

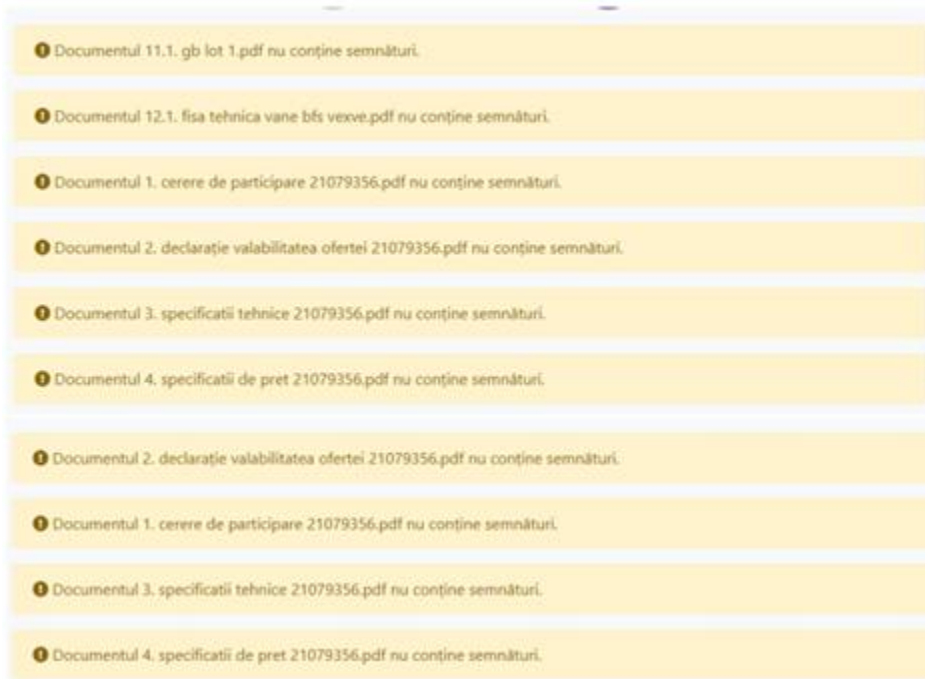
## Electronic signature - a subject of divergence in sectoral procurement

By ANSC Decision [No. 03D-461-23 of July 17, 2023](#), ANSC has established a precedent according to which in sectoral procurement it is not mandatory to electronically sign the offer. In this article we will analyze the legal implications of that decision.

The ANSC decision was issued on a challenge to the results of procurement procedure no. [ocds-b3wdp1-MD-1682594558944](#) of April 27, 2023 concerning "Purchase of valves, triple eccentric valves". In this case, the contracting entity - "Termoelectrica" SA indicated in the contract notice at item 20 that the following documents were to be electronically signed:

Nr. d/o	Descrierea criteriului/cerinței	Mod de demonstrare a îndeplinirii criteriului/cerinței:	Nivelul minim/Obligativitatea
1	Cerere de participare	<i>Original, conform formularului atașat, semnat electronic</i>	Obligatoriu
2	Declarație privind valabilitatea ofertei	<i>Original, conform formularului atașat, semnat electronic</i>	Obligatoriu
3	Specificații de preț	<i>Original, conform formularului atașat, semnat electronic</i>	Obligatoriu
4	Specificații tehnice	<i>Original, conform formularului atașat, semnat electronic</i>	Obligatoriu

The tenderer "Techno Test" Ltd. submitted those documents, but "despite the fact that they contain the holographic signature and wet stamp of the contractor, as a result of verification through the portal of the Government Electronic Signature Service MSign ([www.msign.gov.md](http://www.msign.gov.md)), they are not electronically signed":



However, the contracting entity awarded the contract to "Techno Test" Ltd. This decision was challenged by another contractor participating in the tender procedure, which pointed out the legal invalidity of the winning tender.

ANSC rejected the appeal for the following reasons:

În cele din urmă, Agenția va reține raționamentele entității contractante care a apreciat omisiunea ofertantului declarat câștigător ca fiind una ce nu afectează angajamentele asumate de către „Techno Test” SRL, iar în condițiile în care Legea nr. 74/2020 nu impune expres utilizarea SIA „RSAP”, respectiv, și toate reglementările prevăzute în acest sens în legătură cu acesta, fiind impusă doar aplicarea mijloacelor electronice de comunicare fără specificarea expresă a acestora, aplicabile sunt prevederile art. 316 alin. (2) din Codul Civil al Republicii Moldova nr. 1107 din 06.06.2002, care prevede că forma este o condiție de valabilitate a actului juridic numai în cazurile expres prevăzute de lege.

Prin urmare, reieșind din cele menționate, Agenția va respinge pretențiile contestatorului în măsura în care pretențiile acestuia privind obligativitatea formei electronice actului juridic este dedusă din propriile interpretări ale cadului normativ în vigoare, inclusiv din interpretarea conținutului unor decizii anterioare ale Agenției prin care a fost constatat că aplicarea semnăturii electronice reprezintă o condiție de validitate a documentului electronic în circuitul civil, apreciere ce nu poate fi negată, însă contestatorul nu a ținut cont de prevederile legale ce reglementează în cazul

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achizițiile sectoriale, inclusiv principiile de reglementare a acestora, la caz, fiind relevant principiul proporționalității, or entitatea contractantă este obligată să-l aplice, cu atât mai mult cu cât oferta a cărei legalitate se contestă este și cea mai avantajoasă economic.

Thus, the ANSC based its decision on 3 findings:

1. The Regulation on how to keep the State Register of Public Procurement formed by the AIS "AMPS" does not apply to sectoral procurement regulated by Law No 74/2020 because the Law does not expressly provide for the use of the AIS "AMPS".
2. Law No 74/2020 does not expressly require the use of electronic signatures
3. Although the contracting entity has made the use of electronic signature mandatory in the contract notice, disqualification of a tender for non-compliance with this requirement would be disproportionate.

We consider that findings 1 and 3 are wrong and the second was misapplied.

1. ANSC considered that since Law no. 74/2020 does not make the use of the "RSAP" (MTender) CIS mandatory, the Regulation on how to keep the State Register of Public Procurement formed by the "RSAP" CIS (which in paragraph 121 provides for the mandatory use of electronic signature) does not apply to sectoral procurement regulated by Law no. 74/2020, implicitly also to any other procedure whose regulation does not make MTender mandatory.

This approach is open to criticism, as the Regulation mentions and describes the operation and use of MTender, and its use cannot be made in a legal vacuum. That Regulation does not state that it is applicable only to purchases governed by Law No 131/2015. It was adopted

in accordance with Law No 131/2015 and for its transposition into practice, however its use is in no way limited to procurements under Law No 131/2015 only.

And here a rhetorical question arises: if a procuring entity decides to conduct a sectoral procurement procedure via MTender, then what rules govern the use of the MTender system? Is it not the Regulation mentioned?

Art. 2 of the Regulation states: "*This Regulation lays down rules on how to keep the State Register of Public Procurement (hereinafter - Register) as a result of the operation of the Automated Information System "State Register of Public Procurement" (MTender) (hereinafter - SIA RSAP (MTender)) in the process of organizing and conducting public procurement procedures, minimum requirements towards the use of means of protection when entering, storing, processing and accessing information on public procurement procedures and the adjacent one, as well as minimum requirements towards technical and program equipment and towards users of SIA RSAP MTender.*"

Although it is indicated that the Regulation lays down the rules for keeping MTender in the process of conducting public procurement procedures, the term used here for "public procurement" does not only refer to procurement under Law No 131/2015, but has a broader meaning and refers to procurement that is in the public interest.

For example, from July 1, 2023, part of the low-value procurement will also be carried out by MTender under the Low Value Procurement Regulation. Paradoxically, low-value sectoral procurements falling under the Small Value Procurement Regulation must necessarily be conducted through MTender, whereas higher-value procurements can be conducted anywhere the contracting entity wishes. Thus, the applicable regulations impose much greater transparency on low-value sectoral procurement than on higher-value procurement, which makes no sense. According to the same interpretation, a low-value utility procurement through MTender requires tenders to be signed electronically, whereas a utility tender under Law 74/2020 would not impose such a requirement and this would also be illogical.

And if at some point other procurement procedures will be carried out by MTender, then this Regulation would also apply to them (e.g. procurement organized by international organizations, diplomatic missions or others that are exempted from Law no. 131/2015 under Art. 5 para. (1).

2. The second finding of the ANSC on which it bases its decision is that Law No 74/2020 does not make the use of electronic signatures mandatory. Hence the conclusion that electronic signatures are not mandatory in sectoral procurement, even if carried out by MTender. This conclusion is open to criticism.

ANSC bases its decision on Article 316 para. (2) of the Civil Code of the Republic of Moldova which states that "Form is a condition of validity of the legal act only in cases expressly provided by **law**". However, if we are to apply the given rule in the same way as ANSC, then it would come out that the application of electronic signature is not required in public procurement regulated by Law no. 131/2015 either. **However, just as Law no. 74/2020**

## **does not say anything about the obligation to sign the offer electronically, neither does Law no. 131/2015.**

As an example we offer the ANSC's reasoning in a procurement case regulated by Law no. 131/2015 where a bidder did not electronically sign the bid. In [Decision No. 03D-24-24 of 19 January 2024](#) ANSC indicated that in procurement regulated by Law No. 131/2015 failure to sign the offer must lead to its rejection:

Astfel, la soluționarea contestației, Agenția va avea în vedere prevederile art. 33 alin. (14) lit. i) din Legea nr. 131/2015, care reglementează obligativitatea garantării ca instrumentele și dispozitivele utilizate pentru comunicarea prin mijloace electronice să asigure depunerea ofertelor electronice prin aplicarea semnăturii electronice, iar în acest sens este de menționat că SIA „RSAP” asigură posibilitatea semnării electronice a ofertelor.

Totodată, în conformitate cu pct. 105 din Regulamentul privind modul de ținere a Registrului de stat al achizițiilor publice format de Sistemul informațional automatizat „Registrul de stat al achizițiilor publice” (MTender), aprobat prin Hotărârea Guvernului nr. 986 din 10.10.2018, depunerea ofertei finale este precedată în mod obligatoriu de semnarea electronică și criptarea acesteia, iar potrivit pct. 121 din același regulament toate documentele ofertelor încărcate, precum și contractele rezultate în urma procedurii de achiziție publică urmează a fi semnate digital, utilizând semnătura electronică avansată calificată. Prin urmare, având în vedere faptul că procedura de achiziție publică din speță s-a inițiat prin intermediul SIA „RSAP” (MTender), semnarea electronică a ofertelor reprezintă mecanismul prin care este garantată respectarea condiției de validitate a documentelor depuse de ofertanți.

În acest context, Agenția apreciază drept relevante dispozițiile art. 65 alin. (4) din Legea nr. 131/2015, potrivit căruia prezentarea ofertei presupune depunerea într-un set comun a propunerii tehnice, a propunerii financiare, a DUAE și, după caz, a garanției pentru ofertă, totodată alin. (5) din același articol, prevede că oferta, scrisă și semnată, se prezintă în conformitate cu cerințele expuse în documentația de atribuire utilizând SIA „RSAP”.

De asemenea, conform pct. 64 din Documentația standard pentru realizarea achizițiilor publice de lucrări, aprobată prin Ordinul Ministrului Finanțelor nr. 69 din 07.05.2021, la caz documentația de atribuire, prevede că, oferta scrisă și semnată în format electronic, de către administratorul companiei indicat în Extrasul Registrului de Stat al persoanelor juridice sau de către persoana împuternicită, atât și în cazul delegării sau împuternicirii persoanei, la ofertă se anexează actul/documentul de împuternicire și se prezintă conform cerințelor expuse în anexa nr. 2, în conformitate cu instrumentele existente în SIA RSAP, cu excepția cazurilor prevăzute la art. 33 alin. (7) și alin. (11) din Legea nr. 131/2015 privind achizițiile publice..

Here we will analyze each legal norm to which the ANSC refers:

First, reference is made to Article 33(1). (14) letter i) of Law no. 131/2015. It states that: *"The tools and devices for the electronic receipt of tenders, requests to participate, as well as plans and projects for calls for tenders, must guarantee, by appropriate technical means and procedures, at least that: i) the electronic signature is applied to electronic tenders."* This requirement is in respect of tools and devices for the receipt of tenders. They must ensure that electronic signatures are affixed to tenders. This requirement is not respected by MTender, but any document, including those not signed electronically, can be submitted,

which has also led to several procedures where tenders were not signed electronically and the facts given have come under scrutiny by the ANSC. If the given rule had been respected, such cases would not have reached the ANSC because unsigned bids could not have been submitted electronically. At the same time, this rule does not impose a requirement as to the form of the offer, it only regulates the requirements with regard to devices.

The legislator probably had a legitimate expectation in 2015 when it passed this law that when the electronic procurement platform is created by the Ministry of Finance, it will automatically not accept the submission of a tender/document that is not electronically signed, nor did it include any other special provision in the law requiring electronic signature of tenders.

At the same time, **the same legal provision exists in Law no. 74/2020 in Art. 32 para. (8) letter i):** *"The instruments and devices for the electronic receipt of tenders, requests to participate, as well as plans and projects for contests for solutions, must guarantee, by appropriate technical means and procedures, at least that: i) the electronic signature is applied to electronic tenders."*

Respectively, even if one were to accept the interpretation that Art. 33 para. (14) lit. i) of Law no. 131/2015 requires the electronic signature of tenders in the context of the procurement covered by that law, then exactly the same interpretation would be attributed to Art. 32 para. (8) (i) Law no. 74/2020 in relation to tenders in sectoral procurement. Therefore Art. 33 para. (14) (i) of Law No 131/2015 cannot be the basis for a differentiated approach in public procurement with regard to the electronic signature of tenders.

Further on in the Decision under review, the ANSC refers to the Regulation on how to keep the State Register of Public Procurement formed by the AIS "RSAP", which also imposes the obligation of electronic signature of the offer. As indicated above, the given Regulation applies to all procurements carried out through MTender not only those under Law no. 131/2015.

Next, the ANSC refers to Article 65 para. (4) and (5) of Law no. 131/2015, which states: *"(4) The submission of the bid requires the submission in a common set of the technical proposal, the financial proposal, the DUAE and, if applicable, the bid guarantee. (5) The offer, written and signed, shall be submitted in accordance with the requirements set out in the tender documentation using the "RSAP" AIS, except in the cases provided for in art.33 para. (7) and (11). The contracting authority shall issue to the contractor a receipt indicating the date and time of receipt of the tender or confirming receipt of the tender in cases where the tender has been submitted by electronic means."*

Here too there is no mention of electronic signatures, the legislator is simply pointing to standard documentation. In the case in point, point 64 of the standard tender documentation, approved by Order of the Ministry of Finance 69/2021, does indeed provide for the obligation to sign tenders electronically, but this obligation, as provided for in the standard documentation, is in no way superior to the obligation in the contract notice to sign tenders electronically. Both are part of the tender documentation, which is equally mandatory in the case of procurement covered by Law No 131/2015 and sectoral

procurement covered by Law No 74/2020 (see Art. 55 para. (1), art. 69 par. (3), Art. 75 para. (1)). (At the same time, as the contract notice is not a law, the standard documentation is not a law, it is a normative act subject to the law. But Art. 316 para. (2) of the Civil Code, to which the ANSC refers, indicates that the condition for the validity of the legal act must be **expressly** laid down in the **law in** order to be effective. If the ANSC's analysis is to be applied consistently, then the provisions of the tender documents cannot make the use of an electronic signature compulsory as a formal condition for the tender.

The contracting authority further refers to the Law no. 91/2014 on electronic signature and electronic document, which has been repealed in 2022 under Law 124 of May 19, 2022, published in the Official Gazette 70-176/10.06.22 art.317; in force 10.12.22. A repealed rule has been applied here.

And the last provision of [Decision No. 03D-24-24 of 19 January 2024](#) to which reference is made for the finding that an unsigned electronic tender cannot be admitted to a procurement under Law No. 131/2015 is Article 1, which describes the notion of tender: "*tender - legal act by which the contractor expresses its willingness to commit itself legally to a public procurement contract. The tender includes the financial proposal, the technical proposal, as well as other documents set out in the tender documentation;*" And here we see that it is not indicated that the use of electronic signature is mandatory for the validity of the tender.

Thus, if we compare these two cases we see that the ANSC's approach in them is different. Although in the case there are two procurements regulated by different laws (Law no. 74/2020 vs. Law no. 131/2015), the discrimination applied to the way of signing the offer in them is unjustified as neither of these laws requires the use of electronic signature, and both were carried out in MTender and therefore through the Regulation on the way of keeping the State Register of Public Procurement formed by the SIA "RSAP".

The ANSC's third finding in Decision [No 03D-461-23 of 17 July 2023](#) is that although the contracting entity in the contract notice made the use of electronic signature mandatory, disqualifying a tender for non-compliance with this requirement would be a disproportionate measure. This approach is open to criticism. First of all, it is contrary to the Regulation on how to keep the State Register of Public Procurement formed by the "RSAP" CIS, which, as explained above, also applies to sectoral procurement carried out through Mtender, and which makes the use of electronic signatures compulsory.

In order to correctly apply the principle of proportionality, an analysis of the legal effects of not electronically signing a tender in sectoral procurement through MTender had to be made. This was not done by the ANSC in that decision: it was only found that disqualification would be disproportionate, without an analysis to that effect.

First of all, we draw attention to the following nuance - the issue under consideration is not the form of the tender (which is after all an electronic document) but **the signature affixed to it**. The act to be examined is whether the signature affixed to that offer can be accepted.

Article 316 of the Civil Code provides that "(1) The legal act may be concluded verbally, in writing or in authentic form." We stress that the signature in essence cannot be in verbal

form. And Art. 317 para. (1) of the Civil Code provides that "(1) A legal act for which the law or the agreement of the parties does not establish written or authentic form may be concluded orally." In this case, it was the contracting entity's wish that tenders be signed electronically. And by not contesting the tender documentation, "Techno Test" SRL implicitly accepted this requirement.

Art. 318 para. (1) of the Civil Code provides that "*The written/authentic legal act has an electronic form if it is contained in an electronic document that meets the conditions of the law.*" Para. (3) of the same article provides: "*The written legal act is concluded in electronic form if it is signed with the qualified advanced electronic signature of the person concluding the act, if the agreement of the parties or the law does not provide for the requirement to use another type of electronic signature.*"

In addition to this rule comes Article 319 para. (1) and (2) which provide: "*(1) Where the legal act is concluded by any electronic means and the person has not concluded it by means of an electronic signature as referred to in Article 318 para. (3), the consent of that person shall be presumed to be that person's until such time as he or she disputes its existence. (2) A person may not challenge the existence of consent solely on the ground that it was given by electronic means if he has consented to the use of that electronic means by a legal act concluded previously.*" The contracting entity has not transmitted prior to the submission of tenders by electronic means the information that it accepts the use of tenders signed other than by electronic signature. Therefore the provisions of Art. 319 para. (1) and (2) of the Civil Code are not applicable.

Law No 124/2022 on electronic identification and trust services regulates in Article 20 only two types of electronic signatures - advanced and qualified. The qualified signature is the one that can be verified through the MSign platform and meets the requirements of Art. 24 of Law 124/2022. The requirements for advanced signatures are set out in Art. 23 and include, among others, the following: they "*are created using electronic signature creation data or using electronic seal creation data, which the signatory or, respectively, the creator of the electronic seal can use with an increased level of confidence, exclusively under his/her control; they are linked to the data to which they relate, so that any subsequent changes to this data can be detected.*"

["Techno Test" Ltd.'s bid](#) for procedure no. [ocds-b3wdp1-MD-1682594558944](#) is a scanned document that was created, probably but not for sure, by document scanning software. And the scanned signature on it does not meet the requirements of Article 23 of Law 124/2022. It was not created using data with a high level of confidence and which is exclusively under the control of the person who signed it, and the document to which the signature is applied allows for its subsequent modification without this fact being detectable. If the electronically signed document is also modified, this affects the electronic signature in a detectable way.

Therefore, the tender submitted by "Techno Test" Ltd. cannot be considered as signed in writing or in authentic form. It cannot be considered to be signed. On the basis of this reasoning, tenders not signed electronically in the framework of sectoral procurement must be rejected. This is because they do not confirm the commitment made by the tenderer for that tender.

And in the event of a dispute arising from the withdrawal of the unsigned electronic tender, the contracting entity would be subject to the risk of not being able to oblige the tenderer to stick to the tender submitted. And if this dispute were to go to court, the court would probably find that there was no proper tender. This is the reasoning behind the ANSC's findings in relation to tenders not electronically signed in the context of procurements regulated by Law 131/2015, and we believe the same reasoning should be applied to sectoral procurements.

And the principle of proportionality requires the rejection of a tender which is not properly signed, otherwise the contracting entity cannot ensure that the tender submitted will be respected. The provisions of Article 322 of the Civil Code, which provides for the consequences of non-compliance with the written form of the legal act, are not applicable here, but in the field of administrative law, all rules are mandatory.

Following the analyzed decision, ANSC issued another similar decision - [Decision No. 03D-517-23 of 07 August 2023](#). It was issued on the award decision for the procurement procedure no. MD-1678435256742 organized by "CET-NORD" SA for the purchase of "Monitoring and recording system of power quality parameters in 10 kV and 110kV networks". The decision to award the contract to the non-resident bidder "Edela s.r.o." was contested, and among the reasons was indicated that it did not sign the offer electronically. The difference between these two reasons is that "CET-NORD" SA, in the tender notice did not include the requirement that the tender be signed electronically. This fact was noted by ANSC in that Decision, although in the previous Decision examined, the requirement in the tender notice to sign the offer did not change the solution in the case.



Astfel, având în vedere că Legea nr. 74/2020 nu prevede obligativitatea desfășurării procedurilor de achiziții sectoriale prin intermediul SIA „RSAP”, la fel și luând în considerare circumstanțele din speță și anume faptul că operatorul economic declarat câștigător a semnat olograf cu aplicarea ștampilei documentele prezentate, se conchide că respingerea ofertei „Edela s.r.o”, astfel cum solicită contestatorul, ar fi o măsură disproporționată în raport cu omisiunea admisă, o interpretare inversă în circumstanțele de natura celor din speță ar contravine principiului proporționalității consfințit prin art. 28 din Legea nr. 74/2020, or principiul menționat impune ca actele instituțiilor să nu depășească limitele a ceea ce este adecvat și necesar în scopul realizării obiectivelor urmărite, înțelegându-se că, în cazul în care este posibilă o alegere între mai

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multe măsuri adecvate, trebuie să se recurgă la cea mai puțin constrângătoare, iar inconvenientele cauzate nu trebuie să fie disproporționate în raport cu scopul urmărit.

La caz, urmează a fi reținut că entitatea contractantă nu a prevăzut în documentația de atribuire forma actelor ce urmau a fi prezentate de către operatorii economici, respectiv nu a indicat obligativitatea aplicării semnăturii electronice sau a semnăturii olografe pe documentele ofertei.

În cele din urmă, Agenția va reține că, în condițiile în care Legea nr. 74/2020 nu impune expres utilizarea SIA „RSAP”, respectiv, și toate reglementările prevăzute în acest sens în legătură cu acesta, fiind impusă doar aplicarea mijloacelor electronice de comunicare fără specificarea expresă a acestora, aplicabile sunt prevederile art. 316 alin. (2) din Codul Civil al Republicii Moldova nr. 1107 din 06.06.2002, care prevede că forma este o condiție de valabilitate a actului juridic numai în cazurile expres prevăzute de lege.

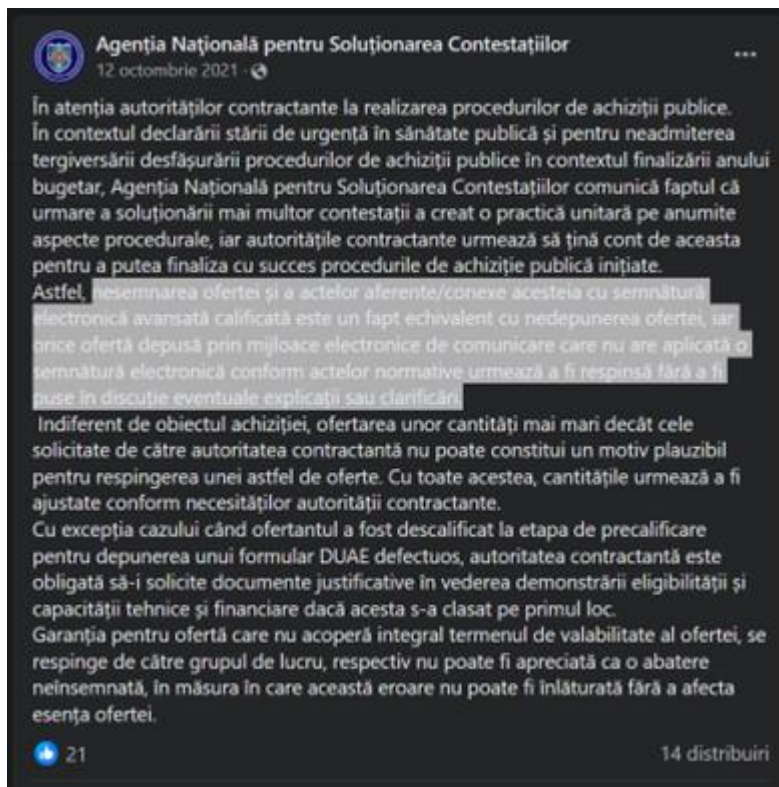
Prin urmare, reieșind din cele menționate, Agenția va respinge pretențiile contestatorului în măsura în care pretențiile acestuia privind obligativitatea formei electronice actului juridic este dedusă din propriile interpretări ale cadrului normativ în vigoare, fără a ține cont de prevederile legale ce reglementează în cumul achizițiile sectoriale, inclusiv principiile de reglementare a acestora, la caz, fiind relevant principiul proporționalității, or entitatea contractantă este obligată să-l aplice, cu atât mai mult cu cât oferta a cărei legalitate se contestă a acumulat cel mai mare punctaj potrivit factorilor de evaluare.

More recently, on 6 March 2024, ANSC issued a [new Decision No. 03D-123-24](#) on the issue under analysis, where it maintained exactly the same approach:

Totuși, la caz, având în vedere că Legea nr. 74/2020 nu prevede obligativitatea desfășurării procedurilor de achiziții sectoriale prin intermediul SIA „RSAP”, la fel și luând în considerare circumstanțele din speță și anume faptul că operatorul contestator a semnat olograf și respectiv, a aplicat ștampila umedă pe documentele prezentate, se conchide că respingerea ofertei „Centrul de Metrologie Aplicată și Certificare” ÎS, ar fi o măsură disproporționată în raport cu omisiunea admisă, o interpretare inversă în circumstanțele de natura celor din speță ar contravine principiului proporționalității consfințit prin art. 28 din Legea nr. 74/2020, or principiul menționat impune ca actele instituțiilor să nu depășească limitele a ceea ce este adecvat și necesar în scopul realizării obiectivelor urmărite, înțelegându-se că, în cazul în care este posibilă o alegere între mai multe măsuri adecvate, trebuie să se recurgă la cea mai puțin constrângătoare, iar inconvenientele cauzate nu trebuie să fie disproporționate în raport cu scopul urmărit.

Astfel, urmează a fi reținut că deși entitatea contractantă a prevăzut în documentația de atribuire forma actelor ce urmau a fi prezentate de către operatorii economici, în speță, „semnat și stampilat de către operatorul economic, confirmat prin semnătură electronică”, condiție ce urma a fi respectată de către toți participanții, cu toate acestea, conform prevederilor art. 75 alin. (5) din Legea nr. 74/2020, entitatea contractantă are dreptul să considere oferta conformă dacă aceasta conține abateri neînsemnate de la prevederile documentației de atribuire, erori sau omiteri ce pot fi înlăturate fără a afecta esența ei. Orice deviere de acest fel se exprimă cantitativ, în măsura în care este posibil, și se ia în considerare la evaluarea și compararea ofertelor.

The three ANSC Decisions analyzed above which refer to the application of Law no. 74/2020 also contradict the guidance provided by the Agency on a [Facebook post](#) from October 2021, i.e. after the entry into force of Law no. 74/2020:



ANSC indicated: "failure to sign the tender and related/connected documents with a qualified advanced electronic signature is equivalent to non-submission of the tender, and any tender submitted by electronic means of communication that does not have an electronic signature applied in accordance with the regulations shall be rejected without any explanation or clarification".

We believe that in order to maintain *uniform practice on certain procedural issues*, it is good that the decisions of the NCA are consistent, not only in the solutions to cases that raise exactly the same legal issues but also in the reasoning/analysis carried out. As stated above, the legal reasoning of the ANSC underlying the rejection of unsigned electronic tenders in procurement governed by Law no. 131/2015 is also applicable to those governed by Law no. 74/2020.

In conclusion, aBoth Law No 74/2020 and Law No 131/2015 do not expressly require the use of electronic signatures. The exception would be if we were to interpret Art. 33 para. (14) lit. i) of Law no. 131/2015 imposes this obligation, but in this case, the same obligation would follow from a similar rule in Law no. 74/2020, namely Art. 32 para. (The different approach to the obligation to sign tenders electronically in procurement procedures under these two laws is not justified.

The requirement for the use of electronic signature is included only in the Regulation on the manner of keeping the State Register of Public Procurement formed by the AIS "RSAP" in item 121 and by virtue of item 2 of the same Regulation is to be applied to all procurements carried out by MTender, not only procurements regulated by Law no. 131/2015 but also low-value procurements, sectoral procurements and others. And if the requirement for the use of electronic signature in a sectoral procurement is included in the call for tenders, even more so such a tender cannot be accepted. Otherwise the contracting entity is put at risk of accepting a tender which does not comply with the mandatory requirements of the Regulation and which cannot be subject to the obligation of compulsory execution.

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