

# Sustainability of the Public Acquisitions System in Romania in the Process of Transition to a Green Economy

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## Abstract

*The aim of this paper is to analyze the current national and international context regarding the possibility for public institutions to bring to the foreground environmental elements in the acquisitions, orientated to a sustainable development, in the context of maximizing the quality / price ratio in the use of public funds. Performance measurement and quantification are important challenges in complying with national and international policies.*

**Key words:** green public acquisitions, sustainable growth, green bonds,

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## 1. Introduction

Globalization, as an extensive process of economic, social and moral transformation, has led to the continuous exploitation and degradation of the environment. Current socio-economic trends are drive towards solutions to solve the ecological crisis, an attempt to reconcile the development trend and natural balance. Public authorities prove to be the biggest consumers in Europe this year.

The actual situation requires a detailed analysis of a national context at the level of the possibility for public institutions to bring to our attention the environmental elements in the acquisitions made, oriented towards sustainable development.

The mission of this research lies in the need to ensure the optimal framework to the main actors, in the efficient provision of the "quality / price" ratio in the use of public funds. Performance measurement and quantification are imperative challenges in complying with national and international policies.

The greening procurement tool is a management tool aimed to include the common interests of society in the public procurement process. This set of environmentally-oriented approaches imposes additional requirements in procurement procedures and, most often, their implementation does not minimize costs (Brannlund, 2009).

Moreover, the acquisitions process is also hampered by the lack of clear classifications of green contracts, and the limited availability of information on eco-public procurement in dedicated public databases is a challenge for those interested in this subject (Renda, 2012).

## 2. Green public acquisitions in the context of European / ECO reporting - EU strategic policy

Sustainable growth means building a competitive, sustainable and resource-efficient economy, which requires the need for public procurement to be closely linked to strategic areas at EU and member state level. The European entities have carried out an important process of reorganizing the legislative framework, aimed at facilitating the fulfillment of the goals.

Table no. 1 – legislative framework and strategic domains

STRATEGIC DOMAIN	LEGISLATIVE FRAMEWORK
<b>ENERGETIC EFFICIENCY</b>	EU Directive 2012/27/EU
<b>ENERGY PERFORMANCE OF BUILDINGS</b>	EU Directive 2010/31/EU
<b>EU ENERGY STAR</b>	Council Regulation (CE) No 106/2008 of the European Parliament and the Council from 15 January 2008 on a Community energy-efficiency labeling program for office equipment

Source: Information processed by the author based on the source [http://ec.europa.eu/environment/gpp/projects\\_en.htm](http://ec.europa.eu/environment/gpp/projects_en.htm)

France has set personalized priorities according to each sector of activity. By adopting the HQE (Haute Qualite Environnementale) method, the French government aims to achieve high ecological quality in the construction sector. During this time, the British and Dutch authorities have tried greening public procurement by purchasing renewable electricity.

In order to make its resources more efficient, member states use a wide range of approaches, from volunteering to new regulatory measures. Central European authorities have built partnerships with representatives from all member states in strategic sectors.

The objectives of these projects include the production of guidance documents, tools and models; setting up groups of buyers and suppliers as well as the development of eco-innovation solutions through pre-procurement and common procurement. In fact, only 3 member states support the efficient use of resources, while another 11 states are in the process of alignment with this measure. There is no such policy in Romania.

- ***External audit on the efficient use of resources***

Financial support for external audits is a measure of support widely used in Germany since 2000. All sectors were targeted, but the measure was successful in the metalworking, metal finishing and food processing industries. The cost of a procedure is between €10,000 to €15,000, being covered in a proportion of 70% by national funding programs and an investment recovery time of up to 2 years.

In support of the efficient use of resources, in 2014, Austria subsidized through the regional programs approximately 1943 enterprises, federal contribution being over 1 million euros. Finland, through state-owned company Motiva Oy Ltd., develops and promotes audit effectiveness through tools for identifying potential resources (materials and energy), savings in production processes, with pilot projects for which have been allocated annually approx. 200,000 euros.

- ***National public funding programs***

Financial support can be an effective way to encourage the efficient use of resources within businesses that normally cannot sustain a cost-effective project. The highest absorption rate of the national programs implemented is found in countries such as Bulgaria, Germany, Denmark, Malta and Poland, while in six member states, including Romania, there is no national strategy in this respect.

A number of government financial support programs exist in Croatia, including measures to increase the efficiency of resource use within businesses. Through the "Entrepreneurial Impulse" support program, the Ministry and the Croatian Agency for SMEs, Innovation and Investment (HAMAG BICRO) puts grants at the disposal of projects in the manufacturing, environmental and information technology sectors, which can include eco-innovation projects.

### **3. China - the pioneer of green bonds**

Known as the country with the largest green-house bond market in the world, China issued in 2016 green bonds of about 36.2 billion dollars. Although in the past year 39% of the "green market" was owned by China, it presents itself as an atypical market:

#### *1. Green bonds aligned with international or local standards*

The regulations of the National Reform and Development Committee allows issuers to use up to 50% of the proceeds of the bonds issued for the repayment of bank loans or other capital markets, while at international level, more than 95% of revenues should be orientated towards

ecological projects. Approximately 34 % of total issued bonds do not meet international standards. The largest portion is represented by the banks issue and only 24% of the enterprises.

#### 2. *Offshore or onshore bonds*

Although China's rise in this sector has been a fulminating one, the arguments are simple: offshore programs are intended for foreign investors, while China's Industrial Bank issues to the mainland China green onshore bonds. Most of the issues are evaluated by local rating agencies, and offshore issues receive international ratings. Procedurally, over 50% of China's green bonds have target completion dates for which they were between 5-10 years, unlike international issuers that have a prescription period of 6-8 years. Looking at the level of allocation of funding, 21% of the revenues are for the energy sector, while the prevention and control of pollution get about 17 percentage points. Globally, China is the largest green-house bond market.

#### 4. Performance indicators

The process of public investment imposes a permanent transparency between tenderers and authorities. An evaluation of the performance of the system through the use of tools is imperative in order to establish the degree to which it is sustainable to meet the objectives set. To perform the analysis, a number of key performance indicators are proposed for discussion:

- **Share of tenderers / by type and / or contract size**

A recent statistics on the number of contractors who submitted offers for the 2014-2016 periods in procurement procedures indicates a number of features related to the situation in Romania. A first analysis of the number of procedures launched shows that the largest share is in supply contracts, 55.77% in 2015.

The economic and political instability had the biggest impact on last year's numbers. The data for the three analyzed years indicated the lowest level of release of procedures in 2016. The fewest offerors were attracted by the investment sector. Compared to previous years, there is a slight increase for service contracts, but the values are relatively insignificant compared to the needs of the market.

Table no. 2 – Analysis of contractors who submitted offers for the 2014-2016 periods in procurement procedures

Research spectrum	No. award procedures by publication of a notice / invitations to participate / simplified participation notice			Total procedure type
<b>Contract type</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	
<b>Suppliers</b>	9.864	12.396	10.724	32.984
<b>Services</b>	4.020	4.500	4.599	13.119
<b>Constructions</b>	4.483	5.331	3.756	13.570
<b>TOTAL</b>	<b>18.367</b>	<b>22.227</b>	<b>19.079</b>	

Source: Information processed by the author based on the source <http://anap.gov.ro/web/category/analize-si-rapoarte-statistice/>

Looking at the value of the number of procedures launched, the investments keep a downward trend, by about 34% compared to the reference year 2014. On the other hand, during the same period the consumption increased by about 8 million Euros.

A more realistic estimate shows the analysis was based on the first quarter of 2016. Taking into consideration the economic forecasts, this period was characterized by stability and financial expansion, with a 4.2% increase in GDP of the same period 2015. However, the spring economic forecasts are balanced by stagnation in the 2014-2020 financial year. The decrease in volume regarding services is due to the economic conditions in this period, but the internal demand for this period is quite robust.

Invoking the various malfunctions in the national mechanisms regarding the absorption of the European aid in the implementation of the procedures, the projects funded by the structural instruments have very low values. In 2016, approximately 96% of the award procedures launched through the Electronic Procurement System were funded by budget funds, 14% more than the reference year.

Table no. 3 – Proportion of funds for project

Research spectrum	2014		2015		2016	
	Ratio		Ratio		Ratio	
	Procedures	Contract size	Procedures	Contract size	Procedures	Contract size
<b>Budget funds</b>	81.58%	57.93%	84.20%	83.9%	95.63%	86.13%
<b>Proportional community funds</b>	18.42%	47.07%	15.80%	16,10%	4.37%	13.87%

Source: Information processed by the author based on the source <http://anap.gov.ro/web/category/analize-si-rapoarte-statistice/>

Although Romania is part of the European cohesion process, in the middle of the 2014-2020 financial exercise the absorption rate is close to 0%, while in the previous financial year about 90% of funding was allocated.

- **Ratio of rejected tenderers in the selection stage**

Public acquisitions represent the key link in the modern economy, as well as a favorable environment for the manifestation of anticompetitive practices. After analyzing the data presented, the 18,367 procedures initiated in 2014 had a degree of completion of 95,14%. However, budget support had differences of approximately 3 billion euros, while the finalization of the initiated procedures was 81.18%. A more detailed analysis of the rejection rate of tenderers in the same year shows that investment in public procurement contracts was 36.89% . At the same time, in the first part of 2016, the conclusion of a framework agreement for the execution of the same types of works indicated increased values in relation to the offers launched on the market. At the end of 2016, Romania completed 77.47% of the open public procurement procedures, the rest being in progress.

Table no. 4 – indicators for determining the current state of complaints

KPI indicator	Reporting period		Variation
	2015	2016	2016/2015
1 Number of disputed procedures	2.232	2.712	21.50%
- Solved	1789	2064	15.37%
- Cancelled for a mistrial	443	648	46,27%
2 The value of the disputed procedures	na	na	na
3 Number of favorable complaints settled out of the total number of disputed procedures	827	814	-1.57%
4 Number of unfavorable complaints solved by rejection of appeals	1380	1582	14.63%
5 Total number of procedures canceled by contracting authorities	25	51	100%
6 Number of procedures canceled by higher institutions	214	231	7.94%

Source: Information processed by the author based on the source <http://anap.gov.ro/web/category/analize-si-rapoarte-statistice/>

The current situation calls for the implementation of a set of local indicators, to determine the current state of reporting complaints and procedures at national level.

The number of complaints filed with the National Council for Solving Complaints has increased on average by 480 additional procedures analyzed. The rise in numbers highlights the lack of experience of the participants in the public trading process and draws attention to the transparency of the field.

The increase in the number of procedures issued by the Court of Appeal is not appropriate at the level of the risk analysis for the control institutions, but involves sustained efforts by all the market players. Reported to the type of procedure analyzed in the reporting period 2015-2016, the large number of requests determined a different fluctuation. The settlement time is double as it was in the previous years, and the prospects are unfavorable to the market.

- ***Changing the estimated price and the price assigned to the contract***

Contracting authorities reserve the right to choose the optimal criteria in order to obtain the most advantageous offer from an economic point of view. According to the latest report, 95% of the completed procedures of 2016 had the "lowest price" while around 666 procedures used "best value for money". Referred to the type of procedure, the most used method remains the direct acquisition by call for tendered with a total number of procedures of 8.337.

A brief analysis of the two criteria indicates that the lowest price is ahead of quality. The persistence of this practice will contribute to instability in the domestic market, with a bad impact on the tenderer' flow in the public tender procedure.

An empirical analysis on the public procurement procedures carried out between 01.01.2017-17.01.2017, through the portal, having as a type of procedure the participation announcement illustrates the prospects of a linear trend in early 2017. The area of contracting authorities is limited to Romania's borders, the samples being dispersed in several geographic areas and regions. In other words, 97% of the contract notices had the "lowest price" award criterion, while 3% of the contracting authorities chose the best value on quality - money. Romanian Law Public acquisitions establishes the obligation of the contracting authorities to calculate the value of an acquisition, related to the total value of the payment, without VAT, anticipating possible options and extensions of the contracts with the specific mentions.

Previous research has indicated that over 60% of the analyzed procedures have initial estimates higher than the values attributed to the acquisitions. In other words, although the information source is growing more widely, on average, the contracts are signed at a significantly lower price than the initial expected value.

The low price criteria tend to hinder economic operators who compete more strongly at the price level, making a rebate on quality. Being oriented to contracting authorities, initial estimates are not always true of the market price survey and the lack of strong documentation and correct technical specifications make estimates inconsistent with reality.

## **5. Conclusions**

Based on the theoretical foundations and the researches included in this paper, the evaluation of the performance and capacity of the local public procurement system in the process of sustainable development proves to be a very sensible one. Although Romania is in the process of alignment with the European prerogatives, the implementation of some specific performance indicators indicate a pilot program with unpredictable results, rather than a continuous effort toward progress.

The current situation requires continuous monitoring of the degree of participation, as well as the trend of the awarding rates. An extensive set of indicators facilitates permanent analysis and detection of any fluctuations that would put the competition system in imbalance.

From a procedural point of view, our country faces a lack of stability of the legislative framework. Substantial changes published in 2016 predicted a reduction in bureaucracy, but proved to be more complex and difficult to apply. Recent experience requires a reorganization of the efforts of the main actors involved for the purpose of significant improvements.

Regarding the integration efforts in the sustainable development process, repeated and inconsistent legislative changes are oriented to an insufficient extent to market needs.

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