of the PPL and not amended. A full list of the relevant decrees is provided in Annex 4, which also includes references to the standard documentation promulgated by the Ministry of Finance and to other relevant legislation.

The focus of the PPL is essentially on the award procedures and the conditions for their application. It thus quite comprehensively regulates procurement plans, notices, tender documents, selection and award criteria, evaluation and award, and the handling of complaints. The preparatory stages, such as needs identification and goal setting, are hardly mentioned, and also not those following the signature of the contract, such as contract management and the evaluation of procurement outcomes.

Contracting authorities and entities are not defined in such a way that the scope of the PPL is complete. Utilities are not covered by the PPL, nor are publicly owned enterprises in general (these have recently become obliged to apply the new regulation on procurement by SOEs). The PPL applies to public contracts, but its coverage of concessions and other public-private partnerships is limited.

The secondary legislation contains a large number of elements which, however, are not all up to date and in some cases fail to cover or to be aligned with what the PPL allows or requires. Consequently, contracting authorities are often confused about what regulation to apply and how. Also, the application of the secondary regulation and the use of the prescribed standard documentation requires considerable administrative efforts and is error prone.

In addition, in many respects, the regulations governing the existing e-procurement system as well as the way the system is designed and used in practice do not match the provisions of the PPL and are not in line with the EU Directives.

The picture is mixed concerning sustainable procurement. The PPL allows the use of sustainability approaches and criteria and there is official guidance for using them. However, their use in practice is very limited, both because of widespread lack of corresponding knowledge and skills and the failure of the compulsory e-procurement system to allow their incorporation among the award criteria.

Obligations deriving from international agreements are broadly reflected in the primary legislation, although the alignment of the PPL with the applicable parts of the EU's public procurement directives is not fully progressing according to the agreed timetable set out in the Association Agreement.

Against this background, the main recommendations for Pillar I of the MAPS assessment are for the PPL and other applicable laws to become adequately aligned with the EU Directives, for the secondary legislation to be brought up to date and complemented accordingly, for the e-procurement system to fully allow contracting authorities to apply the PPL in a way that not only meets its formal requirements but, even more so, the important general principles of transparency, economy and efficiency, for sustainable procurement to be more widely used and for the alignment with the EU Directives to be brought back on schedule.

3.1.1 Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use.

- **Findings**

Main substantive gaps and recommendations for Indicator 1

No.	Substantive gaps	Risk	Recommendations
1.1.	Apart from utilities (to be covered by the new Utilities law), some (other) state owned enterprises are excluded from the PPL but obliged to apply the SOE procurement regulation, irrespective of their characteristics, and the regulation of procurement by municipal enterprises is not clear; in addition, the legal instruments mentioned are not fully harmonised	High	Harmonise the PPL, the utilities law, the SOE procurement regulation and the procurement provisions of the PPP law, in order to reduce the diversity of procedures and of the conditions for their use, and review state owned enterprises and municipal enterprises in order to clarify which of the legal instruments mentioned each of them should apply for what kind of procurement
1.2	Effective access to procurement plans and to many other documents is hampered by incomplete obligations to publish and the use of document formats which are not machine readable	Medium	Require all public procurement documentation to be published on a central website (the e-procurement platform is likely to be most appropriate one for the purpose), using machine readable document formats
1.3.	The e-procurement system is not in line with the PPL and does not allow the full range of procedures and award criteria to be used, while the sequencing of the steps in the process is in contradiction with the PPL	High	Ensure that the implementing regulations and the corresponding functionalities of the e-procurement system fully match the (amended) requirements of the PPL

Sub-indicator 1(a) – Scope of application and coverage of the legal and regulatory framework

The purpose of this sub-indicator is to determine: i) the structure of the regulatory framework governing public procurement; ii) the extent of its coverage; and iii) the public access to the laws and regulations.

The legal framework for public procurement includes the PPL as the one item of primary legislation regulating the award of public contracts, as well as corresponding, secondary legislation in the form of Government decrees. However, several decrees issued before the adoption of the PPL have not been amended to align with it and some provisions in subsequent decrees, notably the ones on the new e-procurement system (see further sub-indicator 1 (j) below), also do not match what the PPL allows or requires. In line with Moldovan and international legal practice, the PPL would normally take precedence over the various Government decrees. As determined during the assessment, some contracting authorities, among which the CAPCS, nevertheless consider themselves obliged to follow

the specific provisions in the various decrees rather than those in the law, even when the former contradict the latter.

The PPL covers goods, works and services, including consulting services, procured by contracting authorities financed from the state budget as well as regional and local authorities for contract values of MDL 200 000 and above for goods and services other than social services and other specific services, MDL 250 000 for works and 400 000 for social services and other specific services. Below these thresholds, small value procurement is regulated by Government decree HG 665/2016. However, this decree uses lower thresholds than those in the PPL for the definition of small value contracts; this creates further confusion in its application and complicates the monitoring of small value procurement.

The notion of 'contracting authority' is defined in the PPL, Art. 13, in line with the definitions in Directive 2014/24/EU, Art. 2.

State owned enterprises and municipally owned enterprises, including utilities, are thus not covered by the PPL but were instead required by law 246/2017 to adopt and apply their own procurement regulations. However, these were of widely varying quality, as further reviewed in Annex 9. The regulations that were actually prepared to date cover either individual SOEs or apply to certain sectors, in particular utilities (Decision of the National Agency for Energy Regulation no. 24 of 26 Jan. 2017 on the approval of the Regulation on procurement procedures for goods, works and services used in the activity of licensees in the electricity, heat, natural gas and operators providing public water supply and sewerage service¹). This Decision has been replaced by the new utilities law (see further under sub-indicator 1(l) below).

A new regulation², generally applicable to procurement by state enterprises and by joint-stock companies in which the State has a majority, was adopted by Government decree on 10 June 2020 and was published, with immediate entry into force, on 10 July 2020. It is now becoming implemented. However, municipal enterprises are only recommended, not explicitly required, to apply the provisions of this regulation. Further considerations regarding procurement by SOEs are found in Annex 9.

The PPL applies³ with respect to public procurement also to the forms of public-private partnership not prohibited by law, and also applied to the award of public works concession contracts until the entry into force early 2019 of the law on works concessions and services concessions⁴. The institution responsible for regulating the implementation of state policy in the fields of administration and denationalization of public property, as well as of the public-private partnership, is the Public Property Agency. The PPP law⁵ establishes the basic principles of the public-private partnership, the forms and the modalities of implementation, the procedure for its initiation and realization, the rights and obligations of the public partner and the private partner.

¹ https://www.legis.md/cautare/getResults?doc_id=99127&lang=ro

² Government decree 351/2020; https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

³ PPL, Art. 2 (5)

⁴ Law no. 121/2018; https://www.legis.md/cautare/getResults?doc_id=105485&lang=ro

⁵ Law no. 179/2008; https://www.legis.md/cautare/getResults?doc_id=83632&lang=ro

The entire regulatory framework is published and easily accessible to the public at no cost. The state register of legal acts of the Republic of Moldova is accessible online¹.

Sub-indicator 1(b) – Procurement methods

This sub-indicator assesses whether the legal framework includes: i) a clear definition of the permissible procurement methods; and ii) the circumstances under which each method is appropriate. The legal framework should provide an appropriate range of procurement methods comprising competitive and less competitive procedures, when appropriate.

The PPL lists the various procedures and related methods that may be used in public procurement (Art. 46) as well as the conditions for their use, reflecting the provisions in the applicable procurement directives of the European Union:

- a) open tender (Art. 47-50);
- b) restricted tender (Art. 51-53);
- c) competitive dialogue (Art. 54);
- d) negotiated procedure (Art. 55-56);
- e) request for proposals (Art. 57);
- f) design contest (Art. 58);
- g) procurement of social services and other specific services (Art. 59);
- h) innovation partnerships (Art. 60);

and as the means for applying the above procedures or their outcomes,

- i) framework agreements (Art. 61);
- j) dynamic purchasing systems (Art. 62);
- k) electronic auctions (Art. 63);
- l) electronic catalogues (Art. 64).

Contracting authorities are free to use open and restricted tenders without any limitations, while the other procedures can be used only if specific conditions set out in the law are duly met.

The procurement methods prescribed include competitive and less competitive procurement procedures, proportionate to the nature and value of the contracts. As a result, not considering the negotiated procedure without prior publication of a contract notice, all types of procedures carried out in accordance with the law have the potential to ensure competitiveness, fairness, transparency, proportionality and integrity.

However, in practice, the limited set of functionalities available in the current e-procurement system have the effect of preventing its use for many of the procedures set out in the PPL.

Requests for proposals can be used for contract values not exceeding 800,000 lei for goods and services and 2,000,000 lei for works, as further regulated in the PPL² and the corresponding implementing regulation³ require the award to be made using an electronic auction (in MTender, the current e-procurement system).

¹ See <http://www.legis.md/>

² PPL, Art. 57

³ Government decree 987/2018

The negotiated procedure without publication of a notice (that is, by direct agreement), is only allowed in exceptional, well defined circumstances. The PPL also contains corresponding provisions aimed at ensuring value for money, fairness, transparency, proportionality and integrity, as further detailed for each of the procedures listed.

A separate decree¹ regulates small value procurement. It does not prescribe any particular approach and only mentions some very general principles to be followed: risk minimisation, efficiency, impartiality and non-discrimination. However, the application of these principles is not systematically monitored and there is no evidence if and to what extent the provisions of the decree are followed by the contracting authorities.

Fractioning of contracts to limit competition is prohibited² and is subject to sanction according to the Contravention Code³. The PPL also prohibits⁴ the division of procurement by concluding separate public procurement contracts for the purpose of applying a public procurement procedure other than the procedure that would have been used in accordance with this law if the procurement had not been divided.

On the other hand, division into lots is presumed to be the normal approach, as regulated in the PPL (Art. 39). When a contract is not divided into lots, the contracting authority is required to file the justification for this approach.

Appropriate standards for competitive procedures are specified⁵. Further details on the procedures are set out in the various standard documents⁶ issued by the Ministry of Finance. These include comprehensive provisions aimed at guiding the work of the contracting authorities, defining the contents of the documents to be used, and facilitating the recording of the various steps to be performed. However, while most of these are aligned with the current PPL, the regulation⁷ on framework agreements dates from 2012 and reflects the former public procurement law, not the corresponding provisions in the current PPL.

Sub-indicator 1(c) – Advertising rules and time limits

This sub-indicator assesses whether: i) the legal framework includes requirements to publish procurement opportunities as a matter of public interest and to promote transparency; ii) there is wide and easily accessible publication of business opportunities; and iii) there is adequate time provided between publication of opportunities and the submission date, consistent with the method and complexity of the procurement, to prepare and submit proposals.

The PPL sets out detailed requirements and modalities for the publication of procurement opportunities; however, they are not fully aligned with EU policies and practices and are not fully matched by the corresponding Government decree no. 1419/2016 promulgating the Regulation on procurement planning. The decree defines the “procurement plan” as comprising all the needs for goods, works or services for the entire budget year, to be met by concluding one or more public procurement

¹ <http://www.legis.md/cautare/rezultate/92984>; see also sub-indicator 1(a) above

² PPL, Art. 4. (21)

³ Law 218/2008, Art. 327

⁴ PPL, Art. 76

⁵ PPL, Art. 46-60

⁶ Accessible at <https://tender.gov.md/ro/content/acte-ministeriale-%C8%99i-departamentale>.

⁷ https://www.legis.md/cautare/getResults?doc_id=21051&lang=ro

contracts, depending on how they are planned to be executed. On the other hand, according to the PPL, Art. 28, contracting authorities first have to publish a “notice of intention” separately for each procurement procedure no later than 30 days from the date of approval of the budget of the respective contracting authority; however, contracts whose estimated value is less than MDL 800,000 for goods and services and less than MDL 2,000,000 for works are not subject to mandatory publication of this kind (the PPL and the decree have differences in this respect). Then, as provided in the decree mentioned, after the publication of the notice of intention in the Public Procurement Bulletin and on the official website of the PPA (note that the PPL does not require publication on the PPA website), the contracting authority shall, within 15 days, approve the procurement plan, and then publish it on the contracting authority’s web page within 15 days from the approval.

The requirements for publication thus partly exceed the requirements in the EU Directives (they do not contain any obligation to publish a notice of intention for each procedure at the beginning of the year), and partly fail to meet them (the provisions¹ on prior information notices are not fully reflected in the PPL). As a consequence, the current provisions do not fully serve the purpose of giving advance notice to the business community in a way that promotes high participation and strong competition, while giving contracting authorities suitable flexibility for efficient procurement management.

The time frames for publication of notices and the submission of tenders are set out in the PPL, which has a general requirement for the contract notices to be published as early as needed to offer all interested economic operators, without any discrimination, real possibilities of participation in the procedures for awarding the public procurement contract (PPL, Art. 29 (6)).

Minimum time frames are set out among the other PPL provisions for each procedure, as a function of the value of the contract. As an example, open tenders (PPL, Art. 47) for contracts of MDL 2,300,000 or above for goods and services other than social services and other specific services, MDL 90,000,000 for works and MDL 13,000,000 for social services and other specific services have to be published no less than 35 days before the deadline for submission, and no less than 20 days for contracts below the amounts mentioned.

Additional rules apply for extending these time limits in case of amendments or clarifications of the tender documents. Requests for clarification must be submitted (PPL, Art. 35) within a short time (depending on the contract value) after the publication of a tender notice and the contracting authority must then issue a clarification by publishing it in the e-procurement system and sending it to the tenderer who requested it, normally within three working days. If the clarification is issued later, the deadline for submission must be extended accordingly. In practice, as applied in the current e-procurement system (MTender), while clarifications can be issued easily, other related changes that may be necessary cannot be made in the same way in the system, and the result is often additional delays to the procedure.

All tender notices (PPL Art. 29) have to be published in the Public Procurement Bulletin and on the website of the Public Procurement Agency in all cases provided by the PPL, according to the procurement procedure applied. There is no charge for this and there are no particular barriers in place. For contracts of MDL 2,300,000 or above for goods and services other than social services and other specific services, MDL 90,000,000 for works and MDL 13,000,000 for social services and other

¹ Directive 2014/24/EU, Art. 48

specific services, the tender notices also have to be transmitted in electronic form for publication in the Official Journal of the European Union. Unfortunately, this provision in the PPL is not yet workable, for the simple reason that only the announcements of EU member countries can be published in the EU's Official Journal (more exactly, in Tenders Electronic Daily (TED)). The only exception for Moldova are the announcements for projects that are financed from the EU budget. However, efforts are being made¹ to create the necessary legal basis for allowing Moldovan procurement notices to be published in TED, though when the necessary arrangements are in place, all notices for contracts above the EU thresholds will then have to be published there, without exception.

Publication of notices on the PPA website is explicitly required in Art. 29 regarding contract notices and invitations to participate, while Art. 28 on 'notices of intention' and Art. 30 on award notices require publication in the Public Procurement Bulletin. This being said, it should be noted that the Public Procurement Bulletin is now issued in the form of the freely accessible web pages² on the PPA website; there is also a "Public Procurement Bulletin" published on MTender³, the current e-procurement system.

The tender notices have to be comprehensive, with their form and content and the method for their preparation provided in Annex no. 3 to the PPL.

Sub-indicator 1(d) – Rules on participation

This sub-indicator assesses the policies that regulate participation and selection, to ensure that they are non-discriminatory.

The PPL ensures, in principle, the equitable right of all economic operators to participate in a public procurement procedure.

The PPL does not limit the right of the resident or non-resident economic operator, natural or legal person of public or private law or association of such persons to participate in public procurement procedures.

On the other hand, in practice, as stated by the PPA, because of the particularities of the applicable legislation, non-resident economic operators cannot submit tenders within the public procurement procedures if they do not have legal representatives on the territory of the Republic of Moldova.

These issues arise from the provisions of the PPL, Art. 33, para. 14 i), which mentions the obligation to apply an electronic signature on electronic offers, but also from the provisions of Law no. 91/2014 on electronic signature and electronic documents, according to which the electronic signature issued by authorities from other states than the Republic of Moldova is not recognized, as there are currently no agreements in this regard between the Republic of Moldova and other states (Art. 6). At the same time, the issuance of the electronic signature is conditioned by the identification of the holder (name, surname, identification number of the natural person), which implies the presentation of the identity card of the Republic of Moldova, residence permit, or other document containing a personal identification code (IDNP). The only solution at the moment is the delegation by proxy of the right to electronically sign the offers to persons resident in the Republic of Moldova, holders of

¹ See <https://ansc.md/ro/content/comunicat-privind-publicarea-anunturilor-contractuale-de-catre-autoritatile-contractante-din>

² See <https://tender.gov.md/ro/bap>.

³ See <https://mtender.gov.md/en/tenders> (section "electronic tenders", subsection "Public Procurement Bulletin")

qualified electronic signatures. However, available data is not sufficient to determine to what extent this restriction affects public procurement.

The contracting authority has the obligation to establish the selection criteria for each procedure. The PPL contains detailed provisions for determining appropriate selection criteria of the tenderer or candidate in terms of grounds for exclusion (eligibility) and, as applicable, right to exercise an economic activity, economic and financial capacity, technical and professional capacity, quality assurance, and environmental protection requirements.

There are no specific rules aimed at creating a level playing field for the participation of state-owned enterprises in public procurement. On the other hand, Art. 6 of the PPL establishes a special regime for protected workshops and social insertion companies if the majority of the employees involved are people with disabilities who, due to the nature or the severity of their condition, cannot carry out a professional activity under the same conditions as those of other tenderers capable of normal participation in the procedures for awarding public procurement contracts.

In order to determine the tenderer's eligibility, the contracting authority requests the completion and submission of the European Single Procurement Document (ESPD), which consists of an updated declaration of conformity with the eligibility requirements, as a preliminary proof, instead of the individual certificates issued by the public authorities or by third parties which confirm that the economic operator concerned fulfils the conditions stipulated by the contracting authority. The PPL also sets out other possible means for demonstrating conformity with the selection criteria, and the contracting authority has the obligation to indicate for each procedure the supporting documents required for this purpose, as further provided by the legislation in force.

However, the provisions in the EU Directives regarding lists of qualified economic operators¹ are no longer reflected in the PPL. The effect is that neither tenderers nor contracting authorities can benefit from the potential advantages offered by these provisions. At the same time, it should be noted that the creation and use of such lists remains optional.

The article of the PPL providing for the use of lists of qualified economic operators was thus deleted² with effect from 1 October 2018, without replacement. Nevertheless, Government decree 1420/2016 with approval of the Regulation of the List of qualified economic operators, based on the earlier wording of the PPL in this respect, has not been repealed. In addition, Government decree 134/2017 with approval of the Regulation on the organisation and functioning of the PPA and its staff still contains an obligation³ for the PPA to draw up, update and maintain the list of qualified economic operators. The list established by the PPA in line with earlier versions of the PPL has not been complemented since August 2018. The earliest entries are from March 2008 and do not appear to have been updated. Nevertheless, the list is still published on the PPA website⁴, creating additional confusion for contracting authorities and economic operators alike.

Also, the way the current e-procurement system is designed means that, in practice, only the qualifications of the winning tenderer are checked, and this only after an electronic auction has been

¹ Directive 2014/24/EU, Art. 64

² By Law 169/2018 of 26 July 2018, Art. 527

³ Decree 134/2017, Annex 1, item 7. 8)

⁴ See <https://tender.gov.md/ro/operatorii-economici-calificati>

held. Contrary to what the PPL requires, there is thus no possibility to exclude unqualified participants from the evaluation of their tenders and from participating in the electronic auction.

Sub-indicator 1(e) – Procurement documentation and specifications

The sub-indicator assesses the degree to which the legal framework specifies the content of procurement documents, to enable suppliers to understand clearly what is requested from them and how the procurement process is to be carried out.

The manner of drawing up, publishing and modifying the tender documents documentation is provided in the PPL, Art. 40 and 41. The rules regarding the description of goods, works and services in the tender documents are provided in Art. 37, requiring them to be clear, relevant and sufficient for the preparation of responsive tenders. In the description of the goods, services and works, the contracting authority must indicate the national or international standards to be used, without favouring a certain producer or supplier or contractor or service provider.

The PPL contains detailed regulations to be followed by the tenderers and the contracting authorities for the clarification of tender documents.

However, in practice, economic operators have noted a number of issues related to how the provisions of the law are applied. Some examples have been frequently mentioned during the assessment:

- when clarifications have been requested immediately before the deadline for tender submission, this deadline has been automatically extended until clarifications have been issued; this has been subject to abuse, as a means to unduly delay the tendering process
- related problems have arisen when the clarifications requested call for greater efforts than would be possible within the short deadlines available for the purpose to the contracting authorities
- the minimum requirements for documents to be submitted are different for different procedures, leading to rejection of tenders and complaints because of clerical errors in compiling the tender documents for submission
- it happens that technical specifications are prepared by simply copying those of a particular supplier, or that they are otherwise drafted in such a way that they match the characteristics of only one particular supplier, or, on the contrary, that they are drafted in such a vague or general manner that suppliers are able to offer items which do not meet the actual needs of the contracting authority

Sub-indicator 1(f) – Evaluation and award criteria

This sub-indicator assesses: i) the quality and sufficiency of the legal framework provisions in respect to the objectivity and transparency of the evaluation process; and ii) the degree of confidentiality maintained during the process, to minimise the risk of undue influences or abuse.

As required by the PPL, the award criteria have to be objective, relevant to the object of the contract and specified in the tender documentation in advance. The decision to award the contract must not depart from the criteria initially set out.

According to the PPL, Art. 26, the four possible award criteria are the following: lowest price; lowest cost; best quality-price ratio; and best quality-cost ratio. The 'lowest cost' criterion would typically use life cycle cost. In addition to price, the 'best quality-price ratio' and 'best quality-cost ratio' criteria usually include

evaluation factors referring to the qualitative aspects of the goods, works or services that are the subject of the purchase. In addition, depending on the objectives behind the procurement, it is also possible to use evaluation factors that include environmental or social aspects related to the items to be procured. However, the possibility to obtain best value for money is considerably limited by the requirement for the price or cost element of the 'best quality-price ratio' or 'best quality-cost ratio' criteria to be no less than

- 60% for goods
- 80% for works
- 40% for services

It is important to note that this provision presupposes and, in practice, even requires that price (or cost) is evaluated separately from quality characteristics and technical or functional merit, before somehow combining the two. This approach has methodological shortcomings which make it open to manipulation, but the wording of the provision would seem to prevent the use of alternative approaches, such as attributing a monetary value to the extent to which each non-price element exceeds the minimum characteristics required and adjusting the evaluated price (or cost) accordingly for the purpose of determining the most advantageous tender. However, although the PPL sets out the four criteria for awarding the contract, the corresponding secondary regulatory framework is incomplete and not fully harmonized with the requirements of the PPL, creating confusion in the application of the law. As an example, the provisions of the Regulation on public works procurement, approved by Government decree 669/2016, regulate only two types of contract award criteria (point 40): "the lowest price" and "the most advantageous offer from a technical and economic point of view". Also, the Government decree 669/2016 does not provide for the submission of the ESPD by the bidders, as an integral part of the bid, although required by the PPL, Art. 20. Finally, Government decree 669/2016 establishes the obligation of the presence of at least three qualified tenders in the public tender of works (point 150.1), something which is not in line with what the PPL allows.

The PPL does not contain separate, special provisions for consulting services, though the general provisions are adequate for setting and assessing the technical capacity needed. On the other hand, the possibility to ensure high quality of consulting services is limited by the just mentioned restrictions in setting the award criteria to be applied.

The contracting authority must specify in the award documentation the relative weight it gives to each evaluation factor, as well as the calculation algorithm or the concrete scoring methodology that is applied to determine the most economically advantageous offer, unless the most economically advantageous offer is determined by applying the lowest price criterion. The method for applying the evaluation factors is provided in PPL Art. 26, para. 10-16. (The remark above under evaluation criterion b) under this sub-indicator applies also here.)

The examination, evaluation and comparison of the offers must¹ be performed without the participation of the bidders and other unauthorized persons.

¹ PPL, Art. 69 (1)

Sub-indicator 1(g) – Submission, receipt and opening of tenders

This sub-indicator assesses how the legal framework regulates the reception of tenders and tender opening.

Tenders have to be opened¹ at the time specified in the award documentation as the deadline for submission of tenders or at the time specified as the deadline for the extended term, regardless of the number of tenderers, according to the established procedures in the award documentation.

According to point 21 of GD 667/2016, the working group is obliged to draw up, in the presence of the bidders, the minutes of the opening of the tenders. However, the regulation mentioned fails to cater for the use of e-procurement. The template of the evaluation report ("award decision") that has to be created at a later stage of the process contains elements concerning the opening of the tenders, but it is not publicly available. See also sub-indicator 7 (a) d).

In all operations of communication, exchange and storage of information, the contracting authority must² ensure the maintenance of data integrity and the protection of confidentiality of tenders and requests to participate. The holder of the "State Register of Public Procurement" (MTender) is obliged³ to ensure the confidentiality of the content of offers until the date for opening them. At the same time, the MTender operator and platform operators must⁴ implement mechanisms to ensure the confidentiality of tenderers or candidates until the deadline for submission of tenders, defined by the contracting authority in the respective procurement procedure.

Regarding the rules applicable to communication, it must be reasonably ensured⁵ that no one has access to the information transmitted according to these requirements before the specified deadlines; only authorized persons have the right to establish or modify the data for the opening of the information received; during different stages of the procurement procedure or of the solution competition, access to all or part of the data submitted is allowed only to authorized persons; only authorized persons allow access to the information sent and only after the appointed date; information received and opened pursuant to these requirements shall remain accessible only to persons authorized to do so. Until the completion of the evaluation, the contracting authority must not⁶ disclose to tenderers or other persons not officially involved in the award procedure information on the examination, evaluation and comparison of tenders.

On the other hand, the way the current e-procurement system works, all tenders become publicly available once the evaluation has finished. This means that there are no possibilities for enterprises to request certain elements of their tenders to remain confidential for competitive reasons, contrary to what EU Directive 2014/24/EU, Art. 21 requires to be possible but what is only incompletely reflected in the PPL, Art. 54, 60 and 78.

The manner of presenting the offers is regulated by Art. 65 of the PPL and the annexes of Government decrees 705/2018 and 986/2018, which generally reflect EU practice.

¹ PPL, Art. 66 (2)

² PPL, Art. 33 (5)

³ Point 8, subpoint 17 of Government decree 986/2016 for the approval of the Regulation on the maintenance of the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurement" (MTender)

⁴ Id., point 93

⁵ PPL, Art. 33 (14)

⁶ PPL, Art. 9 (8)

Sub-indicator 1(h) – Right to challenge and appeal

The purpose of this indicator is to assess whether the legal framework establishes: i) the right to challenge decisions or actions and to appeal; ii) the matters that are subject to review; iii) the time frame for such reviews; and iv) the different stages in the review process.

The right to lodge complaints against contracting authority decisions before the signature of the contract is regulated in the PPL, Art. 82, which gives legal standing to “Any person who has or has had an interest in obtaining a public procurement contract and who considers that in public procurement procedures an act of the contracting authority has infringed a right recognized by law, as a result of which he has suffered or may suffer damages”. However, the rules for publication of award notices and for the standstill periods (see also evaluation criterion d) here below and sub-indicators 7 (a) d) and 13 (a) d)) mean that, in practice, only participating tenderers have the possibility to complain against an award decision before the contract is signed, and this only for a limited range of contracts.

The competent body to resolve complaints regarding the public procurement procedures is¹ the National Agency for the Resolution of Complaints (ANSC), whose decisions can be appealed² in the competent court. See further the entries under Indicator 13 below.

Complaints can be filed regarding the tender documents, the procedure and the results of the procedure as well as any other matter where the complainant’s rights have been infringed by the contracting authority (cf. quotation here above).

The PPL regulates³ the terms for filing, examining and resolving complaints. While not obviously contrary to the requirements of the EU Directives, the current provisions in the PPL mean that it is very difficult for a potential tenderer or any other interested party to effectively, that is, before the contract is signed, complain against e.g. the decision of the contracting authority to award a contract by negotiated procedure without publication of a notice. In fact, an effective possibility for any other interested parties than the participant(s) in the tender to file a complaint before the signature of the contract would require eliminating the exceptions to the standstill periods in the PPL, Art. 32 and introducing a requirement to publish the award notice at an earlier stage than at present (30 days after informing the participants in the tender about the outcome of the evaluation).

Complaints can be submitted online⁴ or at the headquarters of the National Agency for the Resolution of Complaints (ANSC). The application form can be downloaded from the ANSC website⁵. The decisions on the complaints submitted are published on the ANSC website⁶.

Sub-indicator 1(i) – Contract management

The purpose of this sub-indicator is to assess whether the legal framework establishes the following: i) functions and responsibilities for managing contracts; ii) methods to review, issue and publish contract amendments in a timely manner; requirements for timely payment; and iv) dispute resolution procedures that provide for an efficient and fair process to resolve disputes during the performance of the contract.

¹ PPL, Art. 84

² PPL, Art. 86 (12)

³ PPL, Art. 83-85

⁴ https://ansc.md/en/depunere_contestatie

⁵ <https://ansc.md/en/content/depunere-contestatii>

⁶ <https://ansc.md/node/661>

The legal framework for public procurement does not directly and clearly define the responsibilities of the parties to the contracts, other than as set out in the conditions of contract that form part of the standard documents for public procurement. The roles, responsibilities and tasks of the contracting authorities with respect to contract management are also not clearly and comprehensively regulated.

Reflecting the requirements in the EU Directives, public procurement contracts may be amended¹ in the following situations:

1) when the following conditions are cumulatively met:

- a) it becomes necessary to purchase from the initial contractor some additional goods, works or services that were not included in the initial contract, but which became strictly necessary for its fulfilment;
- b) the change of the contractor is not possible;
- c) any increase of the contract price representing the value of the additional goods / works / services does not exceed 15% of the value of the initial contract;

2) when the following conditions are cumulatively met:

- a) the amendment became necessary as a result of circumstances which a diligent contracting authority could not have foreseen;
- b) the modification does not affect the general nature of the contract;
- c) the price increase does not exceed 15% of the value of the public procurement contract / initial framework agreement;

3) when the contractor with whom the contracting authority initially concluded the public procurement contract / framework agreement is replaced by a new contractor, in one of the following situations:

- a) the rights and obligations of the initial contractor resulting from the public procurement contract or framework agreement are taken over [...] by another economic operator who meets the qualification and selection criteria initially established, provided that this amendment does not involve other substantial changes to the public procurement contract or framework agreement and is not carried out in order to circumvent the application of the award procedures provided by this law;
- b) upon early termination of the public procurement contract or framework agreement, the main contractor assigns to the contracting authority the contracts concluded with its subcontractors, following a clear, precise and unequivocal review clause or an option established by the contracting authority in the documentation award;

4) when the changes, regardless of their value, are not substantial.

Regarding this last point, experience shows that some clarifications of what would constitute a change that is (not) substantial would be needed for contracting authorities.

¹ PPL, Art. 76

The PPL does not provide for the settlement of disputes during the execution of the contract other than by declaring¹ that any disputes and requests regarding the execution, nullity, cancellation, resolution, or termination of the public procurement contracts fall under the responsibility of the competent court according to the applicable provisions in commercial law or other civil law, as may be the case. In the field of public procurement, dispute resolution is thus dealt with in the courts and an alternative procedure – e.g., arbitration, is missing. For these reasons, litigation procedures are cumbersome, costly, time consuming and often ineffective, which makes it difficult to effectively sanction breaches of contractual obligations by either party, the end effect being to reduce value for money for all concerned. The courts mentioned issue final, binding and enforceable decisions as provided for in separate legislation.

Sub-indicator 1(j) – Electronic procurement (e-Procurement)

This sub-indicator assesses the extent to which the legal framework addresses, permits and/or mandates the use of electronic methods and instruments for public procurement.

The legal framework allows but only partly mandates the use of e-procurement solutions; in addition, the provisions of the public procurement law (PPL) are partly contradicted by the current implementing regulations and by their application through the existing e-procurement system.

The PPL includes a number of articles regulating e-procurement, in particular Art. 63 on electronic auctions. Electronic communications are required as the default approach. A requirement for publication of notices on the PPA website is explicitly stated regarding invitations² to participate but not for procurement plans³, nor for award notices⁴.

The use of electronic auctions is set out⁵ in the PPL in terms aligned with those of the EU's public procurement directives⁶, and thus with good international practice. This includes the notion of 'electronic auction' as the final stage of a competitive procedure, after 'a complete initial evaluation of the tenders'. However, this initial evaluation is only required to be made 'according to the established award criterion'; thus, without mentioning also the requirement under the EU Directives to examine whether the tenderers meet the qualification criteria and do not fall under any of the grounds for exclusion; only these should then be invited to participate in the electronic auction. The PPL also foresees the use of either price only as the sole award criterion in an electronic auction, or a combination of prices and other elements of the tenders that can be modified in the course of the auction, in order to identify the most economically advantageous tender.

The main implementing regulations are Government Decree 705/2018 on the approval of the technical concept for the "State registry for public procurement (MTender)", Government Decree 985/2018 on the accreditation of public procurement platforms working in the context of MTender, and Government Decree 986/2018 on the running of MTender.

¹ PPL, Art. 87

² Id., Art. 29

³ Id., Art. 28

⁴ Id., Art. 30

⁵ Id., Art. 63

⁶ See e.g. Directive 2014/24/EU, Art. 35 and recital 67

The notional owner of the system is the Ministry of Finance¹. However, in reality, at present, MTender appears to be owned by its developer, who was engaged and is paid for the purpose by the EBRD, since no formal agreement detailing the rights to the system appears to have been concluded with the Ministry of Finance to this effect. The MTender operator is the CTIF, the Centre for Information Technologies in Finance, a public institution founded by the Ministry of Finance. The e-procurement platforms that provide the interface between contracting authorities and economic operators during the electronic cycle of public procurement belong to the private sector. Their relation is described² as “a partnership between the Ministry of Finance and commercial electronic platforms formed to provide collaboratively digital procurement services to public sector and commercial buyers in Moldova”; however, there is no public evidence of any formal agreements detailing this relation. Three such platforms are currently in operation. They are supposed, in principle, to be remunerated by the users (economic operators participating in tenders) but the legal basis for this is not transparent (Decree 705/2018 requires³ the preparation of a regulation for this purpose, but none has been adopted). Nevertheless, the platforms did not charge economic operators any fees other than a unique participation fee of 50 lei for small value procurement in the first phase (pilot for small value procurement) of the MTender project.

The current MTender system replaces an earlier system which, however, is still used by the CAPCS, the centre for centralised health sector procurement. This older system was defined and structured as set out in a technical concept note approved by Government decree 355/2009 of 8 May 2009. Its use remains regulated by the PPA's Order no. 18 of 20 June 2016, prepared in response to decision 56 of 8 December 2014 issued by the Court of Accounts, and replacing earlier instructions.

The MTender regulations mentioned and, correspondingly, the e-procurement system in place at the time of the assessment, thus fail to meet the requirements of the PPL in several important respects, among which the following may be recalled:

- the obligations to use MTender do not fully cater for the cases foreseen in the PPL where it is not appropriate to use an electronic auction
- the modification of tender documents by the contracting authority, e.g. in response to requests for clarifications, is possible only to a lesser extent than allowed by the PPL
- lots cannot be handled in the manner prescribed by the PPL
- the MTender business processes contradicts the PPL in that, e.g., the electronic auction precedes the determination of the qualifications of the tenderers and the full evaluation of the tenders, instead of coming as the final step of the evaluation
- the system does not allow to examine if the tenders meet the requirements and the award criteria and if the tenderers meet the selection criteria for other tenders than the one that the system has determined to be the one best placed; it is therefore not possible to fully apply the PPL's provisions on opening and evaluation of tenders

¹ PPL, Art. 1

² See e.g. <https://mtender.gov.md/en/join-mtender>

³ Decree 705/2018, Art. 4. 1)

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- the price is the only award criterion possible to use, out of the four main criteria foreseen in the PPL

As a consequence, contracting authorities have been in breach of the PPL each time they have used the MTender system.

The assessment also identified various other shortcomings of the system in place and in the underlying approach. Several of them are further covered under indicators 7, 9 and 11. Even if steps have started being taken to address them, they require continued attention, as reflected in the corresponding recommendations. Among them one may mention:

- the private sector operated platforms that contracting authorities and economic operators have to use for interfacing with the system do not appear to have received any formal accreditation¹ for the purpose
- the collection of fees for the use of those platforms is not regulated
- the multitude of parties involved (developer, CTIF, Ministry of Finance, PPA, private sector platforms) makes it difficult to identify the nature, location and origin of any problems that are faced in the operation of the system, and therefore the responsibility for resolving them, and complicates the provision of technical support
- many inputs have to be created and uploaded in the form of separately prepared documents in Word and PDF formats, but the data they contain cannot be readily extracted and reused or analysed elsewhere
- there are no specific facilities for tailoring the access to and the use of the system according to the particular needs of an individual contracting authority or the central authorities concerned, like the PPA, the ANSC, the Court of Accounts or the National Anticorruption Agency

The system creates separate records for each step in the procurement cycle, instead of a single one, as foreseen in the Open Contracting Data Standard (which the system is otherwise supposed to comply with). This makes it very difficult to track the plans, budgets, tenders, awards and contracts made in any single procurement process and thus to verify if the different steps properly match each other.

An interface for integration with or mutual access to other national data bases or e-commerce functions like e-invoicing is in place through the MConnect² platform, but the amount of information accessible in this way is still limited, and few contracting authorities use this facility for, e.g., verifying grounds for exclusion.

Further issues related to the MTender regulations and their implementation are set out in the EU's recent report on the development of the e-procurement system.

There is not full and unrestricted access to the e-procurement system. This is partly because several system functions, like uploading and downloading of tender documents and the submission of tenders,

¹ As regulated by Decree 985/2018

² Cf. <https://mconnect.gov.md/#/>

foresee the use of .pdf files which are not necessarily convertible into a searchable format, and partly because it is impossible for contracting authorities to access all elements of all tenders, as just mentioned.

The PPL does require that interested parties be informed which parts of the processes will be managed electronically, in that it includes¹ an obligation for the contracting authority to announce in advance the decision to use an electronic auction, in the case that this is contemplated at all. However, this PPL provision is inoperative to the extent that the MTender regulations do not properly reflect the limitations² to the use of electronic auctions that are set out in the PPL and reflect the corresponding provisions³ of the EU Directives.

Sub-indicator 1(k) – Norms for safekeeping of records, documents and electronic data

The ability to look at implementation performance depends on the availability of information and records that track each procurement action. This information is also important for the functioning of both internal and external control systems, as it provides the basis for review.

The contracting authority has the obligation⁴ to draw up the public procurement file. All information related to a public procurement procedure registered in the e-procurement system is also considered to be part of the respective public procurement file. On the other hand, the list of documents to be included in the file and the manner of storage is still regulated by Government decree 9/2008 (as amended in 2009) which no longer matches the current PPL and therefore creates confusion, since no other implementing regulation has been issued to provide further details on the obligation to draw up the procurement file.

With the implementation of the MTender system, the tenders are presented in electronic format and not on paper, but the legal framework does not regulate exactly which documents can be kept electronically and which on paper. This legislative vacuum puts unnecessary obligations on the contracting authorities for the preparation, collection and safekeeping of all necessary documents for the procurement file. In practice, in order to comply with Government decree 9/2008 for the elaboration of the public procurement file, all the documents from the system are now still printed on paper, which creates high costs for staff and expenses (paper, ink for printers, facilities for storing the hard copies, etc.) and makes identification and retrieval of information very complicated, and very much complicates publication and transmission of the information in readily accessible form.

The procurement file has to be kept⁵ available by the contracting authority for no less than five years from the initiation of the public procurement procedure. This obligation is in line with the normative acts⁶ regarding the archival fund of the Republic of Moldova. This five-year term is also compatible with the term for performing internal audit⁷ within public entities (three years). With respect to corruption offenses and related to acts of corruption which may occur in public procurement procedures, the Criminal Code classifies⁸ them as less serious or serious offenses, where the term limit for criminal prosecution is five and 15 years, respectively.

¹ PPL, Art. 63 (3)

² Id., Art. 63 (1)

³ Directive 2014/24/EU, Art. 35

⁴ PPL, Art. 45

⁵ Id., Art. 45

⁶ Law no. 880/1992, Government decree no. 352/1992, Order 57/2016 of the State Archive Service

⁷ Law no. 229/2010 on public internal financial control, Art. 17 (3)

⁸ Law no. 985/2002, Art.60

Applicable security protocols for the public procurement files are deficient, particularly for the electronic files in the e-procurement system. This is despite the requirements in the legislation on the protection of personal data that call for the development of security policies on the protection of personal data when processing them in information systems.

Sub-indicator 1(l) – Public procurement principles in specialised legislation

This sub-indicator assesses whether public procurement principles (e.g. competitive procedures, transparency, fairness, value-for-money decisions) and related laws apply across the entire spectrum of public service delivery as appropriate.

Utilities are exempt from the provisions of the PPL, in that its coverage explicitly excludes¹ the public procurement contracts awarded by contracting authorities that carry out their activity in the energy, water, transport and postal services sectors and which are part of these activities. Enterprises majority owned by the State or municipalities operating in the electric power, thermal energy, natural gas and operators that provide the public water supply and sewerage service are currently obliged to follow a standard public procurement regulation issued by the National Agency for Energy Regulation in 2017. As applicable, other utilities fall under the special regulations governing the activities of state-owned enterprises in general, obliging each of them to adopt and apply its own, internal procurement regulation. In order to meet the obligations under the EU-Moldova Association Agreement, the new utilities law (on procurement in the energy, water, transport and postal services sectors) reflecting the provisions of the EU's Utilities Directive was adopted by Parliament on 21 May 2020 and published on 26 June 2020. It will enter into force one year after publication.

However, the internal procurement regulations of SOEs have not systematically and comprehensively reflected the principles and policies of the PPL, as further set out in the analysis in Annex 9. The oversight by the competent authority (the Public Property Agency) of procurement of medium and large budget contracts by SOEs has been incomplete and not transparent to the general public and has not been demonstrated to be effective and efficient.

The new regulation² on procurement by SOEs is bringing uniformity in the policies and procedures to be used. The approach and the procedural requirements reflect established public procurement principles and practices but are not fully aligned with those of the public procurement law. It is binding only on enterprises owned by the State, and municipally owned enterprises are only recommended, not required, to apply it. Also, it would seem to overlap with the utilities law, since most utilities are publicly owned. Finally, some publicly owned enterprises may fall within the broader definition of contracting authorities; these should then apply the PPL rather than the SOE procurement regulation.

It is therefore not easy enough to determine on which legal basis procurement should be carried out by a particular publicly owned enterprise, especially since these have not yet been reviewed and categorised with respect to the applicability of the legal instruments mentioned. In addition, the increased variety of broadly similar but not identical procedures and of the conditions for their application makes it more difficult for practitioners in contracting authorities, enterprises and connect supervisory authorities to properly use the right one for the individual case at hand and raises the risk of formal errors.

¹ PPL, Art. 5 (1)

² Annexed to Government decree 351/2020 of 10 June 2020;
https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

In any case, publicly owned commercial or industrial enterprises operating individually in competitive markets should not necessarily need to have their procurement procedures regulated in detail; instead, it would often be more important to improve their governance in general, with a view to raise the transparency and efficiency of their operations and to increase their value to their public sector owners and the citizens.

The institution responsible for regulating the implementation of state policy in the fields of administration and denationalization of public property as well as public-private partnership is the Public Property Agency. Law no. 179/2008 establishes the basic principles of the public-private partnership, the forms and modalities of implementation, the procedure for its initiation and realization, the rights and obligations of the public partner and the private partner. In principle, the PPL is applicable to the awards, in particular for concession contracts in the sense of Directive 2014/23/EU, but this is not reflected in the provisions¹ of the PPP law on the selection of the private partner. The PPP law also has no provision for independent review of complaints against the procedure or the award decision, other than going to the courts.

- **Substantive gaps and their associated risks**

While each of them now broadly reflects appropriate public procurement principles and policies, the PPL, the utilities law and the regulation on procurement by SOEs, as well as the procurement related provisions of the PPP law, are not fully harmonised. As a result, there is a number of similar but not identical procedures, each calling for scarce resources to be spent on specific standard documentation and guidelines as well as on corresponding capacity building and making it unnecessarily difficult for procurement practitioners to determine and apply the approach in the individual case. The applicability of the legal instruments mentioned to any particular SOE and its procurement is also not fully clear. As a consequence, there is a considerable risk that procurement by publicly owned enterprises is not carried out in an appropriate and transparent manner.

At present, effective access to procurement plans and to many other documents is hampered by incomplete obligations to publish and the use of document formats which are not machine readable. This gap is substantial by itself but would normally be possible to address when enhancing the e-procurement system, hence a risk rating of 'medium'.

With respect to the legal framework for e-procurement and its application, the major gap with respect to legal framework criteria is the failure of the current e-procurement system to meet PPL requirements regarding the limitations to the use of electronic auctions, the proper sequencing of the e-auction steps, the possibility to use other award criteria than price, and the need for contracting authorities to be able to fully access and examine all tenders submitted while at the same time ensuring the level of confidentiality that should be provided for in the law. Unless addressed, these shortcomings create a high risk that procurement is not carried out as the PPL requires or allows.

- **Main recommendations**

Given the inconsistency between the primary and secondary legislation, make an in-depth assessment of the entire legal framework on public procurement, fully align secondary legislation with primary legislation and simplify the former to the extent possible, by removing unused and unnecessary decrees

¹ Law no. 179/2008, Art. 27-29

which bring confusion and unjustified complexity to the framework and by adding clarity on aspects not yet sufficiently covered.

Review the characteristics of all state-owned enterprises in a way that helps clearly determine which ones should apply the PPL, the utilities law or the regulation on procurement by SOEs and which ones should not have to apply any specific rules for awarding contracts¹, and take other suitable steps to ensure that their procurement is carried out in a manner that reflects their position in the markets, with adequate uniformity and transparency.

Expand on the PPL provisions for publishing procurement plans and notices, making tender documents available and providing free, easy access to other procurement information through a single, central access point, in particular by making the use of electronic documents the standard approach for public procurement communications.

Ensure that the implementing regulations and the corresponding functionalities of the e-procurement system fully match the (amended) requirements of the PPL.

As a complement to the above, the following table sets out a number of specific gaps and other shortcomings, together with corresponding recommendations.

Specific gaps and corresponding recommendations for Indicator 1

No.	Specific gaps/shortcomings	Specific recommendations
1.a) ²	Procurement by state owned enterprises is incompletely regulated and the actual rules do not properly reflect their characteristics	Characterise state owned and municipally owned enterprises according to the EU Directives, distinguishing between utilities, commercial enterprises, and others, and regulate their procurement accordingly
1.b)	Most procurement procedures set out in the PPL cannot be used in the e-procurement system	Revise the e-procurement policies and systems in order to cover all procedures foreseen in the PPL and adjust applicable secondary legislation accordingly
1.c)	Small value procurement is regulated but the application of the regulation is not monitored	Monitor small value procurement, and facilitate this task by using the e-procurement system for compulsory publication of key data for each contract
1.d)	Procurement plans are not given full publicity while provisions on 'notices of intent' are unduly restrictive and do not give contracting authorities the flexibility to adjust them to market developments and to use them for shortening deadlines for tender submission	Require procurement plans to be published in the Public Procurement Bulletin, and adjust provisions on 'notices of intent' and tender submission time frames to match those in EU Directive 2014/24/EU, Art. 48 on prior information notices

¹ As evident from e.g. CJEU case C-18/01, if SOEs operate in normal market conditions, aim to make a profit and bear the losses associated with the exercise of their activity, it would not be meaningful to impose on them any specific rules for awarding the contracts, though other effective means for SOE governance should be in place.

² The numbering here and in the corresponding tables under each other indicator is only for ease of reference and must not be confused with the numbering of the sub-indicators. Some of the gaps/shortcomings and recommendations listed correspond to individual evaluation criteria, while some others reflect issues common to several sub-indicators. The table is thus simply intended to give a consolidated overview of what is covered in greater detail in the text, at the level of each evaluation criterion.

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No.	Specific gaps/shortcomings	Specific recommendations
1.e)	There are practical barriers to participation by foreign enterprises because electronic tenders (thus, those submitted through MTender) have to be authenticated using an electronic signature, but electronic signatures issued by other countries are not recognized in Moldova	Remove barriers for foreign economic operators to use the e-procurement system: seek mutual recognition of electronic signatures issued by foreign authorities, amend applicable regulations accordingly, and ensure that the e-procurement system matches these requirements
1.f)	Provisions on lists of qualified economic operators are incomplete and contradictory, and a list continues to be published without clear legal basis for its use	Amend the provisions to either clearly allow and regulate the use of lists of qualified economic operators or, in line with the current absence of provisions in the PPL, delete all references to them in other regulations and data bases
1.g)	Qualifications of tenderers are not possible to check as provided by the PPL	Amend applicable regulations and change the functionalities of the e-procurement system to allow verification of qualifications before qualified tenderers are invited to participate in an electronic auction or other award process
1.h)	The limits for the price or cost element in the 'best quality-price ratio' and 'best quality-cost ratio' award criteria restrict the possibility to achieve best value for money, and not all award criteria set out in the PPL have corresponding regulations duly allowing their full use in practice	Revise applicable regulations, in particular those for works, and raise the flexibility in applying value-for-money criteria
1.i)	Provisions on tender opening and evaluation do not cater for the use of e-procurement	Revise the regulatory framework for opening and evaluation of tenders to reflect the use of e-procurement, and make the requirements for the publication of the corresponding reports fully effective in line with the PPL, Art. 78 (2)
1.j)	The rules and practices currently regulating the submission of complaints make it difficult in practice to address e.g. any inappropriate choice of negotiated procedure without prior publication of notice instead of any competitive procedure	Review the problem in consultation with all parties concerned in order to agree on effective ways to prevent and sanction inappropriate use of direct agreement
1.k)	Possibilities for speedy, effective and efficient dispute resolution in procurement contracts are limited	Review the scope for alternative dispute resolution mechanisms, in parallel with and as a complement to improved contract management by the parties, and adopt corresponding regulations and practices
1.l)	The current e-procurement system has a large number of specific deficiencies, as detailed under sub-indicator 1 (j).	Address each of the shortcomings mentioned when revising or replacing the e-procurement system
1.m)	Rules for filing and safekeeping of records and other documents are not up to date and partly fail to reflect the particularities of e-procurement	Update the applicable provisions in the PPL and in other legislation, ensuring that they safeguard the integrity of the information contained and match other applicable regulations

3.1.2 Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

- **Findings**

Main substantive gaps and recommendations for Indicator 2

No.	Substantive gaps	Risk	Recommendations
2.1.	Secondary legislation is not quite complete and up to date and some of its provisions do not match the PPL	High	Repeal any incomplete or outdated secondary legislation; any prescriptions in the secondary legislation and the corresponding standard documentation should be fully aligned with the PPL and with any future amendments to it
2.2.	Some contracting authorities and supervisory institutions wrongly presume that specific provisions of secondary legislation, even if outdated, take precedence over primary legislation	High	Whenever the issue arises, the PPA or other competent authority would need to clearly confirm the precedence of the PPL and the right to apply it, for as long as any incomplete, outdated or contradictory requirements remain in secondary legislation
2.3.	Secondary legislation and standard documentation prescribed is full of detailed prescriptions, raising the risk of errors and complaints and failing to put focus on value for money in achieving procurement objectives	High	Whenever the PPL is clear enough, there is no need for secondary legislation, but rather for more comprehensive guidance materials; simplify the form and contents of the standard documentation, add examples for their use, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case
2.4.	Obligations to create and update secondary legislation, standard documents and guidance materials, are not fully met by corresponding action	High	Clarify, to the extent needed, the responsibilities for preparing, updating and publishing secondary legislation, standard documentation and other guidance materials; ensure that adequate resources are put to use for the purpose; and monitor the outcomes

Sub-indicator 2(a) – Implementing regulations to define processes and procedures

This sub-indicator aims at verifying the existence, clarity, accessibility and comprehensiveness of regulations to the law that further detail and clarify its application.

The normative framework does not fully cover all public procurement procedures regulated by law, and it is also not fully harmonized, with some of the secondary regulations either exceeding or contradicting what the PPL requires or allows.

On 1 October 1, 2018, amendments to the PPL entered into force, but so far, the secondary regulatory framework has not been correspondingly adjusted, with the procedure for price quotations being the only exception. The normative framework for the other procurement methods has thus not been modified,

which limits the application of the provisions in the PPL and creates confusion. This applies to e.g. the following Government decrees:

- GD 669/2016 procurement of works;
- GD 1419/2016 procurement planning;
- GD 665/2016 low value acquisitions;
- GD 667/2016 the activity of the working group;
- GD 9/2008 management of the procurement file, et
- The regulations on how to conduct the competitive dialogue and the negotiated procedure do not comply with the legislation in force.

There are also no implementing regulations at all on how to carry out restricted tenders and innovation partnerships.

The secondary legislation is readily accessible¹ on the website of the Public Procurement Agency. It is comprehensive, apart from the missing items mentioned above, and detailed, but at the same time also inflexible and prescriptive to the point that it does not fully meet the practical requirements for clarity and ease of use in all the various, specific cases that may occur. As now written, its proper application requires considerable efforts and great administrative skills and may nevertheless lead to frequent, though minor, formal errors and omissions that then create opportunities for lodging frivolous complaints, while diverting the attention from substantive issues like the correct identification and description of needs and requirements in ways that encourage competition and create value for money, as well as the proper management of contracts concluded. Finally, some information now has to be repeatedly indicated in several different places when preparing tender documents; the existing facilities for this purpose in the current e-procurement system do not allow data entered once to be automatically repeated wherever applicable.

Many users among both contracting authorities and economic operators have therefore called for it to be revised for greater clarity, simplicity and flexibility of use.

Reflecting the insights received from its duties to monitor and analyse what happens in the field of public procurement and to provide methodological advice and consultations, the responsibility for preparing proposals for changing and supplementing the public procurement legislation lies with the PPA², for subsequent submission to the Ministry of Finance with a view to their adoption by the Government. However, this obligation has only partly been met, as illustrated by the outdated regulations mentioned above.

Sub-indicator 2(b) – Model procurement documents for goods, works and services

This sub-indicator covers the existence and contents of model procurement documents or, if not complete, standard elements and templates that may serve similar purposes.

¹ See <https://tender.gov.md/ro/content/hot%C4%83r%C3%A2ri-de-guvern> and <https://tender.gov.md/ro/content/acte-ministeriale-%C8%99i-departamentale>.

² PPL, Art. 10 a)

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Standard documentation is issued by the Ministry of Finance for the procurement of goods, works and services using competitive procedures as well as for the use of price quotations.

The standard documentation, including the ESPD, is readily accessible¹ on the website of the Public Procurement Agency. For the major procedures as well as for some particular types of goods and services, the standard documentation typically includes (example taken from the standard documentation for goods):

1. Instructions to tenderers
2. Tender data form
3. Tender form, including tender guarantee and performance guarantee forms
4. Technical specifications, price break-down form
5. Conditions of contract

However, as for the secondary legislation, the standard documentation is not quite up to date and is not fully harmonised with the actual functions of the e-procurement system (MTender) which, in turn, is not harmonised with the PPL.

Given the general duty² of the PPA to provide methodological advice and consultations and to provide training in the field of public procurement and as explicitly required in Art. 7. 1) of the Regulation on the organisation and functions of the PPA, as adopted by Government decree 134/2017 (as amended), it is the obligation of the PPA to take charge of the preparation and updating of the standard procurement documentation. However, this obligation has only partly been met.

Sub-indicator 2(c) – Standard contract conditions

This sub-indicator focuses on the basic provisions that have to be included in a contract with the government.

All standard documentation issued by the Ministry of Finance contains forms of contract. They thus cover goods, works and services and are broadly in line with internationally accepted practice, with the exception that some economic operators contributing their views to the assessment have mentioned that the model forms of contract seem to be more in favour of the contracting authority, meaning that rights and obligations of the parties are not quite proportionate. This disproportion of penalties in contract execution adds risks of corruption and are not necessarily conducive to proper contract execution. As an example, if the contracting authority does not meet its obligations under the contract or, e.g. unduly delays the acceptance and payment of deliverables under the contract, the contractor has very limited possibilities to address the situation.

The applicable contract conditions, as set out in the standard documentation, are included in or attached to the tender documents issued and are thus made available together with these. However, not all procedural provisions are fully adapted to the use of electronic means for concluding and managing contracts.

¹ See <https://tender.gov.md/ro/documente/modele-de-documente>.

² PPL, Art. 10 d)

Sub-indicator 2(d) – User’s guide or manual for procuring entities

This sub-indicator covers the existence of a user’s guide or manual for procuring entities.

Apart from what is contained in considerable detail in the secondary legislation issued by the Government, the standard procurement documentation issued by the Ministry of Finance contains a number of methodological details aimed at helping contracting authorities and economic operators to properly apply the procurement regulations. Further guidance is provided in manuals issued by the PPA. As an example, the principles and practicalities of preparing technical specifications is described in a corresponding guideline that can be downloaded¹ from the PPA website for free. In addition to the general guidance provided, it also contains 54 different, standard technical specifications for frequently procured items. In addition, the PPA has also developed a video guide which is published on its web page².

The document states that it has been elaborated in order to support the contracting authorities but does not include further details on its preparation, such as when the individual standard specifications were originally drafted and if and when they have been updated. It is therefore not possible for the occasional users to know if they are up to date and, consequently, if they match today’s market practices and refer to e.g. the latest, currently applicable standards and technical regulations. There are also cases when it is not clear whether e.g. precise, specific dimensions of various items are so indicated because of a corresponding standard or other legal obligation, or if the contracting authorities have some flexibility in setting those values in accordance with their particular needs (and, if so, what may need to be considered in order to keep the specifications suitably open in order to invite effective competition).

Several of the standard specifications listed have a relatively strong focus on the physical characteristics of the items, as opposed to their performance, and may not quite reflect the potential advantages of functional specifications. They also provide limited guidance on how to draft specifications and to set corresponding evaluation criteria with a view to obtain value for money (life cycle costing, value of quality or performance exceeding minimum requirements). On the other hand, sustainability considerations are presented in a separate guidance issued by the PPA (see further sub-indicator 3(a) below).

The responsibility for maintaining the manuals lies with the PPA, in application of Art. 7. 1) - 3) of the Regulation on the organisation and functions of the PPA, as adopted by decree 134/2017 (as amended). Although a wide range of guidance documents has been published, not all of those have been updated.

- **Substantive gaps and their associated risks**

As noted also in the discussion of the primary legislation, the main gap with respect to implementing regulations, standard documents and related matters is that the secondary legislation is not quite complete and up to date and that, in particular, some of its provisions do not match what the PPL requires or allows. In recent months, efforts have been made to address this gap but unless and until it is fully closed, it creates a high risk of inappropriate procurement approaches.

This problem is compounded by the tendency of contracting authorities and supervisory institutions to wrongly presume that specific provisions of secondary legislation, even if outdated, take precedence over the primary legislation constituted by the PPL. The issue has been particularly acute in the CAPCS and, if

¹ See <https://tender.gov.md/ro/content/ghid-de-specifica%C8%9Bii-tehnice>.

² See <https://tender.gov.md/ro/content/instruc%C8%9Biuni>

not addressed, the risk of continued failure to properly use all the modern approaches and procedures allowed by the PPL is high, with negative consequences on timeliness, efficiency and value for money.

The secondary legislation and the standard documentation prescribed for use in public procurement is so full of detailed prescriptions that may not be strictly necessary or useful that it fails to facilitate the application of the law to specific circumstances and the achievement of overall objectives of economy, efficiency, value for money and transparency, instead multiplying the risk of formal errors and omissions which then invite complaints. These various risks are high and their consequences significant, unless mitigated.

Although the law and other regulations are sufficiently clear about the responsibilities for creating and updating the materials in question there seems to have been some confusion in practice on this point and it appears that the current distribution of resources for the purpose would have room for improvement. As a consequence, there is a high risk that the gaps with respect to preparation and updating of secondary legislation and standard documentation will remain, which in turn raises the risks of inadequacy and inefficiency when public procurement is carried out.

- **Main recommendations**

Review the need for secondary legislation to complement the PPL; when such secondary legislation is needed, align its prescriptions and the corresponding standard documentation with the PPL as amended, and repeal any outdated or unnecessary decrees.

Simplify the form and contents of the standard documentation, make it suitable for use in an e-procurement environment as well as in hard copy, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case. Ensure that all public procurement procedures and methods (use of framework agreements, etc.) allowed or prescribed by the PPL are fully reflected in corresponding regulations and standard documentation and update the latter as soon as the PPL is amended (before the entry into force of such amendments) or other circumstances so require.

Clarify, to the extent still needed, the responsibility for preparing, updating and publishing secondary legislation, standard documentation and other guidance materials, and ensure that adequate resources are put to use for the purpose.

A summary of specific gaps and recommendations is found below.

Specific gaps and corresponding recommendations for Indicator 2

No.	Specific gaps/shortcomings	Specific recommendations
2.a)	Existing procedural guidance in secondary legislation is excessively detailed and prescriptive, while not always readily applicable in all cases appearing in practice	Simplify the procedural requirements and give contracting authorities a minimum of flexibility to make transparent adjustments as reasonably required by circumstances, complementing this measure by corresponding information and training as well as risk-based monitoring of actual practices
2.b)	Current tools for preparing tender documents and reports require repeated entry of similar data	Improve the functionalities of document processing in order to minimise the administrative effort needed, in ways that match other administrative approaches, systems and tools used in the contracting authorities

No.	Specific gaps/shortcomings	Specific recommendations
2.c)	Prescribed standard documents and forms are not suited to use in an e-procurement environment or with computerised document handling	Make standard documentation suitable for use in an e-procurement environment that is fully aligned with the PPL, and ensure that the prescribed forms of notices, reports and the like are aligned with the practicalities of publishing them by electronic means and with the need to make the contents easy to access and analyse
2.d)	The PPL foresees the publication of some notices in the EU's Tenders Electronic Daily (TED) but corresponding agreements and facilities are not yet in place	Finalise agreements with the EU about publication of notices in the TED, and amend the PPL and applicable secondary legislation accordingly
2.e)	Standard documents, including model specifications, and other guidance documents are not quite complete and up to date	Update and complete the range of standard documents, while leaving contracting authorities a minimum of flexibility to make transparent adjustments as reasonably required by circumstances
2.f)	Several of the existing model specifications focus on physical characteristics, while function and performance are less detailed	Revise the model specifications to better reflect functional characteristics, and complement by guidance for how this could be done in the general case

3.1.3 Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.

- **Findings**

Main substantive gaps and recommendations for Indicator 3

No.	Substantive gaps	Risk	Recommendations
3.1.	Weak focus on sustainable public procurement in regulations and practices and lack of corresponding skills	Low	Include sustainability considerations in the curriculum for training of public procurement officials (as well as in that for economic operators)

Sub-indicator 3(a) – Sustainable Public Procurement (SPP)

Following up on more general information gathered in the analysis of the country context (Section II), this sub-indicator assesses whether (i) the country has adopted a policy and an implementation plan to implement Sustainable Public Procurement (SPP) in support of national policy objectives and (ii) the legal and regulatory framework includes provisions on the inclusion of sustainability criteria in public procurement.

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In the Republic of Moldova, there is no strategy exclusively dedicated to sustainable public procurement. For the moment, the regulatory framework offers some possibilities to apply sustainability criteria but does not include an obligation to use them.

On the other hand, a “Programme for the promotion of the ‘green’ economy in the Republic of Moldova for the years 2018-2020” and the action plan for its implementation has been approved¹, and objective no. 8 of the action plan is “to ensure that, until 2020, at least 15% of all public procurement will meet sustainable procurement criteria”.

The SPP objective just mentioned was complemented by a list of actions required for operationalising, facilitating and monitoring the implementation of sustainable public procurement, but not all of them have been carried out. As a consequence, the objective has not yet been achieved.

Nevertheless, contracting authorities have access on the PPA website² to a comprehensive guide on sustainable public procurement, issued in 2017.

One of the principles governing public procurement is to support protection of the environment and promotion of sustainable development through public procurement³. In addition, the use of selection criteria related to environmental standards is covered in the PPL, Art. 18.

Further, the rules regarding the description of goods, works and services (PPL Art. 37, point 14) give the contracting authority the right to impose in the award documentation, insofar as they are compatible with Community law, special conditions for fulfilling the contract, by which it aims to achieve certain effects in relation to environmental protection and to promote sustainable development. Likewise, for procurement of social services and other specific services⁴, the award criteria to be used are the best quality-price ratio or the best quality-cost ratio, thus allowing to take into account quality and sustainability criteria.

On the other hand, the current e-procurement system does not allow the use of any other award criteria than price, even if it remains possible to incorporate sustainability aspects in e.g. qualification requirements and technical specifications.

Applicable legal provisions provide opportunities for a balanced application of sustainability criteria to ensure value for money in that the provisions⁵ on award criteria allow the use of qualitative criteria related to SPP as well as the use of life cycle costs. In addition, the PPL provides⁶ detailed guidance for the calculation of life cycle costs. However, there is no general requirement to consider sustainability criteria, nor to give preference to ensuring value for money.

¹ Government decree no. 160/2018

² See https://tender.gov.md/sites/default/files/document/attachments/ghid_privind_achizitiile_publice_durabile.pdf.

³ PPL, Art. 7 (d)

⁴ PPL, Art. 59.5

⁵ PPL, Art. 26

⁶ PPL, Art. 27

Sub-indicator 3(b) – Obligations deriving from international agreements

Based on the general information for the country context chapter, this indicator assesses (i) the existence of procurement-related provisions in binding international agreements and (ii) the consistent reflection of those obligations in national procurement laws and regulations.

Contracts based on an international agreement are excluded¹ from the coverage of the PPL. Apart from these provisions, obligations regarding public procurement arising from compulsory international agreements are not explicitly reflected in the PPL.

On the other hand, Moldova is a party to the Government Procurement Agreement (GPA) since 14 July 2016 and has thus agreed to abiding by its provisions on policies, procedures and reporting. Moldova is also party to the Association Agreement between the European Union and [...] the Republic of Moldova, signed on 27 June 2014. Chapter 8 of the Association Agreement covers public procurement, where Moldova essentially commits itself to successively aligning its legislation and practices with the EU's public procurement directives over an eight-year period, according to the phases and detailed time schedules set out in Annex XXIX-B to the Association Agreement.

The obligations under the Association Agreement with respect to public procurement have largely been met, though with some delays relative to the agreed time schedule (e.g. concerning utilities) and some remaining discrepancies in the PPL and related regulations. In particular, a number of the provisions in the regulations governing the e-procurement system (MTender) are not in line with neither the PPL nor, by extension, the applicable EU directives (see further under sub-indicators 1(j) and 7(b)).

With the EU directives being fully aligned with the GPA, and as the basic public procurement requirements under the Association Agreement match those of the GPA and have already been met, the PPL itself is also, in principle, in line with the GPA. However, full observation of the GPA requires that also the secondary legislation is brought to full alignment with the PPL.

- **Substantive gaps and their associated risks**

The main substantive gap found under Indicator 3 is the weak focus on sustainable public procurement in regulations and practices and the lack of corresponding skills at the level of the contracting authorities in all stages of the public procurement process. This, in turn, appears to reflect a general need to raise skill levels and strengthen the resources for carrying out public procurement as well as weaknesses in awareness raising about sustainability issues and in the operationalisation of existing sustainability policies. On the other hand, other national initiatives for promoting sustainable development would have benefits also in public procurement, so the procurement specific risk of this gap has been considered to be low.

An important contributing gap is constituted by the very limited possibilities, if any, offered by the current e-procurement system to apply sustainability related award criteria.

¹ PPL, Art. 5 (m)

- **Main recommendations**

Include sustainability considerations in the curriculum for training of public procurement officials (as well as in that for economic operators) and include public procurement aspects in other information and training about sustainable development in general.

Ensure that sustainability considerations can be fully reflected in the e-procurement system, in the form of possibilities to e.g. include non-price elements in electronic auctions and to accommodate the use of life-cycle costs.

A summary of specific gaps and recommendations is found below,

Specific gaps and corresponding recommendations for Indicator 3

No.	Specific gaps/shortcomings	Specific recommendations
3.a)	Since the current e-procurement system only allows the use of price as the one, single award criterion, it is not possible to fully apply the sustainability criteria that the PPL allows to be used	Ensure that the e-procurement system can be used with other award criteria than price
3.b)	While the PPL gives wide opportunities to use sustainability criteria, their use is not explicitly recommended	Clarify the importance and advantages of the use of sustainability criteria in secondary legislation and promote their application in practice
3.c)	The timetable for alignment of the public procurement legislation with the EU Directives is not fully met	Bring the legislation in line with the timetable for alignment
3.d)	The observation of Moldova's obligations under the GPA is incomplete, to the extent that some items of secondary legislation is not yet in line with the PPL	Update the secondary legislation

3.2 Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.

Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Summary findings under Pillar II:

The integration of public procurement in public financial management in general appears to be slightly lopsided, in that budget and disbursement regulations and practices put considerable constraints on the

contracting authorities, while the potential for public procurement to improve value for money in the use of public funds is not fully utilised.

Procurement planning is regulated by the PPL and, with respect to financial management, by the law on public finance and fiscal and budgetary responsibility. Procurement cannot be initiated until funding is confirmed to be available but there are then only very limited possibilities to conclude contracts for a duration that goes beyond the end of the year. As a practical consequence, procurement starts relatively late in the year and there is a rush to use up the budget before the end of the year, limiting the possibility to use procedures that by their nature require longer lead times (e.g. restricted tender), to spread out the procurement workload over the year, and to ensure a regular, reliable supply of the various items needed during the year.

Financial procedures, both at the level of the individual contracting authorities and the Treasury, are not fully conducive to swift and efficient payments to suppliers, contractors and service providers who therefore may face the risk of running into financial problems preventing them from ensuring that subsequent deliveries can be made as required by the contract.

The roles and responsibilities of the central authorities in charge of key public procurement functions are defined in adequate detail in the PPL and in secondary legislation, in apparent accordance with the applicable EU Directives. However, the internal organisation of e.g. the PPA would seem to have room for improvement in order to better focus the available resources on its regulatory and advisory roles (proposals for secondary legislation and standard documentation and their updating; capacity building; and monitoring and analysis of the public procurement system in order to support evidence based policy making). This being said, the weaknesses of the current e-procurement system create additional work for the PPA, limiting its ability to refocus in the short term.

The procuring entities suffer from being far more numerous than would likely be optimal and from a lack of dedicated, permanent and adequately staffed procurement departments, the two issues being closely related. The opportunities for joint and centralised procurement are very little used, with mixed results.

The picture is mixed regarding the use of electronic communications and information technology. Some regulations, e.g. for publishing notices, foresee a wide use of electronic means with wide and easy access, while others, e.g. for preparation and retention of procurement files, seem to ignore them. In practice, the full use of the notional advantages of electronic means is hampered by deficiencies in the e-procurement system that has been introduced.

The ability of the public procurement system to develop and improve is limited by the lack of full recognition of the need for skilled, dedicated public procurement staff with corresponding status and roles and of means for building their capacity.

3.2.1 Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system

This indicator focuses on how well integrated the procurement system is with the public financial management system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

- Findings

Main substantive gaps and recommendations for Indicator 4

No.	Substantive gaps	Risk	Recommendations
4.1.	Contracting authorities find it difficult to reliably plan procurement in the medium term and to run procurements regularly throughout the year and with continuity from one year to another	Medium	Align the time horizon and the approach for high level procurement planning with that for the medium-term budgetary framework, and adjust budget and disbursement regulations to allow procurement to proceed in a regular fashion throughout the year and across fiscal years

Sub-indicator 4(a) – Procurement planning and the budget cycle

This sub-indicator covers the preparation and use of procurement plans and their links with budgeting and expenditure management.

The main focus of the public procurement planning procedure set out in the PPL¹ is limited to the estimation of the contract value, in the first place as required for determining the procedures that would have to be used as a function of the threshold amounts that have been set for this purpose. Government decree 1419/2016 further defines the essence of public procurement planning as well as the general requirements for it, including the obligation for the budgeted amounts to cover the future procurement procedures. The prescribed format of the procurement plan is simple but allows the uniform application of the legal requirements. However, earlier, preparatory stages in the planning process, such as needs identification and goal setting, are not well covered in the legislation, nor in any corresponding guidance materials. Apart from the financial regulations and the rules on administrative procedures, there is also no general system of public project management that comprehensively guides the process of project identification, preparation, appraisal, selection, budgeting, implementation and ex-post evaluation as well as the allocation of duties and responsibilities of relevant government organs for each of these stages.

In accordance with the legal provisions, it is the responsibility of each contracting authority to elaborate its annual procurement plan and publish it on the institution's website. On the other hand, the current e-procurement system (MTender) does not offer the possibility to elaborate and publish those annual procurement plans; its only available facility is for developing plans for the procurement of each individual contract, particularly as is needed for initiating the corresponding procurement procedure.

The requirement for wide publication of the 'notices of intent' for all contracts to be concluded during the year, more than that of the procurement plans themselves, may seem to meet the important objective to inform the business community about coming business opportunities and thereby to encourage strong competition and high participation in public procurement. At the same time, the obligation to do so in often spurious detail at the beginning of the year creates an additional administrative burden on the contracting authority and does not help reach the full benefits of the approach foreseen in the EU Directives (prior information notices according to Directive 2014/24/EU, Art. 48, with flexibility in the timing of their publication and opportunity to use them for shortening the deadlines for tender

¹ PPL, Art. 4

submission). On the other hand, an examination of notices actually published indicates that the obligation to do so at the beginning of the year is not fully met in practice.

The Contravention code provides sanctions¹ for cases in which procurement plans are not developed or published. However, the authority that will check this obligation and apply these sanctions is not specified, so this rule is inapplicable in practice.

The practice of medium-term budgeting is well established at the level of the Ministry of Finance, in that a medium term budgetary framework covering the next three years is approved by Government each year and notified to Parliament, as further regulated in law 181/2014 on public finance and fiscal responsibility. However, in practice, many contracting authorities work to a yearly cycle, delaying the start of procurement until fresh funds are available and using various ways to try to ensure that the funds available are spent before the end of the year. As a consequence, public procurement is not always carried out at a regular pace over the year, matching the timing of the actual needs, and officials may be tempted to use non-competitive procedures to ensure that money is spent quickly enough.

The budget allocations for the planned procedures must fully cover the estimated values of the procedures². If the institution's budget lacks the financial means, the procedures must not be initiated and must be excluded from the procurement plan. Another mechanism for enforcing budget availability is set up at the State Treasury, in that in case of a lack of financial means, the contracts awarded are not registered, which is then a sufficient reason for them not to be binding for the contracting parties.

If the allocations have been diminished as a result of a budget modification during the budget year, the budgetary institutions (contracting authorities financed from the State budget) are obliged to review the contractual relations with the suppliers of goods and services and to reduce the expenses (Law 181/2014, Art. 66 (4)).

It is possible to assume multi-annual commitments for capital investment projects for a period of up to three years and, consequently, to include corresponding elements in the procurement plans. The possibilities for multi-annual commitments in other cases are not well developed. A draft Government decree is said to have been drafted early June 2020, covering a proposal to change law 181/2014 so as to allow multi-annual commitments for procurement of medicines, other medical supplies and medical equipment. However, no evidence is available.

However, while the proposed change, as now drafted, may certainly be useful for medical equipment, the objective of facilitating longer term procurement arrangements for medicines and other medical supplies would likely be better served by improved procedures and practices for using framework agreements. Also, it is not clear why the proposed facility for multi-annual commitments would be limited to the specific items mentioned. Other large and complex contracts, especially those with important needs for spare or wear parts and consumables and awarded on a life cycle cost basis, could also merit similar treatment.

Regarding the procedures for reporting the execution of contracts, the contracting authorities are required to draw up quarterly or half-yearly and annual reports on the execution of contracts and publish

¹ Law no. 218/2008, Art. 327/1, para (3)

² Law 181/2014, Art. 66

them on the institution's website.

In practice, not all contracting authorities publish, nor even prepare, reports on monitoring the performance of contracts. National normative acts do not provide any sanctions for non-compliance with these norms. In accordance with point 34 of Government decree no. 667/2016, the respective reports must include information on the stage of execution of contractual obligations, causes of non-execution, complaints and sanctions applied, mentions on the quality of contract execution, etc. The reports prepared by the public authorities (their working groups in charge of public procurement) and published on the web are usually prepared in the form of a table which includes the fields indicated in point 34 of Government decree no. 667/2016. The greatest problem is that the information in these monitoring reports is often merely of formal, statistical character and does not include specific information on possible non-performance of contractual obligations, the quality of contract performance, or complaints and sanctions against economic operators (and the latter, in any case, even if foreseen in the contract, are understood not to be actually applied by the contracting authority in many cases).

As a result, there is no practical possibility for contracting authorities to use the contract execution reports as a basis for excluding an economic operator because of significant or persistent deficiencies in the performance of any substantive requirement in a prior public contract, as allowed by the EU Directives¹. However, it must be mentioned that the Directive makes it optional to allow or to require this in national legislation.

Sub-indicator 4(b) – Financial procedures and the procurement cycle

This sub-indicator assesses whether budget laws and financial procedures adequately support the procurement process, i.e., the preparation and timely solicitation and award of contracts, contract execution and timely payments.

Assessment criteria:

The legal and regulatory framework, financial procedures and systems should ensure that: (a) No solicitation of tenders/proposals takes place without certification of the availability of funds. (b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.

Law 181/2014 on public finance and fiscal-budgetary responsibility clearly establishes that the initiation of procurement procedures is not allowed without corresponding financial coverage (Art. 66). The corresponding procedural rules are clear and are reported to be strictly applied.

Advance payments are restricted² to a few special cases. Invoices for goods, works or services delivered are processed in several steps, regulated in the Order of the Ministry of Finance no. 215 of 28 December 2015 on the approval of the Methodological norms regarding the cash execution of the component budgets of the national public budget and of the extra-budgetary means through the Single Treasury Account of the Ministry of Finance. The State Treasury and the regional treasuries of the Ministry of Finance are thus required (point 4.2.4.4) to perform additional checks on payment orders in terms of

¹ Directive 2014/24/EU, Art. 57 4. (g)

² Law 181/2014, Art. 66 (5)

budget classification, as well as whether they correspond to the commitments made by the budgetary authority or institution.

When making payments by bank transfer, the budgetary authority or institution must (point 4.2.4.5) present supporting documents at the request of the State Treasury Department or the regional treasuries of the Ministry of Finance. In the model public procurement contracts there are corresponding provisions. As an example, for goods, "The Seller is obliged to present to the Buyer an original copy of the fiscal invoice together with the delivery of the Goods, in order to make the payment. For non-compliance by the Seller with this clause, the Buyer reserves the right to increase the payment term provided in point 3.4 corresponding to the number of days of delay and to be exempted from paying the penalty established in point 10.3."

Once the invoice has been submitted, the contracting authority can thus issue a payment order, which is then transmitted to the Treasury, which in turn prepares a disbursement order in favour of the contractor. The number of treasury operations usually peak towards the end of the year, when contracting authorities have been scrambling to use up their budgets before the end of the year and contractors are anxious to get paid while funds are still available. As a result, disbursements are often delayed during this period.

In principle, delays in the payment cycle may lead to difficulties for the economic operators to fulfil their contractual obligations, which puts them at risk of further problems if the contracting authority decides to sanction such failure to perform. Although several industry representatives have repeatedly indicated problems of this kind in meetings during the assessment, a random selection of 69 contracts from the files held by the PPA indicates that some 90% of invoices were paid on time, and in the survey of economic operators carried out in the course of the assessment, the question was asked if payments are made according to the contract provisions: six out of 10 (60%) respondents said 'yes' while four out of 10 (40%) responded 'no'. Further aspects of the performance of the public procurement system are covered under indicator 9.

- **Substantive gaps and their associated risks**

A major gap in the integration of public procurement into public financial management is the limited possibilities for contracting authorities to reliably plan procurement in a medium-term perspective and to run procurements regularly throughout the year and with continuity from one year to another. The immediate reason is the rigidity (at least, as so presumed by many individual budget entities) of the budgetary and disbursement regulations, which do not seem to fully reflect the particularities of public procurement. At the same time, the development of medium-term budgeting is proceeding, in parallel with other steps to improve public financial management, so the risk created by this gap is rated as 'medium'.

- **Main recommendations**

Align the time horizon and the approach for high level procurement planning with that for the medium term budgetary framework and adjust budget and disbursement regulations in such a way that contracting authorities can proceed with public procurement in a regular fashion throughout the year and across fiscal years.

Further recommendations for addressing a number of specific gaps and shortcomings are found in the table below.

Specific gaps and corresponding recommendations for Indicator 4

No.	Specific gaps/shortcomings	Specific recommendations
4.a)	Provisions on procurement planning focus on cost estimation, while the broader needs to properly identify the needs to be served, determine the objectives to be met by the procurement, and set requirements that the markets can actually meet are little covered	Complement existing rules on cost estimation with practical examples and guidance materials, and ensure that the wider needs for thorough planning and preparation of public procurement are more explicitly addressed in the legislation
4.b)	Legal provisions on the preparation and publication of procurement plans and 'notices of intent' create an administrative burden and nevertheless fail to reach the full, potential benefits of advance information on upcoming business opportunities	Require early, wide publication of procurement plans, with focus on the needs at hand and how they are intended to be met, and change the provisions on 'notices of intent' to fully match those on 'prior information notices' in the EU Directives
4.c)	It is not easy to get an overview of upcoming business opportunities by examining procurement plans as now published, nor to get a clear picture of progress in their execution	Ensure that procurement plans can be published on the same centrally located, easily accessible website as other notices and in such a way that the implementation of the procurement plans can be followed
4.d)	Failure of contracting authorities to prepare and publish procurement plans and contract execution reports cannot be properly sanctioned, because the legal basis for this is incomplete	Clarify the responsibilities for monitoring the publication of procurement plans and contract execution reports and for sanctioning failure to do so as required (substantive contents as well as form)
4.e)	As now regulated, execution reports cannot be readily used for identifying cases of inadequate contract performance in the past	Reflecting improved approaches for effective contract management, revise the contents of the contract execution reports and the way they are published so as to facilitate external monitoring and allow them to be easily and reliably used for identifying cases of inadequate past performance
4.f)	The use of multi-annual commitments is limited to capital investments at present	Expand the possibilities for multi-annual commitments, while recognising that better policies and practices for the use of framework agreements may also serve similar purposes and may have other advantages
4.g)	Invoice payment is at risk of delays and the time actually taken is difficult to monitor	Simplify the procedures for payment of invoices, monitor their application, including the time taken from each delivery to the corresponding disbursement, and consider how to best ensure timely disbursement
4.h)	Goods, works and services delivered are not always of the required quality and quantity, and failure to spot such cases and take action lowers value for money and creates risks of fraud and corruption	Review the skills and practices of contracting authorities with respect to quality control and acceptance of items delivered as required in the context of public financial management, and take corresponding measures for enhancing related training and monitoring

3.2.2 Indicator 5. The country has an institution in charge of the normative/ regulatory function

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organisations. Depending on the institutional set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-co-ordinated joint effort.

- **Findings**

Main substantive gaps and recommendations for Indicator 5

No.	Substantive gaps	Risk	Recommendations
5.1.	Limited ability of the PPA to focus its resources on its regulatory and advisory roles and to build its capacity in this respect	Medium	Review the priorities and means of the PPA and revise the organisational structure accordingly, likely leading to stronger focus of the PPA's staff resources to its regulatory and advisory roles (proposing secondary legislation and standard documentation; capacity building; monitoring and analysis of the public procurement system)

Sub-indicator 5(a) – Status and legal basis of the normative/regulatory function

This sub-indicator examines the regulatory framework that governs the assignment of key public procurement functions to various agencies.

The elaboration and promotion of policy documents and draft normative acts in the field of public procurement is within the competence of the Ministry of Finance.

The Public Procurement Agency (PPA) is an administrative authority¹ subordinated to the Ministry of Finance, established in order to strengthen the capacities of contracting authorities and develop their business skills in the field of public procurement, to monitor compliance with public procurement procedures and to perform analyses of the public procurement system. The work of the PPA is regulated by the PPL, Art. 10, and Government decree no. 134/2017.

Sub-indicator 5(b) – Responsibilities of the normative/regulatory function

This sub-indicator examines the key public procurement functions and their actual distribution between agencies, identifying any gaps or overlaps.

According to the regulations mentioned above, the PPA has the following main roles and responsibilities:

¹ PPL, Art. 9

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- 1) implementation of normative acts in the field of public procurement and elaboration of proposals for modification and completion of the legislation on public procurement;
- 2) participation in the process of gradual harmonization of national legislation with Community legislation;
- 3) monitoring and evaluation of the efficient functioning of the public procurement system;
- 4) performing the ex-post control¹ regarding the application by the contracting authorities of the legal and procedural provisions in the field of public procurement

In order to carry out these basic functions, the PPA is required to perform the following tasks:

- 1) elaborate and implement standard documentation regarding public procurement procedures
- 2) provide methodological assistance and consultations in the field of public procurement to the contracting authorities
- 3) train contracting authority personnel involved in the organisation and development of public procurement procedures
- 4) edit the "Public Procurement Bulletin"
- 5) maintain in the global Internet network the web page "Public Procurement of the Republic of Moldova"
- 6) manage the automated information system of public procurement
- 7) examine reports on public procurement procedures in order to analyse and monitor the efficiency of the public procurement system
- 8) draw up, update and maintain² the list of qualified economic operators and the list of economic operators prohibited from participating in public procurement
- 9) approve draft of normative acts that have an impact on the activities regulated by the legislation on public procurement
- 10) collaborate with international institutions and similar agencies and coordinate the use of foreign technical assistance in the field of public procurement
- 11) prepare, quarterly and annually, reports and statistical analyses on public procurement
- 12) carry out any other attributions established by the legislation

Much of this work would normally take place in an e-procurement context but this is not well reflected in the applicable regulations. In particular, item 6) above does not seem to be fully applied, in that the current e-procurement system is managed in other ways, as further described under e.g. sub-indicators 1(j), 7(a) and 7(b).

Sub-indicator 5(c) – Organisation, funding, staffing, and level of independence and authority

This sub-indicator covers the standing, independence and resources of the agency or agencies in charge of key public procurement functions, especially the normative/regulatory ones.

The PPA is a specialized administrative authority subordinated to the Ministry of Finance, established for the purpose of performing coordination in the field of public procurement. It is financed from the State budget, including fees that may be collected. However, at present, the PPA is not collecting any fees. The fee for publication in the Public Procurement Bulletin of procurement notices for projects with grant

¹ Not required by the PPL since 10 October 2018, but still retained in Government decree 134/2017 (as amended), Annex 1, item 6. 4).

² No longer required by the PPL, but still retained in Government decree 134/2017 (as amended), Annex 1, item 7. 8).

financing is paid directly to the national budget. The PPA's budget is elaborated, examined, approved and executed in the manner established by the legislation (PPL Art. 12). The agency is run by the director, whose appointment as well as any modification, suspension or termination of the employment are made by the Minister of Finance and in accordance with the law regarding the public function and the status of the civil servant.

Early 2020, the authorised staffing of the PPA was reduced in numbers from 43 to 25 full time positions, including civil servants which fall under Law no. 158-XVI of July 4, 2008, and contractual personnel which fall under the incidence of the labour legislation. However, the actual number of named staff members was only 28 already in the middle of 2019 and 29 at the end of 2019. The number was 25 in the middle of June 2020, so the effective reduction in numbers has been quite small.

In practice, for various reasons including the allegedly low salaries, the PPA states that it is difficult to engage and to retain skilled and experienced staff, and staff turnover is estimated at around 30% per year. Most of the employees are young people, the average age being 28 years. As a result, the PPA considers that it faces an effective lack of human resources, of professional competence in the field of activity, and of institutional memory.

Also due to the lack of necessary functionalities and the impossibility of the e-procurement system (MTender) to generate the necessary data and information, the nominal workload of the PPA for monitoring and analysis remains substantial. In practice, the PPA is still required to manually record and process data on public procurement procedures, which are necessary for the performance of the monitoring attribution, for the statistics on the public procurement system, for the Treasury, which needs reliable information on the procurement contracts awarded, as well as for providing information of interest to the public.

Manual data processing takes a lot of time and additional technical work without an impact on the quality of public procurement procedures monitored and reduces the resources available for other important duties, in particular the preparation and updating of proposals for secondary legislation and standard documentation and the planning and supervision of capacity building.

The present organisation of the PPA and the distribution of roles and responsibilities among its staff members¹ may thus have room for better alignment with its current, main tasks, thereby helping it better meet its obligations.

Sub-indicator 5(d) – Avoiding conflict of interest

This sub-indicator reviews the measures to address possible conflicts of interest or roles in the exercise of key public procurement functions, especially the normative/regulatory ones. It is thus related to sub-indicator 14(a).

General provisions regarding the prevention and mitigation of conflicts of interest are found in the PPL, Art. 79, as well as specific provisions for the particular cases of tenderers (Art. 19) and members of the ANSC (Art. 81).

Apart from these provisions in the PPL, all aspects and procedures regarding conflicts of interests in general, thus also applicable to the PPA and to contracting authorities, are regulated in more detail in the

¹ As appears from e.g., <https://tender.gov.md/ro/contacte-aap>

law on integrity no. 82/2017, the law regarding the declaration of wealth and personal interests no. 133/2016 and the law regarding the National Integrity Authority no. 132/2016. According to these normative acts, the observance of the legal regime of conflicts of interests implies the obligation of public agents to refrain from making an act or to participate in making a decision that is or can be influenced by their personal interest. The regulations concerning conflicts of interest are thus focussed on the roles and interests of the individual.

To mitigate the risk, the public agent is obliged (i) to declare in writing, within three days, to the leader of the public entity about the real conflict of interests that has arisen within his or her professional activity, and (ii) to prevent the negative effect of the conflict of interests by refraining from the exercise of his or her duties insofar as they are threatened by the conflict of interests, until its resolution. The head of the public entity is obliged to resolve the conflict of interests, and in case of impossibility of settlement, to address the National Integrity Authority. The National Integrity Authority has the obligation to resolve the conflicts of competences given within its mandate, but also the obligation to supervise the way of resolving conflicts of interests by the leaders of public organisations.

Substantive gaps and their associated risks

The main gap with respect to the roles and responsibilities of the central authorities in charge of key public procurement functions seems to be the limited ability of the PPA to focus its resources on its regulatory and advisory roles and to build its capacity in this respect. One immediate reason for this is the inadequacy of the e-procurement system for generating suitable data for monitoring the public procurement system and the corresponding need for the PPA to assign staff resources to manual work for this purpose. While this gap is very important with respect to the proper functioning of the public procurement system, it should be possible to address in the course of enhancing the e-procurement system, so it is given a 'medium' risk rating.

- **Main recommendations**

Refocus the PPA's staff resources to its regulatory and advisory roles (monitoring and analysis of the public procurement system in order to support evidence-based policy making; proposals for secondary legislation and standard documentation and their updating; and capacity building), as a complement to the updating of the e-procurement system.

Further, specific recommendations for addressing some additional gaps identified are summed up here below.

Specific gaps and corresponding recommendations for Indicator 5

No.	Specific gaps/shortcomings	Specific recommendations
5.a)	Responsibilities for design, operation and maintenance of e-procurement systems as well as for related training, certification and monitoring tasks are not clearly and comprehensively defined and allocated, nor are questions of financing and ownership, in particular title to any software used	In application of broader policies on e-procurement, regulate questions of responsibilities for financing, ownership, design, operation, maintenance, training, certification and monitoring of e-procurement systems in a clear and transparent manner

No.	Specific gaps/shortcomings	Specific recommendations
5.b)	The current e-procurement system cannot generate all suitable data for monitoring public procurement, which hampers the work of the PPA in this respect	Ensure that the e-procurement system can easily provide the data necessary for monitoring various aspects of public procurement; until done, separately assign short term resources for generating a minimum of data for procurement monitoring, including small value contracts
5.c)	Conflicts of roles within and between public authorities are not given much attention, leading to overlaps and conflicting ambitions in e.g. supervision of public procurement	Review the responsibilities of central public institutions regarding their exercise of key public procurement functions, with a view to identify and mitigate possible conflicts of roles within and between them, in harmonisation with other measures for improving regulation, implementation and supervision of public procurement

3.2.3 Indicator 6. Procuring entities and their mandates are clearly defined

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralised procuring entity exists.

- Findings

Main substantive gaps and recommendations for Indicator 6

No.	Substantive gaps	Risk	Recommendations
6.1.	Contracting authorities are not required to have an adequately staffed and resourced unit in charge of public procurement	High	Require each and any contracting authority either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or, if not reasonable for lack of resources, to use the services of another authority with such a unit (this may include a central purchasing body) or those of another competent, external service provider
6.2.	Many contracting authorities delegate public procurement tasks to working groups in subordinate units, which raises the risks of undue splitting of needs into small value contracts, higher unit prices, higher administrative costs and greater risk of errors and omissions	High	Review the actual organisation and management of public procurement in a significant number of various contracting authorities and the effects on costs and outcomes, identify the scope for improvement by centralisation of procurement within the contracting authority, draft corresponding recommendations, and monitor their outcomes

No.	Substantive gaps	Risk	Recommendations
6.3.	There is no policy on centralised procurement and no generally applicable regulation for the operation of such a body	Medium	Examine the scope in Moldova for obtaining the benefits potentially offered by the use of centralised procurement, evaluate the advantages and disadvantages of various approaches, adopt a policy on the subject and draft a corresponding model regulation for central purchasing bodies that fully reflects the opportunities offered by the PPL and gives any centralised purchasing body the means to meet the needs of its clients in a simple and efficient manner, in particular through use of framework agreements
6.4	There is no central purchasing body in place for covering the common procurement needs of e.g. ministries or municipalities	Medium	In application of the preceding recommendation, consider the creation of one or several central purchasing bodies (with the functions duly separated from the current roles of the PPA), for serving the common needs of various contracting authorities for various categories of items

Sub-indicator 6 (a) – Definition, responsibilities and formal powers of procuring entities

This sub-indicator examines how contracting authorities, and their roles and responsibilities are defined and regulated.

The defining characteristics of contracting authorities are clearly indicated¹ in the legislation in line with the definitions set out in the applicable EU directive². The responsibilities and competencies of contracting authorities are clearly defined³, including their rights to delegate certain tasks to individual staff members or external service providers and to engage external experts in order to complement the skills of staff members as may be needed for particular contracts. Further definitions of the responsibilities and competencies of contracting authorities are set out in the rules for the working groups in charge of public procurement, as indicated below.

The contracting authority exercises its tasks through a working group⁴, created for this purpose, composed by officials and specialists within the contracting authority with professional experience in the field of public procurement. Subject to following the required registration procedure separately for each procurement procedure of interest, civil society has the right to be present in any such working group but without a vote when decisions are taken. Depending on the object of the procurement, the contracting authority may create one or more working groups. Such working groups have to be constituted by a corresponding decision by the contracting authority. The detailed regulation regarding the activity of such working groups for public procurement was approved by Government decree no. 667 of May 27, 2016. The working groups are in charge of the whole procurement cycle for each individual contract, from the identification of needs through the preparation of tender documents, the evaluation of tenders and the award of contracts to the management of the contracts concluded as well as monitoring and reporting.

¹ PPL, Art. 13

² Directive 2014/24/EU, Art. 2

³ PPL, Art. 14

⁴ PPL, Art. 14

However, in practice, while the tasks of managing the public procurement procedure are performed by the chairman and secretary of the working group, these persons typically perform other activities according to their job description, and the tasks within the working group come in addition to those other, regular activities.

In addition, following the reform of the central public authorities in 2018, the specialized subdivisions of logistics and goods management were excluded from the model organisation chart and transmitted to the financial subdivisions. As a consequence, many contracting authorities have seen a reduction of qualified staff previously involved in public procurement, leading to difficulties for contracting authorities in conducting procurement procedures while, at the same time, the recent changes to the PPL and to secondary legislation as well as the implementation of the MTender system has created an even greater need for knowledgeable and experienced staff.

From the information obtained during meetings with contracting authorities, it is evident that e.g. major municipalities have set up specific structures for managing public procurement. However, the limited data available does allow getting a clear overview of the actual organisation of the public procurement function in the around 3000 contracting authorities.

In any contracting authority, in application of Government decree 667/2016, decision making authority is delegated to the working group in all stages of the procurement proceedings. The group takes decisions by simple majority vote, including on the award of contracts. Correspondingly, the head of each working group must have “first signature right” or delegated authority in order to sign the contract on behalf of the contracting authority as the client.

In line with the above, accountability for decisions lies with the working group members. This means that the contracting authority as such, in particular its head and senior management, may not necessarily be possible to hold to account if procurement is not carried out in accordance with applicable regulations, even when the reasons lie in failure by senior management to employ competent staff, provide them with adequate resources, training and guidance, and duly supervise their work.

In principle, the PPL gives the contracting authority the right to engage procurement service providers or a central purchasing authority for the purpose of preparing and administering public procurement procedures in the name and for the benefit of the contracting authority, according to the procedures provided by the PPL law. The procurement service provider would then be the one who must duly comply¹ with the provisions of the PPL on behalf of the contracting authority. However, there is no corresponding administrative mechanism in place at present, so this right cannot be exercised.

Sub-indicator 6 (b) – Centralised procurement body

This sub-indicator covers the existence, regulation and organisation of centralised procurement.

The PPL mentions² centralised purchasing, making reference to a centralised purchasing authority designated by the Government for the organisation and centralized conduct of public procurement procedures in order to meet the needs of similar goods, works or services of several contracting

¹ PPL, Art. 14 (5) - (7)

² PPL, Art. 13 (6)

authorities. However, no further provisions on centralised purchasing are included in the PPL, not even those corresponding to what is found in the applicable EU directives. On the other hand, framework agreements are covered¹ in detail, though concerning their award, reference is also made² to a regulation approved by the Government, without further indications.

The practical use of framework agreements by individual contracting authorities and by any centralised purchasing body or bodies would nevertheless need to be further described and illustrated in guidance notes and training materials, as a continuation of the PPA's past efforts to this effect. The same applies to centralised procurement in general, where current practices do not match the potential of this approach.

At present, only two, very specialised contracting authorities carry out centralised purchasing:

- The Centre for Centralized Public Procurement in Health (CAPCS)
- The State Road Administration (ASD)

There is thus a lack of an institution, or several ones, that could place framework agreements in order to meet the needs for similar goods, works or services of several contracting authorities and thereby generate benefits in terms of lower administrative costs, better prices and more qualified handling of procurement. Efforts to develop sustainable procurement would also benefit from the presence of such a set-up.

Although the PPL foresees the use of centralised purchasing, with procedures to be carried out by electronic means and possible to combine with the use of framework agreements, their conduct is a challenge for contracting authorities at present. As an example, the regulation³ governing the work of the CAPCS does not mention the use of framework agreements. As a consequence, even if the PPL provides for framework agreements and regulates their use, the presumption of CAPCS management and staff is that the CAPCS is prohibited from using framework agreements, even if they would normally be the means of choice for carrying out the rights and obligations of the CAPCS.

The centralisation of procurement within each contracting authority or, conversely, the distribution of procurement roles to its various operational units, does not appear to follow any particular pattern. In the case of municipalities, both approaches have been observed: as an example, in the capital city of Chişinău, several subordinate entities carry out procurement on their own, while procurement is largely centralised in the city of Bălţi. Generally speaking, the distribution of procurement tasks to several different entities within a contracting authority is likely to spread out scarce procurement competence quite thinly (thus, raising the risks of inadequate preparation, award and management of contracts and of errors and omissions in the procedures as well as of corresponding complaints), to multiply administrative costs, and to make it more difficult to reduce unit costs by aggregating demand and thereby getting better prices.

In addition, if not strictly done in only the particular cases meeting the full set of conditions set out in the legislation⁴, there may also be a risk that procurement will be split among many small value contracts, thus carried out using less competitive procedures than would normally be required given the yearly values of the contracting authority's procurement of different items.

¹ PPL, Art. 61

² Id., Art. 61 (3)

³ Government decree 1128/2016

⁴ PPL, Art. 4 (20)

Apart from the major shortcoming mentioned, Government decree 1128/2016 clearly defines the legal status, funding, responsibilities and decision-making powers of the CAPCS and the accountability for the decisions that it makes in exercising its functions. However, these provisions have little relation to the characteristics of the demand and supply markets for the various health sector items that it has the obligation to procure. They therefore considerably limit the possibilities of the CAPCS to carry out procurement as a regular activity throughout the year and with the flexibility necessary to make timely adjustments to changes in the needs.

The State Road Administration is a state enterprise founded by the Ministry of Economy and Infrastructure, which is responsible for the efficient management of financial resources allocated from the Road Fund and external sources for rehabilitation, development, modernization and maintenance of the national public road network of the Republic of Moldova. This entity operates according to the norms contained in Law no. 246/2017 on state and municipal enterprises. On the other hand, the normative framework does not describe clearly and in detail the status of the State Enterprise “State Road Administration” as a contracting authority that performs centralized procurement. In art. 8 of the road fund Law no. 720/1996, it is only mentioned that the central administration in the field of road management is responsible for its administration and use according to the purposes of the fund. The Government annually approves a programme for the distribution of the means of the Road Fund to national public road projects. Only in the programme for 2019 there is an explicit provision regarding the State Road Administration, indicating that the functions of beneficiary for the works to be executed according to the annexes to the programme will be performed by this state enterprise, and this is then taken to be the legal basis for its procurement of the works contracts in question. It thus appears that the State Road Administration is authorised to ensure the management of the public procurement process necessary for the development of roads, with this procurement made according to the PPL, but this would merit further review and clarification in order to improve the necessary transparency and effectiveness of road sector investment.

- **Substantive gaps and their associated risks**

The situation of the procuring entities has several gaps.

While the definition of “contracting authority” in the PPL may seem to be clear enough, it is insufficient for ensuring that all the public entities that actually carry out public procurement meet reasonable functional requirements in terms of adequate staffing, skills, and administrative resources for successful, efficient and transparent public procurement. At present, a large number of often small contracting authorities clearly fail to meet any such requirements, and the central authorities lack an overview of the characteristics of all existing contracting authorities.

In addition, their internal organisation and management approaches with respect to public procurement often do not fully reflect the needs for permanent employment of dedicated staff members with public procurement as their primary task, as well as for procurement authority to be suitably delegated to those best placed to exercise it while responsibility remains with senior management. At the same time, some large contracting authorities delegate procurement tasks to a number of subordinate units, further adding to the difficulty of managing and monitoring public procurement for efficiency, effectiveness and economy.

Both gaps are significant and failure to close them creates considerable risks of continued, sub-optimal performance of the public procurement system.

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The potential for successful use of centralised procurement is little examined and little used, also not within larger contracting authorities, and there is no central purchasing body for the common needs of contracting authorities in general. The regulations for the few existing, specialised bodies, mainly the CAPCS, do not adequately allow operations to be carried out in a way that meets the needs of the clients and the characteristics of the market and makes full use of the methods and approaches foreseen in the PPL, in particular framework agreements. Apart from the urgent need to improve the performance of the CAPCS, the absence of any comprehensive analysis of the actual scope for centralised procurement means that it is difficult to assess the related risk, which is therefore set to 'medium'.

- **Main recommendations**

Define the minimum characteristics in terms of staffing, skills and administrative resources that can reasonably be expected to be necessary in order for a contracting authority to reliably perform its duties under the law, analyse the actual characteristics of all entities now carrying out public procurement, and take corresponding steps to restructure them in order for all of them to meet the minimum requirements defined.

Similarly, ensure that the internal organisation of the contracting authorities reflects the need to have dedicated, competent, adequately resourced and properly managed staff in place for carrying out public procurement as their main duty.

Examine the scope for wider use of centralised procurement and regulate joint and centralised procurement in a way that fully reflects the opportunities offered by the PPL and gives any centralised purchasing body the means to meet the needs of its clients in a simple and efficient manner; draft corresponding documentation and launch a pilot operation.

Other gaps identified and the corresponding recommendations are set out in the table below.

Specific gaps and corresponding recommendations for Indicator 6

No.	Specific gaps/shortcomings	Specific recommendations
6.a)	There is no clear overview of all the contracting authorities in the country	Create a complete, regularly updated register of contracting authorities
6.b)	The concept of 'working groups' composed by staff who may not have procurement as their primary professional duty, reduces the organisational focus on public procurement and dilutes the skills and responsibilities that should go with it	Require each and any contracting authority either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or, if not reasonable for lack of resources, to use the services of another authority with such a unit (this may include a central purchasing body) or those of another competent, external service provider
6.c)	Accountability for public procurement decisions lies with the working group members as individuals, rather than the contracting authority as such, as represented by its head and senior management	Review the legal and institutional aspects of the accountability framework with a view to ensure that the heads of authorities and their senior management can be held responsible in case of failures to abide by applicable regulations

No.	Specific gaps/shortcomings	Specific recommendations
6.d)	The distribution of public procurement tasks to several subordinate entities within a contracting authority appears to be not infrequent but creates risks of higher costs, lower levels of skills and experience of officials concerned, and an inappropriate split of the needs into small contracts not requiring full, competitive procedures	Review the actual organisation and management of public procurement in a significant number of various contracting authorities and the effects on costs and outcomes, identify the scope for improvement by centralisation of procurement within the contracting authority, draft corresponding recommendations, and monitor their outcomes
6.e)	The CAPCS regulation does not fully reflect the possibilities offered by the PPL and is not well matched to the particularities of the supply and demand markets	Revise the organisation and approaches of the CAPCS in line with good international practice, and amend its governing regulation accordingly; as an urgent, short term measure, confirm the right of the CAPCS to use framework agreements in the way foreseen by the PPL
6.f)	The role of the State Road Administration in terms of centralised purchasing is not abundantly clear	Review the rights and responsibilities of the ASD in terms of centralised procurement of works for the road sector, and amend applicable regulations for greater clarity, transparency and ease of implementation

3.2.4 Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

- **Findings**

Main substantive gaps and recommendations for Indicator 7

No.	Substantive gaps	Risk	Recommendations
7.1.	The current e-procurement system does not allow for easy publication of the full range of notices, documents and reports foreseen in the PPL in a format that allows search for and analysis of key information	High	Take steps to ensure that annual procurement plans as well as all other procurement notices, reports and other documents are published in the same place in ways that allows full, free and easy access to all the information contained
7.2.	Reliable data on public procurement is only partly available and easily accessible through the e-procurement system and on the PPA website; in particular, data on small value contracts is largely missing and many documents are not machine readable	High	Expand the obligations to make available complete and correct procurement information and take measures to facilitate doing so, so as to ensure that data on important aspects of all public procurement becomes easily accessible
7.3.	There is an apparent lack of e-procurement skills for system use by contracting authorities and economic operators with limited resources	Medium	Develop e-procurement education and training in order to raise knowledge and skills in the medium and long term

Sub-indicator 7(a) – Publication of public procurement information supported by information technology

The objective of this sub-indicator is to determine:

- i) the existence and capacity of the procurement information system in the country
- ii) the accessibility of the information system
- iii) the coverage of the information system
- iv) whether the system provides one-stop-service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

In principle, information on procurement is easily accessible by electronic means. The Public Procurement Agency is in charge¹ of maintaining the official website on public procurement of the Republic of Moldova: <https://tender.gov.md>, where much of the information published is available in a timely manner. The information is public, with open access. However, procurement plans are not centrally published and some key information, like award notices, is allowed to be published with considerable delay.

A system for e-procurement, including the publication of notices, the “State Register of Public Procurement” (usually referred to as “MTender”) was established by Government decree 986/2018 of 10 October 2018 (see also information given under sub-indicators 1 (j) and 7 (b)). Publication of notices in the system is free, while its use for carrying out public procurement procedures has been foreseen to be subject to fees charged by the private sector platforms providing the interfaces that contracting authorities and economic operators have to use for participating in the procedures, including e.g. the submission of tenders.

The MTender system is in principle intended to provide for the publication of procurement plans of different kinds as well as notices and other procurement information and for carrying out public procurement procedures. In practice, MTender is not fully functional, in that only the participation announcements, the participation documentation and the offers submitted can be published. The system does not have adequate possibility to generate documents related to the procedure, procurement contracts and award notices. Procurement plans cannot be published in the system, so the contracting authorities publish them on the web page of the institution. As MTender is not integrated with other databases, information on the decisions taken for resolving complaints appeals cannot be viewed directly (it is necessary to consult the ANSC website), data on contract execution and actual use of funds cannot be viewed, among other related shortcomings.

MTender allows for the tender documentation to be attached to the notice published and to be readily accessible for free download from MTender. Other information is also available on MTender and on the PPA website. Regulations and practices for other public procurement documents than the prescribed notices and reports are incomplete and partly contradictory, and some of the documents are not published. The PPL provides² that the contents of the public procurement file is regulated by Government decree. The corresponding one (no. 9/2008), although outdated, provides that the file should include,

¹ PPL, Art. 10 (g)

² PPL, Art. 45

among other elements, the “minutes of tender opening”. Moreover, the Government decree on the approval of the technical concept of the MTender system (no. 705/2018, Chapter V) indicates the “minutes of tender opening” as one of the MTender system outputs. Likewise, the preparation of such minutes is also mentioned in the Government decree on the approval of the Regulation of the working group activity (no. 667/ 2016, point 21) as one of the obligations of the public procurement working group. However, none of these regulations are readily applicable in the context of electronic submission and corresponding opening of tenders. Nevertheless, in 2019 the PPA issued¹ a prescribed template (in the form of a Word document!) to be used for the minutes of tender opening.

Evaluation reports have to be prepared by the contracting authorities and sent to the PPA (PPL, Art. 69 (10)), using the template (labelled “award decision”²) prescribed for the purpose. However, they are not published *in extenso* or otherwise accessible. Award notices to be issued are prepared by the contracting authorities using the template (labelled “award notice”³) prescribed for the purpose; the PPA then uses their key elements as inputs for the section “Contracts awarded”, which also includes a number of filters that facilitate the search for specific contracts. The process is thus unnecessarily complicated, delaying publication, raising the risks of clerical errors and creating additional administrative costs for both the PPA and the contracting authorities.

Two kinds of award notices are also required to be issued. The first one, labelled “communication” (PPL, Art. 31), is intended to meet the obligation of the contracting authority to inform the winning tenderer and the other participants in the tender about the outcome of the evaluation within three days. However, no one else has to be informed at this stage; the PPL (Art. 30) only requires contracting authorities to prepare a brief, separate award notice to be submitted to the PPA no later than 30 days from the end of the evaluation procedure, using the template included in Annex 3 of the PPL. While in line with the minimum requirements of the EU’s Public Procurement Directive⁴, this approach nevertheless creates evident problems for others than the participating tenderers to lodge complaints about the award decision before the contract is signed (see also sub-indicators 1 (h) a) and d) and 13 (a) d)). On the other hand, the Directives then require the award notice to be published within five days⁵, but the PPL has no corresponding deadline.

Details of the information, documentation etc. available and missing on MTender and elsewhere is found in the table here below.

Document	Legal reference	MTender	Other sources	Comments
Procurement plan	GD 1419/2016, Art. 13, 17, 18; Annex 1	No	Contracting authority web page (if any; not always the case!)	
Template:	http://www.legis.md/UserFiles/Image/an_1_1419.doc			

¹ See <https://tender.gov.md/ro/content/proces-verbal-de-deschidere-ofertelor>

² See <https://tender.gov.md/ro/content/model-decizie-de-atribuire>

³ See <https://tender.gov.md/ro/content/anun%C8%9B-de-atribuire>

⁴ Directive 2014/24/EU, Art. 50

⁵ Directive 2014/24/EU, Art. 51.2

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Prior information notice	PPL, Art. 28 GD 1419/2016, Art. 2	No	Public Procurement Bulletin (tender.gov.md)	The monetary thresholds are not the same in the PPL and the decree
Template:	https://tender.gov.md/ro/content/anun%C8%9B-de-inten%C8%9Bie			
Contract notice	PPL, Art. 29	Yes	No	
Template:	https://tender.gov.md/ro/content/anun%C8%9B-de-participare			
Tender documents	PPL, Art. 40; Ministry of Finance Orders 173, 174, 175, 176/2018	Yes	No	
Template:	https://tender.gov.md/ro/documente/modele-de-documente			
ESPD form	PPL, Art. 20; Ministry of Finance Order 177/2018	Yes	No	
Template:	https://tender.gov.md/ro/content/formularul-standard-al-documentului-unic-de-achizi%C8%9Bii-european			
Tenders received	PPL, Art. 44	Yes, partially	No	
Tender opening minutes	GD 9/2008, 667/2016, 705/2018	No	No	No explicit obligation in PPL, only referred to in GDs listed; not readily applicable to e-procurement
Template	https://tender.gov.md/ro/content/proces-verbal-de-deschidere-ofertelor			
Evaluation reports ("award decisions")	PPL, Art. 69 (10)	No	No	Sent to PPA; final results are published on PPA's website and BAP based on reports per procedure (Art. 78) as well as contract award notices (Art.30) necessary for contract registration
Template: Instructions:	https://tender.gov.md/ro/content/model-decizie-de-atribuire ; https://tender.gov.md/ro/content/comunicat-privind-expedierea-agen%C8%9Biei-achizi%C8%9Bii-publice-deciziei-de-atribuire-contractului			
Award notices	PPL, Art. 30 and Annex 3.	No	Public Procurement Bulletin (tender.gov.md)	
Template:	https://tender.gov.md/ro/content/anun%C8%9B-de-atribuire			
Complaints;	PPL, Art. 80-88	No (only their	ANSC web page	

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ANSC rulings		existence)		
Guidance note, template: Submission on-line: Complaints: Decisions:	https://ansc.md/ro/content/depunere-contestatii https://ansc.md/ro/depunere_contestatie https://ansc.md/ro/contestatii/2020 https://ansc.md/ro/content/decizii-2020			
Contracts	PPL, Art. 74	No	Only basic information (tender.gov.md)	
Templates:	See above under tender documents			
Contract amendments	PPL, Art. 76 (7)	No	Information published on tender.gov.md based on reports submitted	
Registration form:	https://tender.gov.md/ro/content/modele-de-documente-pentru-%C3%AEnregistrarea-acordurilor-adi%C8%9Bionale			
Invoices, payments	Law 181/2014, Art. 66, 117; Ministry of Finance Order 215/2015; Ministry of Finance Order 118/2017	No	No	E-invoicing required to be in place starting 1 July 2020
Provisions:	See above under tender documents			
Contract execution reports	PPL, Art. 15; GD 667/2016, point 34	No	Contracting authority web page	No template issued

While both the PPA website and MTender have filters and other search functions for identifying relevant information, not all documents posted are in a machine-readable format and the facilities for automatic generation of forms and notices from data entered once are very limited. Each notice, tender document, ESPD form and the like has to be created manually outside the system and then uploaded by the contracting authority, and tenderers have to do the same when preparing and submitting their tenders. In addition, the platforms serving as interfaces between contracting authorities and tenderers, on the one hand, and the MTender system, on the other hand, have diverging rules and approaches. As a consequence, creating the necessary documentation and making it available in the system requires considerable administrative efforts by all concerned and the possibilities to search for and analyse relevant information are quite limited.

A contracting authority is allowed to upload documents to the system in either MS Word or Adobe PDF format (.docx or .pdf files, respectively) and even in some other format, e.g. for images, except for

documents that have to be electronically signed, where only .pdf files can be used. The same applies to the case of tenders, where those elements that are required by the law to be electronically signed must be submitted as .pdf files. From a technical point of view, within the MTender system there are no restrictions that prevent uploading scanned documents (meaning that the contents are not searchable) and, in the absence of any clear policy or binding regulation, one platform (achizitii.md) allows this but the other one (e-liciatie.md) does not, considering that would not be in line with the intentions of the legislation. As a result, there are cases when there are many different kinds of documents and very difficult to analyse them in a coherent manner¹.

Responsibility for the management and operation of the PPA website is clearly assigned to the PPA itself, while those responsibilities are less clearly attributed in the case of MTender (cf. sub-indicators 1(j) above and 7(b) below).

Sub-indicator 7(b) – Use of e-procurement

This sub-indicator assesses:

- i) the extent to which e-procurement is currently used in the country's public sector,
- ii) the capacity of government officials to manage and use e-procurement systems, and/or
- iii) the existence of a country strategy to implement e-procurement.

E-procurement is widely used in Moldova at all levels of government. As illustrated by the system introduced in 2009, government officials appear to have had the full, necessary capacity to properly plan, develop and manage e-procurement systems. However, this capacity was somewhat put in doubt by the apparent failure, in the case of MTender, to adopt and to implement e-procurement regulations and corresponding systems that match the requirements of the PPL and to effectively address any of the many issues raised in e.g. SIGMA's evaluation of the draft e-procurement concept that was subsequently retained for MTender without any significant amendments. Nevertheless, recent Government initiatives for enhancing e-procurement seem to indicate that adequate capacity and expertise for the purpose remains available.

In the case of MTender, the very important issue of ownership does not seem to have been addressed in a clear, comprehensive and coherent manner, so the government appears to lack adequate title to the essential software of the system. The matter would require renewed attention in the course of new initiatives for enhancing e-procurement.

The intended model of financing the system by user charges, with several private sector service providers involved, is not sufficiently formalised, has not been clearly reconciled with the corresponding costs of development and operation, and has not been demonstrated to constitute the economically most advantageous solution for the country as a whole. In particular, the distribution of roles and responsibilities for the development, introduction and management of the various elements of the system and, correspondingly, the basis for the allocation of costs and revenues, have not been explicit enough to encourage and enable clear work sharing between public and private sector participants and ensure the longer term competitiveness of the solutions adopted,

¹ See e.g. <https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1589805196677?tab=contract-notice>

and the limitations of the Moldovan supply market for developing and providing public procurement related systems and services on a commercial basis do not appear to have been fully considered.

Procurement staff in many contracting authorities are not able to reliably and efficiently use the e-procurement system. However, to an important extent, this may be the result of the inherent shortcomings of the system as much as of any possible lack of adequate skills. There is online guidance and documentation available for the use of the e-procurement system, covering mainly the mechanics of its operation. Despite the partly complicated and often time-consuming steps involved, procurement staff may therefore well be able to ‘hit the right buttons’, so to speak, when using the system. However, the shortcomings mentioned under sub-indicator 1 (j) severely limit the possibility to carry out e-procurement in line with the requirements of the PPL.

The shortage of adequate skills in using the system and the occasional need for rapid, effective advice and support in case of problems during the use of the system could in principle be addressed by offering additional training opportunities as well as by ensuring immediate access to some kind of helpdesk for troubleshooting problems as and when they arise, both for contracting authorities and tenderers. However, no effective function for this purpose exists for the moment. Its creation would require particular attention due to the complications created by the system architecture: when a problem arises, it would not be immediately evident to the user if it originates in the platform used or in the central database or in the IT networks and who, consequently, would have the responsibility for fixing it. In such a situation, users should nevertheless be able to address themselves to a single contact point for resolving the issue at hand.

There is also a wider problem of lack of general procurement skills in many contracting authorities, especially the many smaller ones with limited possibilities to engage skilled and experienced public procurement specialists, and this negatively impacts the possibility to make best possible use of e-procurement. It would thus be important to properly dovetail any specific training on the use of the e-procurement system with more general training on public procurement principles, procedures and practices.

Given the generalised use of MTender, it is evident that a large number of suppliers (including micro, small and medium-sized enterprises) do participate in e-procurement. However, it is not entirely clear if, to what extent and why enterprises may fail to participate in e-procurement, whether for reasons related to the e-procurement system and its use or because of lack of skills or other means within the company (apparently a problem for some companies, particularly SMEs), or related to possible limitations in the country’s IT networks, or for reasons related to other shortcomings in the public procurement policies and practices.

Sub-indicator 7(c) – Strategies to manage procurement data

This sub-indicator examines the collection, quality and use of public procurement data.

Some data on the procurement of goods, works and services is available and can be extracted from the PPA website and from the MTender system. However, this information is not complete (cf. sub-indicator 7(a), evaluation criterion (d) above) and is only collected for contracts that are awarded using MTender. In particular, few or no data is available on small value contracts, when MTender has not been used. These contracts appear to constitute a significant part of the total value of public procurement and an even

higher share of the total number of contracts concluded. Contracting authorities are obliged to submit procurement reports on such contracts to the PPA but these reports are usually sent on paper (by mail), or sometimes transmitted as .pdf files but then not necessarily in a readable and convertible format, and the information they contain is not consolidated. It is also not clear to what extent the obligation to submit such reports is actually met; the PPA does not appear to keep any records of compliance.

In the particular case of centralised purchasing for the health sector, by amendment to the PPL on 11 March 2019, the CAPCS has been exempted from using the new electronic system (MTender) for the procurement of medicines and medical devices until January 1, 2021. Thus, data on the procurement in health sector carried out by the CAPCS can partly be found in the old e-procurement system (etender.gov.md). However, the availability of data is limited because of system features which do not allow external users to see and extract data and documents such as tender documents, ESPD forms, tenders submitted, evaluation reports, complaints and corresponding rulings, etc.

The PPA uses the available data for preparing its annual reports, which present various key aspects of the functioning of the public procurement system. The same data are also accessible to and used by e.g. the Court of Accounts, the Anti-corruption Agency and various NGOs for looking at trends, levels of participation, efficiency and economy of procurement and compliance with requirements. However, the incompleteness of the data (cf. above) means that it is difficult to draw valid conclusions and to have a solid basis for evidence-based policy making as well as for identifying and pursuing possible cases of mismanagement, corruption or other prohibited practices. This applies in particular to small value procurement, where no data is readily accessible and not reflected in e.g. the PPA's annual reports.

The reliability of the information actually available may be fair enough, but no systematic audits have been made to verify this. The greater problem is certainly the simple lack of data on many transactions and the corresponding inconsistency of various types of information. Using the data at hand, analyses can be made but the problems mentioned above mean that the precision and validity of the observations and conclusions is difficult to determine and that the value of any feed-back from the available data into the development of the public procurement system remains limited for the time being.

- **Substantive gaps and their associated risks**

The situation with respect to the use of information technology to support public procurement has several substantive gaps.

There is no practical possibility to publish and to consult annual procurement plans in a single, easily accessible place, which normally would be the one where other procurement notices are published, and the preparation, submission, publication and analysis of several other types of notices and reports is not easy, requiring several steps while failing to allow the information contained to be easily extracted and analysed. As a consequence, there is a considerable gap in the possibility to monitor public procurement and to generate data that would be needed as a basis for evidence-based policy making. In particular, the lack of any obligation to use any feature of the e-procurement system when carrying out and reporting on small value procurement contributes to an almost complete lack of transparency of such procurement. The risks related to any failure to address these gaps remain high.

Regarding e-procurement, the main substantive gaps lie, among many others, in the failure of the existing system to allow all award procedures to be used as foreseen in the PPL, the limitation of the award criteria

to price only, the absence of possibilities to verify conformity with selection criteria and technical requirements before an electronic auction is held, the lack of facilities for publishing all relevant information in the various steps in the procurement cycle, the failure to allow the confidentiality provisions in the PPL to be fully applied, and the high level of effort needed to use the system while at the same time complying with the requirements of the PPL.

A further gap is constituted by the weaknesses in the ability of some contracting authorities, especially the smaller ones, to make good use of possibilities offered by modern information technology. This gap is likely to disappear little by little as a function of the increasing penetration of IT systems in public administration but will require continued attention to building staff skills and experience. The risk related to this gap is therefore classified as 'medium'.

- **Main recommendations**

Take steps to ensure that annual procurement plans as well as all other procurement notices, reports and other documents are published in the same place in ways that allows full, free and easy access to all the information contained, and introduce at least minimum obligations to use the e-procurement system also for any case of small value procurement, such as for the publication of award notices and reports on such procurement.

In the context of revising the e-procurement functions and systems, staff of contracting authorities as well as economic operators will need to acquire a better knowledge and understanding not only of the functioning of the e-procurement system but also of the general, underlying principles, policies and practices of public procurement, perhaps through a comprehensive training campaign followed by longer term measures for maintenance and enhancement of public procurement skills.

Specific gaps and corresponding recommendations for Indicator 7

No.	Specific gaps/shortcomings	Specific recommendations
7.a)	Not all public procurement information is required to be widely and freely accessible	Require procurement plans and other key items of procurement information (to be further reviewed and agreed) to be published and kept accessible on a central website, that of the PPA or of the e-procurement system
7.b)	Not all regulations on the preparation and publication of public procurement information are up to date, nor aligned with the use of electronic means for submission and publication	Revise outdated or incomplete regulations on notices and reports and their publication
7.c)	The publication process is often unduly complicated: contracting authorities have to prepare and submit reports which then have to be converted by the PPA into notices or other formats for publishing on its website	Devise functionalities for contracting authorities to use electronic means for preparing notices and reports and directly submitting them for publication; these functionalities should normally be available in the e-procurement platform.
7.d)	Certain notices etc. (such as procurement plans) are supposed to be published on a contracting authority's own website, but not all such authorities have one	Ensure that all such information becomes accessible on a central website, and take steps to ensure that each contracting authority also publishes the same information on a website of its own

No.	Specific gaps/shortcomings	Specific recommendations
7.e)	Much procurement information is not yet prepared and published in an easily readable and transmissible format, complicating the generation of data and the access to and analysis of it	Introduce document management functions and formats which are compatible with the e-procurement system and other administrative systems, in ways that allow data to be entered once and then reused, transmitted and extracted as needed

3.2.5 Indicator 8. The public procurement system has a strong capacity to develop and improve

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: i) whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognised as a profession in the country's public service; iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

- Findings

Main substantive gaps and recommendations for Indicator 8

No.	Substantive gaps	Risk	Recommendations
8.1.	Public procurement duties of officials in contracting authorities are not reflected in any corresponding positions or career paths, and capacity building needs remain high	High	Recognise public procurement as a profession, with corresponding positions introduced in the official classification of professions, and ensure that corresponding training and other means for career development are developed
8.2.	The ability of the public procurement system to develop and improve has significant gaps, since the absence of effective monitoring of many aspects of the workings of the public procurement system means that the evidence base for policy making is incomplete, weak and uncertain	High	Review the information needed for preparing and implementing strategies for the development of the public procurement system, identify the measures required for generating, collecting, compiling and analysing such information, and adapt monitoring systems and approaches accordingly; all of this harmonised with the measures taken to enhance e-procurement
8.3.	Work on replacing the 2016-2020 public procurement strategy upon its expiry has been running late	High	Finalise and adopt a new public procurement strategy for 2021-2025 without delay

Sub-indicator 8(a) – Training, advice and assistance

The purpose of this sub-indicator is to verify existence of permanent and relevant training programmes for new and existing staff in government procurement. See also the following sub-indicators: 8(b) Professionalisation of the procurement function; 10(a) Programmes to build capacity in the private sector;

11(a) Programmes to build the capacity of civil society; and 14(d) Integrity training programmes for the procurement workforce.

The PPA is obliged¹ to provide methodological assistance and consultations as well as to organise training in the field of public procurement. Based on its Annual Training Plan (published on the PPA website²), the PPA holds training seminars for contracting authorities, economic operators and PPA employees, both in the capital and in the province, so as to reach contracting authorities all over the country. In principle, they include a wide range of topics, as set out in further detail in the curriculum issued by the PPA in 2018³:

- Knowledge of the legislation applicable to public procurement;
- Annual public procurement planning and its relation to the efficient management of public funds;
- Preparation of public procurement procedures so as to observe all applicable principles of public procurement;
- Routines for contract monitoring, particularly for preventing conflicts during the execution of the public procurement contract

However, most of them, in particular those held in the province for the local contracting authorities, only cover procurement procedures and documentation, presented in the form of a single, five-hour workshop.

The Academy of Public Administration is carrying out yearly programmes⁴ for vocational training of civil servants. However, at present, these specifically cover public procurement only in a few cases.

Some public procurement related training is provided also by a few other public and private sector entities, but there is no consolidated information available on the contents, extent and outcomes of such training.

Corresponding to the limited scope and extent of the training provided and given the scarcity of resources available for the purpose, there is only limited evaluation of the training actually delivered and there is little development of new approaches. On the other hand, as a complement to the basic public procurement training and as required by the legislation⁵, the PPA is preparing a system for certification of public procurement officials. However, no concrete measures to this effect have been taken yet.

A telephone line for methodological advice in the field of public procurement has been established by the PPA⁶. There are now three lines in operation: for inquiries on how to use the functionalities of the new e-procurement system (MTender), for consultations on the application of public procurement legislation, and for information on the status of the documents under examination by the PPA.

Apart from the general considerations and objectives in the training curriculum mentioned, there is no broader capacity building strategy in place for the development of public procurement. No systematic needs analyses seem to have been carried out for determining gaps in knowledge and skills in public procurement as well as in the supply of corresponding training and capacity building. The possibility to

¹ PPL, Art. 10 (d)

² See https://tender.gov.md/sites/default/files/document/attachments/program_de_instruire_2020_modificat.pdf

³ See https://tender.gov.md/sites/default/files/document/attachments/curricula_de_instruire.pdf.

⁴ See e.g. https://www.legis.md/cautare/getResults?doc_id=119903&lang=ro for 2020.

⁵ PPL, Art. 10 e)

⁶ PPA Order no. 15 of 17 April 2018

use other entities than the PPA, such as institutions for higher education and professional development as well as training and consulting firms and individual experts for delivering public procurement training has not been examined in detail, and no measures have been taken to engage, supervise or accredit such other training providers.

In the absence of an overall strategy for capacity building in public procurement, training is organized by several institutions separately, according to their own training plans that are not correlated with each other. Among these one may mention, in addition to the PPA, the Academy of Public Administration, the ANSC and the platforms providing access to MTender for carrying out public procurement procedures, as well as some NGOs with expertise in public procurement.

Sub-indicator 8(b) – Recognition of procurement as a profession

The purpose of this sub-indicator is to determine whether procurement is recognised as a profession in the country's public service.

Procurement is not recognised as a specific function or profession and is not reflected in the official list¹ of professions in Moldova. Procurement positions at different professional levels in public administration are not systematically defined and there are no generic job descriptions for public procurement officials with the requisite qualifications and competencies specified. There is only a general requirement² for the contracting authorities to take a formal decision on the creation of working groups for public procurement and to appoint suitably competent staff ("officials and specialists with professional experience in the field of public procurement") to be members thereof.

Appointments, staff evaluation and promotion of public procurement officials follow the principles and rules applicable to public servants in general, as regulated in Law no. 158/2008 on the civil service and the status of the civil servant, the Regulation on filling vacant civil service positions by competition (annex no. 1 to Government decree no. 201/2009), the Regulation on the evaluation of the professional performance of the civil servant (annex no. 8 to Government decree no. 20/2009), and the Regulation on the continuous professional development of civil servants (annex no. 10 to Government decree no. 201/2009). At the same time, Law no. 270/2018 on the unitary salary system in the budget sector and Government decree no. 1231/2018 for the implementation of the provisions of Law no. 270/2018 regulate the evaluation of staff performance by management for the purpose of granting payment increases for good performance.

In practice, in the particular case of public procurement, since the chair, the secretary and other members of the public procurement working groups are normally employed to perform other duties in the first place, the evaluation of performance and the achievement of indicators is done on the basis of their first-hand responsibilities, and those related to the management of public procurement are not given full attention.

Sub-indicator 8(c) – Monitoring performance to improve the system

This sub-indicator examines the extent to which the performance of the public procurement system is measured, and measures are taken to improve it.

¹ See http://angajat.md/files/files/KL_prof%20Clasificator_19385A5ACBC143ED920652AAC3A0C050.pdf.

² PPL, Art. 14

There is a system in place at national level for monitoring public procurement in the sense that the PPA has the obligation¹ to

- monitor the conformity of the public procurement procedures and analyse the public procurement system;
- elaborate quarterly and annual statistical analyses of public procurement; and
- issue annual reports based on the analysis of the economy, efficiency and effectiveness of the public procurement system.

In addition, the Court of Accounts is working on developing approaches and practices for performance audits in the field of public procurement. However, the value of the monitoring is limited, both because the underlying data is incomplete and partly unreliable, and because qualitative aspects (performance) are given only very little consideration.

The PPA has the obligation², using the information compiled as above, to elaborate, and to submit to the Ministry of Finance, proposals for modification and completion of the public procurement legislation. In turn, the Ministry is supposed to use these and other inputs for preparing the national public procurement strategy. However, the data quality issues mentioned above mean that the policy making cannot be fully evidence based unless and until those issues are resolved.

A strategic plan, including a results framework, is in place, as set out in Government decree 1332/2016 on the approval of the Strategy for the development of the public procurement system for the years 2016-2020 and of the Action Plan regarding its implementation. The implementation of this strategy is focussed on increasing the efficiency of the procurement system and reducing waste, fraud and corruption, thus increasing the confidence of citizens and businesses. The strategy is also a tool for implementing the commitments that result from Chapter 8, Public Procurement, of the Association Agreement between the EU and the Republic of Moldova for the successive alignment of Moldovan legislation with the provisions in the EU's public procurement directives.

A new, similar strategy for the next five years has to be adopted before the end of 2020, as required by the Association Agreement.

- **Substantive gaps and their associated risks**

Regarding the ability of the public procurement systems to develop and improve, there are several substantive gaps.

While the nominal curriculum for public procurement training issued by the PPA is very comprehensive, the actual delivery and the resources available for it are very modest. There is also no evidence of any other capacity building strategy, nor even of a clear and comprehensive knowledge of the apparent skill gaps in many contracting authorities and of the potential of other institutions than the PPA to deliver public procurement training.

In the absence of comprehensive, regular training for a significant number of civil servants, there is also little progress on the certification of procurement officials.

¹ PPL, Art. 10

² PPL, Art. 10 (a)

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While the PPL requires members of the working groups for public procurement to be knowledgeable about the topic, there are no definitions of the knowledge and skills required and no requirements for any particular education or professional background. Possibly related to the absence of any defined public procurement structure in the organisational set-up of public authorities, there is also no recognition of public procurement as a function or profession.

These various gaps weigh heavily on the efficiency and integrity of public procurement, so the risks associated with them are high.

Also, the ability of the public procurement system to develop and improve has a significant gap, in the absence of effective monitoring of many aspects of the workings of the public procurement system, in turn partly caused by the inadequacy of the e-procurement system and of other administrative systems for generating and making available data that would support analysis and policy formulation. The corresponding needs now insufficiently met through resource intensive, manual means. Unless these shortcomings are addressed, the risk is high that the public procurement system will not develop and improve as required, as illustrated also by the delays recently observed in finalising and adopting a new public procurement strategy for 2021-2025.

- **Main recommendations**

Determine the knowledge and skills normally needed for procurement officials at different levels to carry out their duties in a competent, transparent manner; transpose those into standard position descriptions with criteria for initial employment and promotion; analyse the actual skills and background of officials currently carrying out public procurement; make a corresponding training needs assessment; identify and analyse various alternative ways for delivery and quality control of such training, including the resources needed and available, as well as for possible certification of officials (or, alternatively, the contracting authorities themselves), and, on this basis, prepare and implement a capacity building strategy.

Harmonise the capacity building strategy with related initiatives for the definition and recognition of public procurement as a function or profession in public administration as well as for the reorganisation of contracting authorities (cf. sub-indicator 6). A solid basis for this work could be created by using the supplementary MAPS module on professionalisation.

Ensure that data on the functioning and performance of contracting authorities, including but not limited to public procurement, is systematically generated as closely as possible to any individual action taken and then made available for management and analysis purposes, both to decision makers within each authority and to any supervisory body, as well as to the business community and the general public and their organisations.

Some further recommendations and the gaps or shortcomings they are intended to address are presented in the table below.

Specific gaps and corresponding recommendations for Indicator 8

No.	Specific gaps/shortcomings	Specific recommendations
8.a)	The nominal scope of public procurement training offered by the PPA is not matched by actual training resources and activities: most training sessions are quite short, the focus is mainly on award procedures only, and contracting authorities in the province are not well served	In the short term, assign more PPA staff and external trainers to deliver more thorough training on a wider range of topics to a larger number of authorities, while revising the whole approach to public procurement training
8.b)	There is no broader public procurement capacity building strategy in place and the corresponding needs and opportunities are not well known	Review the actual capacities of contracting authorities and their staff, including a training needs assessment; make an inventory of existing and potential means for raising public procurement capacity and delivering training, as well as the needs and availability of resources for the purpose; set objectives to be reached, and prepare and implement a corresponding strategy
8.c)	Public procurement roles in contracting authorities are only defined as obligations of the working groups, and corresponding position descriptions have not been established; specific qualification requirements or criteria for engagement, evaluation and promotion of staff with respect to their public procurement duties are therefore missing	Identify and describe typical roles and responsibilities for staff working on public procurement, draft corresponding position descriptions and officialise the status of all such positions, define corresponding qualification requirements and criteria for engagement and promotion; and harmonise all this with corresponding measures for establishing dedicated procurement units in contracting authorities
8.d)	Members of the public procurement working groups are normally employed to perform other duties in the first place, so their engagement, performance evaluation and promotion has usually little connection with their public procurement tasks	Ensure that staff with public procurement tasks are specifically engaged, evaluated and promoted on the basis of those tasks in the first place
8.e)	Public procurement monitoring suffers from a lack of comprehensive and reliable data and puts very limited emphasis on outcomes and performance	Ensure that other measures to improve the generation and accessibility of data on the functioning of public institutions provide all information necessary for effective monitoring of all key aspects of public procurement, including outcomes and performance, both in the individual and the general case

3.3 Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

Summary findings under Pillar III:

The analysis of the performance in practice of the procurement system faces methodological problems related mainly to the lack of comprehensive, reliable data. Nevertheless, the indications received during the assessment point to a room for improvement in a number of respects, while many of the conditions for this have to be met by measures of more general character.

Planning and preparation of public procurement is regulated in line with international practice but, apart from problems related to the lack of knowledge and skills in many contracting authorities, it is hampered by three important factors:

- budget and disbursement regulations which make it difficult to keep a level procurement workload during the year and to plan procurement in the medium and long term
- limited possibilities to alert the market to coming business opportunities because of the lack of a facility for centralised publication of procurement plans
- limited choice of procedures and award criteria, due to the limitations in the e-procurement system, and therefore limited possibilities to optimise the procurement approach

The diversity of award procedures set out in the PPL and applicable regulations would normally allow public procurement proceedings and practices to be adapted to the particular needs of the contracting authority and to the characteristics of the contract at hand in order to help ensure economy, efficiency and transparency. However, there is far less diversity in the actual practices: among the competitive procedures in the PPL, the open tender with price as the only award criterion dominates very strongly. A sufficient reason for this state of affairs would usually be a lack of knowledge and understanding of the advantages of the various other procedures and award criteria and of the way to use them. This reason may well be an important one also in Moldova, but the picture is unclear because of a second, sufficient reason: the mandatory e-procurement system simply does not make it possible to readily apply any other procedure or evaluation criterion.

Irrespective of the procurement approach taken, the preparation of tender documents, especially technical specification, and the evaluation of the conformity of the tenders received with the requirements stated appear to cause problems for many contracting authorities. Also, here, the examination of the tenders received faces technical limitations because of shortcomings in the way the e-procurement system works.

Contract management is regulated to some extent but in a way that in practice is both cumbersome and ineffective, with many contracts, particularly for works, suffering from delays and cost increases. Here, the reason may more clearly be a lack of attention and skills in many contracting authorities.

The procedural issues facing the contracting authorities are also reflected in the perceptions of the private sector. According to the results of the enterprise survey carried out, 70% (7 out of 10 respondents) state that procurement procedures and the conditions for participation do not encourage and facilitate their participation in public procurement.

Contracting authorities represent the demand side of public procurement and the procedures and practices they apply are intended to be a proxy for a competitive market. For the public procurement market to work properly, also the supply side needs to be competitive. Here, a number of structural issues, many linked to the small size of the economy, reduce the diversity of supply and thereby the level of

participation and the intensity of competition, in addition to leaving less choice of goods, works and services and more limited capacity to deliver. An additional factor may be the inclination of some enterprises to compete based more on the strength of their privileged relations with certain decision makers than on the quality, price and conditions of the goods, works and services that they offer.

3.3.1 Indicator 9. Public procurement practices achieve stated objectives

The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

- **Findings**

Main substantive gaps and recommendations for Indicator 9

No.	Substantive gaps	Risk	Recommendations
9.1.	Lack of reliable, easily accessible data regarding public procurement practices and the actual performance of the public procurement system, partly as a result of the limited possibilities to record and publish details of procurement transactions in a machine readable and transmissible format	High	Review the need and the possibilities for generating reliable data on procurement practices, to the extent necessary for effective and efficient management of the procurement process by the contracting authorities themselves and for satisfying supervisory authorities and the general public that funds used for public procurement are well spent, as well for creating an evidence base for policy making; all of this harmonised with other measures for enhancing e-procurement
9.2.	Many contracting authorities lack the necessary information, skills and tools for well managing all steps in the public procurement cycle, in particular planning and preparation and contract implementation and evaluation	High	Based on more detailed and reliable data on actual practices, identify typical problems encountered and skill shortages as well as any deficiencies in the tools available and used, and use these insights for improving regulations and user documentation, adjusting training on offer, and creating opportunities for exchange of views and experience
9.3.	Numerous shortcomings of the e-procurement system limit or even prevent the use of appropriate approaches for tendering and evaluation	High	Ensure that not only formal requirements but also user skills and needs are duly considered when reforming the e-procurement system

Sub-indicator 9(a) – Planning

Sub-indicator 9(a) assesses whether a thorough needs analysis has been conducted, followed by market research, to inform the development of optimal procurement strategies (in particular for major procurement). It evaluates whether the desired results have been defined and if this entailed economic and/or environmental or social impacts aligned with national policy objectives.

In order to meet the needs of goods, works and services, the contracting authority is obliged¹ to plan public procurement contracts to be concluded, respecting the principles of ensuring competition, efficiency, transparency, equal treatment, non-discrimination and non-division. In this process, the contracting authority has to go through several stages:

- 1) Identification of the needs for goods, works and services;
- 2) Identification of the corresponding financial resources needed and available; and
- 3) Calculation of the estimated value of the contract.

As a complement, it is necessary for the contracting authority to have a clear understanding of what is or may become available from prospective tenderers, in order for the requirements and the budget to be reasonably possible to meet in adequate competition between suitably qualified economic operators. For this purpose, an Order of the Ministry of Finance for the approval of the Instruction on the manner, conditions and procedures for organising and conducting market consultations in order to prepare the public procurement² was finally published on 28 August 2020. There is thus official guidance available for this purpose, broadly aligned with EU practice.

On the other hand, monitoring by the PPA confirms that contracting authorities often make mistakes during planning and preparation and that, as a result, the outputs often prove to be deficient. In case of identification of deviations from the legislation and violation of public procurement principles, the PPA is required to draw up monitoring reports and to inform the contracting authorities of the findings and the remedial solutions proposed. According to the PPA annual report for 2019, 1634 reports were made based on the monitoring of individual procurement procedures. However, not each individual monitoring activity ends with a monitoring report, and it is not known how many procedures were monitored in total. Nevertheless, the reports confirm weaknesses not only in the preparation and planning and but also in the execution and follow-up of public procurement contracts.

At the launching stage, 26% of the procedures monitored contained violations of the law, while only 4% had violations at the awarding stage. Regarding the compliance with the PPA's findings and proposed remedies, in 35% of the cases (575 procedures), the violations were remedied by the contracting authorities concerned; in 12% (190 procedures) they were partially remedied, but in 53% of the cases (869 procedures) the authority did not apply the remedies proposed by PPA. In fact, the monitoring reports are by way of recommendation only and there seems to be no legal instruments or other means in place for obliging the contracting authorities to follow the recommendations and for sanctioning those that do not.

Finally, contracting authorities have only a very limited possibility to apply any proactive identification of optimal procurement strategies, if efforts to this effect are made at all, in that the obligation to use MTender, together with the current limitations of the system, makes it next to impossible to apply other award criteria than price and to make full use of the diversity of approaches and procedures foreseen by the PPL.

The requirements and expected results of the contracts should be clearly defined in the tender documents issued. The PPL and the Government decrees regulating the use of the different

¹ Government decree 1419/2016 on the approval of the Regulation on the planning of public procurement contracts

² https://www.legis.md/cautare/getResults?doc_id=122888&lang=ro

procurement procedures as well as the corresponding standard documentation issued by the Ministry of Finance includes detailed indications for the presentation of the requirements and the preparation and presentation of the technical specifications. However, while the contents of the technical specifications are sufficiently regulated at the legal level, in practice the contracting authorities are not sufficiently trained for the correct application of these legal regulations.

The various contract models to be used are included in the tender documents, which should follow the models in the standard documentation issued¹ by Order of the Ministry of Finance. On the other hand, as observed by the PPA, although the model contract provides several tools to insure the contracting authority against bad fulfilment of the obligations of the tenderer, the contracting authorities very often omit the completion of important headings, which often causes problems in the implementation of the contracts.

The forms of contract largely correspond to international practice but would merit revision and updating, also to ensure that there is enough flexibility to adapt them to the particular needs that may arise for large or complex contracts.

The provisions² for setting the award criteria give room, in principle, for using sustainability criteria as a means for ensuring value for money and addressing environmental objectives, and guidance for sustainable procurement has been issued³ by the PPA. However, no such practices have been developed among the bulk of the contracting authorities. The obligation to use price as the primary award criterion in the mandatory use of the e-procurement system means that contracting authorities can introduce sustainability aspects only when defining the requirements and setting the specifications to be met when preparing the tender documents, and this is very rarely done, if at all, in the frequent absence of even quite basic understanding of the concept and skills for its application in practice. Legal provisions⁴ on the use of life cycle costing have also not been complemented by any secondary legislation or other guidance and are little used, if at all, as reported by the PPA.

See further the points made on sub-indicator 3(a) above.

Sub-indicator 9(b) – Selection and contracting

This sub-indicator focuses on the objective of achieving value for money through appropriate determination of procurement methods and approaches, competition, transparency and fairness in selecting suppliers, including the quality of procurement documents, and process efficiency.

The PPL offers several possibilities to carry out multi-stage procedures in order to ensure that only qualified and eligible participants are included in the competitive process:

- restricted tender;
- competitive dialogue;
- negotiated procedures (with publication of a contract notice).

¹ Available at <https://tender.gov.md/ro/content/acte-ministeriale-%C8%99i-departamentale>

² PPL, Art. 26

³ Available at <https://tender.gov.md/ro/content/ghid-privind-achizi%C8%9Biile-publice-durabile>

⁴ PPL, Art. 27

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However, contracting authorities rarely use these multi-stage procurement procedures due to their perceived complexity and the lack of the knowledge and skills necessary for successfully using these procedures. In turn, this reflects a lack of specific guidance and training that would be needed to improve the awareness and understanding of the advantages of these procedures and to raise the skills for using them.

The standard documents for the major types of procurement object (goods, works, services) and procedure would normally cover the needs in the bulk of the cases encountered in practice, if used correctly. However, as reported by the PPA, contracting authorities sometimes have difficulties in completing the award documentation or otherwise fail to make full use of them.

As evidenced e.g. by the ANSC rulings on complaints against tender documentation and award decisions, the selection procedure is not always carried out effectively and transparently. It thus happens that the tender documents published by the contracting authority are drawn up incorrectly, contain biased, incomplete or vague technical specifications, exaggerated qualification requirements and other selection criteria or, on the contrary, much too weak requirements compared to the importance or complexity of the contract to be concluded. Consequently, contracts are concluded with tenderers that "meet" the requirements, though not necessarily on a fair and transparent basis.

The PPL and the corresponding secondary legislation put a wide range of procurement methods at the disposal of the contracting authorities. However, in practice, contracting authorities rarely use any other competitive procedure than open tender. A sufficient reason for this is certainly that the use of the e-procurement system is mandatory, but the system is not designed to allow easy handling of other procedures. There is anecdotal evidence that, for lack of foresight or to avoid the obligation to use competitive procedures, contracting authorities sometimes divide the procurement needs into several small contracts below the thresholds. However, the lack of data, especially on small value contracts, means that the frequency of such practices is difficult to determine.

During the MAPS assessment, 69 contract files were randomly selected from among those submitted to the PPA by contracting authorities in accordance with the legislation and were examined in some detail. The procurement approaches used were as follows:

Procurement procedure	Period 2017 – 2018	Period 2018 – 2019
Open tender	10	11
Request for quotation	10	10
Negotiation without publication	8	10
Framework agreement	5	5

The e-procurement system (MTender) can only be used for open tenders and requests for quotations, and the estimated contract value is the only parameter used for determining which one to use. For this reason, the procurement files do not include any particular justification of the choice between the two procedures.

On the other hand, the use of the negotiated procedure without publication requires due justification. In almost all the cases examined, this was either the need to complement previously procured items by others from the same supplier, or the existence of only one supplier; in one case was the procedure used

following two unsuccessful competitive tenders, and there was only one other case without any explicit justification.

The procedures for submitting, receiving and opening tenders are clearly described in the PPL, in Government decree 667/2016 on the activities of the working groups for public procurement and in the various standard documents prescribed. The decree also includes detailed modalities for the participation of representatives of economic operators and civil society in the various steps of the process. However, it is not clearly described in the legislation how this process should take place when the procurement procedure is carried out by electronic means, and the e-procurement system used has no particular facility available for the purpose.

Only the members of the working group can participate in the evaluation of the offers, as set out in Government decree 667/2016, point 32, which states that the working group examines the tenders in confidence and does not disclose the information regarding the examination, evaluation and comparison of the tenders of the bidders or persons not officially involved in these procedures or in determining the winning tender. Confidentiality during the tender evaluation and award process is thus clearly required in the applicable regulations. On the other hand, tenderers have no possibility in practice to ensure that certain commercially sensitive elements of the tenders are kept confidential. The tenders submitted are not encrypted and the e-procurement system does not have any other means to ensure the kind of confidentiality mentioned, at least not after the end of the award procedure when all tenders received are made public in full. It is thus not in line with the PPL nor with the applicable EU directive¹.

Appropriate techniques to ensure best value for money are provided² for but most often not applied. Not infrequently, the situation occurs when items are procured at the lowest price, to the detriment of quality. The lack of possibilities to use any other award criterion than price in the mandatory e-procurement system is by itself a sufficient reason for this state of affairs, as is the frequent lack of knowledge and skills on the part of the contracting authority to apply other award criteria than the lowest price.

The PPL has ample provisions³ regulating the announcement of award decisions and the publication of award notices and the e-procurement system has a facility for publishing such notices. Also, the PPA publishes corresponding information on its website. However, the e-procurement system does not allow the dates of the award decision, the publication of the award notice, the signature of the contract and the publication of the contract signature notice to be recorded in such a way that the observation of the time limits can be verified, nor whether the required notices have been published at all. As a consequence, the actual, average time for the different steps in the procurement process is not possible to determine for the moment, other than after examining a sufficiently large sample of tender files (to the extent available) and manually extracting the data.

In the case of the 69 contract files reviewed, the time limits for announcing the award decision were duly observed. All other publication requirements were also met.

¹ Directive 2014/24/EU, Art. 21

² PPL, Art. 26 and 27

³ PPL, Art. 30-32

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Apart from what may be implied by the requirements and the specifications in the tender documents, as reflected in the tenders submitted, the standard contract clauses do not include any sustainability considerations. The 69 contracts reviewed also did not include any sustainability clauses.

The standard contract clauses provide for sanctions in case of failure by the contractor to meet the contractual obligations. However, in practice,

- the specifications are not always drawn up in a way that makes it easy to determine if they are met by the items delivered or not
- the contracting authorities may lack staff, skills and equipment needed for verifying the conformity of the items delivered with the specifications in the contract
- the contracting authorities may otherwise fail to duly verify the conformity of the items
- irrespective of the provisions in the contract, the legal mechanisms for enforcing performance are considered to be cumbersome, time consuming, inefficient and ineffective so, even in duly evidenced cases, contracting authorities rarely apply the contractual clauses on sanctions

The standard contracts do not contain any incentives for exceeding the minimum required performance levels.

Almost all the 69 contracts examined had only vague provisions for ensuring proper execution. Although works contracts tended to have slightly more detailed quality requirements than the others, only one contract had clear and detailed provisions regarding performance, quality, and contract management obligations.

For the contracts examined, the time taken for the procedures applied as well as for awarding framework agreement (entered separately in the tables below, irrespective of the procedure used) varied considerably, as follows. Note that no time calculations could be made in seven cases, for lack of corresponding indications.

Procurement procedure	Minimum and maximum number of days	Most frequent duration	Average duration
Open tender	27 – 120 days	27 – 39 days (52%)	46 days
Request for quotation	17 – 60 days	17 – 38 days (85%)	31 days
Negotiation without publication	1 – 58 days	1 – 14 days (64%)	14 days
Framework agreement	5 – 53 days	5 – 14 days (57%)	22 days

The lack of readily available data makes it difficult to determine to what extent the selection and award process is carried out effectively, efficiently and in a transparent way. Available evidence points to a clear scope for improvement, by e.g. aligning the e-procurement system with what the PPL foresees and by raising the knowledge and skills of public procurement officials.

Data from the PPA's annual report for 2019 indicate that the average number of tenders submitted per procedure was 4.07 for procedures conducted through MTender (for open tenders, the figure was 4.62; for requests for quotations 3.73), and an average of 4.75 tenders were received in procedures carried out by the CAPCS through the old e-procurement system. These figures considerably exceed those recorded for the open tenders and requests for quotations in the 69 contract files examined, where the average number of tenders was 2.8.

No clear explanation for this significant discrepancy has been found. An average of around four tenders per procedure would be relatively favourable in comparison with other countries in the region, where an average of 2.8 would be more typical. However, such overall averages usually hide considerable differences between sectors and regions as well as between goods, works and services and different contract values.

To some extent, such differences often reflect the industry structure of the country, but they also may hide instances of collusion or corruption. The latter issue may also be at play in the case of cancelled procurement procedures; however, an equally plausible reason would be that of a lack of planning and preparation skills and changing needs and conditions. The percentage of cancelled procurement procedures reported by the PPA for 2019 was 18.83% (1.56% for lack of three qualified offers, 1.29% for absence of any offers submitted, and 15.02% for “various reasons” invoked by the contracting authority but without further specification).

It would thus be useful to further analyse the data and the reasons behind the figures and, in the future, to ensure that corresponding data is properly recorded and compiled, so that the situation can be thoroughly assessed, and appropriate measures be taken. The same applies to cancelled procedures, where it is not clear from the figures available if they represent instances of inadequate planning and preparation, weak supply markets, budgetary changes and constraints, corrupt practices, or other reasons.

Sub-indicator 9(c) – Contract management in practice

This sub-indicator assesses the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality, cost and other conditions stated in the contract, for the efficient and effective delivery of public services.

Information on the timely implementation of contracts, on inspection, quality control, works supervision and final acceptance, and on examination, handling and payment of invoices is not systematically collected, nor otherwise possible to extract in other ways than by examination of a large sample of individual cases, to the extent (in practice, extremely limited) that the corresponding documentation can be made available.

As reported by the Ministry of Internal Affairs, 90% of contracts for goods and services are executed on time, while 90% of works contracts exceed the contractual time limits by 1/3, on an average. Also, some 90% of works contracts are amended in ways that increase the contract value. There are many causes behind the weaknesses in the management of contracts: inadequate planning and preparation, unclear or otherwise deficient contractual requirements, insufficient monitoring and enforcement of contractual performance and, underlying these problems, a lack in many contracting authorities of suitably knowledgeable, skilled and experienced public procurement staff.

The review of 69 procedures and contracts filed at the PPA indicates that only few contracts had delays in their execution; more so for requests for quotations than for open tenders, though the numbers are so small that no firm conclusions can be drawn. On the other hand, quality control measures and acceptance proceedings were successfully carried out and documented only for slightly more than half the contracts; data were missing for the others. Invoices were mostly paid on time, as indicated by the percentages here below:

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Procurement procedure	2017 – 2018	2018 - 2019	Total
Open tender	80%	100%	90%
Request for quotation	80%	80%	80%
Negotiation without publication	100%	90%	95%
Framework agreement	100%	80%	90%

The PPA only accepts changes to the contract that have been made during the term of the contract. There are cases when the contracting authorities want to make changes to the already expired contracts. These changes are rejected. Amendments are published in the same way as for the original contracts.

In the 69 cases examined in some detail, almost all of the contract amendments made were for price increases, as follows:

Procurement procedure	2017 - 2018		2018 - 2019	
	Changes in % of total number of contracts	Average increase in contract value	Changes in % of total number of contracts	Average increase in contract value
Open tender	10 %	15 %	9 %	12 %
Request for quotation	10 %	18 %	20 %	14 %
Negotiation without publication	-	-	-	-
Framework agreement	-	-	-	-

The PPA structure contains a Directorate for Statistics, Reporting and Electronic Procurement. Centralised reports¹ on activity in the field of public procurement are prepared quarterly, containing generalised data by country. The capacity of the Directorate mentioned is limited and, due to the lack of an automated system equipped with a module for extracting and analysing statistical data, many statistical indicators cannot be calculated or have to be prepared manually.

The legislation in the field of public procurement offers the possibility² to the representatives of the civil society to participate in the activity of the working groups for public procurement. However, the PPA does not have any data on the actual involvement of civil society representatives in the activity of public procurement working groups, nor has such information been found elsewhere.

At different stages of the public procurement procedure, the contracting authority is obliged to complete forms specially developed for the purpose of documenting what has been done and creating an audit trail. These model forms can be found on the PPA website³. However, contracting authorities not infrequently make mistakes in completing the data on the procurement procedure, mainly due to a lack of knowledge in the field of public procurement and the large workload.

Many of these records are not published or otherwise accessible, although they form part of the procurement file that each contracting authority has to prepare for each procedure and keep available for audit purposes. Management, reporting and monitoring would be likely be made easier if these tasks are integrated in the authority's administrative systems and procedures and if these are properly used.

¹ See <https://tender.gov.md/ro/documente/rapoarte-de-activitate>

² Government decree 667/2016 for the approval of the Regulation on the activity of the working group for procurement, item 5

³ See <https://tender.gov.md/ro/documente/modele-de-documente>

- **Substantive gaps and their associated risks**

A fundamental, substantive gap regarding public procurement practices and the actual performance of the public procurement system is constituted by the lack of reliable, easily accessible data, in turn a result of the limited possibilities to record and publish details of procurement transactions in a machine readable and transmissible format and of the shortage of procurement management tools. This gap is not only a matter of concern for regulatory and supervisory authorities managing and monitoring public procurement in general, but also for individual contracting authorities, who need a clear overview of their own performance in order to plan, carry out and evaluate their public procurement activities. The risks of not closing this gap are high, given its consequences on procurement performance.

In the planning and preparation phase, gaps exist with respect to the possibilities to determine what the supply market can reasonably be expected to offer (although guidance on market consultations has been made available, contracting authorities still lack skills and experience in this respect), to optimise procurement approaches (unduly narrow range of procedures and award criteria available to choose from), and to inform and alert prospective tenderers about business opportunities (procurement plans cannot be widely published). A related shortcoming exists in the difficulty of many contracting authorities to draft requirements, specifications and selection and award criteria that invite effective competition and give value for money in meeting the actual needs (lack of skills and experience or resources of procurement officials).

In the evaluation, award and contracting phase, the major gap is created by the failure of the e-procurement system to incorporate other procedures and award criteria than open tender and price to be used, and to allow the qualifications of tenderers and the conformity of their tenders to be evaluated before an electronic auction is launched.

In the contract management phase, available evidence indicates gaps in the attention and skills of contracting authorities and in the level of transparency, particularly with respect to quality control and acceptance of items delivered and other means for ensuring that items are delivered as required in the contract and that this is duly recorded.

Risks associated with this lack of skills and tools for all phases of the procurement cycle are high.

Several of the shortcomings mentioned above are related to issues with the current e-procurement system, and failure to enhance the system is therefore also associated with high risks.

- **Main recommendations**

Improve the generation of public procurement data and the means for making them accessible, as also recommended elsewhere.

Publish procurement plans in an easily accessible form on the same central website as procurement notices, with suitable facilities for cross-referencing and searches.

Ensure that the full range of procedures and award criteria foreseen in the PPL are suitably implemented in the e-procurement system, as also recommended elsewhere.

Create opportunities for practical training and exchange of experience in needs analysis, market consultations, drafting of specifications and of selection and award criteria and their application in the

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evaluation and award process, and contract management; all harmonised with related measures for updating of regulations and standard documentation and for capacity building in general.

Mandate public access to information that allows contract execution to be monitored and compared with corresponding elements of procurement plans, budgets and expenditures.

Numerous other shortcomings in public procurement practice, and corresponding recommendations, are indicated below.

Specific gaps and corresponding recommendations for Indicator 9

No.	Specific gaps/shortcomings	Specific recommendations
9.a)	Available reports confirm weaknesses in planning and preparation and that these are often reflected in problems in later stages of the procurement cycle	Raise contracting authorities' awareness of the importance of proper preparation and planning, and complement any training offered with practical examples for raising the skills in this respect
9.b)	Guidance for planning and preparation of public procurement is incomplete	Review the pertinence, clarity and comprehensiveness of existing guidance materials and complement and update them accordingly
9.c)	The scope for optimising public procurement approaches by using the most appropriate procedures, tools and selection and award criteria from among those allowed by the PPL is severely limited by shortcomings in the e-procurement system	Ensure that the e-procurement system can be used for all procedures, tools, and selection and award criteria foreseen in the PPL
9.d)	An apparent lack of knowledge, skills and experience in many contracting authorities leads to fairly frequent errors and omissions in the preparation and use of tender documents, including in the form of vague, incomplete, excessively prescriptive or biased requirements and specifications and mismatches between requirements and selection and award criteria	Examine current practices, identify typical shortcomings in the work of the contracting authorities and adjust monitoring, advice, guidance materials and training accordingly
9.e)	Not all clauses in all contract models prescribed may be appropriate in all individual cases	Revise the forms of contracts and the instructions for their use in ways that allow some flexibility in clearly defined circumstances and conditions, in ways that secure a proper balance between the rights and obligations of both parties
9.f)	Errors and omissions occur in the use of the existing contract models	Issue additional guidance specifically addressing observed inaccuracies in the use of the contract models, and add corresponding automatic checks when using electronic means for contract preparation
9.g)	The current e-procurement system does not allow other award criteria than price to be readily used, very much complicating the use of sustainability criteria	Ensure that the e-procurement system allows easy use of all award criteria foreseen in the PPL, and provide corresponding advice and training for contracting authorities

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No.	Specific gaps/shortcomings	Specific recommendations
9.h)	There is little knowledge of other competitive procedures than open tendering and even less understanding of their advantages and of the principles for selecting the most appropriate one, and low skills in using them	Reinforce training on the selection and use of other procurement procedures than open tendering, and monitor their application
9.i)	It is not possible for economic operators to use their right to demand that certain commercially sensitive elements of their tenders remain confidential, since the tenders are published in full on the e-procurement system once the evaluation has finished	Ensure that the e-procurement system is able to cater for cases when certain elements of tenders submitted should be kept confidential in application of corresponding legislation
9.j)	The absence of any possibility to use other award criteria than price in the e-procurement system means that contracting authorities cannot fully use appropriate techniques for ensuring best value for money and also lack current experience of their proper application	Ensure that the e-procurement system allows easy use of all award criteria foreseen in the PPL, and provide corresponding advice and training for contracting authorities
9.k)	The full observation of the time limits in the PPL cannot be monitored, since the e-procurement system does not allow all relevant dates to be recorded	Ensure that the e-procurement system allows easy recording of all relevant dates in the procurement process, so that the observation of all applicable time limits can be easily monitored
9.l)	The enforcement of the contractual obligations of both parties to the contracts is made difficult by weak skills in contract management, weak sanctions, time consuming court proceedings with uncertain outcomes, and a virtual absence of alternative means for dispute resolution	Review the conditions of contract for clearly stated, equitable distribution of rights and obligations between the parties; ensure that provisions for enforcement of contractual obligations are clear and easy to apply; and add standard provisions for alternative means for dispute resolution in parallel with the development of a corresponding legal and institutional framework
9.m)	The reasons behind the relatively frequent cancellation of procedures are not entirely clear, and existing data is not enough for identifying appropriate measures for improving the situation	Analyse a significant number of cancellations, identify underlying problems, and prepare and implement corresponding measures
9.n)	Anecdotal evidence points to a range of apparent problems with contract management, including weak skills of contracting authorities and failure to properly apply prescribed procedures, and delays, cost increases and frequent contract amendments (mainly in works contracts), some of this in turn reflecting bad preparation and inadequate or unclear contractual requirements; however, data on actual practices is incomplete	Analyse a significant number of contracts in order to identify and categorise typical errors and omissions as well as strengths and weaknesses in policies and practices and underlying problems of management, skills, tools and approaches, prepare and implement corresponding measures for improving the situation, and monitor the outcomes in the context of the general monitoring of public procurement performance

No.	Specific gaps/shortcomings	Specific recommendations
9.o)	Strict legal requirements for the involvement of civil society in public procurement working groups are enacted but their application (the actual form and level of such involvement and the sanctioning of any failure to comply) is not known; also, the current possibilities and limitations for civil service involvement may not be appropriate for serving the intended purposes	Make a short-term case study about the actual involvement of civil society in public procurement working groups and its advantages and disadvantages, and use this information for reforming the forms and contents of civil society involvement in public procurement (not necessarily in the working groups, which in any case are recommended to be replaced); then require corresponding information to be recorded, incorporated and made publicly available in procurement reports
9.p)	Data on contract execution and contracting authority performance are not systematically prepared and submitted by contracting authorities in a form and with contents that facilitate compilation and analysis by the PPA and other interested parties	Revise the form and contents of performance reporting (contract execution and its outcomes) in ways that limit the administrative burden while making data easy to compile, transmit, publish and analyse (e.g. by automatic generation from existing project management files, using machine readable forms, integration with other administrative systems and procedures, etc.); enhance the monitoring of this reporting in order to help ensure its adequacy and relevance; and analyse it with a view to improve public procurement policies, procedures and practices

3.3.2 Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

- Findings

Main substantive gaps and recommendations for Indicator 10

No.	Substantive gaps	Risk	Recommendations
10.1.	The opportunities for policy dialogue at the level of specific sectors of the economy, from the perspective of enhancing the benefits from and for public procurement, are limited and have only been little used	High	Continue the public-private sector dialogue at the level of the various authorities concerned, with focus on making its importance and advantages clearer, and correspondingly adapt its form and contents for greater pertinence, effectiveness and efficiency
10.2.	Perceptions of unfair competition, both for objective reasons (shortcomings in the e-procurement system) and based on unproven presumptions, may discourage well qualified and competitive firms from participating in public procurement	High	Examine in further detail the reasons why economic operators would or would not participate in public procurement, including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies and action plans with concrete measures for mitigating any barriers identified

Sub-indicator 10(a) – Dialogue and partnerships between public and private sector

This sub-indicator reviews whether there are forums for dialogue between the government and the private sector.

The Law on transparency in the decision-making process no. 239 of 13 November 2008 establishes rules for ensuring transparency in the decision-making process within the central and local public administration authorities, other public authorities, regulating, in this respect, their relations with stakeholders. It is a framework law, and the procedures for consulting citizens, associations and other stakeholders are established by the Government, Parliament and the President of the Republic of Moldova. At Government level (also applicable to central and local public authorities), there is a Regulation on public consultation procedures with civil society in the decision-making process, approved by Government decree no. 967/2016. Regarding Parliament, the legal framework in the field includes the Regulation of the Parliament, adopted by Law no. 797/1996, with the Concept regarding the cooperation between the Parliament and the civil society approved by Parliament Decision no. 373/2005, as well as a series of internal acts within the Parliament.

The civil society associations consulted during the MAPS assessment mention that, at the level of the Government and implicitly of the central public authorities, the process of public consultations is largely (cf. sub-indicator 11(a)) carried out according to the law. Draft normative acts in the field of public procurement have to be published on a website¹ set up for the purpose. Any interested person can submit recommendations within the term indicated by the author, but which cannot be less than 10 working days. Likewise, public authorities can send the draft normative act directly (by e-mail, other means) to non-governmental organisations, specialists, experts, other interested parties, for consultation. Lately, the Ministry of Finance (which is the direct author of draft normative acts in the field of public procurement) is reported to have shown greater openness to the public and often use this tool. For example, several recent draft normative acts (draft Government decree for the approval of the Regulation on public procurement using the negotiation procedure, draft Order on the approval of the standard form of the Single European Procurement Document, draft Government Decision for the approval of the Regulation on public works procurement) have been directly consulted with non-governmental organisations that constantly monitor public procurement and development studies in this field. These consultations were not only formal, but the Ministry of Finance took into account several recommendations submitted by civil society for the improvement of draft normative acts.

In addition, the Economic Council under the Prime Minister was established by the Government Decision of the Republic of Moldova no. 631/2011, as an advisory body and a platform for discussions between the Government, business, experts, donors and other stakeholders. Within the Council, seven permanent thematic working groups and two temporary (ad-hoc) working groups were set up. At present, the Economic Council under the Prime Minister has 118 members, of which 56 business associations, eight representatives of the research community, 11 representatives of international organisations active in the field of business reforms and 43 representatives of authorities and public institutions.

¹ <http://www.particip.gov.md/>

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Nevertheless, the private sector survey carried out indicates that, in response to the question if the Government consults them on public procurement matters, 9.1% answered 'always', 36.4% 'most of the time', 36.4% 'rarely' and 18.2% 'not at all'. There would thus seem to be room for further improvement.

NGOs consulted during the MAPS assessment have indicated that the greatest problems regarding the transparency of the decision-making process have been identified with respect to Parliament. For the most part, Parliament only publishes a draft law on its website, often without the accompanying documents. Parliamentary committees either do not organize public consultations for draft laws (including in the field of public procurement) or, when they do, organize them selectively and sometimes badly. If public consultations are held, parliamentary committees often ignore the recommendations of the parties consulted and do not inform them of the results of the public consultations.

In the particular case of the relations between public institutions, especially the Government, on the one hand, and the business community of the other, regular contacts as well as formal and informal consultations are organised by business associations such as the Chamber of Commerce and Industry and the Employers' Federation, as well as by their member organisations and other industry associations and chambers.

On the other hand, there has been a rather weak response to private sector suggestions for constructive dialogue in certain sectors where economic operators now see problems in the way that public procurement policies, procedures and practices are applied, with little consideration of the particularities of the sector. Among those cases one may mention telecommunications and medical services and equipment as well as medicines. Such dialogue would have the potential to lead to improvement of range and quality of supply and of value for money, in ways that would benefit both the domestic industry and the contracting authorities and the citizens they serve. Similar advantages could also be expected from enhanced dialogue with the private sector in the context of centralised procurement and the use of framework agreements, where there are now considerable gaps in the use of such approaches.

The PPA has included information and training for economic operators in its training curriculum, but the volume of such training actually provided is not large, reflecting a very weak demand from economic operators. In addition, both the PPA and the e-procurement platforms interfacing with contracting authorities and economic operators offer information and training in the mechanics of using the e-procurement system. There are no other public programmes for supporting private sector participation in public procurement. As a complement, to compensate for the relative weakness of the official Government programmes, NGOs (e.g. IDIS) and the business organisations, such as the Chamber of Commerce and Industry, organise information and training sessions on public procurement for their members, though not on a regular, permanent basis, and occasionally give advice in particular cases.

Sub-indicator 10(b) – Private sector's organisation and access to the public procurement market

This sub-indicator looks at the capacity within the private sector to respond to public procurement in the country.

The private sector is relatively well organised and active, but its structure and capacity reflects the small size and limited resources of the country: in many sectors, the supply side is rather thin and in others there is only one or a few enterprises, if any. Parts of the economy are also closely linked, directly or indirectly, to public sector interests, and vice versa. As a consequence, there are strong perceptions of fraud and corruption, as evidenced in e.g. Transparency International's Corruption Perception Index (rank

120 out of 180 countries), and related presumptions that enterprises may be tempted to muddle through by engaging in the same illicit behaviour as others while being better than them in avoiding getting caught.

As a result of such perceptions of unfair competition based on corrupt behaviour, some well-run companies may hesitate to participate in public procurement. On the other hand, in the private sector survey carried out, none of the respondents stated that they had offered a bribe to get a procurement contract.

In application of the corresponding requirements in the EU Directives, the PPL includes several provisions intended to facilitate SME participation in public procurement, such as provisions on division into lots and on preliminary market consultations. Also, in line with EU policies, there are no provisions for local preference or for other preferential treatment of SMEs or other categories of prospective tenderers. Some systemic constraints have the effect of limiting private sector access to the public procurement market.

First among these is the perceived complexity of the regulations and the level of administrative efforts needed in order to fully comply with the multitude of formal requirements applicable to the competitive procedures. As a consequence, many enterprises, especially SMEs, do not find it worth the effort to participate in public procurement; their scarce resources can often be better used elsewhere and many simply do not have staff with the necessary knowledge and skills. The notional simplicity of the e-procurement system is thus not fully effective in practice.

It is also difficult for enterprises with limited resources to monitor and identify the business opportunities that arise, especially when annual procurement plans are not published centrally. In addition, the use of price as the dominant award criterion discourages participation by firms with novel solutions giving better value for money if their possible advantages in terms of quality, performance and life cycle costs cannot help them win the contract.

Finally, when electronic auctions are held without prior examination of the conformity of the tenders and of the qualifications of the tenderers, there is a considerable, unquantifiable risk of participation by unqualified enterprises offering items not meeting requirements and specifications but nevertheless (precisely for those reasons) with quite low prices. They are therefore likely to come out as the best placed ones in the auction and, having received what may seem to be a favourable price, contracting authorities may be tempted to disregard indications of low quality and lack of qualifications, if at all these aspects are duly examined.

It may then happen that a contract is concluded but that the company becomes unable to deliver or delivers items which do not match the specifications. If the items are still urgently needed, as would often be the case, there may be a temptation to nevertheless accept them, possibly against some additional favour to those in charge, but to the detriment of those who should ultimately receive the benefits of the goods, works or services procured.

All this creates a climate of unfair competition which by itself discourages participation by well-run enterprises and encourages further fraud and corruption, in addition to reducing the value for money of the public funds spent.

Sub-indicator 10(c) – Key sectors and sector strategies

This sub-indicator reviews to what extent the Government examines the country's supply market from a public procurement point of view.

There is little evidence of any analysis by the Government of the Moldovan supply market from the point of view of public procurement and of any efforts to proactively develop the competitiveness of enterprises in sectors of importance to public procurement.

- **Substantive gaps and their associated risks**

Despite a comprehensive legal framework for public consultations and increasing efforts by the authorities, particularly the Government, to follow prescribed procedures, there still seems to be room for improvement in the ways consultations are held and their outcomes are put to good use in the later stages of the legislative process. Also, the opportunities for policy dialogue at the level of specific sectors of the economy from the perspective of enhancing the benefits from and for public procurement, have only been little used. Enhanced consultations should be expected to improve mutual understanding and trust between the supply and the demand side of public procurement, leading to higher participation and greater competition, and thereby to better procurement outcomes.

The complexity of the procurement procedures creates problems for many SMEs and the lack of effective limits to participation by potentially unqualified tenderers in electronic auctions creates a risk of discouraging well run companies from participating. Perceptions of unfair competition stemming from presumptions of other companies' corrupt behaviour are likely to have similar effects. However, comprehensive and reliable data on this subject is not available, and the corresponding risk has therefore been set to 'medium'.

- **Main recommendations**

Carry out a systematic analysis of the importance of key sectors of the economy for public procurement, as well as vice versa, and develop the opportunities for dialogue between the authorities and the private sector on procurement policies and practices, by sector.

Ensure that the e-procurement system is brought in line with the PPL, with the evaluation of tenderers' qualifications and of the conformity of their tenders preceding any electronic auctions, if held at all, and bring all other means to bear for eliminating fraud and corruption in public procurement.

Some more specific recommendations, set against the shortcomings identified, are presented below.

Specific gaps and corresponding recommendations for Indicator 10

No.	Specific gaps/shortcomings	Specific recommendations
10.a)	There is room for improvement in the ways public consultations are held and their outcomes are put to good use	Monitor compliance with provisions in the legislation on public consultations and seek ways to improve its effectiveness.

No.	Specific gaps/shortcomings	Specific recommendations
10.b)	Although firm evidence is lacking, there may still be significant misconceptions about public procurement among economic operators and the general public	Survey the knowledge and understanding of public procurement policies and practices and the attitudes towards them among economic operators and the general public, and take corresponding steps to raise awareness and acceptance of public procurement principles
10.c)	The high administrative complexity of the public procurement procedures, as often perceived by the business community, and the limited possibilities to compete on quality and performance create disincentives for many enterprises	Raise contracting authorities' skills in preparing and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market in question, and ensure that the e-procurement system can properly allow the use of other award criteria than price whenever appropriate for improving value for money
10.d)	Contrary to the provisions of the PPL, tenderers' qualifications and the conformity of the tenders are only verified after the electronic auction (when held), and only for the winning tenderer; this allows unqualified tenderers to participate and to do so with tenders not meeting all requirements, which constitutes unfair competition that strongly discourages the otherwise most suitable and competitive enterprises from participating	Revise the workings of the e-procurement system in order to comply with the sequence of evaluation steps prescribed by the PPL, so that only fully qualified tenderers having submitted fully compliant tenders are invited to an electronic auction, if held (which may not necessarily be suitable, depending on the nature of the contract and the market situation)
10.e)	It is not clear to what extent the importance of the public procurement market and its significance for economic development are recognised by the Government and reflected in economic policy	Analyse the Moldovan supply market from the point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement

3.4 Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

Pillar IV includes four indicators that are considered necessary for a system to operate with integrity; that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework; and that has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Summary findings under Pillar IV:

The legal and institutional framework contains a number of features intended to secure integrity in public procurement as well as in public administration in general. Laws and regulations are in place to promote public consultations, enable civil society participation, provide access to information, handle complaints by tenderers and other parties concerned in a competent and timely manner, facilitate internal and

external audit, prevent and identify cases of fraud, corruption and other prohibited practices, and sanction those breaching the rules. Corresponding institutions are in place, with staff and other resources engaged for the purpose.

Nevertheless, various observations and analyses made (e.g. by the Court of Accounts and Transparency International) indicate that there are gaps in the implementation of many of the laws and regulations mentioned, and the insignificant number of successful prosecutions of fraud and corruption points to weaknesses in the ability of the legal system to effectively sanction those at fault.

3.4.1 Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring and oversight.

- **Findings**

Main substantive gaps and recommendations for Indicator 11

No.	Substantive gaps	Risk	Recommendations
11.1.	Limited availability of detailed and reliable data allowing civil society and the competent authorities themselves to analyse public procurement	Medium	Improve the generation of public procurement data and the possibilities to access it in a way that allows also civil society to effectively monitor all stages of the public procurement cycle; all of this harmonised with the measures taken to enhance e-procurement
11.2.	Weak support to civil society in terms of access to information, opportunities for dialogue, and possibilities to participate in training	Medium	Include civil society organisations, along with contracting authorities and economic operators, in any information and training programmes offered, and consider offering specific training for them

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

This indicator assesses the following:

- whether a transparent and consultative process is followed when changes are formulated to the public procurement system,
- whether programmes are in place to build the capacity of civil society organisations to support participatory public procurement, and
- whether effective feedback and redress mechanisms are in place for matters related to public procurement.

There is a legal framework in place which stipulates that changes in legal/policy framework (including in public procurement one) should be transparent and consultative. The main legal documents are Law no.

239-XVI from 13 November 2008 and Government decree no. 967 from 09 August 2016. However, not all legal drafts and policy proposals have been subject to public consultations in full accordance with legal framework mentioned and many amendments have been approved without consultations (e.g. amendment to exempt procurement of medicines from the obligation to be implemented in MTender).

The currently existing support to CSOs in procurement area mostly stems from foreign donors. There are no legal or policy documents that would envision systematic support from the public sector for CSOs in the area of public procurement. However, the PPA could possibly include such activities in its training schedule by simply allowing or inviting CSOs to participate in existing events, if no separate ones are set up specifically for CSOs.

The Government partially takes into account the feedback from CSOs. According to the Ministry of Finance, in 2018 it took into account around 50% of all proposals from CSOs. The CSOs concerned are of the opinion that even critical requirements are not always taken into account (e.g., the proposal of CSOs to include small value contracts in the e-procurement system (MTender) was ignored).

Sub-indicator 11(b) – Adequate and timely access to information by the public

This sub-indicator covers the right of the public to access information. Complementary aspects have been highlighted in the following sub-indicators:

- The laws, regulations, and policies governing public procurement are published and easily accessible to the public at no cost (sub-indicator 1(a));
- All stakeholders have adequate and timely access to information in each phase of the public procurement process related to specific procurements (in accordance with legal provisions protecting specific sensitive information) and access to other information that is relevant to promote competition and transparency (sub-indicator 7(a));
- Free access to this information is preferably provided through a centralised online portal and open data standards (sub-indicator 7(a)).

The legal framework on public procurement is accessible free of charge. It stipulates that some important documents on procurement should be published by the contracting authority (procurements plans, minutes of tender evaluation, and reports on contract implementation). However, not all documents that should be open are published in full by the contracting authorities and they are not all readily accessible from a single, national point of access. At the same time, some documents such as tenders submitted are available in MTender, but the existing legal framework has not been adjusted to specify and regulate this kind of disclosure in full compliance with the PPL and the applicable EU Directives.

Also, even when formally in compliance with the law, some of the information that is now published is no longer timely enough to serve all underlying purposes, given e.g. the delay allowed for publishing contract award notices.

Sub-indicator 11(c) – Direct engagement of civil society

This sub-indicator assesses the extent to which (i) the laws, regulations, and policies enable the participation of citizens in terms of consultation, observation, and monitoring and (ii) whether the government promotes and creates opportunities for public consultation and monitoring of public contracting.

The existing legal framework allows the representatives of CSOs to take part at public procurement procedures as members of working groups established within the contracting authorities. The existing legal framework allows representatives of CSOs to take part as members of working groups mostly in the following phases of procurement:

- tender opening (observation)
- evaluation and contract award (observation)

There are several CSOs involved in procurement process through consultation, observation and monitoring in systemic manner. The active involvement of local CSOs is constrained by lack of technical knowledge and by dependence on foreign assistance.

In individual procurement cases, according to the legislation¹ in the field, the contracting authority is obliged to include in the composition of the working group the representatives of the civil society, if they submit an application at least two days before the date of opening the tenders. However, these representatives do not always participate in or get to know details about the planning stage of the procedures in which they participate in the working group, and usually attend only at the opening and evaluation of tenders. Often, they are no longer invited to discussions on the management and completion of the contract in order to be able to learn, in detail, how the economic operator has fulfilled its contractual obligations (particularly important in the case of procurement of works). In addition, the legal provisions² do not seem to fully reflect the particularities of e-procurement, and the functioning of the current system does not seem to fully cater for the right to civil society participation.

CSOs consulted during the MAPS assessment report that there are also cases when contracting authorities unreasonably refuse the presence of CSOs within the working group, thus violating the applicable legal provisions, but there appears to be no authority competent to sanction them for such violations.

- **Substantive gaps and their associated risks**

The most important gap in the environment for public consultation and monitoring lies in the limited availability of detailed and reliable data that would allow civil society and the competent authorities themselves to take measures to analyse the way public procurement is carried out and the outcomes of it and thereby to determine ways for improving the economy, efficiency and effectiveness of public procurement proceedings.

A secondary gap is constituted by the weak support offered to civil society organisations in terms of access to information and opportunities for participation.

Both gaps would likely be at least partly filled by other measures to widen the dialogue between the various stakeholders involved in public procurement and to enhance the generation and publication of public procurement data. Consequently, the risks associated with these gaps have been set to 'medium'.

- **Main recommendations**

Improve the generation of public procurement data and the possibilities to access it in a way that helps effectively monitor all stages of the public procurement cycle.

¹ E.g. PPL, Art. 14 (5)-(8)

² PPL, Art. 14,

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Include civil society organisations, along with contracting authorities and economic operators, in the information and training programmes offered by the PPA and other institutions.

Some further recommendations are found below, with the gaps they are intended to close.

Specific gaps and corresponding recommendations for Indicator 11

No.	Specific gaps/shortcomings	Specific recommendations
11.a)	Full and effective public consultations have not always been carried out for new public procurement regulations	Strictly observe existing legal obligations for public consultations, in addition to a wider, proactive dialogue with the private sector and the general public
11.b)	The numerous, detailed provisions in the PPL for civil society participation in public procurement, particularly in the working groups, are not always easy to apply and may not be suitable for serving the broader purposes of such participation	In consultations between the parties concerned, develop simple and practical approaches for civil society engagement in public procurement, e.g. through improved, timely access to information, and adjust the regulatory framework accordingly
11.c)	The rules for civil society participation in the working groups for public procurement and the actual functioning of the current e-procurement system do not seem to fully match	In application of the preceding recommendation, examine and revise the rules for civil society engagement in terms which make them readily applicable also in any e-procurement system, and ensure that any future developments in e-procurement incorporate functions matching the legal provisions in question

3.4.2 Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

- **Findings**

Main substantive gaps and recommendations for Indicator 12

No.	Substantive gaps	Risk	Recommendations
12.1.	There is no evidence of a harmonised, overarching approach to the need to ensure, in an effective and efficient manner, that rules and regulations for supervision and audits are properly applied	High	Set broad, overarching objectives for ensuring, in an effective and efficient manner, that rules and regulations for supervision and audits are properly applied; examine how current institutions meet (or not) these objectives; and take steps to revise and harmonise the legal and institutional framework in ways that best meet the overarching objectives, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources

No.	Substantive gaps	Risk	Recommendations
12.2.	Internal audit is not yet fully introduced and even less effective in all contracting authorities	High	Intensify the development of internal audit through increased training, advice and exchange of experience, if necessary, by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes

Sub-indicator 12(a) – Legal framework, organisation and procedures of the control system

This sub-indicator assesses

- i) whether the country's laws and regulations provide for a comprehensive control framework,
- ii) whether the institutions, policies and procedures as defined in the law are in place and operational, and
- iii) whether the existing control framework adequately covers public procurement operations.

There is no comprehensive, harmonised legal framework for the control system. Each legal body is governed by separate legislation, with gaps and overlaps, of which some may appear obvious while others are not immediately recognisable.

The main body for external audit in the public sector is the Court of Accounts. As the Supreme Audit Institution of the Republic of Moldova, it exercises its mandate in accordance with Law no. 260 of 7 December 2017 on the organisation and functioning of the Court of Accounts. This law clearly stipulates the attributions of the Court of Accounts that it exercises according to the powers given to it. The Court of Accounts performs three types of external public audit (financial, compliance, performance). All public (budgetary) entities, and programmes and projects managed by one or more of such entities, including the sale, privatization or concession of assets and the revenues obtained from them, may be subject to external public audit. The Court of Accounts performs the external public audit based on its annual and multiannual programme of audit activities on which it decides independently. Law no. 229/2010, significantly amended in 2018 by law no. 234/2018, establishes general rules and principles for organizing public internal financial control, which includes a) internal managerial control and b) internal audit. The objects of the internal managerial control are all the systems, processes, and activities within the field of responsibility of the public entity. The internal audit ensures evaluation at least once every three years of the high-risk processes in the following fields: a) financial accounting; b) public procurement; c) asset management; d) information technologies. The public entity organizes the internal audit through the following forms: a) internal audit performed by the subdivision established in the structure of the public entity; b) internal audit by association; c) internal audit based on contract. The law describes the rights and obligations of persons conducting internal audit. They have the responsibility to supervise (including) the procurement process, to report to management on the compliance, effectiveness, and efficiency of procurement operations. In order to adequately inform and avoid duplication of activities, the internal audit subdivisions collaborate with the Court of Accounts and submit to it: a) a copy of the Annual Plan of the internal audit activity; b) copy of the Annual Report of the internal audit activity.

Although the Republic of Moldova has an ambitious legal framework regarding public internal financial control, the reality is different. An issue for the effectiveness of the internal audit with regard to procurement processes is the limited knowledge and capacity of the internal auditors to adequately

review procurement procedures as well. Despite the obligation of strengthening the internal audit procedures within public procurement processes, established in different public policies (for example priority no. 2 established within the Anti-corruption Plan in Public Procurement for the period 2018 - 2020), during 2019 there were no trainings for the internal audit units within the public authorities. At the local level it is even worse, many local authorities have not even employed any such staff members yet.

Public procurement has been and remains the focus of the Court of Accounts. The internal management control system in its entirety, especially the public procurement component, is evaluated in each mandatory financial audit (consolidated financial statements of nine ministries and three Government Reports on the execution of state budget, the state social insurance budget and the compulsory health insurance funds), as well as in compliance or performance audits planned separately in the field of procurement.

As set out in the Court of Accounts' Audit Strategy for 2019-2021 (approved by its Decision no. 4 of 18 February 2019), the focus of compliance audits will be on public procurement, subsidies, regular exercise by public authorities of delegated responsibilities, compliance of public services to citizens with applicable requirements, local public authorities, etc.

In accordance with law no. 260/2017, until May 1, the Court of Accounts presents the annual activity report, which is heard in the plenary session of the Parliament. At the same time, the Court of Accounts presents to the Parliament in plenary session (until September 15) the annual report on the administration and use of public financial resources and public patrimony, which analyses and generalizes the conclusions of all audit missions performed during a year. In addition, the respective reports shall be published in the Official Gazette of the Republic of Moldova within 15 days from the date of approval by the Court of Accounts and shall be submitted to the President of the Republic of Moldova and the Government. The reports are also published on Parliament's website.

Starting with the new parliamentary term, a new commission was set up in Parliament - the Public Finance Control Commission. This commission has the role of ensuring the legal framework regarding the external public audit, ensuring the organisation and functioning of the supreme audit institution, examination and hearing of the annual and audit reports of the Court of Accounts and of the audited entities, other important competencies. The work of the committee is a form of parliamentary oversight to hold the Government and other public authorities accountable for their actions and to ensure that they implement policies in accordance with the laws and the budget adopted by Parliament. The Commission sets up a schedule for the examination of the Court of Auditors' reports, the most recent schedule includes 12 hearings of the Court of Auditors' reports between February and April this year.

As a result of the hearings, the Public Finance Control Commission draws up a report, which includes the basic findings and recommendations addressed to the public authorities, informing the committee of the measures taken.

The national legal framework does not include clear provisions and procedures regarding the exercise of parliamentary oversight, monitoring the fulfilment of recommendations by public authorities and the occurrence of responsibilities for their non-execution. The Regulation of the Parliament, adopted by law no. 797/1996, contains general provisions regarding the parliamentary control.

The draft Code of Parliamentary Rules and Procedures (registered in November 2018 in Parliament), which seeks to replace Parliament's current Rules of Procedure, contains regulations on conducting supervisory

hearings based on the reports of the Court of Auditors. The Code also contains a separate chapter on specialised parliamentary oversight, which expressly states that Parliament, through its standing committees, exercises specialized parliamentary oversight in the areas of competence by monitoring the implementation by public authorities of the Court of Auditors' recommendations. The draft Code was examined in first reading in the sitting of the Parliament of 22 November 2018, but it was not subsequently brought to the public for discussion, and it is not known how this legislative initiative will develop.

Sub-indicator 12(b) – Co-ordination of controls and audits of public procurement

This sub-indicator assesses whether internal controls, internal audits and external audits are well defined, co-ordinated, sufficiently resourced and integrated to ensure the consistent application of procurement laws, regulations and policies and the monitoring of performance of the public procurement system, and that they are conducted with sufficient frequency.

There is a comprehensive manual on public internal financial control, prepared by the Ministry of Finance with support from the Dutch authorities and issued in December 2015, available on the Ministry's website¹. However, despite the ample regulation of internal audit, practices lag very much behind, already because of the lack of skilled staff and the related fact that many authorities have not even managed to engage any internal auditors. As a consequence, rather few internal audits are carried out for the moment.

During its audits of public procurement, the Court of Accounts is guided by the International Auditing Standards of INTOSAI as well as by the Court of Accounts' Financial Audit Manual (adopted by its Decision no. 101 of 21 December 2018). Its updated version provides guidance on auditing the significant components of public procurement, such as the specifics of the procurement cycle and related transactions (p. 46), sample selection (p. 79), clarification and error aggregation (p. 84), and red flags and indicators of possible fraud (p. 148).

The Court of Accounts' Guide on Compliance Audit (approved for testing by its Decision no. 55 of 20 September 2019) contains practical examples (pp. 10, 12) of possible approaches applicable in a compliance audit of the public procurement process or a stage thereof.

The Court of Accounts' Performance Audit Manual (approved by its Decision no. 54 of 5 December 2016) is based on the practical examples (pp. 34, 44, 107, etc.) applicable in an audit mission that is meant to evaluate the public procurement procedure.

The Court of Accounts reviews the internal management control system in the field of public procurement, assesses risks and plans audit actions according to the situation in all financial audits, compliance audits and in specialized missions of compliance and performance audit. As a result, aspects related to public procurement are verified in approx. 90% of its public external audit missions. The vast majority of the corresponding audit reports present findings on public procurement. Sometimes this information is amplified in a Letter to Management, which is sent to the head of the public authority concerned, without publication.

The audit findings can be studied by accessing the reports published² on the website of the Court of Accounts. From 2005 to 2018, the Court of Accounts conducted regularity and performance audits and issued corresponding reports. Since 2018, the Court of Accounts has performed three distinct types of

¹ See https://mf.gov.md/sites/default/files/documente%20relevante/m_audit_intern.pdf

² See <http://www.ccrm.md/hotariri-si-rapoarte-1-95>.

audits (financial, compliance, performance). For 2020, the Court of Accounts has planned several compliance audits of public procurement (Ministry of Defence; Ministry of Justice, including penitentiaries; Ministry of Internal Affairs, etc.).

However, the share of performance audits is still very low and the most recent one on public procurement conducted by the Court of Accounts dates from October 2015¹. This situation would seem to require further attention to the capacity of the Court of Accounts and its staff to carry out public procurement audits, especially those which – as appropriate – focus on the performance of the contracting authority and whether and to what extent any procurement carried out meets the actual, underlying needs and provides value for money.

According to the activity report² of the Court of Accounts, in 2019, 54 decisions were drawn up regarding the examination of the results of the audit missions and 1118 requirements and recommendations were submitted, with an execution / implementation term that varied from 3 to 12 months. The audited entities take measures for their implementation and regularly inform the Court about this. Out of the 469 recommendations with a deadline until the second - fourth quarter of 2020, about 30.5% of them were executed. In the case of recommendations submitted directly to the central public authorities, the degree of execution was around 56.8%.

Sub-indicator 12(c) – Enforcement and follow-up on findings and recommendations

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time.

Audited entities and other institutions referred to in the auditor's report are obliged³, within the term established by the Court of Accounts, to report on the implementation of the recommendations in the auditor's report or on the reasons why they were not implemented. The Court of Accounts establishes concrete reporting deadlines for the implementation of the recommendations submitted depending on the complexity of the measures to be taken for their implementation.

The Court of Accounts shall monitor the implementation of the recommendations through (1) the procedure provided by the internal regulations, (2) within the mandatory annual audits, but also (3) during the follow-up missions planned separately in the annual program of the audit activity.

Through its reports, the Court provides recommendations that are likely to make a significant contribution to addressing the weaknesses or issues identified by the audit, the implementation of which is mandatory. During 2018, 1681 requirements and recommendations were submitted, the deadline for their implementation, depending on their complexity, ranging from 1 to 12 months from the date of publication of the Decisions of the Court of Accounts in the Official Gazette of the Republic of Moldova.

The audited entities are legally obliged to take measures for their implementation and to periodical informing the Court about this. However, although the term of execution of 1395 requirements and recommendations (83%) expired in the II-IV quarters of 2019, only about 32% of the total for 2019 were reported to have been implemented by 31 March 2020.

¹ See <http://ccrm.md/hotariri-si-rapoarte-1-95?idh=767>

² Available at <http://www.ccrm.md/storage/upload/reports/postari/184/pdf/d1bade4c31667c5bdd3f5d2543f3a5da.pdf>

³ Law no. 260/2017, Art. 37

Sub-indicator 12 (d) – Qualification and training to conduct procurement audits

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task.

Apart from the training in general financial management, including auditing, provided at institutions of higher education, the Court of Accounts has on-the-job training for newly engaged auditors and for the professional development of regular, based on its own manuals (see sub-indicator 12(b) (b) above). This training is organised and delivered by the Vocational Training Directorate within the General Directorate for Methodology, Planning and Reporting.

In 2018, six training sessions were conducted (for a total of 71 hours) in the field of public procurement, including in terms of transparency of the procurement process, and attended by 92 employees of the Court of Accounts (82% of total employees with audit responsibilities). In 2019, 100 employees were trained (89% of total employees with audit responsibilities) in five training sessions (for a total of 34 hours). During the professional training phase of the certification process of public auditors, special attention is paid to familiarizing employees with audit responsibilities with the rigors and the existing national regulatory framework in the field of public procurement.

On the other hand, there is no corresponding programme for internal auditors within the contracting authorities.

The Court of Accounts has well established criteria and procedures for the selection, engagement and management of auditors, and applies them as a matter of routine in its regular operations.

Corresponding criteria for internal auditors also exist, but their application by contracting authorities is quite limited, in the absence of established practices and, frequently, of adequate resources for their engagement and management.

- **Substantive gaps and their associated risks**

The various institutions involved in audit and control suffer from a lack of a harmonised, overarching approach for audit and control; as a result, there are gaps and overlaps in their roles, responsibilities and activities and the requirements and criteria applied in their work are not uniform across the board, so contracting authorities may face repeated checks of the same actions as well as diverging or even contradictory expectations and obligations.

Despite its great potential for improving public procurement, internal audit still remains very underdeveloped and has a long way to go. Policies and procedures as well as guidance and training materials are available but internal audit is not yet widely practised by knowledgeable and skilled practitioners.

Closing both gaps has the potential to greatly improve efficiency, economy and integrity in public procurement and not closing them is therefore associated with high risks.

- **Main recommendations**

Review the approach to audit and control with a view to simplify the approaches and the institutional set-up, clarify roles and responsibilities and reassign them in a way that eliminates gaps and overlaps.

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Harmonise the criteria and requirements applied in audit and control, so that contracting authorities can clearly know what is expected from them.

Intensify the efforts to roll out internal audit and make it effective, in harmony with measures taken to concentrate public procurement responsibilities to a smaller number of adequately staffed and resourced contracting authorities.

Specific gaps and corresponding recommendations for Indicator 12

No.	Specific gaps/shortcomings	Specific recommendations
12.a)	The Court of Accounts has room for further development of procurement audits, with relatively greater emphasis on outcomes and performance	Refocus the approach of the Court of Accounts when auditing public procurement towards outcomes and performance of procurement operations relative to their original objectives, the approaches taken and the resources used; by revising rules and procedures, (re-)training and (re-)allocating staff accordingly and adding staff and other resources as may be necessary for the purpose, and improving corresponding monitoring and reporting
12.b)	The findings and recommendations of the Court of Accounts are not fully applied in a timely and transparent manner	Revise rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts, adequately sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings
12.c)	Existing arrangements for training and capacity building for internal auditors do not match the needs	Review the possibilities for improving and expanding academic training for future and current internal auditors and for complementing it by on-the-job training and other means for professional development, and incorporate corresponding measures in the broader measures for intensifying the development of internal audit

3.4.3 Indicator 13. Procurement appeals mechanisms are effective and efficient

Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

- **Findings**

Main substantive gaps and recommendations for Indicator 13

No.	Substantive gaps	Risk	Recommendations
13.1.	Possibilities to search for and analyse ANSC decisions from a number of points of view are very limited, so the case law that they establish is not easily accessible	High	Publish the decisions of the review body in a structured, searchable format and create a database of past decisions, in order to raise transparency and support consistency of decision making by the ANSC

No.	Substantive gaps	Risk	Recommendations
13.2.	There is no mechanism in place to ensure that the interpretation and application of the PPL becomes harmonised across the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, so contracting authorities and economic operators may face different or even contradictory expectations and requirements	High	Institutionalise regular consultations between the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, with a view to harmonise the interpretation and application of the public procurement law, in a way that adequately respects the specific mandates of the institutions concerned and recognises their independence

Sub-indicator 13(a) – Process for challenges and appeals

This sub-indicator looks at the process that is defined for dealing with challenges or appeals and sets out some specific conditions that provide for fairness and due process.

The National Agency for the Settlement of Complaints (ANSC) is the specialised review body in charge¹ of the first review of complaints against public procurement related decisions and actions or inactions of contracting authorities during preparation and award of public contracts; there is no requirement to first lodge a formal complaint with the contracting authority.

It is not limited with respect to the evidence it can use as the basis for rendering its decisions. Each party must prove what it claims, and in the event that further evidence is not accessible from open sources, the ANSC's decision is made only on the basis of the evidence submitted by the parties. In fact, the Administrative Code, Art. 22, provides that the competent public authorities and courts shall *ex officio* examine the facts independently, that they themselves determine the type and volume of research needed, and that they are not bound by or limited to neither the submissions by the parties nor their requests for evidence.

A decision by which the ANSC annuls, in whole or in part, the contested act is binding² on the contracting authority and, in general, its decisions are binding on the parties. As a result, any public procurement contract concluded in non-compliance with the decision of the ANSC is struck by absolute nullity. Nevertheless, the decisions of the ANSC can be challenged in court. This happens only in fairly rare cases³: five appeals against 200 ANSC decisions in 2017, 17 out of 726 in 2018 and 21 out of 805 in 2019. None of ANSC's decisions were struck down by the courts in 2017 and 2018 and only two in 2019.

Complaints have to be lodged⁴ no more than five or ten days (depending on the estimated value of the contract) after the complainant learned about the decision or other action against which the complaint is made.

¹ PPL, Art. 80

² PPL, Art. 86

³ See ANSC's annual report for 2019, p. 53; https://www.ansc.md/sites/default/files/document/attachments/raport_2019.pdf

⁴ PPL, Art. 83

The ANSC has to resolve the complaint on its merits within 20 working days from the date of receipt of the complaint. In duly justified cases, the time limit for resolving the complaint may be extended once by 10 days. However, the ANSC shall first rule on whether the complaint is receivable¹ and, if not, it shall state so within ten days, and the substantive examination of the case shall not proceed.

As required by the Remedies directives of the EU, Art. 32 of the PPL includes an obligation to observe a stand-still period of 11 or six days, depending on the contract value, until the contract can be signed. This time period is calculated from the date when the participating tenderers, including the winning one, are informed about the outcome of the evaluation. The intention is to allow complaints to be made against the award decision before the conclusion of the contract makes any remedies difficult or onerous to apply. However, this intention is not always possible to meet in certain specific cases (see also sub-indicators 1 (h) a) and 7 (a) d).

First, the stand-still period remains optional² when the contract has been concluded following a negotiated procedure without publication of a notice or when only one tender has been received in a competitive procedure. This means that other, prospective tenderers or any other party with legal standing to lodge a complaint effectively become denied the possibility to lodge a complaint against the choice of procedure (including the failure to use a competitive procedure) as well as against the award decision before the contract is concluded. On the other hand, the rules in the Remedies Directives concerning contract ineffectiveness are well transposed³ in the PPL.

Second, in principle⁴, also any other interested parties have the right to lodge complaints. However, in practice, they are not allowed to do so against the award decision, not only because they do not have access to any timely information about it, as discussed above, but also because the ANSC limits the right to do so to the participants in the tender, to the exclusion of anyone else.

Sub-indicator 13(b) – Independence and capacity of the appeals body

This sub-indicator assesses the degree of autonomy that the appeals body has from the rest of the system, to ensure that its decisions are free from interference or conflict of interest.

No fee is currently charged for lodging complaints. A recent, draft Government decree is understood to propose to amend the PPL by introducing a fee for lodging complaints, proportionate to the estimated value of the contract but with floor and ceiling amounts and to be reimbursed in case the complaint is accepted. The stated, underlying reason would be the allegedly high frequency of frivolous complaints against the CAPCS when procuring medical products and the resulting delays and complications in the process, and the presumption that a fee would be appropriate for resolving the problem. However, this draft decree has not yet been published.

Such fees are currently charged in some EU countries and, if the amounts are reasonable, would not contradict the applicable provisions of the EU Directives. In other countries there are no such fees, in particular where it is considered that access to justice should be free (e.g. Hungary). As recalled by the assessment team, experience from these same countries as well as from e.g. Turkey and several Western

¹ PPL, Art. 86 (1)

² PPL, Art. 32 (3)

³ PPL, Art. 88

⁴ PPL, Art. 82

Balkans countries seems to indicate that a fee is neither necessary nor sufficient for reducing or eliminating frivolous complaints and, in general, for preventing complaints from unduly delaying or complicating the procurement process, and that other measures can be taken for these purposes. Such other measures do not appear to have been much examined in Moldova, however, but would merit further consideration.

Apart from the provisions of the PPL on the submission and review of complaints and the status and work of the ANSC, the activities of the latter are further defined in Parliament's decision 271/2016 on the establishment, organisation and functioning of the ANSC.

However, the right or duty of the ANSC to examine or not to examine also other aspects of a public procurement process than those explicitly covered by the complaint received, and to take or not to take measures for addressing any other errors or omissions or illegal decisions than those complained against, is not clearly set out in the applicable regulations. While the ANSC initially appears to have had the ambition to carry out a general *ex officio* review of the whole process in each case, a subsequent court decision had the effect of limiting its role strictly to that of a complaints review body only, without any further supervisory role or authority.

Possibly as a consequence of the same court ruling, Law 169¹ of 26 July 2018 deleted, with effect from 1 October 2018, the previous provision in the PPL (Art. 80 (4)) requiring the ANSC to report to the PPA any other violation of the PPL than that which was subject of the complaint. However, Parliament's decision 271/2016 on the set-up and the workings of the ANSC does not seem to have been revised accordingly. On the other hand, a recent draft Government decree seems to have the intention to clarify the situation by proposing to amend the end of Art. 84 (1) of the PPL to read "The [ANSC] is competent to resolve complaints regarding the public procurement procedures according to the regulation of its organisation and functioning, *within the limits of the claims made in the complaint*". In any case, one of the obvious effects of the existing and proposed limits to the ANSC's rights and duties is that any other violations of the PPL than those covered in a specific complaint are now less likely than at the beginning to be identified, reported and sanctioned.

In practice, the only remaining *ex officio* obligation of the ANSC's members and staff individually (or, possibly, the ANSC itself as an institution) appears to be that of any public servant to submit a report to the National Anticorruption Centre (or as may be applicable, other law enforcement bodies) about any case of possible corruption. This being said, many, if not all, deviations from or clear violations of the provisions of the PPL could potentially be the result of some form of corrupt behaviour and should therefore be duly reported if and when detected.

This situation, on the other hand, raises the additional, practical question of how clear cases of possible corruption could - or, even less, should - be distinguished from (other) deviations from the provisions in the PPL; the underlying principles seem to require that they should all be reported, and those reports should be acted on, to the extent that the ANSC would not be entitled to meting out at least a limited range of sanctions itself, among the other remedies at its disposal. This situation remains to be clarified, with due attention to possible implications for resources and staffing of the ANSC and other authorities concerned.

¹ <http://lex.justice.md/md/376886%20/>

There is no automatic suspension of public procurement proceedings when a complaint is lodged. However, in duly justified cases and for the prevention of an imminent damage, at the request of the interested party, until the resolution of the merits of the case, the ANSC has the right¹ to issue a decision within three days, to suspend the public procurement procedure. Similarly, the contracting authority does not have the right to conclude the public procurement contract until the final decision by the ANSC. In practice, few or no public procurement procedures have been suspended until recently, as the *ex officio* suspension of the conclusion of the procurement contract serves the same purpose. Nevertheless, the ANSC has started making more use of this legal provision and decided to suspend some procedures, as per the decisions² published on its web page.

So far, the ANSC has always delivered its decisions within the legal time frame. However, there are cases when procurement proceedings are nevertheless delayed (because a contract cannot be signed until the complaint has been resolved) because of frivolous complaints which not only may cause delays but also block scarce administrative resources. They are not specifically identified as such and it is therefore challenging to calculate and demonstrate their occurrence and effects. In the data from the ANSC report for 2019 it could nevertheless be assumed that some of the complaints that remained without examination could represent frivolous complaints. Thus, out of the total of 805 complaints in 2019, in the case of 600 (75%), the ANSC examined the substance, while out the other 205 complaints, 49% were submitted too late, 14% were not within the competence of the ANSC, 10% were non-compliant, 10% remained without object, and 17% were returned without being examined.

The PPL states³ that the decisions of the ANSC are binding on the parties. However, the Contravention Code does not include any corresponding provisions and no sanctions are established for failure to abide by the ANSC's decisions.

Parliament decision 271/2016 sets the number of ANSC staff positions to 30, remunerated according to the applicable legislation (Law on civil service). However, in 2019, these staff positions were only filled to 63.3 % (19 staff members, on an average). Among other possible reasons, this reflects the fact that reviewing and resolving complaints is a fairly narrow area, where it is necessary to accumulate knowledge and skills in the field of law and public procurement, concessions, utilities. This is said to be a major difficulty in recruiting competent staff, since such specialists are not available on the labour market in sufficient numbers to cover demand.

On the other hand, the current performance of the ANSC seems to indicate that, despite not having been able to fill all staff positions allowed, it is adequately resourced and staffed to fulfil its functions. This being said, its internal organisation and ways of working may merit review. In particular, there is no evidence that the ANSC is using any kind of case management system that would help it ensure that complaints are recorded and dealt with in ways that are fully transparent and raises the ANSC's administrative efficiency, also allowing the ANSC itself to have easy access to relevant, past decisions and thereby better ensure the consistency of its rulings, as well as giving any external interested party effective access to past rulings. In fact, a contracting authority may consider a certain approach, or an economic operator may envisage making a complaint, and only full access to a searchable data base of past ANSC rulings would give appropriate guidance for those seeking to apply the applicable case law set by the ANSC. Doing so would

¹ PPL, Art. 85 (14)

² See <https://ansc.md/ro/content/decizii-suspendate>

³ PPL, Art. 86 (11)

then likely give the benefit of reducing the number of potential violations as well as the number of not well-founded complaints.

In face of the rising number of complaints, including frivolous ones, further measures could be envisaged with a view to quickly and reliably identify, examine and reject frivolous complaints.

The ANSC can use external expertise if needed, but this possibility in principle is facing practical limitations because of the difficulty in a small country like Moldova to find external experts who are both competent in the subject at hand and free from conflicts of interest.

Sub-indicator 13(c) – Decisions of the appeals body

This sub-indicator examines the decisions of the review body and what happens once they have been taken.

In order to resolve the complaint, the ANSC has the right¹ to request clarifications from the parties, to seek evidence and to request any other data or documents insofar as they are relevant in relation to the object of the complaint.

The ANSC must² be unbiased in its decisions. A survey conducted by the ANSC itself in the second half of 2019 indicates that 73% of responding economic operators consider the decisions of the ANSC to be “credible” and that 93% of the respondents consider that the procedure for examining complaints is duly carried out *inter parties*, in compliance with the principles of legality, speed and the right to defence. No separate, independent survey on the topic has been carried out during the MAPS assessment.

The remedies available are set out in the legislation³. After examining the contested action or decision from the point of view of its legality and validity, the ANSC may annul it in part or in whole or oblige the contracting authority to issue a decision or order any other measure necessary to remedy the actions affecting the procedure. The ANSC does not have the right⁴ to award the contract to another tenderer.

All decisions of the ANSC are published⁵ on its website in the form of PDF files, within the time limits set by the legislation. A separate overview of the complaints made is also published⁶ by the ANSC. In both cases, filters allow certain categories of complaints and decisions to be identified. In parallel, information on any complaints made is published in the e-procurement system⁷, but only for each individual procedure.

The possibilities to search decisions according to various criteria are thus rather limited. It is therefore difficult for both contracting authorities and economic operators to get a clear overview and understanding of the case law established by the ANSC decisions and to try to determine, by reference to earlier decisions, the possible outcome in case a complaint is envisaged to be made. In the absence of such a searchable database of past decisions, it is also difficult to examine, and even for the ANSC itself to ensure, the consistency of the rulings of the ANSC.

¹ PPL, Art. 85 (1)

² PPL, Art. 80 (12)

³ PPL, Art. 86 (3)

⁴ PPL, Art. 86 (7)

⁵ <https://ansc.md/ro/decizii>

⁶ See <https://ansc.md/ro/contestatii/2020>

⁷ www.mtender.gov.md

The ANSC has started addressing some elements of this issue by publishing its ‘unified practices’ based on the most frequent complaints and the ways the ANSC has resolved them. While only three have been published¹ so far and they do not diminish the need for a searchable data base of past decisions, it is nevertheless a useful initiative for raising awareness and creating greater predictability about the reasons for complaints, the way they would be addressed, and thus how to prevent them from being made in the first place.

The lack of easy, comprehensive access to a significant number of past ANSC decisions in a number of typical cases (frequently encountered subjects of complaints) also means that it is difficult to compare the ANSC’s interpretation of the provisions of the PPL with that of other advisory and supervisory bodies. This creates the risk for both contracting authorities and economic operators that they may face conflicting expectations and requirements from, e.g., the PPA, the CNA, the Court of Accounts, and the ANSC itself. There is currently no mechanism in place for harmonising the interpretation of the PPL among these institutions.

- **Substantive gaps and their associated risks**

Despite the efforts of the ANSC to ensure transparency, a substantive gap remains, in that there are rather limited possibilities to search for and analyse decisions from a number of points of view; as a result, it is difficult both to ensure (by the ANSC itself) and to verify (by external observers) the consistency of the rulings made and to get a clear view and understanding of the case law that they establish. The absence of such a searchable data base and of a case management system that would help generate contents for the data base and facilitate the work of the ANSC is therefore a gap that is associated with high risks if not closed.

Even if not explicitly required in the MAPS methodology, a second source of concern exists in that there is a risk that the interpretation and application of the PPL is not well harmonised across the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, so that contracting authorities and economic operators may face different or even contradictory expectations and requirements. This, in turn, creates uncertainty and constitutes a drain on scarce staff resources, with both leading to higher costs for both monitoring and for ensuring and demonstrating compliance, and may lead to risk avoidance by contracting authorities and their staff (often with negative effects on value for money) and less interest of economic operators to participate in public procurement (thus reducing competition and, again, value for money). For these reasons the associated risk is set to ‘high’.

- **Main recommendations**

Develop and introduce a fully searchable data base of decisions for both external and internal access, in the latter case possibly integrated with case management and document management systems.

Set up a framework for regular consultations between the authorities concerned about the interpretation and application of the PPL and, consequently, how advice should be given, complaints would be addressed, and requirements and criteria would be applied in audit and control.

Further recommendations for addressing specific shortcomings are listed here below.

¹ <https://ansc.md/ro/advanced-page-type/practica-unitara>

Specific gaps and corresponding recommendations for Indicator 13

No.	Specific gaps/shortcomings	Specific recommendations
13.a)	The question of possibly charging a fee for complaints has been raised but has not been comprehensively addressed	In consultation among all authorities concerned as well as with the business community and civil society, review the arguments made for introducing a fee and the practical consequences of doing so, identify and examine the actual reasons behind the problems intended to be addressed by a fee as well as alternative means for resolving them, and agree on and implement a solution
13.b)	Civil servants, including ANSC members and staff, have a general obligation to report possible acts of corruption, and any violation of the PPL may be the result of such acts, but there is no clear right or duty of the ANSC itself to meet this obligation (or not) by reviewing (<i>ex officio</i>) the whole procurement process where a complaint has been made	In consultation among all authorities concerned as well as with the business community and civil society, review the question of <i>ex officio</i> review of public procurement processes subject to complaints, examine the possible solutions with their advantages and disadvantages, and agree on and implement a solution
13.c)	The number of frivolous complaints is thought to be rising, creating fears of increasing delays in public procurement proceedings and case overload at the ANSC	Monitor the frequency, nature and underlying reasons of frivolous complaints and consider which measures may need to be taken in case they increase to the point of endangering the ANSC to do its work on time and with the required quality.
13.d)	Unnecessary delays to the procurement process may be caused by possibilities to repeatedly lodge complaints while proceedings are suspended, as well as by frivolous complaints	Review and revise the rules for when complaints may be made on what aspects of the public procurement process; analyse the incidence of frivolous complaints and seek better ways to quickly and reliably identify, examine and reject them
13.e)	The ANSC does not appear to have a well-functioning case management system including, in particular, a comprehensive, searchable data base of past decisions that is also freely accessible	Review and revise the ANSC's internal procedures and put a corresponding case management system in place, including a publicly accessible data base of past decisions
13.f)	No data is available for evaluating the risk of conflicting interpretation of the PPL by various advisory and supervisory bodies dealing with public procurement, including the ANSC	Review and compare the decisions and recommendations of the various advisory and supervisory bodies dealing with public procurement, including the ANSC; identify the nature and extent of any discrepancies; and, to the extent that such discrepancies are found, set up a consultation mechanism for harmonising the interpretation and application of the PPL's provisions among the bodies concerned

3.4.4 Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses i) the nature and scope of anti-corruption provisions in the procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

- Findings

Main substantive gaps and recommendations for Indicator 14

No.	Substantive gaps	Risk	Recommendations
14.1.	Low effectiveness of anti-corruption measures: procedures are in place, but not systematically applied and initial findings do not always lead to further investigation and even less convictions and sanctions	High	With external, unbiased expert assistance, review the actual functioning and outcomes of all measures in place for preventing, identifying and sanctioning fraud and corruption; identify shortcomings and their underlying reasons; revise the legal and institutional framework accordingly; and monitor the effects and the outcomes of the new approaches taken
14.2.	Lack of systematic review, analysis and follow-up of information in the form of declarations of absence of conflicts of interest and of assets held	High	Raise the level of transparency of the review of declarations of conflicts of interest and of assets as well as of the measures taken; monitor the work of the supervisory body in charge and ensure that possible breaches become investigated and, when applicable, duly sanctioned

Sub-indicator 14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties

This indicator assesses the existence of legal provisions that define fraudulent, corrupt and other prohibited practices and set out the responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

Definitions of fraud, corruption and other prohibited practices in public procurement are found in the legislation. The PPL refers¹ to bribery as the situation in which the economic operator proposes or agrees to propose, directly or indirectly, to any person with responsibility position or to any employee of the contracting authority a favour in any form, offer of employment or any other service as a reward for certain actions, decisions or application of a public procurement procedure to his advantage. Without giving strict definitions, references to prohibited practices can be found also in other articles, e.g. in the definition² of a non-compliant offer. However, the provisions are general and not harmonised with other applicable legislation in force and there are no effective means for monitoring their application and sanctioning any breaches.

Definitions of fraud, corruption and other prohibited practices, applicable to public procurement, can also be found in a number of other normative acts adopted from 2016 onwards. These include the National Strategy for Integrity and Anti-corruption (SANI) for the years 2017-2020 and its action plan³, which regulates the aspects of integrity in the public / private sector and define the general notions of corruption, corruption manifestations and other corrupt facts. Other applicable laws include law no.

¹ PPL, Art. 42 (1)

² PPL, Art. 1

³ Adopted by Parliament Decision no. 56/2017

82/2017 on integrity, law no. 133/2016 regarding the declaration of assets and personal interests, and law no. 122/2018 regarding integrity warnings.

The PPL sets out a number of cases¹ when tenderers or tenders are rejected, or contracts nullified as a result of corruption. Corresponding provisions are found in several Government decrees² regulating procurement practices. Further provisions regarding ethical and integrity behaviour, facts considered illegal and corrupt, obligations of contracting authorities to act and report such cases, but also other aspects are detailed in most of the standard documentation in public procurement.

The PPL stipulates³ the obligation of the contracting authority to take all necessary measures to avoid situations that may cause a conflict of interest to arise during the application of the procedure for awarding the public procurement contract. To this end, those engaged in the evaluation must sign⁴ a declaration of confidentiality and impartiality and refrain⁵ from participating if there is a situation of conflict of interest. There is also a corresponding obligation⁶ to exclude a tenderer who is in a situation of conflict of interest. However, according to information provided by the National Anticorruption Centre, many conflicts of interest remain undeclared and are not being addressed.

Further regulations applicable to conflicts of interest in public administration in general are found in the law of integrity no. 82/2017, the law regarding the declaration of wealth and personal interests no. 133/2016 and the law regarding the National Integrity Authority no. 132/2016. However, there is an unresolved overlap of competence between the latter authority and the PPA with respect to the measures to be taken if a case of conflict of interest is detected.

In law no. 82/2017 on integrity, law no. 133/2016 regarding the declaration of wealth and personal interests and law no. 132/2016 regarding the National Integrity Authority, there are explicit restrictions and limitations in connection with the termination of the mandate, employment or service relationships of officials in case they move to the private sector. The purpose is to prevent former public servants from obtaining benefits due to the previously held function and to information obtained in the exercise of that function.

Sub-indicator 14(b) – Provisions on prohibited practices in procurement documents

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include references on fraud, corruption and other prohibited practices, conflict of interest and unethical behaviour, as defined in the law in the procurement and contract documents.

The legal framework does not specify the obligation to insert in the procurement documents and the procurement contract the provisions regarding the prohibited practices, nor are there any instructions in this regard. Nevertheless, references in this regard are found in some standard documentation, though with certain overlaps, e.g. an obligation of the economic operator to include a "Declaration on ethical conduct and non-involvement in fraudulent and corrupt practices" in the tender and the requirement to indicate in Part III of the ESPC whether the tenderer falls under any of the criteria for exclusion. In fact,

¹ As in Art. 19 (10)-(12), 42 (1) and (4), 69 (6) and 71 (1)

² Government decrees 826/2012, 766/213, 668/2016, 669/2016, 987/2018

³ PPL, Art. 79 (1)

⁴ PPL, Art. 79 (5)

⁵ PPL, Art. 79 (6)

⁶ PPL, Art. 19 (3)

this latter requirement together with provisions in other legislation could well imply that the “Declaration” mentioned may not bring any clear benefits, while its use creates additional administrative burdens. On the other hand, the requirement for declarations on ethical conduct and non-involvement in fraudulent and corruption practices as part of the tenders and for the ESPD does not apply to all public procurement.

The legal framework does not provide an obligation to insert statements regarding fraud, corruption and other prohibited practices in the procurement contracts, and none have been found in the 69 contracts received from the PPA and analysed as part of the MAPS assessment.

Sub-indicator 14(c) – Effective sanctions and enforcement systems

This indicator concerns the enforcement of the law and the ability to demonstrate this by actions taken.

The PPA, the contracting authority and the economic operator are required¹ to immediately report to the competent bodies each case of corruption or attempted corruption committed by the economic operator or the representative of the contracting authority. A similar requirement is found in the secondary legislation². However, it is not abundantly clear how this requirement should be met in practice.

In addition, the general rules for reporting illegal practices, corruption acts and the like apply. They are provided in law no. 82/2017 on integrity, law no. 122/2018 on integrity warnings, law no. 1104/2002 on the National Anticorruption Centre, law no. 122/2003 containing the Code of criminal procedure, but also other normative acts, such as law no. 2/2016 on the prosecutor's office, law no. 320/2012 regarding the activity of the police and the status of the policeman, law no. 133/2016 regarding the declaration of wealth and personal interests, and law no. 132/2016 regarding the National Integrity Authority, as well as in some other normative acts.

Statistics regarding the number of reports of fraud, corruption and other prohibited practices in public procurement are not found, neither in the annual activity reports of the PPA nor in the annual activity reports of the National Anticorruption Centre. As implied by the latter reports and as stated by the CNA, a major problem, including in the field of public procurement, is the non-reporting of corruption cases and related to corruption by those who know about such cases. This is largely due to corruption, lack of independence in these bodies, lack of confidence in the CNA, lack of confidence in the justice of the Republic of Moldova, but also the fear that the denunciation will occur adverse consequences for the person or company making such a report, as illustrated by the results of the Impact Assessment Study of the National Integrity and Anticorruption Strategy - Moldova 2019³, elaborated by the Centre for Social Studies and Marketing "CBS-Research" at the request of the United Nations Development Programme.

As mentioned in sub-indicator 14 (a), evaluation criterion (b), there are several legal provisions in PPL and in subordinate normative acts according to which the economic operator is excluded from the public procurement procedures. Either the tender is rejected, or the procedure is annulled in cases with acts of corruption or the existence of definitive judgments of the courts. The PPL provides⁴ for exclusion of the tenderer if convicted, by final decision of a court, for corruption and fraud in the last five years. However, the PPL does not expressly exclude the bidder in the case of acts of corruption committed directly in the procurement procedure that takes place. According to the law, rejection of the tender and cancellation

¹ PPL, Art. 42 (3)

² E.g. Government decree no. 667/2016, point 21

³ See https://www.undp.org/content/dam/moldova/docs/Studiu_CBS_CNA_final%20clean_ROM.pdf.

⁴ PPL, Art. 19 (1), (2)

of the contract award procedure take place only after the acts of corruption become confirmed by a final decision of the court. In this case, these rules are ineffective, since the lawsuits may take a long time, even years, before such a final decision is reached. As a result, the contracting authority will have no reason to reject the tender or cancel the procedure which takes place in a much shorter time than the judicial process. At the same time, the legal framework does not provide for measures to suspend the procurement procedure or the tenderer in case of corruption.

As a complement to the above, a system has been introduced for creating a list of economic operators prohibited from participating in public procurement procedures. The contracting authority has then the obligation to exclude from the procedure any tenderer or candidate who is included in the list¹. In addition, the economic operator registered in the list or one that has at least one founder who is or was the founder of another economic operator registered in the list is not entitled² to participate in any public procurement procedures and the contracting authority must not award any public procurement contracts to it. Correspondingly, the contracting authority has to check the list before the start of the evaluation³. It should be noted that the current e-procurement system does not allow this rule to be applied, in that the qualifications and the grounds for exclusion of tenderers are not verified before an electronic auction is held.

The list is drawn up, updated and maintained in electronic form by the Public Procurement Agency⁴, which also takes the decision to list or de-list an economic operator, based on requests from a contracting authority or the ANSC or on its own initiative. An economic operator can be put on the list for up to three years in each case. Further details on the use of the list are regulated by Government decree 1418/2016,

The grounds for inclusion on the list⁵ partly overlap with the compulsory grounds for exclusion in the PPL⁶. On the other hand, the grounds for inclusion on the list also include failure by the economic operator to abide by its contractual obligations or delivery of goods, works or services of a lower quality than specified in the contract or the tender documents, in particular when this has led to the termination of the contract.

This last point is in line with the EU's Public Sector Directive⁷. However, the PPL does not contain any corresponding provision, so it is not possible for a contracting authority to "exclude from participation in a procurement procedure any economic operator [...] where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions", except by requesting the tenderer to be put on the list of economic operators prohibited from participating in public procurement procedures and waiting for this request to be approved. However, this cannot necessarily be done within reasonable time during an on-going evaluation process. There are also no other means for a contracting authority to easily access information about past instances of bad performance by a particular tenderer. In principle, the

¹ PPL, Art. 19 (3) i)

² Government decree 1418/2016 (20)

³ PPL, Art. 25 (2)

⁴ PPL, Art. 25

⁵ Government decree 1418/2016, item 14

⁶ PPL, Art. 19

⁷ Directive 2014/24/EU, Art. 57 4. (g)

compulsory contract execution reports could probably meet this need, but the brief information now published is not adequate for the purpose.

A contracting authority can make a request to the PPA for such listing up to 60 days after the appearance of any relevant grounds. The PPA has issued detailed instructions¹ for this purpose. The PPA then has to examine the alleged grounds and take a decision within 15 days and update the list on its website². The decision by the PPA can be challenged in court.

The PPA also has the right to delete an economic operator from the list. However, there are no specific provisions in the applicable regulations for how this would be done, on what basis and at what time. As a result, the use of the list is a blunt instrument that is difficult to use effectively and efficiently and provides little value in addition to the existing grounds for exclusion.

There is no segregated data available on convictions of fraud and corruption related to public procurement. Only reports with general statistical data from the activity of public anti-corruption authorities and courts are presented to the public. Consequently, it is difficult to identify and compile data regarding the companies or individuals who were investigated and found guilty of fraud and corruption in procurement; the number of companies or individuals who were prohibited from participating in public procurement (other than in the case of blacklisting according to Art. 25 of the PPL; see above); the number of civil servants investigated or convicted for fraud and corruption in public procurement; or the number of companies that have admitted to engaging in unethical practices, including offering any kind of bribes to obtain public procurement contracts.

Sub-indicator 14(d) – Anti-corruption framework and integrity training

This sub-indicator attempts to verify whether an anti-corruption framework is in effect, and if so, its extent and nature and any other special measures in place, such as integrity training programmes that can help prevent and/or detect fraud and corruption specifically associated with public procurement.

In the Republic of Moldova there are three main institutions in charge of prevention of corruption and fight against it: The National Anticorruption Centre (CNA), the Anticorruption Prosecutor's Office and the National Integrity Authority (ANI).

The CNA is a body specialized in preventing and combating corruption, acts related to corruption and acts of corruption, which operates according to the provisions of law no.1104/2002 regarding the CNA and other normative acts. The CNA is a unitary body, centralized and hierarchical, consisting of central apparatus and territorial subdivisions (North, Centre, South). In accordance with the Decision of the Parliament no. 34/2016, its staffing is limited to 359 full time positions.

Pursuant to the new law no. 3/2016 regarding the prosecutor's office, the prosecutor's office system includes the General Prosecutor's Office, specialized prosecutor offices and territorial prosecutor offices. The Anticorruption Prosecutor's Office is a specialized prosecutor's office, headed by a chief prosecutor, assimilated to the Deputy Prosecutor General and specialised in the fight against corruption offenses and acts related to corruption. It may have territorial offices or representations in the territory.

¹ See https://tender.gov.md/sites/default/files/instructiuni_lista_de_interdictie_2.docx

² See <https://tender.gov.md/ro/lista-de-interdictie>

The National Integrity Authority is responsible for the control of the declarations of wealth and personal interests, as well as the control of the compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. The control is carried out by ANI in accordance with the provisions of law no. 132/2016 regarding the ANI, law no. 133/2016 regarding the declaration of wealth and personal interests and law no. 82/2017 on integrity.

In the arsenal of the CNA there are a number of tools used to identify corruption risks, including in public procurement. In this regard, the CNA carries out the following measures¹:

- anti-corruption education;
- anti-corruption expertise of normative acts;
- assessment of institutional integrity;
- testing professional integrity;
- strategic and operational analysis of corruption;
- monitoring and evaluation of anti-corruption policies.

However, there is no mechanism in place specific to public procurement. Nevertheless, in the process of elaborating its analytical products, the CNA found the following problems in the field of public procurement:

a. Defective planning of public procurement

- In most cases, the contracting authorities did not plan public procurement efficiently, with initial formal plans and frequent changes being noted.
- The contracting authorities do not publish on the web pages the provisional / annual procurement plan, within 15 days from its approval or within 5 days from the modification.

b. Shortcomings in the preparation of the award documentation

- Providing incomplete information regarding requirements, criteria and rules offers possibilities of interpretation regarding the object of the contract and the selection of the interested offer.
- The inclusion in the documentation of the awarding of specific requirements, benefits some participants in relation to the other bidders.

c. Deficiencies in awarding contracts

- Determining the least advantageous offer considering only the lowest price (example of poor-quality food in educational institutions).
- Undervaluation of the bidders according to the qualification requirements (the personal, technical, professional, economic-financial capacity of the bidders). Examples of cases when newly created companies, with 1-2 employees, are selected for the start of complex works (tens of millions of lei).

d. Insufficient control in the process of contract execution

- Negligent attitude of the representatives of the contracting authority towards the quality of the execution of the contract (Ex: Receiving the acquisition object over the established time limits, with delays of up to 6 months).

¹ CNA 2019 Activity Report, https://cna.md/public/files/Raport_CNA_2019_ro_engl.pdf

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- Not checking the quality of the products received.
- Non-involvement the specialists in the field to receive goods, works and services (Ex: construction works, IT equipment, etc.).
- Failure to take actions to sanction economic operators.

e. Protecting the illegal actions of the actors involved in public procurement

- Prevention by the heads of subdivisions of the National Agency for Food Safety and the General Directorate of Youth and Sport Education of the Chisinau Municipal Council regarding the initiation of controls at the economic agents and educational institutions.
- The lack of evidence of the controls carried out by the National Agency for Food Safety and the National Agency for Public Health creates favourable conditions for committing abuses and acts of corruption among employees, which can also generate poor quality food products.

f. Public money allocated for non-functional information systems

- The information systems in the possession of 11 central public authorities and subordinated institutions were worth about 749 million lei. Of these, 13 information systems are non-functional, amounting to 28 million lei.

g. Increasing the value of the basic contracts, including over 15%

- In case of the designation as the winners of the offers with the lowest prices, agreements are often admitted to increase the value of the initial contract.
- The increases are allowed both within the legal threshold of up to 15% and above, and in some of these cases, abnormally low tenders were found, which represented up to 85% of the value of the works calculated by the contracted authority in the established way.

h. Not publishing data regarding inclusion in the debarment list

- The Public Procurement Agency does not permanently ensure the publication of new operators included in the Prohibition List (the example of a company that, despite the existence of a final court decision to be included in the list, was not included in the Prohibition list, and the respective company continues to win. public procurement contracts in the amount of 1.2 million lei).

i. Initiation of civil proceedings for the purpose of delaying inclusion in the Prohibition list. Omission of the term for requesting the prohibition.

- The request by the authorities to include the economic operators in the ban list, with the exceeding of the 45 days term, generates the rejection of the request by the PPA.
- The economic operators initiate court proceedings to delay the inclusion in the interdiction list, and in some cases, these processes last for even 3 years (the public procurement monitored in this sense has a value of 35.5 million lei).

j. The uneven application of the legislation by the judges regarding the decisions of inclusion in the interdiction list

- In 2 similar cases, the same judge took two diametrically opposed decisions.

k. The interdiction list only works for legal entities

- Identified several cases when the founders abandon their companies included in the Prohibition List and intervene in the process of public procurement with new companies, managed through

other persons, including their relatives (Example: in 2017 a company in the field of public food is included in the List of interdiction, and its representatives found another company with which it wins 450 public procurement contracts between March 2017 - October 2019, in a total value of over 100 million lei).

The CNA ensures the monitoring and evaluation of the implementation process of the main instrument of public policies in the field of integrity, the National Strategy for Integrity and Anti-corruption for the years 2017-2020 and its action plan, adopted by Parliament Decision no.56/2017. During 2019, two Monitoring and Evaluation Reports of the National Integrity and Anticorruption Strategy were prepared: the report for 2018 and the report for the first semester of 2019¹. The reports make a quantitative and qualitative analysis of the progress of the actions and identify the deficiencies and the challenges encountered by the implementing entities. Regarding public procurement, the National Strategy for Integrity and Anti-corruption provides for the approval and implementation of the sectoral anti-corruption plan in the field of public procurement. This plan was approved by Government decree no. 370/2018. It includes 21 actions to be taken by the responsible institutions in the period 2018-2020.

The anti-corruption authorities publish annual activity reports on the web, in which statistical data on legal proceedings and corruption convictions are calculated. In 2019, 640 criminal cases were started by the criminal prosecution officers from the CNA, of them 546 were corruption offenses and related to them, and of these criminal cases only 253 were finalized (46%), the rest of the criminal cases were terminated for various reasons. According to Strategic Analysis of the CNA regarding the sentences adopted by the courts in 2019 on criminal cases for corruption and corruption related facts and the profile of the subject of corruption offenses, 88% of the decisions taken by the courts on corruption files and those related to corruption are condemnation, and 12% of them are sentences of acquittal. The prison with real execution was applied in 13% of cases, and the average term was 2 years and 5 months. In most cases courts applied criminal fines, with an average value of 86,235 lei per case.

However, it is hardly possible to reliably identify the cases specific to public procurement included in the global figures above.

There are no special measures designed to detect and prevent corruption in public procurement. The same legal instruments are used for all areas when it comes to corruption. It should be noted that Art. 327 of the Contravention Code provides for sanctions in case of violation of obligations related to public procurement. However, the Code is not up to date in this respect and there is no body clearly responsible for examining such contraventions.

In the PPA's annual report for 2019 there is no mention about conducting special trainings regarding integrity for public procurement specialists from the contracting authorities. The CNA conducts thematic trainings at the request of the public authorities. In this regard, in 2019 a request was received from the PPA regarding the topics meant to strengthen the climate of integrity within public entities, and as a result the CNA conducted two trainings attended by 18 PPA staff members.

Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

This indicator assesses the strength of the public and the private sector in maintaining a sound procurement environment. This may be made manifest in the existence of respected and credible civil

¹ Monitoring report on the implementation of SANI sem. I 2019, https://cna.md/public/files/Raport_SNIA_sem_I_2019_final.pdf

society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social control.

In the Republic of Moldova there are civil society organisations that have strengthened their capacities in recent years, enjoying credibility in front of citizens, public authorities and international donors. Performing social audits and controls are some of the basic functions of civil society organisations.

Some of these organisations also specialised in public procurement. The area of activity of these organisations in the field of procurement includes: elaboration of analyses and studies; formulating proposals for improving public policies and developing public procurement policies; assessing the public's perceptions of the transparency, efficiency and integrity of the public procurement system; monitoring the activity of public institutions responsible for public procurement; monitoring public procurement by contracting authorities; training of actors in public procurement procedures and other subjects (contracting authorities, economic agents, civil society, etc.); developing guides for the subjects involved in the procurement procedures and challenging them; guiding and strengthening the capabilities of local civil society organisations to monitor public procurement, etc.

Among the civil society organisations that permanently approach the subject of public procurement are, at national level the Institute for Development and Social Initiatives (IDIS) "Viitorul", the Association for Efficient and Responsible Governance (AGER), Transparency International Moldova, Promo-Lex, Expert-group, the Public Association "Positive Initiative", while at the local level one may note the Lex XXI Human Rights Association, ADR "Habitat" Public Association and others.

The procedure¹ for including the representatives of the civil society in the composition of the public procurement working groups is a bureaucratic one and does not allow the participation in the procurement process of any citizen, who de facto and de jure is a member of the civil society. The civil society representatives cannot constitute more than 1/3 of the working group. In the absence of explicit provisions allowing the use of electronic means of communication, many of them find it difficult to use classic tools (official letters) for sending requests to participate, communicating with other members of the working group, and obtaining information quickly in order to attend the meetings of particular interest

As monitors of public procurement procedures, either through participation in working groups or through monitoring of purchases included in the MTender electronic system, civil society representatives often played a vital role in detecting illegal actions, publicising them and reporting to the authorities in charge.

One of the tools available for CSOs monitoring public procurement is to request the PPA to include a company in the Prohibition List for reasons of corruption or procurement fraud.

Actions to monitor procurement at national and local level by civil society do not always result in stopping procurement or holding those responsible to account, as the civil society is neither a control nor a law enforcement body. However, in some cases, as a result of the application of public pressure, some contracting authorities take such observations into account. A recent example is procurement in the context of the COVID-19 pandemic monitored by several active NGOs (IDIS, AGER, Positive Initiative, etc.). Thus, the civil society is reported to have identified several acquisitions that are not appropriate in the current emergency situation (cars, carpets, haunts, photo-video services, etc.) and reported them to the

¹ PPL, Art. 14

authorities. Although a decision has not yet been made to order the suspension of some acquisitions of the type mentioned, some authorities have on their own initiative cancelled the procedures initiated.

Business in the country is just taking the first steps towards implementing integrity standards within companies. The notion of compliance is new to the private sector, and one cannot yet speak of a culture and ethical behaviour in business and directly in public procurement. A recent study¹ shows that 80.8% of the companies do not elaborate an action programme with special anti-corruption rules and procedures; 76.5% of companies do not have procedures for preventing and sanctioning bribes; 66.1% of economic agents do not have procedures for preventing conflicts of interest; and 83.4% of the companies do not organize any training courses for employees or managers regarding the fight against corruption

At the moment, the internal integrity measures are largely limited to the adoption of codes of ethics in companies. According to the results of the Study of the impact assessment of the National Strategy for Integrity and Anticorruption - Moldova 2019², most of the economic agents (79%) stated that there is a Code of ethics in the organisation where they operate.

A similar situation also reigns in the business associations, many of which are poorly developed and have low capacities, including in the aspect of elaborating and implementing internal compliance measures.

Sub-indicator 14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour

This sub-indicator assesses the following: i) whether the country provides, through its legislation and institutional set-up, a system for reporting fraudulent, corrupt or other prohibited practices or unethical behaviour; and ii) whether such legislation and systems provide for confidentiality and the protection of whistle-blowers.

According to the Regulation on the functioning of the system of anti-corruption telephone lines, approved by law no. 252/2013, these are found at three levels: a) the national anti-corruption line; b) specialized anti-corruption lines; c) lines for information in individual institutions. The three levels of anti-corruption telephone lines are intended to work concurrently and to complement each other within public entities at central and local level in order to receive information regarding corrupt acts, to enable examining the information received and taking the necessary measures, including the presentation of the respective information to the competent body.

In law no. 122/2018 on integrity warnings, it is provided that the disclosure of illegal practices may be internal (communicated to the employer), external (communicated to the supervisory authorities) and public. The disclosure of the illegal practice is made in writing, through the electronic online disclosure system or to the anti-corruption telephone lines of the employers or of the supervisory authorities³. The identity of the employee who discloses illegal practices is not disclosed and is not communicated to persons suspected of such practices⁴.

¹ "Combating corruption in Moldova: what can the business do?", 2017, <http://viitorul.org/files/library/Raport%20Coruptie%20Biz%20rom.pdf>

² "CBS-Research", 2019, https://www.undp.org/content/dam/moldova/docs/Studiu_CBS_CNA_final%20clean_ROM.pdf

³ Law no. 122/2018, Art.7

⁴ Law no. 122/2018, Art.8

Most of the central authorities have established anti-corruption telephone lines (there is no assessment of the functionality of these telephone lines), but many local authorities are lagging behind in this respect, with the exception of second-level territorial administrative units, municipalities and big cities.

Law no. 122/2018 on integrity warnings came into force on 17 October 2018. It regulates the disclosures of illegal practices within public and private entities, the procedure for examining these disclosures, the rights of integrity warnings and the protection measures of the obligations of employers, the powers of the authorities responsible for examining such disclosures and the protection of whistle blowers. In order to detail some aspects, the Regulation regarding the procedures for internal examination and reporting of the disclosures of illegal practices has recently been approved¹.

However, there is still little evidence available about the effectiveness of these whistle blower protections.

The regulatory framework regarding integrity warnings and information disclosure is a new one, recently implemented, and the Regulation on procedures for internal examination and reporting of disclosures of illegal practices entered into force in January 2020. In this context, there is no information on developments regarding the disclosure of information, so there is no clarity about the existence of a functional system in this regard. Further disclosure of corruption acts and its history is included in the annual statistics of the notifications and cases investigated by the CNA, the Anticorruption Prosecutor's Office, and the ANI.

Sub-indicator 14(g) – Codes of conduct/codes of ethics and financial disclosure rules

This sub-indicator examines the presence and use of codes of conduct and other measures to ensure integrity in public procurement.

Law no. 158/2008 on the civil service and the statute of the civil servant stipulates the obligation of the civil servant to respect the rules of professional conduct. The civil servant bears disciplinary, civil, contraventional and criminal liability for the violation of these norms of conduct. There is also a special law, no. 25/2008, on the Code of conduct of the civil servant, which is mandatory for all civil servants.

Most of the central authorities have elaborated and approved, by internal order, Codes of Conduct for its officials. Such Codes of Conduct have also been approved by some local public authorities. Those public entities that elaborated and approved the Codes of Conduct, largely reproduced the provisions of the Code of conduct of the civil servant, adopted by law no. 25/2008. However, there is no data regarding the share of public entities, including contracting authorities, that have such a code of conduct in place. Although the State Chancellery has the power to monitor the application of law no. 158/2008, neither the State Chancellery nor any other public authority monitors the application of the Code of conduct of the civil servant. As a result, data on this aspect is missing.

One of the chapters of the Code of Conduct refers to the liability that arises for a civil servant in case of violation of the rules of conduct. This liability can be of several forms, including contraventional and criminal. The contraventional facts and the acts that constitute offenses are expressly established in the Contravention Code no. 218/2008 and the Criminal Code no. 985/2002.

All officials have the obligation to continuously improve their skills and professional training, and each public authority has the obligation to ensure the organisation of a systematic and planned process of

¹ Government decree no. 23/2020

continuous professional development of the civil servant, as set out in law no. 158/2008 on the civil service and the status of the civil servant and the Regulation¹ on the continuous professional development of the civil servants. Also, at national level, a corresponding training programme has been elaborated².

Aspects of integrity and rules of conduct are part of the training programs organized for civil servants. For example, the Professional Development Plans of civil servants under the command of the state³, elaborated and published by the Academy of Public Administration, includes courses such as ethics and integrity; internal public financial control; public procurement, etc.

The latest Report of the State Chancellery on the civil service and the status of the civil servant presents information from 2018⁴. According to this report, the share of trained civil servants continued to decrease in 2018, compared to the previous years, with about 46.6% being trained out of the total number of civil servants (62.7% were trained in 2017). However, according to the Impact Assessment Study of the National Strategy for Integrity and Anti-corruption - Moldova 2019, in the last years of activity, only about 56% of the respondents participated in some trainings on ethics and integrity norms

Conflicts of interests are sanctioned according to the provisions of law no. 133/2016 regarding the declaration of wealth and personal interests. Statements of assets and other useful information are systematically submitted, but there is no evidence that the institution responsible for monitoring (the National Integrity Agency, ANI⁵) takes the necessary measures, not even in cases reported by CSOs or the press, when these declarations are incomplete or erroneous or how evident conflicts of interest are mitigated or sanctioned.

- **Substantive gaps and their associated risks**

The main substantive gap with respect to anti-corruption measures in the public procurement system is the low effectiveness of the implementation of the various existing legal provisions. A number of procedures are in place for preventing, detecting and sanctioning cases of fraud and corruption but they are not systematically applied, and the initial findings of the various supervisory bodies involved are not always leading to further investigation and prosecution and even less to convictions. As a consequence, the incentives not to engage in fraud and corruption remain weak. When they happen, such cases may cause great cost and damage to the contracting authority and to the citizens which should be served by the procurement that it carries out. Unless duly addressed, this gap thus carries high risk.

In turn, this reflects gaps and overlaps in the institutional framework, e.g., the National Anti-corruption Centre, the National Integrity Authority and the Anti-corruption Prosecutor's Office have related and partly overlapping roles and responsibilities but there is little effective co-operation between them.

In parallel, the legal framework has a number of gaps or inconsistencies: with respect to public procurement, e.g., several laws and decrees create a general obligation for contracting authorities and

¹ Government decree no. 201/2009, Annex 10

² Programme of training of civil servants for the years 2016-2020, approved by Government decree no. 970/2016

³ Professional development plan 2nd semester 2019, <http://aap.gov.md/files/ddp/planuri/19/s2/cs/plan.PDF>

⁴ Report of the State Chancellery 2018, https://cancelaria.gov.md/sites/default/files/document/attachments/raport_anual_functie_publica_2018.pdf

⁵ See www.ani.md and <http://ani.md/ro/node/9>

other parties involved to report allegations of fraud, corruption and other prohibited practices, but there are no clear and comprehensive provisions about how to do this, so the obligation is not effective.

There is also a lack of systematic review, analysis and follow-up of information duly collected in the form of declarations of absence of conflicts of interest (as required from e.g. public procurement working group members) and of assets held (as required from all officials in the public sector). The immediate consequence of this gap is that many cases of conflict of interest and of ownership or control of tenderers by procurement officials or managers go undetected or are not sanctioned, and the corresponding risk must be assessed as high.

In addition, the normative framework in the field of public procurement does not regulate some aspects regarding integrity. There is no obligation to insert rules on fraud, corruption and other prohibited practices in procurement contracts. The legal framework does not provide for measures to suspend the procurement procedure or the tenderer in case of corruption and does not expressly exclude the bidder in the case of acts of corruption committed directly in the procurement procedure that takes place. There is an apparent overlap of competences and competition of rules in the event of an unresolved conflict of interest and the measures to be taken in such cases.

The regulatory framework regarding integrity warnings and information disclosure is a new one, recently implemented, and there is no clarity about the existence of a functional system in this regard. Until the new regulations, the non-reporting of corruption cases, including in the field of public procurement, is still a major problem, which may have its causes in the citizens' fear of and distrust in the investigative and judicial bodies of the Republic of Moldova.

The National Anticorruption Centre carries out thorough analyses, having at its disposal a series of tools provided by law to identify corruption risks, including in public procurement. However, the results of this analytical work are not necessarily observed in the direct fight against corruption and fraud in public procurement.

The annual activity reports of the competent anti-corruption institutions do not include statistics on the number of complaints of cases of fraud, corruption and other prohibited practices in public procurement, public entities and subjects involved in investigations and criminal cases related to public procurement, including the results of criminal proceedings on such cases.

Economic operators in the country and their business associations are just taking the first steps towards implementing integrity standards within companies.

- **Main recommendations**

Include provisions on corruption, fraud and other prohibited practices in public procurement contracts.

Regulate more clearly the situations and procedures for the suspension and exclusion of tenderers in cases of corruption.

Review and coordinate the rules now conferring the same powers on the Public Procurement Agency and the National Integrity Authority for the examination and settlement of cases of conflicts of interest.

Oblige senior management in all authorities to ensure the disclosure of illegalities in public procurement as well as the security of whistle-blowers and their protection from possible abuses and revenge; among

other means, by creating secure channels for communicating disclosures that ensure the confidentiality of the personal data of the whistle-blower, drawing up and maintaining the Register of disclosures of illegal practices and warnings of integrity, and approving and applying procedures for examining and reporting disclosures of illegal practices.

Specific gaps and corresponding recommendations for Indicator 14

No.	Specific gaps/shortcomings	Specific recommendations
14.a)	Provisions on fraud, corruption and other prohibited practices appear in tender documents, but with some overlaps and gaps and without any clear legal basis	Review the possible need to incorporate provisions on fraud, corruption and other prohibited practices in tender documents, in ways that close gaps and avoid overlaps; if needed, amend the legislation accordingly, as well as any applicable secondary legislation, standard forms and instructions for their use by economic operators and contracting authorities alike
14.b)	There are clear, general requirements for reporting cases of corruption or attempted corruption, but not for how this obligation should be met in practice, e.g. by systematic review of documents or by any other means; in addition, the requirements do not appear to be fully harmonised across all laws and regulations concerned	Review the requirements for reporting cases of corruption or attempted corruption, harmonise them across all applicable laws and regulations, and ensure that they are as clear and simple as possible and that there is adequate correspondence between monitoring and reporting obligations
14.c)	Data on cases of fraud, corruption and other prohibited practices in public procurement are incomplete and unreliable, because of deficiencies in monitoring and reporting and partly overlapping roles and responsibilities of various authorities	Examine the gaps and overlaps in regulations, institutions, practices and outcomes regarding monitoring and reporting of fraud, corruption and other prohibited practices in public procurement, as well as the underlying reasons; harmonise regulations, approaches and roles in ways that allow the situation in public procurement to become clearly identified and addressed; and monitor implementation of the measures taken
14.d)	The rules for applying grounds for exclusion and for debarment of delinquent tenderers are not effective, partly because the e-procurement system does not match the applicable legal provisions	Examine the qualifications of tenderers and whether they meet any grounds for exclusion, including debarment, at the beginning of the tender evaluation process, before any electronic auction or the like is held
14.e)	Past failures to meet contractual obligations are among the grounds for including economic operators on the list of those prohibited from participating in public procurement; however, this is not among the grounds for exclusion set out in the PPL and there are no efficient means for contracting authorities to learn about such cases	Amend the PPL to include provisions matching those of Directive 2014/24/EU, Art. 57 4. (g); ensure that the contract execution reports contain corresponding information and that these reports are duly published; give guidance to the contracting authorities about the new provisions mentioned and their use; and monitor their application and the outcomes

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No.	Specific gaps/shortcomings	Specific recommendations
14.f)	With revised grounds for exclusion and a working system for publishing and using contract execution reports, the lists of economic operators prohibited from participating in public procurement may no longer be needed	Review the system for prohibiting economic operators from participating in public procurement, and revise or abolish it as found appropriate
14.g)	Integrity related training for public procurement is little developed	Expand the offer of training on integrity related topics for public procurement specialists, as a complement to any wider ethics and integrity training (cf. item 14.k) below)
14.h)	Civil society, including business organisations, has still rather limited activities in monitoring public procurement and promoting integrity, and there is no strong enabling environment for giving them a meaningful role	Review the potential roles of various interested parties, in particular civil society, in monitoring public procurement, determine how this could be done in a comprehensive and transparent manner, and put in place corresponding mechanisms for participation and information sharing
14.i)	While legal provisions exist for disclosing and reporting cases of fraud and corruption as well as for whistle-blower protection, some practical means for the purpose (telephone hotlines and the like) are not yet in place in all authorities concerned and the practical effects of the legal provisions are not yet fully clear	Ensure that legal provisions and practical arrangements match up, and that reports and their follow-up are monitored and the outcomes published
14.j)	The actual use of the various codes of conduct officially prescribed is not monitored and no corresponding data is available	Monitor the use of codes of conduct and the means put in place to ensure that the obligations they include are met, review the possible need for improvements to their form, contents or application; and make corresponding changes to the applicable policies and practices
14.k)	Training on ethics and integrity, among other forms of professional development, is not provided to all civil servants	In the context of broader measures for improving the arrangements for professional development of civil servants, in response to the actual needs identified, develop curricula for training on ethics and integrity, covering also the particular aspects of public procurement
14.l)	There is no clear evidence available about the extent to which declarations of wealth and personal interests are made, whether and how they are examined, and how possible conflicts of interest are mitigated, in particular those with relevance to public procurement	Review the actual practices of how declarations of assets and interest are prepared, submitted and reviewed, how cases of missing, incomplete or false declarations are identified and sanctioned, how conflicts of interest are mitigated and how the proper functioning of the declaration system is monitored and enforced; and revise the legal and institutional set-up as may be needed to address the deficiencies found

4 Consolidated Recommendations

The following sections sum up the various recommendations made for improving public procurement in Moldova, with particular focus on the areas where major gaps and shortcomings have been identified. In order to be successful, these recommendations will need to be addressed in a clear, coordinated, well-resourced and carefully implemented manner. To this end, there is an urgent need for a unified, widely shared and formally adopted vision of public procurement reform in Moldova, in order to ensure national ownership and sustainability of the reform process, with clear definition of roles and responsibilities among the respective stakeholders, and clear and measurable objectives for the short, medium and long term.

This vision is likely to be formulated and detailed in the next, national public procurement strategy, with its associated action plans, that is due to be prepared and adopted no later than by the end of 2020. It would thus reflect the strong government commitment to continued reforms in the context of the Association Agreement with the EU. Some suggested elements of such a national reform strategy are presented below in Chapter 5 Draft action plan.

On the basis of the findings of the MAPS assessment, it is possible to identify the most important issues at hand and to formulate corresponding recommendations at the country level, as set out below. These overarching recommendations indicate the suggested, main priorities for action in the short and medium term.

The most urgent and important action is clearly the revision of the e-procurement system, which would also have strong beneficial effects for carrying out the other recommendations. These are complementary and should therefore be carried out in parallel; by their nature, they require a longer-term approach, even if each of them also has the potential for some “quick wins”, particularly concerning functions that a better e-procurement system should enable as soon as it becomes operational. One example of this would be that overarching recommendations II. and III. would facilitate the use of framework agreements, allowing rapid improvement of centralised procurement in health, which would then also benefit from measures under recommendations IV., V. and VI. in the longer term.

The subsequent, more detailed and specific recommendations are organised by pillar. They closely reflect the observed shortcomings in the actual situation, set against the requirements in the various indicators and assessment criteria. This may create certain apparent overlaps which, however, would evidently be eliminated in the final, national strategy for public procurement reform.

4.1 Overarching MAPS recommendations for Moldova

- I. Ensure that the PPL, the utilities law, the law on works concessions and services concessions, the law on PPPs and the regulation of procurement by SOEs are fully harmonised, in particular regarding the coverage of the respective procuring entities (e.g., commercial SOEs should rather not be covered), the award procedures to be used, and the handling of complaints, so that it is fully clear which rules apply to which procuring entities for which contracts, and that these rules are as coherent as possible.

- II. Prepare and issue secondary legislation, standard documents, procedural guidelines and training materials that are up to date and fully reflect the provisions of the PPL, revise them without delay as may be necessary to reflect changes in the legislation or in the public procurement market, and make sure that they can be accessed from and used in the e-procurement system.
- III. Take all and any steps necessary to make sure that the e-procurement system matches what the public procurement law requires or allows, that it provides procedural support for all steps and procedures in the public procurement cycle, that it ensures the greatest possible transparency of all procurement transactions, irrespective of contract value, and that its functionalities maximise administrative efficiency.
- IV. Adjust administrative procedures and budget regulations as required to make it possible for public procurement planning, execution and evaluation to be carried out in a longer-term perspective, while retaining flexibility to adapt to changing needs and allowing continuity of operations over the year and across fiscal years.
- V. In order to maximise economy, efficiency and transparency, ensure that all public procurement be carried out by contracting authorities that have fully competent, professional staff, working in an administrative department set up for the purpose and having appropriate tools, systems and administrative routines and resources at their disposal.
- VI. To strengthen the knowledge, skills and experience of public procurement staff and recognise their competence, define the skill sets required and the position descriptions to be used when engaging and managing officials with public procurement as their profession.
- VII. Systematically generate, store, collect and disseminate public procurement data, ensuring its availability through the e-procurement system, as needed for evidence-based policy making at national level and in individual contracting authorities and for allowing civil society, research and education institutions and the general public full and free access to a complete and clear picture of how authorities spend public funds and with what effect.
- VIII. Roll out internal audit to all contracting authorities, including public procurement as one of the main fields to be addressed; focus both internal audit and external audit more strongly on the performance of the authority; and ensure that findings and recommendations are effectively acted on.
- IX. Review and harmonise the approaches and scope of work of regulatory and supervisory authorities involved, directly or indirectly, in public procurement, so as to close gaps and avoid conflicts of roles and unnecessary overlaps and to ensure that any contracting authority or economic operator is treated in a fair and predictable manner, based on the merits of the case at hand.

4.2 Pillar I: Legislative and Regulatory Framework

1. **Continue amending the primary procurement legislation** in line with the timetable and the requirements in the Association Agreement, and **update and revise corresponding secondary legislation** accordingly, repealing any outdated or unnecessary decrees

2. **Ensure that** the implementing regulations and the corresponding functionalities of **the e-procurement system fully match the requirements of the public procurement law**; in particular, the sequencing of the evaluation steps and the full range of procedures and award criteria
3. **Simplify the form and contents of the standard documentation**, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case
4. **Require all public procurement documentation**, from procurement plans to ex-post evaluations of contracts implemented, **to be published and freely accessible on or through a central website**, using machine readable document formats
5. **Review and categorise all enterprises owned by the State or regional or local governments and their subordinate entities** in order to clarify the applicability of the public procurement law, the utilities law or the regulation on procurement by SOEs, and ensure that procurement by such enterprises not covered by these legal instruments is managed in accordance with general, good practices for the governance of public enterprises

4.3 Pillar II: Institutional Framework and Management Capacity

1. **Align the time horizon and the approach for high level procurement planning** with that for the medium-term budgetary framework, and adjust budget and disbursement regulations to **allow procurement to proceed in a regular fashion throughout the year** and across fiscal years
2. **Review the priorities and means of the Public Procurement Authority** and revise its duties, financing, staffing, operations and organisational structure accordingly
3. **Address the lack of skills and resources in many small contracting authorities**, by broad capacity building measures as well as by reducing their numbers and by consolidating procurement within each of them
4. **Replace the “working groups” for public procurement** by a requirement for all contracting authorities either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or to use the services of another authority with such a unit or of another, suitably competent external service provider
5. **Examine the scope in Moldova for** obtaining the benefits potentially offered by the **use of centralised procurement**, evaluate the advantages and disadvantages of various approaches, consider the creation of one or several central purchasing bodies, draft a corresponding model regulation and guidance materials for central purchasing bodies that fully reflects the opportunities offered by the PPL, and launch a pilot operation for central government entities or municipalities
6. **Recognise public procurement as a profession**, with corresponding positions introduced in the official classification of professions, together with commensurate approaches for engagement, management, training (possibly complemented by certification), evaluation and promotion of public procurement officials

7. **Review the information needs** for preparing and implementing strategies for the development of the public procurement system as well as for managing procurement in individual contracting authorities and for individual contracts, **identify the measures required for generating, collecting, compiling, analysing and publishing such information**, and adapt monitoring systems and approaches accordingly

4.4 Pillar III: Procurement Operations and Market Practices

1. **Collect more detailed and reliable data on actual procurement practices** in contracting authorities, identify typical problems encountered and skill shortages, as well as any deficiencies in the tools available and used (in particular, in the e-procurement system and in standard documentation), and use these insights for improving regulations and user documentation, adjusting training on offer for both contracting authorities and economic operators, and creating opportunities for exchange of views and experience
2. **Examine in further detail the reasons why economic operators would or would not participate in public procurement**, including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies for mitigating any barriers identified
3. **Raise contracting authorities' skills in preparing and carrying out procurement**, with greater focus on value for money and sustainability, by using simple and practical approaches matching the underlying needs and objectives and tailored to fit the supply market in question
4. **Analyse the Moldovan supply market** from the point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement

4.5 Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System

1. **Improve the generation of public procurement data** and the possibilities to access it in a way that allows also civil society to effectively monitor all stages of the public procurement cycle, and offer corresponding training
2. **Strictly observe existing legal obligations for public consultations**, in addition to a wider, proactive dialogue with the private sector and the general public, including effective measures for civil society participation as foreseen in the law
3. **Ensure that objectives and regulations for supervision and audits are harmonised**, properly applied, and effective, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources between the authorities concerned
4. **Intensify the development of internal audit** through increased training, advice and exchange of experience, if necessary, by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes

5. **Refocus the approach for auditing public procurement towards the outcomes and the performance** of public procurement operations, set in clear relation to their original objectives, the approaches taken, and the resources used
6. **Revise rules and procedures for monitoring the implementation of the recommendations** of the Court of Accounts and sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings
7. **Publish the decisions of the review body** in a structured, searchable format and create a database of past decisions, in order to raise transparency and support consistency of decision making by the ANSC
8. **Institutionalise regular consultations between the policy making, advisory and supervisory institutions** dealing with public procurement, including the ANSC, with a view to harmonise the interpretation and application of the public procurement law, in a way that adequately respects the specific mandates of the institutions concerned and recognises their independence
9. **Review** the actual functioning and outcomes of **all measures in place for preventing, identifying and sanctioning fraud and corruption**, including but not limited to public procurement; identify shortcomings and their underlying reasons; revise the legal and institutional framework accordingly; and monitor the effects and the outcomes of the new approaches taken
10. **Raise the level of transparency of the review of declarations of conflicts of interest and of assets** as well as of the measures taken, and ensure that possible breaches of the principles and regulations become investigated and, when applicable, duly sanctioned
11. **Review the system for prohibiting economic operators from participating** in public procurement and revise or abolish it as found appropriate, while at the same time improving the ways for determining and recording cases of failures of suppliers, contractors and service providers to meet contractual obligations and for making this information available to other contracting authorities

5 Strategic Planning

On the following pages, the consolidated recommendations set out in Chapter 4 of the assessment report have been restructured in the form of tables with suggested headings for defining and describing their implementation: timing, parties responsible, specific actions, priorities, conditions for success, and expected results. In its present version, this action plan template is only intended as a reference framework for the high-level discussions and decisions that will be needed for agreeing on the next steps, formally adopting a plan for public procurement reform, mobilising the necessary resources, and implementing the reforms. As revised and finalised, it may then also be used for high level monitoring of progress and outcomes. Evidently, both the format and contents may have to be adjusted in order to align it with any applicable, formal requirements under the Association Agreement with the EU.

Pillar I: Legislative and regulatory framework						
Recommendation	Timing	Responsible	Specific measures	Priority	Key conditions	Expected results
Continue amending the primary procurement legislation in line with the timetable and the requirements in the Association Agreement, and update and revise corresponding secondary legislation accordingly, repealing any outdated or unnecessary decrees						
Ensure that the implementing regulations and the corresponding functionalities of the e-procurement system fully match the requirements of the public procurement law ; in particular, the sequencing of the evaluation steps and the full range of procedures and award criteria						
Simplify the form and contents of the standard documentation , and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case						

Pillar I: Legislative and regulatory framework						
Recommendation	Timing	Responsible	Specific measures	Priority	Key conditions	Expected results
Require all public procurement documentation , from procurement plans to ex-post evaluations of contracts implemented, to be published and freely accessible on or through a central website , using machine readable document formats						
Review and categorise all enterprises owned by the State or regional or local governments and their subordinate entities in order to clarify the applicability of the public procurement law, the utilities law or the regulation on procurement by SOEs, and ensure that procurement by such enterprises not covered by these legal instruments is managed in accordance with general, good practices for the governance of public enterprises						

Pillar II: Institutional framework and management capacity						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Align the time horizon and the approach for high level procurement planning with that for the medium-term budgetary framework, and adjust budget and disbursement regulations to allow procurement to proceed in a regular fashion throughout the year and across fiscal years						
Review the priorities and means of the Public Procurement Authority and revise its duties, financing, staffing, operations and organisational structure accordingly						
Replace the “working groups” for public procurement by a requirement for all contracting authorities either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or to use the services of another authority with such a unit or of another, suitably competent external service provider						
Examine the scope in Moldova for obtaining the benefits potentially offered by the use of centralised procurement , evaluate the advantages and disadvantages of various approaches, consider the creation of one or several central purchasing bodies, draft a corresponding model regulation and guidance materials for central purchasing bodies that fully reflects the opportunities offered by the PPL, and launch a pilot operation for central government entities or municipalities						

Pillar II: Institutional framework and management capacity						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Recognise public procurement as a profession , with corresponding positions introduced in the official classification of professions, together with commensurate approaches for engagement, management, training (possibly complemented by certification), evaluation and promotion of public procurement officials						
Review the information needs for preparing and implementing strategies for the development of the public procurement system as well as for managing procurement in individual contracting authorities and for individual contracts, identify the measures required for generating, collecting, compiling, analysing and publishing such information , and adapt monitoring systems and approaches accordingly						

Pillar III: Procurement operations and market practices						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Collect more detailed and reliable data on actual procurement practices in contracting authorities, identify typical problems encountered and skill shortages, as well as any deficiencies in the tools available and used (in particular, in the e-procurement system and in standard documentation), and use these insights for improving regulations and user documentation, adjusting training on offer for both contracting authorities and economic operators, and creating opportunities for exchange of views and experience						
Examine in further detail the reasons why economic operators would or would not participate in public procurement , including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies for mitigating any barriers identified						
Raise contracting authorities' skills in preparing and carrying out procurement , with greater focus on value for money and sustainability, by using simple and practical approaches matching the underlying needs and objectives and tailored to fit the supply market in question						
Analyse the Moldovan supply market from the point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement						

Pillar IV: Accountability, integrity and transparency of the public procurement system						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Improve the generation of public procurement data and the possibilities to access it in a way that allows also civil society to effectively monitor all stages of the public procurement cycle, and offer corresponding training						
Strictly observe existing legal obligations for public consultations , in addition to a wider, proactive dialogue with the private sector and the general public, including effective measures for civil society participation as foreseen in the law						
Ensure that objectives and regulations for supervision and audits are harmonised , properly applied, and effective, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources between the authorities concerned						
Intensify the development of internal audit through increased training, advice and exchange of experience, if necessary, by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes						
Refocus the approach for auditing public procurement towards the outcomes and the performance of public procurement operations, set in clear relation to their original objectives, the approaches taken, and the resources used						

Pillar IV: Accountability, integrity and transparency of the public procurement system						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Revise rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts and sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings						
Publish the decisions of the review body in a structured, searchable format and create a database of past decisions, in order to raise transparency and support consistency of decision making by the ANSC						
Institutionalise regular consultations between the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, with a view to harmonise the interpretation and application of the public procurement law, in a way that adequately respects the specific mandates of the institutions concerned and recognises their independence						
Review the actual functioning and outcomes of all measures in place for preventing, identifying and sanctioning fraud and corruption , including but not limited to public procurement; identify shortcomings and their underlying reasons; revise the legal and institutional framework accordingly; and monitor the effects and the outcomes of the new approaches taken						
Raise the level of transparency of the review of declarations of conflicts of interest and of assets as well as of the measures taken, and ensure that possible breaches of the principles and regulations become investigated and, when applicable, duly sanctioned						

Pillar IV: Accountability, integrity and transparency of the public procurement system						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Review the system for prohibiting economic operators from participating in public procurement and revise or abolish it as found appropriate, while at the same time improving the ways for determining and recording cases of failures of suppliers, contractors and service providers to meet contractual obligations and for making this information available to other contracting authorities						

6 Validation

Validation of the findings and recommendations of the MAPS report has taken place in several steps, so as to ensure that the description of the situation and the gaps is clear, comprehensive and correct and that the recommendations are well founded and supported by the stakeholders involved. As indicated in the concept note, the assessment team had planned to hold several validation meetings in the course of the preparation of the draft report, in particular for verifying that the description of the situation and the gaps was complete and correct and that the underlying reasons behind the gaps were well understood.

Unfortunately, the restrictions stemming from the measures taken to mitigate the impact from the COVID-19 pandemic meant that these meetings could not be held as intended. Instead, key stakeholders were consulted by correspondence and by 'phone when the first draft of the body of the assessment report was being finalised. The stakeholders involved are presented in greater detail in Annex 3 (see Volume II). They have generally been very supportive of the assessment and the recommendations that have been made based on their inputs and will therefore be expected to actively support the implementation of the measures to be taken for implementing these recommendations.

The complete drafts were also formally reviewed in two steps by the Ministry of Finance, represented by the PPA.

After addressing the comments and suggestions thus received, the draft final report was circulated to all major stakeholders for their final review. Their corresponding inputs were duly incorporated into the initial final draft of the report, with the intention to discuss the findings and recommendations with the Government and to agree on priorities, responsibilities and specific measures, as the next step in the drafting of the new public procurement strategy and action plan for 2021-2025. However, these discussions were postponed, among other reasons, because of the deteriorating pandemic situation and the upcoming presidential elections.

Comments made by the World Bank's MAPS Global Team late October 2020 were reflected in further revisions of the final draft in November and early December 2020. Additional comments were solicited from the MAPS Technical Advisory Group (TAG) by the MAPS Secretariat late January 2021. Received early March 2021, they were duly considered in the preparation of a new version of the final report, submitted on 19 March 2021. Additional comments from a second review by the TAG were received on 19 June 2021 and the report was further amended in accordance with the suggestions made.

Validation steps and timeline:

Validation step	Timing	Comments
Validation meetings on site with Government entities and other stakeholders concerned		Cancelled as a result of the COVID-19 pandemic
Consultations on initial drafts with Government entities and other stakeholders concerned, by correspondence and telephone	April-June 2020	In lieu of validation meetings on site
Review of first full draft by Ministry of Finance	- 4 June 2020	MoF represented by the PPA
Review of draft final report by Ministry of Finance	- 8 August 2020	MoF represented by the PPA

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Validation step	Timing	Comments
Review of draft final report by all major stakeholders	- 18 September 2020	Circulated by the PPA to the private sector, NGOs, public sector, development banks and international community (response from EBRD received on 22 October 2020)
First review by MAPS Global Team	- 23 October 2020	Report amended accordingly
Review by TAG, second review by MAPS Global Team	- 2 March 2021	Report amended accordingly
Second review by TAG	- 19 June 2021	Report amended accordingly
First review by MAPS Secretariat	- 11 June 2021	Report amended accordingly
Second review by MAPS Secretariat	- 5 August 2021	Volume I approved for publication and Volume II amended accordingly
Report shared with PPA	- 7 August 2021	Publication of the report approved by PPA



MAPS

Methodology for Assessing
Procurement Systems

Moldova

Assessment of the public procurement system Volume II - Annexes

The World Bank Group



Government of Moldova



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Annex 1: Concept Note

I. Context

A. General

Country Overview

Moldova is a small, economically and culturally open, lower middle-income country with 3.5 million people in 2016. It is landlocked between Romania to the west and Ukraine to the north, east and south. Although Moldova is the poorest country in Europe, it has made significant progress in reducing poverty and promoting inclusive growth since the early 2000s. Poverty rate has declined from 26 percent in 2007 to 11 percent in 2014. Growth has been driven largely by consumption and poverty reduction mainly by remittances and pensions. Employment declined because of emigration and falling labor force participation, so wage income added little to improving living standards. Emigration of the working-age population and an annual population decline of around 1½ percent add to the country's economic, fiscal, and social fragility. Moldova is vulnerable to changes in external demand and climate shocks. It is also at risk because of high external debt and a legacy of political instability.

Economic Overview

The economy has expanded by an average of 5 percent annually, driven by consumption and fueled by remittances. The latter account for a quarter of GDP, among the highest share in the world.

Despite strong investments, growth slowed to 4 percent in 2018. Tax cuts, wage increases, and remittances supported growth of disposable income, resulting in a 3.2 percentage points contribution of private consumption to growth. Lower inflation, favorable interest rates and solid public investments underpinned investment growth. With strong domestic demand and stronger Leu (Moldova currency), imports expanded more quickly than exports. Favorable financial conditions and government spending expanded the construction sector.

European integration has anchored successive governments' policy reform agendas, but reforms that are good on paper have yet to turn into tangible results. A vulnerable political system, polarized society, adverse external environment, and skills mismatch in the labor market, along with climate-related shocks, are Moldova's biggest economic challenges.

Transparency, accountability, and corruption are crucial concerns. Business confidence is low, and the macroeconomic framework remains vulnerable. Continued economic stabilization, the advancement of key economic reforms, reduced corruption, and the creation of a rule-based environment for businesses are the country's key goals.

B. Public Procurement

Volume of public procurement: The volume of public procurement in 2016 was MDL 7.5 billion, which represented 5.6 percent of the total GDP (MDL 134 billion). Out of total volume of public procurement, procurement of goods and works equaled MDL 6.3 billion, while procurement of services (mainly non-consulting services) – MDL 1.2 billion. The highest volume of public procurement was registered in 2014 (9.67% of GDP) which decreased significantly in 2015 due to

the unfavorable macroeconomic trends and insufficient internal and external financing to cover the budget deficit. This led to the temporary suspension of budget spending and of public procurement tenders for all expenditures with the exception of those strictly necessary to ensure the functioning of state institutions. Since 2015, the volume of public procurement remained at the same level with a slight increase in 2017. The volume of public procurement in 2017 was around MDL 9.3 billion, out of which MDL 7.6 billion spent in goods and works and MDL 1.7 billion – in services. In 2018, the volume of public procurement was around MDL 10.5 billion which represented an increase by 22.11% compared to year 2017.

Background of Reforms

In the years immediately following its independence from the Soviet Union in 1991, public procurement in Moldova was characterized by an uncertain legal framework and a lack of firm government control over the expenditure of public funds on the procurement of goods, works and services for state needs. While much of the state orders and contracts systems, which the country inherited from the old central planning model, were quickly abolished, they left a legislative and procedural vacuum that the Government began to fill on a piecemeal basis, firstly through a Resolution on State Orders in 1991 and, later, by a Regulation on public works in 1993. However, neither of these instruments came close to achieving the kind of competitive, rules-based public procurement system that Moldova would need as an integral part of its journey towards a market economy. With assistance from the World Bank, Moldova's first significant step towards subjecting government contracts to meaningful competition was achieved by the enactment of the Law on Procurement of Goods, Works and Services for Public Needs, dated April 30, 1997. Shortly after the enactment of the law, the Government established the National Agency for Government Procurement (NAGP), which was charged with implementing procurement procedures on behalf of the public procurement institutions.

The first Country Procurement Assessment Report (CPAR) on Moldova, conducted in June 2003, came at a time when the country had publicly committed itself to the signal departure of acceding to the WTO Agreement on Government Procurement. The report included an agreed Action Plan with short-, medium- and long-term actions for public procurement reform in Moldova.

Since the 2003 CPAR, the World Bank continued to support the Government's efforts in this area with analytical work and technical assistance under the following instruments:

- An IDF Grant for Development of Public Procurement Infrastructure to support implementation of a proposed reform program from the NAGP in a timely and effective manner (2004-2008);
- Two Public Expenditure and Financial Accountability (PEFA) Assessments in 2006 and July 2008; and
- A Corruption Vulnerability Scan for Moldova in May 2008.

Also based on the 2003 CPAR and follow-up activities, the Government took several actions in the area of public procurement, including: (i) Enactment of the PPL (April 2007); (ii) Establishment of the Agency for Material Resources, Public Procurement and Humanitarian Aid (AMRPPHA) (April 2007); (iii) Establishment of Oversight Committee to monitor public procurement activities and ensure compliance with the PPL (May 2008); (iv) Self-assessment of the national public procurement system using OECD/DAC Methodology (October 2008); (v) Performance Audit by Court of Accounts, first of its kind for public procurement (May 2009); and (vi) Decision to restructure AMRPPHA and establish the Public Procurement Agency (November 2009).

The second CPAR was conducted in June 2010 with the objective to provide the Government with an assessment of the progress made on public procurement reform since the earlier report; review and comment on the findings of the self-assessment conducted by the Government; and develop an Action Plan to implement the next stage of reform and assist the Government in prioritizing these actions. The 2010 CPAR included in-depth review and analysis of procurement operations and practices in the health, education and transport sector and presented cases/examples to underpin the recommendations. Another area included in the scope of that CPAR was e-procurement system and its assessment to support the Government's efforts on e-GP and public sector reform, including design and implementation of e-GP.

Following the 2010 CPAR, the World Bank continued to support the Government in its reforms in this sector with two projects:

- An IDF Grant for Strengthening Public Procurement in Moldova (2012-2015) which had the objective to assist the Government in improving transparency and efficiency of the public procurement system by: (i) designing and rolling-out the electronic tools for public procurement; (ii) building procurement capacities in the country.
- Open Contracting Project in Moldova (2015-2017) which intended to contribute to the improvement of the effectiveness of public contracting through increasing the levels of disclosure of information and data at all the stages of public contracting, enhancing the capacities of the Government and civil society to engage constructively and creating more and better opportunities for the participation of non-government stakeholders in public procurement.

General

Moldova's legal framework for its public procurement system is being brought closer to EU standards. The new Public Procurement Law (PPL) No. 131 of July 3, 2015 has been adopted entering into effect on May 1, 2016. The new law provides a satisfactory, basic regulatory framework and incorporates the fundamental EU principles governing the award of public contracts. However, some provisions are not yet fully compatible with EU requirements and will require further amendments. Procurement in the area of defense and utilities remains unregulated, while the legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation.

Further revisions of the legislation will have to be made in application of the timetable for full alignment with the EU Directives on public procurement set out in the Association Agreement between the EU and Moldova.

Public Procurement Legal Framework

The PPL is the governing law in public procurement. It covers the procurement of goods, works and services (including non-consulting and consulting services). Since its adoption, the PPL has been amended through fifteen amendments. The most recent amendment dates from March 11, 2019. The law applies, with several exceptions, to public procurement contracts estimated at a cost equal to or above the following thresholds: Goods and services – MDL 200,000, works – MDL 250,000 and social services and other services defined in the law – MDL 400,000 (all thresholds exclusive of VAT). All contracts estimated to cost less than the above thresholds are procured in accordance with the Public Procurement Regulation for small-value public procurement contracts, as approved by the Government. Public procurement primary and secondary legislation, including

the Standard Bidding Documents, are published on the website of the Public Procurement Agency and are easily accessible to the public.

Institutional Arrangements

Ministry of Finance (MoF): its role in public procurement, through its Division on regulating policies in public procurement, is to develop and promote policies in this area.

The *Public Procurement Agency (PPA)* is the institution, subordinated to the Ministry of Finance (MoF), responsible for: (i) developing and submitting to the MoF proposals to amend and complete the public procurement legal framework; (ii) establishing, updating and maintaining the List of Debarred firms; (iii) monitoring the compliance of public procurement tenders with the national legislation and analyzing the performance of the public procurement system; (iv) offering consulting and advisory services, as well as organizing various workshops on public procurement procedures; (v) developing and implementing mechanisms for certifying the specialists within contracting authorities responsible for conducting public procurement tenders; (vi) editing the Public Procurement Bulletin; (vii) maintaining the official website for public procurement; (viii) conducting quarterly and annual statistical analyses of public procurement; (ix) requesting from competent bodies any information required to perform its functions; (x) conducting communication campaigns on public procurement; (xi) issuing annual progress reports on public procurement system performance; and (xii) collaborating with international institutions and similar agencies in the area of public procurement.

National Agency for Solving Complaints (NASC): the NASC is an autonomous and independent institution which examines complaints arising from public procurement tenders.

e-Procurement

As per the PPL, Moldova's e-procurement system SIA "RSAP" (Automated Informational System "State Registry of Public Procurement") is an online electronic system, web-based, with a dedicated address, used to conduct public procurement tenders, publish procurement notices at the national level, submit and evaluate bids/proposals, award contracts and sign contracts applying an electronic signature. The owner of SIA "RSAP" is the MoF. The platform was developed in 2008 with limited funding available to expand its functionalities. Understanding the need to enhance this platform, the Government of Moldova (GoM) sought support of donors, including of the World Bank. However, the discussions on including an e-procurement component under one of the Bank-funded operations did not bring any results.

There have been multiple contributions from various international organizations focused on reforming and further development of the country's e-procurement system, as follows:

- EBRD implemented the project "Policy Advice and Support in Legislative Drafting for Procurement Reforms" which aimed to adjust the national legal framework related to e-Procurement to EU and GPA standards, as well as to develop the Technical Concept for the redevelopment of the e-procurement system.
- The EU Delegation launched the project "Technical Assistance in Reengineering of Selected Public Services in Moldova" which under one of the components aims to support the redevelopment of the e-Procurement system initially planned to be based on the Technical Concept developed by EBRD.
- A new digital service platform – MTender – was designed with EBRD's support to support public procurement from planning to payment stages. MTender has been piloted in

January 2017 and as of October 1, 2018 is mandated for use by all the contracting authorities through a government decision. It is planned that a technical audit of MTender will be conducted by EU Delegation, which will inform on available options for further development of the e-procurement platform.

Procurement Capacity

The role as a Public Procurement Officer in the Moldovan public sector is not considered as a profession, is not defined, and does not exist in the official classifier/registry of public servant positions. This leads in practice to low technical capacity of procuring entities where procurement is carried out by officials with positions like accountants, lawyers, etc. The high number of officers without proper skills and knowledge is a major problem and leads to poor and inefficient public procurement planning, low quality technical specifications and tender documents, and insufficient monitoring of execution of public procurement contracts. The country also lacks any certification programs for officials involved in public procurement or even for staff of the PPA. On top of this, the PPA faces a high turnover of staff due to unattractive remuneration.

National Complaints Handling Mechanism

With the adoption of the PPL, the complaints review function (previously handled by the PPA) has been attributed to the NCSA. The agency was established at the end of 2016 and is currently functioning at its full capacity since September 4, 2017.

State Owned Enterprises (SOEs)

SOEs are not subject to the PPL, not even those in the utilities sector. Only a few SOEs have their own internal procurement regulations, which have been developed by the institutions themselves without being assessed for quality and relevance by the PPA or other relevant institutions. The utilities sector is currently unregulated, which undermines Moldova's participation in the WTO GPA and its ability to meet the obligations under it. However, the Ministry of Finance with the support of OECD/SIGMA has drafted a new Law on utilities to transpose the EU Directive 25/2014. The consultations of the draft law are being finalized and it will shortly be approved by Government and later submitted to the Parliament.

II. Objectives of the Assessment

The main development objective of this project is to assess the quality and effectiveness of the Moldova's public procurement system through the MAPS II assessment tool. In order to achieve this objective, the assessment will: (i) identify strengths and weaknesses of the public procurement system in Moldova, and benchmarking it with international best practices and standards; (ii) identify any substantial gaps that negatively impact the quality and performance of the public procurement system; (iii) help the Government to prioritize efforts in public procurement reform to enable: (a) balanced accountability mechanisms between the Government, citizens, and the private sector; (b) governance of risk management in the procurement cycle; and (c) integration of the public procurement system with the overall public finance management, budgeting and service delivery processes; (iv) provide a comparative analysis of the country's two parallel procurement systems (Government and State-Owned Enterprises (SOEs)), between each other and against MAPS II standards; and (v) suggest recommendations to continuously enhance the quality and performance of the procurement system.

This is the the first MAPS assessment carried out in Moldova.

III. Tasks to meet the objectives

The procurement assessment will be guided by the MAPS analytical framework with four pillars on:

- (i) Legal, Regulatory and Policy Framework
- (ii) Institutional Framework and Management Capacity
- (iii) Procurement Operations and Market Practices, and
- (iv) Accountability, Integrity and Transparency.

It is proposed that the assessment will consider and customize, if needed to enable it to be fit for purpose, 14 qualitative indicators and about 15 of the 20 quantitative indicators provided in the MAPS II methodology, which together present the criteria for a “snapshot” of the actual system against internationally accepted procurement principles and practices. The findings of the quantitative indicators will serve as the baseline for assessment of impact of procurement reforms in future.

This assessment will be carried out by the World Bank, who will hire an individual international consultant to lead the analysis along with one or two local consultants for collection of data. The assessment will also involve interviews with the central and local contracting authorities, development partners supporting procurement reform in the country, professional bodies, and civil society organizations. Once the data analysis is completed, considering the inputs received through the interviews, recommendations will be derived and validated with the counterpart and other key stakeholders.

A MAPS Assessment Steering Committee led by the MoF will be set up and will include representatives from key ministries, other public institutions, civil society, private sector, as well as donors to make it a multi-disciplinary team.

Specific tasks to meet the objectives of the assessment will revolve around the following key functions:

a) Planning and Preparing the Assessment

- i) Cooperation with the Government, PPA in particular, on establishing the counterpart team (tentatively comprising of the MoF, PPA, NASC, Center for Centralized Public Procurement in Health (plans and conducts tenders, awards contracts and monitors contract execution for the supply of medicines, equipment and other medical products for health institutions), Court of Accounts (Supreme Audit Institution responsible for financial and performance audits in Moldova’s public sector), Public Property Agency (on behalf of the Government, performs the functions of the founder of State-Owned Enterprises and Joint-Stock Companies where the State holds shares), major procuring entities/contracting authorities, private sector, civil society, major SOEs and others), National Anti-Corruption Agency, EU and other donors who will provide guidance, share their views and experience;
- ii) Consultations with wider stakeholders to agree on the scope and finalize the concept note;
- iii) Establishment of the MAPS Steering Committee and the Technical Advisory Committee;
- iv) Setting up the MAPS Assessment Team (hiring of consultants); and
- v) Handling of logistical arrangements for the study.

b) Conducting the Assessment

The assessment phase will focus on the following elements:

- i) Analysis of the Country Context including mapping of stakeholders;
- ii) Assessment of the Public Procurement System:
 - Develop and regularly update assessment schedule;
 - Collect data (qualitative and quantitative), including data and inputs from similar and relevant diagnostic works already conducted in the country;
 - Apply the MAPS indicators using the following three-step approach:

Steps	Assessment
Step 1	<ul style="list-style-type: none"> • Review of the system applying assessment criteria expressed in qualitative terms. • Preparation of a narrative report providing detailed information related to this comparison (actual situation vs. assessment criteria) and on changes underway.
Step 2	<ul style="list-style-type: none"> • Review of the system applying a defined set of quantitative indicators (applying at least the minimum set of quantitative indicators defined). • Preparation of a narrative report detailing the findings of this quantitative analysis.
Step 3	<ul style="list-style-type: none"> • Analysis and determination of substantive or material gaps (gap analysis). • Sub-indicators that exhibit a “substantive gap” need to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system. • In case of identified reasons that are likely to prevent adequate actions to improve the system, “red flags” need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

c) Validation of Findings

- I) An Assessment Report (draft version and final report) will be prepared;
- II) A validation exercise involving key stakeholders will be conducted. This will provide an opportunity to agree on the findings of the assessment, on reform priorities and on a shared strategy for addressing the key weaknesses in the system;
- III) Review of compliance with the assessment process and assessment report with the MAPS methodology and quality review of the assessment results will be made by the MAPS *Secretariat (to the extent that it is in operation at the time) and a designated MAPS Technical Advisory Group. This mechanism will allow for the external certification of the MAPS assessment.

IV. Focus of the assessment

The MAPS II assessment will pay special focus on strengthening and promoting the procurement profession; improving efficiency and transparency of the procurement process; and strengthening contract management.

The assessment will cover the central and local public authorities indicated below, however, those may be adjusted during the course of assessment as needed due to logistical or other considerations. At the request of the Minister of Finance to include sector analysis into the scope, the team will

conduct the general assessment, which will be focused on two selected sectors, having as counterpart the following institutions:

a) Central Public Authorities (roads and health sectors)

- i) Ministry of Health, Labour and Social Protection/Center for Centralized Public Procurement in Health
- ii) Ministry of Economy and Infrastructure/State Road Administration

b) Local Public Authorities

- i) Municipalities/Local Rayon Council
- ii) Health Institutions

Apart from the general and sector assessment, and at the request of the Minister of Finance, the project will also include:

1. SOEs - Comparative analysis of the country's two parallel procurement systems (Government and SOEs), as follows:
 - (i) The status and role of SOEs in the country (from a macro-economic and overall governance and public administration points of view);
 - (ii) The importance of SOEs in Public Procurement under two angles:
 - their eventual participation in public procurement, either as agents for other/traditional government procuring agencies, or as bidders (unlikely for utilities, but possible in some sectors);
 - their share of the broad public expenditures and volume of public procurement when procuring for their own purposes.
 - (iii) In particular, rules and regulations that SOEs may be subject to when procuring for their own purposes, and the specific issues and challenges such may raise;
 - (iv) The articulation and consistency (or lack thereof) of the various legal instruments under which their role and functions in public procurement are laid out (there is no absolute model of how procurement carried out by SOEs should be legislated, but all instruments, in addition to the PPL, which include any provisions on how SOEs may carry out or participate in public procurement will be analysed).

The following SOEs have been identified to participate in the MAPS exercise:

- a) State Road Administration
- b) Red Nord

2. Spend Analysis- The purpose of this assessment is to help the Government reduce procurement costs and improve efficiency in public procurement to generate savings. The team will collect, classify and analyze expenditure data in the major spending sectors and will present it to the Government for further decisions on how to optimize the spending.

V. Information sources

1. Since Moldova has a well-functioning electronic procurement system, it is expected that the PPA which is responsible for managing it, has been collecting public procurement data. The team will design the templates for obtaining the public procurement data from the database,

both MTender and SIA RSAP, for carrying out its analysis including the application of indicators for measuring the performance of the public procurement sector. As needed, the authorities and the SOEs included in the assessment will also be requested to provide data and information needed for the assessment.

2. Other sources of information are, but not limited to:

- (i) Procurement audit reports;
- (ii) Information and data obtained from interviews with government personnel involved in procurement;
- (iii) Information and data obtained from various stakeholders indicated under the heading “Stakeholders” below;
- (iv) Findings and recommendations of any recent analytical work on public procurement carried out by the Government and development partners active in Moldova.

VI. Leadership and Assessment Teams

World Bank Team: As this is a World Bank executed study, the process will be co-led by S.M. Quamrul Hasan, Senior Procurement Specialist and Elena Corman, Procurement Specialist, under the overall guidance of V.S. Krishnakumar, Practice Manager. The team will liaise and collaborate within the Bank with Governance Specialists, Financial Management Specialists, Lawyers and Task Team Leaders for the selected sectors. The World Bank team will also include an international consultant and one or two local consultants.

Counterpart Team: The assessment will be led by the MAPS Steering Committee, which will be chaired by the MoF and the PPA and will include officials from NASC and two sector ministries.

Technical Advisory Group: The composition of the Technical Advisory Group (TAG) remains to be confirmed. The WB team will approach the following donors active in Moldova to seek their participation in the TAG:

Global Procurement Partnership MDTF donors:

- European Commission
- Swiss State Secretariat for Economic Affairs
- Government of the Netherlands
- French Development Agency

Other development partners:

- EBRD
- USAID
- DFID
- GIZ

VII. Stakeholders

Stakeholders for the assignment will include:

Public Sector

- Ministry of Finance
- Public Procurement Agency

- Ministry of Health, Labour and Social Protection/Center for Centralized Public Procurement in Health
- Ministry of Economy and Infrastructure/State Road Administration
- Public Property Agency/Selected SOEs

Local Rayon Councils/Municipalities

Court of Accounts

National Agency for Solving Complaints

National Anti-Corruption Agency

State-Owned Enterprises

- State Road Administration
- Red Nord

Private Sector through Chamber of Commerce and Industry of Moldova

Civil Society Organizations

International Organizations (listed in Section IV)

VIII. Validation of assessment results

1. To ensure that the assessment findings are valid and credible, a validation workshop involving key stakeholders will be held to agree on the findings of the assessment, reform priorities and have a shared strategy to address key weaknesses in the system.
2. As part of quality control, the assessment will undergo peer review from Governance Specialists, Fiduciary Specialists, MAPS Secretariat and stakeholders, including private sector, international organizations and civil society organizations.
3. The validation of the findings will include a review by the TAG with members to be confirmed (listed in Section VI).
4. External partners will be engaged from the early stages of the process for review of the Concept Note. They will also be key stakeholder to provide input during the study and be involved in the validation workshop

IX. Communication and Cooperation

Further to the team's discussion of the draft report with the Government counterparts, including the assessment counterpart team, the assessment team will prepare the final assessment report, which will be disseminated to the public after agreement with the Government.

The assessment team will advise the Government on dissemination of the final report. Once agreed, the team will help in conducting the dissemination workshop to all key procurement stakeholders, as well as to all international organizations active in the country.

The World Bank team will also cooperate with the Government in exploring ways and means of implementing the recommendations included in the final Assessment Report.

X. Outputs and timetable

The following table summarizes the outputs to be achieved, as well as responsible parties and deadlines for the MAPS assessment.

<u>Step</u>	<u>Responsible</u>	<u>Cooperation with</u>	<u>Timing</u>
1. Draft Concept Note:	Government and World Bank	Ministry of Finance PPA Internal and External partners	By mid-October 2019
2. Formation of MAPS Steering Committee and TAG	Government/World Bank		By mid-November 2019
3. Decision on Concept Note by the Government	World Bank		By mid-November 2019
4. (i) Organizational and logistical arrangements (including selection of experts/consultants and ensuring that required information and data is available); (ii) Identification and mobilization of stakeholders who will participate in the assessment process, as well as in the validation of the assessment report	Government and World Bank	Internal and External partners and Assessment Steering Committee	October - November 2019
5. Analysis of County Context, including the writing up of Country Context Chapter.	Assessment Team	Assessment Steering Committee	By November 30, 2019
6. Assessment of the Public Procurement System (detailed in the table below)	Government Assessment Team	Assessment Steering Committee	November 10, 2019 – February 14, 2020
7. Draft Assessment Report (including developing recommendations for prioritized reform)	Assessment Team	Assessment Steering Committee	February 15 – March 14, 2020
8. Validation of Findings and Recommendations	Government - facilitated by Assessment Team	Stakeholders External partners Peer Reviewers	March 15 – April 10, 2020
9. Peer Reviewing of the Report	Bank	Peer Reviewers MAPS Secretariat TAG	April 11 - May 31, 2020
10. Final Assessment Report	Assessment Team	Assessment Steering Committee In case of MAPS Quality assurance: MAPS Secretariat/ Technical Advisory Group	May - June 2020
11. Publication of MAPS Assessment Report	Government/MAPS Secretariat		July 2020

MAPS II Moldova Assessment Process Time Schedule

<u>Step</u>	<u>Responsible</u>	<u>Participants</u>	<u>Timing</u>
MAPS launch workshop: <ul style="list-style-type: none"> • Presentation of assessment purpose and approach; timetable; roles of parties involved; set-up of working groups (heads, members, etc.): in principle, one per pillar • Training on the MAPS methodology • Review of data sources, reference documents, other data needed; by sub-indicator and evaluation criterion • Organisation of data collection, guidance for quantitative analysis • Next steps, distribution of tasks 	Assessment team	Government, SC, WB, stakeholders (working group members)	13-14 Nov.
First assessment step: <ul style="list-style-type: none"> • Compilation and analysis of data for qualitative indicators • Launch of surveys; identification and extraction of other quantitative data • Final drafting of Country Context Chapter 	Assessment team; working groups	Working groups, WB	15 Nov. – 9 Dec.
First assessment workshop: <ul style="list-style-type: none"> • Overview of progress to date • Review and discussion of situation and gaps for qualitative indicators, by pillar • Identification of remaining data gaps • Next steps, distribution of tasks 		Government, SC, WB, working groups	10-11 Dec.
Second assessment step: <ul style="list-style-type: none"> • Completion of qualitative data analysis, suggestions for recommendations, identification of corresponding conditions for success/red flags • First compilation of inputs into report drafts (by pillar) • Continued collection of quantitative data, chasing survey results • Compilation and analysis of available quantitative data 	Assessment team; working groups	Working groups, WB	12 Dec. – 20 Jan.
Second assessment workshop: <ul style="list-style-type: none"> • Overview of progress to date • Review of report elements compiled to date • Agreement on analysis (situation and gaps), initial agreement on recommendations etc. for qualitative indicators • Review and discussion of situation and gaps for quantitative indicators, by pillar • Next steps, distribution of tasks 	Assessment team	Government, SC, WB, working groups	21-22 Jan.
Third assessment step: <ul style="list-style-type: none"> • Completion of data collection for quantitative indicators • Completion of quantitative data analysis, suggestions for recommendations, identification of corresponding conditions for success/red flags • Continued compilation of inputs into report drafts (by pillar) 	Assessment team; working groups	Working groups, WB	23 Jan. – 17 Feb.
Third assessment workshop: <ul style="list-style-type: none"> • Overview of progress to date • Review of report elements compiled to date • Agreement on analysis (situation and gaps) for quantitative indicators • Agreement on draft recommendations 	Assessment team	Government, SC, WB, working groups	18-19 Feb.

<u>Step</u>	<u>Responsible</u>	<u>Participants</u>	<u>Timing</u>
• Next steps			

XI. External support and budget

The budget of this project is USD 150,000 which has already been allocated. The external experts for the study will be employed by the World Bank. Logistical arrangements will be managed by the World Bank in collaboration with the MoF and PPA.

Budget breakdown provided in the table below:

Item	Total (USD)
World Bank staff	31,000
External Experts: International consultant (excl. travel costs) and two national consultants	72,000
Travel Costs (Travel, accommodation, per diem)	31,000
Spend Analysis	5,000
Consultation conference; Validation workshop	5,000
Other expenditures (translations):	6,000
TOTAL ESTIMATED COSTS	150,000

XII. Source Documents

Methodology for Assessing Procurement Systems (MAPS), Version of 2018 available at: <http://www.mapsinitiative.org/>

Annex 2: Assessment Team

As this assessment has been carried out as a World Bank executed study, the process has been co-led by S.M. Quamrul Hasan, Senior Procurement Specialist and Elena Corman, Procurement Specialist, under the overall guidance of V.S. Krishnakumar, Practice Manager. The World Bank team has also included an international consultant, Daniel Ivarsson, and two local consultants, Diana Enachi and Viorel Pirvan. Daniel Ivarsson has been the main drafter of the report, with the local consultants carrying out documentary research and interviews with stakeholders and reviewing and commenting on successive drafts of the report.

The team has had the benefit of receiving logistic and administrative support from staff in the World Bank office in Chisinau.

The assessment team has liaised and collaborated within the Bank with Governance Specialists, Financial Management Specialists, Lawyers and Task Team Leaders for the selected sectors.

Annex 3: Stakeholder analysis

A mapping of key stakeholders formally and informally linked to public procurement structures is found below. Initiated during the preparation of the MAPS concept note and refined during the assessment, it has helped identify and engage stakeholders as part of the assessment and as part of future reform processes. The understanding of how their interests, incentives, values and ideas are shaped by formal and informal rules has helped support stakeholder engagement in the assessment, both for the analysis of the situation and the gaps and for the development of recommendations that are feasible to implement.

The table identifies the major stakeholders and gives a summary overview of their roles and responsibilities in public procurement. Their presumed interests and their importance in public procurement are briefly stated, based on publicly available information and the assessment team's understanding of the situation. The last column indicates gaps and risks with respect to the need to obtain relevant data for the assessment, as well as the outline approach for interacting with the respective stakeholders. The MAPS assessment should be expected to deliver outputs and outcomes that in one way or another would meet the needs and interests of the various stakeholders, and this is always explained when working with them during the assessment.

Stakeholders	Public procurement roles and responsibilities	Interests and importance	Gaps, risks and approach
Ministry of Finance	<ul style="list-style-type: none">▪ Public procurement policy under responsibility of state secretary▪ Adopts draft legislation for Government approval, consultations, submission to Parliament; issues ministerial orders▪ For most contracting authorities, Treasury must register public contracts above MDL 10 000; executes corresponding payments▪ PIFC department dealing with internal audit; manual adopted but roll-out limited▪ Financial Inspection performs centralized compliance control	<ul style="list-style-type: none">▪ Official commitment to public procurement reform▪ Official requests for MAPS assessment▪ Leads development of e-procurement▪ Potential for decisive reform leadership	<ul style="list-style-type: none">▪ Weak evidence base; data access limited▪ Few skilled and experienced officials available to develop public procurement▪ Frequent changes of key decision makers, risk of lack of continuity and institutional memory▪ Engage in focused discussions on key issues; keep informed throughout the assessment

Stakeholders	Public procurement roles and responsibilities	Interests and importance	Gaps, risks and approach
Public Procurement Agency	<ul style="list-style-type: none"> ▪ Functions regulated by public procurement law, gov't decree ▪ Monitors public procurement, analyses developments, issues quarterly and annual reports ▪ Develops draft legislation; provides methodological support ▪ Develops training materials, carries out training ▪ Publishes notices, other information on its website; collects and files reports from contracting authorities 	<ul style="list-style-type: none"> ▪ Management commitment to best practices, reforms ▪ Ambitions may differ from mandate and resources ▪ Key entity for regulation, capacity building and monitoring 	<ul style="list-style-type: none"> ▪ Much data held is not easily accessible; weak administrative systems and tools; limited means for data generation and processing ▪ Work closely with management throughout the assessment; check reports; make clear, specific requests for any information that may be required
ANSC	<ul style="list-style-type: none"> ▪ Autonomous body, regulated by public procurement law and parliamentary decree ▪ Review body for complaints against public procurement actions and decisions of contracting authorities ▪ Publishes its rulings on its website ▪ Runs user surveys; issues annual report 	<ul style="list-style-type: none"> ▪ Anxious to remain a strong, independent entity ▪ Crucial entity for access to justice before contract signature 	<ul style="list-style-type: none"> ▪ No evidence of a case management system; decisions published are hardly searchable, difficult to analyze ▪ Go through complaints review practices with ANSC leadership ▪ Sample decisions for analysis
Court of Accounts	<ul style="list-style-type: none"> ▪ In charge of external audits in Moldova's public sector ▪ Regular audits include public procurement operations ▪ No recent performance audit of public procurement (a few planned for 2020) 	<ul style="list-style-type: none"> ▪ Stated ambition to expand public procurement audits, performance audits ▪ Potential to improve public procurement by enforcing its recommendations 	<ul style="list-style-type: none"> ▪ Public procurement issues only moderately prominent in findings and recommendations ▪ Low visibility; need to clarify focus, means, transparency, enforcement ▪ Review official reports; discuss with management, senior auditors
Other supervisory bodies	<ul style="list-style-type: none"> ▪ National Anticorruption Centre works on preventing and combating corruption, including in public procurement ▪ National Integrity Authority collects declarations of wealth and personal interests of public officials, including tender committee members; monitors conflicts of interest ▪ Competition Council works on preventing and combating anti-competitive behavior, including bid rigging 	<ul style="list-style-type: none"> ▪ Interests unclear, apart from official mandates; why so low apparent effectiveness? ▪ Roles essential; potential for good may be far greater than current performance 	<ul style="list-style-type: none"> ▪ Low number of successful prosecutions, not appearing to match reported perceptions of corruption etc.; activities reported on but low transparency of final outcomes ▪ Possible discrepancies in interpretation of public procurement rules; to be checked ▪ Meet management; analyses performance

Stakeholders	Public procurement roles and responsibilities	Interests and importance	Gaps, risks and approach
Contracting authorities at central government level	<ul style="list-style-type: none"> Procurement typically financed from the state budget (exceptions occur, e.g. health insurance and social insurance agencies) Many subordinate agencies, some notionally independent; all acting as contracting authorities on their own? Some ministries (e.g. Defense, Internal Affairs) procure for their subordinated units; otherwise, no centralized purchasing, other than by CAPCS in health 	<ul style="list-style-type: none"> Interests often seen are administrative efficiency, full spending of budget Important spenders Important demonstration effects of reforms 	<ul style="list-style-type: none"> Possibly limited access to data Invite ministries etc. to group meetings Meet CAPCS, State Road Administration, other selected agencies separately
Contracting authorities at sub-central government level	<ul style="list-style-type: none"> Procurement done by large number of regional and local authorities, nominally independent but said to have low financial autonomy (dependent on e.g. state subsidies): possibly limited freedom to manage public procurement Local governments associated in CALM Rules similar for all contracting authorities, but the legal definition may allow or require even very small entities (e.g. municipal departments and enterprises, schools; at least if they are separate legal entities) to carry out procurement on their own 	<ul style="list-style-type: none"> Interests and focus may differ: larger entities may seek value for money, smaller ones look for procedural simplicity Good local practices very important for performance and for citizens' trust in public procurement 	<ul style="list-style-type: none"> Limited overview of contracting authorities, no official, comprehensive list; large number, lack of data may complicate assessment Small value procurement may be an issue; apparent lack of data Invite broad sample of municipalities to group meetings; individual discussions with major municipalities (Chisinau, Balti, etc.) and CALM
SOEs, other contracting authorities	<ul style="list-style-type: none"> Each SOE has been required to adopt its own procedures, with limited harmonization, but new common rules being introduced Some SOEs may operate independently in competitive markets; public procurement rules may then not necessarily be relevant Public Property Agency approves higher value SOE contracts Municipal enterprise procurement supervised by their founders Status of utilities and of (other) municipal enterprises unclear Procurement by utilities and (partly) PPPs becoming separately regulated in line with the Utilities Directive and the Concessions Directive 	<ul style="list-style-type: none"> Other SOEs than utilities notoriously uninterested in transparent, competitive, regulated procedures Utilities and other SOEs providing a public service are important in public procurement; commercial enterprises less so 	<ul style="list-style-type: none"> Large number and great variety of SOEs; no comprehensive list, no overview of their characteristics Multitude of rules and procedures, need to get proper sample Competition with private sector? Possible lack of interest, or even fear of disclosure of actual (bad?) SOE practices Liaise with Public Property Agency Meet major utilities, selected SOEs

Stakeholders	Public procurement roles and responsibilities	Interests and importance	Gaps, risks and approach
Economic operators and their associations	<ul style="list-style-type: none"> Participate in tenders Provide the goods, works and services required by the contracting authorities Business associations (Chamber of Commerce and Industry, some branch associations) provide some public procurement related advice and support to members 	<ul style="list-style-type: none"> A competitive enterprise is normally interested in easy identification of business opportunities and fair and transparent procedures Very high importance: economic operators make up the supply side of the procurement market 	<ul style="list-style-type: none"> Limited information on views and needs of enterprises regarding public procurement Perceptions of high levels of corruption may discourage well run firms from engaging in public procurement, even from discussing it Supply side competition, SME participation? Liaise with associations; invite enterprises to group meetings Carry out enterprise survey
Civil society	<ul style="list-style-type: none"> Some civil society organizations (CSOs) specifically monitor public procurement, seek to identify and report cases of misprocurement, fraud and corruption and to monitor the measures taken, if any Some CSOs look at public administration and public financial management in general, which occasionally may relate to public procurement 	<ul style="list-style-type: none"> Some CSOs show interest in contributing to the reform efforts, some just in monitoring or participating in public procurement Active CSOs have strong potential to promote and support good procurement practices 	<ul style="list-style-type: none"> Need to better understand CSO interests, postures and incentives regarding public procurement Liaise with CSOs active in public procurement, invite to group meetings Review CSO reports and analyses issued

Correspondingly, the main stakeholders consulted during the assessment are listed here below.

Public Sector Bodies:

- Ministry of Finance
- Public Procurement Agency
- Ministry of the Interior
- Ministry of Agriculture, Regional Development and Environment
- Ministry of Economy and Infrastructure
- Ministry of Education, Culture and Research
- Ministry of Justice
- Ministry of Defence
- Ministry of Health, Labor and Social Protection

- Ministry of Foreign Affairs and European Integration
- Secretariat of the Parliament
- Center for Centralized Public Procurement in Health
- National Medical Insurance Company
- National Social Insurance Company
- National Institute of Urgent Medicine
- Ministry of Economy and Infrastructure
- Department of Penitentiary Institutions
- General Inspectorate of Police
- State Road Administration
- Municipality of Chisinau
- Municipality of Balti
- Municipality of Cahul
- Municipality of Comrat
- Court of Accounts
- National Agency for Solving Complaints
- National Anti-Corruption Agency
- Public Property Agency
- Public Services Agency
- Regional Development Agency
- State Road Administration
- National Bank of Moldova
- Red Nord

Private Sector

- Chamber of Commerce and Industry of Moldova
- Association of Foreign Investors
- Employers' Association of Light Industry
- Union of Sugar Producers
- Republican Club of businessmen "Timpul"

- Some 15 individual private sector enterprises

Civil Society Organizations

- IDIS Viitorul
- Expert Grup
- Association for Efficient and Responsible Governance (AGER)
- Lex XXI Human Rights Association
- Transparency International

Annex 4: List of applicable legal instruments

Primary legislation

Laws in the field of procurement

- Law No. 131 from 03.07.2015 on public procurement¹

Complementary laws, relevant to the field of procurement

- State budget law for 2020 no. 172 from 19.12.2019²
- State budget law for 2019 no. 303 from 30.11.2018³
- Law no. 121 from 05.07.2018 on concessions of works and services⁴
- Law no. 139 of 19.07.2018 on energy efficiency⁵
- Law no. 122 from 12.07.2018 on integrity warnings⁶
- State budget law for 2018 no. 289 from 15.12.2017⁷
- Law no. 246 from 22.11.2017 on state owned enterprises and municipal enterprises⁸
- Law of integrity no. 82 from 25.05.2017⁹
- Law no. 133 from 17.06.2016 on declaring wealth and personal interests¹⁰
- Law no. 132 from 17.06.2016 on the National Integrity Authority¹¹
- Law no. 181 from 25.07.2014 on public finance and fiscal-budgetary responsibility¹²
- Contravention Code of the Republic of Moldova no. 218 from 24.10.2008¹³
- Law no. 397 from 16.10.2003 on local public finances¹⁴
- Fiscal Code of the Republic of Moldova no.1163 from 24.04.1997¹⁵

¹ <http://www.legis.md/cautare/rezultate/113104>

² https://www.legis.md/cautare/getResults?doc_id=119651&lang=ro

³ https://www.legis.md/cautare/getResults?doc_id=117024&lang=ro

⁴ https://www.legis.md/cautare/getResults?doc_id=105485&lang=ro

⁵ https://www.legis.md/cautare/getResults?doc_id=106556&lang=ro

⁶ https://www.legis.md/cautare/getResults?doc_id=105486&lang=ro

⁷ https://www.legis.md/cautare/getResults?doc_id=110403&lang=ro

⁸ https://www.legis.md/cautare/getResults?doc_id=115474&lang=ro

⁹ https://www.legis.md/cautare/getResults?doc_id=120706&lang=ro

¹⁰ https://www.legis.md/cautare/getResults?doc_id=105905&lang=ro

¹¹ https://www.legis.md/cautare/getResults?doc_id=120704&lang=ro

¹² https://www.legis.md/cautare/getResults?doc_id=106188&lang=ro

¹³ https://www.legis.md/cautare/getResults?doc_id=121245&lang=ro

¹⁴ https://www.legis.md/cautare/getResults?doc_id=120082&lang=ro

¹⁵ https://www.legis.md/cautare/getResults?doc_id=120958&lang=ro

- Law no. 721 from 02.02.1996 regarding the quality in constructions¹⁶
- Road fund law no. 720 from 02.02.1996¹⁷
- Road law no. 509 from 22.06.1995¹⁸

Secondary legislation

Legal acts of the Government in the field of procurement:

- Government Decision no. 638 from 26.08.2020 on the approval of the Regulation regarding public procurement of works¹⁹
- Government Decision no. 599 from 12.08.2020 on the approval of the Regulation regarding public procurement using the negotiated procedure²⁰
- Government Decision no. 351 from 10.06.2020 on the approval of the Regulation regarding procurement of goods, works and services by state enterprises²¹
- Government Decision no. 122 from 26.02.2019 regarding the modification of some Government decisions (modification of the limit staff of the Public Procurement Agency and the Ministry of Finance)²²
- Government Decision no. 544 from 12.11.2019 on some measures to organize the procurement process in the field of information and communication technology²³
- Government Decision no. 1129 from 21.11.2018 on the approval of the Regulation regarding the periodic adjustment of the value of the public procurement contracts with continuous execution, concluded for a term of more than one year²⁴
- Government Decision no. 986 from 10.10.2018 on approval of the Regulation for keeping the State register of public procurement formed by “State register of public procurement” (Mtender)²⁵
- Government Decision no. 987 from 10.10.2018 on approval of the Regulation on procurement of goods and services using request for price quotation²⁶
- Government Decision no. 705 from 11.08.2018 on approval of the Technical concept of “State register of public procurement” (MTender)²⁷

¹⁶ https://www.legis.md/cautare/getResults?doc_id=120454&lang=ro

¹⁷ https://www.legis.md/cautare/getResults?doc_id=118925&lang=ro

¹⁸ https://www.legis.md/cautare/getResults?doc_id=115472&lang=ro#

¹⁹ https://www.legis.md/cautare/getResults?doc_id=123036&lang=ro

²⁰ https://www.legis.md/cautare/getResults?doc_id=122853&lang=ro

²¹ https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

²² https://www.legis.md/cautare/getResults?doc_id=120537&lang=ro

²³ https://www.legis.md/cautare/getResults?doc_id=118946&lang=ro

²⁴ https://www.legis.md/cautare/getResults?doc_id=109334&lang=ro

²⁵ <http://www.legis.md/cautare/rezultate/109175>

²⁶ <http://www.legis.md/cautare/rezultate/109176>

²⁷ <http://www.legis.md/cautare/rezultate/113731>

- Government Decision no. 985 from 10.10.2018 on approval of the Regulation on accreditation of electronic platforms on procurement within “State register of public procurement” (MTender)²⁸
- Government Decision no. 134 from 09.03.2017 for the approval of the Regulation on the organization and functioning of the Public Procurement Agency and its staff²⁹
- Government Decision no. 1128 from 10.10.2016 on the Center for centralized public procurement in health³⁰

Legal acts of the Government (that need to be adjusted following the amendments to the law 131 from 2018):

- Government Decision no. 370 from 21.04.2018 regarding the approval of the Sectorial Plan of anti-corruption actions in the field of public procurement for the years 2018-2020³¹
- Government Decision no. 134 from 09.03.2017 for the approval of Regulation on the organization and functioning of the Public Procurement Agency and its personnel³²
- Government Decision no. 1332 from 14.12.2016 for the approval of the Strategy for development of the public procurement system for the years 2016 – 2020 and the Action Plan for its implementation³³;
- Government Decision no. 1418 from 28.12.2016 for the approval of Regulation on the compilation of the interdiction list of the economic operators³⁴
- Government Decision no. 1419 from 28.12.2016 for the approval of Regulation on the planning of public procurement contracts³⁵
- Government Decision no. 667 from 27 of May 2016 for approval of Regulation on activity of working group on public procurement³⁶ (in the process of being adjusted, a new draft of the Regulation has been published by the MoF for public consultation³⁷);
- Government Decision no. 669 from 27 of May 2016 for approval of Regulation on public procurement of works³⁸ (in the process of being adjusted, a new draft of the Regulation has been published for public consultation³⁹);

²⁸ <http://www.legis.md/cautare/rezultate/109174>

²⁹ https://www.legis.md/cautare/getResults?doc_id=120579&lang=ro#

³⁰ https://www.legis.md/cautare/getResults?doc_id=111606&lang=ro

³¹ https://www.legis.md/cautare/getResults?doc_id=103018&lang=ro

³² https://www.legis.md/cautare/getResults?doc_id=113098&lang=ro

³³ https://www.legis.md/cautare/getResults?doc_id=96808&lang=ro

³⁴ https://www.legis.md/cautare/getResults?doc_id=96901&lang=ro

³⁵ https://www.legis.md/cautare/getResults?doc_id=96902&lang=ro

³⁶ <http://www.legis.md/cautare/rezultate/92988>

³⁷ <http://mf.gov.md/ro/content/proiectul-hg-pentru-aprobarea-regulamentului-cu-privire-la-activitatea-grupului-de-lucru>

³⁸ <http://www.legis.md/cautare/rezultate/92992>

³⁹ <http://mf.gov.md/ro/content/proiectul-hot%C4%83r%C3%AEE-guvernului-pentru-aprobarea-regulamentului-cu-privire-achizi%C8%9Biile-0>

- Government Decision no. 668 from 27 of May 2016 for approval of Regulation on public procurement using negotiating procedure⁴⁰ (in the process of being adjusted, the new draft of the Regulation is on the MoF web page⁴¹);
- Government Decision no. 665 from 27 of May 2016 for approval of Regulation on public procurements of small value⁴²;
- Government Decision no. 826 from 7.11.2012 for the approval of the Regulation on the framework agreement as a special way of awarding the public procurement contract⁴³;

Legal acts of the Government relevant to the field of procurement:

- Government Decision no. 164 from 11.03.2020 for the approval of the Program on the distribution of road fund funds for national public roads for 2020⁴⁴
- Government Decision no. 484 from 18.10.2019 for the approval of some normative acts regarding the implementation of Law no. 246/2017 on the state enterprise and the municipal enterprise (Model statute of the state enterprise, Model statute of the municipal enterprise, etc.)⁴⁵
- Government Decision no. 206 from 03.04.2019 on the approval of the Program on the allocation of road funds for national public roads for 2019 and the Program for periodic repair of national, local, communal roads and streets⁴⁶
- Government Decision no. 225 from 12.03.2018 for the approval of the Program on the distribution of road funds for national public roads for 2018 and of the Program for periodic repair of national public roads (within localities), local, communal and streets⁴⁷
- Government Decision no. 902 from 06.11.2017 regarding the organization and functioning of the Public Property Agency (as the founder of state-owned enterprises)⁴⁸
- Government Decision nr. 936 from 16.08.2006 for the approval of the Regulation on technical expertise in constructions⁴⁹

⁴⁰ http://www.legis.md/cautare/getResults?doc_id=93359&lang=ro

⁴¹ <http://mf.gov.md/ro/content/proiectul-hg-pentru-aprobarea-regulamentului-cu-privire-la-achizi%C8%9Biile-publice-folosind-1>

⁴² <http://www.legis.md/cautare/rezultate/92984>

⁴³ https://www.legis.md/cautare/getResults?doc_id=21051&lang=ro

⁴⁴ https://www.legis.md/cautare/getResults?doc_id=120749&lang=ro

⁴⁵ https://www.legis.md/cautare/getResults?doc_id=118535&lang=ro

⁴⁶ https://www.legis.md/cautare/getResults?doc_id=117552&lang=ro

⁴⁷ https://www.legis.md/cautare/getResults?doc_id=113666&lang=ro

⁴⁸ https://www.legis.md/cautare/getResults?doc_id=119181&lang=ro

⁴⁹ https://www.legis.md/cautare/getResults?doc_id=103648&lang=ro

- Government Decision no. 1029 from 19.12.2013 on public capital investment⁵⁰
- Government Decision nr. 361 from 06.25.1996 on ensuring construction quality⁵¹
- Government Decision nr. 285 from 23.05.1996 regarding the approval of the Regulation for the reception of the afferent constructions and installations⁵²

Legal acts of the Parliament:

- Parliament Decision no. 271 from 15.12.2016 regarding the establishment, organization and functioning of the National Agency for Solving Complaints⁵³

Orders of the Minister of Finance in the field of procurement:

- Order no. 105 from 12.08.2020 on approval of the instruction on the manner, conditions and procedure for organizing and conducting the market consultation in preparation for public procurement⁵⁴
- Order no. 72 from 11.06.2020 on approval of the standard form of ESPD⁵⁵
- Order no. 23 from 6.02.2019 on the approval of the Standard Documentation for the public procurement of social food services in educational institutions⁵⁶
- Order no. 193 from 27.11.2018 on registering public procurement contracts by the territorial treasuries and Order no. 01 from 02.01.2019, Order no. 36 from 21.02.2019, Order no. 85 from 30.05.2019, Order no. 167 from 11.12.2019, Order no. 47 from 19.03.2020 and Order no. 82 from 06.07.2020 for modification of Order no. 193⁵⁷
- Order no. 157 from 14.09.2018 on Program for experimental use of IAS State Register of public procurement and order no. 178 from 16.10.2018 on modification of Order no. 157⁵⁸
- Order no. 176 from 05.10.2018 on approval Standard document for procurement of works⁵⁹

⁵⁰ https://www.legis.md/cautare/getResults?doc_id=110651&lang=ro

⁵¹ https://www.legis.md/cautare/getResults?doc_id=94139&lang=ro

⁵² https://www.legis.md/cautare/getResults?doc_id=109762&lang=ro

⁵³ https://www.legis.md/cautare/getResults?doc_id=107157&lang=ro

⁵⁴ https://www.legis.md/cautare/getResults?doc_id=122888&lang=ro

⁵⁵ https://tender.gov.md/sites/default/files/ordin_72_duae.pdf

⁵⁶ https://www.legis.md/cautare/getResults?doc_id=112513&lang=ro

⁵⁷ https://tender.gov.md/sites/default/files/ordin_mf_193.pdf,

https://tender.gov.md/sites/default/files/ordin_01_din_02.01.2019_de_modificare_ordin_193.pdf,

https://tender.gov.md/sites/default/files/ordin_36_din_21.02.2019.pdf,

https://tender.gov.md/sites/default/files/ordin_85_din_30.05.2019.pdf,

https://tender.gov.md/sites/default/files/167_11.12.2019.pdf,

https://tender.gov.md/sites/default/files/ordin_47_193_mf.pdf,

https://tender.gov.md/sites/default/files/82_06.07.2020_1_0.pdf

⁵⁸ http://www.legis.md/cautare/getResults?doc_id=111806&lang=ro,

http://www.legis.md/cautare/getResults?doc_id=111807&lang=ro

⁵⁹ http://www.legis.md/cautare/getResults?doc_id=111822&lang=ro

- Order no. 175 from 05.10.2018 on approval of Standard document for procurement of goods and works using request for price quotation⁶⁰
- Order no. 174 from 05.10.2018 on approval of Standard document for public procurement of services⁶¹
- Order no. 173 from 05.10.2018 on approval of Standard document for public procurement of goods⁶²
- Order no. 14 from 26.01.2017 regarding the approval of the standard report form regarding the public procurement procedure⁶³
- Order nr. 84 din 15.06.2016 on the approval of the Standard Documentation for conducting public procurement of goods, services and works through the competitive dialogue procedure⁶⁴
- Order nr. 85 din 15.06.2016 regarding the approval of the Standard Documentation for public procurement of goods, services and works through the negotiation procedure⁶⁵
- Order of the Ministry of Finance no. 18 of 20.06.2016 on the approval of the Regulation on the use of the Automated Information System "State Register of Public Procurement" (SIA RSAP)⁶⁶

Orders of the Minister of Finance relevant to the field of procurement:

- Order no. 208 / 24.12.2015 regarding the budgetary classification⁶⁷
- Order nr. 185 from 3.11.2015 on the approval of the Instruction on capital investment project management⁶⁸

Other normative acts:

- Decision of the National Agency for Energy Regulation no. 24 of 26.01.2017 on the approval of the Regulation on procurement procedures for goods, works and services used in the activity of licensees in the electricity, heat, natural gas and operators providing the public water supply and sewerage service⁶⁹

⁶⁰ https://www.legis.md/cautare/getResults?doc_id=111820&lang=ro

⁶¹ https://www.legis.md/cautare/getResults?doc_id=111813&lang=ro

⁶² https://www.legis.md/cautare/getResults?doc_id=111813&lang=ro

⁶³ https://www.legis.md/cautare/getResults?doc_id=97696&lang=ro

⁶⁴ https://www.legis.md/cautare/getResults?doc_id=93992&lang=ro

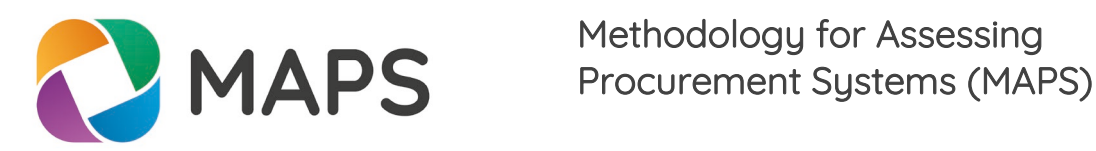
⁶⁵ https://www.legis.md/cautare/getResults?doc_id=93993&lang=ro

⁶⁶ https://tender.gov.md/sites/default/files/regulamentul_cu_privire_la_utilizarea_sia_rsap_1.pdf

⁶⁷ https://www.legis.md/cautare/getResults?doc_id=121134&lang=ro

⁶⁸ https://www.legis.md/cautare/getResults?doc_id=90134&lang=ro

⁶⁹ https://www.legis.md/cautare/getResults?doc_id=99127&lang=ro



Indicator Matrix

Pillar I. Legal, Regulatory, and Policy Framework

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	The legal and regulatory body of norms complies with the following conditions: (a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established. (b) It covers goods, works and services, including consulting services for all procurement using public funds. (c) PPPs, including concessions, are regulated. (d) Current laws, regulations and policies are published and easily accessible to the public at no cost	<ul style="list-style-type: none"> Law 131/2015 on public procurement GD no. 544 of 12.11.2019 on some measures for organizing the procurement process in the field of information and communication technology GD no. 1129 of 21.11.2018 on the approval of the Regulation on the periodic adjustment of the value of public procurement contracts with continuous execution, concluded for a period of more than one year GD no. 987 of 10.10.2018 for the approval of the Regulation on the acquisition of goods and services by requesting price offers GD no. 986 of 10.10.2018 on the approval of the Regulation on the maintenance of the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurement" (MTender) GD no. 985 of 10.10.2018 on the approval of the Regulation on the accreditation of electronic procurement platforms within the Automated Information System "State Register of Public Procurement" (MTender) GD no. 705 of 11.07.2018 on the approval of the Technical Concept of the Automated Information System "State Register of Public Procurement" (MTender) GD no. 1419 of 28.12.2016 for the approval of the Regulation on the planning of public procurement contracts GD no. 1418 of 28.12.2016 for the approval of the Regulation on the manner of drawing up the Prohibition List of economic operators GD no. 665 of 27.05.2016 for the approval of the Regulation on low value public procurement GD no. 667 of 27.05.2016 for the approval of the Regulation on the activity of the procurement working group GD no. 668 of 27.05.2016 for the approval of the Regulation on 	<p>a) Normative acts in the field of public procurement are registered and organized according to the rules, principles and procedures for approving normative acts, entry into force, evidence, systematization and hierarchy of normative acts, expressly established in law no. 100 of 22.12.2017 on normative acts (previously law no. 780 of 27.12.2001 on legislative acts and law no. 317 of 18.07.2003 on normative acts of the Government and other authorities of the central and local public administration).</p> <p>b) The normative acts in the field of public procurement include norms that regulate the procurement of goods, works and services (the whole spectrum of services) from public funds. Law 131/2015 applies to public procurement contracts for goods and services whose value exceeds 200,000 lei and to public works contracts from 250,000 lei (Law 131/2015, art. 2)</p> <p>c) Law 131/2015 applies in the manner corresponding to the forms of public-private partnership not prohibited by law, as well as in the case of awarding public works concession contracts (Law 131/2015, art. 2, paragraph (5)). The Republic of Moldova has the framework law on public-private partnership no. 179/2008, which establishes the basic principles of the public-private partnership, the forms and modalities of realization, the procedure of initiation and its realization, the rights and obligations of the public partner and of the private partner. The institution responsible for regulating the implementation of state policy in the fields of administration and denationalization of public property, as well as public-private partnership is the Public Property Agency. In 2018, the law on works concessions and service concessions was adopted, which replaces the old law of 1995 and partially transposes Directive 2014/23 / EU of the European Parliament and of the Council of 26 February 2014.</p> <p>d) The entire regulatory framework is published and easily accessible to the public at no cost. The state register of legal acts of the Republic of Moldova is accessible online (http://www.legis.md/). At the same time, the list of normative acts is published on the website of the Public Procurement Agency (www.tender.gov.md), the Ministry of Finance (www.mf.gov.md) and the National Agency for Solving Complaints (www.ansc.md).</p>	<ul style="list-style-type: none"> On October 1, 2018, a series of important amendments to law 131/2015 entered into force, but so far the secondary regulatory framework has not been adjusted. Currently, the Ministry of Finance has submitted to public consultations the draft Regulation on public works procurement and the draft Regulation on public procurement using the negotiation procedure. Likewise, the normative - secondary legal framework correlated with the primary legislation for concession contracts is missing. Thus, the regulations regarding the way of organizing the concession award procedures through public competition / competitive dialogue, the regulation regarding the activity of the concession award commission were not approved. In addition, the standard Concession Contract Notice Form is missing, and no instructions for concession contracts have been developed. In connection with this, no information campaigns are organized and carried out on the new rules on the award of concession contracts. The approval of the law on the award of contracts in the utility sector, which will transpose Directive 2014/25 / EU, is delayed. Draft of the Law on utilities (on procurement in the energy, water, transport and postal services sectors), approved by the Government on December 27, 2019 and approved in first reading by Parliament on February 2, 2020. The procurement system is unique for all public authorities, without taking into account the specifics of local public authorities (mode of activity with 2 distinct public authorities - mayor / district president and local / district council; the fact that they are large local communities where public authorities have larger capacities and small local communities, where public authorities have reduced Changing the thresholds (raising them) was a good thing for the local public authorities and made their work easier. However, this increase did not take into account the different possibilities of a city / municipality and a village / commune. For a municipality, the threshold of 200 thousand lei is low. capacities). 	<ol style="list-style-type: none"> Full alignment of the legal framework with the Acquis of the European Union. Adjusting the secondary normative framework to Law 131/2015. Priority: Regulation on public works procurement (currently subject to public consultation), Regulation on the activity of the Procurement Working Group (currently subject to public consultation), Regulation on public procurement using the negotiated procedure (currently subject to public consultations), the Regulation on the framework agreement. Elaboration of the secondary legal framework for the concession contracts, in particular the Regulations on the way of organizing the concession award procedures and the Regulation on the activity of the concession award commission. Adoption of the draft law for the transposition of the Utilities Directive (draft law on procurement in the energy, water, transport and postal services sectors). Elaboration of normative acts regarding the designation by the Government of the central procurement authorities for the organization and centralized development of the public procurement procedures in order to satisfy some needs of the same goods, works or services of several contracting authorities. The public procurement system needs to be differentiated, especially for local public authorities. There should be general regulations, but more flexibility should be given to local public authorities, which can regulate certain issues on their own. For local public authorities, especially those with financial capacity and resources, it would be welcome to raise procurement thresholds or to develop a flexible threshold

			<p>public procurement using the negotiation procedure</p> <ul style="list-style-type: none"> GD no. 669 of 27.05.2016 for the approval of the Regulation on public works procurement GD no. 826 of 07.11.2012 for the approval of the Regulation on the framework agreement as a special way of awarding the public procurement contract GD no. 355 of 08.05.2009 regarding the approval of the Technical Concept of the Automated Information System "State Register of Public Procurement" GD no. 9 of 17.01.2008 for the approval of the Regulation on drawing up and keeping the public procurement dossier MF Order no. 23 of 06.02.2019 on the approval of the Standard Documentation for the realization of public procurement of social food services in educational institutions MF Order no. 177 of 09.10.2018 on the approval of the standard form of the Single European Procurement Document MF Order no. 176 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of works MF Order no. 175 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of goods and services through the request for price offers MF Order no. 174 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of services MF Order no. 173 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of goods Law no. 179/2008 on the public-private partnership 			<p>system for local authorities. For the procurement of works, the threshold must be raised to 400 thousand lei.</p>
	1(b) Procurement methods	<p>The legal framework meets the following conditions:</p> <p>(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.</p> <p>(b) The procurement methods prescribed include competitive and less competitive procurement</p>	<p>Law 131/2015 provides for the following types of procedures (art. 46):</p> <p>The public procurement contract can be awarded through the following procedures:</p> <ul style="list-style-type: none"> a) open tender (art. 47-50); b) restricted auction (art. 51-53); c) competitive dialogue (art.54); d) negotiated procedures (art. 55-56); e) request for price offers (art. 57); f) competition of solutions (art. 58); 	<ul style="list-style-type: none"> a) The legislation expressly provides the conditions and the manner of carrying out each type of public procurement procedure. b) Except for the negotiated procedure without prior publication of a contract notice, all types of procedures, in accordance with the law, ensure competitiveness, fairness, transparency, proportionality and integrity. There is also a low level of transparency in low value procurement procedures. c) art. 76 of Law 131/2015 prohibits the division of procurement by concluding separate public procurement contracts for the 	<ul style="list-style-type: none"> ➤ In the view of civil society representatives, but also some contracting authorities, procurement methods are not uniquely regulated, the conditions under which each method can be used are not sufficiently established. ➤ The economic operators in the telecommunications field reported on the cases in which the public institutions intentionally use low value purchases to 	<ol style="list-style-type: none"> Paragraph (8) of Article 57 must be amended to comply with Directive 2014/25 / EU - the contracting authority at its discretion may complete the procedure by electronic tender. Thus, the electronic auction can take place only after the public procurement procedure and only for the qualified economic

		<p>procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.</p> <p>(c) Fractioning of contracts to limit competition is prohibited.</p> <p>(d) Appropriate standards for competitive procedures are specified.</p>	<p>g) acquisition in the case of social services and other specific services (art. 59);</p> <p>h) partnership for innovation (art. 60).</p>	<p>purpose of applying a public procurement procedure other than the procedure that would have been used in accordance with this law if the procurement had not been divided.</p> <p>d) Law 131/2015 provides general conditions regarding the manner of conducting each type of public procurement procedure</p>	<p>contract services only from the State Enterprise “Moldtelecom”.</p> <ul style="list-style-type: none"> ➤ Article 57 of Law no. 131/2015, regarding the Request for price offers, establishes in paragraph (8) that the award of a public procurement contract for goods and services by requesting price offers is preceded by the electronic auction. That provision is contrary to Directive 2014/25 / EU. ➤ There are no Regulations on how to carry out the following types of procedures: restricted tender, innovation partnership ➤ The regulations on how to conduct the competitive dialogue and the negotiated procedure do not comply with the legislation in force. Currently, the Ministry of Finance has developed and submitted for public consultation the draft Regulation on public procurement using the negotiation procedure. ➤ Law no. 131/2015 does not describe the situation when a public procurement procedure was carried out through an open tender, being delimited on several lots and, respectively, no bids were submitted for one / or more lots, which leads to delays. ➤ Some CAs divide procurement contracts, but this is difficult to monitor due to the fact that they are not required to publish low value procurement procedures, nor do these contracts appear on the Public Procurement Agency page, they can only be monitored ex-post, analyzing the reports of the contracting authority. ➤ From the point of view of public procurement in the field of health, the envisaged procurement procedures partly ensure the necessary efficiency, given that the Framework Agreement, as a special way of awarding public contracts, cannot be applied. For the framework agreement, the regulation dates back to 2012 (Government Decision no. 826/2012) and refers to Law no. 96 of 13.04.2007 on public procurement, which was repealed with the entry into force of Law no. 131/2015 (dated 01.05.2016) 	<p>operators who have passed the evaluation.</p> <ol style="list-style-type: none"> 2. Elaboration and approval of the Regulations on the manner of conducting public procurement procedures (restricted tender, partnership for innovation). 3. Adjustment of the Regulations approved by Government Decisions (GD no. 668/2016 and GD no. 804/2013) to the 2018 amendments to law 131/2015. 4. Art. 56 paragraph (1) letter a) of Law no. 131/2015 on public procurement is to be supplemented with provisions that would regulate that, in the situation when a public procurement procedure was carried out through an open tender, being delimited on several lots and, respectively, no bids were submitted for one / or more lots, the contracting authority may use the negotiated procedure without prior publication of a contract notice for that lot (s). 5. It is necessary to update the Regulation on the framework agreement (GD no. 826/2012) and to organize training seminars on awarding contracts through the framework agreement. There are many types of contracts for which the quantities are not known, but they are strictly necessary for the authorities, such as: office supplies, petroleum products, consumables for computer technology, car service, current road repairs, food, etc. 6. Insertion of an article in law no. 131/2015 with the complete description of the conduct of the Public Auction procedures, requests for price quotations through SI M-Tender with the description of all stages and obligations of the parties.
	1(c) Advertising rules and time limits	<p>The legal framework meets the following conditions:</p> <p>(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).</p> <p>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The</p>	<ul style="list-style-type: none"> ▪ According to art. 28 of Law 131/2015, the contracting authority is obliged to publish in the Public Procurement Bulletin a notice of intent regarding the planned public procurement, the value of which exceeds 800,000 (goods and services) and 2,000,000 (works). The notice of intent will be published separately for each procurement procedure, no later than 30 days from the date of approval of the contracting authority's own budget. 	<ol style="list-style-type: none"> a) The publication rules are provided by the legal framework for each type of procedure. b) The deadline for submission of tenders for standard public procurement procedures is reasonable and provides sufficient time, in accordance with the type, nature and complexity of procurement, for potential tenderers to obtain the award documentation and the contracting authority to respond to clarifications. Minimum submission periods are defined for each type of procedure and these periods may be extended on the basis of requests. c) The participation notices are published in the Public Procurement Bulletin, on the MTender portal, in the public area of SIA RSAP (etender.gov.md), on the web page of the contracting authority. Access to information and these electronic sources is free. 	<ul style="list-style-type: none"> ➤ Law 131/2015 provides in the case of public procurements whose value of the contract to be awarded is equal to or higher than the thresholds provided in art. 2 para. (3), the participation notice will be sent in electronic form for publication and in the Official Journal of the European Union. However, the institutions of the Republic of Moldova do not have the possibility to submit for publication. That provision is irrelevant to Moldova for the simple reason that only the announcements of EU member countries are published in the Official Journal of the EU. Only announcements that are funded from the EU budget can be published in the Additional Journal. 	<ol style="list-style-type: none"> 1. Exclusion of the provisions from art. 2 paragraph (3) of law 131/2015. 2. We propose to revise the deadline for publishing the tender procedures for goods. We consider that there are no qualification requirements that would prevent the EO from being included within 20 days to prepare the set of documents for participation.

		<p>minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.</p> <p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).</p> <p>(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.</p>	<ul style="list-style-type: none"> ▪ According to art. 29 of Law 131/2015, the contracting authority is obliged to publish in the Public Procurement Bulletin and on the website of the Public Procurement Agency the participation notice in all cases provided by this law, according to the applied procurement procedure. ▪ The rules for publishing the procedures initiated by open tender are provided by points 2, 3, 4, 5, 6, 7 of art. 47 (Law 131/2015). ▪ The rules for publishing the procedures initiated by restricted tender are provided by points 2, 3, 4 of art. 51 (Law 131/2015). ▪ The rules for publishing the procedures initiated through competitive dialogue are provided by point 5 of art. 54 (Law 131/2015). ▪ The rules for publishing the procedures initiated by negotiating with the prior publication of a notice of participation are provided by points 6, 7 of art. 55 (Law 131/2015). ▪ The rules for publishing the procedures initiated by the request for price offers are provided by point 6 of art. 57 (Law 131/2015). ▪ The rules for publishing the procedures initiated through a solution competition are provided by points 6, 7 of art. 58 (Law 131/2015). ▪ The rules for publishing the procedures initiated through the innovation partnership are provided by point 4, of art. 60 (Law 131/2015). 	<p>Regarding CAPCS, all open tenders are published on the website of the Public Procurement Agency (https://tender.gov.md/ro). The Center for Centralized Public Procurement in Health (CAPCS) additionally publishes the notices of participation (award documents) and the results of the procurement procedures on the website http://capcs.md/.</p> <p>d) The content of the participation notice is comprehensive, and the manner of its preparation is provided by Annex no. 3 of law 131/2015.</p> <p>All articles in law 131 correspond to Directive 2014/24 / EU.</p>	<ul style="list-style-type: none"> ➤ At the beginning of the year, the CA does not know all the quantities of food or the volumes of current repair works, information to be included in the Notice of Intent. The information is general, eg "Food, 60 lots, estimated value - 12 million lei". The publication term for the auctions of goods exceeding the threshold of 2.3 million lei without VAT is 35 days, only in case of publication of the Notice of Intent with information developed on all lots, the CA can reduce the term to 20 days. This is practically impossible to do when buying food. The publication deadline of 35 days is much too long for the CA, also taking into account the fact that the waiting period for signing the contract in the given circumstances is at least 11 days. So, in order to make a purchase for the first semester of 2020, starting with January 1, the publication of the procedure must be done at the latest in early November. We consider the deadline for publishing the 35-day open tender procedure to be too long. 20 days is a reasonable time for both CA and OE. ➤ A disadvantage is the provisions of art. 41, para. (1) of Law no. 131/2015 according to which the contracting authority is obliged to extend the deadline for submission of tenders in case of modification of the award documentation, so that from the date of notification of changes made until the new deadline for submission of tenders remains at least 50% of the deadline initially established. Often, the contracting authority produces insignificant changes in the award documentation, and the provisions of art. 41, para. (1) lead only to the delay of the procurement procedure and this in the conditions in which the contracting authority needs certain goods in the most restricted terms. ➤ According to the observations of the representatives of the civil society, the information necessary for the elaboration of the offers is not always published in full. Especially in the case of works procurement, OE can get acquainted with the projects at the AC headquarters only. Likewise, the obligation to publish is often ignored and the deadlines for publication of notices are not always met. ➤ Not all published content includes enough information to allow potential bidders to determine if they are able to submit a bid and are interested in submitting one. ➤ The online platform does not take into account days off and holidays when setting the deadlines for various actions by bidders. As a result, the time frame for such actions are artificially reduced and the deadline could fall on weekend or a holiday, which makes it rather difficult to meet such deadlines, in particular during the Christmas and New Year period, when the absolute majority of tenders are held and when there are lengthy period of holidays. ➤ Access to medical procurement procedures is difficult. 	
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	1(d) Rules on participation	<p>The legal framework meets the following conditions:</p> <p>(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.</p> <p>(b) It ensures that there are no barriers to participation in the public procurement market.</p> <p>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.</p> <p>(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.</p> <p>(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.</p>	<p>The right of the economic operator to participate in the public procurement procedures is regulated by art. 16, 17, 18, 19, 21, 22 of Law 131/2015.</p>	<p>a) Law 131/2015 ensures the fair right of all economic operators to participate and to be excluded in a public procurement procedure.</p> <p>b) Law 131/2015 does not limit the right of the resident or non-resident economic operator, natural or legal person of public or private law or association of such persons to participate in public procurement procedures.</p> <p>c) Art. 19 of Law 131/2015 provides the eligibility criteria of the bidder or candidate. Law no. 131/2015 contains certain general provisions, scattered in several texts and articles of the law, regarding illegalities / acts of corruption and the exclusion / rejection of bidders (art. 1, art. 19 par. (1), (2) , art.42 para. (1), (4), art.69 para. (6) letter e), art.71 paragraph (1) letter e)). Such provisions are also included in the normative acts in the field of public procurement subordinated to law no. 131/2015. Any administrative act of the contracting authority (including the act of excluding a tenderer) can be challenged at the National Agency for Solving Appeals (art.82 - 86 of law no.131 / 2015).</p> <p>d) Art. 6 of Law 131/2015 establishes a special regime for sheltered workshops and social insertion enterprises if the majority of employees involved are persons with disabilities who, by the nature or severity of their deficiencies, cannot carry out a professional activity under conditions normal participation in the procedures for awarding public procurement contracts. In general, Law 131/15 on public procurement does not regulate express conditions for the participation of state-owned or majority-owned enterprises, the latter participating as an economic operator under general conditions on the basis of open competition, in cases where it there is.</p> <p>e) In order to determine the eligibility of the tenderer, the contracting authority shall request the completion and submission of the Single European Procurement Document (DUAЕ) which consists of an updated declaration on its own responsibility, as preliminary evidence instead of certificates issued by public authorities or third parties. that the economic operator concerned fulfills the conditions laid down by the contracting authority.</p>	<p>➤ Non-resident economic operators cannot submit tenders within the public procurement procedures if they do not have legal representatives on the territory of the Republic of Moldova. Additionally, the issue of electronic signature for non-residents is not resolved.</p> <p>➤ Practice shows that the most common in the procurement procedures are resident economic operators, the market of the Republic of Moldova being perceived as small and unattractive for non-resident economic operators.</p> <p>➤ According to art. 7, lit. c) of Law no. 131/2015 provides for the principle of ensuring competition and combating anti-competitive practices in the field of public procurement. From the perspective of health procurement, these provisions are often in contradiction with point 20 of Government Decision no. 667/2016 for the approval of the Regulation on the activity of the working group for procurement, which stipulates that the working group examines and concretizes the needs of the contracting authority for goods, works and services, coordinating them within the financial means allocated for this purpose. Experience has shown that the Central Procurement Authority (CAPCS) is often required to indicate more general technical specifications than those required by the beneficiary public health institutions, in order to ensure competition. Finally, the goods purchased sometimes do not meet or partially satisfy the real need of the beneficiary.</p> <p>➤ According to monitoring by civil society representatives, the legislation provides for rules of participation, but these principles are often violated. In some cases, winning bids containing false documents or submitted by companies in respect of which certain infringements have been found are designated, even companies included in the prohibition list.</p>	<p>1. Completing / generating DUAЕ by electronic means and solving / revising the electronic signature of the tender documents.</p>
	1(e) Procurement documentation and specifications	<p>The legal framework meets the following conditions:(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and</p>	<ul style="list-style-type: none"> ▪ The manner of drawing up, publishing and modifying the award documentation is provided by art. 40 and 41 of Law 131/2015. ▪ The rules regarding the description of goods, works and services are provided by art. 37 of law 131/2015. ▪ The clarifications are described in art. 35 of law no. 131/2015. 	<p>a) The qualification criteria of the bidders are provided in art. 18, with the detail in art. 19, 20, 21, 22, 23 and 24. At the same time, the contracting authority has the obligation to establish for each procedure the qualification and selection criteria, as well as the supporting documents, provided by the legislation in force, necessary to be presented by to economic operators (art. 17, paragraph 1).</p> <p>b) Art. 37 of Law 131/2015 stipulates that the contracting authority will use national and international standards in the description of the requested goods, services and works without favoring a certain producer / provider / executor. In accordance with art. 37, para. (6): "The technical specifications shall not refer to a particular trade mark or economic operator, to a patent, to a sketch or to a type of goods, works or services, shall not indicate a specific origin, a manufacturer or a concrete economic operator. "</p> <p>c) According to art. 37 para. 6, if there is not a sufficiently accurate way of exposing the requirements to the acquisition, and such a reference is inevitable, the characteristics will include the words "or equivalent".</p> <p>d) The right and obligation of both the economic operator and the contracting authority to request / respond to clarifications</p>	<p>➤ The period for submitting clarifications is automatically extended when operators submit requests for clarifications on the last day and the contracting authority fails to respond immediately. The deadline may be extended several times, thus delaying the successful conduct of the procedure. In addition, the contracting authority cannot attach documents to its reply to clarifications - changes to the procedure must be applied for this.</p> <p>➤ The need to request additional supporting documents from economic operators before awarding the public procurement contract only delays the procurement procedures, and DUAЕ in these conditions is perceived only as an additional document that hinders the activity of contracting authorities and economic operators bidding. At the same time, in the DUAЕ document the questions are not clearly exposed which misleads participating economic operators.</p>	<p>1. Clearer regulation of situations in which late clarifications are submitted (at the last moment) in order not to delay the procedures.</p> <p>2. Elaboration and updating of the List of qualified economic operators in accordance with the Government Decision no. 1420 of 28.12.2016 for the approval of the Regulation on the record of the List of qualified economic operators. The existence of a database that will contain exhaustive information on all qualified economic operators (at least from the Republic of Moldova) will considerably facilitate the activity of contracting authorities and bidding economic operators.</p>

		communicate the clarification to all potential bidders (in writing)		regarding the award documentation is provided in art. 35, Law 131/2015.	<p>➤ art. 65 para. (4) of Law 131/15 provides: "The submission of the tender involves the submission in a common set of the technical proposal, the financial proposal, the DUAE and, as the case may be, the tender guarantee." art.1 Notions from Law 131/15 on public procurement, the meanings for the phrases "technical proposal" and "financial proposal" are attested, as well as for the phrases "technical specification" and "financial specification". This indicates that the technical proposal is not the equivalent of the technical specification as a form, and the financial proposal is not the equivalent of the price specification as a form.</p> <p>➤ The requirements for minimum documents are different for the requests for price quotations and for tenders. Because the EO only attaches the price and technical specifications, the CA has to disqualify bidders, which leads to many complaints.</p> <p>In the Standard Documentation for the realization of public procurement of goods and services by the request for price offers approved by the order of the Ministry of Finance no. 175 of October 5, 2018 is provided:</p> <p>1. The documents that constitute the offer</p> <p>1.1. The offer will include the following:</p> <p>a) The price offer, which will include, as the case may be, the guarantee for the offer;</p> <p>b) <u>The technical specification</u> for the purchased goods / services;</p> <p>c) The single European procurement document;</p> <p>In the Standard Documentation for the realization of public procurement of goods approved by the order of the Ministry of Finance no. 173 of October 5, 2018 is provided:</p> <p>1. The documents that constitute the offer</p> <p>1.1. The offer will include the following:</p> <p>a) <u>the financial proposal</u>, which will include, as the case may be, the tender guarantee;</p> <p>b) <u>the technical proposal</u>, as well as supporting and optional documents requested by the contracting authority;</p> <p>c) The single European procurement document;</p> <p>In the Standard Documentation for the realization of public procurement of services approved by the order of the Ministry of Finance no. 174 of October 5, 2018 is provided:</p> <p>1. The documents that constitute the offer</p> <p>1.1. The offer will include the following:</p> <p>a) <u>the financial proposal</u>, which will include, as the case may be, the tender guarantee;</p> <p>b) <u>the technical proposal</u>, as well as supporting and optional documents requested by the contracting authority;</p> <p>c) The single European procurement document;</p>	<p>3. implementation of the Framework Agreement (Update of Government Decision no. 826/2012 or its abrogation and elaboration / approval of a new Regulation on the Framework Agreement, taking into account the amendments of Law no. 131/2015)</p> <p>4. To improve and clarify (possibly to standardize) in the standard documentation the requirements compared to the minimum documents for public procurement procedures</p> <p>5. From the standard documentation it is necessary to exclude the "Procurement Data Sheet" because the information here can be found in the Participation Notice..</p> <p>6. Training of persons responsible for conducting public procurement.</p>
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	1(f) Evaluation and award criteria	<p>The legal framework mandates that:</p> <p>(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents,</p> <p>(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.</p> <p>(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.</p> <p>(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.</p> <p>(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to</p>	<p>The criteria for awarding the public procurement contract are regulated by art. 26 of Law 131/2015.</p>	<p>a) The award criteria provided by Law are objective, relevant to the object of the contract and are specified in advance in the award documentation. The contract award decision does not derogate from the criteria originally laid down.</p> <p>b) According to art. 26 para. 3 of Law 131/2015 are 4 award criteria: the lowest price; the lowest cost; The best quality-price ratio; the best quality - cost.</p> <p>c) Law 131/2015 does not contain the separate / special provision for consulting services.</p> <p>d) The contracting authority shall specify in the award documentation the relative weight it assigns to each evaluation factor, as well as the calculation algorithm or the concrete scoring methodology that is applied to determine the most economically advantageous tender, unless the most economically advantageous offer is determined by applying the lowest price criterion. The manner of applying the evaluation factors is provided in art. 26 para. 10, 11, 12, 13, 14, 15 and 16</p> <p>e) According to art. 69 par. 1, the examination, evaluation and comparison of tenders shall be carried out without the participation of tenderers and other unauthorized persons</p>	<p>➤ Usually, the CA awards the contracts according to the criterion "lowest price", less often " best quality-price ratio", due to the fact that the allocated financial sources are insufficient. The CA does not have specialists who would make calculations in order to apply the " the best quality - cost" criterion, and no money is allocated to purchase the respective services.</p> <p>➤ Economic operators in bad faith or who have delivered products / services and executed low-quality works continue to participate in public procurement, and local public authorities do not know about the history of these companies and previous illegalities committed.</p> <p>➤ Regarding CAPCS, it applies the award criterion "the lowest price" in accordance with the provisions of art. 26, para. (3) of Law no. 131/2015. The award documentation indicates the criterion "lowest price excluding VAT, corresponding to all requirements" (which involves first the technical evaluation of the goods offered by qualified bidders and then the financial evaluation). The decision to award public contracts is taken only in accordance with the award criteria.</p> <p>➤ The limitation only to the mentioned award criterion is explained by:</p> <ul style="list-style-type: none"> - the increased danger of countless complaints from economic operators, - the importance of the object of acquisition, - limited time for procurement, 	<ol style="list-style-type: none"> 1. Elaboration of instructions / regulations on how to apply the criteria for awarding the public procurement contract. 2. Training is needed in order to apply other award criteria, in addition to the "lowest price" and a different approach from the CA of public procurement, in order to quality and sustainable procurement (especially health procurement). 3. Creating favorable working conditions for specialists of the contracting authority to prevent the increased flow of staff. 4. The MTender must contain a tool for identifying risks to public authorities (especially local ones) and notifying if an economic operator is in bad faith, has committed illegalities in the past or has not properly performed other public procurement contracts. . 5. The information in the "prohibition list" must automatically be viewed in the MTender system, so the automatic economic operator will be rejected from public procurement procedures. As an

		others not officially involved in the evaluation process.			<div>- Lack of experience of the contracting authority's staff in applying an award criterion other than "the lowest price", - Lack of a specialized, independent laboratory capable of ruling on the bioequivalence of medicines or on compliance with technical parameters in the case of certain medical devices (consumables)</div>	<div>option - the MTender system must alone, based on risk indicators, include the economic operator in the "ban list".</div> <div>6. When examining the information provided by the companies that wish to participate in the tenders, one should consider both the capability of conducting the tender exercises and availability of personal and attracted production capacities, that will allow to support the required volume of supply, work or services, specified in the tender documentation.</div> <div>7. When the tender board examines information necessary for tenders and submitted by the economic agents, it must base on the interrelation of all comprehensive factors that affect the fulfillment of the tender conditions. The board should not base solely on the lowest price factor, which is far from being always decisive in the timely and high-quality fulfillment of the tender conditions.</div> <div>8. The tender working group must not examine the tender participants' proposals, if the initial bid price is by 20% lower than market prices for this type of product, work or services – because quality of the service suffers during the implementation. Appear additional, complexly controlled risks of non-performance of contractual obligations and, almost always, the use of the budget funds turns out to be ineffective.</div> <div>9. Delegate the competences of making the final decision on conducting public procurement tenders and summing up their results to the new public institution – the Public Boards, which is established at the central and local levels. The Public Board shall consist of three equal parts: contracting central or local public authorities represent one third, the civil society – one third, including the business community, and the expert community and the development partners of the Republic of Moldova – one third. Establish the Contestation Board in the same way, withdraw it from the Parliament of the Republic of Moldova and make it a public</div>
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						<p>body, which shall consist of three equal parts: one third – of the Parliament members, one third – of the civil society, including the business community and one third – of the expert community and Moldovan development partners.</p> <p>10. In order to increase the professionalism, integrity and transparency of the contracting authorities' activities, allow the contracting central or local public authorities to conclude contracts for providing the procurement services on an out-sourcing basis, with the specialised companies or organisations working in this field. Also, it is obligatory to provide for the subsequent review and approvement of all tenders' results by the Public Boards, noted in the paragraph 6 of this proposal.</p> <p>11. In healthcare procurement - Establishment of a specialized, independent laboratory (s) empowered to rule on the bioequivalence of medicinal products or on compliance with technical parameters in the case of certain medical devices (medical consumables)</p>
	1(g) Submission, receipt, and opening of tenders	<p>The legal framework provides for the following provisions:</p> <p>(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.</p> <p>(b) Records of proceedings for bid openings are retained and available for review.</p> <p>(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.</p> <p>(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.</p> <p>(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.</p>	The conditions of presentation and opening of tenders are provided in art. 65 and 66 of Law 131/2015.	<p>a) Article 66 para. 2 of Law 131/2015 expressly provides that tenders are opened at the time specified in the award documentation as the deadline for submission of tenders or at the time specified as the deadline of the extended period, regardless of the number of bidders, in accordance with established procedures in the award documentation.</p> <p>b) According to point 21 of GD 667/2016, the working group is obliged to draw up, in the presence of the bidders, the minutes of the opening of the bids.</p> <p>c) Art. 33 paragraph 5 of Law 131/2015 provides that in all operations of communication, exchange and storage of information, the contracting authority ensures the maintenance of data integrity and the protection of confidentiality of tenders and requests to participate. According to point 8 subpoint. 17 of GD 986/2016 for the approval of the Regulation on the maintenance of the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurement" (MTender), the holder of the Register is obliged to ensure the confidentiality of the content of offers until the date for their opening. At the same time, according to point 93 of the above-mentioned GD, the SIA RSAP operator (MTender) and PEA operators must implement mechanisms to ensure the confidentiality of tenderers or candidates until the deadline for submission of tenders, defined by the contracting authority / entity. contracting authority in that procurement procedure.</p> <p>d) Article 33 para. 14 of Law 131/2015 stipulates that according to the rules applicable to communication, it is reasonably ensured that no one has access to the information transmitted according to these requirements before the specified deadlines; only authorized persons have the right to establish or modify the data for the opening of the information received; during different stages of the procurement procedure or of the solution competition, access to all or part of the data submitted is allowed</p>	<p>➤ On October 1, 2018, the amendments to Law 131/2015 entered into force, but so far the secondary normative framework has not been adjusted (ex: GD 667/2016 on the activity of the working group).</p> <p>➤ Minutes of the opening of tenders are made on paper according to the GD, and are not relevant to the procurement procedure.</p> <p>➤ Economic operators submit the set of documents through MTender, but the Contracting Authority to form the public procurement dossier, according to the GD, prints the bids submitted from the system. Thus, if before the implementation of the system the economic operators presented on paper and the contracting authority at the end of the procedure only drew up the file, at the moment CA the whole set presented by OE prints. There are procedures where there are 13 bidders and a single bid is about 700-800 pages, ie it takes 2 weeks to print these bids.</p>	<p>1. Adjusting the secondary legislative framework.</p> <p>2. Elaboration of the method for generalizing the Minutes of opening the offers with the adjustment of the legislative framework.</p> <p>3. Improving the MTender system to become electronic.</p>

				<p>only to authorized persons; only authorized persons allow access to the information sent and only after the set date; information received and opened pursuant to these requirements shall remain accessible only to persons authorized to do so. Article 69 para. 8 of Law 131/2015 stipulates that until the completion of the evaluation the contracting authority does not disclose to tenderers or other persons not officially involved in the award procedure information on the examination, evaluation and comparison of tenders.</p> <p>e) e) The manner of presenting the offers is regulated by art. 65 of Law 131/2015, Annex of GD 705/2018, GD 986/2018.</p>		
	1(h) Right to challenge and appeal	<p>The legal framework provides for the following:</p> <p>(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.</p> <p>(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.</p> <p>(c) Rules establish the matters that are subject to review.</p> <p>(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.</p> <p>(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.</p> <p>(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).</p>	The settlement of disputes and legal liability is regulated in Chapter X (art. 80-88) of Law 131/2015.	<p>a) The right to appeal is regulated in art. 82 of Law 131/2015.</p> <p>b) According to art. 84 of Law 131/2015, the body competent to resolve appeals regarding public procurement procedures is the National Agency for Solving Appeals, whose decision can be challenged in the competent court (art. 86 para. 12). According to ANSC, no public procurement procedures were suspended during the evaluated period, being sufficient the ex officio suspension of the conclusion of the procurement contract.</p> <p>c) Any person who has or has had an interest in obtaining a public procurement contract and who considers that in public procurement procedures an act of the contracting authority has harmed his right recognized by law, as a result of which he has suffered or may suffer damages, is entitled to challenge the act. The appeal can be submitted both on the award documentation and on the results of the procedure.</p> <p>d) The terms for filing, examining and resolving the appeal are regulated in art. 83, 84 and 85 of Law 131/2015.</p> <p>e) The submission of the appeal can be online (https://ansc.md/ro/depunere_contestatie) or at the ANSC headquarters. The form for submitting the appeal can be downloaded from the ANSC website (https://ansc.md/ro/content/depunere-contestatii). The decisions on the submitted appeals are published on the ANSC website (https://ansc.md/node/661).</p> <p>f) The decision of the National Agency for the Settlement of Appeals regarding the settlement of the appeal may be challenged in the competent court.</p>	<p>➤ There is the practice of ANSC to accept appeals submitted by bidders who were not participants in the procedure. This fact is also caused by the different interpretation of the norm contained in art.82 paragraph (1) of law no.131 / 2015 - "Any person who has or had an interest in obtaining a public procurement contract and who considers that in in the context of public procurement procedures, an act of the contracting authority has harmed a right recognized by law, as a result of which it has suffered or may suffer damage, it is entitled to challenge that act in the manner established by this law. "</p> <p>➤ Long deadlines for ANSC decision-making.</p> <p>➤ The economic operator that submits appeals does not bear any responsibility in case of loss of the appeal and delay of the procurement process.</p> <p>➤ A category of economic operators intentionally and unmotivated submits appeals to the National Agency for Solving Complaints (thus stopping the process and delaying several months), then negotiates with the economic operator who won and withdraws his appeal for a commission.</p> <p>➤ The lack of enforcement mechanisms encourages some contracting authorities to ignore these decisions, although they are considered binding. Some economic operators in particular delay the given process</p> <p>➤ It is difficult for local public authorities to travel 200 km to Chisinau to participate in the meetings of the National Agency for the Settlement of Appeals</p> <p>In the opinion of the Public Procurement Agency:</p> <p>➤ The National Complaint Settlement Agency (NSCA) reviews each complaint with a team of 3 Counsellors, which makes the allocation of effort inefficient;</p> <p>➤ NSCA consists of 30 staff having just one responsibility while PPPA has 43 staff having 12 responsibilities given by law. The exaggerated number of staff and the approach makes the process of solving complaints slow and inefficient;</p> <p>➤ NSCA is supposed to solve only the complaint addressed and not to review the whole public procurement procedure and make a decision based on a reason not raised in a complaint. The Law does not give them such a responsibility.</p>	<ol style="list-style-type: none"> Clarification in law no. 131/2015 of the categories of subjects who have the right to appeal. Improving the legal framework and developing instruments to oblige contracting authorities to execute ANSC decisions. to review the deadlines for making the decision of the Appeals Resolution Agency up to 20 days. To consider the opportunity to include a fee for filing appeals by economic operators. <p>In the opinion of the Public Procurement Agency:</p> <ol style="list-style-type: none"> Law 131/2015 should be modified and each complaint should be solved by 1 Sounsellor (this is the approach of other small economies like Estonia and Cypres); The above will allow the Parliament to reduce the NSCA staff to max 16 personnes (as initially planned in 2016); The current practice of reviewing the whole procedure should be abolished.

	1(i) Contract management	<p>The legal framework provides for the following:</p> <p>(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,</p> <p>(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.</p> <p>(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.</p> <p>(d) The final outcome of a dispute resolution process is enforceable.</p>	Regarding the public procurement contract, the Law regulates: the award principles, the execution conditions, the termination cases (art. 72, 73, 74, 76, 77 of Law 131/2015).	<p>a) The legal framework does not clearly define the responsibilities of the parties signing the contracts. However, the legislation generally provides for the obligation to monitor the performance of the contract (it is the responsibility of the working group).</p> <p>b) The law expressly provides for cases in which public procurement contracts may be amended (art. 76)</p> <p>c) Law 131/2015 does not provide for the settlement of disputes during the execution of the contract. This is up to the competent court.</p> <p>d) The decisions of the courts remaining final and irrevocable are binding.</p>	<p>➤ Law 131/2015 does not regulate “contract management”;</p> <p>➤ AAP has no duties to monitor the execution of the contract. De facto, the Agency according to the legislation does not have attributions / intervention levers on the way of conducting the public procurement procedures. In case of deviations / non-conformities, the remedial measures of the Agency being only by way of recommendation.</p> <p>➤ In the field of public procurement, dispute resolution is examined in the courts and an alternative procedure - that of arbitration, is missing. For these reasons, litigation procedures are cumbersome, costly and time consuming.</p> <p>➤ At the stage of implementation of the contract there is no person with legal knowledge in the local public authorities to consult the mayor what legal measures must be taken regarding the economic operator.</p> <p>➤ Regarding CAPCS, in accordance with point 33 of GD 1128/2016, the Center concludes with the economic operator designated the winner and with the beneficiary public health institution the public procurement contract, based on the decision of the working group to designate the winner of the procurement procedure , according to the Model Contract provided in annex no. 3 of GD 1128/2016. The model contract provides a clear definition of the responsibilities of each of the parties (economic operator as seller, the beneficiary public health institution and CAPCS as the central purchasing authority.</p> <p>➤ CAPCS also mentions that from the experience gained in the field of procurement for the health system, it is found that the central purchasing authority registers a lot of Additional Agreements amending the registered public procurement contracts. This is due either to poor planning by public health institutions, specialized commissions within the MSMPs, or to the emergence of additional needs for drugs and medical devices during the year, which are unpredictable at the initial stage of presentation of the need. According to art. 76, para. (7) of Law no. 131/2015 and point 36 of GD no. 667/2016, the additional acquisition of goods is allowed if the value of the additionally contracted goods does not exceed 15 percent of the value of the initially contracted goods. Often, there are cases when the beneficiaries urgently need to purchase significant quantities of goods. In these cases, options to purchase an additional 15% of the value of the goods initially contracted or to purchase through a low value contract do not meet the needs of the applicant. In such cases, the only solution provided by the normative framework (art. 56, paragraph (1), letter b) of Law no. 131/2015) is the application of the public procurement procedure - Negotiation without prior publication of a notice of participation, which is less transparent and solves the problem only temporarily and</p>	<ol style="list-style-type: none"> Extending the powers of the PAA in carrying out control over the entire process of conducting public procurement procedures and monitoring the execution of the contract. Promoting alternative dispute resolution procedures in the field of public procurement - arbitration and mediation. For healthcare procurement - Identify a transparent mechanism for the procurement of medicines and medical devices on the basis of concluded public procurement contracts, if the additional need exceeds 15% of the value of the goods initially contracted. For example, by derogation from the provisions of art. 76, para. (6) of Law no. 131/2015, in emergency situations, well reasoned - the admission of the additional purchase of medicines and medical devices based on public procurement contracts concluded, in the amount necessary to deal with the emergency, within the norms of stocks of material values provided in Annex no. . 1 of the Joint Order of MSMPs and NHIC no. 857/241-A of 27.12.2010 (60 days in the case of centralized public procurement procedures and 90 days in the case of public procurement procedures meant for the implementation of National and Special Programs). For health procurement - Identification of a methodology that will allow prompt intervention in case of non-execution of the public procurement contract by the winning economic operator (refusal to deliver certain goods, late delivery of goods). Modification of the model contract, approved by GD no. 1128/2016, so that 1% will be applied for each day of delay, but not more than 30% of the amount of undelivered goods (respectively a maximum of 30 days delay will be allowed). At the same time, arising from each separate case, the contracting authority will have the right to initiate a repeated procurement procedure immediately from the date of notification of the impossibility of delivery of a medicine / medical device
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					<p>partially (according to Law no. 131/2015, the contracting authority has no right to determine the duration contract for a longer period than necessary to deal with the emergency situation which led to the application of the negotiation procedure without prior publication of a contract notice).</p> <p>➤ In the opinion of CAPCS, in situations of maximum urgency of some goods, which are part of registered (already existing) public procurement contracts, there is no reasoning to apply the procurement procedure "Negotiation without prior publication of a contract notice", because :</p> <ul style="list-style-type: none">- this procedure is in any case a sustainable one (requires the preparation and dispatch of invitations to tender, the establishment of a reasonable minimum time between the date of submission of the invitation and the deadline for submission of tenders, the conduct of consultations and negotiation of contract terms, public procurement, with the corresponding arguments, publication in the RSAP SIA (MTender) and does not fall within very short deadlines;- there is a risk of obtaining significantly higher prices compared to those already contracted;- in accordance with Annex no. 1 of the Joint Order of MSMPs and National Medical Insurance Company no. 857/241-A of 27.12.2010, public medical institutions do not have the right to exceed the norm of material stocks: 60 days in the case of centralized public procurement procedures and 90 days in the case of public procurement procedures intended for the implementation of National and Special Programs . <p>➤ Another very sensitive topic for CAPCS regarding the modification of public procurement contracts is the modification of delivery tranches. On the one hand, according to art. 76, para. (3) of Law no. 131/2015, it is forbidden to modify any element of the concluded public procurement contract or to introduce new elements if such actions are likely to change the conditions of the offer that constituted the basis for its selection (except for the cases provided in art. 76, para.) 7)). On the other hand, during the execution of public procurement contracts, economic operators sometimes take steps to change delivery installments for various reasons. Historically, for certain groups only one economic operator participates (the requirements of the pharmaceutical market are very rigorous, respectively the number of economic operators is small). Thus, if the contracting authority organizes a repeated procurement procedure, as a result the same economic operator participates which imposes its rules of the game. At other times, the economic operator, being the only bidder for a certain lot, directly proposes in its offer other delivery tranches than those indicated in the award</p>	<p>according to the established contractual clauses.</p>
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					<p>documentation. Thus, the contracting authority has two options: 1) to accept the offer of the sole tenderer with the delivery installments proposed by him or 2) to remain without offers for the requested lot.</p> <p>➤ For health procurement, the Model Public Procurement Contract, approved by GD 1128/2016, provides mechanisms for the prompt resolution of disputes that may arise during the execution of public procurement contracts. However, the way in which cases where the seller refuses to deliver the goods and / or delays the goods late remains unsatisfactory. According to the model contract for public procurement, approved by GD no. 1128/2016:</p> <p>- for the refusal to sell the Goods provided in this Contract, the Seller bears a penalty in the amount of 30% of the amount of the undelivered Goods;</p> <p>- For the late delivery of the Goods, the Seller bears material responsibility as follows: 1. for the first 30 calendar days of delay, the penalty constitutes 0.1% of the amount of the Goods not delivered for each day of delay; 2. for the following days of delay, which exceed the period of 30 calendar days, the penalty shall be 0.5% of the amount of Undelivered Goods for each day of delay, but not more than 30% of the amount of Undelivered Goods for the entire period of delay. From the perspective of the public medical institution, the penalization of the economic operator does not solve the problem of lack or insufficiency of stocks of a certain medicine, medical consumable, disinfectant, etc. During this period - 84 days (if the economic operator still does not deliver the requested goods) - the contracting authority can practically not intervene (organize a public procurement procedure) and the public health institution is not provided with the necessary medicine / medical device .</p>	
	1(j) Electronic Procurement (e-Procurement)	<p>The legal framework meets the following conditions:</p> <p>(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.</p> <p>(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.</p> <p>(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.</p>	According to the legal framework of public procurement procedures are conducted electronically (GD 705/2018).	<p>a) In 2018, GD 705/2018 was approved, which defines the concept of the new electronic instrument used in the processes of conducting public procurement procedures, but also of the pre-procedure (planning) and post-procedure (monitoring) processes. The "MTender" system is to ensure the implementation by electronic means of the entire cycle of public procurement procedures, from the procurement planning stage to the last payment made at the end of the execution of public procurement contracts.</p> <p>b) According to the Concept, the "MTender" System will contain adequate security mechanisms, in order to create a secure purchasing environment, by implementing information security objectives; as also required by e.g. the PPL, Art. 33 (5), (14).</p> <p>c) There is a general requirement for all communications to be carried out by electronic means, with specific exceptions; the tenderr documents have to state the means that will be used (PPL, Art. 33 (2)).</p>	<p>➤ PPA, the E-Government Center and the OECD / SIGMA were against the multiplatform system, where the central base belongs to the state but the front-end of private platforms.</p> <p>➤ Due to this important fact, the SIA RSAP Concept (MTender) was approved and Law 131/2015 was amended. Finally we have a non-compliant MTender electronic system. It does not cover the entire public procurement cycle. The system is not functional for carrying out all types of procedures provided by law.</p> <p>➤ MTender is not user friendly, you cannot find a procedure or a contract.</p> <p>➤ The system does not allow the award of public procurement contracts through a framework agreement, the dynamic procurement system, the electronic catalog (The system only ensures the application of electronic tendering and request for price offers).</p> <p>➤ The fact that small purchases are not required to be made in the Mtender system is also a</p>	<p>In the opinion of the PPA it is necessary:</p> <ol style="list-style-type: none"> 1. abrogation of the multi-platform concept which from 1.10.2018 until now has proved to be unreliable for the Republic of Moldova; 2. Development of a new single-platform system (according to SIGMA recommendations) which will comply with law 131/2015 and will cover the entire cycle of the public procurement procedure. <p>In the opinion of MTender users it is necessary:</p> <ol style="list-style-type: none"> 3. Optimization of the electronic platform SIA RSAP (Mtender), so that it is possible to start procurement procedures with minimal effort (as little manual work as possible) and in the

					<p>problem, in the context in which the thresholds have been increased, but not all these procedures can be monitored, therefore, the risk of their fraud also increases.</p> <ul style="list-style-type: none">➤ Only one contract award criterion (lowest price) can be applied through the System.➤ Changes to the public procurement contract cannot be made through the System.➤ The system does not have a cabinet for PPA, NASC and other control bodies. The PPA cannot exercise its monitoring duties without this office. At the same time, all the necessary statistics per domain at the moment cannot be made.➤ Procurement procedures are performed on non-accredited platforms.➤ The system only allows the indication of CPV codes, from the same class.➤ The contracting authority cannot extend the deadline for submission of tenders or modify / attach other documents until the deadline for submission of tenders, it is obliged to cancel the procedure (consequently the process is delayed). In addition, the contracting authority has the technical possibility to place in the system only the additional information, without being able to initially draft the award documentation uploaded in the SIA RSAP (MTender) in batches, until the deadline for submission of tenders. Consequently, economic operators submit non-compliant tenders because the updated award documentation is not visible.➤ Failure to open all tenders for examination, evaluation and comparison on the date of their opening. Within the Electronic Procurement Platforms, the contracting authority is required to initially evaluate a certain operator according to the "lowest price criterion", and viewing the next bid submitted is made only under the conditions of justified disqualification of the operator who proposed the lowest price. Thus, the principle of evaluation in the field of public procurement is violated, by not respecting the 3 stages in chronological order, such as: 1) the evaluation stage of the qualification requirements; 2) the stage of evaluation of the technical requirements; 3) the evaluation stage of the proposed price, after the promotion of the 2 stages mentioned above. Likewise, it is contrary to the notion of electronic auction in art. 1 of law no. 131/2015: "electronic auction - repetitive process involving electronic means of presenting, in descending order, the new prices and / or new values regarding certain elements of the tenders, which intervene after a first complete evaluation of the tenders, allowing their classification based on automatic evaluation methods. "➤ According to the provisions of art. 63 para. (3) of Law no. 131/2015 on public procurement, the contracting authority has the obligation to announce the decision to use the electronic auction in the notice of participation and in the award documentation. In this context, SIA	<p>shortest possible time (excluding the need to perfect documents in Microsoft Word , the development of the option to generate award decisions and reports automatically, the facilitation of the way of awarding public procurement contracts, the elaboration of the electronic file, the improvement of other deficiencies of the system).</p> <p>4. Development of the necessary functionalities in MTender to be easy to use, find information, extract and process data from the system according to certain specific criteria.</p>
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					<p>RSAP (MTender) activates the electronic tender for the RFQ procedure on goods and services unilaterally, without the decision of the contracting authority to use the electronic tender in the contract notice and in the award documentation. Moreover, the electronic auction for works design services was unilaterally activated, which is an exception to the rule on starting the procedure by electronic auction, according to the provisions of art. 63 para. (1) of Law no. 131/2015 on public procurement. Thus, we conclude that SIA RSAP (MTender) does not filter the procedures for which the procedure cannot be started by electronic tender. Respectively, the contracting authority is put in the situation of canceling the procurement procedures started, because it is unable to adopt corrective measures, without them leading to the violation of the principles provided in art. 7 of Law no. 131/2015 on public procurement, namely "assuming responsibility in public procurement procedures and minimizing the risks of contracting authorities."</p> <ul style="list-style-type: none">➤ At the stage of publishing the procurement procedures in batches, they are not viewed consecutively, according to the order established in the award documentation proposed for publication.➤ From a technical point of view, at the stage of publishing the notification that was sent to the economic operators, the button confirming the award decision is not activated, respectively the procedures are viewed with "evaluation" status, which misleads the economic operators.➤ The contact details of economic operators in the process of uploading contracts in PDF format are not saved. Respectively, it is necessary to include each time the respective data (name of the economic operator, name of the director, fiscal code, address, telephone number, e-mail address, etc.), consuming time and human resources.➤ In the process of publishing public procurement contracts, there is no technical possibility of placing them under the heading of the completed public procurement procedure.➤ There is no technical possibility to place several public procurement contracts by describing all the elements of the contracts, such as: the total amount of contracts without VAT, the unit of measure, the object of the contract, the name of the supplier.➤ The system limits the publication of contracts with a volume of more than 15 mb, and the authorities are put in the situation of additional use of the information reduction program, which consequently leads to decreased visibility of contractual data, published in SIA RSAP (MTender).➤ Multiple IBAN codes are required to generate the contract, but no more than 4 are allowed in MTender.	
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					<ul style="list-style-type: none"> - Long process of awarding public contracts (for each lot) - The need for manual completion (in Microsoft Word files) of the Award Decision and Report - Laborious way of registering public procurement contracts (over 3000 contracts), which are dispersed in the operating system - Absence of the electronic record compartment of the Additional Agreements concluded on the basis of public procurement contracts 	
	1(k) Norms for safekeeping of records, documents and electronic data	<p>The legal framework provides for the following:</p> <p>(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.</p> <p>(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.</p> <p>(c) There are established security protocols to protect records (physical and/or electronic).</p>	Art. 45 of Law 131/2015 provides general conditions regarding the public procurement file.	<p>a) According to Law 131/2015, the contracting authority has the obligation to prepare the public procurement dossier and to keep it within 5 years from the initiation of the public procurement procedure.</p> <p>b) The legal framework does not expressly stipulate which part of the public procurement dossier is available for public inspection. The content of the public procurement file is established by GD no. 9/2008. This policy of keeping the file dates back to 2008, when the acquisitions were made entirely on paper.</p> <p>c) Legislation on the protection of personal data requires the development of security policies on the protection of personal data when processing them in information systems.</p>	<p>➤ On October 1, 2018, the amendments to Law 131/2015 entered into force, but so far the secondary normative framework has not been adjusted (ex: GD 9/2008 on the elaboration and keeping the public procurement file).</p>	<ol style="list-style-type: none"> 1. Adjusting the secondary legislative framework; 2. The electronic procurement system must be developed so as to comply with all security / confidentiality requirements of law 131/2015 and to comply with the requirements of the e-Gov Center, STISC, CTIF, Center for the protection of personal data, etc. 3. To amend GD no. 9 of 17.01.2008 in order to regulate the electronic dossier.
	1(l) Public procurement principles in specialized legislation	<p>The legal and regulatory body of norms complies with the following conditions:(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.</p>	<p>Art. 7 of Law 131/2015 provides the principles for regulating public procurement relations.</p> <p>Government decree 351/2020 of 10 June 2020 on procurement by SOEs</p> <p>Law no. 179/2008 on PPPs</p>	<p>a) Utilities are exempt from the provisions of the PPL, in that its coverage explicitly excludes⁷⁰ the public procurement contracts awarded by contracting authorities that carry out their activity in the energy, water, transport and postal services sectors and which are part of these activities. In order to meet the obligations under the EU-Moldova Association Agreement, a new utilities law (on procurement in the energy, water, transport and postal services sectors) reflecting the provisions of the EU's Utilities Directive was adopted by Parliament on 21 May 2020 and published on 26 June 2020, with entry into force one year after publication.</p> <p>b) The new regulation on procurement by SOEs contains approaches and procedural requirements reflecting established public procurement principles and practices.</p> <p>c) The principles governing the relations regarding public procurement apply in the appropriate way to the forms of public-private partnership not prohibited by law, as well as in the case of awarding public works concession contracts.</p> <p>d) The Republic of Moldova has the framework law on public-private partnership no. 179/2008, which establishes the basic principles of the public-private partnership, the forms and modalities of realization, the procedure of initiation and its realization, the rights and obligations of the public partner and of the private partner. The institution responsible for regulating the implementation of state policy in the fields of administration and denationalization of public property, as well as public-private partnership is the Public Property Agency. In 2018, the law on works concessions and service concessions was adopted, which replaces the old law of 1995 and partially transposes Directive</p>	<p>The regulation on SOE procurement is not fully aligned with the public procurement law. It is binding only on enterprises owned by the State, and municipally owned enterprises are only recommended, not required, to apply it. Also, it would seem to overlap with the utilities law, since most utilities are publicly owned. Some publicly owned enterprises may fall within the broader definition of contracting authorities; these should then apply the PPL rather than the SOE procurement regulation. Other SOEs are operating on a commercial basis in competitive markets and should not necessarily have to follow specific procurement rules, if other means for their proper governance are in place (rather not the case at present).</p> <p>SOEs have not yet been reviewed and categorised in order to determine which law or regulation on procurement should be applied to each of them.</p> <p>The award provisions in the PPL and the PPP law are not harmonised.</p>	<p>Harmonise the procurement regulations for utilities, SOEs and PPP operations with each other and the PPL, so that it is abundantly clear which regulation should apply to each enterprise or operation.</p>

⁷⁰ PPL, Art. 5 (1)

				<div>2014/23 / EU of the European Parliament and of the Council of 26 February 2014.</div> <div>e) Regarding the acquisitions in the field of health, we have the Government Decision no. 1128/2016 on the Center for Centralized Public Procurement in Health.</div>		
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Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures	(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law. (b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place. (c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	<ul style="list-style-type: none"> GD no. 544 of 12.11.2019 on some measures for organizing the procurement process in the field of information and communication technology GD no. 1129 of 21.11.2018 on the approval of the Regulation on the periodic adjustment of the value of public procurement contracts with continuous execution, concluded for a period of more than one year GD no. 987 of 10.10.2018 for the approval of the Regulation on the acquisition of goods and services by requesting price offers GD no. 986 of 10.10.2018 on the approval of the Regulation on the maintenance of the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurement" (MTender) GD no. 985 of 10.10.2018 on the approval of the Regulation on the accreditation of electronic procurement platforms within the Automated Information System "State Register of Public Procurement" (MTender) GD no. 705 of 11.07.2018 on the approval of the Technical Concept of the Automated Information System "State Register of Public Procurement" (MTender) GD no. 1419 of 28.12.2016 for the approval of the Regulation on the planning of public procurement contracts GD no. 1418 of 28.12.2016 for the approval of the Regulation on the manner of drawing up the Prohibition List of economic operators GD no. 665 of 27.05.2016 for the approval of the Regulation on low value public procurement GD no. 667 of 27.05.2016 for the approval of the Regulation on the activity of the procurement working group GD no. 668 of 27.05.2016 for the approval of the Regulation on public procurement using the negotiation procedure GD no. 669 of 27.05.2016 for the approval of the Regulation on public works procurement 	<ul style="list-style-type: none"> a) The secondary normative framework aims to complete and detail the provisions of law no. 131/2015. b) The existing Government Decisions include comprehensive norms regarding the application of law no. 131/2015. These can be easily found in the State Register of Legal Acts accessible online (http://www.legis.md/), on the website of the Public Procurement Agency (www.tender.gov.md), Ministry of Finance (www.mf.gov.md) and the National Agency for Solving Complaints (www.ansc.md). c) The Ministry of Finance, with the support of the Public Procurement Agency, is responsible for developing policies in the field of public procurement. Some of these regulations have not been updated, some of them are being updated. 	<ul style="list-style-type: none"> ➤ On October 1, 2018, a series of important amendments to law 131/2015 entered into force, but so far the secondary regulatory framework has not been adjusted. ➤ There are provisions that contravene the public procurement law no. 131/2015. For example, in the Regulation on public works procurement, approved by Government Decision no. 669 of 27.05.2016, stipulates the obligation of the existence of 3 qualified bidders, otherwise the procedure is canceled by the contracting authority (p.150). However, Law no. 131/2015 allows the contracting authority to opt for the continuation of the procedure if the number of tenderers / candidates who meet the qualification and selection requirements is less than the minimum number provided for each procedure. ➤ Similar issues arise for the CAPCS: its statutes have not been well aligned with the PPL and staff have considered themselves obliged to apply the statutes rather than the PPL. <p>Not updated:</p> <ul style="list-style-type: none"> - Government Decision no. 9 of 17.01.2008 for the approval of the Regulation on drawing up and keeping the public procurement file - Government Decision no. 665 of 27.05.2016 for the approval of the Regulation on low value public procurement - Government Decision no. 667 of 27.05.2016 for the approval of the Regulation on the activity of the procurement working group - Government Decision no. 668 of 27.05.2016 for the approval of the Regulation on public procurement using the negotiation procedure - Government Decision no. 669 of 27.05.2016 for the approval of the Regulation on public works procurement ➤ Currently, the Ministry of Finance has submitted to public consultations the draft Regulation on public works procurement and the draft Regulation on public procurement using the negotiation procedure. 	<ol style="list-style-type: none"> Adjusting the secondary normative framework to Law 131/2015. Priority: Regulation on public works procurement (currently subject to public consultation), Regulation on the activity of the Procurement Working Group (currently subject to public consultation), Regulation on public procurement using the negotiated procedure (currently subject to public consultation) public consultations), the Regulation on the framework agreement. The need to modify GD no. 665 of 27.05.2016 regarding public procurements of low value, namely the increase of the limit of 10000.00 thousand lei without VAT in the context of the increase of the ceiling from 80000.00 lei to 200000.00 lei without VAT in law 131 of 03.07.2015 (Article 2). Update the CAPCS regulation to align it with the PPL, and make it clear that the PPL supersedes any contradictory indication in secondary legislation (which then should be duly harmonised)..

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
			<ul style="list-style-type: none"> GD no. 826 of 07.11.2012 for the approval of the Regulation on the framework agreement as a special way of awarding the public procurement contract GD no. 355 of 08.05.2009 regarding the approval of the Technical Concept of the Automated Information System “State Register of Public Procurement” GD no. 9 of 17.01.2008 for the approval of the Regulation on drawing up and keeping the public procurement dossier 			
	2(b) Model procurement documents for goods, works, and services	<p>(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.</p> <p>(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.</p> <p>(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.</p>	<ul style="list-style-type: none"> MF Order no. 23 of 06.02.2019 on the approval of the Standard Documentation for the realization of public procurement of social food services in educational institutions MF Order no. 177 of 09.10.2018 on the approval of the standard form of the Single European Procurement Document MF Order no. 176 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of works MF Order no. 175 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of goods and services through the request for price offers MF Order no. 174 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of services MF Order no. 173 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of goods 	<p>a) There is standard documentation for goods, works and services. However, there is no special for consulting services.</p> <p>b) As listed in the column “Refence document(s)”.</p> <p>c) The Ministry of Finance, with the support of the Public Procurement Agency, is responsible for the elaboration of standard documentation in public procurement. Some of these standard documents have not been updated, some of them are in the process of being updated (eg DUAE). According to statements by the PPA, the responsibility for preparation and updating would benefit from further clarification.</p>	<p>➤ The documents are difficult to complete in the situation of multilot procedures, especially in the situation of organizing the electronic auction. The tables proposed for completion contain practically the same information, except that in some it is inserted horizontally, in others vertically, as well as according to the ranking. We consider this a useless, time-consuming thing.</p> <p>➤ In the case of the Single European Procurement Document, both the provisions of law no. 131/2015, of the normative acts subordinated to the law, but also the standard DUAE Form, create confusions, non-uniform interpretations and barriers for the economic operators. These errors are explained by the complex format of the document, the unclear structure, imprecise or repetitive questions, unclear instructions for completing each of the parts. Those errors result in disqualifications of bidders, contesting procurement procedures, delaying the procurement process or even canceling procurement procedures.</p>	<ol style="list-style-type: none"> In the context of the implementation of the M-Tender system, the standard documents are to be revised as they often repeat the requested information. Generation of documents by electronic procurement platforms. revision of the standard DUAE form both in form (appropriate numbering) and content (exclusion of references and instructions from the form); elaboration of an instruction on the use of DUAE, separate from the form itself; implementation of electronic DUAE, as well as integration with the electronic procurement system and with the national databases; the amendment of art.20 paragraph (7) of law no.131 / 2017 in order to exclude the possibility of the contracting authority to request all the qualification documents related to DUAE at the stage of submission of tenders.
	2(c) Standard contract conditions	<p>(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.</p> <p>(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.</p> <p>(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.</p>	<ul style="list-style-type: none"> MF Order no. 23 of 06.02.2019 on the approval of the Standard Documentation for the realization of public procurement of social food services in educational institutions MF Order no. 176 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of works MF Order no. 175 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement 	<p>a) In the standard documentation approved by the Ministry of Finance there are model contracts and standard contractual conditions for the most common types of contracts, mandatory for participants in public procurement procedures.</p> <p>b) The content of the contractual conditions is different from one type of contract to another, but contains basic provisions necessary in contractual legal relationships.</p> <p>c) The model contracts are part of the standard documentation and are made available to the participants in the procurement procedures.</p>	<p>The contractual conditions are not always well adjusted according to the specifics of each acquisition. The disproportion of penalties in contract execution adds risks of corruption and are not necessarily conducive to proper contract execution. For instance, if the contracting authority does not meet its obligations under the contract or, e.g. unduly delays the acceptance and payment of deliverables under the contract, the contractor has very limited possibilities to address the situation.</p>	<ol style="list-style-type: none"> In the context of the implementation of the M-Tender system, the standard clauses will be revised and the contract system in electronic format will be developed. Establishing the standard clauses as well as offering the possibility to the Contracting Authority to include some clauses specific to the object of procurement.

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
			of goods and services through the request for price offers <ul style="list-style-type: none"> MF Order no. 174 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of services MF Order no. 173 of 05.10.2018 regarding the approval of the Standard Documentation for the realization of public procurement of goods 			
	2(d) User's guide or manual for procuring entities	(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws. (b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	On the PPA webpage: <ul style="list-style-type: none"> Instructions regarding the creation of an Open Tender procedure for the procurement of works in SIA RSAP MTender; Instructions regarding the creation of an Open Tender procedure for the purchase of goods / services in SIA RSAP MTender; Instructions on creating a requests for price quotations procedure for the procurement of works in SIA RSAP MTender; Instructions regarding the creation of a requests for price quotations procedure for the acquisition of goods / services in SIA RSAP MTender; Instructions Prohibition list; Video guide - completing the award documentation 	a) There are some instructions on the website of the Public Procurement Agency, but they are not comprehensive and do not take the form of instructions, plus they do not refer to all procedures; b) The Public Procurement Agency is responsible for methodological support and consultations in the field of public procurement. Guides and manuals are missing	In the absence of guidelines from the Public Procurement Agency, participants in procurement procedures have at their disposal: <ul style="list-style-type: none"> The Guide of the National Agency for Solving Appeals, as methodological support for economic operators on how they are to develop and file an appeal on a public procurement procedure, the rights and obligations arising from the submission of the appeal, as well as the way in which the contracting authorities and the economic operators can act depending on the solution pronounced by the National Agency for Solving Appeals. Guidelines developed by non-governmental organizations: <ul style="list-style-type: none"> - Guide on public procurement appeals (IDIS "Viitorul"); - Guide on public procurement for contacting authorities (IDIS "Viitorul"); 	1. Exercising by the Public Procurement Agency its role of support and consultancy for the participants in the public procurement procedures (elaboration and publication of guides, instructions, other useful material).
3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.	3(a) Sustainable Public Procurement (SPP)	(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives. (b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP. (c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle. (d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	<ul style="list-style-type: none"> GOVERNMENT DECISION No. 160 of 21.02.2018 on the approval of the Program for the promotion of the "green" economy in the Republic of Moldova for the years 2018-2020 and of the Action Plan for its implementation; Law no. 131/2015: <ul style="list-style-type: none"> - Article 7. Principles for regulating public procurement relations (letter d) environmental protection and promotion of sustainable development through public procurement); - Article 37. Rules on the description of goods, works and services (paragraph (14)) The contracting authority has the right to impose in the award documentation, insofar as they are compatible with Community law, special conditions for performance of the contract, by which aims to achieve social or environmental effects and 	a) By GOVERNMENT DECISION No. 160 of 21.02.2018, the Program for the promotion of the "green" economy in the Republic of Moldova for the years 2018-2020 and the Action Plan for its implementation were approved. Specific objective no. 8 of the ACTION PLAN provides: Ensuring, by 2020, that at least 15% of all public procurement meets the criteria for sustainable procurement. b) The actions preserved in the Specific Objective no. 8 provide systems and tools to operationalize, facilitate and monitor the implementation of sustainable public procurement. c) One of the principles regulating the relations regarding public procurement provides for the protection of the environment and the promotion of a sustainable development through public procurement (art. 7 letter d) of Law 131/2015). At the same time, among the qualification and selection criteria provided in art. 18 also provided the criterion related to environmental protection standards. d) Legal provisions provide opportunities for balanced application of sustainability criteria to ensure value for money.	<ul style="list-style-type: none"> In the Republic of Moldova there is no strategy exclusively dedicated to sustainable public procurement. At present, the regulatory framework offers possibilities to apply the sustainability criteria, but does not provide for their mandatory use. Although the specific objective no. 8 of the Action Plan for the implementation of the Program for promoting the "green" economy in the Republic of Moldova for the years 2018-2020 provided the necessary actions to operationalize, facilitate and monitor the implementation of sustainable public procurement, so far has failed to achieve the goal to ensure, by 2020, that at least 15% of all public procurement meets the criteria for sustainable procurement. In the model public procurement contracts there are no express provisions / contractual clauses regarding sustainability. Once the regulatory framework provides possibilities for the application of sustainability criteria and does not make it mandatory to use them, sustainable procurement is not implemented by contracting authorities. 	1. Development of the normative framework in order to ensure the wide use of sustainability criteria for economy, environment and society with concrete objectives for the next 3-5 years for each Contracting Authority. 2. Promoting and increasing the capacities of the Contracting Authorities regarding the use of sustainability criteria and the dissemination of best practices for sustainable development. 3. Insertion in the model public procurement contracts of the express provisions regarding sustainability.

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
			<p>promote sustainable development.)</p> <p>- Article 59. Procurement of social services and other specific services (paragraph (5)) The award criteria used for the award of public procurement contracts / framework agreements having as object social services and other specific services, provided in annex no. 2, are the best quality-price ratio or the best quality-cost ratio, taking into account the criteria of quality and sustainability of social services.)</p>		<p>➤ Another important factor would be the financial one, because the purchase of "eco" products is more expensive than the usual ones.</p>	
	3(b) Obligations deriving from international agreements	Public procurement-related obligations deriving from binding international agreements are: (a) clearly established (b) consistently adopted in laws and regulations and reflected in procurement policies.	Law no. 131 of 03.07.2015 on public procurement; Directive 2014/24 / EU of the European Parliament and of the Council of 26 February 2014 on public procurement and abrogation of Directive 2004/18 / EC	a) Law no. 131 of 03.07.2015 on public procurement transposes Directive 2014/24 / EU of the European Parliament.	Public procurement obligations arising from binding international agreements are not fully and clearly determined and are not consistently adopted in laws and regulations and reflected in public procurement policies. In particular, a number of the provisions in the regulations governing the e-procurement system (MTender) were not aligned with neither the PPL nor, by extension, the applicable EU directives (see further under sub-indicators 1(j) and 7(b). The observation of Moldova's obligations under the GPA is also incomplete, to the extent that some items of secondary legislation is not yet in line with the PPL.	Update and harmonise the secondary legislation with the PPL.

Pillar II. Institutional Framework and Management Capacity

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
4. The public procurement system is mainstreamed and well integrated into the public financial management system	4(a) Procurement planning and the budget cycle	The legal and regulatory framework, financial procedures and systems provide for the following: (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning. (b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period). (c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	According to the PPL (art. 15, para (1), let.a)) the procurement working group elaborates annual and quarterly procurement plans. GD 1419 of 28.12.2016 on the approval of Regulation on the planning of public procurement contracts.	Procurement planning and execution is mostly carried out on an annual basis, with operations often starting well after the beginning of the fiscal year and being rushed through towards its end which does not contribute to multi-year budgetary planning. The possibilities for multi-annual planning are not well developed. Civil society: according to the monitoring results, there are cases when the contracting authorities are planning procurement higher than the funds available. The execution of the contracts is non- transparent (contracts, amendments, invoices, payments, sanctions, etc.)	It is possible to assume multi-annual commitments for capital investment projects for a period of up to three years and, consequently, to include corresponding items in the procurement plans. However, the multi-annual contracts have financial coverage only for the one-year budgetary period. Civil society: The Contravention Code provides sanctions for contracting authorities when procurement plans are not developed and / or published. However, the Code lacks the provisions that would clearly state the authority with the duty to apply these sanctions. As a consequence, the provision is inapplicable.	Implement possibilities for multi-annual commitments, while recognising that better policies and practices for the use of framework agreements may also serve similar purposes and may also have other advantages for contracting authorities. Simplify the procedures for payment of invoices, monitor their application, including the time taken from each delivery to the corresponding disbursement, and consider how to best ensure timely disbursement. Civil society: amendment of the Contravention Code by indicating the competent authority to establish the contravention and to apply sanctions.
	4(b) Financial procedures and the procurement cycle	The legal and regulatory framework, financial procedures and systems should ensure that: (a) No solicitation of tenders/proposals takes place without certification of the availability of funds. (b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*	a) GD no. 1419 of 28.12.2016 on the approval of Regulation on the planning of public procurement contracts provides at p. 5 that one of the mandatory conditions for procurement planning is the existence of financial resources or proof of their allocation. The same GD 1419/2016 (p. 15) provides that for the additional allocated financial resources (modification of the financing plan, subsidies), which were not known at the time of drawing up the procurement plan, a new procurement procedure is carried out, in accordance with the thresholds provided by the law for the application of public procurement procedures. Law 181/2014 on public finance and fiscal-budgetary responsibility clearly establishes that the initiation of procurement procedures is not allowed without corresponding financial coverage (Art. 66). The corresponding procedural rules are clear and are reported to be strictly applied. The budget allocations for the planned procedures must fully cover the estimated values of the procedures (Law 181/2014, Art. 66). If the allocations have been diminished as a result of a budget modification during the budget year, the budgetary institutions (contracting authorities financed from the State budget) are obliged to review the	If the institution's budget lacks the financial means, the procedures must not be initiated and must be excluded from the procurement plan. Another mechanism for enforcing budget availability is set up at the State Treasury, in that in case of a lack of financial means, the contracts awarded are not registered, which is then a sufficient reason for them not to be binding for the contracting parties. Contracting authorities: about 90% of the invoices are paid on time, 10% later but this is due to over-requests from the territorial Treasuries at the end of the budgetary year.	Financial procedures, both at the level of the individual contracting authorities and the Treasury, are not fully conducive to swift and efficient payments to suppliers, contractors and service providers who therefore may face the risk of running into financial problems preventing them from ensuring that subsequent deliveries can be made as required by the contract.	Simplify the procedures for payment of invoices, monitor their application, including the time taken from each delivery to the corresponding disbursement, and consider how to best ensure timely disbursement

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
			contractual relations with the suppliers of goods and services and to reduce the expenses (Law 181/2014, Art. 66 (4)). Advance payments are restricted to a few special cases. Invoices for goods, works or services delivered are processed in several steps, regulated in the Order of the Ministry of Finance no. 215 of 28 December 2015 on the approval of the Methodological norms regarding the cash execution of the component budgets of the national public budget and of the extra-budgetary means through the Single Treasury Account of the Ministry of Finance. The State Treasury and the regional treasuries of the Ministry of Finance are thus required (point 4.2.4.4) to perform additional checks on payment orders in terms of budget classification, as well as whether they correspond to the commitments made by the budgetary authority or institution.			
		// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.		Not calculated because of lack of data.		
5. The country has an institution in charge of the normative/regulatory function	5(a) Status and legal basis of the normative/regulatory institution function	(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	The activity of the PPA is regulated by the PPL and GD no. 134 of 09.03.2017.	PPA: The elaboration and promotion of the policies and normative acts is the legal responsibility of the Ministry of Finance. The Public Procurement Agency is an administrative authority subordinated to the Ministry of Finance, established for the purpose of strengthening the capacities of contracting authorities, developing the public procurement skills of business environment, monitoring the compliance of public procurements, and conducting analysis of public procurements system. (PPL, article 9, paragraph (1))	Several entities have supervisory roles in public procurement. Their decisions when exercising these roles may have normative/regulatory effects but are not always harmonised with the roles and decisions of the PPA and the Ministry of Finance, leading to some overlaps and confusion..	Review the responsibilities of central public institutions regarding their exercise of key public procurement functions, with a view to identify and mitigate possible conflicts of roles within and between them, in harmonisation with other measures for improving regulation, implementation and supervision of public procurement.
	5(b) Responsibilities of the normative/regulatory function	The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility: (a) providing advice to procuring entities (b) drafting procurement policies (c) proposing changes/drafting amendments to the legal and regulatory framework (d) monitoring public procurement (e) providing procurement information (f) managing statistical databases (g) preparing reports on procurement to other parts of government (h) developing and supporting	The elaboration and promotion of the policies and normative acts is the legal responsibility of the Ministry of Finance. The responsibilities of the PPA are regulated within the Article 10 of the PPA.	The PPA's legal duties are: a) to draw up and submit to the Ministry of Finance proposals to amend and complement the public procurement legislation; b) to draw up, update and maintain the list of banned economic operators; c) to monitor the compliance of public procurement process and analyse the public procurement system; d) to provide methodological help and consultations, and organize training seminars on public procurement; e) to design, develop, and implement mechanisms for the certification of persons within contracting authorities and procurement service providers responsible for organizing, conducting public procurement and awarding public procurement contracts; f) to issue the Public Procurement Newsletter, g) to maintain the Internet website of Public Procurement in the Republic of Moldova; h) to produce, quarterly and annually, statistical analysis regarding public procurement;	PPA: According to the legislation, PPA does not have attributions / intervention levers on the way of conducting public procurement procedures. In case of non-conformities / irregularities identified during monitoring process, the remedial measures prescribed by the PPA are by way of recommendation and not mandatory. Civil society: The PPA no longer has the power to control ex-ante or ex-post public procurement procedures. At the same time, the monitoring reports it draws up are more of a recommendation for the contracting authorities, so many of contracting authorities (about half of them) ignore them, although obvious irregularities and violations of the law are found.	PPA: Revision of the PPA responsibilities by including the right to carry out the control the entire process of public procurement procedures according to the OECD / SIGMA recommendations of July 2016.

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		implementation of initiatives for improvements of the public procurement system (i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement (j) supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession) (k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate.		<p>i) to request and obtain from the competent bodies any information they need to carry out their duties; j) to organize awareness raising campaigns on public procurement; k) to issue annual reports based on the analysis of economy, efficiency and effectiveness of public procurement system; l) to cooperate with similar international institutions and similar agencies from other countries in the field of public procurement.</p> <p>Correspondingly, it has to</p> <p>a) elaborate and implement standard documentation regarding public procurement procedures b) provide methodological assistance and consultations in the field of public procurement to the contracting authorities c) train contracting authority personnel involved in the organisation and development of public procurement procedures d) edit the "Public Procurement Bulletin" e) maintain in the global Internet network the web page "Public Procurement of the Republic of Moldova" f) manage the automated information system of public procurement g) examine reports on public procurement procedures in order to analyse and monitor the efficiency of the public procurement system h) draw up, update and maintain⁷¹ the list of qualified economic operators and the list of economic operators prohibited from participating in public procurement i) approve draft of normative acts that have an impact on the activities regulated by the legislation on public procurement j) collaborate with international institutions and similar agencies and coordinate the use of foreign technical assistance in the field of public procurement k) prepare, quarterly and annually, reports and statistical analyses on public procurement l) carry out any other attributions established by the legislation</p>		

⁷¹ No longer required by the PPL, but still retained in Government decree 134/2017 (as amended), Annex 1, item 7. 8).

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	5(c) Organisation, funding, staffing, and level of independence and authority	<p>(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.</p> <p>(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.</p> <p>(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.</p>	PPA: The organisation and functioning of the PPA is regulated by the GD no. 134 of 09.03.2016.	<p>PPA: The PPA is an administrative authority subordinated to the Ministry of Finance, established for the purpose of monitoring the compliance of public procurements, and for the interbranch coordination in the public procurement sector.</p> <p>The PPA has the status of a legal person under public law, has treasury accounts, a stamp with the State Coat of Arms and its name in the state language being financed from the state budget. The PPA is headed by the director. The Minister of Finance is responsible for the appointment, modification, suspension and termination from the service, in accordance with the law on the civil service and the status of civil servant.</p> <p>The limit staff of the PPA in number of 25 units, of which civil servants, which fall under the incidence of Law no. 158-XVI of July 4, 2008, and contractual personnel, which fall under the incidence of the labor legislation.</p>	<p>PPA: In the last 3 years the PPA limit staff has been reduced from 64 to 25 units. At the moment PPA has 30% of vacant positions facing a fluctuation of 30% (extremely high) of staff with experience in the public procurement. Most of the employees are young people, the average age being 28 years. Respectively, due to the permanent staff turnover, the Agency faces a lack of human resources, professional competence in the field of activity and lack of institutional memory.</p> <p>PPA: Due to the lack of technical functionalities and the impossibility of SIA "RSAP" MTender to generate data and information, the workload of the PPA has been substantially increased. Respectively, the PPA has to manually record and process the data on public procurement procedures, which are necessary for the performance of the monitoring duty, for compiling statistics, providing truthful information on the procurement contracts awarded to the Treasury, as well as serving as information of public interest. Data processing manually takes a lot of time and additional technical work without an impact on the quality of public procurement procedures. Those issues led to the PPA inability to exercise its basic attribution which is monitoring the conformity of the public procurement procedures.</p>	<p>PPA: To align the remuneration of the PPA employees with the remuneration within other similar agencies subordinated to the Ministry of Finance (such as Customs Service, State Fiscal Service).</p> <p>PPA: Development of a modern e-procurement system, with business process automation together with the high-performance data analytics module.</p>
	5(d) Avoiding conflict of interest	(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*	<p>PPL 131/2015, Art. 79</p> <p>Points 40 - 43 of the Regulation regarding the activity of the working group for procurement (Government Decision no. .667 / 2016</p> <p>Law on integrity no. 82/2017</p> <p>Law regarding the declaration of wealth and personal interests no. 133/2016</p> <p>Law regarding the National Integrity Authority no. 132/2016</p>	<p>The PPL stipulates the obligation of the contracting authority / service provider to take all necessary measures to avoid situations that may cause a conflict of interest to arise during the application of the procedure for awarding the public procurement contract (art. 79 paragraph (1)).</p> <p>In this respect, the contracting authority / service provider has the obligation to sign, on its own responsibility, a declaration of confidentiality and impartiality (art. 79 paragraph (5)), which undertakes to comply unconditionally the provisions of the present law and by which also confirms that:</p> <p>a) is not a spouse, relative or affiliate, up to the third degree inclusive, with one or more employed persons of the bidder (s) or with one or more of their founders;</p> <p>b) in the last 3 years, it did not activate on the basis of the individual employment contract or of another registrant demonstrating the working relations with one of the bidders or was not part of the board of directors or any other governing or administrative body thereof ;</p> <p>c) does not hold shares in the subscribed share capital of the bidders.</p> <p>In case one of the members of the working group of the contracting authority / procurement service provider finds, before or after the opening session of the tenders, that he is in one or more of the situations specified above, he will request immediately its replacement in the composition of the group with another person (art. 79 para. (6)).</p> <p>Based on the provisions of art. 19 paragraph (3), the contracting authority has the obligation to exclude from the procedure for awarding the public procurement contract any tenderer or candidate who is in a conflict of interest situation that cannot be remedied in a manner effectively through the measures provided for in Article 79.</p> <p>Similar rules regarding the obligation of the contracting authority (working group) to avoid conflicts of interest and to sign the declaration of confidentiality and impartiality are also included in points 40 - 42 of the Regulation regarding the activity of the working group for procurement (Government Decision no. .667 / 2016). Also in this Regulation it is stipulated that in case of non-observance of the</p>	<p>The rules on conflicts of roles mainly refer to individuals. Conflicts of roles within and between public authorities are not given much attention, leading to overlaps and conflicting ambitions in e.g. supervision of public procurement.</p> <p>The competition of the norms of law, which on the one hand mentions that the PPA is entitled to cancel the public procurement procedure in case of non-observance of the provisions regarding conflicts of interests (point 43 of the Regulation regarding the activity of the working group for procurement) , and on the other hand it regulates in detail the competence of the National Integrity Authority to ascertain the violation of the legal regime of conflicts of interest and the jurisdiction of the court to ascertain the absolute nullity of the administrative act issued / adopted or of the legal act concluded directly or through a person third parties, or the decision taken in violation of the legal regime of conflicts of interest.</p> <p>The impossibility of the PPA having the competence to cancel the public procurement procedure in the context in which it no longer has the competence to carry out the ex-post control, after which the situations of conflicts of interest in the public procurement procedures can be detected.</p>	As under 5(a) above.

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				provisions regarding the conflicts of interests, the Public Procurement Agency is entitled to cancel the public procurement procedure (point 43 of the Regulation). All aspects and procedures regarding conflicts of interests are regulated in more detail in the law of integrity no. 82/2017, the law regarding the declaration of wealth and personal interests no. 133/2016 and the law regarding the National Integrity Authority no. 132/2016		
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.				
6. Procuring entities and their mandates are clearly defined	6(a) Definition, responsibilities and formal powers of procuring entities	The legal framework provides for the following: (a) Procuring entities are clearly defined. (b) Responsibilities and competencies of procuring entities are clearly defined. (c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability. *(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. (e) Accountability for decisions is precisely defined.	a) The quality of a contracting authority is clearly defined in Chapter III, section 1 (art. 13) of the PPL no. 131/2015. b) The responsibilities of the contracting authorities are clearly defined within the PPL 131/2015 (art. 14). c) According to art. 14 of Law 131/2015, the contracting authority performs its duties through a working group established for this purpose and formed of public servants and experts with professional experience in the field of public procurement from within the contracting authority, within the limits of the documented personnel. Based on the subject matter of the procurement, the contracting authority may set up one or several procurement working groups. The regulation on the activity of the procurement working group was approved by GD no. 667 of 27.05.2016. e) The contracting authority is accountable for the execution and management of the procurement contracts within the terms and condition provided for.	The defining characteristics and the responsibilities and competencies of contracting authorities are set out in the PPL (Art. 13 and 14) and are in line with the EU Directives. Contracting authorities exercise their duties through working groups set up for this purpose, composed by officials and specialists within the contracting authority with professional experience in the field of public procurement. They are in charge of the whole procurement cycle for each individual contract, from the identification of needs through the preparation of tender documents, the evaluation of tenders and the award of contracts to the management of the contracts concluded as well as monitoring and reporting. Following the reform of the central public authorities in 2018, the specialised subdivisions of logistics and goods management were excluded from the model organisation chart and transferred to the financial subdivisions so, with the exception of e.g. major municipalities, there is usually no dedicated administrative unit in charge of public procurement and often not even any staff members with procurement as their main duty; the workig group members typically perform other activities according to their primary job descriptions. Contracting authorities are allowed to engage external service providers, includiing a central purchasing body, for carrying out procurement but this is not regulated in detail.	The responsibilities and competencies of contracting authorities as such are not well reflected in any corresponding administrative set-up and matching staff positions. Contracting authorities are thus not formally required to have an adequately staffed and resourced unit in charge of public procurement. The lack of dedicated administrative units and the shortage of specialised, skilled and experienced staff limit the ability of contracting authorities to carry out procurement in accordance with applicable laws and regulations and established good practice. The use of separate working groups dilutes responsibilities and makes it difficult to clearly assign accountability and to effectively sanction bad practices and unlawful decisions.	Contracting authorities: Each contracting authority should have a dedicated unit or at least a dedicated position for a procurement specialist to be responsible for carrying out public procurement procedures without cumulating other roles and responsibilities.
		// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialised procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.				
	6(b) Centralized procurement body	(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	The PPL 131/2015 provides for in the modalities to carry out centralized public procurement procedures. According to the art. 13, para. (6) of the PPL 131/2015, the centralised purchasing authority is also a contracting authority designated by the Government to organize	In the Republic of Moldova, there are only two centralized procurement institutions, namely the State Road Administration and CAPCS. The Center for Centralized Public Procurement in Health (CAPCS) and SoE "State Road Administration" (ASD) have a regulated status for the activity of centralized public procurement. Additionally, there is also a local public authority practising centralized procurement (Balti Municipality).	Except the general provisions within the PPL, the normative framework is not fully developed to ensure the wide application of centralized procurement. The provisions on centralised purchasing provided in the PPL are not fully reflected in the statutes etc. of e.g. the CAPCS, not even those corresponding to what is found in the applicable EU directives.	PPA: Designation by the Government of central purchasing authorities for the conduct of centralized public procurement procedures, typically using framework agreements for the most common goods and services, in order to

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		<p>(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:</p> <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. • The body and the head of the body have a high-level and authoritative standing in government. <p>(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.</p>	<p>and perform, in centralized manner, the public procurement procedures, using only electronic means of communication except the cases foreseen in article 33, for the purpose of meeting the needs for the same supplies, works or services of several contracting authorities.</p>	<p>Civil society: in fact there is only a centralized procurement body, which is the Center for Centralized Public Procurement in Health (CAPCS)</p> <p>Balti Municipality: At the level of Balti Municipality, there was signed an Association Agreement with the departments subordinated to Balti City Hall, by which the working group of Balti City Hall was delegated with the responsibility of organizing procurement procedures that exceed the threshold of low value contracts, as well as for the purpose of procurement goods and services in a centralized manner in order to obtain a more reasonable price. The activity organized in that way strengthens the capacities of the departments subordinated to the City Hall (art. 13 paragraph (3) of Law 131/15). According to the provisions of the Association Agreement, the City Council working group is designated responsible for launching and organizing the procurement procedures. Procurement planning, concluding contracts and their monitoring, as well as contractual payments are carried out by each department of the City Hall. The working group includes the mayor and the deputy mayors, as well as the representative of the general financial-economic division, which allows a more efficient management of public money.</p>	<p>PPA: Although the regulatory framework allows for the conduct of centralized public procurement procedures, at present, their conduct is a challenge for contracting authorities. It is necessary to create / appoint another institution that will carry out framework agreements for the most common goods and services, which in fact was provided in the Strategy on the development of the public procurement system for the years 2016 - 2020.</p> <p>No actions were initiated to assess the impact of centralization in some sectors or regions.</p> <p>Civil society: the establishment of the CAPCS did not lead to the solving of the problems in the system, e.g. In the opinion of the economic operators participating in the CAPCS procedures, there are currently more debts of the CAPCS to the EO (compared to the period when the contracts were not tripartite); late proceedings, although there are documents governing those deadlines, etc.</p>	<p>meet the needs of similar goods, works or services of several contracting authorities</p> <p>PPA: Development of the e-catalog within the electronic system MTender.</p>

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7. Public procurement is embedded in an effective information system	7(a) Publication of public procurement information supported by information technology	<p>The country has a system that meets the following requirements:</p> <p>(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.</p> <p>(b) There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.</p> <p>(c) The information system provides for the publication of: *</p> <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency. <p>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).</p> <p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p> <p>(f) Responsibility for the management and operation of the system is clearly defined.</p>	PPL, Art. 10 Government decree 705/2018 Government decree 986/2018	<p>a) According to art. 10 let. g) of the Public procurement Law no 131/2015, the PPA maintains the official website on public procurement of the Republic of Moldova (https://tender.gov.md_, where the relevant information on public procurement in a timely manner is published. The information is public, with open access.</p> <p>b) Thorough the GD no. 986 of 10.10.2018 was approved the Regulation for keeping the State register of public procurement formed by “State register of public procurement” (MTender); it can be freely accessed.</p> <p>c) The MTender provides for the publication of the procurement plan, the authority’s budget, as well as the conduct of public procurement procedure.</p> <p>d) MTender provides for the publication of tender documentation.</p> <p>e) Much of the information is not in an open data format, because of the wide use of .pdf documents prepared by scanning hard copy originals.</p>	<p>PPA: The MTender system has only partially technical functionalities developed and do not correspond to the requirements.</p> <p>MTender technical deficiencies (according to contracting authorities):</p> <ul style="list-style-type: none"> - Difficulties to load the attached documents, especially the specifications for the works, including the project documentation. - lack of possibility to select the exact CPV code (only the second degree code) - the system does not generate documents and tables, which makes it difficult to evaluate and award contracts. - the system has considerably increased the preparation of paper documents by the contracting authority - The contracting authority has to spend time preparing different documents with the same information in totally different tables as a format, collecting the signatures of the members of the working group for the purpose of scanning the documents and sending them for examination to the PPA. - the extremely high flow of documents considerably delays the PPA examination of the documents. - lack of technical functionalities that would allow to publish the procedures of negotiation without publication. This fact leads to the monitoring report form the PPA mentioning the non-compliance by the authorities with the legal provisions. In this case, it is not the irresponsibility of the authorities, but the deprivation of the possibility to make the negotiation procedure transparent within the MTender system. - lack of functionality for the economic operators to upload additional documents after the opening of tenders, which are being sent by e-mail at the request of the contracting authority. - the functionality “the working group members” and the generation of “Statements of confidentiality and impartiality” are not provided for in the electronic system - the MTender system did not generate major savings for the contracting authority, as was initially forecast at the launch stage. - the use of MTender has increased the number of unjustified complaints from economic operators, leading to late purchases of goods, services and works. 	PPA: Change the current multi-platform e-procurement system into a mono-platform system and development of a system that would cover the entire cycle of a public procurement procedure and would be compliant with the legal framework.
		// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):		Not calculated because of lack of data.	PPA: The MTender is not fully developed and does not currently support the data collection.	

		<ul style="list-style-type: none">• procurement plans published (in % of total number of required procurement plans)• key procurement information published along the procurement cycle (in % of total number of contracts) :• invitation to bid (in % of total number of contracts)• contract awards (purpose, supplier, value, variations/amendments)• details related to contract implementation (milestones, completion and payment)• annual procurement statistics• appeals decisions posted within the time frames specified in the law (in %). <p>Source: Centralised online portal.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a)</p> <p>Assessment criterion (e):</p> <ul style="list-style-type: none">- Share of procurement information and data published in open data formats (in %). <p>Source: Centralised online portal.</p>				
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Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
	7(b) Use of e-Procurement	(a) E-procurement is widely used or progressively implemented in the country at all levels of government.* (b) Government officials have the capacity to plan, develop and manage e-Procurement systems.(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.* (e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	According to the Public Procurement Law no. 131/2015: - The “State Register of Public Procurement” – online electronic system, accessible via the Internet at a dedicated address, used for the electronic application of public procurement processes, for posting invitations /notices at national level, submission and evaluation of tenders, award, and electronic signing of public procurement contracts. The AIS "SRPP" owner is the Ministry of Finance (art.1); - (1) The contracting authority shall be required to publish in the Public Procurement Newsletter a notice of planned procurement (prior information notice) regarding the contemplated public procurement procedures (art. 28, para. (1)); - the tenders are submitted in writing via SIA “RSAP” and their content remains confidential until the expiration of the deadline set for their opening (art. 61, para. (19), let. c)).	All public procurement procedures are carry out through the MTender system (except CAPCS procedures). Each participant within a procurement procedure has access to the electronic system. The public procurement specialists are required by the law to use SIA RSAP MTender. Initially, there were trainings organized on how to use the system. However, the skills of the contracting authorities as well as of the economic operators need permanent training to meet the requirements of digital technology. Ministry of Internal Affairs: depending on the planned value of the goods, the number and the share of each procedure may vary. For example, in 2019 within the MIA, the open tender constituted 60% from the total number of procedures and 40% from the total value of procurement procedures conducted.	The non-residents economic operators cannot participate in a procurement procedure through MTender because of their impossibility to obtain the electronic signature which is mandatory to participate in a tender.	PPA: The development of a mono-platform e-procurement system due to the fact that from 01.10.2018 it was demonstrated that the multi-platform system and the state cooperation with private companies in this field of public procurement is not reliable and has no future. PPA: Development of a new and modern e-procurement system that would be in line with the legal framework.
		// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system. * Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d): - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) Source: e-Procurement system.		Not calculated because of lack of data.		
	7(c) Strategies to manage procurement data	(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology. (b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements. (c) The reliability of the information is high (verified by	Recently, within the MTender platform there was integrated the open contracting tool previously developed by the World Bank Office in Moldova - https://opencontracting.eprocurement.systems/contracts/contractor	While the MTender system has searching tools and filters that allow users to find some historical procedures, the collection and of such data is not available. The data is available to be searched and seen „procedure by procedure” not in the form of a report / excel format, etc. The PPA uses the available data for preparing its annual reports, which present various key aspects of the functioning of the public procurement system. The same data are also accessible to and used by e.g. the Court of Accounts, the Anti-corruption Agency and various NGOs for looking at trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	The MTender system does not currently have any tool to collect and analyse data on public procurement. Contracting authorities: the main issue of the MTender system is that the contracting authorities are including data in the system manly by uploading pdf and scanned document witch is not machine readable format. The incompleteness of the data means that it is difficult to draw valid conclusions and to have a solid basis for evidence based policy making as well as for identifying and pursuing possible cases of mismanagement, corruption or other prohibited practices. This applies in particular to small value procurement, where no data is readily accessible and not reflected in e.g. the PPA's annual reports	Development of a e-procurement system with technical functionalities which would allow the collection and analysis of data by the PPA and by the public. There is a strong need to digitise the data within the MTender system.

		audits). (d) Analysis of information is routinely carried out, published and fed back into the system. *				
		// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d): • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. Source: Normative/regulatory function/E-Procurement system.		Not calculated because of lack of data.		

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
8. The public procurement system has a strong capacity to develop and improve	8(a) Training, advice and assistance	There are systems in place that provide for: (a) substantive permanent training programmes of suitable quality and content for the needs of the system. (b) routine evaluation and periodic adjustment of training programmes based on feedback and need. (c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public. (d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	According to art. 10 let. d) of the PPL, the PPA provides methodological assistance and consultations, as well as organizes seminars in the field of public procurement;	By Order of the Public Procurement Agency no. 15 of 17.04.2018, was established the telephone line for methodological advice in the field of public procurement (HelpDesk). Based on the Annual Training Plan (published on the PPA website) there are seminars held for contracting authorities, economic operators and for the PPA employees. They nominally include a wide range of topics, as set out in further detail in the curriculum issued by the PPA in 2018: <ul style="list-style-type: none"> • Knowledge of the legislation applicable to public procurement; • Annual public procurement planning and its relation to the efficient management of public funds; • Preparation of public procurement procedures so as to observe all applicable principles of public procurement; • Routines for contract monitoring, particularly for preventing conflicts during the execution of the public procurement contract However, the overall volume of training is small: most contracting authorities outside the capital have only had access to five hour trainings and many have not participated at all. Some public procurement training and advice is also offered by other public institutions as well as by NGOs and trade associations. However, their work is not part of any overriding strategy for building public procurement capacity and there is no overview of the nature and extent of their activities.	The nominal scope of public procurement training offered by the PPA is not matched by actual training resources and activities: most training sessions are quite short, the focus is mainly on award procedures only, and contracting authorities in the province are not well served. There is no broader public procurement capacity building strategy in place and the corresponding needs and opportunities are not well known.	There is a need for permanent training program for public procurement specialists that need capacities and skills to contribute to the improvement of the procurement process within the contracting authority. In the short term, assign more PPA staff and external trainers to deliver more thorough training on a wider range of topics to a larger number of authorities, while revising the whole approach to public procurement training. Review the actual capacities of contracting authorities and their staff, including a training needs assessment; make an inventory of existing and potential means for raising public procurement capacity and delivering training, as well as the needs and availability of resources for the purpose; set objectives to be reached, and prepare and implement a corresponding strategy
	8(b) Recognition of procurement as a profession	The country's public service recognises procurement as a profession: (a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified. (b) Appointments and promotion are competitive and based on qualifications and professional certification. (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	PPL, Art 10, Art. 14.	According to the PPL, art. 14, para (1), the contracting authority performs its duties through a working group established for this purpose and formed of public servants and experts with professional experience in the field of public procurement from within the contracting authority, within the limits of the documented personnel. Based on the subject matter of the procurement, the contracting authority may set up one or several procurement working groups. However these provisions do not create any specific positions or well defined professional roles. According to the PPL, art.10, let. e), the PPA has the duty to design, develop, and implement mechanisms for the certification of persons within contracting authorities and procurement service providers responsible for organizing, conducting public procurement and awarding public procurement contracts. Currently, the certification system is under development.	In the Republic of Moldova, there is no currently such a profession as a procurement specialist.	Including the profession of public procurement specialist within the Nomenclature of professions and the Classifier of positions, with corresponding position descriptions, skills and knowledge requirements for recruitment and criteria for evaluation and promotion. Introduction of the professional certification system for procurement specialists.
	8(c) Monitoring performance to improve the system	(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects. (b) The information is used to support strategic policy making on procurement. (c) Strategic plans, including results frameworks, are in place and used to improve the system. (d) Responsibilities are clearly defined.	GD no. 1332 of 14.12.2016 on the approval of the Strategy for development of the public procurement system for the years 2016 – 2020 and the Action Plan for its implementation.	The implementation of this Strategy aims to increase the efficiency of the public procurement system and to reduce waste, fraud and corruption, thus increasing the confidence of citizens and businesses. The Strategy is also a tool for implementing the commitments resulting from Chapter 8 - Public Procurement Title V of the Moldova - EU Association Agreement.	Lack of monitoring system (as well as lack of implementation) at the national level.	Development of a monitoring system that would be part of the new strategy for the next years.

Pillar III. Public Procurement Operations and Market Practices

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
9. Public procurement practices achieve stated objectives	9(a) Planning	(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies. (b) The requirements and desired outcomes of contracts are clearly defined. (c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	<ul style="list-style-type: none"> Law 131/2015 on public procurement Law 181/2014 on public finances and budgetary-fiscal responsibility Government Decision no. 1419 of 28-12-2016, for the approval of the Regulation on the planning of public procurement contracts 	<p>a) Government Decision no. 1419 of 28-12-2016, for the approval of the Regulation on the planning of public procurement contracts, establishes that, in order to meet the needs of goods, works and services, the contracting authority is obliged to plan public procurement contracts, which are to be concluded as a result of the conduct of public procurement procedures, respecting the principles of ensuring competition, efficiency, transparency, equal treatment, non-discrimination and non-division.</p> <p>b) In the process of planning public procurement contracts, the contracting authority has to go through several stages:</p> <ol style="list-style-type: none"> Identifying the needs of goods, works and services; Identification of financial resources; Calculation of the estimated value of the contract. <p>c) The requirements and expected results of the contracts are clearly defined. The model contracts are part of the award documentation and are approved by Order of the Ministry of Finance. According to the Public Procurement Agency, although the model contract provides several tools to insure the contracting authority against its non-qualitative performance, authorities very often omit the completion of important headings, which often causes problems in fulfilling the contractual conditions.</p> <p>d) Sustainability criteria are rarely used.</p> <p>e) According to the municipality of Balti,, financial coverage does not always meet all the needs of contracting authorities. Contracting authorities tend to contract sustainable procurement, which is, of course, more expensive.</p> <p>f) According to the Ministry of Internal Affairs, public procurement planning is carried out annually according to the provisions of the legal framework and according to the needs of the Contracting Authority. The needs are well defined both generically and quantitatively, being determined based on the functional attributions and annual tasks established by the Authority.</p>	<ul style="list-style-type: none"> ➤ According to the Public Procurement Agency, contracting authorities often make mistakes in public procurement planning, this activity being a faulty one. ➤ The contract largely corresponds to international practice but needs revision. ➤ Virtually no one in the Republic of Moldova uses sustainability criteria. ➤ The environmental / sustainability component is mainly regulated as one of the qualification requirements, included in the award documentation. However, there are no general obligations for contracting authorities to take sustainability standards into account. Despite its original concept, MTender currently has several gaps and shortcomings, which consequently limit the development of sustainable e-procurement. ➤ In the field of health there are unpredictable public procurements at the time of contract planning. For example changes in Laws that must be implemented in the short term (2-3 weeks) but according to GD 1419/2016 "The plan is amended or supplemented if changes occur in the budget and , new financial resources are identified." The authority needs to identify the sources, change the budget, change the public procurement plan of the institution and just then carry out the procedure, already time is wasted and everything is in a hurry 	<ol style="list-style-type: none"> Procurement plans must be published on the same portal as procurement announcements Elaboration of a guide. To review and adjust the standard contract to be more flexible in the case of more complex or particular contracts. The continuous training of the contracting authorities. Impose the application of sustainable criteria through a Government policy. This can be done by requiring contracting authorities to procure durable goods - with an increase from 5% - 15% in 3 years. It is necessary to modernize the MTender electronic public procurement system for the use of the other criteria for awarding public procurement contracts, which will allow the environmental / sustainability component to be taken into account. Amendment of GD 1419/2016 for the simplification of urgent procedures with the concrete description of cases of "urgent procedures"
	9(b) Selection and contracting	(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process. (b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors. (c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework. (d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend		<p>a) Law 131/2015 offers the possibility to carry out procurement procedures in several stages, such as: restricted tender; competitive dialogue; negotiated procedures (with the publication of the contract notice). However, due to their complexity, contracting authorities rarely use multi-stage procurement procedures.</p> <p>b) The award documents are clear and standardized, elaborated for each type of procurement object (goods, works, services) and type of procurement procedure. Standard documentation is approved by Order of the Ministry of Finance. For the most part, the award documentation is used correctly by the contracting authorities and covers almost entirely their needs.</p> <p>c) Procurement methods are largely chosen, documented and justified in accordance with the purpose and legal framework.</p> <p>d) The procedures for submitting, receiving and opening tenders are clearly described in the procurement documents.</p> <p>e) Representatives of economic operators and civil society can participate in tendering. In case of committing violations at the stage of opening the offers, the economic operators can contest this. However, in connection with the publication of tenders and the electronic submission of documents, the presence of tenderers and representatives of civil society in the process of submission, receipt and opening of tenders is superfluous.</p>	<ul style="list-style-type: none"> ➤ Contracting authorities rarely use multi-stage procurement procedures due to their complexity and lack of knowledge of how to use these procedures. ➤ Contracting authorities sometimes encounter difficulties in completing the award documentation (they are either incorrectly drawn up or contain biased, incomplete or vague technical specifications, exaggerated qualification requirements and others). ➤ Sometimes the contracting authorities, due to lack of knowledge or to avoid the publication of the contract notice, divide the procurement into small lots. ➤ It is not clearly described in the legislation how this process takes place in the case of the procurement procedure carried out in electronic format. ➤ Confidentiality is not ensured because the offers are not encrypted. Additionally, the concept of the MTender system "Everyone Sees Everything" does not correspond to art. 21 of Directive 24 / EU and national legislation. ➤ Not infrequently the situation occurs when purchased at the lowest price to the detriment of 	<ol style="list-style-type: none"> Creating the profession of public procurement specialists and attracting qualified staff. Elaboration of secondary legislation. To develop a new electronic system that will comply with both national legislation and Directive 24 / EU. Introduction of a clear sanctioning mechanism for contracting authorities for infringements committed. Ongoing training of contracting authorities. Introduction of a clear prevention mechanism (ex-ante control).

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		<p>bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.</p> <p>(e) Throughout the bid evaluation and award process, confidentiality is ensured.</p> <p>(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.</p> <p>(g) Contract awards are announced as prescribed.</p> <p>(h) Contract clauses include sustainability considerations, where appropriate.</p> <p>(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.</p> <p>(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *</p>		<p>f) Only members of the working group can participate in the evaluation of tenders. According to the law, the offers must be confidential. The confidentiality of the assessment is guaranteed by the statement signed by each member of the working group</p> <p>g) Appropriate techniques are often applied to determine the best value for money based on the criteria set out in the contract award documents.</p> <p>h) The evaluation of the tenders is carried out according to the criteria established in the award documentation at the launch of the procurement procedure.</p> <p>i) The decisions for awarding the contract are brought to the notice of the bidders, in writing, within 3 days from the pronouncement by electronic means (art. 31). Most often the awarded contracts are announced in the established manner.</p> <p>j) The contractual clauses provide for sanctions for the non-qualitative performance of the contract. There are quite frequent cases where contracting authorities do not complete the contractual clauses on sanctions or do not apply them when necessary.</p>	<p>quality. The reason is the lack of knowledge on the part of the contracting authority to apply other award criteria than the lowest price.</p> <ul style="list-style-type: none"> ➤ There is no effective prevention mechanism. ➤ It is not uncommon for contracting authorities not to complete the contractual clauses on sanctions or to apply them where appropriate. ➤ From the perspective of civil society organizations monitoring public procurement, the selection procedure is not always carried out effectively and transparently: often the award documentation published by the contracting authority is incorrectly prepared, contains adjusted technical specifications, exaggerated eligibility criteria or, conversely, far too simple compared to the procedure to be performed. Consequently, contracts are concluded with economic operators that "meet" the requirements. ➤ The M-Tender system, although it ensures transparency and unlimited accessibility, does not offer the confidentiality of the information of the submitted offers. Thus, although the legal framework obliges the contracting authority to ensure the confidentiality of the data, the M-Tender system discloses all data in the tenders. ➤ The legal framework regulates 4 criteria for evaluating bids, in turn Sistelum M-Tender offers the possibility to use only one criterion - "the lowest price". If the Contracting Authority selects another criterion, the actual tender evaluation procedure is not reflected in the system, which violates the principle of transparency of the procurement procedure. 	
		<p>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):</p> <ul style="list-style-type: none"> - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) <p>Source for all: Sample of procurement cases.</p>		a) See Annex 7.		

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
	9(c) Contract management	<p>(a) Contracts are implemented in a timely manner.*</p> <p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*</p> <p>(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.</p> <p>(d) Contract amendments are reviewed, issued and published in a timely manner.*</p> <p>(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.</p> <p>(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*</p> <p>(g) The records are complete and accurate, and easily accessible in a single file.*</p>	The Public Procurement Agency in its structure contains the Directorate of Statistics, Reporting and Electronic Procurement. Centralized reports on activity in the field of public procurement are prepared quarterly, containing generalized data by country. https://tender.gov.md/ro/documente/rap-oarte-de-activitate	<p>a) As it does not fall within its remit, the Public Procurement Agency does not have information on monitoring the execution of public procurement contracts.</p> <p>b) The Public Procurement Agency accepts only the changes to the contract that were made during the validity period of the contract. There are cases when contracting authorities want to make changes to already expired contracts. These changes are rejected.</p> <p>c) Reduced capacity of the Directorate for Statistics, Reporting and Electronic Procurement.</p> <p>d) Contracting authorities often make mistakes in completing the data on the procurement procedure.</p> <p>e) In the field of health, in order to be executed in due time, the contracts are discussed in terms of the performance of the contract by the working group at the initiation of the procedure and are introduced in the model contract of the procedure. Inspection, quality control, supervision of works and final acceptance of products are carried out by hiring the technical manager and establishing by internal order of the working group to establish the volumes. The contract monitoring report is compiled and published quarterly.</p> <p>f) According to the Ministry of Internal Affairs:</p> <ul style="list-style-type: none"> - 90% of goods and services contracts are executed on time, in turn those of works in proportion of 90% are made by exceeding the execution term, on average by 1/3 of the contracting term. - The verification of the goods and services offered is performed at the time of delivery-receipt of the goods, and in the case of works are verified by certified specialists. - 90% of the invoices are paid on time, delays are only at the end of the year due to the large number of documents to be processed by the Treasury. - Changes to contracts are made in a timely manner and published in the BAP. - Works contacts are increased by up to 15%, in proportion of 90% of the concluded contracts. <p>g) Not all contracting authorities have fully complied with the obligation to provide records for centralised publication of procurement information and reports on low value contracts have only been held on paper by the PPA and have not been readily accessible.</p>	<ul style="list-style-type: none"> ➤ The cause of poor contract management is the lack of staff in the field of public procurement. ➤ Due to the lack of an automated system equipped with a module for extracting and analyzing statistical data many statistical indicators cannot be calculated. ➤ mistakes made by contracting authorities in filling in the forms regarding the procurement procedure are due to lack of knowledge in the field of public procurement and high workload. ➤ The contract monitoring report is completed manually. 	<p>Analyse a significant number of contracts in order to identify and categorise typical errors and omissions as well as strengths and weaknesses in policies and practices and underlying problems of management, skills, tools and approaches, prepare and implement corresponding measures for improving the situation, and monitor the outcomes in the context of the general monitoring of public procurement performance. Possible measures could include:</p> <ol style="list-style-type: none"> 1. Ongoing training of contracting authorities. 2. Introduction of a clear sanctioning mechanism for contracting authorities for infringements committed. 3. Development of a modern electronic system that meets all the requirements to automate many forms filling processes.
		<p>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %)</p> <p>Source: Sample of procurement cases* Recommended quantitative indicators to substantiate assessment of sub-indicator 9(c) linked to different assessment criteria above as follows: • For assessment criterion (a): time overruns (in %; and average delay in days) • For assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)•</p>	Information on the timely implementation of contracts, on inspection, quality control, works supervision and final acceptance, and on examination, handling and payment of invoices is not systematically collected, nor otherwise possible to extract in other ways than by examination of a large sample of individual cases, to the extent (in practice, extremely limited) that the corresponding documentation can be made available. 69 samples were extracted from the hard copy files held at the PPA.	The review of 69 procedures and contracts filed at the PPA indicates that only few contracts had delays in their execution; more so for requests for quotations than for open tenders, though the numbers are so small that no firm conclusions can be drawn. On the other hand, quality control measures and acceptance proceedings were successfully carried out and documented only for slightly more than half the contracts; data were missing for the others. Invoices were mostly paid on time, Details are presented in Annex 7.	Data on contract execution and contracting authority performance are not systematically prepared and submitted by contracting authorities in a form and with contents that facilitate compilation and analysis by the PPA and other interested parties.	Revise the form and contents of performance reporting (contract execution and its outcomes) in ways that limit the administrative burden while making data easy to compile, transmit, publish and analyse (e.g. by automatic generation from existing project management files, using machine readable forms, integration with other administrative systems and procedures, etc.); enhance the monitoring of this reporting in order to help ensure its adequacy and relevance; and analyse it with a view to improve public procurement policies, procedures and practices.

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		For assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).• For assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)• For assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.				
10. The public procurement market is fully functional	10(a) Dialogue and partnerships between public and private sector	<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p>(b) The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.</p>	<ul style="list-style-type: none"> • Law on transparency in the decision-making process no. 239/2008 • Government Decision on the mechanism of public consultation with civil society in the decision-making process no. 967/2016 	<p>a) The local legal framework stipulates the obligation of the public authorities to consult the interested parties in case of elaboration of the draft normative acts, including in the field of public procurements.</p> <p>b) In the arsenal of public authorities there are several tools that offer them the possibility to consult business associations, their involvement in the decision-making process and the establishment of permanent or ad-hoc partnerships.</p> <p>c) The draft normative acts in the field of public procurement are obligatorily placed on the page www.particip.gov.md, and any interested person can submit recommendations within the term indicated by the author, but which cannot be less than 10 working days. Likewise, public authorities can send the draft normative act directly (by e-mail, other means) to non-governmental organizations, specialists, experts, other interested parties, for consultation.</p> <p>d) The Ministry of Finance (which is the direct author of draft normative acts in the field of public procurement) shows an openness to the public</p> <p>e) Usually, companies alone are looking for opportunities and possibilities to strengthen their capacities and knowledge to access the procurement market, including with the help of the profile associations of which they are part, especially the Chamber of Commerce and Industry.</p>	<p>➤ Public authorities rarely use institutionalized mechanisms for cooperation and consultation with business associations, such as advisory boards and working groups.</p> <p>➤ The biggest problems regarding the transparency of the decision-making process are within the Parliament. For the most part, Parliament only publishes the bill on its website (often without publishing the documents accompanying a bill). Parliamentary committees either do not organize public consultations for draft laws (including in the field of public procurement) or organize them selectively and sometimes badly. If public consultations are held, parliamentary committees ignore the recommendations of the consulted parties and do not inform them of the results of the public consultations.</p> <p>➤ Business associations do not have the necessary capacities to follow legislative changes, make recommendations and submit to public authorities.</p>	<p>1. Public authorities, especially the Parliament, must implement in practice all the transparency requirements indicated in the law and organize real and efficient consultations with business associations.</p> <p>2. It is necessary to strengthen the capacities of business associations to participate effectively in the decision-making process on the one hand, and on the other hand to help its members enter the public procurement market</p>
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</p>		See Annex 8.		

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
	10(b) Private sector's organisation and access to the public procurement market	(a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.* (b) There are no major systemic constraints inhibiting private sector access to the public procurement market.	<p>In the field of awarding contracts within the system of compulsory health insurance:</p> <ul style="list-style-type: none"> Law on public finances and budgetary-fiscal responsibility no. 181 of 25.07.2014 (art. 23, point 2 e), art. 26) Law no. 131 of 03.07.2015 on public procurement (art. 5, art. 7) GD no. 1387 of 10.12.2007 on the approval of the Single Program of compulsory health insurance and the annual contracting criteria approved by the Joint Order of the Ministry of Health, Labor and Social Protection and the National Medical Insurance Company GD no. 1020 of December 29, 2011 "On tariffs for medical services" Health Care Law no. 411-XIII of 28.03.1995 (art.25) Law on compulsory health insurance no. 1585-XIII of 27.02.1998 (art.5, art.13) GD no. 156 of 11.02.2002 regarding the approval of the Statute of the National Medical Insurance Company (point 12) Competition law no. 183 of 11.07.2012 (art.2) Law no. 845 of 03.01.1992 on entrepreneurship and enterprises (art.8) Constitution of the Republic of Moldova (art. 36) 	<p>a) In general, the market in the Republic of Moldova is small and there are not many participants in public procurement. In addition, due to existing corruption, many economic agents are discouraged and do not participate in procurement procedures. In the field of awarding contracts within the system of compulsory health insurance:</p> <p>b) The funds of the obligatory medical assistance insurance based on art. 26 of the Law on public finances and budgetary-fiscal responsibility no. 181 of 25.07.2014 are part of the national public budget, and art. 23, point 2 e) stipulates the responsibility of the National Medical Insurance Company for ensuring the management of the means of the Compulsory Health Insurance Funds in accordance with the principles of good governance. At the same time, according to art. 5 of Law no. 131 of 03.07.2015 on public procurement, the award of contracts within the system of compulsory health insurance are not expressly exempted from the application of the provisions of the given law and according to art. 7, among the principles of regulating procurement relations are ensuring competition and combating anti-competitive practices as well as equal treatment, impartiality, non-discrimination with respect to all bidders and economic operators. However, we certify that the de facto award of the contract within the compulsory health insurance is carried out based on the provisions of GD no. 1387 of 10.12.2007 on the approval of the Single Program of compulsory health insurance and the annual contracting criteria approved by the Joint Order of the Ministry of Health, Labor and Social Protection and the National Medical Insurance Company - documents that do not contain a clear procedure and fair, as well as quantifiable, certain and objective requirements vis-à-vis healthcare providers, with a clear lack of decision-making transparency. Tariffs for medical services are capped by GD no. 1020 of December 29, 2011 "On tariffs for medical services" so that the selection of providers will take place based on other predefined criteria and approved by the Government.</p> <p>In the field of telephony and communications:</p> <p>c) The state owned incumbent operator, Moldtelecom, is a fully integrated operator, offering mobile voice, mobile broadband (mBB), fixed voice, fixed broadband (fBB) and TV services. It is the only operator having countrywide coverage with fixed voice, fBB (FTTx and xDSL) and TV (IPTV). Moldtelecom has a 94% market share in fixed voice, 62% in fBB, 41% in TV, 40% in mBB, and 6% in mobile voice. Moldtelecom is favored to win the majority of public procurements. For example, in 2019, all tenders for fixed services were won by Moldtelecom. In 2020, 6 tenders were won by Moldtelecom, 1 by Arax, the terms of reference in 5 other tenders were challenged by Orange. It should be mentioned that:</p> <ul style="list-style-type: none"> - Orange offers mobile voice and mBB countrywide and fixed voice, fBB (mainly HFC) and TV (DVB-C) in large cities only. Orange has a 64% market share in mobile voice, 50% in mBB, ~30% in TV, and ~8% in fBB (jointly with Sun Communications, a cable operator wholly owned by Orange). - Moldcell offers mobile voice and mBB countrywide and fixed voice in large cities only, with a 30% market share in mobile voice and 11% in mBB. - Starnet offers fixed voice, fBB (FTTx) and TV (IPTV) in large cities only, with a 22% market share in fBB and 18% in TV. 	<p>The high administrative complexity of the public procurement procedures, as often perceived by the business community, and the limited possibilities to compete on quality and performance create disincentives for many enterprises. Contrary to the provisions of the PPL, tenderers' qualifications and the conformity of the tenders are only verified after the electronic auction (when held), and only for the winning tenderer; this allows unqualified tenderers to participate and to do so with tenders not meeting all requirements, which constitutes unfair competition that strongly discourages the otherwise most suitable and competitive enterprises from participating. Perceptions of unfair competition, both for objective reasons (shortcomings in the e-procurement system) and based on unproven presumptions, may discourage well qualified and competitive firms from participating in public procurement.</p> <p>In the field of awarding contracts within the system of compulsory health insurance:</p> <ul style="list-style-type: none"> Such an approach over the years has proven to be one that leads to the inefficient use of compulsory health care funds. The contracting of public health service providers is favored by mechanisms lacking clear and transparent provisions, or the allocation of the budget of compulsory health insurance funds in proportion of approximately 95% is directed to public providers annually, prejudicing the possibility of ensuring patient access to providers. services regardless of the type of property in order to respect his right to free choice of doctor, medical institution and the form of medical assistance enshrined in art. 25 of the Law on health care no. 411-XIII of 28.03.1995. At the same time, according to the provisions of the Law on compulsory health insurance no. 1585-XIII of 27.02.1998, art. 13 "within the compulsory health insurance, the medical assistance is provided by the medical service providers, regardless of the type of property and legal form of organization, which operate in accordance with the legislation", and the National Medical Insurance Company is obliged to concludes with the medical-sanitary institutions with any type of property and legal form of organization, which operates in accordance with the legislation in force, medical assistance contracts to be granted to persons "according to the provisions of art. 12 GD no. 156 of 11.02.2002 regarding the approval of the Statute of the National Medical Insurance Company. However, the non-transparent and discreet selection of healthcare providers is in contradiction with the legislation in force, which provides that private healthcare providers within the national health system do not come to supplement or provide healthcare not covered by 	<p>Raise contracting authorities' skills in preparing and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market in question, and ensure that the e-procurement system can properly allow the use of other award criteria than price whenever appropriate for improving value for money. Revise the workings of the e-procurement system in order to comply with the sequence of evaluation steps prescribed by the PPL, so that only fully qualified tenderers having submitted fully compliant tenders are invited to an electronic auction, if held (which may not necessarily be suitable, depending on the nature of the contract and the market situation). Examine in further detail the reasons why economic operators would or would not participate in public procurement, including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies and action plans with concrete measures for mitigating any barriers identified.</p> <ol style="list-style-type: none"> It is proposed not to examine the procurement tender participation requests from companies lacking the conditions necessary to conduct the procurement exercises: lack of experience in relevant activities, of significant facilities and clients, lack of own staff, of succesful outcomes of participating in previous tenders and executing the tender contracts, the impossibility of providing financial guarantee or insurance certificates, or other supplying, etc. When examining the information provided by the companies that wish to participate in the tenders, one should consider both the capability of conducting the tender exercises and availability of personal and attracted production capacities, that will allow to support the required volume of supply, work or services, specified in the tender documentation. One should follow the tender exercises' permanence (stability) – through this, an economic operator that won the tender would not be able to unreasonably reinterpret or

				<p>- Arax offers fixed voice, fBB (FTTx) and TV (IPTV) in large cities only, with 3% market share in fBB.</p>	<p>public healthcare providers, but it works on the principle of equality with them, aiming finally to ensure efficiency and transparency in the use of public financial means, based on the needs of the population in medical services, related to the capacities of the health system, within the means of compulsory health insurance funds. Article 5 of the Law on compulsory health insurance no. 1585-XIII of 27.02.1998, stipulates that one of the principles of organizing compulsory health insurance is that of equality, according to which all participants in the system of compulsory health insurance (payers of compulsory health insurance premiums, providers medical services and beneficiaries of medical care) are provided with non-discriminatory treatment with regard to the rights and obligations provided by law.</p> <p>Given that one of the basic principles of contracting medical services is to ensure that people have access to the medical services included in the Single Program, we cannot ignore the shortcomings in terms of waiting lines, overburdening certain providers and limiting access to others.</p> <p>This violates both the patient's rights enshrined in the Constitution of the Republic of Moldova in health care, which is guaranteed in art. 36 (1), as well as the rights of private providers of medical services. In particular, those enshrined in the Competition Law no. 183 of 11.07.2012 art.2 b „The provisions of this law apply to deeds actions or inactions that have as object or have or may have as effect the restriction, impediment or distortion of competition, as well as to the deeds of unfair competition actions, which are committed by: b) central or local public administration authorities, insofar as they, through the issued decisions or by the adopted acts, intervene on the market, directly or indirectly influencing the competition, except for the situations when such measures are taken in application of other laws or for the defense of a major public interest “. Moreover, being economic agents, the private medical institutions are violated the rights provided by Law no. 845 of 03.01.1992 regarding entrepreneurship and enterprises, especially the provisions of art. 8, pt. 1 „The state creates equal management and economic conditions for all enterprises, guarantees the observance of their legitimate rights and interests, contributes to the development of free, conscientious competition between them, ensures them equal opportunities to use technical-material, natural resources, labor, financial and information not admitting the monopolization of the markets of these resources, and regulates the entrepreneurial activity based on the legislation in force. Point 2. The government, the public administration authorities, as well as the local public administration authorities may make dispositions to the enterprises only within the limits of their competence, established by the legislation.</p> <p>If, as a result of the issuance by the public administration authorities or by another body of an act that does not correspond to its competence</p>	<p>modify these exercises during their implementation.</p> <p>4. When the tender board examines information necessary for tenders and submitted by the economic agents, it must base on the interrelation of all comprehensive factors that affect the fulfillment of the tender conditions. The board should not base solely on the lowest price factor, which is far from being always decisive in the timely and high-quality fulfillment of the tender conditions.</p> <p>5. The tender working group must not examine the tender participants’ proposals, if the initial bid price is by 20% lower than market prices for this type of product, work or services – because quality of the service suffers during the implementation. Appear additional, complexly controlled risks of non-performance of contractual obligations and, almost always, the use of the budget funds turns out to be ineffective.</p> <p>6. Delegate the competences of making the final decision on conducting public procurement tenders and summing up their results to the new public institution – the Public Boards, which is established at the central and local levels. The Public Board shall consist of three equal parts: contracting central or local public authorities represent one third, the civil society – one third, including the business community, and the expert community and the development partners of the Republic of Moldova – one third. Establish the Contestation Board in the same way, withdraw it from the Parliament of the Republic of Moldova and make it a public body, which shall consist of three equal parts: one third – of the Parliament members, one third – of the civil society, including the business community and one third – of the expert community and Moldovan development partners.</p> <p>7. In order to increase the professionalism, integrity and transparency of the contracting authorities’ activities, allow the contracting central or local public authorities to conclude contracts for providing the procurement services on an out-sourcing basis, with the specialised companies or organisations working in this field. Also, it is obligatory to provide for the subsequent review and approvement of all tenders’ results by the Public Boards, noted in the paragraph 6 of this proposal.</p>
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					<p>services from Moldtelecom without a tender. In some instances, mobile services were moved to Moldtelecom and integrated with the fixed services of Moldtelecom in a way that makes it virtually impossible for others to bid for such services. First, no tender is held for fixed voice services, which are contracted from Moldtelecom, but bidders for mobile services are required to provide unlimited free calls from mobile to fixed numbers operated by Moldtelecom (Closed User Group). Second, bidders for mobile services are required to integrate mobile and fixed services within a very short time (5 days) in the same way (e.g. create a dedicated APN in each district and route all mobile data traffic to local district server via 100 Mbps connection, create a dedicated APN at national level with dedicated APN with 10 GBs uplink connection) (e.g. STI department of the Ministry of Interior, RED Nord power distribution company, Agentia Medicala Prespitaliceasca).</p> <p>➤ The value threshold for small value procedure, which does not require a tender to be made, was increased from 80K mdl to 200K mdl in December 2018. Even when a tender is organized, the special procedure for appealing terms of reference or results of the tender is not applicable. So, the general court procedure can only be used, which does not permit a rapid and efficient recourse and makes such appeals useless.</p> <p>➤ There are no guidelines for the type of procedure (RFQ or auction) or selection criteria (lowest price or quality/price ratio) that should be applied in public procurement process. When quality/price ratio is applied, there is no clear mechanism of assessment of the bids (e.g. the relative weight of each element, how the quality is assessed).</p> <p>➤ The online platform does not take into account days off and holidays when setting the deadlines for various actions by bidders. As a result, the time frame for such actions are artificially reduced and the deadline could fall on weekend or a holiday, which makes it rather difficult to meet such deadlines, in particular during the Christmas and New Year period, when the absolute majority of tenders are held and when there are lengthy period of holidays.</p> <p>➤ The online platform frequently sets the auctions at the same time, making it impossible for responsible persons of the bidders to participate in them. Ideally, each auction should have a reserved time slot, which should not overlap with other auctions for the same category of services (e.g. electronic communications).</p>	
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) • total number and value of 				

		<p>contracts awarded to domestic/foreign firms (and in % of total) Source: E-Procurement system/Supplier Database.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.</p>				
	10(c) Key sectors and sector strategies	<p>(a) Key sectors associated with the public procurement market are identified by the government.</p> <p>(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>		<p>a) No efforts are made and there are no analyzes of the public procurement market, including no important measures to develop the competitiveness of companies operating in important sectors for public procurement.</p> <p>b) Market risks and their management have hardly been assessed by the Government and private sector involvement in public procurement policy has been limited.</p>	The importance of the public procurement market and its significance for economic development are not clearly recognised by the Government and could be more specifically be reflected in economic policy	<p>1. Systematic analyzes of key sectors of the economy are needed for public procurement, including actions to increase the competitiveness of companies.</p>

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Initial input for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
11. Transparency and civil society engagement foster integrity in public procurement	11(a) Enabling environment for public consultation and monitoring	(a) A transparent and consultative process is followed when formulating changes to the public procurement system. (b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. (c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	<ul style="list-style-type: none"> The main legal documents are Law nr. 239-XVI from 13.11.2008 and Government Decision nr. 967 from 09.08.2016 	a) There is a legal framework in place which stipulates that changes in legal/policy framework (including in public procurement one) should be transparent and consultative. b) There are no such programs. The support of CSOs in procurement area has a haphazard character, and mostly stems from foreign donors. c) Government takes into account partially the feedback from CSOs. According to Ministry of Finance in 2018 they took into account circa 50% of all proposals of CSOs.	<ul style="list-style-type: none"> Not all legal drafts and policy proposals are conducted in accordance with mentioned legal framework. Many amendments were approved without to be consulted with CSOs (e.g. amendment to exempt the drugs from the obligation to be implemented in MTender). There are no legal or policy documents that would envision a systemic support for CSOs in the area of public procurement. However, the PPA can include such activities in their training schedule. In reality, the most critical requirements are not taken into account (e.g. it was ignored the proposal of CSOs to embed the small value contracts in the MTender). 	1. PPA extends their training activities to include as well the CSOs.
	11(b) Adequate and timely access to information by the public	(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.		a) The legal framework on public procurement is accessible free-of-charge. In legal framework is stipulated that some important documents on procurement should be published by contracting authority (procurements plans, minutes on bid evaluation, and reports on contract implementation).	<ul style="list-style-type: none"> Not all documents that should be open are published by contracting authorities. At the same time, some documents such as bid offers are available in MTender, but the existing legal framework was not adjusted to specify this kind of disclosure. 	1. Adjustment of MTender and of legal framework to specify the exhaustive list of documents which should be published and available to the public.
	11(c) Direct engagement of civil society	(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: <ul style="list-style-type: none"> the planning phase (consultation) bid/proposal opening (observation) evaluation and contract award (observation), when appropriate, according to local law contract management and completion (monitoring). (b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.		a) The existing legal framework allows the representatives of CSOs to take part mostly at the following phases of procurement as members of working groups: <ul style="list-style-type: none"> bid/proposal opening (observation) evaluation and contract award (observation) b) There is little evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring, and the existing evidence indicates only weak participation.	<ul style="list-style-type: none"> The active involvement of local CSOs is constrained by lack of technical knowledge and by dependence on foreign assistance. According to the relevant legislation, the contracting authority is obliged to include in the composition of the working group the representatives of the civil society, if they submitted a request at least 2 days before the date of opening the tenders. However, these representatives do not always participate or know details about the planning stage of the procedures in which they participate in the working group, but only when opening tenders (they are visible in the system to anyone, not just members of the working group) and evaluating tenders. There are cases when the contracting authority unjustifiably refuses the access of the representatives of the civil society organizations within the working group, thus violating Law 131/2015 on public procurement. However, no competent authority sanctions them. Moreover, it is not clear which institution should penalize the contracting authority for such infringements. Often, civil society representatives are no longer invited to discussions on the management and completion of the contract, in order to know, in detail, how the economic operator has fulfilled its contractual obligations (important in the case of procurement of works). 	1. It is necessary to improve the publication and access to public procurement data in order to facilitate the efficient monitoring of all stages of the public procurement cycle. 2. improving regulations and practices regarding the participation of civil society in working groups, in connection with the further development of the electronic procurement system
12. The country has effective control audit systems	12(a) Legal framework, organisation and procedures of the control system	The system in the country provides for: (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies	<ul style="list-style-type: none"> Law no. 260 of 07.12.2017 on the organization and functioning of the Court of Accounts Law on public internal financial control no. 229/2010 The guide on compliance audit (approved for testing by CoA Decision no. 55 of 20.09.2019) contains 	a) Law no. 260/2017 clearly stipulates the attributions of the Court of Accounts exercised according to the competence. The Court of Accounts performs 3 types of external public audit (financial, compliance, performance). All public / budgetary entities, programs and projects managed by one or more of the entities, including the process of sale, privatization or concession of assets and the revenues obtained from them, may be subject to external public audit. The Court of Accounts carries out the	There is no evidence of a harmonised, overarching approach to the need to ensure, in an effective and efficient manner, that rules and regulations for supervision and audits are properly applied.	Set broad, overarching objectives for ensuring, in an effective and efficient manner, that rules and regulations for supervision and audits are properly applied; examine how current institutions meet (or not) these objectives; and take steps to revise and harmonise the legal and institutional framework in ways that

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		(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations (c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation (d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management (e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance) (f) clear mechanisms to ensure that there is follow-up on the respective findings.	practical examples of possible approaches applicable in a compliance audit, which has as its object the public procurement procedure, or a stage thereof. (see Guide, pp. 10, 12) <ul style="list-style-type: none"> According to the Audit Strategy for 2019-2021 (approved by CoA Decision no. 4 of 18.02.2019), the orientation of compliance missions will be towards public procurement, subsidies, regular exercise by public authorities of delegated responsibilities, compliance of public services to citizens , APL etc. The Performance Audit Manual (approved by CoA Decision No. 54 of 05.12.2016) is based on practical examples applicable in an audit mission that is meant to evaluate the public procurement procedure. (See Manual, pp. 34, 44, 107, etc.) 	external public audit on the basis of the annual and multi-annual Program of audit activities on which it decides independently. b) Public procurement has been and remains under the supervision of the Court of Auditors. The entire managerial internal control system, but especially on the public procurement component is evaluated in each mandatory financial audit (consolidated financial statements of 9 ministries and 3 Government Reports on the execution of the state budget, state social insurance budget and funds of healthcare), as well as in compliance or performance audits planned separately in the field of procurement. c) Law no. 229/2010 establishes general rules and principles for organizing public internal financial control, which includes a) internal managerial control and b) internal audit. The objects of the internal managerial control are all the systems, processes and activities within the field of responsibility of the public entity. d) The CoA carries out independent external audits according to its established procedures (incl. risk assessments, etc.) but there is room for improvement of the level of effective oversight, in particular given the low level of performance audits. e) CoA reports are submitted to and reviewed by Parliament on a yearly basis. f) Follow-up of audit reports and other control measures is largely ineffective, as demonstrated by the very small number of sanctions meted out or of other, specific measures taken as a result of problems having been reported. Internal audit is still inoperable because of its slow, limited roll-out in public administration.	Internal audit is not yet fully introduced and even less effective in all contracting authorities. Despite the relatively good legal framework, the capacities of internal auditors in terms of procurement processes are low, and many public authorities, especially at the local level, have difficulties in hiring internal auditors. The Court of Accounts has room for further development of procurement audits, with relatively greater emphasis on outcomes and performance. The findings and recommendations of the Court of Accounts are not fully applied in a timely and transparent manner.	best meet the overarching objectives, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources. Intensify the development of internal audit through increased training, advice and exchange of experience, if necessary by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes. Refocus the approach of the Court of Accounts when auditing public procurement towards outcomes and performance of procurement operations relative to their original objectives, the approaches taken and the resources used; by revising rules and procedures, (re-)training and (re-)allocating staff accordingly and adding staff and other resources as may be necessary for the purpose, and improving corresponding monitoring and reporting. Revise rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts, adequately sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings.

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	12(b) Coordination of controls and audits of public procurement	(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual. (b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing. (c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.* (d) Clear and reliable reporting lines to relevant oversight bodies exist.	<ul style="list-style-type: none"> Auditing Standards of INTOSAI The Court of Accounts' Financial Audit Manual (Decision no. 101 of 21 December 2018) The Court of Accounts' Guide On Compliance Audit (Decision no. 55 of 20 September 2019) The Court of Accounts' Performance Audit Manual (Decision no. 54 of 5 December 2016) 	<p>a) The Court of Accounts assesses internal managerial control in the field of public procurement, assesses risks and plans audit actions depending on the situation - in all financial, compliance and specialized audit missions of compliance and performance audit. In other words, in approx. 90% of external public audit missions - the aspects related to public procurement are verified. The vast majority of audit reports present findings on public procurement. Sometimes this information is given in the Letter to the management, which is sent to the manager without publication. This information can be verified by accessing the website of the Court of Accounts. For 2020, the CoA has planned several compliance audits of public procurement (Ministry of Defense, Ministry of Justice, including penitentiaries; Ministry of Internal Affairs, etc.).</p> <p>b) See entries in the column "Reference document(s)"; these cover the CoA only and there is no overarching policy or co-ordination mechanism to harmonise various types of control and audit.</p> <p>c) The CoA carries out its audits in a yearly cycle as set out in the applicable regulations and manuals; however, not every contracting authority is covered each year. Internal audit would in principle be a continuous process but is not yet widely practised.</p> <p>d) Applicable regulations clearly indicate how suspected cases can be reported to the various oversight bodies.</p>	<p>➤ few internal audits are currently being performed</p> <p>➤ The leaders of public entities are not yet fully aware of the legal obligation and the benefit of establishing an internal managerial control system. The low and unsatisfactory concern of top management towards the functionality of internal managerial control, especially on public procurement procedures is directly proportional to the admission of irregularities, errors and fraud in the field of procurement.</p>	1. It is necessary to intensify the efforts to carry out the internal audit and it must become effective
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialised procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits). Source: Ministry of Finance/Supreme Audit Institution.				
	12(c) Enforcement and follow-up on findings and recommendations	(a) Recommendations are responded to and implemented within the time frames established in the law.* (b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.		<p>a) According to art.37 of Law no.260 / 2017, the audited entities and other institutions referred to in the auditor's report are obliged, within the term established by the CoA, to report on the implementation of the recommendations in the auditor's report or on the reasons why they were not implemented. The CoA establishes concrete reporting deadlines for the implementation of the recommendations submitted depending on the complexity of the measures to be taken in their implementation.</p> <p>b) The CoA monitors the implementation of the recommendations through (1) the procedure provided by the internal regulations, (2) within the mandatory annual audits, but also (3) within the follow-up missions planned separately in the Annual Program of the audit activity.</p> <p>c) In its reports, the Court provides recommendations that are likely to make a significant contribution to addressing the identified weaknesses or audit issues, the implementation of which is mandatory. During 2018, 1681 requirements and recommendations were submitted, the deadline for their implementation, depending on their complexity, ranging from 1 to 12 months from the date of publication of the Decisions of the Court of Accounts in the Official Gazette of the Republic of Moldova. Although the term of execution of 1395 requirements</p>	➤ The mechanisms of responsibility of the authorities / officials who do not implement the recommendations of the Court of Controls are very vague and poorly functional	1. Strengthening / establishing the new mechanisms of responsibility of the authorities / officials who do not implement the recommendations of the Court of Controls

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				and recommendations (83%) expires in the II-IV quarters of 2019, at the situation of 31.03.2019 were implemented about 32% of the total. It should be noted that the audited entities take measures for their implementation, periodically informing the Court about this.		
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.				
	12(d) Qualification and training to conduct procurement audits	(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.* (b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants. (c) Auditors are selected in a fair and transparent way and are fully independent.		a) In the period 2017-2019, within the Court of Accounts, special attention is paid to the training of public auditors in the field of public procurement. Thus, in 2018, 6 training sessions were conducted (a total of 71 hours) in the field of public procurement, including in terms of transparency of the procurement process attended by 92 employees of the Court of Accounts (82% of total employees with audit responsibilities). In 2019, 100 employees were trained (89% of the total employees with audit responsibilities) in 5 training sessions (a total of 34 hours). It should be mentioned that during the professional training stage of the certification process of public auditors, special attention was paid to familiarizing employees with audit responsibilities with the rigors and the existing national regulatory framework in the field of public procurement. b) There are no generally applicable, detailed requirements for specific knowledge of public procurement as a condition for their engagement. At the CoA, efforts are made to address any weakness by on-the-job training and mentoring. c) Positions in the CoA are subject to competitive recruitment; the CoA and its auditors are required to be independent.	➤ There is no corresponding programme for internal auditors within the contracting authorities.	1. Maintaining a continuous training process in the field of public procurement of the entire body of public auditors. 2. Strengthen the skills to perform performance audits in the field of public procurement.
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution. * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.				

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13. Procurement appeals mechanisms are effective and efficient	13(a) Process for challenges and appeals	(a) Decisions are rendered on the basis of available evidence submitted by the parties. (b) The first review of the evidence is carried out by the entity specified in the law. (c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. * (d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.	<ul style="list-style-type: none"> Law on public procurement no. 131/15 (art.80, 83, 85, 86) 	<p>a) The National Agency for the Settlement of Appeals is not limited to making assessments on the appeal only on the basis of the evidence presented by the parties. However, each party must prove what it claims, and if the evidence is not accessible from open sources, the assessment is made on the basis of the evidence of the parties.</p> <p>b) Any time limit for resolving an appeal delays the procurement procedure to some extent. However, the time limit for lodging an appeal is included in the waiting period in which the contracting authority does not have the right to conclude a procurement contract and therefore regardless of whether or not an appeal is lodged this deadline must be met.</p> <p>c) There are no statistics on the percentage of decisions executed. According to the ANSC report, not all appeals decisions issued by ANSC are executed by the contracting authority and case of formal execution (for instance when contracting authority is maintaining the award decision contrary to the appeals decision and the law. Other contracting authorities choose to appeal in the court the ANSC decisions and because of the lengthy lawsuits, the suspended decisions became ineffective. In some cases, it was found that contracting authority ignored ANSC decisions. Therefore, economic operators, whom appeals have been accepted by ANSC being found the violation of their rights, could not effectively benefit from the effects of ANSC decisions.</p> <p>d) In general, the deadlines specified for submitting and examining appeals do not unduly delay the procurement process, but there are exceptions: when an economic operator submits an (unfounded) appeal only to delay and postpone the procurement procedure as much as possible.</p> <p>e) At the same time, a new trend was detected, namely the submission and then withdrawal of the appeal, even when its claims could be admitted by the National Agency for Solving Appeals. In 2019, there are 129 such cases (or 12,55% from the total number of appeals), when the economic operators request the withdrawal. The reasons behind these decisions are: in case of 28% - the arguments of contracting authority were accepted by the economic operator so appeals became devoid of purpose; in case of 25% - remedies implemented by the contracting authorities; no reasons to keep the appeal; in case of 8% - the contracting authority canceled the procedure and in the rest of 39% - unknown reason.</p>	<p>Civil servants, including ANSC members and staff, have a general obligation to report possible acts of corruption, and any violation of the PPL may be the result of such acts, but there is no clear right or duty of the ANSC itself to meet this obligation (or not) by reviewing (ex officio) the whole procurement process where a complaint has been made</p> <p>There are no mechanisms in place to ensure the execution of ANSC decisions.</p> <p>The number of frivolous complaints is thought to be rising, creating fears of increasing delays in public procurement proceedings and case overload at the ANSC.</p> <p>Unnecessary delays to the procurement process may be caused by possibilities to repeatedly lodge complaints while proceedings are suspended, as well as by frivolous complaints.</p> <p>The ANSC does not appear to have a well-functioning case management system including, in particular, a comprehensive, searchable data base of past decisions that is also freely accessible.</p> <p>No data is available for evaluating the risk of conflicting interpretation of the PPL by various advisory and supervisory bodies dealing with public procurement, including the ANSC.</p>	<ol style="list-style-type: none"> Law 131/15 on public procurement had to be supplemented with the principle of availability (refers to the examination and settlement of cases based on available evidence, submitted by the parties). Elaboration of mechanisms for the accountability of contracting authorities / officials who do not implement the decisions of the National Agency for Solving Complaints. As a solution, ANSC proposes to amend the Contraventional Code so that the control bodies in the ANSC's fields of competence could apply sanctions for non-execution of the ANSC's decisions. Currently, no fees are charged, but this would be a welcome solution for the cases listed above, namely: filing appeals based on unfounded claims or unjustified withdrawal. The payment of a fee that would be refunded to the economic operator by the contracting authority, if its claims are admitted, or paid by the economic operator, if its claims are unfounded, would discipline both actors involved in conducting public procurement procedures. Regardless of the solution that will be chosen, it is necessary to perform an analysis of the causes that lead to this situation and the existing practices, with the identification of the best solutions. Review and revise the rules for when complaints may be made on what aspects of the public procurement process; analyse the incidence of frivolous complaints and seek better ways to quickly and reliably identify, examine and reject them. Review and revise the ANSC's internal procedures; put a case management system in place, including a publicly accessible data base of past decisions. Review and compare the decisions and recommendations of the various advisory and supervisory bodies dealing with public procurement, including the ANSC; identify the nature and extent of any discrepancies; and, to the extent that such discrepancies are found, set up a consultation mechanism for harmonising the interpretation and application of the PPL's provisions among the bodies concerned

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		<p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>		a) In 2018, the number of appeals filed by economic operators and registered with the Agency, randomly distributed electronically to the 4 panels set up, reached 726.		
	13(b) Independence and capacity of the appeals body	<p>The appeals body:</p> <p>(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</p> <p>(b) does not charge fees that inhibit access by concerned parties</p> <p>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p> <p>(d) exercises its legal authority to suspend procurement proceedings and impose remedies</p> <p>(e) issues decisions within the time frame specified in the law/regulations*</p> <p>(f) issues decisions that are binding on all parties</p> <p>(g) is adequately resourced and staffed to fulfil its functions.</p>	<ul style="list-style-type: none"> • Law on public procurement no. 131/15 (art.80, 85, 86) • The decision of the Parliament regarding the establishment, organization and functioning of the National Agency for Solving Appeals no. 271 of 15.12.2016 	<p>a) The only attribution of the National Agency for the Settlement of Appeals is the settlement of disputes on public procurement contracts, works and service concessions, and in the future on public utility contracts.</p> <p>b) Law on public procurement no. 131/15 does not provide for any fee for filing the appeal, and the address to the National Agency for the Settlement of Appeals does not imply any payment as a condition of admission in the dispute resolution process.</p> <p>c) During the evaluated period, no public procurement procedures were suspended, being sufficient the ex officio suspension of the conclusion of the procurement contract.</p> <p>d) The limit staff of the National Agency for the Settlement of Appeals was set at 30 units. During the reported period, the staff status of the Agency was supplemented in the amount of 63.3%, which refers to the specialized staff, which falls under the incidence of the Law on civil service and the status of civil servant. This trend is current and present. Supplementing staff is hampered by the fact that resolving appeals is a fairly narrow area, where it is necessary to accumulate knowledge in the field of law and public procurement, concessions, utilities, and this is the main major inconvenience in recruiting staff, or such specialists do not are in the labor market in sufficient numbers to cover demand.</p> <p>e) According to the Agency, 100% of appeals are resolved within the deadline specified in the legislation.</p> <p>f) As set out in the PPL, the Agency's decisions are binding on the parties. However, there is no effective mechanism for enforcing these decisions.</p> <p>g) As evidenced by its performance to date, the Agency has had enough resources to deliver according to its mandate, even if the full number of authorised staff positions has not been filled.</p>	<p>➤ Uncertainty regarding the Agency's right or obligation to examine or not to examine other aspects of a public procurement process than those explicitly invoked in the appeal</p> <p>➤ difficulties in filling staffing</p>	1. It is necessary to clarify in the legislation the right of the Agency to review ex officio the public procurement processes subject to complaints.
		<p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.</p>		<p>a) According to the Agency, 100% of appeals are resolved within the deadline specified in the legislation.</p> <p>b) According to the PPL the legal term for resolving an appeal is 20 working days counting from the day of receiving the appeal. In the case of an exception which prevents the examination, ANSC must comply with the term of 10 days. Also, in duly justified cases, the time limit for resolving the appeal may be extended only once by 10 days.</p>		

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	13(c) Decisions of the appeals body	Procedures governing the decision making process of the appeals body provide that decisions are: (a) based on information relevant to the case. (b) balanced and unbiased in consideration of the relevant information.* (c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.* (d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*		a) In order to resolve the complaint, the ANSC has the right to request clarifications from the parties, to seek evidence and to request any other data or documents insofar as they are relevant in relation to the object of the complaint. b) The ANSC must be unbiased in its decisions. c) After examining the contested action or decision from the point of view of its legality and validity, the ANSC may annul it in part or in whole or oblige the contracting authority to issue an decision, or order any other measure necessary to remedy the actions affecting the procedure. d) The PPL provides that appeals decisions, including the justification of the decision, will be communicated to the parties within 3 days and appeals decision shall be published on the ANSC webpage within the same period. For instance, ANSC has issued 805 decisions within the last year (2019). e) In the electronic system MTender, the integration of the appeals functionality was done on July 11, 2019, which means that for each procedure there is available the information on the appeals submitted and thus it is redirected to the appeals decision published on the ANSC web page. The appeals decisions continue being published on its webpage.	➤ The possibilities to search the Agency's decisions according to various criteria are limited	1. Improving the Agency's database of decisions to facilitate access to decisions according to several criteria
		// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralised online portal.* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.		a) Based on the survey conducted by the National Agency for Solving Complaints in the III-IV quarter 2019, 73% of economic operators consider credible the decisions of the National Agency for Solving Complaints and 93% of responding economic operators consider that the procedure for examining appeals is carried out in accordance with the principles legality, speed, adversariality and the right to defense. b) According to the Agency's Report in 2018, 53% of the decisions were in favor of the contracting entity, 43% in favor of the applicant (or partially), and 4% of the decisions refer to appeals that do not fall within the competence of the National Agency for Resolving Appeals. In 2019, from the total of decisions, 65% were in favor of the applicant (admitted or partially admitted) by ANSC and the other 35% were in favor of contracting authority (dismissed as being unfounded). From the total of those 205 decisions that remain unexamined (exceptions) is for the following reasons: 100 appeals (49%) were submitted tardy, 21 appeals (10%) were non-compliant, 21 appeals (10%) remained without object, 35 appeals (17%) were return without being examined and other 28 appeals (14%) wasn't ANSC competence. Regarding the appeals submitted tardy, from the total number of appeals, 9,75% were submitted tardy, which is less compared with the previous year 2018 by 14,46%. c) All decisions of the National Agency for the Resolution of Appeals are published on the official portal https://ansc.md/ro/decisions within the terms provided by the legislation.		
14. The country has ethics and anticorruption measures in place	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties	The legal/regulatory framework provides for the following: (a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements. (b) definitions of the individual responsibilities, accountability and penalties for government	<ul style="list-style-type: none"> The Law on public procurement no. 131/2015 (art.1, art.19, art. 42, art.69, art.71, art. 79) The Regulation for approving the Regulation on the purchase of goods and services by requesting price offers / Government Decision no.987 / 2018 (point 46 sub-item 4). The regulation on public procurement using the negotiation procedure / Government Decision no.668 / 2016 	a) The Law on public procurement no. 131/2015 does not expressly contain the definitions of corruption and other practices prohibited in public procurement, but there are norms in the law that mention and describe the basic elements of these phenomena. b) The Law on public procurement stipulates the obligation of the contracting authority / service provider to take all necessary measures to avoid situations that may cause a conflict of interest to arise during the application of the procedure for awarding the public procurement contract. In this respect, the contracting authority / service provider has the obligation to sign, on its own responsibility, a declaration of confidentiality and impartiality.	➤ The competition of the norms of law, which on the one hand mentions that the Public Procurement Agency is entitled to cancel the public procurement procedure in case of non-observance of the provisions regarding conflicts of interests (point 43 of the Regulation regarding the activity of the working group for procurement) , and on the other hand it regulates in detail the competence of the National Integrity Authority to ascertain the violation of the legal regime of conflicts of interest and the jurisdiction of the court to ascertain the absolute	1. Adjustment of the rules conferring similar powers on the Public Procurement Agency and the National Integrity Authority for the examination and settlement of cases of conflicts of interest.

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law. (c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	<p>(point 50 sub-section 3), point 104 sub-item 4).</p> <ul style="list-style-type: none"> • The regulation on public procurement of works / Government Decision no. 669/2016 (point 147, point .150 subpct.4) • The regulation regarding the framework agreement as a special way of awarding the public procurement contract / Government Decision no.826 / 2012 (point 87 letter.g) • The Regulation on public procurement using the dynamic system / Government Decision no.766 / 2013 (point 49 sub-item 6) • The Regulation regarding the activity of the working group for procurement / GD no.667 / 2016 (point 21 sub-section 22) • The standard documentation for the public procurement of social food services in educational institutions (Ministry of Finance Order no. 23 of February 6, 2019); • The standard documentation for the accomplishment of works acquisitions (Order of the Ministry of Finance no.176 from October 5, 2018); • Standard documentation for the public procurement of goods and services by requesting price offers (Order of the Ministry of Finance no. 175 of October 5, 2018); • Standard documentation for the public procurement of services (Order of the Ministry of Finance no. 174 of October 5, 2018); • Standard documentation for public procurement of goods (Order of the Ministry of Finance no.173 of October 5, 2018); • Standard documentation for the public procurement of goods, services and works through the negotiation procedure (Order of the Ministry of Finance no.85 of 15.06.2016); • Standard documentation for the public procurement of goods, services and works through the competitive dialogue procedure (Order of the Ministry of Finance no.84 of 15.06.2016). • the law of integrity no. 82/2017 • the law regarding the declaration of assets and personal interests no. 133/2016 • the law regarding integrity warnings no. 122/2018 	<p>All aspects related to corruption (aspects of integrity in the public / private sector and define the general notions of corruption, corruption manifestations and other corrupt facts) and conflicts of interest are regulated in the special legislation: the law of integrity, the law regarding the declaration of wealth and personal interests, the law regarding the National Integrity Authority, other laws.</p> <p>In the above-mentioned laws are express provisions regarding the observance of the legal regime of restrictions and limitations in connection with termination of the mandate, employment or service relationships and with the migration of public agents to the private sector.</p>	<p>nullity of the administrative act issued / adopted or of the legal act concluded directly or through a person third parties, or the decision taken in violation of the legal regime of conflicts of interest.</p> <p>The impossibility of the Public Procurement Agency having the competence to cancel the public procurement procedure in the context in which it no longer has the competence to carry out the ex-post control, after which the situations of conflicts of interest in the public procurement procedures can be detected.</p>	
	14(b) Provisions on prohibited practices in procurement documents	(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and		a) The legal framework does not specify the obligation to insert in the procurement documents and the procurement contract the provisions regarding the prohibited practices, nor are there any instructions in this regard. Some references in this regard are found only in some standard documentation.	➤ Absence of provisions on corruption, fraud and other prohibited practices in public procurement contracts.	1. Review the legal framework to include provisions on corruption, fraud and other prohibited practices in public procurement contracts and other documents.

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		contract documents. (b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.		b) Only for some procedures are provided the Declarations on ethical conduct and non-involvement in fraudulent and corruption practices as part of the offers of economic operators, plus the mentions in the DUAE c) With regard to contracts, the legal framework does not provide for the obligation to insert in the procurement contracts statements regarding fraud, corruption and other prohibited practices.		

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
	14(c) Effective sanctions and enforcement systems	(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this. (b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities. (c) There is a system for suspension/debarment that ensures due process and is consistently applied. (d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*		<p>a) The regulatory framework establishes the obligation of contracting authorities to report allegations of fraud, corruption and other prohibited practices.</p> <p>b) In the absence of special procedures for reporting cases of fraud, corruption and other practices prohibited in public procurement procedures, the general rules for reporting illegal practices, corruption acts and their related ones applies.</p> <p>c) Neither in the annual activity reports of the Public Procurement Agency, nor in the annual activity reports of the National Anticorruption Center, are the statistics regarding the number of reports of fraud, corruption and other practices prohibited in public procurement. The National Anticorruption Center presents general figures annually, either divided into some categories, but which does not refer directly to public procurement. Regarding the General Prosecutor's Office (Anticorruption Prosecutor's Office as specialized prosecutor's office), we also have general information about its activity, without being able to process distinct information for the field of public procurement. We also have a similar situation regarding the National Integrity Authority, which has more competences regarding conflicts of interests, but does not systematize the information on sectors of activity, such as public procurement.</p> <p>a) There are several legal provisions according to which the economic operator is excluded from the public procurement procedures in tangent cases with acts of corruption, conflict of interests or the existence of definitive judgments of the courts. However, the above exclusion measures take place outside a criminal investigation conducted by the NAC / Anti-corruption Prosecutor's Office.</p> <p>b) We have no data regarding the companies / individuals who were investigated and found guilty of fraud and corruption in procurement; number of companies / individuals who were prohibited from participating in other purchases (suspended / excluded); the number of civil servants investigated / convicted for fraud and corruption in public procurement; number of companies that admitted unethical practices, including offering gifts (in%) to obtain public procurement contracts.</p>	<p>➤ A major problem, including in the field of public procurement, is the non-reporting of corruption cases and related to corruption by those who know about such cases.</p> <p>➤ The passivity of citizens to notify the NAC and other law enforcement agencies is largely due to corruption, lack of independence in these bodies, lack of confidence in the NAC, lack of confidence in the justice of the Republic of Moldova, but also the fear that the denunciation will occur adverse consequences for himself and / or his company (confirmed by the results of national surveys conducted).</p> <p>➤ Aggregate information on corruption cases (in public procurement procedures) reported and investigated by competent authorities is missing</p> <p>➤ The prohibition list of economic operators is a difficult tool to use and has a low efficiency in terms of improving the responsibility of economic operators and the climate of integrity in public procurement.</p>	<p>1. In the legal framework regarding public procurement it would be appropriate to insert express rules, which regulate the procedures for reporting cases of fraud, corruption and other prohibited practices, or to refer to the existing procedures, especially those of the integrity law no. 82 / 2017.</p> <p>2. It is necessary to systematize and publish information on the causes of corruption and related to corruption in public procurement, from the notification stage of the National Anticorruption Center, the detection of the crimes by the NAC, followed by the stage of the criminal investigation, with the initiation, conduct and completion of the criminal cases by the NAC and the Anti-corruption Prosecutor's Office, up to the stage of transmitting the cases to the court, including with the monitoring of the results of the criminal trials. Similarly, it is necessary to process the information regarding the field of public procurement, held by the National Integrity Authority.</p> <p>3. Review the system for prohibiting economic operators from participating in public procurement</p>
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including				

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		making gifts in (in %). Source: Survey.				
	14(d) Anti-corruption framework and integrity training	<p>(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*</p> <p>(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.</p> <p>(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.</p> <p>(d) Special measures are in place for the detection and prevention of corruption associated with procurement.</p> <p>(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</p>		<p>a) In the Republic of Moldova there are three main institutions empowered with the prevention and fight against corruption: National Anticorruption Center, Anticorruption Prosecutor's Office (General Prosecutor's Office) and National Integrity Authority.</p> <p>b) In the arsenal of the National Anti-Corruption Center there are a number of tools used to identify corruption risks, including in public procurement. In this regard, the NAC carries out the following measures:</p> <ul style="list-style-type: none"> - anti-corruption education; - anticorruption expertise of normative acts; - assessment of institutional integrity; - testing professional integrity; - strategic and operational analysis of corruption; - monitoring and evaluation of anti-corruption policies; <p>c) It is necessary to note that there is no segregated data on convictions in the procurement sector. Only reports with general statistical data from the activity of public anti-corruption authorities and courts are presented to the public.</p> <p>d) There are no special measures designed to detect and prevent corruption in public procurement. The same legal instruments are used for all areas when it comes to corruption.</p> <p>e) In the PPA Report there are no mentions about conducting special trainings regarding integrity for public procurement specialists from the contracting authorities. Such mentions are not included neither in the NAC Activity Report for 2019.</p>	<p>➤ Although the National Anticorruption Center performs detailed analyzes, having at its disposal a number of tools provided by law to identify corruption risks, including in public procurement, the results of these activities are modest in terms of direct fight against corruption and fraud in public procurement.</p> <p>➤ The annual activity reports of the relevant anti-corruption institutions do not include statistics on cases of fraud, corruption and other prohibited practices in public procurement.</p>	1. Paying increased attention by anti-corruption institutions regarding cases of corruption and fraud in public procurement, with the publication of statistical data on such cases
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.		Cf. Annex 8.		

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
	14(e) Stakeholder support to strengthen integrity in procurement	(a) There are strong and credible civil society organisations that exercise social audit and control. (b) There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government. (c) There is evidence that civil society contributes to shape and improve integrity of public procurement. * (d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures. *	<ul style="list-style-type: none"> law no.239 / 2008 on transparency in the decision-making process Government Decision no.967 / 2016 on the mechanism of public consultation with civil society in the decision-making process 	<p>a) Civil society organizations are actively involved in monitoring public procurement, helping to adjust the legislative framework, identify irregularities, etc. There are around 8 civil society organizations that actively ensure social supervision and control in the procurement process.</p> <p>b) The area of activity of these organizations in the field of procurement includes: elaboration of analyzes and studies; formulating proposals for improving public policies and developing public procurement policies; assessing the public's perceptions of the transparency, efficiency and integrity of the public procurement system; monitoring the activity of public institutions responsible for public procurement; monitoring public procurement by contracting authorities; training of actors in public procurement procedures and other subjects (contracting authorities, economic agents, civil society, etc.); developing guides for the subjects involved in the procurement procedures and challenging them; guiding and strengthening the capabilities of local civil society organizations to monitor public procurement, etc.</p> <p>c) One of the tools available for CSOs monitoring public procurement is to notify the PPA of including a company in the Prohibition List for corruption, false acts or procurement fraud. Thus, the company SC Rodicons SRL was included in the List at the notification of an NGO (AGER) on July 16, 2019 because of the presentation of false documents in the procurement procedure</p> <p>d) One of the NGOs actively monitoring procurement launched 2 editions of the Public Procurement System Trust Index, which measured and compared the perception of the authorities, the private sector and civil society on the corruption phenomenon in 2018 and 2019, by applying questionnaire tool.</p> <p>e) Also, NGOs contributed by training the contracting authorities and economic agents on integrity and anti-corruption in the procurement process.</p> <p>f) Another contribution concerns the monitoring of policies and strategic documents in the field by identifying integrity deficiencies and proposing measures to improve system integrity.</p> <p>g) An NGO has developed a tool for civic control of NGO purchases (online platform www.revizia.md), where each citizen can express his opinion, can make a suggestion, recommendation or complaint, with reference to a certain procurement procedure.</p> <p>h) Business in the country is just taking the first steps towards implementing integrity standards within companies. The notion of compliance is new to the private sector, and we cannot yet speak of a culture and ethical behavior in business and directly in public procurement. Similar situations are also attested to the business associations, with the mention that they are poorly developed and have low capacities, including in the aspect of elaborating and implementing internal compliance measures.</p> <p>i) A survey conducted in 2017 by an NGO showed that: 80.8% of the companies did not elaborate an action program with special anti-corruption rules and procedures; 76.5% of companies do not have procedures for preventing and sanctioning bribes; 66.1% of economic agents do not have procedures for preventing conflicts of interest; 83.4% of the companies did not organize any training courses for employees or managers regarding the fight against corruption</p>	<p>➤ The procedure for including the representatives of the civil society in the composition of the working groups is a bureaucratic one and does not allow the participation in the procurement process of any citizen, who de facto and de jure is a member of the civil society. At the same time, using the classic tools (official letters sent) is difficult for a civil society representative to send the request, communicate with the members of the working group, to obtain information quickly in order to attend the meetings of interest.</p> <p>➤ The ceiling on the number of representatives of the civil society in the composition of the working group is not argued in the context in which they have only the right to consult</p> <p>➤ The recommendations of CSOs to the projects of normative acts are not always taken into account.</p> <p>➤ Actions to monitor procurement at national and local level by civil society do not always result in stopping an acquisition as manifest violations, sanctioning or holding those responsible accountable, as the civil society is neither a control or a law enforcement body.</p>	<p>1. It would be appropriate to expressly indicate the ways in which a civil society representative can submit the request, specifying that the electronic tools (e-mail, viber, facebook) available to the contracting authority can be used.</p> <p>2. Creating the necessary conditions (improving the electronic public procurement system), providing the necessary support (including training), implementing existing mechanisms to enable civil society to monitor public procurement</p>
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil service organisations (CSOs), including				

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		national offices of international CSOs) actively providing oversight and social control in public procurement. Source: Survey/interviews. * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.				
	14(f) Secure mechanism for reporting prohibited practices or unethical behaviour	(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour. (b) There are legal provisions to protect whistle-blowers, and these are considered effective. (c) There is a functioning system that serves to follow up on disclosures.	<ul style="list-style-type: none"> Regulation on the functioning of the system of anti-corruption telephone lines, approved by law no. 252/2013 the law on integrity warnings no. 122/2018 Regulation regarding the procedures for internal examination and reporting of the disclosures of illegal practices was approved (Government Decision no.23 / 2020) 	<p>a) the main method of reporting, in case it does, is considered the national anti-corruption line</p> <p>b) most of the central public authorities have established anti-corruption telephone lines (there is no assessment of the functionality of these telephone lines), but the local public authorities are lagging behind in this chapter, with the exception of second-level territorial administrative units, municipalities and big cities</p> <p>c) Starting with 17.10.2018, the law on integrity warnings no. 122/2018 came into force, which regulates the disclosures of illegal practices within public and private entities, the procedure for examining these disclosures, the rights of integrity warnings and the protection measures of the their obligations of employers, the powers of the authorities responsible for examining such disclosures and of the protection authorities of integrity warnings. In order to detail some aspects, the Regulation regarding the procedures for internal examination and reporting of the disclosures of illegal practices was approved (Government Decision no.23 / 2020).</p> <p>d) The regulatory framework regarding integrity warnings and information disclosure is a new one, recently implemented. In this context, there is no information on developments regarding the disclosure of information, but there is no clarity about the existence of a functional system in this regard.</p>	<p>➤ the main reasons for which the population and the economic agents do not report the acts of corruption they have encountered in the interaction with public agents are the belief that this is useless; the fact that it did not had the necessary evidence; the belief that there are no protection mechanisms for those who report corruption acts; the fear of not suffering later on personal or professional level</p>	<p>1. Implementation by public authorities of procedures for disclosing illegal practices (which will also refer to the field of public procurement), internal reporting channels and whistleblower protection mechanisms</p> <p>2. Implementation by the responsible anti-corruption institutions of the legal provisions regarding the protection of whistleblowers, providing more training in this regard and dissemination to the public of the information necessary to promote whistleblowing</p>
	14(g) Codes of conduct/codes of ethics and financial disclosure rules	(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.* (b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.* (c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal. (d) Regular training programmes are offered to ensure sustained awareness and implementation of measures. (e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision	<ul style="list-style-type: none"> the law on the civil service and the statute of the civil servant no.158 / 2008 the law on the Code of conduct of the civil servant no. 25/2008 the law on internal public financial control no.229 / 2010 Regulation on the continuous professional development of the civil servants - annex no. 10 to the Government Decision no. 201/2009 The program of training of civil servants for the years 2016-2020, approved by Government Decision no.970 / 2016 	<p>a) Most of the central public authorities have elaborated and approved by internal order Codes of Conduct for its officials. Such Codes of Conduct were also approved by some public authorities at local level. However, there is no data regarding the weight of public entities that have a code of conduct, respectively there is no such information for the contracting authorities.</p> <p>b) The law on the Code of conduct of the civil servant no. 25/2008 includes some general provisions regarding the use of public resources by any public official, including those involved in public financial management and public procurement. Thus, the civil servant must ensure, according to his duties, the efficient use and according to the destination of the public money</p> <p>c) The law on the civil service and the status of the civil servant no.158 / 2008, as well as the law on the Code of conduct of the civil servant no. 25/2008 establish disciplinary, civil, contraventional, criminal liability, in case of violation of the rules of conduct by the civil servant. At the same time, conflicts of interests are sanctioned according to the provisions of the law regarding the declaration of wealth and personal interests no. 133/2016.</p> <p>d) Regarding the filing of the declarations of wealth and personal interests of the civil servants involved in the public procurement, we note that according to the law no. 133/2016, all the civil servants (including those involved in the public procurement) and</p>	<p>➤ The institution responsible does not take the necessary measures even in cases reported by CSOs or the press when declarations of wealth and personal interests are incomplete or erroneous</p>	<p>1. Monitoring by the State Chancellery of the situation regarding the elaboration and implementation of codes of conduct to ensure that the obligations included in these codes are fulfilled</p>

Indicator	Sub-indicator	Assessment criteria	Reference document(s): name; Internet link if available; chapter or article as applicable; other sources used	Qualitative analysis: comparison of actual situation vs. assessment criteria	Gap analysis: substantial gaps, their underlying reasons; conditions to be met for closing them	Initial inputs for recommendations (as recorded during data collection and initial drafting; final recommendations are found in the report and may differ from the below)
		makers to prevent corruption risks throughout the public procurement cycle.		<p>other subjects provided by the law are obliged to submit thus of annual declarations until March 31, upon employment, validation of the mandate, appointment and termination of the mandate or employment or service relationships. From January 1, 2018, the information system "e-Integrity" was put into operation, which allows the filing of the declaration of wealth and personal interests in electronic format, as well as facilitates the electronic access of citizens and public authorities to the information in the system.</p> <p>e) Every official has the obligation to continuously improve their skills and professional training, and each public authority has the obligation to ensure the organization of a systematic and planned process of continuous professional development of the civil servant. Aspects of integrity and rules of conduct are part of the training programs organized for civil servants.</p>		
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.</p>				

Annex 6: Assessment results by indicator, sub-indicator and assessment criterion

Assessment Result Summary

MAPS Pillar	Criteria Substantially Met	Criteria Partially Met	Criteria Substantially Not Met	Criteria Not Applicable	Total
Pillar I: Legal, Regulatory, and Policy Framework	35	28	4	0	67
Pillar II: Institutional Framework and Management Capacity	25	26	3	1	55
Pillar III: Public Procurement Operations and Market Practices	2	19	5	0	26
Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System	30	27	5	0	62
Total	92	100	17	1	210

Color Code:

- i. Criterion Substantially Met – Green
- ii. Criterion Partially Met – Yellow
- iii. Criterion Substantially Not Met – Red
- iv. Criterion Not Applicable - Blue

6.1 Pillar I. Legal, Regulatory, and Policy Framework

1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

Assessment criteria
(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.
(b) It covers goods, works and services, including consulting services for all procurement using public funds.
(c) PPPs, including concessions, are regulated.
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost

1(b) Procurement methods

Assessment criteria
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.
(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.
(c) Fractioning of contracts to limit competition is prohibited.
(d) Appropriate standards for competitive procedures are specified.

1(c) Advertising rules and time limits

Assessment criteria
(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).
(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.
(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).
(b) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

1(d) Rules on participation

Assessment criteria
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.
(b) It ensures that there are no barriers to participation in the public procurement market.
(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.

1(e) Procurement documentation and specifications

Assessment criteria
(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.
(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.
(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)

1(f) Evaluation and award criteria

Assessment criteria
(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely based on the criteria stipulated in the documents.
(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.
(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.
(d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents.
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

1(g) Submission, receipt, and opening of tenders

Assessment criteria
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.
(b) Records of proceedings for bid openings are retained and available for review.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.

1(h) Right to challenge and appeal

Assessment criteria
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies and establish the right for judicial review.
(c) Rules establish the matters that are subject to review.
(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.
(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).

1(i) Contract management

Assessment criteria
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned.
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.
(d) The final outcome of a dispute resolution process is enforceable.

1(j) Electronic Procurement

Assessment criteria
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.
(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

1(k) Norms for safekeeping of records, documents and electronic data

Assessment criteria

(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.

(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.

(c) There are established security protocols to protect records (physical and/or electronic).

1(l) Public procurement principles in specialized legislation

Assessment criteria

(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.

(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.

(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria

(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.

(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.

(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.

2(b) Model procurement documents for goods, works, and services

Assessment criteria

(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.

(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.

(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.

2 (c) Standard contract conditions

Assessment criteria
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.

2(d) User's guide or manual for procuring entities

Assessment criteria
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.

3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the application of SPP.
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.

3(b) Obligations deriving from international agreements

Assessment criteria
(a) clearly established
(b) consistently adopted in laws and regulations and reflected in procurement policies.

6.2 Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well- integrated into the public financial management system

4(a) Procurement planning and the budget cycle

Assessment criteria
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

4(b) Financial procedures and the procurement cycle

Assessment criteria
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.
(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.

5. The country has an institution in charge of the normative/regulatory function

5(a) Status and legal basis of the normative/regulatory institution function

Assessment criteria
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

5(b) Responsibilities of the normative/regulatory function

Assessment criteria
(a) providing advice to procuring entities
(b) drafting procurement policies
(c) proposing changes/drafting amendments to the legal and regulatory framework
(d) monitoring public procurement

(e) providing procurement information
(f) managing statistical databases
(g) preparing reports on procurement to other parts of government
(h) developing and supporting implementation of initiatives for improvements of the public procurement system
(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)
(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate

5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.
(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

5(d) Avoiding conflict of interest

Assessment criteria
(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.

6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities and formal powers of procuring entities

Assessment criteria
(a) Procuring entities are clearly defined.
(b) Responsibilities and competencies of procuring entities are clearly defined.
(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.
(e) Accountability for decisions is precisely defined.

6(b) Centralized procurement body

Assessment criteria
(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.
(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following: <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. • The body and the head of the body have a high-level and authoritative standing in government.
(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.

7. Public procurement is embedded in an effective information system

7(a) Publication of public procurement information supported by information technology

Assessment criteria
(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.
(b) There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.
(c) The information system provides for the publication of: <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements /notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency.
(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).
(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format)
(f) Responsibility for the management and operation of the system is clearly defined.

7(b) Use of e-Procurement

Assessment criteria
(a) E-procurement is widely used or progressively implemented in the country at all levels of government.

(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.
(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.
(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.
(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

7(c) Strategies to manage procurement data

Assessment criteria
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.
(c) The reliability of the information is high (verified by audits).
(d) Analysis of information is routinely carried out, published and fed back into the system.

8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

Assessment criteria
(a) substantive permanent training programmes of suitable quality and content for the needs of the system.
(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.

8(b) Recognition of procurement as a profession

Assessment criteria
(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.
(b) Appointments and promotion are competitive and based on qualifications and professional certification.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

8(c) Monitoring performance to improve the system

Assessment criteria
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.
(b) The information is used to support strategic policy making on procurement.
(c) Strategic plans, including results frameworks, are in place and used to improve the system.
(d) Responsibilities are clearly defined.

6.3 Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.
(b) The requirements and desired outcomes of contracts are clearly defined.
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.

9(b) Selection and contracting

Assessment criteria
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.
(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.
(e) Throughout the bid evaluation and award process, confidentiality is ensured.
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.
(g) Contract awards are announced as prescribed.
(h) Contract clauses include sustainability considerations, where appropriate.
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.
(j) The selection and award process is carried out effectively, efficiently and in a transparent way.

9(c) Contract management

Assessment criteria
(a) Contracts are implemented in a timely manner.
(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.
(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

(d) Contract amendments are reviewed, issued and published in a timely manner.
(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.
(g) The records are complete and accurate, and easily accessible in a single file.

10. The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria
(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.
(b) The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

10(b) Private sector's organisation and access to the public procurement market

Assessment criteria
(a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.
(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.

10(c) Key sectors and sector strategies

Assessment criteria
(a) Key sectors associated with the public procurement market are identified by the government.
(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.

6.4 Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.
(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.

11(b) Adequate and timely access to information by the public

Assessment criteria
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.

11(c) Direct engagement of civil society

Assessment criteria
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: <ul style="list-style-type: none">• the planning phase (consultation)• bid/proposal opening (observation)• evaluation and contract award (observation), when appropriate, according to local law• contract management and completion (monitoring).
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.

12. The country has effective control audit systems

12(a) Legal framework, organization and procedures of the control system

Assessment criteria
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations

(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation
(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)
(f) clear mechanisms to ensure that there is follow-up on the respective findings.

12(b) Coordination of controls and audits of public procurement

Assessment criteria
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.
(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.
(d) Clear and reliable reporting lines to relevant oversight bodies exist.

12(c) Enforcement and follow-up on findings and recommendations

Assessment criteria
(a) Recommendations are responded to and implemented within the time frames established in the law.
(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.

12(d) Qualification and training to conduct procurement audits

Assessment criteria
(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.
(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.
(c) Auditors are selected in a fair and transparent way and are fully independent.

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria

(a) Decisions are rendered on the basis of available evidence submitted by the parties.
(b) The first review of the evidence is carried out by the entity specified in the law.
(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions.
(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

13(b) Independence and capacity of the appeals body

Assessment criteria
(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions
(b) does not charge fees that inhibit access by concerned parties
(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available
(d) exercises its legal authority to suspend procurement proceedings and impose remedies
(e) issues decisions within the time frame specified in the law/regulations*
(f) issues decisions that are binding on all parties
(g) is adequately resourced and staffed to fulfil its functions.

13(c) Decisions of the appeals body

Assessment criteria
(a) based on information relevant to the case.
(b) balanced and unbiased in consideration of the relevant information.
(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.
(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.

14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

Assessment criteria
(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.
(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.

14(c) Effective sanctions and enforcement systems

Assessment criteria
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.
(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.

14(d) Anti-corruption framework and integrity training

Assessment criteria
(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.
(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.
(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria
(a) There are strong and credible civil society organisations that exercise social audit and control.
(b) There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.

- (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.
- (d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.

14(f) Secure mechanism for reporting prohibited practices or unethical behaviour

Assessment criteria
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.
(c) There is a functioning system that serves to follow up on disclosures.

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria
(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.
(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.
(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.

Annex 7: Findings from review of selected procurement contract files

Number of procurement procedures analyzed - 69

Procurement procedure	Period 2017 – 2018	Period 2018 – 2019
Open tender	10	11
Request for quotation	10	10
Negotiations without publication	8	10
Framework agreement	5	5

Information provided by contracting authorities – incomplete

Sub-indicator 9 (b) Selection and contracting

(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework

As basic procedures, especially after the implementation of the electronic system MTender to conduct procurement through open tender and request for price, the contracting authority does not justify choosing these procedures.

As regards the negotiation procedure without publication, the contracting authorities have the obligation to justify the choice, indicating the legal norms that indicate under what conditions the negotiation procedure without publication can be applied. As a result of the analysis of the contracts, we found a single case in which no arguments were presented for the selected procedure (period 2018 - 2019). In the rest of the cases, the contracting authorities justified the choice by indicating mainly the legal norms of the law no. 131/2015 on public procurement and the Government Decision no. 668/2016 for approving the Regulation on public procurement using the negotiation procedure, but also with reference to other normative acts or interim acts of the contracting authority. Most often the contracting authorities continued the collaboration with the economic operator with whom he had concluded an initial public procurement contract through other procedures, and during the course there appeared the need for additional services or works, either services / urgent works. In other situations the contracting authorities have justified by the legal obligation to contract services only from certain economic operators. It was a case in which one opted for unpublished negotiation after previously two open tender procedures failed.

(g) Contract awards are announced as prescribed

Regarding the open tender procedures and the request for price offers, the contracting authorities informed the economic operators involved in the award procedure about the decisions regarding the outcome of the award procedure of the public procurement contract (art. 31 of the law no. 131/2015). According to the analyzed data, when informing about the decisions of the working group the terms of waiting for the conclusion of the contracts were respected (art. 32 of the law no. 131/2015).

(h) Contract clauses include sustainability considerations, where appropriate

No contract analyzed contains any sustainability clauses. Unfortunately, sustainable procurement is not implemented at the level of contracting authorities and, respectively, there is no emphasis on the procurement of goods, works or services with little impact on the environment.

(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance

As a rule, the contracts do not contain detailed provisions on performance, most often in the contracts there are some general provisions, sometimes very vague, which oblige certain quality requirements to be respected, and in case of violation of contractual conditions occur sanctions such as collecting a sum from the garnishment of good execution, including payment of penalties (mainly for delays in the execution of contractual obligations). In the contracts regarding works, the aspects related to the quality of works are more detailed. Only a single contract analyzed (refers to the purchase of food for educational institutions) contains precise and detailed provisions regarding performance, quality, checks, responsibilities for all the subjects involved in the execution of the contract.

(j) The selection and award process is carried out effectively, efficiently and in a transparent way

The number of days between placing the notice / request and signing the contract varies for each procurement method used and period.

Period 2017 – 2018

The **public tenders** were held between 29 and 79 days, most (50%) being from 29 to 39 days. The procurement by the method of **requesting for quotation** were carried out in a period of 24 - 60 days, and most of these purchases (70%) were from 24 to 29 days. Although, as a rule, the procedure of **negotiation without publication** is carried out within a limited period, sometimes in a day, there were cases when this procedure lasted up to 22 days. The number of days for the **framework agreements** ranged from 5 to 31.

Period 2018 – 2019

Purchases through **public tenders** ranged between 27 and 120 days, of which 55% took place between 27 and 39 days. The procedures by **requesting the price offers** lasted between 17 and 54 days, of which 80% were carried out between 17 and 38 days. Usually (30%) of the **negotiation procedures without publication** take place in a single day, but there were cases when the deadline reached 58 days. The **framework agreement** ranged from 14 to 53 days.

Total

If we cumulate both periods under review, the most important findings is as follows:

Procurement procedure	Minimum and maximum number of days	Most frequent period in%
Open tender	27 – 120 days	27 – 39 days (52%)
Request for quotation	17 – 60 days	17 – 38 days (85%)
Negotiations without publication	1 – 58 days	1 – 14 days (64%)
Framework agreement	5 – 53 days	5 – 14 days (57%)

Note: missing information for the period 2017 - 2018 (4 unpublished negotiations, 1 framework agreement), for the period 2018 - 2019 (2 framework agreements)

The average time for the purchase of goods, works and services is presented as follows:

Procurement procedure	2017 - 2018	2018 - 2019	Total
Open tender	45 days	51 days	46 days
Request for quotation	30 days	32 days	31 days
Negotiations without publication	9 days	16 days	14 days
Framework agreement	14 days	33 days	22 days

Note: missing information for the period 2017 - 2018 (4 unpublished negotiations, 1 framework agreement), for the period 2018 - 2019 (2 framework agreements)

average number (and %) of bids that are responsive (for each procurement method used) was possible to calculate for public tenders and the request for price offers only for the period 2017 - 2018. With the implementation of the MTender system and the electronic procurement through these 2 procedures of acquisitions, the working group no longer evaluates the conformity of all the offers of the economic operators, being verified only the offer of the winner automatically selected by the electronic public procurement system.

Regarding the negotiation procedure without publication, due to the specificity of this procedure in which only one economic operator usually participates, the average number of compliant offers was "1" for the period 2017 - 2018 and "1.1" for 2018 - 2019, because it was a case when 2 economic operators participated.

Procurement procedure	2017 - 2018		
	Average number of bids	Average number of bids that are responsive	% bids that are responsive from total number of bids
Open tender	2,8	2,6	93%
Request for quotation	2,8	2,4	86%
Negotiations without publication	1	1	100%
Framework agreement	4,5	3,25	72%

For the period 2018 - 2019 was on average 2.8 bids in the framework agreement procedure, of which 1.8 on average were consistent, which is about 64%.

Note: missing information for the period 2017 - 2018 (1 negotiation without publication, 1 framework agreement).

Share of processes that have been conducted in full compliance with publication requirements (in %)

All the analyzed procedures were performed according to the publication requirements.

Number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

All the analyzed procedures were successfully awarded.

Sub-indicator 9 (c) Contract management

(a) Contracts are implemented in a timely manner

Time overruns (in %; and average delay in days)

Most cases of exceeding the deadline refer to the period 2017 - 2018 for the procedure of requesting the offers of prices (3 situations of exceeding the term) and the public tenders (2 exceedings). There was also an overshoot in the case of negotiations without publication. Regarding the period 2018 - 2019, we have a case of exceeding in the public tenders and a case in requesting the offers of prices.

The number of days delayed, their average and the weight in % is presented as follows:

Procurement procedure	2017 - 2018			2018 - 2019		
	Number of days delayed	Average number of days delayed	% of cases exceeding the deadline	Number of days delayed	Average number of days delayed	% of cases exceeding the deadline
Open tender	23 10	16,5	20%	17	17	9%
Request for quotation	150 90 > 730	323	30%	150	150	10%

Negotiations without publication	90	90	12,5%	-	-	-
Framework agreement	-	-	-	-	-	-

(b) Inspection, quality control, supervision of work and final acceptance of products is carried out

Quality-control measures and final acceptance are carried out as stipulated in the contract (in %)

The public procurement contracts establish (some in general, others in more detail) the quality control and final acceptance measures. Regarding the goods, they check their compliance with the technical specifications, the standards of the country of origin of the product, the certificates of conformity, the sanitary - veterinary certificates for the food products, etc. Regarding the works performed and the services provided, documents of reception - delivery, minutes of final reception, field checks, etc. are drawn up.

The results of the analysis of the information provided by the contracting authorities show that in 54% of the procurement procedures, quality control and final acceptance measures were carried out according to the contractual provisions. Unfortunately, no information was provided regarding such measures for 41% of the procurement contracts under examination. At the same time, 5% of the contracts are in progress, either stopped at the moment, and the quality control and acceptance measures will be carried out at the end of the implementation of the contracts.

(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

Invoices for procurement of goods, works and services are paid on time (in % of total number of invoices)

Although there were cases when the payments were made in violation of the terms stipulated in the contract and according to the good international practices, the vast majority of the invoices for the purchases were paid on time, as shown in the table below.

Procurement procedure	2017 - 2018	2018 - 2019	Total
Open tender	80%	100%	90%
Request for quotation	80%	80%	80%
Negotiations without publication	100%	90%	95%
Framework agreement	100%	80%	90%

(d) Contract amendments are reviewed, issued and published in a timely manner

Contract amendments (in % of total number of contracts; average increase of contract value in %)

Regarding the analyzed contracts, we note few cases when they were modified, with the increase of the contract value, and when such a change took place, the increase of the value of the contract varied between 12 - 18% (note: according to art.76 paragraph (7) from the law no. 131/2015 on public procurement, the modification is admitted if the price increase does not exceed 15% of the value of the public procurement contract / the initial framework agreement). Also here we note a case of modification of the contract by which the value of the original contract was reduced.

Procurement procedure	2017 - 2018		2018 - 2019	
	Changes in% of the total number of contracts	Average increase in contract value	Changes in% of the total number of contracts	Average increase in contract value
Open tender	10 %	15 %	9 %	12 %

Request for quotation	10 %	18 %	20 %	14 %
Negotiations without publication	-	-	-	-
Framework agreement	-	-	-	-

Annex 8: Enterprise survey questionnaire and responses

Public Procurement System Assessment Survey Questionnaire (private sector)

10 responses

I. GENERAL INFORMATION ABOUT THE ENTERPRISE

1. Position/function of the person filling in the questionnaire:

10 responses

Lawyer

Manager

Engineer

Head of Law Dept, SRL Balti-Gaz

Specialist, Procurement and Supply Section

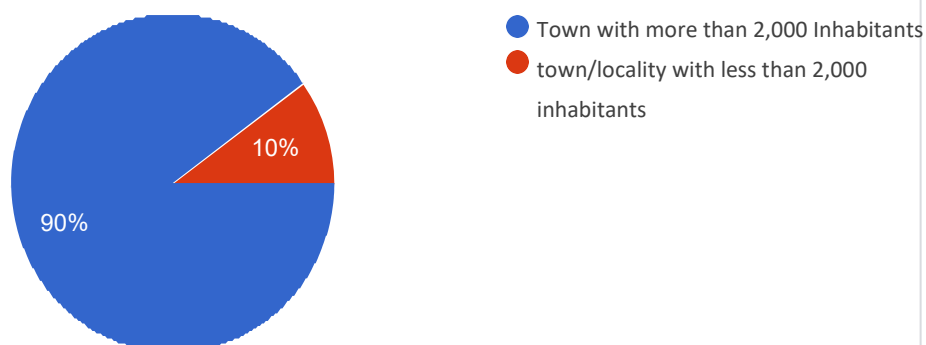
Director, SA Universcom

Director

Acting Head, Economic-Financial Section

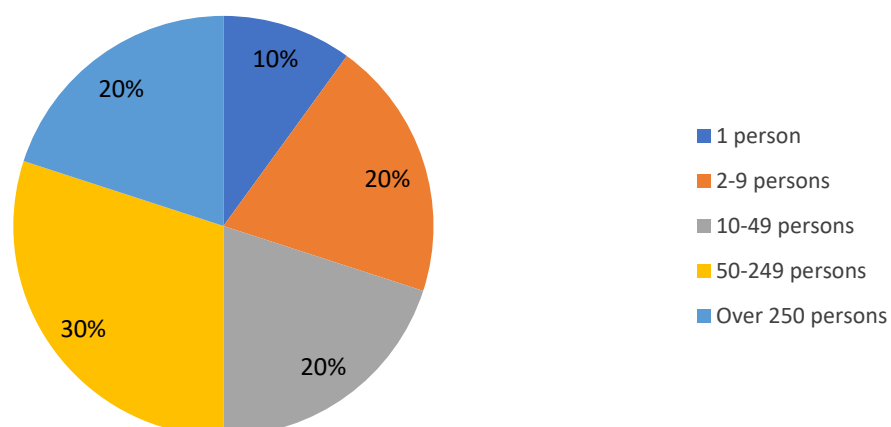
Accountant

2. Location of your enterprise (Please tick the applicable response)



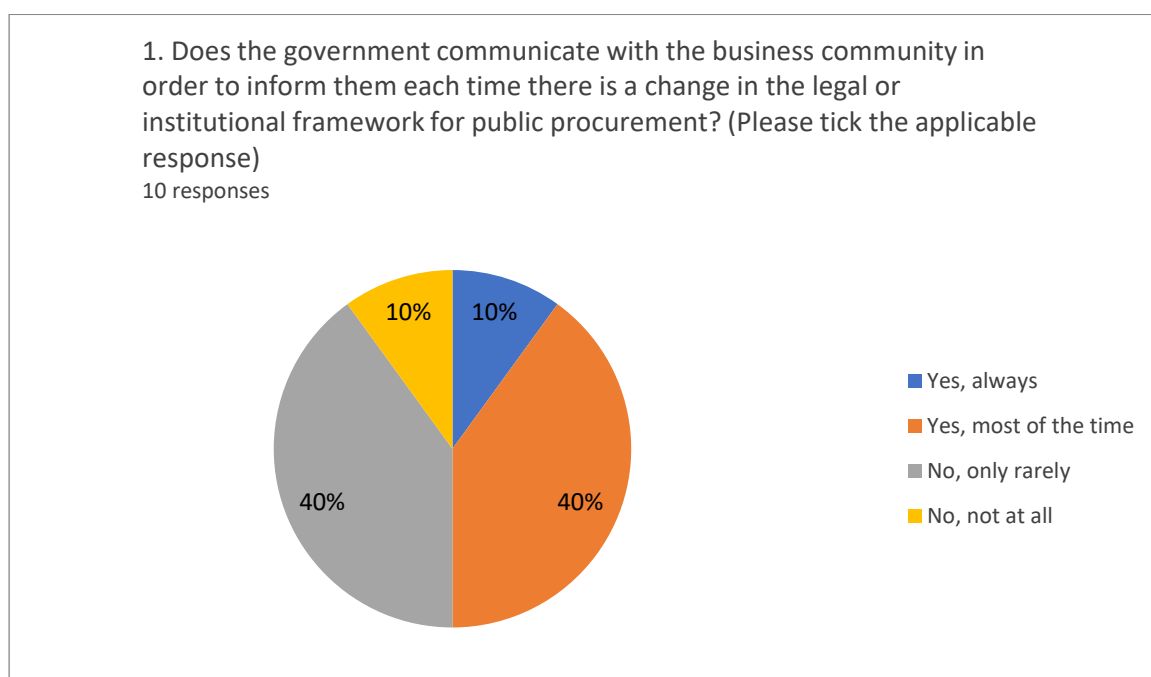
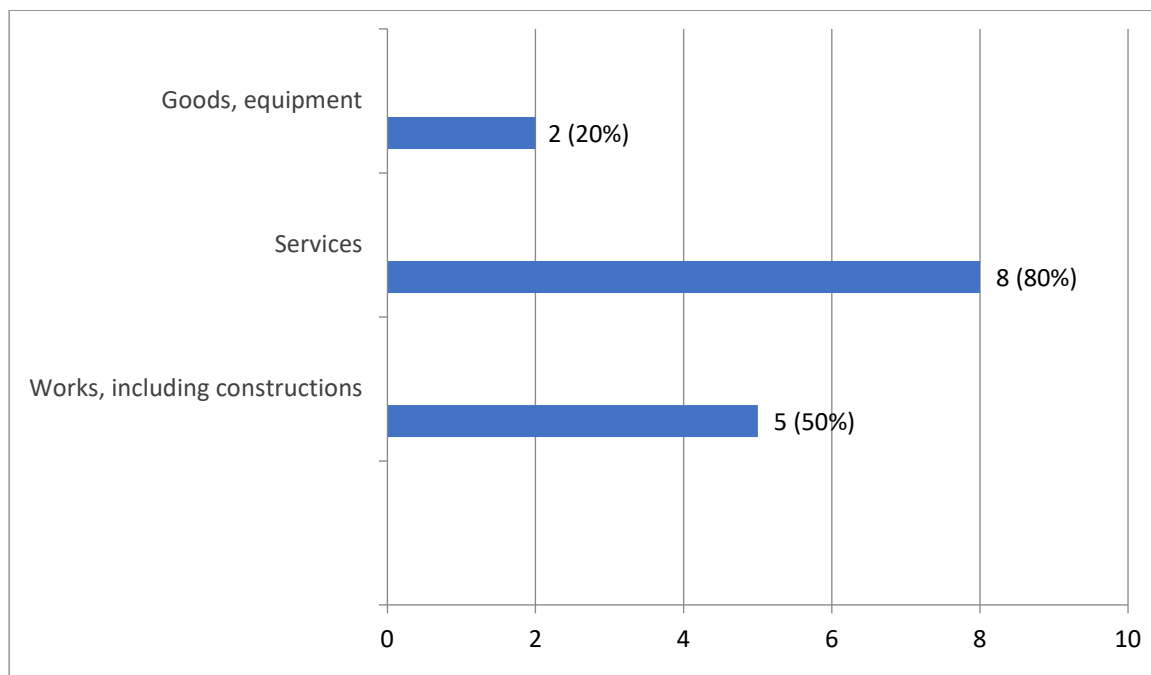
3. Number of employees in your company
(please tick the applicable response)

10 responses

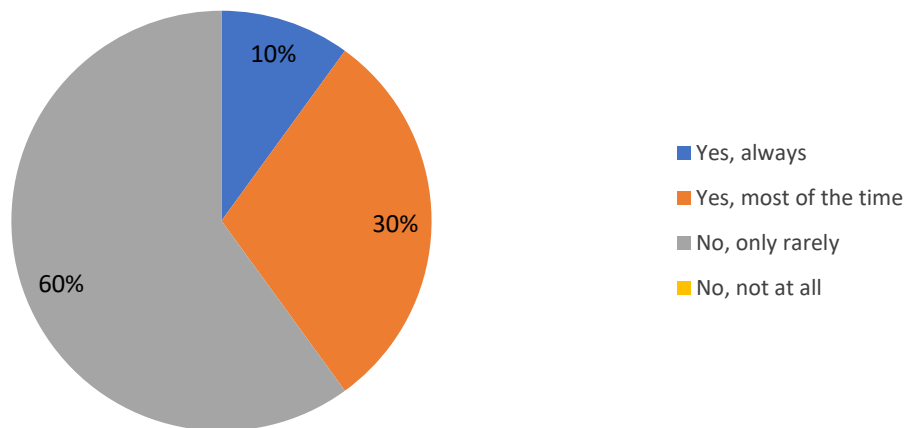


4. Main sector of activity of your enterprise? (Please tick one or more response options)

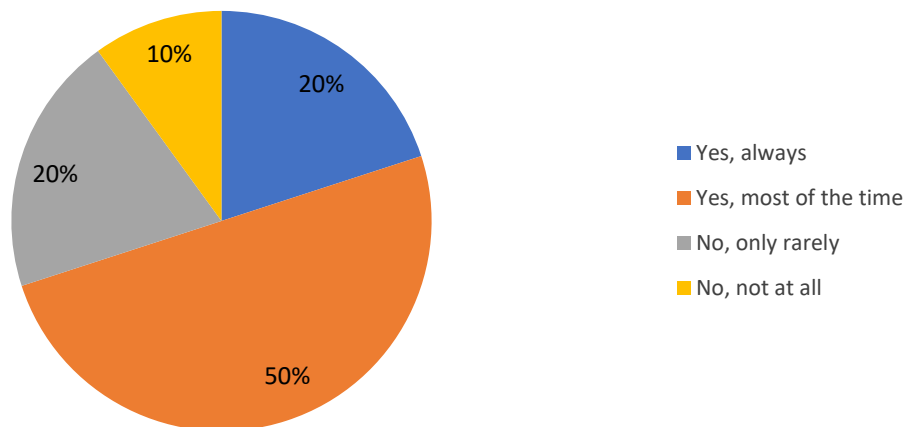
10 responses



2. Do you find that the changes in the legal or institutional framework for public procurement are easy to follow?
10 responses

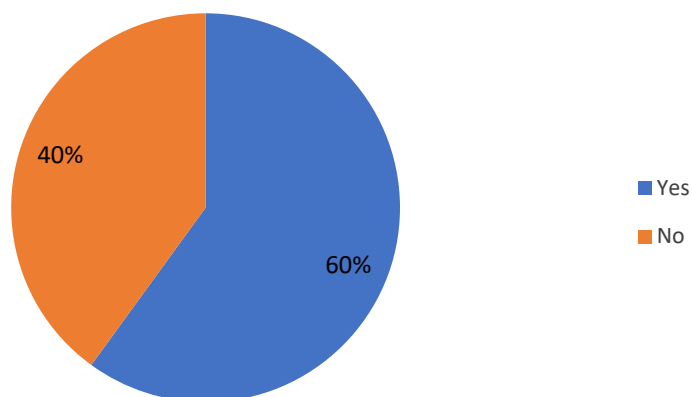


3. Do you have the necessary resources to follow the changes in the legal or institutional framework for public procurement?
10 responses



4. Have you participated in any capacity building programmes or information sessions on public procurement organised for the benefit of the private sector?

10 responses



4a. If yes, who organized it and when? Was it useful? If not, why?

Public Procurement Agency, public procurement platforms

It was useful in the context of the switch to e-procurement format

No

Government and international institutions

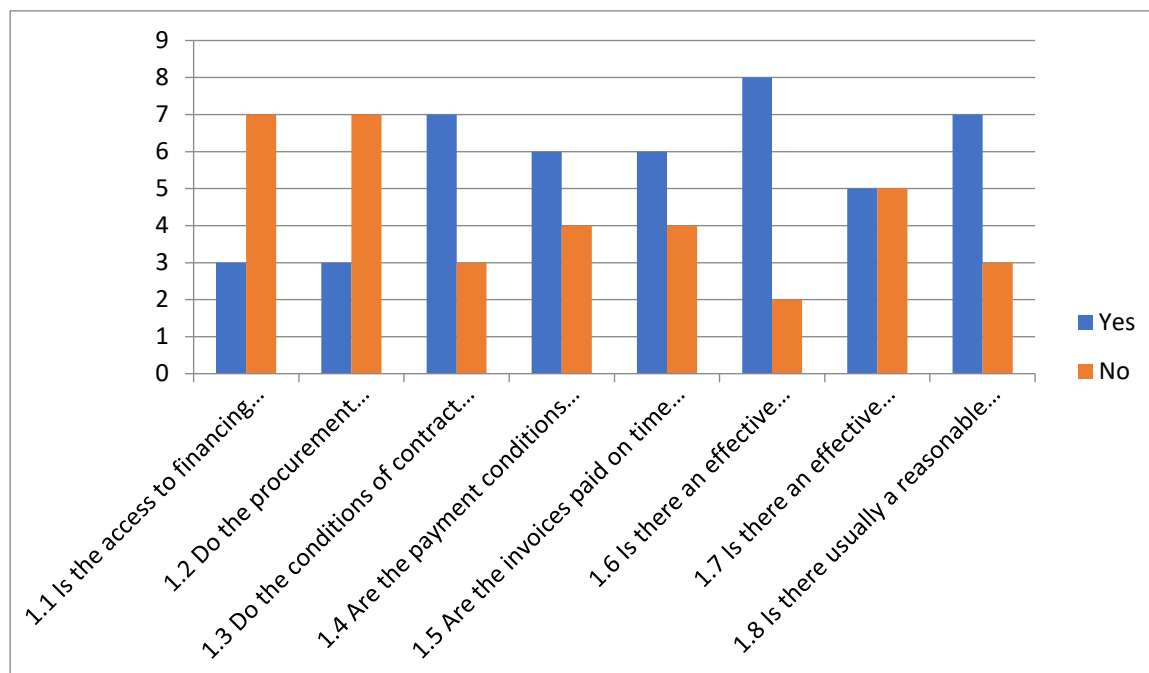
CCI

e-licitație (*e-procurement*), yes, it was useful

February 2019

SUB-INDICATOR 10 (b)

1. In the case of Moldova, do you think that the following conditions are met in the field of public procurement? (Please tick the applicable responses for each question)



2. Which aspects of public procurement should be improved in order to facilitate the access of private companies to the public procurement market?

Responses:

Inform business operators on public procurement field as frequently as possible.

Establish constant requirements for public procurement through contracting authorities for at least 3-5 years for each field and structure.

Improve and adjust regulatory framework.

Simplify conditions, accepting to have 75% of the future contract value.

Easy to understand legal framework, aligned to e-procurement.

Improve ANSC activity.

Documents and their requirements to be reviewed and assessed according to the law.

Additional information and trainings.

More straightforward participation requirements.

SUB-INDICATOR 13 (c)

1. Have you already participated in a tender organized by a contracting authority? If yes, please provide further details (number, type, contracting authority, etc.):

Responses:

Yes, I participated

No. 21013441- Ministry of Defense - Duvets No. 21012136, No. 21006374 – Department of Penitentiary Institutions - Duvets

Parliament, Services

Particularly, procurement of repair and construction works.

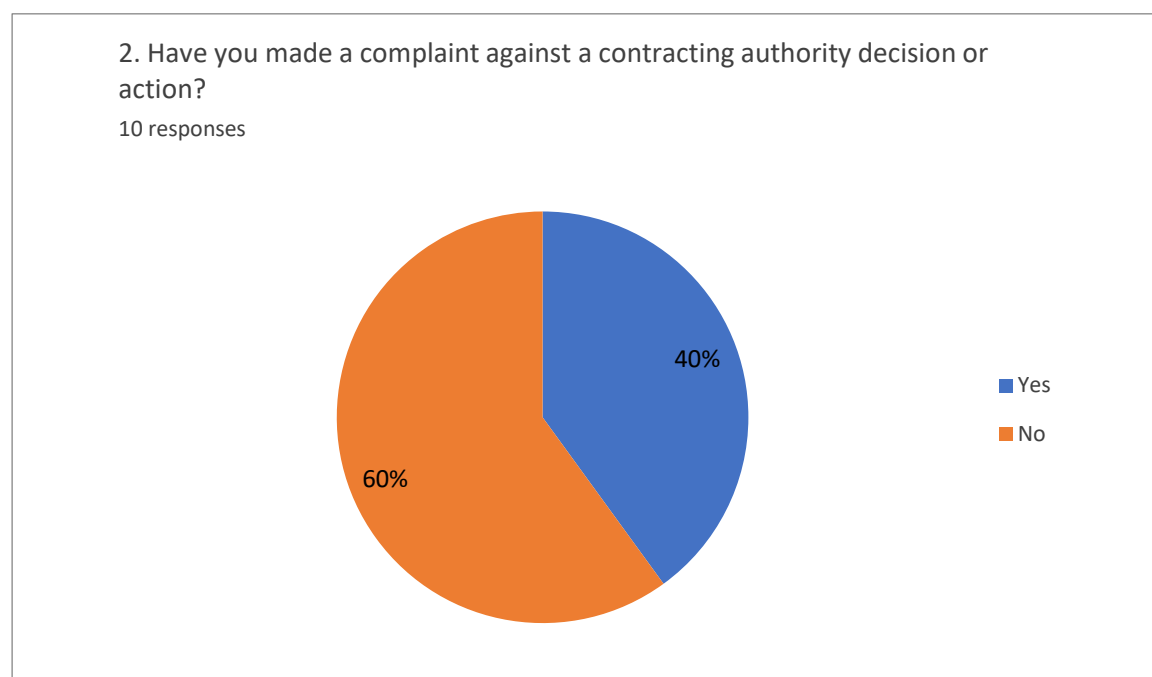
No

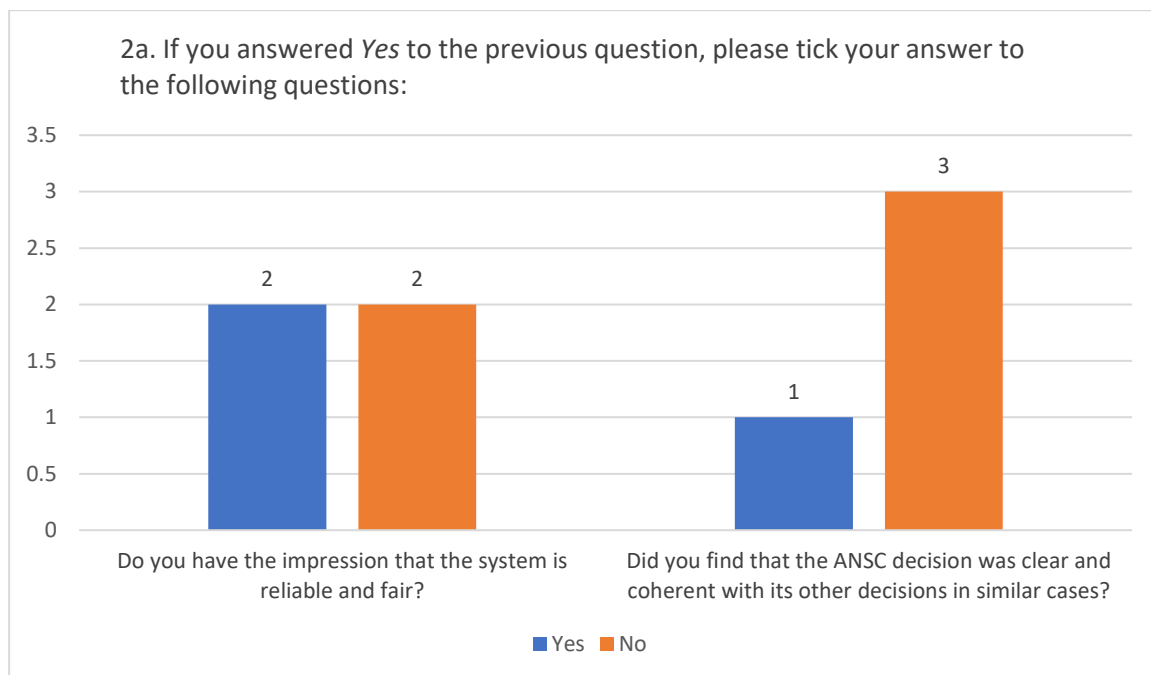
21017123 I.P.CTI in Finance

Participate almost always, permanently

No

Yes





2b. If you answered *No* to any of the previous 3 questions, please explain why:

Responses:

It was not the case

The ANSC issues different decisions for the same Complaint.

It took the decision to cancel the procurement rather than to award the contract to the other business operator which did not have any problems.

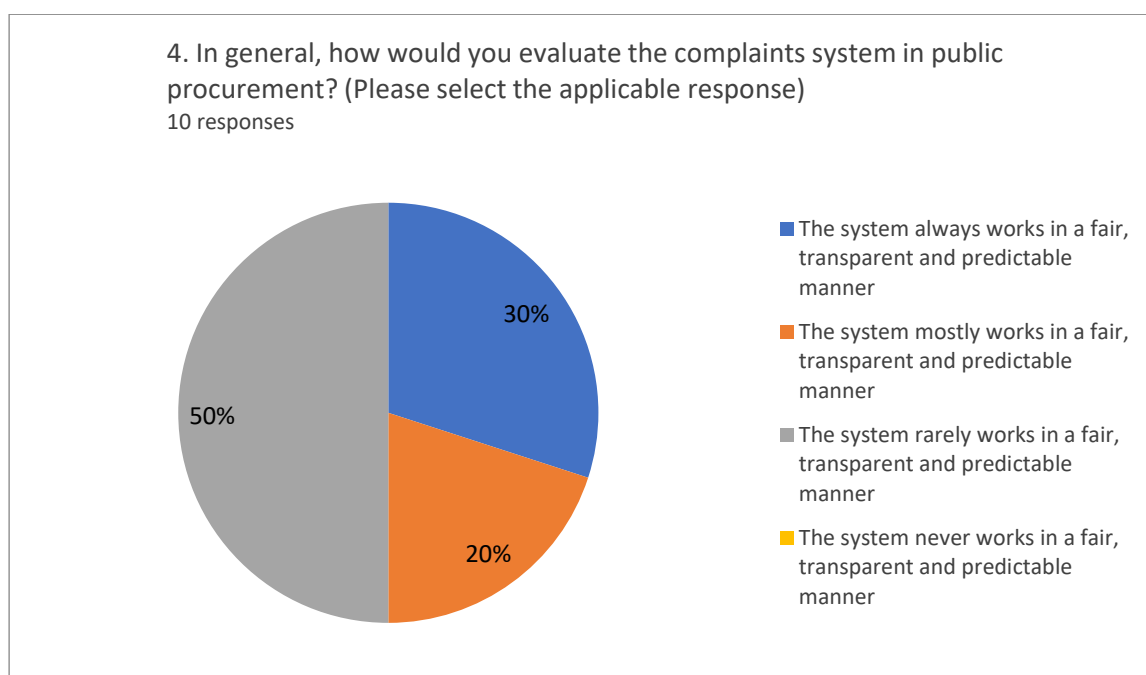
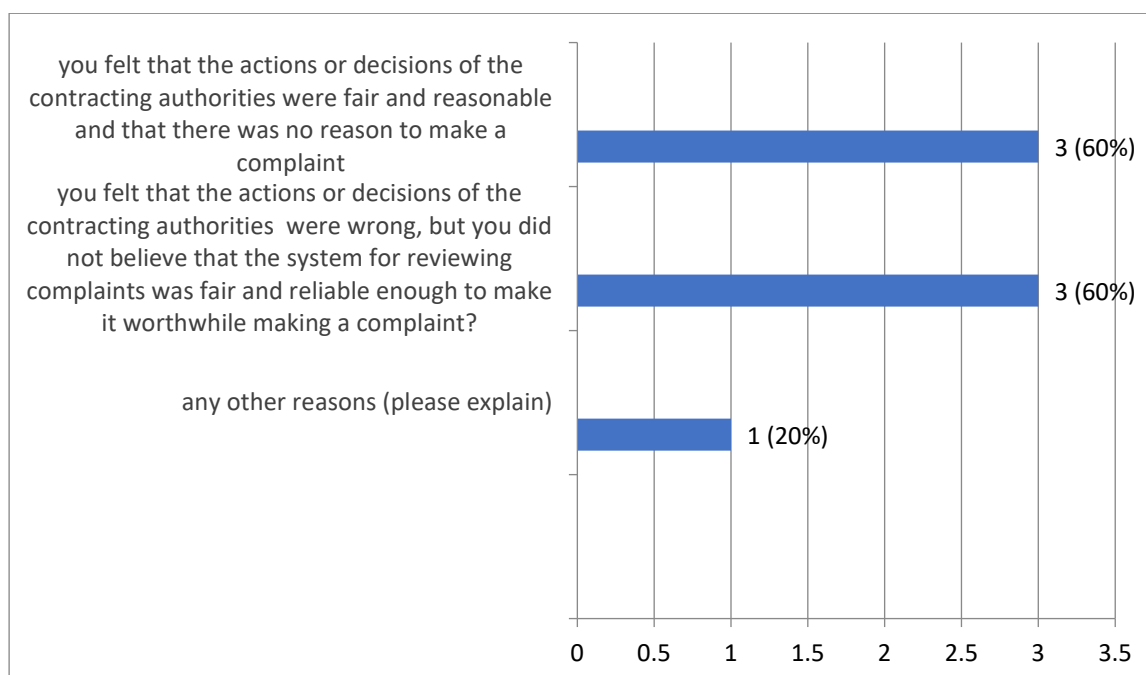
I am not a member of the procurement team

No reasons

3. If you have never made a complaint about the actions or decisions of a contracting authority, would it be because of the following reasons:

(Please tick all the applicable responses)

(5 responses)



5. In your opinion, what could be improved regarding the system for review of public procurement complaints in Moldova?

Responses:

Exclude the possibility of taking biased decisions

Uniform practices of settling similar disputes

A deeper clarification of complaints and non-cancellation of procurements

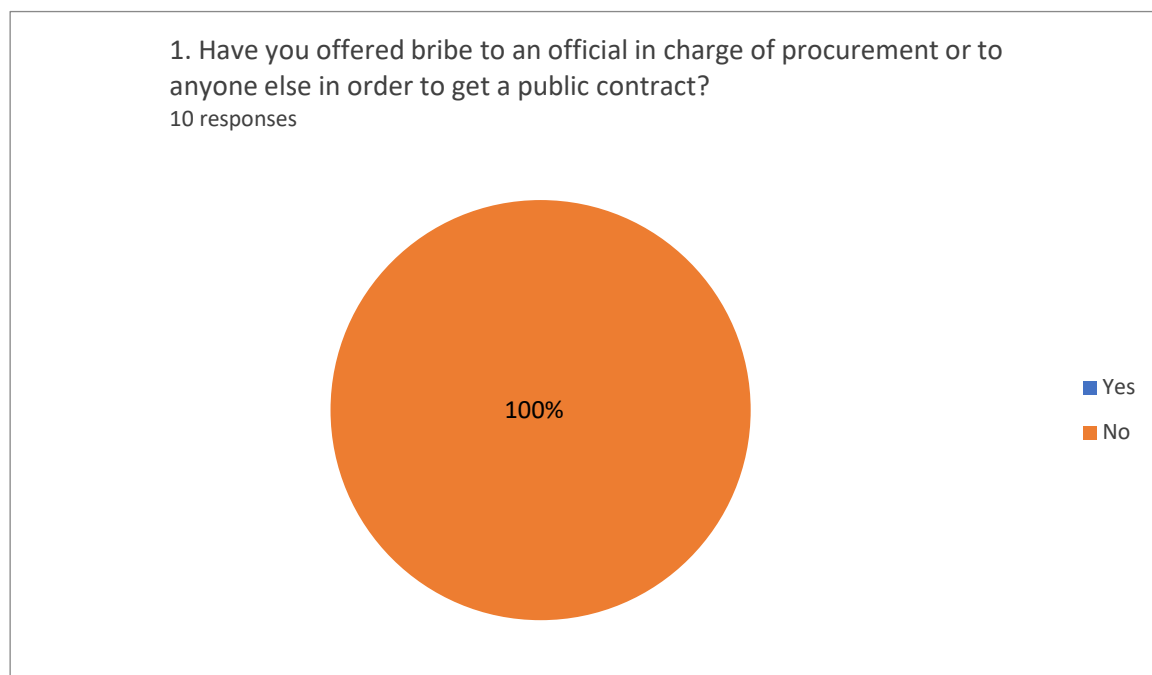
Don't know

To make correct decisions according to the legislation

To make correct decisions according to the legislation

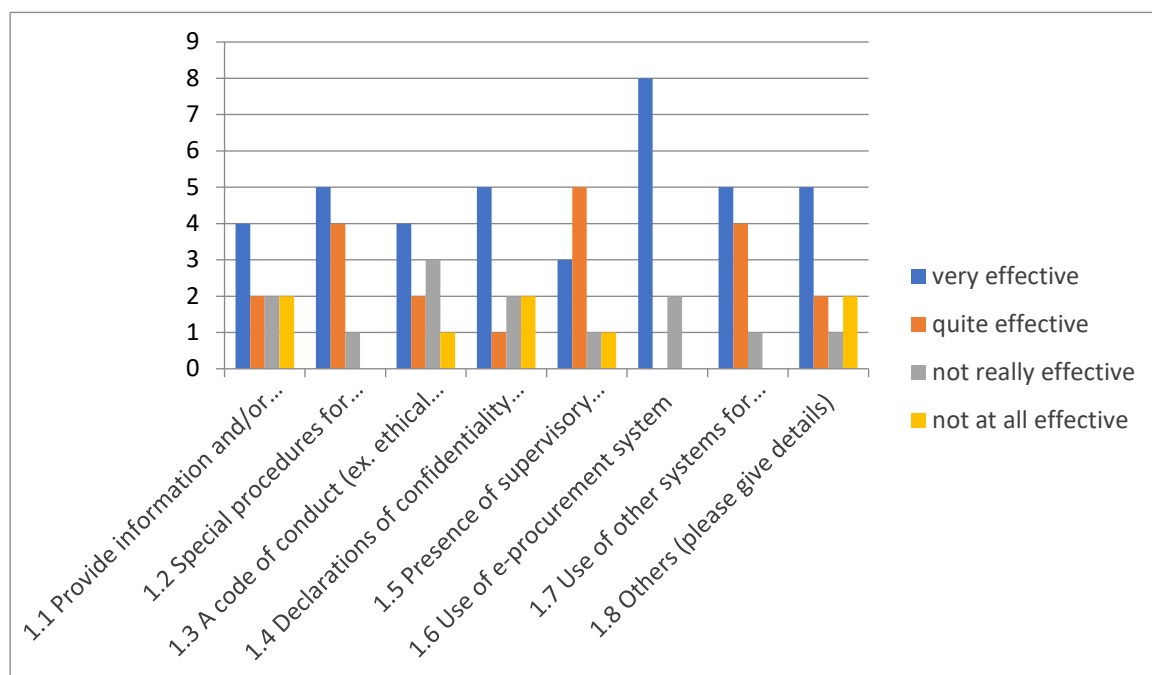
No need for improvements, they are doing a good job

SUB-INDICATOR 14 (c)



SUB-INDICATOR 14

1. In your opinion, what is the level of effectiveness of these measures (if they are taken) in the Moldovan context? Please give a score to each measure:
[4 - very effective, 3 - quite effective, 2 - not really effective, 1 - not at all effective]



2. Which three measures would you propose to take in order to combat corruption in procurement?

Responses:

The prosecution and the judicial system to fulfil their duties in compliance with the law.

To provide by the Law: personal liability of each member of the working group for the approval of incorrect decisions, and not of the contracting authority. In the case of the ANSC- analogical liability. Procurement of goods failing to meet the established standards – criminal liability for the persons in charge. The post-audit of procured goods against the specifications should be mandatory.

Fully electronic procurements. Efficiency of the law / justice bodies in identifying and fighting against conflicts of interest in procurement

Presence of several parties in the decision-making process, application of a decision-making algorithm based on the met requirements.

Persons taking bribes to be punished (harshly).

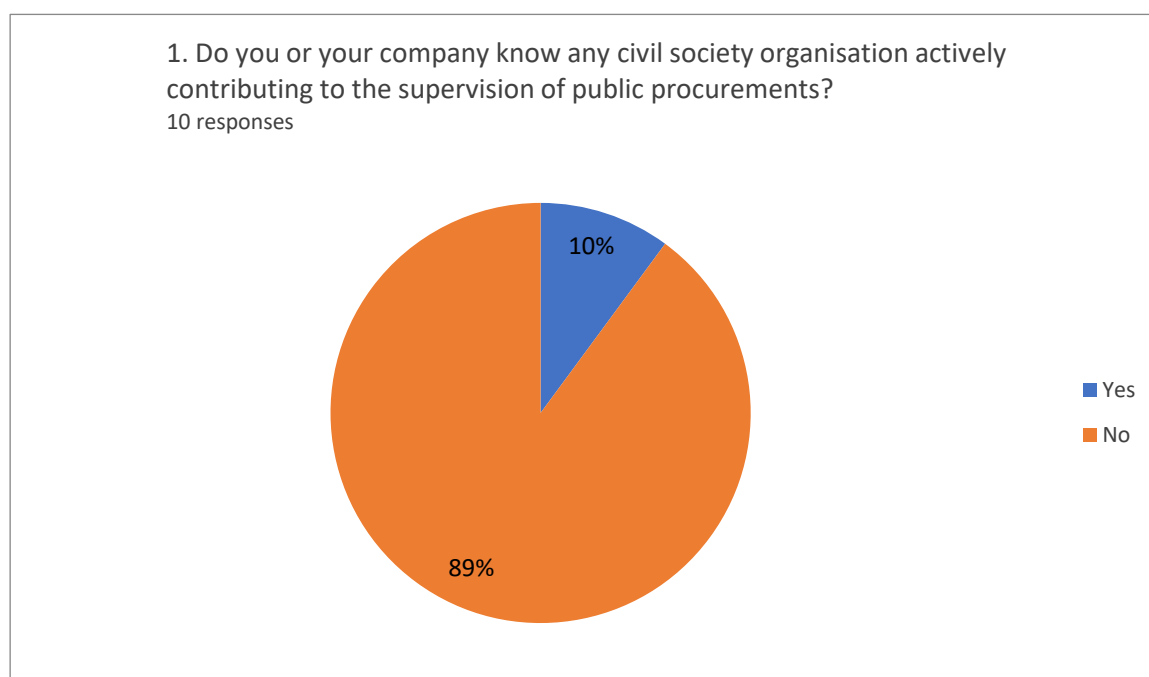
Correct application of the law.

None of the proposals works in our Country. Everybody works as they want and does what they want.

Supervision, control and correct application of the LAW.

1. Exclude companies offering an unreasonably low price.

SUB-INDICATOR 14 (e)



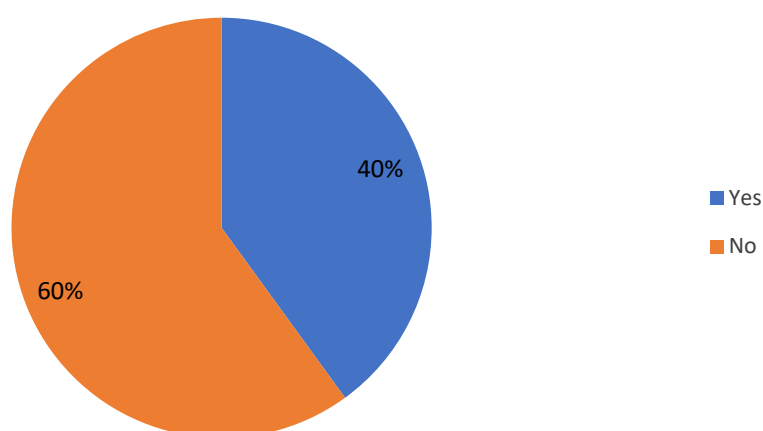
1a. If Yes, please provide some examples.

Response:

IDIS Viitorul

1b. If *No*: Do you think that participation of CSOs in monitoring public procurement could be useful?

10 responses



1c. Please explain why.

Responses:

There will be issues related to the intrusion of a third person in the public procurement process.

Civil society organizations will be interested in purchasing quality goods, at a price-quality ratio, and wear-resistant, hence, it will not be needed to purchase them on a yearly basis, and this will help saving the public budget and taxpayers' money.

Independent external monitoring

Presence of a third uninterested party

Moldova is the Wonderland, unless we have a legal framework in place, followed by everybody, there will be no order. Too many godparents (nepotism) and relatives.

A transparent activity

Control measures do not function in our country. Money rule, while rights and control measures do not work, and if they work, it's in 10% out of 100% cases.

I don't have

A stronger supervision is needed

Annex 9: SOE procurement

9.1 Introductory overview of publicly owned enterprises in Moldova

Moldova has a number of enterprises owned by the State or by other public bodies, mainly municipalities. In principle, the public procurement policies that should be applied to them (or sometimes not!) do not depend on whether the owner is the State, a regional or local authority or any other public body, nor on their legal status. Even if the term is not exact, they will therefore collectively be referred to as 'state owned enterprises' (SOEs) in the following.

Moldovan SOEs have traditionally been separated into two groups: (i) "state enterprises" (and, correspondingly, "municipal enterprises"), doing their business using assets held by the founder; and (ii) joint stock companies (SAs or SRLs), with all or more than half ("majority") of the shares belonging to one public entity/founder (or possibly several ones).

The law⁷² on state and municipal enterprises regulates the creation, management and dissolution of state enterprises and municipal enterprises only, while joint stock companies owned by the State or by municipalities are managed according to the law⁷³ on joint stock companies in general, irrespective of their ownership, the financial institutions law⁷⁴ as well as the decisions of the National Commission for Financial Markets⁷⁵.

The Public Property Agency is a central administrative authority subordinated to the Government (formerly, to the Ministry of Economy), in charge of administering public property, including representation of the State as the owner of SOEs. A total of 132 state enterprises have the Public Property Agency as the founder. The Public Property Agency is thus the founder of a number of state enterprises and holds all or part of the shares of a number of joint stock companies. These SOEs are presented on the Public Property Agency website⁷⁶, with links to key information about the activities of each of them. However, the information available in the lists does not cover public procurement. There are also no links to the websites (if any) of the respective SOEs, nor any other contact details.

The Public Property Agency website also contains Excel spreadsheets⁷⁷ listing the situation at the beginning of the year regarding all state and municipal enterprises as well as all the joint stock companies (SAs and SRLs) in which the State or the municipalities have even just a small share. These lists indicate the name, the head office address and a number of figures describing the key characteristics of the enterprises, but contain no other information on their activities nor any links to such information. Also, the information in the spreadsheets does not fully match that in the separate lists of the Public Property Agency's SOEs first mentioned above.

Some SOEs publish information on their activities on their websites. However, a number of SOEs do not even have a website and it is rare for the owners, other than the Public Property Agency, to publish any information on their SOEs. Since there is also no other aggregated information on SOEs available from official sources, it is difficult to get a clear view of their situation and their activities, including their procurement operations.

According to the data in the Public Property Agency spreadsheets mentioned, the various SOEs can be grouped as follows, reflecting the situation at the beginning of 2020:

⁷² https://www.legis.md/cautare/getResults?doc_id=105722&lang=ro

⁷³ https://www.legis.md/cautare/getResults?doc_id=121165&lang=ro

⁷⁴ <https://www.cnpf.md/ro/piata-de-capital-6423.html>

⁷⁵ <https://www.cnpf.md/ro/piata-de-capital-6423.html>

⁷⁶ State enterprises at <http://www.app.gov.md/intreprinderi-de-stat-3-378>; joint stock companies at <http://www.app.gov.md/societati-comerciale-3-379> and <http://www.app.gov.md/societati-cu-raspundere-limitata-3-435>

⁷⁷ The links to them are found at <http://www.app.gov.md/registrul-patrimoniului-public-3-384#>

- 132 state enterprises held by the State Property Agency
- 75 state enterprises held by other State bodies
- 542 municipal enterprises held by regional or local authorities
- 78 joint stock companies with shares held by the State Property Agency (several of them in the process of being liquidated, mostly for insolvency), with a majority shareholding in 59 of them
- 2 joint stock companies wholly owned by the Ministry of Agriculture, Regional Development and Environment
- 52 joint stock companies with varying levels of municipal ownership

Their field of activity and the nature of their business is not stated in the spreadsheets. However, from the names of the companies it is clear that they represent a wide range of economic activities. Some of them have an evident commercial character, like the “Cricova” winery, several of them are clearly active in the utilities sector (water supply and waste water treatment, electricity supply, etc.), while others appear to provide services in e.g. construction and maintenance of public infrastructure.

9.2 SOEs as procuring entities: typology and applicable public procurement regulations

The proper application of the EU’s public procurement directives, as transposed into national law, is very much facilitated if SOEs are classified with respect to the nature of their operations, the contracts that they procure as well as the nature and degree of public ownership and control. However, no such classification appears to have been done until now. As a result, it is not always easy for SOE managers and staff and for supervisory authorities to determine if, how and why any particular contracts to be procured should follow this or that law or regulation, even if the definitions of the various types of contracts and of the entities covered by the public sector directive, the utilities directive and the concessions directive are reflected in the three corresponding national laws⁷⁸.

In principle, an SOE that falls under the definition of a contracting authority or a body governed by Craiova public law would have to procure its public contracts according to the public procurement law⁷⁹. Likewise, SOEs (as well as private sector companies!) operating in the energy, water, transport or postal services sectors would have to apply the utilities law for procurement in relation to those sectors (unless their exclusive rights etc. have been obtained following a transparent, competitive process)⁸⁰. However, the definitions of the scope of application (entities and contracts covered) are not fully harmonised or cross-referenced between the two laws mentioned. As a consequence, the definitions mentioned in the PPL would seem to encompass some of the cases covered by the utilities law. Also, small value procurement is explicitly addressed only in the PPL, not the utilities law.

In this context it has to be noted that the new utilities law has not yet come into force; this is foreseen for 20 June 2021, one year after its publication. In the meantime, utilities will have to continue to apply the procurement provisions of the respective sector laws⁸¹, which typically require the adoption of an internal procurement regulation, similar to the case of state enterprises.

There are also some SOEs that would neither be contracting authorities nor contracting entities, and to which the public procurement law or the utilities law should not have to apply. This concerns, in particular, SOEs that are operating independently in competitive markets and are subject to bankruptcy. Such SOEs would normally be considered as being subject to such competitive pressures

⁷⁸ Public procurement law: <http://www.legis.md/cautare/rezultate/113104>; utilities law: https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro; concessions law: https://www.legis.md/cautare/getResults?doc_id=105485&lang=ro

⁷⁹ As foreseen in the PPL, Art. 13 (1) and (2)

⁸⁰ Utilities law, Art. 1 and 4

⁸¹ As referenced in the utilities law, Art. 89 (3)

that they would by themselves take each and any step necessary to ensure that, whatever items they need, they purchase them with the necessary economy, efficiency, transparency and accountability, without the need to strictly apply the formal procurement procedures prescribed for public entities.

In Moldova, the current situation is made more complicated by the existence of separate, partly conflicting legal requirements for procurement by state enterprises and the absence of binding procedural regulations for municipal enterprises, irrespective of whether and, if so, how they and the contracts they procure would fall under any of the laws just mentioned.

Until the entry into force of law 246/2017 on state enterprises and municipal enterprises, there were no legal provisions on public procurement specific to state and municipal enterprises. According to the new law, state enterprises have to carry out procurement according to procedures adopted by their respective boards of directors, while municipal enterprises are implicitly exempt from this obligation⁸². However, there were no clear, corresponding guidelines and no effective harmonisation of the approaches. Consequently, there has been a very wide variation in the ways procurement was regulated and carried out, as demonstrated in the analysis of samples of such regulations and procurement activities that was carried out during the MAPS assessment.

Confusingly, the same paragraph of the law also requires that a procurement regulation be approved by the Government. This provision has been implemented through the publication of a new regulation on procurement by state enterprises, adopted by Government decree⁸³ on 10 June 2020 and in force from that date. However, the reach of this regulation is limited. It applies only to state enterprises falling under Law 246/2017, with explicit exception⁸⁴ of those covered by the PPL (as described above); on the other hand, there is no corresponding exception with reference to the utilities law. Further, municipal authorities are only encouraged, but not obliged⁸⁵, to apply the provisions of the state enterprise procurement regulation to municipal enterprises.

Its provisions are also not applicable to any SOEs organised in the form of joint stock companies. Consequently, the founder of a state enterprise can avoid applying the regulation simply by changing the legal status from a 'state enterprise' to an 'SA' or 'SRL'. This change of status, by the way, is actually an obligation of the Government indicated in the law⁸⁶, to be initiated within 24 months from its entry into force. However, rather little appears to have been done to this effect; the policies applied and the procedures followed are not very transparent and the general public can learn about it only when a change of status is published. A similar but more vaguely formulated provision applies to municipal enterprises⁸⁷, but only as a recommendation and without any time limit.

The state enterprise procurement regulation foresees three main procedures⁸⁸: open tender, negotiated procedure, and requests for price quotations. Open tender is considered as the basic procedure, while contracts between MDL 200 000 and 800 000 can be procured using requests for price quotations⁸⁹. The use of the negotiated procedure is subject to a number of clearly stated, specific conditions⁹⁰. However, none of the three procedures mentioned is clearly defined, not even just by reference to e.g. the provisions of the PPL. On the other hand, procedural steps are described in generally applicable terms, though, once again, in a manner that differs in various details from the procedures in the PPL.

⁸² As set out in Law no. 246/2017, Art. 8 (7) r)

⁸³ https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

⁸⁴ State enterprise procurement regulation, Art. 12

⁸⁵ Government decree no. 351/2020, Art. 2

⁸⁶ Law no. 246/2017, Art. 19 (3) b)

⁸⁷ Law no. 246/2017, Art. 19 (4)

⁸⁸ State enterprise procurement regulation, Art. 18

⁸⁹ State enterprise procurement regulation, Art. 20

⁹⁰ State enterprise procurement regulation, Art. 27ff

Invitations to participate must be published⁹¹ on the websites of the state enterprise and that of its founder, but without any obligation for publication on any national website like those of MTender or the Public Procurement Agency. Other publication requirements are largely missing. On the other hand, “where appropriate”, state enterprises shall forward the invitation to “selected economic operators”. As a consequence, there is a certain risk that many otherwise qualified, competent and potentially interested enterprises do not learn about the opportunity to tender or to submit a price proposal. The quite short minimum deadlines for submitting tenders or price proposals (14 and 5 working days, respectively)⁹² may also have the effect of limiting the scope for receiving good, competitive offers and may raise the risk of undue efforts to seek or to divulge advance information about any upcoming procurement.

Requests for clarification and complaints against an award decision can be made, respectively, to the state enterprise and its founder, while other procurement related disputes have to be settled in the competent administrative court⁹³. The state enterprise procurement regulation thus gives no possibility for public procurement related complaints to be handled by the ANSC in the way provided for in the PPL.

No procedures are required⁹⁴ for contracts below MDL 200 000, though the working group in charge of procurement at the SOE is nominally obliged⁹⁵ to apply general principles of efficiency, objectivity and impartiality. On the other hand, no procurement under contracts of more than MDL 400 000 or of a value that exceeds 25% of the net assets of the state enterprise in question is allowed to be carried out unless approved by the board of directors and agreed in writing by the founder. The time and administrative efforts needed for these reviews and approvals have the effect of making the procurement process more lengthy and costly. Information from the Public Property Agency to the MAPS assessment team has pointed to a few isolated cases when this procedural requirement has prevented misprocurement but there is little evidence that it has any general benefits for improving economy, efficiency and transparency of procurement by state enterprises

Given the combined scope of application to SOEs of the PPL and the utilities law, the state enterprises not falling under one or the other of the two laws (and thus obliged to apply the state enterprise procurement regulation) would typically be of industrial or commercial character and would not provide any public service. If these operate in a competitive market, the provisions of the regulation then very likely constitute an onerous and possibly unnecessary complication that may prevent them from running their business to the full benefit of their public sector owner. If, on the other hand, they do have a dominant position in the market or their market is otherwise not competitive, the PPL has provisions⁹⁶ allowing them to be obliged to carry out procurement according to the PPL.

Consequently, all cases when, for good reasons, SOEs should apply some form of public procurement rules appear to be well covered in either the PPL or the utilities law already. Except, possibly, as a temporary measure, the additional value of the state enterprise procurement regulation is therefore not clear, particularly given its limitation to state enterprises only. Behind the regulation, there may possibly have been an intention to bring some order into the operations of state enterprises and to make them more transparent and accountable. However, as now drafted, the new procurement regulation appears not to be necessary, and even less sufficient, for this presumed purpose.

⁹¹ State enterprise procurement regulation, Art. 62

⁹² State enterprise procurement regulation, Art. 66

⁹³ State enterprise procurement regulation, Art. 108, 109

⁹⁴ State enterprise procurement regulation, Art. 21f

⁹⁵ State enterprise procurement regulation, Art. 48

⁹⁶ PPL, Art. 13 (4)

In fact, no public procurement regulations can be a sufficient substitute for better SOE governance by the various other means that should normally be expected to be applied as a matter of routine. As variously pointed out in recent assessments by OECD/SIGMA and the World Bank⁹⁷, a number of such other measures are required in order to raise the effectiveness and transparency of the of SOE governance in Moldova. General considerations and recommendations to this effect can also be found in e.g. the OECD guidelines⁹⁸ on SOE management.

9.3 Gaps and risks with respect to procurement by SOEs

Against the background set out above, significant insufficiencies or inconsistencies with respect to procurement misprocurement rules for Moldovan SOEs can be summed up as follows. Unless addressed, they constitute risks that negatively affect economy, efficiency and transparency in procurement by SOEs or that, from a different point of view, prevent them from generating benefits for the State and the citizens. In several of the cases, the risks are related to the lack of clarity and specificity of the rules: this is likely to create uncertainty and confusion for the SOEs concerned and raise the risk of procedural errors, while at the same time making it more difficult to impose good practices and to sanction misprocurement.

- SOEs are not systematically reviewed and categorised with respect to the procurement laws and regulations that they have to apply, if any, in their various activities
- The definitions in the PPL of its scope of application in terms of entities and contracts covered, as applicable to SOEs, appear to have some overlaps with those in the utilities law
- In its current wording, the state enterprise procurement regulation makes no reference to the utilities law nor to the sectoral laws applicable until the entry into force of the utilities law; it thereby fails to explicitly exempt those state enterprises that are utilities and, as a consequence, the legal instruments mentioned now overlap and are in conflict with each other with respect to public procurement
- The state enterprise procurement regulation mentions three procurement procedures and the conditions for their use, but fails to define or describe these procedures or to give a reference to their description in e.g. the PPL, so the way to apply them is not sufficiently clear, neither to the state enterprises themselves, nor to the economic operators, nor to the review body (ANSC), nor to the supervisory bodies
- The publication requirements in the state enterprise procurement regulation are limited, reducing transparency and raising the risk that not all prospective tenderers learn about the business opportunities, and the short minimum times for submitting tenders or price proposals are also likely to have similar, negative effects
- Small value procurement by SOEs (below the respective monetary thresholds) is only regulated in the most general terms⁹⁹, except when the PPL is applicable and thereby also the small value procurement regulation¹⁰⁰, which, however, is quite general in character and not effectively enforced; as a consequence, there is a considerable risk of bad practices in small value procurement
- The provisions of the state enterprise procurement regulation do not cover municipal enterprises, nor any SOEs that are constituted as joint stock companies, and the lack of

⁹⁷ See e.g. the report available at <https://cfrr.worldbank.org/programs/support-reform-soes-republic-moldova>

⁹⁸ <https://www.oecd.org/corporate/guidelines-corporate-governance-SOEs.htm>

⁹⁹ Utilities law, Art. 28 1.; state enterprise procurement regulation, Art. 21f and 48

¹⁰⁰ Decree 665/2016; https://www.legis.md/cautare/getResults?doc_id=92984&lang=ro

common, transparent rules makes it more difficult to enforce good, transparent procurement practices

- The state enterprise procurement regulation does not exempt those SOEs that, because of their position in their (fully competitive) markets, should normally be allowed to carry out their business without the strictures of formal public procurement procedures, so they may unnecessarily difficult to realise their full economic potential, to the detriment of the State and the citizens
- The scarcity of readily accessible information on the activities of SOEs means that their public procurement practices are not fully open to scrutiny, except, in principle, for those enterprises that have to apply the PPL
- The state enterprise procurement regulation is not sufficient as a general means for improving SOE governance, nor does it seem necessary for the purpose of regulating state enterprise procurement in the cases when there is a need for such regulation, since other, existing laws already appear to serve this purpose

9.4 SOEs as tenderers in public procurement

In many cases, SOEs are active in markets where also private sector companies operate or would be willing and able to enter the market. In such cases, good international practice requires¹⁰¹ that SOEs refrain from market practices that prevent other economic operators from competing on fair and equitable conditions. This is a particularly important issue wherever, like in Moldova, there is a significant number of SOEs in fields like public works, municipal services, health care services and telecommunications. However, current rules and practices do not appear to be well suited to prevent and to mitigate the negative effects of unfair competition by SOEs.

Similarly, SOEs may appear as tenderers or consortium members also in operations that require application of the procurement rules in the concessions law or the PPP law¹⁰². In principle, a concession (in the sense of the concessions law) is a kind of PPP, which means that there is a risk of overlap between the concessions law and the PPP law. This applies in particular to the award procedures, which have a number of differences between the two laws, which would need to be resolved.

Failure to ensure a level playing field in public procurement creates considerable risks of negative effects on the economy of the country as well as on each enterprise concerned, both SOEs and private sector companies. To give some examples, SOEs that obtain public contracts under conditions that are not fully competitive

- are likely to be or to become less profitable and to have less incentives to develop their technology and to make their operations more effective and efficient, thereby failing to deliver value for money to their owner both in the short and the long term and even creating a financial burden on public budgets
- squeeze out otherwise competitive private sector enterprises from existing markets or prevent them from growing
- discourage innovation that would allow the contracting authorities or entities to better serve the needs of the citizens

¹⁰¹ As set out in e.g. the OECD's recommendations for ensuring the competitive neutrality of SOEs; see https://www.oecd-ilibrary.org/governance/competitive-neutrality-and-state-owned-enterprises_5kg9xfjgdhg6-en

¹⁰² https://www.legis.md/cautare/getResults?doc_id=83632&lang=ro

- risk blurring the lines between fair competition, on the one hand, and fraud and corruption, on the other
- discourage foreign and domestic investment in the sector concerned

Uncompetitive practices from the side of Moldovan SOEs as well as contracting authorities or entities occur throughout the procurement cycle: when structuring the tenders, writing the technical specifications, setting and applying the qualification requirements and the award criteria, setting the time limits for submission, publishing (or not) the invitations, and receiving and accepting the items procured. The MAPS assessment has identified a number of such uncompetitive practices:

- limiting the technological solutions to those offered by an SOE
- bundling the goods, services or technologies required in ways that favour SOEs or even exclude any private sector tenderers
- extending or limiting the geographical scope in ways that favour SOEs, whether for delivery of the items required or for, e.g., maintenance and support services
- prohibiting or requiring sub-contracting in ways that prevent exclude private sector tenderers from grouping together or using the services of an incumbent SOE, or ensure that an incumbent SOE will get part of the business in any case
- setting unrealistically short deadlines for tendering while giving advance notice to an SOE
- setting unrealistically short implementation time frames in ways that can only be met by an incumbent SOE
- carrying out repeat procurement of small value contracts, or failing to group the needs of several public entities to be served, so as to avoid having to launch an open tender and instead invite an existing SOE, and to prevent complaints from being made
- launching electronic auctions at times when normal private sector companies would be closed
- launching several electronic auctions at the same time, making it unduly difficult to participate for private sector tenderers with a limited number of senior decision makers
- launching an electronic auction which, given the particularities of the MTender system, prevents prior examination of the conformity of the tenders and their technical merit, while requiring the use of the lowest price as the only award criterion, rather than e.g. the quality/price ratio
- contracting for the services of another contracting authority or entity or SOE instead of holding an open tender, even when several private sector providers would be willing and able to participate and to deliver goods, works or services on better conditions

Part of these issues could be resolved simply by privatisation of the SOEs concerned; evidently under conditions that prevent them from abusing their position in the future. Other issues would require a change of practices of the contracting authorities or entities or SOEs concerned, combined with increased transparency and more vigilant enforcement of existing principles, policies and procedures. However, there seems to be a need for developing and adopting explicit

policies for ensuring that SOEs participate in public procurement on transparent, fair and equitable conditions. The OECD recommendations mentioned could serve as a basis for this.

9.5 Summary recommendations for SOE procurement

Based on the preceding observations and considerations, the MAPS assessment has concluded on the following recommendations for SOE procurement in Moldova:

- Complement the spreadsheets listing various SOEs on the website of the Public Property Agency, or create another, comprehensive SOE database, accessible on a single website, with links to the websites of the SOEs and their respective founders and with expanded access to information about their activities, including, where applicable, their public procurement operations
- Review the scope of application of the PPL and the utilities law with respect to the authorities, entities and contracts covered, so as to eliminate any possible overlap or confusion
- Add an exemption for utilities to the state enterprise procurement regulation
- Harmonise the provisions on award procedures and handling of complaints in the PPP law and the concessions law with each other and with the PPL and the utilities law
- Introduce and apply a full set of principles, policies and practices for SOE governance in line with established international practice, as a complement to the procurement law(s) or regulation(s) they should apply, if any, and covering all SOEs irrespective of their legal status or the identity of their founder
- Once the preceding recommendation is implemented, review the need for retaining the state enterprise procurement regulation, in view of the coverage of SOE procurement by the PPL and the utilities law and of the need of some SOEs to operate in the same way as private sector enterprises in the same sector, and consider repealing it
- Review and categorise all SOEs with respect to which procurement law(s) or regulation(s) they should apply, if any
- Ensure that all SOEs that will remain obliged to apply some form of public procurement procedures duly publish all their procurement notices and reports on the same, single, freely accessible website, in ways similar to what is already required under the PPL, in addition to any publication on their own websites and those of their founders
- Prepare simple, practical guidelines for small value procurement that would be of use also to SOEs applying the PPL or the utilities law
- Prepare, adopt, put into practice, monitor and enforce a set of principles, policies and procedures for ensuring that any SOEs participating as tenderers in public procurement do so in ways that put them on an equal footing with private sector tenderers, and that any contracting authorities, entities or SOEs do not give any undue privileges or advantages to SOEs when carrying out procurement

9.6 Observations from the analysis of procurement regulations of SOEs

1. The 16 regulations analysed were approved both until 2016 and after 2016, when the new law on public procurement came into force.
2. The volume of the pages of the regulations varied from very small (4 pages) to very voluminous (58 pages), but on average, most regulations have between 10 - 17 pages.

3. Few regulations refer to the fact that its provisions are linked to norms from existing normative acts. As a rule, regulations developed after the entry into force of the law on public procurement may refer to this law, some of them refer to the old law of 2007. Some companies refer to other regulations such as the law on state and municipal enterprises, the law on joint stock companies, ANRE Decision no. 24 of 26.01.2017 on the approval of the Regulation on procurement procedures for goods, works and services used in the activity of licensees in the electricity, heat, natural gas and operators providing the public water supply and sewerage service, etc.
4. The most complex, voluminous, detailed and comprehensive regulations are of the enterprises in the electric power sector, which connected its norms and procedures with the provisions of ANRE Decision no. 24 from 26.01.2017.
5. Responsible for procurement in enterprises is the procurement working group composed of at least 3 - 7 people, appointed by management order. Only two companies had an internal subdivision responsible for procurement in addition to the working group.
6. The vast majority of companies have stipulated in the regulations the obligation to draw up annual procurement plans and to manage these plans when carrying out procurement. Some companies have published these plans on their website.
7. With regard to thresholds, each company sets its own thresholds, which vary depending on the procurement procedures used. In some cases they are common for goods, services and works, in other cases they are different. For example, low value purchase rules can be applied for values less than 10 thousand lei, 15 thousand, 30 thousand or less than 60 thousand lei depending on the enterprise; requests for proposals for values between 60 thousand and 300 thousand for goods and services; 60 thousand - 500 thousand for minor works or 100 thousand - 400 thousand for goods and services; and 150 thousand - 1 million 500 for major works. There are regulations that expressly stipulate that their procedures apply only if the value of the procurement exceeds 500 thousand for goods and services or 600 thousand for works.
8. In the context of thresholds, regulations regulate and apply only to public procurement that exceeds that minimum amount, so procurement below that amount is either not regulated at all or just subject to a general provision regarding such procurement in the regulation.
9. The types of procedure vary from one company to another, some use only open tenders, others use five types of procedures, among which are procedures that are no longer used according to the new law on public procurement no. 131/2015 (example: procurement from only one source), but these are still indicated in some of the regulations, even in some of those approved after 2016).
10. Most businesses are required to publish invitations to participate in public procurement on their websites, but they can also use national or local media, and some provide for the publication of notices in the Official Gazette.
11. The invitation is sent to the economic operators and the Specifications, which is the main document of the procurement documentation and which must clearly and concisely formulate the technical specifications of the products / works / objects / services to be purchased by the company. Some regulations expressly state the need not to indicate requirements in the technical specification that would favour an economic operator.
12. The deadline for submitting bids varies from 3 to at least 10 days.
13. Most companies indicate in the regulations the criteria according to which tenders will be evaluated. It is usually the "lowest price", but some companies are guided by other criteria such as "the most advantageous offer from a technical and economic point of view", "the best

quality", "delivery time", "delivery time", "payment conditions", etc. There are regulations that do not contain the evaluation criteria, being mentioned that they will be found directly in the invitations to participate.

14. Most regulations indicate the obligation of the members of the working group to sign the declarations of confidentiality and impartiality.
15. Only 3 regulations include in the annexes models of documents such as: invitation to participate, minutes of the working group on the opening / evaluation of tenders, the content of the procurement dossier, the declaration of confidentiality and impartiality, etc.
16. Few regulations obligatorily establish a minimum number of tenders / participants in public procurement procedures (2-3 participants).
17. Although for the most part the regulations are more general, without detailing some procedures, the rules in the regulations refer from the planning stage to the award of the contract.
18. The procedures for initiating and conducting procurement include: drafting and publishing the procurement notice; elaboration and sending of the invitation to participate in acquisitions; making available and / or sending the specifications; deadlines; clarification; submission of tenders, with annexes; opening offers; examination and evaluation of tenders (confidential); drawing up the opening minutes and the minutes of the examination / evaluation of the offers; naming the winners; conclusion of the procurement contract (no standard model or standard clauses); preparation of the procurement dossier.
19. No regulation mentions the conduct of procurement through electronic systems.
20. There are no provisions regarding the monitoring of the execution of contracts, sanctions, etc. Only some general provisions are mentioned in some regulations.
21. As a rule, the regulations do not contain provisions on the submission of appeals and the settlement of disputes. Those regulations containing such provisions establish a procedure by which the tenderer submits the appeal directly to the state-owned enterprise which settles its case, without appeal procedures on the decision. In the absence of express provisions in the regulations, any dispute will be resolved only by the court.