

***NATIONAL EXPERIENCE IN
SETTING UP EFFICIENT
AND TRANSPARENT PP
SYSTEM***

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- *Romania's acceptance in the EU implied the adoption of measures regarding the harmonization of the PP legislation in accordance with the European directives. The fulfillment of this condition meant two consequences:*
 - *the adoption of national regulations compatible with the European legislation and;*
 - *the control and prevention of any acts of corruption that can occur in PP procedures.*

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- *With a consistent experience in the regulation of PP activities after 1990, during the pre-adherence period, Romania set-up the institutional and legal framework for the proper awarding of PP contracts.*

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- *In the process of establishing an institutional framework, several institutions were created, in order to monitor and regulate the awarding of PP contracts, as follows:*
 - *National Authority for Regulating and Monitoring Public Procurement;*
 - *National Council for Solving Complaints;*
 - *The Unit for Coordination and Verification of Public Procurement;*
 - *Electronic System for Public Procurement.*

National Authority for Regulating and Monitoring Public Procurement

Main public institution involved in:

- *Ensuring a coherent legal framework within the procurement area*
- *Identifying law infringements that may lead to possible acts of corruption in public procurement*
- *Implementing legality in public procurement*
- *Monitoring, supervising and analyzing the public procurement system.*

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- *Furthermore, regulations regarding the awarding of PP contracts have been adopted:*
 - *Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts;*

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- *Government Decision no. 925/2006 for approving of the application norms of the Government's Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts works concession contracts and services concession contracts;*

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- *Government Decision no. 1660/2006 for approving the application norms of the provisions referring to the award of procurement contracts by electronic means from the Government's Emergency Ordinance no. 34/2006;*
- *Government Emergency Ordinance no. 30/2006 regarding the verification function of the procedural aspects concerning the public procurement contracts;*

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- *Government Decision no 942/2006 for approving the application norms of Government Emergency Ordinance no.30/2006;*
- *Government Decision no. 782/2006 for approving the Regulation of the organization and functioning of the N.C.S.C.*

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- *The awarding of public procurement contract is subject to the following principles:*
 - *non-discrimination;*
 - *equal treatment;*
 - *mutual recognition;*
 - *transparency;*
 - *proportionality;*
 - *efficient utilization of funds;*
 - *assumption of responsibility.*

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- *Today's presentation focuses on the means by which the legislator has tried and is still trying to set-up the legal framework in order to ensure the transparency of the procedures regarding the award of PP contracts.*

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- *According to the initial version of GEO 34/2006, the legal provisions regarding the ensuring of transparency were:*
 - *The contracting authority has the obligation to send for publication an intention notice where take the option to benefit from the provision laid down if:*

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- ✓ the estimated total value of the contracts/framework agreements for acquiring products within the same CPV group that are to be awarded in the following 12 months, is equal or greater than RON equivalency of EUR 750.000;*
- ✓ where the estimated total value of the contracts/framework agreements for acquiring services within the same category listed in Annex 2A that are to be awarded in the following 12 months, is equal or greater than RON equivalency of EUR 750.000;*

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- ✓ where the estimated value of the works contracts/framework agreements is to be awarded in the following 12 months and whose estimated value is equal or greater than RON equivalency of EUR 5.000.000.*

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- *The contracting authority has the obligation to send for publication a participation notice when:*
 - ✓ *it initiates an open procedure, restricted procedure, competitive dialogue or negotiation with the publication of a participation notice, in order to award a public procurement contract or to conclude a framework agreement;*
 - ✓ *it sets up a dynamic purchasing system;*

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- ✓ it initiates the awarding process of a public procurement contract through a dynamic purchasing system; in this case will publish a simplified notice;*
- ✓ it organizes a design contest.”*

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- *The contracting authority has the obligation to answer clearly, completely and without ambiguities, as soon as possible, to any request for clarifications, in a period of time that shall not exceed, as a rule, 3 working days from receiving the respective request from the economic operator.*

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- *The contracting authority has the obligation to send the answers to the requested clarifications to all the economic operators that obtained the tender documentation according to the provisions of this law, taking the necessary measures in order not to disclose the identity of the economic operator that made the request for clarifications.*

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- *The evaluation commission must transmit a copy of the opening minute to all economic operators that participate to procedure, regardless of whether these were present or not at the opening session.*
- *The contracting authority has the obligation to inform the candidates/tenderers that have been rejected or those who's tender has not been declared winning on the grounds that the respective decision is based on, as follows:*

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- ✓ for each unsuccessful candidate of the reasons for the rejection of his candidature;*
- ✓ for each unsuccessful tenderer, the concrete reasons for the rejection of his tender, detailing the reasons on the basis of which it was considered to be unacceptable, irregular or unsuitable, particularly the reasons for taking the decision that the works, supplies or services do not meet the performance or functional requirements, provided in terms of reference;*

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- ✓ *any tenderer who has made an admissible tender but which was not declared winner, the characteristics and relative advantages of the selected tender/tenders in comparison with its tender, the name of the tender to whom the contract is to be awarded or, where is the case, of the tenderers with whom it will be conclude the framework agreement.*

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- *The public procurement dossier has the character of a public document. The access of persons to this information is enabled by respecting the time-limits and procedures stipulated by the legal provisions regarding the free access to public interest information and can't be restricted unless this information is classified as secret or protected by an intellectual property right, according to the law.”*

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- *The contracting authority has the obligation to transmit for publication an awarding notice within 48 days after it:*
 - *has finalized the open procedure, restricted procedure, competitive dialogue or negotiation, by awarding the public procurement contract or concluded the framework agreement;*

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- *has finalized a design contest by establishing the winner;*
- *has awarded a public procurement contract by a dynamic purchasing system.*

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- *The following deeds constitute contraventions and are sanctioned:*
 - ✓ *the infringement the rules for transparency and advertising*
 - ✓ *incorrect application of the rules for communication and transmission of data, having as effect the restriction of access of the economic operators to the awarding procedure, breaching the equal treatment or the transparency principle*
- *The contraventions provided are sanctioned with a fine between 5000 RON and 10000 RON*

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- *NARMPP, as main public institution involved in ensuring a coherent legal framework as we presented before within the procurement area and monitoring, supervising and analyzing the public procurement system has identified transparency related provisions that needed to be revised, for the following reasons:*
 - *An awarding notice was not needed in the request for tenders procedures;*

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- *There was a difference in the number of participation notices and the number of awarding notices, because the annulment of the procedure, in case it occurred, was not subject to any notice*
- *The sanctions for the infringement of the legal provisions were not sufficient in respect of their purpose*
- *By interpretation, it was not clear if an obligation for the publishing of the awarding notice existed in the negotiation without publication of a participation notice procedure*

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- *In these conditions, in 2007, on NARMPP's proposal and with the consulting of the European Commission, GEO no. 34/2006 was amended by GEO no. 94/2007, as follows:*
 - *The contracting authority has the obligation to transmit for publication an awarding notice within 48 days after it: has finalized the awarding procedure – open tender, restricted tender, competitive dialogue, negotiation with/without prior publication of a contract notice, request for tenders – by awarding the public procurement contract or by concluding the framework agreement*

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- *the infringement of the publicity rules stipulated by the present emergency ordinance and/or non fulfilling the obligation of registration in ESPP by the contracting authorities, as it is provided in the public procurement's legislation shall be sanctioned with a fine between 70.000 and 100.000 RON;*

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- *NAMRPP has the right to request in court the absolute nullity ascertainment of the contracts/framework agreements in the following cases: the respective contracts/framework agreements have been concluded without publishing the contract notices, if these actions have taken place in other circumstances than the ones allowed by the present emergency ordinance*

Tools used to detect corruption

*In preventing acts of corruption we have identified the following **warning sensors - red flags**:*

- *the rate of public procurement contracts awarded within the negotiation procedure without prior publication of the contract notice;*
- *the rate of total value of the public procurement contracts awarded within the negotiation procedure without prior publication of the contract notice;*
- *the rate of not publishing the awarding notices;*

Tools used to detect corruption

- *the rates of issuing the advisory opinions by the Unit for Coordination and Verification of Public Procurement (U.C.V.A.P.);*
- *the rate of public procurement procedures contested by The National Council for Solving the Complaints;*
- *the rate of complaints admitted by The National Council for Solving the Complaints.*

Conclusions

- *The **warning sensors** we established indicate the imperfections of the system that, may or may not, lead to acts of corruption*
- *The indicators will be calculated and, together with the information gathered from the system, we will have a real and accurate image of the phenomenon of corruption in public procurement*

■ *Thank you for your attention!*