



MONITORING REPORT

The sectorial plan for anti-corruption actions in the field of public procurement for the years 2018–2020

(period – year 2018)

Authors: **Viorel PARVAN, Diana ENACHI**

Chisinau 2019



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This document was drafted within the „*Cutting edge improvements in the public procurement system in Moldova through inclusiveness, creativity and law-abiding practices*” Project financed by the EU. Responsibility for the content of this publication lies with the authors and it does not necessarily reflect the EU’s position.



The project is funded by the European Union.
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The project is implemented by the Institute for Development and Social Initiatives (IDIS) Viitorul.

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Acronyms

AA	–	Association Agreement
BI	–	Business Intelligence
CPA	–	Central Public Authorities
CTIF	–	Center for Information Technology in Finance
DP	–	Decision of the Parliament
EBRD	–	European Bank for Reconstruction and Development
ESPD	–	European Single Procurement Document
EU	–	European Union
GD	–	Government Decision
GD	–	Government Decision
LPA	–	Local Public Authorities
NACS	–	National Agency for Complaints Settlements
PPA	–	Public Procurement Agency

Executive summary

The monitoring report of the Sectoral Plan of anti-corruption actions in the field of public procurement describes the progress regarding the implementation of the actions foreseen in the Plan for 2018, and this goal is using an evaluation methodology based on both quantitative evaluation indicators and qualitative indicators in terms of accomplished changes. The authors of the report evaluated the degree of accomplishment of 12 actions, with 11 of them being foreseen for the year 2018, while another one having a continuous and permanent character.

Following the analysis of the deficiencies and shortcomings identified for each envisaged action, the valutors have formulated a series of recommendations and policy proposals for the responsible authorities. The proposals aim to eliminate the shortcomings and deficiencies identified in the monitoring process, to increase the impact of the taken actions in terms of reducing the risks of corruption and fraud, and to improve the quality of anti-corruption policies in the field of public procurement.

The results of the quantitative evaluation show that only 16.7% (2 actions) were implemented without deficiencies, while another 33.3% (4 actions) were implemented, but with deficiencies. At the same time, 25% (3 actions) of the total number of actions were partially implemented and another 25% not implemented. Regarding the qualitative evaluation in the light of the changes accomplished as a result of the actions taken, the results show that only 8.3% of them had a major impact, while half of the actions had a medium impact (50%). A low impact had 2 actions (16.7%), and in the case of 25% of the actions, there is a complete lack of impact.

The table below shows that progress on the **implementation of the Sectoral Plan of anti-corruption actions in the field of public procurement** can be considered **modest**.

Figure 1. Quantitative evaluation results

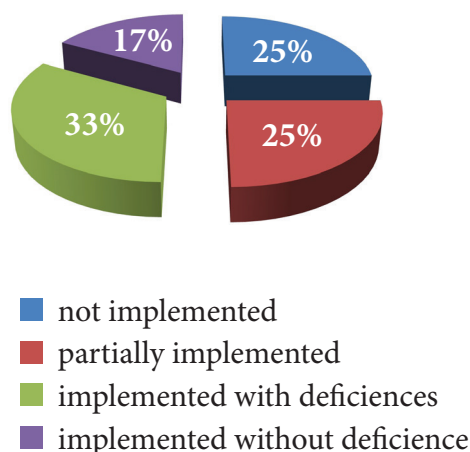
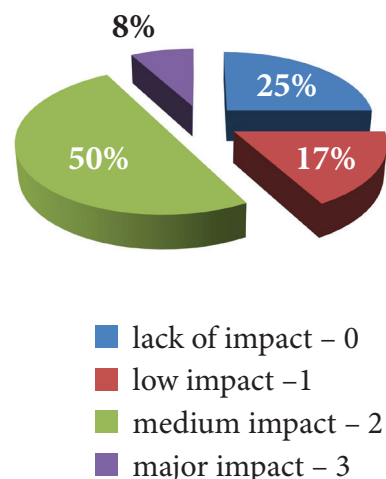


Figure 2. Qualitative evaluation results



The most important accomplishments of the envisaged actions mainly concern the transposition into national law of the main elements of the European directives, the introduction of electronic procurement, the introduction of new award criteria with emphasis on qualitative aspects, the introduction of the European Single Procurement Document - ESPD, the development of a new system for resolving complaints, the establishment of a specialized dispute resolution body and the elaboration of several instructions and guides necessary for the actors involved in the procurement process.

In parallel, the monitoring process has revealed **several shortcomings and deficiencies in carrying out the envisaged actions and obtaining the expected results**. The main deficiencies are related to the legal secondary-normative framework being incomplete and not harmonized with the primary legislation; an electronic procurement system that does not ensure the functioning of an entire procurement process by electronic methods, especially at the execution stage of the procurement contracts and of the additional agreements; the lack of a national training program in the field of public procurement; the lack of actions in the sense of developing a centralized procurement system in certain fields; last, but not least the evaluators have identified as a major shortcoming the dispersed and insufficient actions taken in order to strengthen the capacities of the actors involved in the procurement process.

As a result of the identified deficiencies, a **series of proposals were formulated**, the main ones being:

- ❖ To review and improve the mechanism of dialogue between the responsible public institutions, so that it becomes effective and permanent, with clear roles and responsibilities defined for each institution;
- ❖ The approval by the Government, as a priority, the normative acts necessary for the implementation of the provisions of the Law on public procurement (which was modified essentially in 2018), these being: the Regulation on the activity of the procurement working group, the Regulation on public procurement of works, the Regulation regarding public procurement using the negotiation procedure, the Regulation on the framework agreement.
- ❖ The revision and improvement by the Ministry of Finance of the standard form of the European Single Procurement Document, both in form (appropriate numbering) and content (excluding references and instructions in the form).
- ❖ To develop the electronic procurement system to ensure the entire conduct of the public procurement process through electronic means, transparency at all stages of the procurement process and in particular at the stage of contract execution, as well as the development of the BI mode necessary for analyzing and monitoring public procurement.
- ❖ To develop a national training program in the field of public procurement.
- ❖ To approve of the secondary normative framework regulate in detail how the provisions regarding the outsourcing of public procurement services will be applied (roles, degree of involvement, responsibilities, the responsibility that may arise, etc.).
- ❖ To revise the legal framework and ensure the transparency of the execution stage of public procurement contracts and additional agreements.

Introduction

The reform of the public sector in the Republic of Moldova is inextricably linked to the integrity of procurement. The public procurement is the sector which is extremely vulnerable to the risks of fraud and corruption. An important premise that can ensure the application of appropriate procurement standards as well as the efficient and effective use of public resources is integrity.

Over recent years, the public procurement sector is undergoing a comprehensive reform process, which aims to streamline the public procurement process, increase transparency, and reduce the risks of fraud and corruption.

Along with the signing of the Association Agreement between Republic of Moldova and European Union, a new stage has been launched to align the primary and normative-secondary legal framework in relation to public procurement to the European directives in the field. Chapter 8 “Public Procurement” of the Association Agreement, and namely Article 273 paragraph (1), sets out that “(1) The Republic of Moldova shall ensure that its actual and future public procurement legislation will progressively become compatible with the *acquis* of the Union in the field of public procurement. In 2016, by law No. 125 of 02.06.2016, the Republic of Moldova acceded to the World Trade Organization Agreement on public procurement. In context of this reform, in December of 2016, the Strategy for the development of public procurement system for 2016-2020¹ was adopted, which, *inter alia*, provides for measures to strengthen the integrity and combat corruption in the public procurement system. The strategy also envisages the use of electronic tools and processes in public procurement, which have a substantial impact on transparency increasing, combating and preventing effective corruption in the field.

The sectorial plan contains 6 priorities, such as follows:

The priority No.1: Reviewing the legal and regulatory framework for public procurement, bringing it in line with EU directives and good practices;

The priority No.2: Optimizing the procurement process, developing the capacities of the contracting authorities in making public procurement and preventing corruption in the field, consolidating the internal control procedures within the public procurement processes;

The priority No.3: Ensuring transparency of public procurement processes;

The priority No.4: Strengthening the role of business environment and civil society in preventing corruption in public procurement, eliminating bureaucratic barriers, preventing arranged procurement;

¹ Common technological platform implemented by the Government in order to increase the cost-efficiency of IT services consumption. The MCloud platform aims to make government spendings more profitable and to consolidate data centers in a form of shared management – <http://egov.md/ro/projects/mcloud>

The priority No.5: Review of functions and strengthen the capacities of supervisory and control bodies, and settlement of claims;

The priority No.6: Implementation of the informational system of efficient and effective public procurement, with the integration of instruments and good practices for identifying and preventing fraud and corruption.

The monitoring process was carried out on the basis of envisaged actions, deadlines set for the implementation of these actions, as well as the established progress indicators. The report presents the results of monitoring process, both quantitatively and qualitatively, of the actions planned to be carried out in 2018, and contains a series of policy proposals and recommendations for institutions with responsibilities in the field. Through this report we aim to contribute to increasing the degree of implementation of actions foreseen for the following periods, eliminating the shortcoming in respect of the actions not implemented, Partially implemented, or implemented with deficiencies, as well as informing all interested persons about the implementation of anti-corruption policies in the public procurement sector and reducing the risks of fraud and corruption in the system.

Monitoring methodology

Monitoring of the degree of implementation of the sectorial Plan of anti-corruption actions in the field of public procurement in 2018 was achieved through a monitoring methodology that is based on both quantitative evaluation criteria, from the perspective of achievement degree, and qualitative evaluation criteria, from the perspective of the changes produced.

I. Quantitative evaluation

- a. the following assessments were used to determine the **level of implementation** of the actions:

Assessment		Significance
Implemented	<i>without deficiencies</i>	action fully achieved according to the Plan, respecting the legal procedure and principles of transparency and participation in the decision-making process
	<i>with deficiencies</i>	action implemented with deficiencies that should be described in detail
Partially implemented		action has been initiated and is in the 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 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, such as follows:

Assessment	Significance
0 - lack of impact	There is a lack of impact on achievement of objectives set in the Sectorial Plan and, as a result, on the improvement of the integrity of the public procurement system, in the absence of actions and / or policies on the part of the responsible authorities.
1 - Low impact	there is a reduced impact and insignificant changes in the public procurement system as a result of the action fulfilled or partially carried out by the responsible authorities.
2 - Medium impact	there is a medium positive impact and some efficacious changes in fulfillment of the priorities set out in the Sectorial Plan, but with no significant changes produced in the field of integrity and prevention of corruption in the public procurement system.
3 - Major impact	there is a major impact and significant positive changes that have contributed to the achievement of priorities set out in the Sectorial Plan and which have produced important changes in the public procurement system, contributing to strengthening the integrity and preventing corruption in the public procurement system.

Impact indicators:

- consolidated confidence of the business environment and citizens in public procurement system;
- improved transparency and openness of public procurement data;
- integrity of the actors involved in the consolidated public procurement process;
- capacities of the supervisory and control bodies and settlement of the consolidated appeals;
- improved quality of regulations.

III. The tools applied

A number of instruments were used in the monitoring process, including the following:

- Analysis of the primary and normative-secondary legal framework on public procurement;
- Requests for conducting interviews were sent to all the authorities that were responsible for the actions in the plan during the reference period (2018). As a result, the authors of the report conducted 4 in-depth interviews with the institutions in the field and those responsible for carrying out the actions in the Plan, based on a questionnaire developed for each institution (Ministry of Finance, Public Procurement Agency, National Agency for Complaints Settlements, State Treasury). It is worth mentioning that the National Anticorruption Center and the Ministry of Economy and Infrastructure have sent us the information requested by email, and from the Public Property Agency and the National Council for Public-Private Partnership we have not received any information. The Agency for Electronic Governance responded to our request by mentioning that the coordinating role of the process of carrying out this action belongs to the Ministry of Finance, and the AEG was not involved into fulfillment of this action and does not have information on the degree of its accomplishment.
- The authors of the report conducted 4 interviews with the actors in the field, including representatives of the electronic procurement platforms - achiziti.md and elicitatie.md, with the public procurement expert Mr. Serghei Merjan, and with the former Deputy Minister of Finance - responsible for the implementation of electronic procurement and MTender system –Mr. Iurii Cicibaba. Requests for meetings were also sent to the Financial Inspection and the Center of Information Technologies in Finances(CTIF), but we did not receive any response from these institutions.
- Analysis of open data sources, including electronic registers, official web pages of authorities, including such as:

• 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 activity reports/statistics of public authorities (responsible for actions in the Plan) including Activity Reports for 2011 and 2018 of PPA, NACS.
- Other information, analysis, studies, reports prepared by independent experts, civil society or the international community.

Progress in implementation of the sectorial plan (2018)

The priority No. 1

Reviewing the legal and regulatory framework on public procurement, bringing it in line with EU directives and good practices.

Action 1. Elaboration of the project for amending and completing the Law on public procurement No. 131 of July 3, 2015 for the purpose of transposing other elements of the European Union directives 2014/24/EU and 2014/25/EU (Quarter I, 2018)

Progress indicators: *the project has been elaborated and presented to the Government.*

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of the project for amending and completing the Law on public procurement- No. 131 of July 3, 2015 for the purpose of transposing other elements of the European Union directives 2014/24/EU and 2014/25/EU	-	Partially implemented	Medium impact - 2

Quantitative assessment

Based on the commitments undertaken by the Republic of Moldova regarding the harmonization of the national legislative framework in the field of public procurement with *acquis communitarian* (EU-Moldova Association Agreement) and of the objectives set at national level, the responsible authorities were to transpose the provisions of the 2014/24/EU Directive of the European Parliament and Council of 26 February 2014 on public procurement and repeal of Directive 2004/18/EC, as well as the provisions of Directive 2014/25/EU of the European Parliament and Council of 26 February 2014 on procurement made by the entities operating in water, energy, transport and postal services sectors and repeal of Directive 2004/17/CE into the national legal framework.

Starting from the progress indicators in the Sectorial Plan, it is worth mentioning that the Ministry of Finance has elaborated 2 draft laws for amending and completing Law No.131 of July 3, 2015 on public procurement:

1) The draft law transposing the provisions of Directive 2014/24/EU.

It was elaborated and submitted to the public consultations on 15.03.2018², presented to the Government on 14.06.2018, approved by the Government Decision No. 603 of 2.07.2018, and adopted by Law No.169 of 26.07.2018 afterwards.

2) The draft law transposing the provisions of Directive 2014/25/EU.³

It was elaborated and submitted to public consultations on 13.04.2018, subject to the anti-corruption expertise by the National Anticorruption Center on 17.07.2018⁴. The project was subject to the expertise of compatibility with the EU legislation on 04.07.2018 and the legal expertise⁵. The project has not been presented to the Government, and from the Report of the Ministry of Finance on implementation of Plan of Actions 2018 we find that the opportunity of elaboration of a draft law on the transposition of the European Union Directive 2014/25/EU separately from the Law No. 131/2015 is under consideration. It is worth noting that during the year 2018 and until 31.08.2019, a draft law that would transpose the provisions of Directive 2014/25/EU regarding the procurement made by entities operating in the water, energy, transport and postal services sectors, was not adopted.

Starting from the fact that the Sectorial Plan provides for transposition of both EU Directives (2014/24/EU and 2014/25/EU), we find that the above mentioned action was **partially implemented**.

Qualitative assessment

The medium impact of the action is due to:

- 1. Firstly, the provisions of Directive 2014/25/EU regarding the procurement made by entities operating in the water, energy, transport and postal services sectors have not been transposed.**

In such a way, we have an incomplete regulatory framework, which does not regulate the particularities regarding the procurement procedures carried out by the specific sectorial entities that carry out relevant activities in the field of energy, water, transport and postal services. However, one of the expected results for the priority No. 1 of the Sectorial Plan is the elaboration of comprehensive rules for making procurement for the utilities sector, companies providing public services and other companies with public capital.

² <http://particip.gov.md/proiectview.php?l=ro&idd=5136>

³ <http://particip.gov.md/proiectview.php?l=ro&idd=5236>

⁴ https://cna.md/report_view.php?l=ro&id=5461

⁵ The Report of the Ministry of Finance on implementation of Plan of Actions 2018 - <https://mf.gov.md/ro/ministerul-finan%C8%9Bilor/activit%C4%83%C8%9Bile-ministerulu>

Based on the preamble and the provisions of Directive 2014/25/EU, the regulations included in this act of the European Union are necessary in order to guarantee the opening to competition of the procurement made by the entities that carry out their activity in the named sectors, as well as to implement the principles of the Treaty on the functioning of the European Union, including the principles derived therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

Only recently, on 21.08.2019, the Ministry of Finance held a working session on the aspects of the draft law that would regulate procurement in the utilities sector⁶, and later on this draft law will be subject to public consultations. Unless amendments and completion of legal framework is made, the license holders from the electricity, thermal energy, natural gas and operators who provide the public water supply and sewerage services shall be guided by the Regulation approved by the Decision of the Board of Directors of the National Agency for Energy Regulation No. 24/2017 from 26.01.2017⁷.

This topic also concerns the general problem of all publicly-owned enterprises (state and municipal enterprises, commercial and municipal companies with the state majority-owned capital), which are not subjects of the law on public procurement and do not comply with the procedures established by law, which leads to lack of transparency, vulnerability to corruption and, implicitly, inefficient use of public money. In 2018, no actions have been taken in this respect, and at the moment we have a draft law adopted in the first reading by Parliament on 5.07.2019⁸ which obliges these companies to make the procurement according to the law, being positively endorsed by Government at the session as of 1.08.2019.⁹

2. Secondly, because of the non-adoption of the normative acts necessary for implementation of provisions of the law on public procurement.

As for the adoption of Law No.169/2018 for amending Law No.131 of July 3, 2015 on public procurement, it transposes the provisions of Directive 2014/24/EU on public procurement and sets out a more complex regulatory framework in the field of public procurement, with clarification of many notions, concepts, including development and establishment of new mechanisms to simplify the public procurement process. Among the important rules included in the law we could point out the following ones: simplification of electronic communication in procurement system; creation of certain electronic tools; introducing the ESPD concept, which consists in declaration of the economic operator on his/her own responsibility of the meeting the qualification and selection criteria, being not obligatory to present the qualification documents of economic operators before the opening of offers; setting new criteria in award procedure, etc.

6 <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>

7 The report of the Ministry of Finance on implementation of the Action Plan 2018 is available at the address <https://mf.gov.md/ro/ministerul-finan%C8%9Belor/activit%C4%83%C8%9Bile-ministerulu>

8 <http://bit.ly/2KS7AeJ>

9 <https://gov.md/ro/content/sedinta-guvernului-din-1-august-2019-ora-1300>

However, a series of amendments made in 2018 to Law No. 131/2015 did not lead to the expected results.

In case of the *European Single Procurement Document (ESPD)*, the contracting authorities, on the one hand, did not understand its role and request all the qualification documents besides the ESPD form, but, on the other hand, the provisions of Law No. 131/2015, as well as normative acts subordinated to the law, create confusions, unclear interpretations and barriers for economic operators. IDIS “Viitorul” has issued several recommendations¹⁰ for the correction of the mentioned situation, among which we can outline the following: a) revision of the standard ESPD form, both its form (the proper numbering) and its content (excluding the references and instructions from the form); b) elaboration of an instruction regarding the use of ESPD, separated from the form itself; c) implementation of electronic ESPD, as well as its integration in the electronic procurement system and national databases; d) amendment of art. 20 paragraphs (7) of the law No. 131/2017 in order to exclude the possibility of the contracting authority to request all the qualification documents related to ESPD at the stage of submission of tenders.

As a result of the amendments and completions made by Law No.169/2018, it is necessary to revise the *Regulation on the activity of the working group for procurement*, adopted by the Government Decision No.667 of 25.05.2016¹¹, an obligation that was not fulfilled in 2018. Although on 4.04.2019¹² the Ministry of Finance elaborated and submitted to the public consultations the draft of the Government Decision amending the named Regulation, so far it has not been approved by the Government. The Regulation should provide more clarity regarding the tasks and obligations of the working group for procurement, the right of contracting authorities to call for procurement services or the central procurement authority, the award documentation, the ESPD form, regarding the sanctioning of economic operators in case of improper fulfillment or non-fulfillment of the contractual clauses, the procurement procedures by means of the electronic system of procurement MTender, etc.

Similarly, the *Regulation on public procurement of works*, approved by Government Decision No.669 of 27.05.2016, should be correlated with the new provisions of Law 131/2015. For this purpose on 25.10.2018¹³ the Ministry of Finance has elaborated and submitted to the public consultations the draft of the Government Decision approving the Regulation on public procurement of works, but it has not been approved by the Government so far. According to the Ministry of Finance, through the aforementioned project, it is proposed to regulate an efficient and transparent mechanism of public procurement, which would permit both procurement of works, and elaboration of documentation for the design of works, of constructions of any category and the related installations, as well as for the works on timely intervention in existing constructions (renovation, restoration, modification, transformation, consolidation, extension and capital repairs), for the needs of one or several contracting authorities.

10 “Policy analysis how does the European Single Procurement Document facilitate the public procurement process? ”, is available at the address http://viitorul.org/files/library/IDIS_Analiz%C4%83%20de%20Politici_DUAE_final.pdf

11 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=365130>

12 <http://particip.gov.md/proiectview.php?l=ro&idd=6274>

13 <http://particip.gov.md/proiectview.php?l=ro&idd=5860>

The issue of the frame agreement remains unresolved. The contracting authorities use this method of procurement provided by legislation and completed by Law No. 169/2018, without having a Regulation describing the mechanism of its application, or the existing Regulation was approved prior to the Law No.131/2015 (Government Decision No. 826 from 7.11.2012). In this context, it is necessary to elaborate and approve a new *Regulation on the frame agreement* as a special way of awarding the public procurement contract in accordance with Law No. 131/2015.

The Ministry of Finance had the responsibility to adjust the *Regulation on public procurement using the negotiation procedure*, approved by the Government Decision No.668 of 27.05.2016, to the new provisions included in 2018 to the basic law on public procurement. Only on 24.05.2019 the Ministry of Finance submits to the public consultations¹⁴ a draft of the Government Decision for the approval of the Regulation on public procurement using the negotiation procedure, but it has not been approved so far by the Government. The new Regulation must regulate the negotiation process through which the contracting authority shall consult and negotiate the contractual clauses with one or more suppliers of goods, executors of works or service providers, including aspects of use of electronic systems in such procedure.

However, in 2018, a series of normative acts in the field of public procurement were approved, which are necessary for implementation of Law No.131/2015 and new provisions introduced by Law No.169/2018. These include the following:

- ✓ The Regulation on procurement of goods and services through the request for price quotation (RPQ), was approved by Government Decision No.987 of 10.10.2018
- ✓ The Regulation on periodic adjustment of the value of the public procurement contracts with continuous execution, concluded for more than one year, approved by the Government Decision No.1129 of 21.11.2018;
- ✓ The technical concept of the automated information 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 information system "State Register of Public Procurement" (MTender), approved by Government Decision No.985 of 10.10.2018;
- ✓ The Regulation on the way of keeping the State Register of public procurement created by the automated information system "State Register of Public Procurement" (MTender), approved by Government Decision No.986 of 10.10.2018;
- ✓ Standard documentation for the public procurement of goods, approved by the Order of the Ministry of Finance No.173 from 05.10.2018;
- ✓ Standard documentation for the public procurement of services, approved by the Order of the Ministry of Finance No.174 from 05.10.2018;
- ✓ Standard documentation for the public procurement of goods and services through the request for price offers, approved by the Order of the Ministry of Finance No. 175 of 05.10.2018;

14 <http://particip.gov.md/proiectview.php?l=ro&idd=6365>

- ✓ Standard documentation for the public procurement of works, approved by the Order of the Ministry of Finance No.176 from 05.10.2018;
- ✓ Standard form of the European Single Procurement Document, approved by the Order of the Ministry of Finance No.177 of 09.10.2018;

3. Thirdly, low confidence in public procurement system in the Republic of Moldova of the participants of procurement procedures.

In order to monitor and evaluate the expected results of the actions in Priority No.1, in the Sectorial Plan were included such indicators as ensuring transparency, competitiveness, cost efficiency and meeting the real needs in the procurement process, reducing corruption costs, increasing the quality of services, revising tariffs/prices, etc.

IDIS "Viitorul" has published 2 editions in 2018¹⁵ and 2019¹⁶ of the Index of Confidence in public procurement system of the Republic of Moldova, in order to present in a complex and systematic form the opinions of citizens and business community on the use of public money through the national public procurement system. In the recent Index there were collected the data for the period July 2018 - January 2019, and namely for the period when the amendments were made to Law No.131/2015 and other normative acts in the field of public procurement, mentioned above in this monitoring report.

According to the results of the Index of 2019, the general level of confidence in public procurement system and in the use of public money for procurement is a low one, only 28% of the participants in the survey showed a high and extremely high confidence in the public procurement system. Similar results can also be observed regarding the efficiency of the public procurement system. However, compared to 1–2 years ago, respondents see certain positive trends, the level of confidence and the perception on the efficiency of the public procurement system being slightly increased.

About $\frac{3}{4}$ of respondents gave an extremely low, low and medium rating to competition in the field of public procurement, as well as to the integrity of the procurement system and the transparency of this field. Still, we should note that there is a positive evolution of perception on the degree of transparency in the field of public procurement in 2019 if compared to 2018.

One of the basic causes adduced by the respondents to explain the situation in procurement system refers to the imperfect primary and secondary legal framework. The proposed solutions concern improvement of the legal framework, updating and elaboration of the secondary legal framework, elimination of discrepancies, etc.

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

16 <http://viitorul.org/files/library/Raport%20nr.2%20Indice%20Achizitii%20m.pdf>

Action 3. Elaboration of the normative framework regarding the outsourcing of public procurement services (Quarter II, 2018)

Progress indicators: draft decision elaborated and presented to the Government

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of the normative framework regarding the outsourcing of public procurement services	-	not implemented	lack of impact - 0

Quantitative assessment

Starting from the progress indicators in the Sectorial Plan to have a draft decision elaborated and presented to the Government, it is worth mentioning that the Ministry of Finance has not elaborated in 2018 and up to now a draft Government Decision that would regulate the outsourcing of public procurement services. Thus, we find that the above mentioned action **is not implemented**.

Qualitative assessment

By Law No.169/2018, several norms regarding the outsourcing of public procurement services were introduced. Thus, in Law No.131/2015 (art.1) we find the notion "*ancillary procurement activities*", by which we understand activities to provide assistance and support for procurement activities in different forms, such as: b) counseling in respect of initiation and carrying out the public procurement procedures; c) initiation and carrying out of public procurement procedures on behalf and for the benefit of a contracting authority. Also the definition of "*procurement service provider*" is included here - thus being designated any natural or legal person of public or private law that makes offers of ancillary procurement services on the market.

Further is expressly provided (art. 14 - art. 15) the right of the contracting authority to address to the procurement service providers for the purpose of preparing and administering the public procurement procedures on behalf and for the benefit of a contracting authority, according to the procedures provided by Law No. 131/2015. It is clear from the provisions of law that these services will be provided by *certified procurement specialists*. These certified specialists can be delegated the functions exercised by the working group for public procurement, but only for the public procurement procedures through price quotation request.

It is worth mentioning that the regulations on the functions of certified specialists in public procurement were included in secondary legislation, for example, Regulation on procurement of goods and services through the request for price quotation (RPQ), approved by the Government Decision No.987 of 10.10.2018, even in the form of draft normative acts

elaborated and submitted to the public consultations by the Ministry of Finance, such as the draft Regulation regarding the activity of the procurement working group.

The insertion of new subjects involved in the process of organization and realization of public procurement (procurement service providers, certified public procurement specialists) must be followed, on the one hand, by the clear regulation in the law of the roles of these subjects, the degree of their involvement, responsibilities, liability that may arise (at present these rules are too general). However, they will carry out public procurement procedures in the name and for the benefit of the contracting authority, and delegation/transfer to the third parties (“private persons”) of powers in the field of public procurement will exclude the possibility of criminal and administrative liability of “public persons” within the contracting authorities in the case of corruption related offences. On the other hand, the norms existing in Law No.131/2015 are to be developed in a Regulation approved by the Government, as provided by art.14 paragraph (3) of the Law on public procurement. This Regulation is to regulate in detail how the provisions regarding the outsourcing of public procurement services will be applied in practice. So far we have no secondary regulatory framework to regulate these issues.

In addition to this, the Public Procurement Agency has not elaborated, developed and implements the mechanisms of certification of the procurement service providers responsible for organizing and carrying out public procurement procedures and awarding public procurement contracts, as it is set out by art.10 lit.e.) of Law No. 131/2015.

In the view of lack of regulations and mechanisms described above, it is impossible to imply an impact of the provisions included in the Law No. 131/2015 on outsourcing of public procurement services.

The priority No. 2

Optimizing the procurement process, developing the capacities of the contracting authorities in making public procurement and preventing corruption in the field, consolidating the internal control procedures within the public procurement processes;

Action 4. Analysis of the necessity of training the contracting authorities; elaboration of the National Training Program (Quarter I, 2018)

Progress indicators: elaborated program

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Analysis of the necessity of training the contracting authorities; elaboration of the National Training Program	In due time	Implemented with deficiencies	Low impact - 1

Quantitative assessment

Starting from the progress indicators from the Sectorial Plan to have an elaborated Program, it is worth mentioning that the Public Procurement Agency has elaborated and published on its web page the Training Curriculum¹⁷ and the Training Plan¹⁸ for 2018, but they do not contain all the components of a National Training Program. Thus, we state that the above-mentioned action **is implemented with deficiencies**.

Qualitative assessment

Although the Curriculum and the Training Plan were elaborated, this is not sufficient to have a National Training Program that would include the entire public procurement system and ensure a continuous process of training the members of working groups and procurement specialists, meeting the needs of contracting authorities, as well as the appropriate level of training of each official in the specific area he/she is responsible for. The training process is not a permanent one and consists mainly of theoretical seminars on general topics. Taking into consideration the limited capabilities of the Public Procurement Agency, no local facilitators were trained to ensure the process of training of the contracting authorities at the local level.

The responsibility of the Public Procurement Agency to organize training seminars in the field of public procurement results from the provisions of art.10 letter d) of the law No.131/2015 and pt.7 subpt. 3) of Regulation on organization and functioning of the Public Procurement Agency and its maximum staff number, approved by Government Decision No. 134/2017.

However, the agency has limited capabilities, especially too few employees in order to cope successfully with this responsibility. Following the restructuring of the Public Procurement Agency (Government Decision No.134/2017), the *Consultancy and Training Department* was created, within the competence of which lies organization of activities and conducting of trainings in public procurement. It is difficult for this structure to organize with its own forces the entire training process, from planning and organizing to proper carrying out of training sessions. In this regard, it is very important to cooperate with the Ministry of Finance and the National Anticorruption Center, as responsible institutions/partners.

Cooperation between institutions is necessary because in the analysis of the Training Plan for 2018, elaborated by the Agency, we observe the lack of training topics that refer to the prevention and avoidance of corruption, conflicts of interest and fraud in public procurement. Or, among the expected results following the actions of Priority No.2 we note the reduction of risks of fraud and prevention of corruption risks, based on a curriculum developed as a result of assessment of needs.

Regarding the training curriculum, we note the necessity to revise it in order to be in line with the latest amendments to the national legal framework. For example, among the normative acts in the bibliography there was specified the Government Decision No.

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

18 https://tender.gov.md/sites/default/files/document/attachments/plan_instruire_modificat_1.pdf

666/2016 on approval of the Regulation on procurement of goods and services by request of price quotation, in the case when the Government Decision No. 987/2018 approves a new Regulation on procurement of goods and services by request of price quotation. Also, in the bibliography of the curriculum Standard Documentation for the execution of public procurement of goods, services and works for the year 2016 are found, while the Ministry of Finance in 2018 approved new Standard Documentation. At the same time, the bibliography must be supplemented with other normative acts approved in 2018 which refer to MTender, ESPD, etc. We should also note in this context the difficulty in developing a comprehensive curriculum when the secondary legal framework in the field of public procurement is incomplete, a series of normative acts being not approved up to date.

Action 5. Elaboration of the training program in the field of public procurement for the internal auditors within the contracting authorities (procurement process, fraud risks and integrity standards) (Quarter II, 2018)

Progress indicators: *Elaborated program; team of trainers created (within the Public Procurement Agency and the National Anticorruption Center)*

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of the training program in the field of public procurement for the internal auditors within the contracting authorities (procurement process, fraud risks and integrity standards)	In due time	Not implemented	lack of impact - 0

Quantitative assessment

As for the progress indicators in the Sectorial Plan to have an elaborated Program and a team of trainers created (formed up by the employees of the Public Procurement Agency and the National Anticorruption Center), no such Program was identified and no mention was made about the common team of trainers. Thus, we find that the above mentioned action **is not implemented**.

Qualitative assessment

The sectorial plan designated the Public Procurement Agency and the Ministry of Finance as institutions responsible for carrying out the monitored action.

In the Action Plan of the Public Procurement Agency for the year 2018¹⁹ we did not identify the elaboration of a Training Program in the field of public procurement for internal auditors of the contracting authorities (the procurement process, the risks of fraud and integrity standards), not even any mentions regarding creation teams of trainers formed up by employees of the Public Procurement Agency and the National Anticorruption Center. Moreover, such mentions are not included in the Training Curriculum and the Training Plan for the year 2018.

In the Action Plan of the Ministry of Finance for the year 2018²⁰ the action of strengthening the capacities of internal auditors of the public sector with the organization of at least 3 training activities is specified, but we do not find any mentions or information on the web about the Training Program and the team of trainers set up in common with the National Anticorruption Center.

With a view to the lack of Training Program in the field of public procurement for internal auditors from the contracting authorities and a team of trainers from the Public Procurement Agency and the National Anticorruption Center, we state the lack of impact of the action of the Sectorial Plan on improving the integrity of the public procurement system.

Action 6. Organization of training for representatives of contracting authorities and internal audit units in the field of public procurement (in particular in procurement planning, contract management (during the year)

Progress indicators: *at least 500 trained persons*

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Organization of training of representatives of contracting authorities and internal audit units in the field of public procurement (in particular in procurement planning, contract management	In due time	Implemented without deficiencies	Medium impact - 2

Quantitative assessment

Considering the progress indicators of the Sectorial Plan to have at least 500 people trained throughout the year, this quantitative indicator was achieved, with the argumentation set out below. Consequently, we note that this action was **implemented without deficiencies**.

19 https://tender.gov.md/sites/default/files/document/attachments/plan_de_activitate_2018.pdf

20 https://tender.gov.md/sites/default/files/document/attachments/plan_de_activitate_2018.pdf

Qualitative assessment

Based on the activity report of the Public Procurement Agency for the year 2018²¹, during the year 135 training and information activities were carried out for representatives of the contracting authorities, economic operators, civil society, with 5464 participants registered.

Most of the training seminars (70) were held in Chisinau municipality, which makes up about 52% of the number of seminars held in 2018. In the territory (at the local level) 31 seminars (23%) were held, and 34 seminars (25%) took place directly at the premises of the Public Procurement Agency.

The most approached topic of these seminars refers to the general provisions regarding the stages of the public procurement process in the Republic of Moldova (32%), followed by the topic regarding the efficiency of public procurement through the use of the MTender electronic platform (25%) and to the new legislative changes in the field of public procurement, in accordance with Law No.169 of 26.07.2018 for amending and completing Law No.131 of 03.07.2015 on public procurement, which entered into force on October 1, 2018 (21%). In about 14% of the seminars the topic regarding the State Register of Public Procurement (MTender) was discussed. About 7% of seminars addressed certain particularities in the public procurement procedures (risks of corruption, food products, procurement in the water and sewerage sector), and the topic regarding the responsibilities and rights of economic operators participating in the public procurement procedure was discussed least of all (1%).

According to the report mentioned above, the Public Procurement Agency, in collaboration with the Ministry of Finance, the National Anticorruption Center, the Chamber of Accounts and the Financial Inspection, had held 3 training courses aimed at the internal auditors within the CPA and LPA of the second level, as well as the internal auditors, who hold qualification certificates in the field, on the topic "General aspects regarding public procurement and corruption risk management. Collaboration of internal auditors with other insurance providers". 78 internal auditors from the public sector took part in the training.

Regarding the training of the internal auditors, in the Report on the progress registered in the implementation of actions included in the Annual Action Plan of the Ministry of Finance for the year 2018²², it is specified that two training seminars titled "General aspects regarding public procurement and corruption risk management" were held being attended by a total of 78 internal auditors.

At the same time, according to the information provided by the National Anticorruption Center, during 2018 it participated in 2 trainings within the Ministry of Finance, where 166 people (unspecified) were trained and 2 trainings within the Public Procurement Agency, where 18 people were trained.

21 https://tender.gov.md/sites/default/files/document/attachments/raport_anul_2018.pdf

22 <https://mf.gov.md/ro/ministerul-finan%C8%9Belor/activit%C4%83%C8%9Bile-ministerului>

According to the Indices of Confidence in the public procurement system in the Republic of Moldova for the year 2019²³, the professionalism of the employees responsible for conducting public procurement within the public authorities was evaluated with the low and extremely low rating of 40% by the surveyed, and 29% of them gave an average rating. This fact shows that efforts are still needed, including by carrying out the trainings in order to increase the professionalism of the actors in the public procurement system.

It is worth mentioning that the perception of the degree of training and professionalism of the people responsible for public procurement procedures if compared to 2018 registered an increase of 12 percentage points. This may be due to the training seminars held in 2018, especially to those who have been informed about the new amendments made to Law No. 131/2015 or due to the use of the MTender electronic system.

Despite these results, there are delays in training the representatives of the contracting authorities at local level where the biggest problems are related to the professionalism and reduced competence of public procurement specialists. Only ¼ of the training seminars were organized at the local (district) level in 2018, which is too little to remedy the deficiencies faced by the representatives of contracting authorities. The Public Procurement Agency and the Ministry of Finance has to foster their efforts at the local level by carrying out training seminars, with the purpose of increasing the level of skills and professionalism.

The priority No. 3 **Ensuring transparency of public procurement processes**

Action 10. Revision of the single point of access to information on public procurement (Quarter II, 2018)

Progress indicators: portal reviewed; general information on public procurement (launch date, expected opening date and time) accessible to all interested actors

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Revision of the single point of access to information on public procurement	In due time	Implemented with deficiencies	Medium impact - 2

23 <http://viitorul.org/files/library/Raport%20nr.2%20Indice%20Achizitii%20m.pdf>

Quantitative assessment

In July 2018, a Technical Concept of the Automated Information System "The State Register of Public Procurement (MTender)" was approved by Government Decision No. 705 of July 11, 2018²⁴, elaborated with the support of EBRD. According to the decision, the Ministry of Finance had to be the owner of the central data unit of the MTender system, to ensure the implementation, operation and development of the system in accordance with the international legislation and agreements which the Republic of Moldova has joined. For the purpose of applying the Government Decision No. 705/2018 mentioned above, in September 2018, the Ministry of Finance approved the Program for experimental use of the MTender system (MF Order No. 157 of 14.09. 2018 with the further amendments). Thus, as of October 17, 2018, all public authorities with the status of contracting authority according to Law 131/2015 are obligatory to follow the procedures of price quotation request and open bidding through the MTender system. In addition, the contracting authorities may choose to carry out small value procurement electronically, having no obligations in this respect.

The action was assessed as **implemented with deficiencies**, as the MTender system does not ensure the complete development of public procurement by electronic means, starting with the planning stage and up to the management stage of the procurement contract and the amendments to the contract. During the reference period, several technical functionalities and necessary adjustments were implemented (the integration of the "claims" section, the availability of all 4 award criteria according to Law 131/2015, the possibility of uploading supplementary documents of the offer selected as winning, etc.). However, the system has a number of shortcomings in terms of its functioning as provided by the Technical Concept, as well as inconsistencies with the primary and normative-secondary legal framework, which are analyzed in the document elaborated by IDIS "Viitorul" - "Constraints in use of the MTender electronic public procurement system".

Qualitative assessment

The introduction of the MTender system, which works according to the "everyone sees everything" principle, had a **medium impact(2)**. Although, on the one hand, it is a tool for ensuring the transparency and efficiency of the procurement process by reducing the administrative burden, increasing competition and reducing operating expenses, at the same time making public authorities accountable for using public money. On the other hand, the expected results aimed at providing access to information on awarding public procurement contracts and additional agreements, as well as increasing the level of civil society participation in monitoring public procurement, including the execution of public procurement contracts, have not been achieved.

24 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=376903>

Action 11. Revision of the legal framework on monitoring of execution of public procurement contracts (Quarter II, 2018)

Progress indicators: *the revised legal framework; transparency of information regarding the ensured execution of contracts and additional agreements.*

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Revision of the legal framework regarding the monitoring of execution of public procurement contracts	-	Not implemented	Lack of impact - 0

Quantitative assessment

In terms of progress indicators, the action is considered **not implemented** in conditions when the responsible institutions (Ministry of Finance, PPA) have not taken measures during the reference period to review the legal framework and increase the transparency of the information regarding the execution of procurement contracts and additional agreements.

In the process of public procurement, in terms of lack of clear regulations and leverage for raising responsibility of contracting authorities and economic operators who assume some obligations by signing a public procurement contract, the execution stage of public procurement contracts is the most vulnerable to corruption risks. According to Law 131/2015, the Public Procurement Agency is the institution responsible for “*monitoring the compliance of the public procurement procedures and carrying out the analysis of the public procurement system*”, and the working group within the contracting authority is responsible for “*monitoring the public procurement contracts*”. PPA has no leverage of intervention in execution of procurement contract, the contracting authority being fully responsible for its proper execution. In case of non-fulfillment of the contractual obligations by the economic operator, the contracting authority may submit complaints, apply sanctions to the economic operator, and may request the PPA to include the economic operator in Exclusion List (prohibition of participation in public procurement for 3 years) according to the Regulation on making an Exclusion list of economic operators²⁵.

Transparency at the execution stage of the procurement contract is extremely low and monitoring reports on the execution of procurement contracts that the contracting authority is obliged to elaborate and publish on the website at quarterly/semi-annual and annual basis have a formal character. Respectively, these reports do not prevent the risks of corruption and illegal agreements between authorities and economic operators, provided that no authority will reflect in its own reports deviations or illegality in contract execution.

²⁵ <http://lex.justice.md/md/368202/>

Qualitative assessment

In the context of the above, the lack of impact is attested. The legal framework has not been amended and improved to ensure more efficient monitoring of execution of public procurement contracts, and transparency of information on execution of procurement contracts and additional agreements is still extremely low.

Action 12. Elaboration of a set of indicators for the Public Procurement Agency that will be used in collection of statistical data and in the activity reports of the Public Procurement Agency (Quarter I, 2018)

Progress indicators: set of indicators elaborated and approved

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of a set of indicators for the Public Procurement Agency that will be used in the collection of statistical data and in the activity reports of the Public Procurement Agency	-	Partially implemented	Low impact - 1

Quantitative assessment

The Public Procurement Agency elaborates activity reports on a regular basis: quarterly, semi-annually and annually, these being published on the web page in the "transparency"²⁶ section. We find that these reports are predominantly statistical, without a set of performance indicators. The activity reports prepared and published by the PPA include several "transparency indicators" such as share of canceled procurement, share of public procurement carried out by means of publication in PPB (Public Procurement Bulletin), the volume of public procurement reported to GDP, the share of public procurement in GDP. It is noted that in 2018 a set of indicators has not been developed and approved for use in collecting statistical data and for PPA activity reports. A set of indicators has been identified and included in the Methodology of selection of procurement procedures that are included in the sample subject to ex-post control, approved by the Order of the Director of the Public Procurement Agency No. 29 of May 22, 2017.

Qualitative assessment

The indicators presented in the quarterly, semi-annual and annual reports of PPA are useful, but they are insufficient to ensure transparency, as well as for the analysis and identification of the risks of corruption and fraud at each stage of the public procurement process and, implicitly, to take preventive actions in respect of these risks. Therefore, **the impact of the action is low.**

²⁶ <https://tender.gov.md/ro/documente/rapoarte-de-activitate>

Action 13. Elaboration of a guide on the mode of generation and submission of claims (Quarter II, 2018)

Progress indicators: the guide elaborated and published on the web page

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of a guide on the mode of generation and submission of claims	In due time	Implemented without deficiencies	Major impact - 3

Quantitative assessment

The National Agency for Complaints Settlements (NACS) officially announced that starting from September 4, 2017, economic operators can submit to NACS the complaints regarding the public procurement procedures by filling in a standard form²⁷. Given that the appeals system has undergone essential changes both from a legislative and institutional point of view, the Guide had to integrate all the information on contestation and settlement procedure of an appeal that would ensure maximum compliance with the procedure by economic operators who intend to file a claim as a result of violations committed by the contracting authorities in the procurement process.

We would like to mention that in December 2017, such a Guide was developed by IDIS “Viitorul” in collaboration with specialists from the Public Procurement Agency (the institution previously responsible for receiving and settlements of claims regarding public procurement procedures) – the **Guide “Appealing in public procurement”**²⁸

The action was carried out without shortcomings and within the deadline, considering that in December 2018 NACS had developed the **Guide for filing and settlement of claims**, which was published on the web page in the “appeals” section²⁹ and which includes the following main sections: claim settlement system; filing claims regarding public procurement procedures; the procedure of examination and settlement of claims; NACS decisions.

²⁷ <https://ansc.md/ro/content/comunicat-privind-receptionarea-spre-solutionare-contestatiilor-depuse-de-catre-operatorii>

²⁸ <http://viitorul.org/ro/library-books/1113>

²⁹ <https://ansc.md/ro/content/depunere-contestatii>

Qualitative assessment

The impact of the action is a major one considering the need of economic operators for methodological support on the mode they are to elaborate and file a claim regarding a procurement procedure. This is demonstrated, on the one hand, by increase of the degree of information and implicitly of the number of complaints lodged, and, on the other hand, by the reduction of the number of complaints filed late or in incomplete/non-compliant mode. If in 2017 these had constituted 41% and respectively 12% of the total rejected claims, then in 2018, the late and incomplete/non-compliant claims were reduced by 8 pp, constituting 33% and respectively, by 8 pp, constituting 4 % of all claims rejected.

Action 15. Elaboration of a model declaration of eligibility for participation in public procurement (Quarter II, 2018)

Progress indicators: *draft order elaborated and approved*

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of a model declaration of eligibility for participation in public procurement	In due time	Implemented with deficiencies	Medium impact - 2

Quantitative assessment

The European Single Procurement Document (ESPD) was introduced in the legal framework together with the amendments to Law 131/2015 of October 2018 (Law No. 169 of 26.07.2018, in force from 01.10.2018) for the purpose of transposing Directive 2014/24/EU of the European Parliament and Council of 26 February 2014 on public procurement and repeal of Directive 2004/18/EC. ESPD aims to facilitate the participation of SMEs in public procurement procedures and, finally, to contribute to increasing competition and ensuring better conditions for all the authorities.

Thus, Law 131/2015 with the respective amendments stipulates that, when submitting the requests for participation or tenders, the contracting authority accepts the European single procurement document, which consists of an **updated declaration on one's own responsibility, as a preliminary proof instead of the certificates issued by public authorities or by the third parties**, and confirming that this economic operator meets the following conditions:

- a) *is not in any of the exclusion situations mentioned in art. 18;*
- b) *meets the capacity criteria as requested by the contracting authority;*
- c) *if applicable, meets the selection criteria set out by the contracting authority in accordance with provisions of this law.*

Also, the art. 65, paragraph 4, stipulates that the **presentation of the offer implies the submission in a common set of the technical proposal, the financial proposal, the ESPD and, if applicable, the guarantee for the offer**. For the purpose of applying the respective norms, a few days later the Order of the Ministry of Finance No. 177 of 09.10.2018 on approval of the standard form of the European Single Procurement Document was approved.

Although the action was carried out in full and within the term provided in the Plan, still it was assessed as **implemented with deficiencies**, considering the multiple deficiencies of the approved form and the constraints faced by the contracting authorities and economic operators in its use. These errors are explained by the complex format of the document, the unclear structure, inaccurate or repetitive questions, and unclear instructions on completion for each of the parties. The respective errors cause disqualifications of the bidders, appealing against procurement procedures, delays in procurement process or even canceling some procurement procedures. Further details regarding ESPD can be found in the policy analysis elaborated by IDIS "Vitorul"³⁰. In order to remedy the shortcomings of the ESPD form and to improve the experience of its use, IDIS "Viitorul" together with AERG (Association for Efficient and Responsible Governance) made a series of proposals that were sent to the Ministry of Finance in March, 2019.³¹

Qualitative assessment

Introduction of ESPD has a medium impact considering, on the one hand, the complexity of the procurement procedure and the multitude of documents required to participate in the procurement procedure, and, on the other hand, the constraints in using the form generated by its deficiencies. Once ESPD has been introduced, the activity of the economic operators in the bidding process has been streamlined, reducing the time required to prepare the bids, the resources involved, and that of the contracting authorities - by reducing the time required to evaluate all the documents related to the bids received. The economic operators can redirect their resources in a much more efficient way, optimizing the costs and expenses related to the preparation of the documents for bidding within public procurement procedures. Moreover, by streamlining the bidding process, economic operators have the opportunity to participate in several procurement procedures, which improves competition in the procurement market and generates more value in relation to the public money allocated for procurement.

30 http://viitorul.org/files/library/IDIS_Analiz%C4%83%20de%20Politici_DUAE_final.pdf

31 http://viitorul.org/files/library/Propuneri%20formularul%20DUAE_IDIS%26AGER.pdf

Action 17. Elaboration of the strategic development plan and institutional consolidation of the National Agency for Complaints Settlements (Quarter II, 2018)

Progress indicators: *Elaborated development plan; financial resources for its implementation are identified*

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of the strategic development plan and institutional consolidation of the National Agency for Complaints Settlements	–	Partially implemented	Medium impact - 2

Quantitative assessment

In terms of the progress indicators of the Sectorial Plan to have an elaborated Development Plan and financial resources for its implementation being identified, these quantitative indicators were partially implemented, *with the argumentation set out below*. As a result, we note that the action in question is **partially implemented**.

Qualitative assessment

The Strategic Development Plan for the medium and long term of the NACS was approved on 08.12.2018³². The Plan outlines three basic objectives:

- Objective 1. **Development of the institutional capacity of NACS;**
- Objective 2. **Contributing to development of legal framework in the domains of competence;**
- Objective 3. **Raising efficiency of claim settlement process.**

The Strategic Development Plan is not completed by a precise Plan of actions necessary to achieve the objectives, the terms of execution, the responsible subdivisions/persons, the progress indicators, the financial resources. In terms of lack of an Action Plan with all the components described above, we cannot speak *in a strict sense* about an impact of this strategic document on the activity and institutional consolidation of NACS. If we disregard this strategic

³² https://ansc.md/sites/default/files/document/attachments/plan_de_dezvoltare_strategica_pe_termeni_mediu_si_lung.pdf

document, since its establishment as an institution, the NACS achieved much success, without being directly guided by an Action Plan approved in this regard. An analysis of the objectives described in the Strategic Development Plan makes us conclude that the actions required for implementation of this strategic document are in fact actions within the scope of the NACS's competences, which are currently being realized and which are financed from the budget resources allocated annually to the NACS.

The priority No. 6

Implementation of information system of efficient and effective public procurement, with the integration of instruments and good practices to identify and prevent fraud and corruption.

Action 19. Elaboration of the concept of a new electronic public procurement system (Quarter I, 2018).

Progress indicators: the concept elaborated and presented to the Government

Action	Term of execution	Assessment	
		Quantitative	Qualitative
Elaboration of the concept of a new electronic public procurement system	In due time	Implemented with deficiencies	Medium impact - 2

Quantitative assessment

The technical concept of the Automated Information System "The State Register of Public Procurement (MTender)" was approved in July 2018 by Government Decision No. 705 of July 11, 2018. According to the aforementioned GD, the Ministry of Finance had to be the owner of the central data unit of MTender system and to ensure the implementation, operation and development of the system in compliance with international legislation and agreements which the Republic of Moldova has joined.

The above mentioned concept provides that the "MTender" system shall create a unified information space and an official source of data on the public procurement procedures carried out and the results of their organization - the public procurement contracts. The technical concept provides for the automation by the "MTender" system of the processes for carrying out the public procurement procedures, including the pre-procedure (planning) and post-procedure (monitoring) processes, as well as offering advanced data analysis tools using this system.

The Public Institution “Center for Informational Technologies in Finances” (hereinafter CTIF) is the holder and technical and technological operator of the central data unit of the MTender system, being responsible for the maintenance of the mentioned unit, for support and development of a single governmental portal for online access: <https://mtender.gov.md/>, for ensuring the interoperability of the system with the common government technological platform “MCloud” [1], as well as for integrating with the state information resources and with the relevant government electronic services available in the Republic of Moldova.

It is important to emphasize the principles of MTender system set out in the Technical Concept:

- 1. interconnected multiplatforms model;**
- 2. full coverage of procurement processes;**
- 3. interoperability with government electronic services;**
- 4. standards and principles *open source, open data, open contracting*;**
- 5. cost-efficiency during implementation.**

During the year 2018, the MTender system continued to be developed, with modifications and adjustments being made for the most efficient conduct of the procurement procedures by contracting authorities and for the more active participation of economic operators. However, there is a number of deficiencies and inconsistencies with the primary and regulatory-secondary legal framework, as well as lack of some technical functions that were provided by the technical concept of MTender system. The current deficiencies and inconsistencies between the system and the legal framework, as well as lack of technical functions that would ensure electronic conduct of the entire public procurement process generate a series of constraints for both contracting authorities and economic operators.

Qualitative assessment

Although the system ensures transparency of procurement process, yet it has not integrated a set of corruption risk identification tools that will help to reduce the risks of fraud and corruption in the procurement system. In these terms, the impact of the action is a medium one.

Final conclusions and policy recommendations

It is imperative for us that any action of the authorities in the field, any legislative or procedural amendment should be translated into the transparent, equitable, non-discriminatory, impartial, legal and efficient use of public money by the authorities when purchasing the necessary goods, services and works.

It is important to mention that harmonization of legislation of the Republic of Moldova with the *acquis communautaire* is a determinant factor of the success of our country's integration into the European Union, and it is necessary for the continuous development of the procurement system. However, the incorporation of European legislation into the national system must comply with both the principles of the legislative technique according to which the normative acts must be elaborated clearly, simply and concisely, and the terminology used to transpose the norms. Consistent, clear and feasible legislation is a key factor in reducing the risks of corruption and fraud typical of public procurement and seriously damaging public budget and interest of citizens.

The monitoring process showed major delays in implementation of the sectoral Plan of anti-corruption actions in the field of public procurement. Only 2 actions were implemented without deficiencies, 4 actions were implemented with deficiencies, 3 actions were partially implemented and another 3 actions were assessed as not implemented out of 12 actions with the deadline until the end of 2018. The monitoring chart shows that only 50% of measures were carried out during the respective period.

We find a low level of transparency in the process of implementing the actions envisaged in the Sectoral Plan and the lack of aggregated information, which makes it difficult to monitor them. The actions taken are either not made public or their publication is scattered on different web portals (particip.gov.md, parliament.md, gov.md, justice.gov.md, tender.gov.md, mf.gov.md, cna.md, NACS.md, etc.). Regarding not implemented or partially implemented actions, no explanations are given, the obstacles that prevent the actions fulfilment are not mentioned, and the solutions for overcoming them are not presented. Contrary to requirements, the Ministry of Finance and National Anticorruption Center did not publish quarterly monitoring reports on their websites. Despite these shortcomings, it stands to mention the openness of the public authorities responsible for IDIS "Viitorul" inquiries and the information on the actions taken.

Implementation of the sectorial Plan of anti-corruption actions in the field of public procurement depends on the effective cooperation between the responsible public and partner authorities. There are big delays and difficulties in this regard. First of all, for each action in the Sectorial Plan, several institutions are indicated, some of them are directly responsible, others are only

partners, the role of each institution not being specifically defined, what leads to the transfer of responsibilities from one institution to another.

The legal framework has not been brought into line with European Union directives and good procurement practices so far. The responsible authorities have directed their efforts to transpose Directive 2014/24/EU on public procurement, but the provisions of Directive 2014/25/EU on procurement made by entities operating in water, energy, transport and postal services sectors have not been transposed. As a result, we have an incomplete regulatory framework, which does not regulate the particularities of the procurement procedures carried out by the specific sectoral entities that carry out relevant activities in the utilities sector.

Thus, the problem of publicly-owned enterprises (state and municipal enterprises, commercial and municipal companies with the state majority-owned capital) remains unresolved, since they are not subjects of the Law on public procurement and do not comply with the procedures set out by law, the fact that leads to the lack of transparency, vulnerability to corruption and, implicitly, inefficient use of public money. There is a legislative initiative in Parliament that obliges these companies to make procurement in accordance with the law, but it was adopted only in first reading.

A series of amendments made in 2018 to the law on public procurement did not lead to the expected results due to the failure to adopt the necessary regulatory acts for implementation of legal provisions, or because of the existence of gaps and inconsistencies in the domestic legal framework:

- the provisions of Law No.131 / 2015, as well as the normative acts subordinated to the law, create confusion, uneven interpretations and barriers for the economic operators regarding the European Single Procurement Document;
- so far, the Government has not revised the Regulation on the activity of working group for procurement, Regulation on public procurement of works, Regulation on public procurement through negotiation procedure, and not even a new Regulation on the frame agreement has been drafted;

The new provisions of the law regarding the procurement service providers and the certified specialists in the field of public procurement are too general, not being developed in a Regulation approved by the Government. At the same time, mechanisms for certification of procurement specialists have not been developed and implemented. In terms of lack of these regulations, the provisions regarding the outsourcing of public procurement services cannot be applied in practice.

The process of planning, organizing and conducting the training sessions has many shortcomings and deficiencies, caused by the reduced capacities of the Public Procurement Agency. A national training program in the field of public procurement is lacking, including a Program for internal auditors within the contracting authorities, which would include all the necessary components of such programs. The training process does not have a permanent and continuous character and does not include practical seminars on specific subjects to meet the needs of the contracting authorities and to be held by skilled trainers and to be run on. Only ¼

of the training seminars were organized at the local level (district) in 2018, which is too few to remedy the deficiencies faced by the representatives of the contracting authorities, to increase the professionalism and capabilities of the specialists in public procurement.

During the year 2018, the MTender system continued to develop with modifications and adjustments being made for the most efficient fulfillment of procurement procedures by the contracting authorities and for the more active participation of economic operators. However, there is a number of deficiencies and inconsistencies with the primary and regulatory-secondary legal framework, as well as the lack of technical functionalities that were provided according to the technical concept of the MTender system. These deficiencies and inconsistencies generate a series of constraints for contracting authorities and for economic operators, not ensuring the complete electronic process of the entire public procurement process. The positive plenary effects of the implementation of electronic system will be felt under the conditions of ensuring a complete electronic procurement process, of ensuring the functional and financial sustainability, of eliminating the inconsistencies with provisions of the legal framework, and of integrating the tools to identify corruption risks in the electronic public procurement system.

The legal framework has not been amended and improved to ensure a more efficient monitoring of the execution of the public procurement contracts - the most vulnerable stage to the risks of corruption - and there is still a lack of clear regulations and leverage to raise responsibility of contracting authorities and economic operators that assumed some obligations by signing a public procurement contract. In addition to this, the transparency of the information regarding the execution of procurement contracts and additional agreements is still extremely low, and monitoring reports on execution of procurement contracts, which contracting authority is obliged to elaborate and publish on the website quarterly/semi-annually and annually, they have a formal character and they do not prevent risks of corruption and illegal agreements between authorities and economic operators.

Policy recommendations

First of all, it is necessary to implement all the actions provided by the sectorial Plan of anti-corruption actions in the field of public procurement, in compliance with the terms specified and to achieve all the performance indicators provided set out in the Plan.

It is necessary to increase the transparency of the activity of the entities responsible for the implementation of the Sectorial Plan. Aggregate information on the implementation process of the actions envisaged must be published on web pages of responsible institutions. Web pages of the Ministry of Finance and National Anticorruption Center must contain quarterly monitoring reports on the implementation of the sectorial Plan.

It is necessary to review and refine the current mechanism of dialogue between the responsible public institutions, so that it is an effective and permanent one, with clear roles and responsibilities for each institution, and this will contribute to the advancement of the implementation process of the sectorial Plan of anti-corruption actions in the field of public procurement.

Public authorities should direct their efforts to transpose European Union rules and practices into the national legal framework, in particular Directive 2014/25/EU on procurement made by entities operating in the water, energy, transport and postal services sectors.

Priority review of the legal framework by the Parliament to oblige publicly-owned enterprises (state and municipal enterprises, commercial and municipal companies with the state majority-owned capital) to make procurement in accordance with the procedures set out in the public procurement law.

Priority approval by the Government of normative acts necessary for implementation of the provisions of the law on public procurement essentially amended in 2018, such as: the Regulation on the activity of the working group for procurement, the Regulation on public procurement of works, the Regulation on public procurement through negotiation procedure, the Regulation on the framework agreement.

Development of electronic procurement system in order to ensure the complete cycle of a public procurement electronically and to ensure transparency at all the stages of procurement process, in particular at the stage of contract execution, as well as development of BI method necessary for analyzing and monitoring public procurement. The actions necessary to ensure the functional and financial sustainability of MTender, elimination of inconsistencies with the provisions of the legal framework, as well as integration of tools to identify corruption risks in the electronic public procurement system are related to the development of the system.

Amendment and improvement of the legal framework in order to ensure a more efficient monitoring of the execution of the public procurement contracts and increasing the level of transparency of the information regarding the execution of the procurement contracts and the additional agreements.

Revision by the Ministry of Finance of the standard form of the European Single Procurement Document both as a form (appropriate numbering) and content (excluding references and instructions in the form). More recommendations regarding the ESPD can be found in the document elaborated by IDIS "Viitorul" and AERG and sent to the Ministry of Finance.³³

Amendment by Parliament of the norms of Law on public procurement (art. 20 paragraph (7)) in order to exclude the prerogative of the contracting authority to request all the qualification documents related to the ESPD at the tender submission stage.

Approval of the secondary normative framework to regulate in detail the way in which the provisions regarding the outsourcing of public procurement services will be applied (roles, degree of involvement, responsibilities, liability that may arise, etc.). Also it is necessary to develop and implement the mechanisms for certification of procurement specialists.

In order to develop the capacities of the contracting authorities in making public procurement and preventing corruption in the field, the process of planning, organizing and conducting the training sessions must be improved. In this sense it is necessary:

33 http://viitorul.org/files/library/Propuneri%20formularul%20DUAE_IDIS%26AGER.pdf

- elaboration of a National Training Program in the field of public procurement, including a Program for internal auditors of the contracting authorities;
- permanent and continuous organization and development of the training process, with practical seminars on specific topics, according to the needs of the contracting authorities held by the teams of instructed trainers;
- planning, organizing and conducting as a priority training seminars at the local level to increase the professionalism and capabilities of public procurement specialists of the contracting authorities in localities.

In order to develop the capacities of the National Agency for Complaints Settlements, it should elaborate and approve an Action Plan for implementation of objectives of the Strategic Development Plan of the institution, specifying the terms of execution, the subdivisions/responsible employees, progress indicators and financial resources. This Plan should not lack such actions as:

- completion of personnel;
- strengthening the integrity of the staff and preventing corruption;
- raising the level of transparency and accessibility of public information;
- improving the dialogue and cooperation between the Agency and the Parliament, the Ministry of Finance, the Public Procurement Agency, the civil society, other important actors;
- identifying all problems and gaps in the Agency's activity and submitting solutions, including draft normative acts, to rectify the situation;
- increasing the professionalism of the advisors for settlement of claims;
- application of unified practices in decisions issued by the Agency;
- identification of tools to reduce the time frame for examining claims and reducing the number of abusive actions;
- provision the actors in the public procurement system with the information regarding their rights, obligations and procedures to be followed in case of lodging claims.

