



EVALUATION REPORT

Strategy for the development of the public procurement system for the years 2016–2020 and its implementation Action Plan 2016–2018

(period: 2016–2018)

Authors: Vadim TURCAN, Diana ENACHI

Chisinau 2019



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Acronyms

- AA** – Association Agreement;
- CA** – Contracting Authority;
- DP** – Decision of the Parliament;
- EBRD** – European Bank for Reconstruction and Development;
- EO** – Economic operator;
- EPP** – Electronic Procurement Platforms;
- GD** – Government Decision;
- NACS** – National Agency for Complaints Settlements;
- PPA** – Public Procurement Agency;
- WB** – World Bank;
- WTO** – World Trade Organization

Executive summary

The evaluation report of **the public procurement system development strategy for 2016-2020** presents the progress on the implementation of the actions provided in **The Strategy Implementation Action Plan for 2016-2018** by using an evaluation methodology based both on quantitative indicators, in terms of actions accomplishment, and qualitative indicators, in terms of the changes achieved. Respectively, for the period 2016-2018, in the present report the authors have evaluated the degree of accomplishment of 44 actions included in 4 stages.

The quantitative evaluation shows that **only 23% (10 actions) were implemented without deficiencies**, while another **20% (9 actions) were implemented, but with deficiencies**. At the same time, **18% (8 actions) were partially implemented** while another **39% (17 actions) were not implemented**. At the same time, from among the actions accomplished with or without deficiencies - for **13 actions the execution deadline was respected**, while another **6 actions were implemented, but only after the deadline**.

The qualitative evaluation in the light of the changes accomplished as a result of the taken actions, the authors concluded that **only 11% of these actions had a major impact**, while **36% of the actions had a medium impact**. **Six actions (14%) had a low impact**, and in the case of more than one third (**39%**) of the actions, **the impact is lacking** altogether.

It is necessary to mention that the results of the evaluation were strongly influenced by the lack of progress in the implementation of the strategy with regard of the transposition of the **Directive 2014/23/EU** concerning the award of concession contracts, as out of the total of 7 actions to this end, **5 received the unaccomplished rating**. A similar situation can be observed regarding when transposing the **Directive 2014/25/EU** concerning the purchases made by the entities that operate in the water, energy, transport, and postal services sectors, where all the **9 actions** have been marked as **unaccomplished**.

The table below shows that the progress regarding the implementation of the Action Plan for the implementation of **the public procurement system development strategy for 2016-2020** can be considered modest.

Fig. 1. The results of the quantitative evaluation

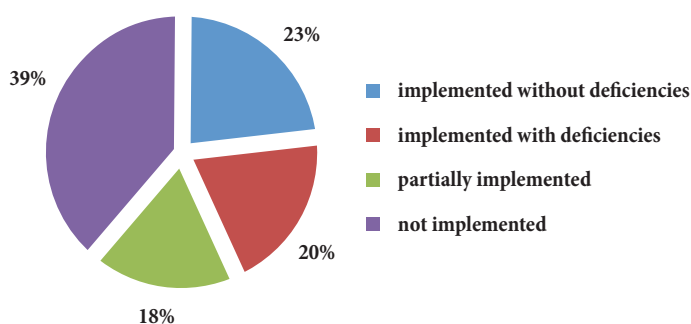
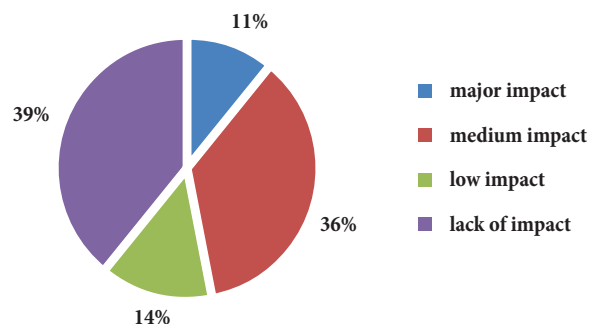


Fig. 2. The results of the qualitative evaluation



If we, however, refer to the public **sector of public procurement** as regulated by Law 131/2015, while at the same time the question of utility procurement and concession contracts, we note a **higher progress** compared to the general results regarding the implementation of the Strategy:

The quantitative assessment shows that more than one third of the actions (**36%**) were **implemented** without deficiencies, while another **32% (9 actions)** were **implemented, but with deficiencies**. At the same time, **21% (6 actions)** were **partially implemented** and another **11% (3 actions)** were not implemented. At the same time out the total number of actions that have been executed both with or without deficiencies, for **13 actions** the **deadline was respected**, while another **6 actions were implemented after the deadline**.

For the qualitative evaluation in the light of the changes produced as a result of the actions taken, the results show that only **18%** of those actions had a **major impact**, more than half (**57%**) of the actions had an **medium impact**. A low impact had **4 actions (14%)**, and in the **case of 11% of the actions**, there is a complete **lack of impact**.

Fig 3. The result of the quantitative assessment regarding Law 131/2015

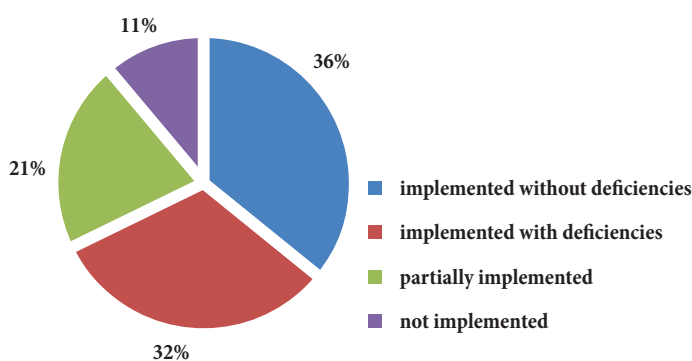
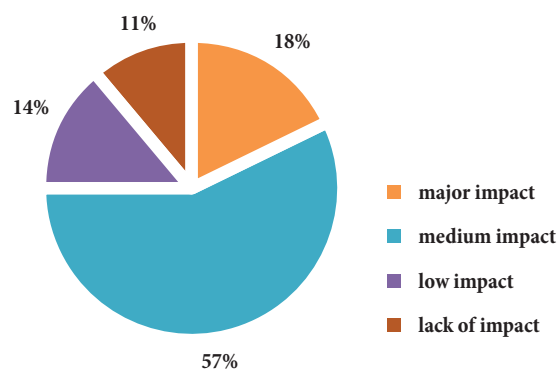


Fig 4. The result of the qualitative evaluation regarding Law 131/2015



The main achievements of the actions taken in the period 2016 - 2018, and which are:

- The harmonization of the national legislation for classic public procurement with the provisions of the European directives, especially with the Directive 2014/2014/EU on public procurement;
- The development of the electronic procurement system facilities;
- Establishment of the National Agency for Complaints Settlements as a functional specialized body for examining and resolving appeals;
- Organizing of training and developing the necessary instructions for the actors involved in the procurement process.

The main deficiencies in the implementation of the aforementioned Strategy and its plan are the following:

- Lack of a dialogue mechanism between the responsible public institutions;
- The normative-secondary legal framework is incomplete and requires harmonization with the primary legislation regarding classical public procurement;
- The electronic procurement system does not ensure the integral conduct of the whole procurement process;
- Lack of a certification system for procurement specialists;
- Lack of actions to develop a centralized procurement system;
- Lack of the legal secondary-normative framework for concession contracts that would be harmonized with the primary legislation;
- Lack of legal framework for transposing the directive on the utilities sector.

As a result of the identified deficiencies, the authors formulate a **series of proposals**, among which we highlight the most important as the following:

- The establishment of an efficient and permanent dialogue mechanism between the responsible institutions, to clearly define the roles and responsibilities for each institution;
- The approval by the government of the normative acts necessary for the implementation of Law no. 131/2015. Priority should be given to the Regulation on the procurement of public works, the Regulation on the activity of the procurement working group, the Regulation on public procurement using the negotiation procedure, and to the Regulation concerning the framework agreement.
- The elimination of deficiencies in the electronic procurement system by ensuring the functionality of an entirely electronic procurement process. The development of the electronic procurement system for the use of different types of procedures (in this case: the framework agreement and the restricted auction) and of different techniques and tools (in this case: the electronic catalogs). At the same time, it is imperative to develop the Business Intelligence module for generating statistical reports and for identifying the risks of fraud and corruption to encourage the performance of the monitoring and control functions by the competent institutions as well as by the general public.
- The development of a national certification system in the field of public procurement following the establishment of partnerships with the relevant academic institutions.
- The elaboration of the secondary legal framework for concession contracts, in particular, the Regulations on the way of organizing the concession award procedures and the Regulations regarding the activity of the concession award commission.
- The development of the legal framework for the transposition of the directive on the utilities sector.

Introduction

The development of the Strategy of public procurement system for 2016 - 2020 (*herein after referred to as the Strategy*) and the Action Plan on its implementation for 2016 - 2018 (*hereinafter referred to as the Action Plan*) was approved by Government Decision No. 1332 of 14.12.2016. This strategic document was developed for the purpose of implementing Title V, Chapter 8 of the Association Agreement between the Republic of Moldova and the European Union (*hereinafter referred to as the Association Agreement*), as well as to carry out the measures to implement provisions of the WTO Agreement on public procurement. (Law No. 125 of 02.06.2016)¹.

The same GD stipulates that the Ministry of Finance is the responsible institution that shall ensure the process of monitoring and coordinating the implementation of the Strategy and Action Plan, as well as the cooperation with international organizations and development partners to attract the necessary volume of investments to implement the provisions of the Strategy and Action plan.

The evaluation process was carried out based on the envisaged actions, the schedule provided in the Association Agreement, the term of execution and performance indicators foreseen in the Action Plan to implement the Strategy for 2016-2018. The action plan for the implementation of the Strategy comprises 44 actions divided into 4 stages and sub-stages for each of them, as follows:

Stages to implement the reform	Term of execution	Actions envisaged
Stage 1. Goods for the central government authorities	quarter IV 2016 quarter IV 2017	14 actions
Stage 2. Goods for the state, regional and local public law authorities and institutions; goods for all contracting authorities in the utilities sector, service and works provision contracts for all the contracting authorities	quarter IV 2017 quarter IV 2018	19 actions
Stage 3. Concessions for all contracting authorities	quarter II 2018 – quarter IV 2018	7 actions
Stage 4. Service and works provision contracts for all the contracting authorities in the utilities sector	quarter II 2018 – quarter IV 2018	4 actions

¹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=365458>

Assessment methodology

The implementation of the Strategy of public procurement system development for 2016 - 2020 and the Action Plan on its implementation for 2016 - 2018 was assessed on the basis of a methodology relying on both quantitative evaluation criteria in due times of the extent of actions fulfilment, and qualitative evaluation criteria through the prism of the changes produced.

I. Quantitative assessment

a. The following ratings were used to assess the **level of implementation of the actions** within the quantitative evaluation process:

Assessment		Significance
Implemented	<i>without deficiencies</i>	The action fully achieved according to the Plan in line with the legal procedure and the principles of transparency and participation in the decision-making process
	<i>with deficiencies</i>	action fulfilled with deficiencies which should be described in detail
Partially implemented		the action has been initiated and is in process of realization
Not implemented		no activity was initiated in order to fulfill the action

b. In order to determine the actions carried out from the perspective of **compliance with the term** set out in the Plan, the following descriptions were used: **in due time, exceeding the time limit.**

II. Qualitative evaluation

In the process of evaluating the impact and changes produced as a result of the actions carried out, a grid with four Assessment levels was used, as follows:

Assessment	Significance
0 - lack of impact	there is lack of impact on meeting objectives of the Strategy and, consequently, on improving the quality of the public procurement system, in the absence of actions and/or policies from the responsible authorities
1 - low impact	there is reduced impact and insignificant changes in the public procurement system as a result of the action taken or partially carried out by the responsible authorities
2 - medium impact	there is an average positive impact and namely some changes with effects on achievement of the objectives set out in the Strategy but which have not produced significant changes on the improvement of the quality of the public procurement system
3 - major impact	there is a major impact and significant positive changes that have supported the achievement of the objectives set out by the Strategy and which have produced important changes in the public procurement system.

Impact indicators:

- raised confidence in the public procurement system;
- improved transparency and efficiency of public procurement;
- consolidated capacities of actors involved in public procurement process;
- improved quality of regulations;
- improved efficiency of monitoring / controlling the compliance and legality of procurement procedures.

III. The tools applied

The following tools were used in the evaluation process:

- Analysis of the primary and regulatory or secondary legal framework in the field of public procurement;
- Requests for interviews were sent to all the authorities that were responsible for the actions from 2016-2018 action plan. As a result, the authors of the report carried out 4 in-depth interviews with the institutions in the field and the people responsible for carrying out the actions in the Action Plan, based on a questionnaire developed for each institution (Ministry of Finance, Public Procurement Agency, National Agency for Settlement of Claims, State Treasury). It should be mentioned that the Ministry of Economy and Infrastructure replied by email, and we received no information from the National Council for Public-Private Partnership (whose secretarial duties are carried out by the Public Property Agency).
- The authors of the report have obtained 3 interviews with actors in the field including representatives of electronic procurement platforms - achizitii.md and e-licitatie.md; the former Deputy Minister of Finance - responsible for implementation of electronic procurement and MTender system –Mr. Iurii Cicibaba. Requests for meetings were also sent to the Financial Inspection and the Center for Information Technologies in finances (CTIF) but without any response.
- Analysis of open data sources, including electronic registers, official web pages of authorities, including:

- | | | |
|--|--|--|
| • www.mf.gov.md ; | • www.ansc.md | • www.mei.gov.md ; |
| • www.tender.gov.md ; | • www.mtender.gov.md ; | • www.particip.gov.md ; |
| • www.app.gov.md ; | • www.cna.md ; | • etc. |

- Analysis of plans and activity reports/statistics of the public authorities (responsible for the actions in the Plan) including the Activity Reports for 2016, 2017 and 2018 of the Public Procurement Agency, the National Agency for Settlement of Claims, the Ministry of Finance.
- Other information, analyzes, studies, reports prepared by independent experts, civil society or the international community.

The progress of implementation of the action plan for 2016 – 2018

Stage 1.

Goods for central government authorities: (Quarter IV, 2016 – Quarter IV, 2017)

The provisions of the law No. 131/2015 can be considered as partially fulfilling the set of basic standards provided in art. 270 of the AA. The measures needed to solve the identified problems are to be adopted as follows:

For **primary legislation** - development and adoption of amendments to law No. 131/2015 with the objective of resolving outstanding cases of non-compliance with the set of basic standards and ensuring the independence of the NACS.

For **secondary legislation**:

- ✓ development and approval of Regulation on establishment and functioning of the NACS;
- ✓ legal requirements that establish the obligation of all contracting authorities to publish, before launching the procedure, the justification of using the negotiation procedure without prior publication;
- ✓ developing and approving standard models and forms for public procurement announcements.

Action 1. Ensure harmonization of legislation with basic standards governing the award of contracts and institutional framework (Quarter IV, 2016)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensure harmonization of legislation with basic standards governing the award of contracts and institutional framework	exceeding time limit	implemented with deficiencies	3 - major impact

Amendments to law No. 131/2015 that took place following the adoption of law No. 229 of 23.09.2016² aimed to ensure the functionality of the NACS and to ensure the time limits in the procedure of contracts awarding. At the same time during 2016, a series of GDs were adopted to ensure the efficient transposition of primary legislation. (See Table 1)

² http://www.legis.md/cautare/getResults?doc_id=95888&lang=ro

Table 1. Regulatory - secondary framework for public procurement adopted in 2016

No.	Regulation	Decision
1	Regulations on small value public procurement	GD No. 665 of 27.05.2016
2	Regulations on the procurement of goods and services by request for price quotation	GD No. 666 of 27.05.2016
3	Regulations on the activity of the working group for procurement	GD No. 667 of 27.05.2016
4	Regulation on public procurement using the negotiation procedure	GD No. 668 of 27.05.2016
5	Regulation on public works procurement	GD No. 669 of 27.05.2016
6	Regulation on making an Exclusion list of economic operators	GD No. 1418 of 28.12.2016
7	Regulation on the mode of planning public procurement contracts	GD No. 1419 of 28.12.2016
8	Regulations on keeping the List of qualified economic operators	GD No. 1420 of 28.12.2016
10	Standard documentation for carrying out public procurement of goods and services	Order No. 71 of 24.05.2016
11	Standard documentation for public procurement of works	Order No. 72 of 24.05.2016
12	Standard documentation for public procurement of goods, services and works through the competitive dialogue procedure	Order No. 84 of 15.06.2016
13	Standard documentation for carrying out public procurement of goods, services and works through the negotiation procedure	Order No. 85 of 15.06.2016
14	Standard documentation for public procurement of security services	Order No. 160 of 26.12.2017

It is necessary to mention that no regulations were updated/developed regarding the other types of public procurement procedures or amendment of the public procurement contract, including:

- Regulation on the framework agreement as a special way of awarding public procurement contract (GD No. 826 of 07.11.2012);
- Regulations on periodic adjustment of the value of public procurement contracts with continuous execution, concluded for more than one year (GD No. 640 of 19.07.2010);
- Regulation on public procurement through restricted bidding/competitive dialogue/ solution competition

Therefore, the Action is considered to have been **implemented with deficiencies** due to the acts that have not been updated as mentioned above. From the point of view of quality, the Action has a **major impact** because the legal framework for the most commonly used procurement procedures has been delivered.

Action 2. Development of legal framework for establishment of an independent revision body (Quarter IV, 2016)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Development of legal framework for establishment of an independent revision body	in due time	implemented without deficiencies	3 - major impact

In the initial draft of law No. 131/2015, NACS is qualified as an independent administrative authority, but it is subordinated to the Ministry of Finance, therefore its independence could not be guaranteed, what contravenes to art. 270, para. (2), letter. b) of the AA.

Before the establishment of NACS, the claims were examined by PPA. Thus, within this action the law No. 131/2015 was amended by law No. 229 of September 23, 2016, in which, through the amendments adopted, the NACS becomes an autonomous and independent public authority if compared with other public authorities, individuals and legal persons, which examines the filed complaints within public procurement procedures. The conflict of responsibilities was eliminated and the independence of the NACS was ensured.

At the same time, the functioning of NACS was ensured by GD No. 271 of 15.12.2016 on establishment, organization and functioning of the NACS, which sets out the legal status, basic functions, organization and status of NACS personnel, as well as the procedure for examining and settlement of claims.

The action is considered to be **implemented without deficiencies** taking into account the achieved progress and legal framework that has been modified, so that the NACS would be guaranteed with its independence and functionality. At the same time, this Action had a **major impact** on the way of examining and settlement of claims, so that the obstacle in filing appeals was overcome.

Action 3. Ensuring functionality of the National Agency for Complaints Settlements (Quarter IV, 2016)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring functionality of the National Agency for Settlement of Claims	exceeding time limit	implemented with deficiencies	3 - major impact

Law No. 229 of 23.09.2016 amended several laws (law No. 355/2005, law No. 199/2010, law No. 48/2012) in which amendments were made in respect of ensuring the functionality of NACS and providing budget resources, including setting the amounts of wages for the officials, with effect from January 1, 2017. However, the authority became operational only 9 months later, in September 2017, once the EO claims lodging process was initiated.

The Action is considered to be **implemented with deficiencies** since there was a gap of possibility to file claims from January 1, 2017 until September 4, 2017, when EO could appeal a public procurement only through the prism of *Law No. 793 of 10.02.200 on administrative litigation*, which in itself involved a long-term procedure, without convincing the observance of the principle of expedience and celerity. From the point of view of quality, it produced a **major impact**, by simplifying the procedure for appealing the decisions of the CA, thus the number of the claims filed in 4 months of 2017 reached 200, with the estimated value of 743 482 093.06 MDL.

Action 4. Functional review and reorganization of the internal structure of the Public Procurement Agency (Quarter IV, 2016)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Functional review and reorganization of the internal structure of the Public Procurement Agency	in due time	implemented without deficiencies	2 - medium impact

Following the amendments to law No. 131/2015, the powers of PPA regarding the examination and registration of award documents and public procurement contracts, the function of control of the procedures results and the right to dispose of re-examination or cancellation of the results of the public procurement procedures were excluded. Thus, these attributions were replaced with the attribution of performing the **ex-post control of the public procurement procedures** carried out after the signing of public procurement contracts.

At the same time, the *Regulation on the organization and functioning of the PPA and its maximum staff number was approved by GD No. 134 of 09.03.2017³*, published in Official Monitor No. 85-91/223 of 24.03.2017, which designates PPA staff in 43 units. Therefore, the PPA no longer has territorial subdivisions, and its activity is carried out at the headquarters in Chisinau. As a result, the method of interaction of the PPA with the contracting authorities was modified, the participation announcements and the reports being presented in electronic form via e-mail. At the same time, the Consultancy and Training Department was created, within the competence of which lie the organizing of activities and conducting of trainings in public procurement.

The Action is considered to be **implemented without deficiencies** because the advisory and training functions of the PPA have been strengthened, which produced a **medium impact**, since while performing its tasks the PPA has reduced capacities in performing fundamental tasks, mainly due to limitation of staff number.

Action 5. Strengthening the capacity of the policy unit within the Ministry of Finance (Quarter IV, 2016)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Strengthening the capacity of the policy unit within the Ministry of Finance	exceeding time limit	implemented without deficiencies	1 - low impact

Consolidating the capacity of the Ministry of Finance to develop public policies in the field of procurement was achieved following the adoption of GD No. 152 of 07.03.2019⁴, which amended GD No. 696 of 30.08.2017⁵ regarding the organization and functioning of the Ministry of Finance, where changes were made in the structure of the central apparatus so that the *Public Procurement Regulatory Policy Service* was replaced by the *Public Procurement Regulatory Policy Department*, and the limit staff number was increased by 1 unit.

The Action is considered to be **implemented without deficiencies**, as the number of personnel in the Ministry of Finance responsible for policy making in public procurement has increased, but it had a **low impact**, due to the number of public policies developed and adopted in accordance with the legislation in force.

3 http://www.legis.md/cautare/getResults?doc_id=113098&lang=ro

4 http://www.legis.md/cautare/getResults?doc_id=112818&lang=ro

5 http://www.legis.md/cautare/getResults?doc_id=113340&lang=ro

Action 6. Development of a set of macro monitoring indicators for procurement, based on which analyses are performed regarding the functioning of the public procurement system in Moldova and included in annual reports (II Quarter, 2017)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Development of a set of macro monitoring indicators for procurement, based on which analyses are performed regarding the functioning of the public procurement system in Moldova and included in annual reports	in due time	implemented without deficiencies	2 - medium impact

PPA is responsible for monitoring public procurement from January 1, 2017. According to the *Report on the activity carried out in 2017*⁶ by the PPA in the exercise of its monitoring duties, a series of violations were revealed and systematized in the reports presented by the CA. Until July 11, 2017, the violations revealed in the result of reports examination were recorded in Excel files, and after July 11, 2017, the process was partially automated within the capabilities and possibilities of the internal record keeping and document management program, 23 risk factors being included.

Ex-post control actions were carried out in accordance with the provisions of art. 8 and art. 9 of law No. 131, /GD No. 134/2017 and the PPA Order No. 17 of 30.03.2017 on the approval of the *Methodology regarding ex-post control (MO No. 109-118 from 07.04.2017)*. In 2017, 115 ex-post controls were carried out, after which it was found that all the verified procedures were carried out with a series of deviations from the legislation in force. At the same time, the set of indicators that is included in the sample subject to ex-post control was included in the Methodology of selection of the procurement procedures, approved by the Order of the PPA Director No. 29 of May 22, 2017.

The Action is considered to be **implemented without deficiencies**, because the monitoring indicators have been defined, but it had a **medium impact**, because the annual reports do not contain a complex analysis of the performance characteristics of the public procurement system.

Action 7. Development of centralized procurement, framework contracts, sector procurement instructions and structures with new responsibilities (Quarter II, 2017)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Further development of centralized procurement, framework contracts, sector procurement instructions and structures with new responsibilities	-	not implemented	0 - lack of impact

⁶ https://tender.gov.md/sites/default/files/document/attachments/raport_anual_2017.pdf

The number of institutions that make centralized procurements in the Republic of Moldova is small, only 2 units at the moment:

1. Center for public procurement centralized in health care according to *GD No. 1128 of 10.10.2016*⁷ (OM No.353-354/1210 of 11.10.2016)
2. "The State Road Administration" State Institution (SI), which operates on the basis of law *No.146 of 16.06.1994 on state enterprise*⁸

It is worth mentioning that by the end of term of execution for this action no new structures have been identified for centralized procurement. Later on, a sample of an association agreement between several CAs was uploaded on the PPA web page, with the purpose of organizing and conducting public procurement procedures for centralized procurement, but no association cases were made known, this being considered a lack of impact of this document.

The Action is considered **not implemented**, due to the fail to achieve progress indicators.

Action 8. Developing technical facilities of the electronic procurement system to be able to collect and process the information included in the announcements and to generate reports/statistical data according to the needs of the Public Procurement Agency (Quarter I, 2018)

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Developing technical facilities of the electronic procurement system to be able to collect and process the information included in the announcements and to generate reports/statistical data according to the needs of the Public Procurement Agency	-	partially implemented	2 - medium impact

The development of a new electronic procurement system started on November 30, 2016, together with the signing of the Collaboration Memorandum for the development of a new electronic system of public procurement. The MTender system is an electronic online multi-platform electronic procurement system, consisting of a web portal and an Open Data Central Unit and a network of multiple private sector platforms accredited to support procedures of procurement carried out electronically for customers in the public and private sectors. By the I Quarter of 2018, MTender had launched the MTender pilot system, which implied carrying out small value procurement procedures.

⁷ http://www.legis.md/cautare/getResults?doc_id=111606&lang=ro

⁸ http://www.legis.md/cautare/getResults?doc_id=111931&lang=ro

The Action is considered **partially implemented**, because at present electronic facilities do not allow the generation of reports/statistical data that would meet the needs of the PPA. At the same time, the multiple directions of development of the electronic procurement system produced a **medium impact**, as it ensures a higher transparency of procurement process.

The Action 9. Development of a web search engine to allow browsing the decisions of the National Agency for Complaints Settlements (Quarter IV, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Development of a web search engine to allow browsing the decisions of the National Agency for Settlement of Claims	in due time	implemented without deficiencies	2 - medium impact

It is noted that once the electronic website www.ansc.md and the announcement of receipt of complaints as of September 4, 2017 was launched, a web search engine had been developed in the Claims section, which allow researching the appeals by a series of filters including the following: *plaintiff, CA, composition of judges, OA, the status of decision, the number of claim, etc.* Thus, use of this site allows quick searching of necessary decision. It is also necessary to mention that until now the decisions issued by the NACS are not “machine - readable”, which means that they do not have the necessary context to be analyzed by various automated methods.

The Action is considered to be **implemented without deficiencies** within the set term with a **medium impact** due to the functionalities that are not developed in full.

The Action 10. Organizing a training for the Public Procurement Agency and National Agency for Complaints Settlements after harmonizing the legislation with the basic standards governing the award of contracts and the institutional framework (Quarter IV, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing a training for the Public Procurement Agency and National Agency for Complaints Settlements after harmonizing the legislation with the basic standards governing the award of contracts and the institutional framework	in due time	Implemented without deficiencies	3 - major impact

During the reference period, PPA and NACS participated in many trainings after harmonizing the legislation with the basic standards governing the award of contracts and the institutional framework:

- “Decisions of the European Union Court of Justice (CJUE) in the field of public procurement” Workshop, attended by NACS advisers;
- Workshop organized by EBRD in collaboration with PPA titled “Training on e-procurement reform in Moldova”.
- Workshop in Kiev, Ukraine titled “Transparent and efficient procurement in Ukraine” (attended by 15 PPA representatives)
- “Transparent and efficient public procurement in Moldova” workshop, organized with support of the Commercial Law Development Program (CLDP) of the US Department of Commerce, in cooperation with PPA (attended by 20 PPA representatives).

The Actions considered **implemented without deficiencies** having a **major impact** because it achieved the expected outcomes, and namely the acquisition of more profound knowledge by the personnel designated for execution of key public procurement functions within the central institutions.

The Action 11. Organizing trainings for contracting authorities and economic operators after harmonizing the legislation with the basic standards governing the award of contracts and institutional framework (Quarter II, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing trainings for contracting authorities and economic operators after harmonizing the legislation with the basic standards governing the award of contracts and institutional framework	in due time	implemented with deficiencies	2 - medium impact

Organizing trainings for CA and EO after harmonization of legislation lies in the competence of PPA, which according to the general duties shall provide the CA with methodological support and consultations in public procurement. By the end of quarter IV, 2017, the PPA conducted a series of seminars aimed mainly at contracting authorities, but some of them were also for economic operators, state-owned enterprises and at the request of public authorities, on such topics as: general provisions of the public procurement process, carrying out public procurement of air tickets, purchasing of foodstuff, applying the legislation in respect of the amendment of public procurement contracts on works provision as a result of adjusting the value of the contracts, the agreement on public procurement of the WTO.

The Action is considered **implemented with deficiencies** because trainings in the territory and namely local events in each district were not provided. At the same time, no printed and distributed materials were identified for familiarizing the CA and EO with the provisions of the amendments to the law No. 131/2015. The **medium impact** is due to the fact that in all the procedures subject to the ex-post control by the PPA violations of the legislation were detected, this constituting a reduced indicator of the efficiency and effectiveness of the organized trainings.

The Action 12. Setting-up a Help Desk contact point (Quarter IV, 2016)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Setting-up a Help Desk contact point	exceeding time limit	implemented without deficiencies	2 - medium impact

In the view of accomplishment of this Action on March 28, 2018, a telephonenumber of methodological advice in the field of public procurement (HelpDesk) was established. According to the *Report on activity carried out during 2018⁹*, between March 28, 2018- December 31, 2018, 3560 calls were made to the Help Desk. Among the most frequent questions asked by the representatives of CA, EO as well as the representatives of civil society were as follows: the interpretation of the legislative norms, the particularities of the public procurement procedures, the preparation of the award documentation, the procedure of opening and offers evaluating, the means of reporting on public procurement procedures.

The Action is considered to be **implemented without deficiency**, but with a **medium impact** due to uneven information solutions for CA and EO and the impossibility of the PPA to provide practical support for using the new electronic procurement system.

The Action 13. Setting up a Frequently Asked Questions special section on the Public Procurement Agency website (IV Quarter, 2016)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Setting up a Frequently Asked Questions special section on the Public Procurement Agency website	in due time	implemented without deficiencies	1 - low impact

⁹ https://tender.gov.md/sites/default/files/document/attachments/raport_aap_2018.pdf

A *Frequently Asked Questions* section was identified on the www.tender.gov.md page containing 27 question - answer sets and the *Frequent Mistakes* section which contains 31 error - solution sets. The Action is considered **implemented without deficiencies**, within the preset term.

However, the respective lists are not sufficiently elaborated by including the relevant cases encountered in the procurement activity by both the CA and the EO. Given the number of frequently asked questions and mistakes compared to the violations admitted by the authorities (also confirmed in the monitoring reports prepared by the PPA), as well as the complexity of the procurement process, the Action produced a **low impact**.

The Action 14. Development of instructions after harmonizing the legislation with the basic standards governing contract awards and institutional framework (IV Quarter, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Development of instructions after harmonizing the legislation with the basic standards governing contract awards and institutional framework	in due time	implemented with deficiencies	1 - low impact

During 2017, the following instructions were developed and published after the harmonization of the legislation with European standards:

- Standard form of report on procurement procedure in line with Order No. 14 of 26.01.2017;
- The methodology for ex-post control, approved by Order No. 17 of 30.03.2017;
- Standard documentation for the public procurement of security services, approved by Order No. 160 of 26.12.2017.

At the same time, a series of guides developed in 2017 were identified.

1. **Guide on sustainable acquisitions**¹⁰ developed by the PPA to disseminate the concept of sustainable public procurement within the CA, and, on the other hand, the increase of the awareness of the public institutions regarding the procurement of products, services and works, which should include sustainability criteria in award documentation.
2. **“Appealing in public procurement” Guide**¹¹ developed by IDIS “Viitorul” in cooperation with PPA and referring to means of appealing CA documents by EOs, which sees their rights as being infringed by the former.
3. **Technical specification guide**¹² for the most frequently purchased goods for the support of the contracting authorities while delivering award documentation.

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

11 <http://viitorul.org/ro/library-books/1113>

12 https://tender.gov.md/sites/default/files/document/attachments/specificatii_tehnice.docx

However, instructions for completing certain documents refer to pre-completed document templates and do not provide sufficient information to users. The information presented is predominantly for CAs, so EO have difficulty in finding pre-filled document templates if they intend to participate in public procurement procedures.

The Action is considered **implemented with deficiency** and to have a **low impact**, because the instructions elaborated after harmonization of legislation were not sufficient for the participants in the public procurement procedures, this fact being attested by the number of violations detected in the ex-post control by the PPA, but also by the large number of requests for methodological support from the AC.

Stage 2.

Goods for state, regional and local public law authorities and institutions; goods for all contracting authorities in the utilities sector, service contracts and works for all contracting authorities (Quarter IV, 2017 - Quarter IV, 2018)

The Action 15. Ensuring harmonization of legislation with the basic elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC) (Quarter IV, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring harmonization of legislation with the basic elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC)	-	partially implemented	2 - medium impact

In accordance with commitments made by the Republic of Moldova regarding the harmonization of the national legislative framework in the field of public procurement to the acquis communautaire (EU-Moldova Association Agreement), but also the objectives set at national level, the responsible authorities were to transpose the provisions of Directive 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC) into the national legal framework.

The Law on public procurement No. 131/2015 (in force from 01.05.2016)¹³, developed for the purpose of transposing European directives in the field of procurement, was improved by a series of amendments during 2017 (law No. 123 from 07.07.2017, law No. 178 from 21.07.2017, law No. 223 from 02.11.17 in force from 24.05.18, law No. 288 of 15.12.2017, law No. 305 of

¹³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=377937>

21.12.17). However, there are delays in the secondary legislation, including the Regulations governing the framework agreements, the contracts concluded for more than one year, the preparation and keeping of the public procurement file, the dynamic system, the competitive dialogue. Respectively, during 2017 no regulations for the implementation of the amendments to the law 131/2015 harmonized with the directive 2014/24/EU were developed and adopted. For these reasons, the Action was rated as **partially implemented**.

Legislation in the field of public procurement contains irregularities and inconsistencies, this fact being also mentioned by the participants in the survey for the Indices of confidence in the public procurement system (edition I, August 2018). According to the respondents, actual legal framework is relatively good; the problems arise mainly when it comes to implementing the provisions related to public procurement. However, some of the interviewees also invoke certain gaps in public procurement legislation. According to them, the procedures are not regulated in the case of floating prices, price adjustment, procedures in case when the supplier is monopolist (example: exclusive regional distributors of a manufacturer)¹⁴. Taking into consideration the harmonization of the primary legislation, the shortcomings in developing the secondary legislation and appreciation of the actors in the field of the legal framework, the Action has a **medium impact**.

The Action 16. Ensuring the implementation of the standard form of announcements regarding public sector, including the same information as that approved by Implementation Regulations of the Commission(EU) 2015/1986 of November 11,2015 (IV Quarter, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring the implementation of the standard form of announcements regarding public sector, including the same information as that approved by Implementation Regulations of the Commission (EU) 2015/1986 of November 11, 2015	Exceeding time limit	implemented with deficiencies	2 - medium impact

The technical concept of the “MTender” System provides for ensuring the complete cycle of public procurement procedures using electronic means, from the procurement planning stage to the last payment made upon completion of public procurement contracts execution. It is also stipulated that the “MTender” system will ensure the possibility to edit and publish the announcements of intention, participation and award of the public procurement contract. The Action is **partially implemented** exceeding time limit, given that the announcements are available from October 2018, when MTender system became mandatory for all contracting authorities. However, there are some shortcomings, including the following:

¹⁴ <http://viitorul.org/files/library/Index%20incredere%20achizitii%20WEB%202ab.pdf>

- inconsistencies in the announcements of intention, participation and award in the system and the provisions of law 131/2015 regarding their content
- the contracting authority does not control all the data appearing in participation announcement. Some information appears in participation announcement without being specified by the CA or in the way other than specified by the CA (e.g. type of procurement procedure, validity of offers - default value 90 days;
- the announcements of intention are not generated electronically in the system, the contracting authority having the task to elaborate them manually, to send them to the PPA and to upload them into the system;

In the view of quality, taking into consideration the impact of irregularities and inconsistencies of the electronic procurement system on both the regulatory authorities and the contracting authorities and economic operators, the Action produced a **medium impact**.

The Action 17. Creating local/regional and district procurement units to support the activity of contracting authority (Quarter IV, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Creating local/regional and district procurement units to support the activity of contracting authority	-	not implemented	0 - lack of impact

According to the strategy, there are about 4300 contracting authorities in Moldova, operating at central and local level - an extremely large number for the dimensions of the country and public budgets that most of them have. Except in the field of health care and roads management, all procurement procedures are carried out in a decentralized manner, which means that local contracting authorities, which in most cases are very small, do not have the capacity and specialists but they have to organize procurement processes according to the same complex rules and procedures, using their own administrative potential.

At the time of the Strategy approval (December 2016), 2 centralized procurement units were operating in the health care and road sectors (see The Action 7). It is noted that in the reference period no actions were taken to create centralized units for local or regional procurement. In interviews, the authorities acknowledge that there is no structure that would handle these processes. Accordingly, the Action was rated as **not implemented**.

The Action 18. Development of specific search engines in electronic procurement system for easier identification of bidding possibilities, as well as historical information, using different types of filters and online alert notifications (Quarter I, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Development of specific search engines in electronic procurement system for easier identification of bidding possibilities, as well as historical information, using different types of filters and online alert notifications	exceeding time limit	implemented with deficiencies	2 - medium impact

Filters and search engines have been developed by the economic operators in MTender system for easier identification of possibilities to participate in public procurement, as well as historical information regarding the award of public procurement contracts. MTender system, through electronic procurement platforms, offers the possibility of online alert notifications for those registered on these platforms, which facilitates the access of economic operators to the public procurement market and contributes to improving the competitive climate.

The system places at public’s disposal 3 basic filters: information about the buyer (name, identification number, type, region, type of activity), the procurement procedure (unique identification number, type, status, estimated value, CPV, etc.) and periods (period of publication, delivery, clarification, electronic auction, submission of offers, and award of the contract). However, the action was rated as **implemented with deficiencies**, since the use of these filters is not obvious, being difficult for beginners. Also, there is no filter for “economic operator” to make it possible to identify the contracts awarded to a certain economic operator. At the same time, in the absence of the Business Intelligence analysis that was provided in the Technical Concept of the system, neither reports in relation to historical procurement, nor the offers submitted by a certain economic operator to various procurement procedure scan be generated.

From the point of view of quality, the Action was qualified as having **major impact**, considering the contribution of electronic platforms in providing obvious filters and search engines. Consequently this helped to increase the degree of informational awareness of economic operators on opportunities in the public procurement market, reducing the time needed to find these opportunities, but also to encourage the involvement of citizens in the process of monitoring the way the public money is used.

The Action 19. Organizing trainings for the Public Procurement Agency and the National Agency for Complaints Settlements after harmonizing the legislation with the basic elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC) (Quarter I, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing trainings for the Public Procurement Agency and the National Agency for Complaints Settlements after harmonizing the legislation with the basic elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC)	in due time	implemented without deficiencies	2 - medium impact

According to the PPA activity report, during the reference period, PPA employees participated in a workshop on functioning of electronic public procurement system in the Republic of Kazakhstan (attended by 19 persons from PPA);

Also, NACS was afforded the opportunity to take part in the following trainings:

- Workshop titled “Decisions of the Court of Justice of the European Union in public procurement”;
- Workshop titled “Decisions of the Court of Justice of the European Union in public procurement”;
- Seminar to unify the administrative and jurisdictional practice organized by the National Council for Settlement of Claims of Romania;

Thus the Action was qualified as **implemented without deficiencies**. As for the qualitative assessment, the activity produced a **medium impact**. For the better impact, training on narrow subjects, focusing on the particularities of European directives, EU good practices, as well as training on uniform practices and cases in the claims system is needed.

The Action 20. Implementing the National training program after harmonizing the legislation with the basic elements of directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC)(Quarter II, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Implementing the National training program after harmonizing the legislation with the basic elements of directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC)	in due time	implemented with deficiencies	1- low impact

The PPA developed and published a Training plan for 2018¹⁵ which stipulated the organization of about 45 training seminars for different categories of beneficiaries, both experienced and inexperienced, including representatives of the contracting authorities, companies that provide water supply and sewerage services, economic operators, National Agency for Employment, officials from the Financial Inspection, officials from institutions subordinated to the General Directorate of Education, Culture, Youth and Sports in Chisinau. It should be mentioned that civil society representatives can also attend the seminars organized by the PPA. In 2018, PPA trained 5464 people.

The topics of the training seminars held by the PPA in 2018 were focused on general provisions related to the stages of public procurement process; procedures of procurement of goods, services and works used in the activity of license holders in water and sewage works sector; the responsibilities and rights of economic operators participating in the public procurement procedures; the procurement of food and catering services; the public procurement process; the public procurement system in the context of the new legislative provisions, etc.

The Action was qualified as **implemented with deficiencies**, since we do not currently have a national training program that would comprise the entire procurement system and ensure a continuous process of training the members of the working groups and procurement specialists in line with the needs of contracting authorities, according to the level of training of each official. The training process is not permanent and consists mainly of theoretical seminars on general topics. Also, local trainers were not prepared to provide the process of training for contracting authorities at local level, given the limited capabilities of the PPA. Therefore, the activity produced a **low impact**.

The Action 21. Developing instructions after harmonizing the legislation with the basic elements of directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC) (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Developing instructions after harmonizing the legislation with the basic elements of directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66/EC)	-	partially implemented	2- medium impact

In order to apply the amendments to law 131/2015 of 2018 for harmonization of legislation with the basic elements of the above mentioned European directives, the following instructions have been elaborated and published on the PPA web page:

15 <https://tender.gov.md/ro/content/plan-de-instruire>

1. Order No. 176 of 05.10.2018 on approving the Standard Documentation for the public procurement of works;
2. Order No. 175 of 05.10.2018 on approving the Standard Documentation for the public procurement of goods and services through request for price quotation;
3. Order No. 174 of 05.10.2018 on approving the Standard Documentation for the public procurement of services;
4. Order No. 173 of 05.10.2018 on approving the Standard Documentation for the public procurement of goods;
5. Video guide –on completion of award documentation;
6. Instructions on establishment of a COP procedure for procurement of goods/services in the SIA RSAP (MTender);
7. Instructions on establishment of a COP procedure for procurement of works in the SIA RSAP (MTender)
8. Instructions on establishment of an open tender procedure for the procurement of goods/ services in the SIA RSAP (MTender);
9. Instructions on establishment of an open tender procedure for the procurement of works in the SIA RSAP (MTender).

The Action was **partially implemented**, as it was found that a complete set of instructions that would include not only the theoretical part but also practical instructions regarding the use of the electronic system and the performance of different types of procurement procedures was not developed. From the point of view of quality, the Action produced a **medium impact**.

The Action 22. Introduction of Certification System for Procurement Specialists (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Introduction of Certification System for Procurement Specialists	–	not implemented	0 - lack of impact

According to law 131/2015, one of the responsibilities of the PPA is elaboration, development and implementation of mechanisms of certification of the employees of contracting authorities and procurement services providers, responsible for organizing, carrying out the public procurement procedures and awarding the public procurement contracts. However, it is noted that such a mechanism has not been developed. Therefore the Action is considered **not implemented**.

The Action 23. Ensuring harmonization of legislation with basic elements of Directives 2014/25 / EU and 92/13/EEC (amended by Directive 2007/66 /EC) (Quarter II, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring harmonization of legislation with basic elements of Directives 2014/25/EU and 92/13/EEC (amended by Directive 2007/66 / EC)	–	not implemented	0 - lack of impact

One of the outcomes expected from the Strategy is development of comprehensive procurement rules for the utilities sector, public service providers and other companies with public capital. It is noted that although the authorities have initiated some actions, the provisions of Directive 2014/25/EU regarding the procurement made by entities operating in water, energy, transport and postal services sectors have not yet been transposed into national law. In April 2018, the Ministry of Finance published for public consultations a draft law to amend and complete the law No. 131 of July 3, 2015 on public procurement in order to transpose the provisions of Directive No. 2014/25/EU of the European Parliament and Council of 26 February 2014. However, the draft law was not included on the agenda of the government and parliament for consideration and approval.

Only recently, on 21.08.2019, the Ministry of Finance held a working session on the aspects of the draft law that would govern procurement in the utilities sector¹⁶. Unless the amendments and completion of the legal framework are made, the license holders from the electricity, thermal energy, natural gas operators and providers of public water supply and sewerage services shall be guided by the Regulation approved by the Decision of the NARE Board of Directors No.24/2017 of 01.26.2017¹⁷, but also by their own internal regulations and law No. 246 of 23.11.2017 on state-owned enterprise and municipal enterprise. Currently, there is a draft law adopted in the first reading by Parliament on 5.07.2019¹⁸, which obliges these companies to make procurement in accordance with the law, being approved by the Government (meeting from 01.08.2019). As a result, the Action is **not implemented**.

16 <http://mf.gov.md/ro/content/ministerul-finan%C8%9Belor-desf%C4%83%C8%99urat-o-%C8%99edin%C8%9B%C4%83-de-lu-cru-privind-aspectele-proiectului-de-lege>

17 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=369950>

18 <http://parlament.md/%D0%97%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B4%D0%B0%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D1%8B%D0%B9%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D1%81%D1%81/Proiectedeacteleislative/tabid/61/LegislativId/4615/language/ro-RO/Default.aspx>

The Action 24. Ensuring the implementation of the standard form of the announcements regarding the utilities sectors including the same information as that approved by Implementation Regulations of the Commission(EU) 2015/1986 of November 11,2015 (Quarter III, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring the implementation of the standard form of the announcements regarding the utilities sectors including the same information as that approved by Implementation Regulations of the Commission (EU) 2015/1986 of November 11, 2015	-	not implemented	0 - lack of impact

Such forms were not developed owing to delays in adopting the legal framework governing the utilities sector (see details in Action 23).

The Action 25. Organization of training for the Public Procurement Agency and the National Agency for Complaints Settlements regarding the legal framework in the utilities sectors (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organization of training for the Public Procurement Agency and the National Agency for Complaints Settlements regarding the legal framework in the utilities sectors	-	not implemented	0 - lack of impact

In the utilities sector no trainings were organized for the PA and NACS, given the lack of a regulatory framework in this regard (see details in Action 23).

The Action 26. Organizing trainings for contracting authorities and economic operators on legal framework in the utilities sectors (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing trainings for contracting authorities and economic operators on legal framework in the utilities sectors	-	not implemented	0 - lack of impact

In the utilities sector no training was organized for the contracting authorities and economic operators, given the lack of a legal framework for the sector (see details in Action 23).

The Action 27. Developing instructions for contracting authorities on procurement procedures in the utilities sectors (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Developing instructions for contracting authorities on procurement procedures in the utilities sectors	–	not implemented	0 - lack of impact

Instructions for the contracting authorities regarding the procurement procedures in the utilities sectors have not been developed (see Action 23).

The Action 28. Ensuring harmonization of legislation with other mandatory and optional elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66 /EC) (Quarter II, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring harmonization of legislation with other mandatory and optional elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66 /EC)	–	partially implemented	2 – medium impact

Some of the Regulations necessary for the implementation of the primary legal framework have been approved only by the end of 2018, including the following:

- The Regulation on procurement of goods and services through the request for price quotation (RPQ), was approved by the Government Decision No.987 of 10.10.2018;
- The Regulation on periodic adjustment of the value of public procurement contracts with continuous execution, concluded for a term more than one year, approved by the Government Decision No.1129 of 21.11.2018;
- The technical concept of the Automated Informational System “State Register of Public Procurement” (MTender), approved by the Government Decision No.705 of 11.07.2018;
- The Regulation on accreditation of electronic procurement platforms within the Automated Informational System “State Register of Public Procurement” (MTender), approved by Government Decision No.985 of 10.10.2018;
- The Regulation on maintenance of the State Register of public procurement formed by the Automated Informational System “The State Register of Public Procurement” (MTender), approved by the Government Decision No.986 of 10.10.2018;
- The standard documentation for carrying out public procurement of goods, approved by the Order of the Ministry of Finance No.173 from 05.10.2018;

- The standard documentation for carrying out public procurement of services, approved by the Order of the Ministry of Finance No.174 of 05.10.2018;
- The standard documentation for carrying out public procurement of goods and services through the request for price quotation, approved by the Order of the Ministry of Finance No. 175 of 05.10.2018;
- The standard documentation for carrying out public procurement of works, approved by the Order of the Ministry of Finance No.176 from 05.10.2018;
- The standard form of the European Single Procurement Document, approved by the Order of the Ministry of Finance No.177 of 09.10.2018.

However, the Action has been classified as **partially implemented**, as the secondary regulatory framework has not been fully adjusted according to the amendments to the Law 131/2015 and, as a result, this generates inconsistencies and constraints in the procurement process by the authorities and also economic operators. Also, within monitoring process PPA identifies irregularities and deviations, which are also a consequence of inconsistencies in the legislation. (see The Action 1).

Thus, the Action produced a **medium impact**, considering that the problems generated as a result of the contradictory provisions of the primary and secondary legislation that are not timely adjusted to the primary law.

The Action 29. Organizing a training for the Public Procurement Agency and the National Agency for Complaints Settlements for the amendments entered into force after harmonizing the legislation with other mandatory and optional elements of Directives 2014/24/EU and 89/665 /EEC (amended by Directive 2007/66 / EC) (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing a training for the Public Procurement Agency and the National Agency for Complaints Settlements for the amendments entered into force after harmonizing the legislation with other mandatory and optional elements of Directives 2014/24/EU and 89/665 /EEC (amended by Directive 2007/66 / EC)	in due time	implemented with deficiencies	2 – medium impact

According to the activity report of PPA, during the reference period (December 5-7, 2018), the employees of PPA took part in the following training: The workshop on the topic “Transparent and efficient procurement”, phase IV, organized in collaboration with the Ministry of Finance and the Ministry of Economic Development and Trade of Ukraine (22 people).

A training for NACS was held during the reference period: „Workshop on the topic „Procedural equity and oral hearings. The trials“- October 8-9, 2018;

The Action was classified as **implemented with deficiencies**, since the number of trainings is a small one if taking into consideration the staff of 2 institutions and complexity of procurement process and that of harmonization with European acquis. In due times of quality, the Action was rated as having a **medium impact**. In order to have a major impact, trainings on narrower topics regarding the award of public procurement contracts, focusing on the particularities of European directives, EU good practices, as well as trainings on topics that address uniform practices and cases in the system of claims are needed.

The Action 30. Organizing trainings for contracting authorities and economic operators on the amendments in legislation entered into force after harmonization with other mandatory and optional elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66 /EC) (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing trainings for contracting authorities and economic operators on the amendments in legislation entered into force after harmonization with other mandatory and optional elements of Directives 2014/24/EU and 89/665/EEC (amended by Directive 2007/66 /EC)	in due time	implemented without deficiencies	2 – medium impact

Taking into account the fact that the PPA activity report for 2018 does not include the dates of the organization of training seminars, the information will be presented for the year 2018. Thus, PPA has carried out 135 training and information activities developed for both contracting authorities, economic operators and for civil society with 5464 participants registered. In 2018, PPA held the following seminars:

- 43 training seminars on the topic “General provisions regarding the stages of the public procurement process in the Republic of Moldova” - 1763 people (including 17 seminars in districts);
- 2 seminars for economic operators, on the topic “Responsibilities and rights of the economic operators participating in the public procurement procedure” - 58 participants;
- 28 informational seminars on the topic “New legislative amendments related to public procurement, according to the Law No. 169 of 26.07.2018, which entered into force on October 1, 2018 ”- 1004 participants (including 16 seminars in districts);

- 8 training seminars held in collaboration with other institutions such as:
 - Ministry of Finance, NAC, Court of Accounts and Financial Inspection - 3 training courses for internal auditors within the CPA and LPA of the second level, as well as for the internal auditors holding qualification certificates in the field, on the topic "General aspects of public procurement and management of corruption risks. Collaboration of internal auditors with other insurance providers". (78 internal auditors from the public sector).
 - The General Directorate of Education, Culture, Youth and Sports in the municipality of Chisinau, the Institute of Standardization of Moldova and the National Agency for Food Safety; there were held 2 training seminars on the topic "Procurement of food products and catering services" (102 participants)

Thus, the Action is considered to be **implemented without any deficiencies**. In due times of quality, the Action has been classified as having a **medium impact** due to the difficulties of applying the new legislative provisions, in particular the use of the ESPD (European Single Procurement Document) form, the use of electronic auction tool, the application of new award criteria introduced in Law 131/2015 and the mode of submission of tenders in the framework of public procurement procedures.

The Action 31. Elaboration of instructions for contracting authorities after harmonizing the legislation with other mandatory and optional elements of Directives 2014/24/EU and 89/665 / EEC (amended by Directive 2007/66/EC) (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of instructions for contracting authorities after harmonizing the legislation with other mandatory and optional elements of Directives 2014/24/EU and 89/665 / EEC (amended by Directive 2007/66/EC)	-	partially implemented	2 - medium impact

See Action 21.

The Action 32. Development of technical facilities of electronic procurement system to ensure electronic communication between the contracting authorities and bidders during all the stages of procurement procedures (Quarter I, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Development of technical facilities of electronic procurement system to ensure electronic communication between the contracting authorities and bidders during all the stages of procurement procedures	in due time	implemented with deficiencies	3 - major impact

The technical facilities to ensure the communication in the procurement system were developed by introducing a clarification section in MTender, where EOs may put their questions to CA clarifying the issues regarding award documentation and the technical specifications. Thus, these questions are addressed in a transparent manner, and responses to the details inquiries can be viewed by all the participants in public procurement procedures. An important role for development of electronic system is assigned to the EPP, which through the developed functionalities ensures increased possibilities for participation of the EO in public procurement procedures.

The Action has been classified as **implemented with deficiencies**, given that the SIA RSAP MTender does not fully ensure the conduct of public procurement only by electronic means, starting from the planning stage to the stage of procurement contract management and amendments to the contract. Also, during the reference period, several technical functionalities and necessary adjustments were implemented (integration of “claims” component, availability of all 4 award criteria according to Law 131/2015, functionality for uploading additional documents of the offer after selecting the winning bid, etc.). However, the system has a number of shortcomings related to its functionalities as provided by the Technical Concept, but also inconsistencies with the primary legal framework and regulatory framework –the secondary one, which are analyzed in the document elaborated by IDIS „Viitorul” „Constraints in the use MTender electronic public procurement system”. Despite all existing shortcomings, the introduction of MTender electronic system has made a **major impact** on the procurement system, which is mainly aimed to increase transparency and access to data on procurement, to build more confidence of the private sector in public procurement, to make the activity of contracting authorities more effective, etc.

The Action 33. Elaboration of the special modules of the electronic procurement system for organizing electronic auctions, initiating and operating dynamic procurement systems and electronic catalogs (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of the special modules of the electronic procurement system for organizing electronic auctions, initiating and operating dynamic procurement systems and electronic catalogs	-	partially implemented	2 – medium impact

While the **electronic auction** is used in MTender electronic procurement system, either optional or obligatory depending on the procedure (obligatory for the two procedures), it does not currently have the functions developed for the initiation and operation of dynamic procurement systems and electronic catalogs.

The electronic auction in the electronic system shall be conducted as follows:

- following the principle of open outcry auction;
- the participants in the procurement procedure can reduce the price of the offer during 3 rounds (according to the minimum step established by the CA);
- the system prioritizes bids in ascending order, the bidder with the lowest price having priority to bid;
- at the end of the electronic auction MTender automatically classifies the offers.

The Action is considered **partially implemented**, since the modules for dynamic procurement systems and electronic catalogs are not elaborated, and the **impact is medium**, due to the lack of possibility to use other technical tools.

Stage 3.

Concessions for all contracting authorities (Quarter II, 2018 - Quarter IV, 2018)

The Action 34. Ensuring the harmonization of legislation with mandatory and optional elements of Directives 2014/23/EU and 89/665/EEC (amended by Directive 2007/66/EC and Directive 2014/23/EU) (Quarter II, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring the harmonization of legislation with mandatory and optional elements of Directives 2014/23/EU and 89/665/EEC (amended by Directive 2007/66/EC and Directive 2014/23/EU)	-	partially implemented	1 - low impact

The harmonization of the legislation with the obligatory and optional elements of the Directives 2014/23/EU took place through the adoption of the **Law No. 121 of 05.07.2018 on works concessions and service concessions**¹⁹, published in the OM (Official Monitor) No. 309-320/470 from 17.08.2018 with the date of entry into force 17.02.2019. As for remedial measures, **Directive 2007/66/EC** in the part relating to the enhancement of efficiency of the remedies

¹⁹ http://www.legis.md/cautare/getResults?doc_id=105485&lang=ro

regarding the award of public procurement contracts, in the law No. 121/2018, according to art. 5, p. (8), the competence of the NACS is to examine the claims regarding the award of concessions, and chapter VI „Settlement of disputes” is practically identical to that in the law No. 131/2015.

The Action is considered **partially implemented**, as the regulations on the modes of organization of the procedures for concession awarding through public tender/competitive dialogue, the regulations on activity of the concession award commission, etc. have not been approved. The result is **low impact**, because the legal framework is not fully harmonized.

The Action 35. Clarification of the role of the Ministry of Economy, the National Council for Public-Private Partnership, the Ministry of Finance and the Public Procurement Agency in concession contracts (Quarter IV, 2017)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Clarification of the role of the Ministry of Economy, the National Council for the public-private partnership, the Ministry of Finance and the Public Procurement Agency in concession contracts	–	not implemented	0 – lack of impact

The role sharing between the Ministry of Economy, the National Council for public-private partnership, the Ministry of Finance and the PPA has not been identified. The Action is considered **not implemented**.

The Action 36. Organizing the training for the Public Procurement Agency and the National Agency for Complaints Settlements regarding the award of concession contracts (Quarter III, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing the training for the Public Procurement Agency and the National Agency for Complaints Settlements regarding the award of concession contracts	–	partially implemented	1 - low impact

According to data provided by NACS, there was organized a workshop: „Unification of administrative and jurisdictional practice regarding remedies and appeals in the award of public

procurement contracts, sectoral contracts and works concession and service concession contracts, as well as for the organization and functioning of NCSC". PPA had no trainings on the subject of awarding concession contracts.

The Action was **partially implemented**, because not all the managers were trained on the award of concession contracts, and in due times of quality it has a **low impact**.

The Action 37. Ensuring implementation of the standard form of the announcements regarding the concession contracts, which include the same information as that approved by Implementation Regulations of the Commission (EU) 2015/1986 of November 11, 2015 (Quarter III, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring implementation of the standard form of the announcements regarding the concession contracts, which include the same information as that approved by Implementation Regulations of the Commission (EU) 2015/1986 of November 11, 2015	-	not implemented	0 – lack of impact

The standard form of the announcements regarding the concession contracts, which include the same information as that approved by Implementation Regulations of the Commission (EU) 2015/1986 of November 11, 2015 was not elaborated and implemented. Respectively, the Action is **not implemented**.

The Action 38. Organizing an information campaign on the new rules regarding the award of concession contracts (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing an information campaign on the new rules regarding the award of concession contracts	-	not implemented	0 – lack of impact

Information campaigns on the new rules regarding the award of concession contracts were not organized and carried out. Accordingly, the Action was assessed as **not implemented**.

The Action 39. Implementation of the National Training Program based on the curriculum adapted for the concession contracts (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Implementation of the National Training Program based on the curriculum adapted for the concession contracts	–	not implemented	0 - lack of impact

It is stated that the National Training Program based on the curriculum adapted for the concession contracts has not been developed. Therefore, the Action is qualified as **not implemented**.

The Action 40. Elaboration of instructions for concession contracts (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of instructions for concession contracts	–	not implemented	0 - lack of impact

The instructions for concession contracts have not been developed. Therefore, the Action is **not implemented**.

Stage 4.

Service and works contracts for all contracting authorities in the utilities sector
(Quarter II, 2018 – Quarter IV, 2018)

The Action 41. Ensuring the harmonization of legislation with other mandatory and optional elements of Directives 2014/25/EU and 92/13/EEC (amended by Directive 2007/66/EC) (Quarter II 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Ensuring the harmonization of legislation with other mandatory and optional elements of Directives 2014/25/EU and 92/13/EEC (amended by Directive 2007/66/EC)	–	not implemented	0 - lack of impact

The national legislation was not harmonized with the elements of the directives in utilities sector, the Action being classified as **not implemented**. See Action 23.

The Action 42. Organizing the training for the Public Procurement Agency and the National Agency for Complaints Settlements regarding the amendments operated after the harmonization of the legislation with other obligatory and optional elements of the directives 2014/25/EU and 92/13/EEC (amended by the Directive 2007/66 /EC) (Quarter III, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing the training for the Public Procurement Agency and the National Agency for Complaints Settlements regarding the amendments operated after the harmonization of the legislation with other obligatory and optional elements of the directives 2014/25/EU and 92/13/EEC (amended by the Directive 2007/66 /EC)	-	not implemented	0 - lack of impact

The trainings for PPA and NACS regarding the utilities sector were not organized, due to the lack of legal framework, the Action being qualified as **not implemented**. See Action 23.

The Action 43. Organizing trainings for contracting authorities and economic operators regarding the amendments operated after harmonization of legislation with other mandatory and optional elements of Directives 2014/25/EU and 92/13/EEC (amended by Directive 2007/66/EC) (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Organizing trainings for contracting authorities and economic operators regarding the amendments operated after harmonization of legislation with other mandatory and optional elements of Directives 2014/25/EU and 92/13/EEC (amended by Directive 2007/66/EC)	-	not implemented	0 - lack of impact

For the lack of legal framework, no trainings on utilities have been organized for the authorities and economic operators, the Action being qualified as **not implemented**. See Action 23.

The Action 44. Elaboration of instructions for contracting authorities regarding the amendments operated after harmonization of legislation with other obligatory and optional elements of the Directives 2014/25/EU and 92/13/EEC (amended by the Directive 2007/66/EC) (Quarter IV, 2018)

The action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of instructions for contracting authorities regarding the amendments operated after harmonization of legislation with other obligatory and optional elements of the Directives 2014/25/EU and 92/13/EEC (amended by the Directive 2007/66/EC)	-	not implemented	0 - lack of impact

For the lack of legal framework, no instructions on utilities sector have been organized, the Action being qualified as **not implemented**. See Action 23.

Final conclusions and policy recommendations

The success of the reform depends on the implementation of the fundamental principles governing the awarding of public procurement contracts - free competition, transparency, efficient use of public money, equal treatment, and mutual recognition. This includes, first and foremost, ensuring full compliance with the basic standards governing contract award and then gradually harmonizing with EU public procurement directives.

As a result of the Actions taken, we attest a high degree of harmonization of the national legislation, especially regarding the Directive 2014/24/EU on public procurement. At the same time, it is necessary to mention the implementation of electronic procurement, which is one of the key components of the reform program in this field. The SIA RSAP MTender is an effective tool for increasing the transparency and efficiency of public procurement procedures. With the amendments which entered in force in October 2018, all public procurement procedures are performed electronically, which has led to the reduction of the administrative burden for EO and to substantial savings of time, funds and administrative capacity. At the same time, the process of developing electronic procurement was carried on with deficiencies due to reduced capacity of the system and impossibility of following the procurement procedures in full from procurement planning to contract signing and its management.

The insufficient development of CA capacities in public procurement is noted. The lack of a regulation regarding the certified specialists represents a vulnerability of the public procurement process, and the centralized procurement process was not developed during the reference period.

The main objective of a review system was achieved by ensuring the functionality of NACS as a specialized body for examining and settlement of claims in the interest of all parties, which provides the offended bidders with possibilities of remedy.

It is important to mention that the public procurement reform requires an adequate regulatory framework, through further developments and adjustments of legislation, in accordance with the provisions of the Moldova-EU Association Agreement, especially regarding the utilities sector and concession contracts, which at the moment are found to lack necessary efforts to harmonize them.

The success of the public procurement reform and development depends on a strong organization and management to organize the policy development and provision of personnel needed to manage a set of key public procurement functions. We note the lack of cooperation and a clear and effective dialogue for implementation of all the Actions set forth by the strategy.

Policy recommendations

- Given that the Action Plan expired in 2018 and the second The Action Plan for 2019-2020 has not been drawn up yet, it is necessary to review and ensure implementation of The Actions that have been improperly or partially implemented or were rated as unaccomplished. Eventually, outstanding or unaccomplished. The Actions can be included into the Action plan for 2020.
- Sharing responsibilities within the implementation of the Strategy for the development of public procurement system, with the precise specification of each institution involved. Such collaboration among the Ministry of Finance, PPA, NACS, EPP, civil society and other important actors would contribute to the implementation of the strategy and outstanding or unaccomplished The Actions.
- Development of electronic procurement by ensuring full functionality of electronic procurement system, including by adding the possibility of conducting public procurement through other types of procedures (e.g. competitive dialogue, restricted bidding, etc.), as well as ensuring the use of instruments provided by law (e.g.: framework agreement, electronic catalog etc.). At the same time, it is necessary to ensure functioning of electronic system at all the stages of procurement process, including contract management functionality and Business Intelligence module.
- Developing/adjusting the legal framework and identifying an efficient mechanism for monitoring the proper execution of procurement contracts at the level of each contracting authority that would reflect the efficiency of the last stage of procurement process by ensuring the compliance with the efficiency criteria.
- Harmonization of the secondary regulatory framework with the primary legislation as regards classic procurement. It is imperative to adopt regulations on carrying out the public procurement procedures provided by law No. 131/2015 to eliminate the current divergences between primary and secondary legislation (e.g. *the Regulation on public procurement of works, the Regulation on the activity of the working group for procurement, the Regulation on public procurement by means of negotiation procedure, the Regulation on framework agreement*). At the same time, it is important to carry out the Action on revision of standard form of European Single Procurement Document.
- Development by the PPA a program of certification for CA employees responsible for organizing, carrying out public procurement procedures and awarding public procurement contracts, including developing academic partnerships with the profile institutions.
- Planning, organizing and conducting training seminars at the local level to raise the competence and professional abilities of public procurement specialists of contracting authorities in localities, both theoretically and practically, including by developing the functions of providing methodological support in PPA.
- Elaboration and adoption legislation on works concessions and service concessions in order to ensure the implementation and functionality of primary legislation.

- Development of centralized procurement by creating centralized procurement units in certain areas according to the analysis of opportunities (e.g.: *procurement of information technology, regional development, food procurement, etc.*) and setting up local/district procurement, particularly in case of food stuff procurement.
- Alignment of legislation with the mandatory elements of Directive 2014/23/EU in the utilities sector in order to eliminate the main problem of the companies that carry out the activities in the field of transport, water supply and sewerage, thermal energy and so on, and adoption of secondary legislation on concession contracts.

