

Analytical note with recommendations for the Regulation on planning of public procurement contracts

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Current policies and regulations on public procurement planning

The Regulation approved by Government Decision No. 1419 of December 28, 2016 regulates the way of planning public procurement contracts in the Republic of Moldova. It sets out the procedure by which contracting authorities identify, estimate, plan, approve and publish procurement needs for goods, services and works, with a view to an efficient, transparent and predictable use of public funds.

The regulation applies to all contracting authorities, regardless of the source of funding - whether from the state budget, local budgets, external funds or other legal sources. The document requires each authority to draw up an annual procurement plan, based on identified needs and the estimated value of contracts, and to approve it within set deadlines. The plan must then be published on the institution's official website and, since the digital reforms, in the MTender electronic procurement system.

The regulation also allows the plan to be updated annually in the event of budgetary changes, changes in priorities or other justified needs, and contracting authorities are obliged to justify and document these changes.

With this regulation, the Government has sought to ensure rigorous and strategic planning of public procurement that supports good governance, minimizes the risks of corruption and allows for effective monitoring by relevant institutions and civil society. At the same time, it strengthens the accountability of contracting authorities in the management of public resources.

The legislative framework for public procurement has been significantly updated, including through the elaboration by the Ministry of Finance of a new draft law on public procurement, which was subject to a broad public consultation process, which aims to fully transpose Directive 2014/24/EU, as well as Directives 89/665/EEC and 92/13/EEC, in order to align with the *acquis communautaire* and to strengthen a transparent, efficient and competitive public procurement system, it is necessary to amend the secondary legal framework. Also, the National Program for the Development of the Public Procurement System for the years 2023 - 2026 (GD no. 625/2023), it is indicated the imperative need to revise the Government Decision no. 1419/2016 on the way of planning public procurement contracts. This revision must ensure consistency and compatibility with the new legislative provisions and meet the requirements of modernization and digitalization of the public procurement process. These new strategic documents focus on digitalization, professionalization

efficiency and alignment with EU directives, objectives which are not reflected in the current form of the 2016 regulation.

[The National Action Plan for Moldova's Accession to the European Union 2024-2027](#) includes explicit references to public procurement planning. This strategic document, elaborated by the Government of the Republic of Moldova, sets out the necessary steps to align with the *acquis communautaire* and to fulfill the criteria for accession to the European Union.

Under Chapter 5: Economic policies and functioning of the internal market, the sub-chapter on public procurement, the plan foresees the following actions relevant for planning:

1. Revise the regulatory framework for public procurement, including planning procedures, to ensure compliance with EU directives and to improve the efficiency and transparency of the procurement process.
2. Implement an integrated public procurement planning and monitoring system, allowing better coordination between contracting authorities and facilitating the analysis of procurement data.
3. Develop the institutional and professional capacities of contracting authorities, through training and capacity building, to ensure proper and strategic planning of public procurement.

These actions reflect the Republic of Moldova's commitment to strengthen the public procurement system, in particular at the planning stage, as part of European integration efforts.

International perspectives on effective procurement planning

The [OECD Legal Instruments](#) document "Recommendation of the Council on Public Procurement", also contains relevant recommendations on public procurement planning.

One of the 12 key components recommended by the OECD is "Balanced and multi-year budgeting and planning". This emphasizes the importance of strategic and sustainable planning with a focus on:

- Efficient allocation of public resources according to real priorities;
- procurement plans that reflect public policy objectives;
- coordinating procurement with budget cycles and sector strategies;
- use of market data and analysis to correctly estimate procurement needs and contract values.

The OECD document therefore explicitly supports the idea that rigorous planning is essential for an efficient, transparent and accountable procurement system. It provides a solid basis for arguing the proposed amendments to GD 1419/2016 in the light of international good practice.

[The MAPS report assessing the national public procurement system](#) explicitly mentions the importance and shortcomings related to procurement planning.

In the executive summary, it is emphasized that one of the key components assessed was the improvement of the planning and preparation stages of procurement, together with the efficiency of tender evaluation and contract management.

Also under Pillar II - Institutional and Management Capacity, the evaluation draws attention to the following planning issues:

- The lack of a unified methodological framework for procurement planning at contracting authority level;
- The need for planning to be better linked to the budgets of the institutions and to the real needs of beneficiaries;
- Lack of a mechanism to monitor and analyze the implementation of the annual procurement plans;
- Need to introduce training and guidelines to improve planning capacity at local and central level.

The report directly recommends "improving the planning and preparation stages of procurement processes, including the introduction of tools and standards for needs assessment and procurement forecasting." / *"enhancing the planning and preparation stages of procurement processes, including the introduction of tools and standards for needs assessment and procurement forecasting."* Therefore, this document provides a sound and technically validated basis for the revision of HG no. 1419/2016, in particular with regard to:

- Formalizing the planning process;
- Publication and justification of changes;
- Linkage with budget and public policies;
- Profession professionalization of the planning function.

The [2024 Enlargement report](#) published by the European Commission refers to procurement planning issues, although it does not treat this as a separate or central topic. Under the section dedicated to Chapter 5 - Public Procurement, the report emphasizes the need to continue reform efforts to bring Moldova's legislation and practices in line with EU standards. Specifically, the report mentions:

- Lack of administrative and institutional capacity in many contracting authorities, including the capacity for rigorous and realistic procurement planning.
- The need for more strategic planning, consistent with budgetary priorities and sectoral policies, to reduce fragmentation and unplanned procurement.
- Insufficient use of market data and analysis in the planning process, leading to inaccurate estimates and launching procedures with increased risk of failure.

The report recommends, in line with the EU acquis, a strengthening of the procurement planning and programming processes, including through digitization and professionalization, which reinforces the justification for amending Government Decision 1419/2016. This European document thus provides a strong strategic foundation for the reform of the national procurement planning framework.

Shortcomings identified in public procurement planning

The report of the compliance audit on public procurement in the system of the Ministry of Justice in the years 2019-2020, published by the Court of Auditors in 2021 ([3 hcc nr. 40 from 23.07.2021.docx](#)) emphasizes that procurement procedures were affected by irregularities and deficiencies, depending on how they were planned. This indicates a direct link between inadequate planning and subsequent problems in the conduct of procurement.

Also, monitoring reports prepared by civil society organizations, such as the Institute for Development and Social Initiatives (IDIS) "Viitorul", the Association for Efficient and Responsible Governance (AGER), Transparency International Moldova (TI Moldova), the Independent Press Association (API), etc., point to a number of recurring dysfunctions.

The civil society analysis points out that rigorous planning in public procurement is a fundamental element for the efficient use of public funds and for adequately meeting the needs of citizens, as well as for properly equipping institutions that provide public services. This importance applies irrespective of the subject matter of the procurement, be it goods, services or works, and applies to all relevant sectors, from education and health to infrastructure and social protection. However, the planning stage is often treated superficially, sometimes even ignored, either because of a lack of specialized staff or because of other activities considered more urgent by contracting authorities.

As a consequence, procurement procedures are initiated late, in haste, without realistic calculations or thorough analysis of real needs. In many cases, the authorities try to spend the allocated funds before the end of the budget year, leading to procedural mistakes and unwise decisions. Problems arise either during the procedure itself or later, during contract implementation. Poor planning entails significant risks: procedures annulled following contestations, non-utilization of available funds, recourse to negotiation procedures without prior notice for reasons of urgency, or inappropriate purchases that are either too expensive or not in line with the beneficiaries' requirements.

This situation underlines the need for a serious rethink of the approach to public procurement planning to prevent errors, losses and underperformance in the delivery of public services.

In the study [Risk Indicators in Public Procurement in the Republic of Moldova - Procurement Pulse](#) the authors mention that risk indicators can be identified at each stage of the procedure: from planning, to contract award and even the implementation stage. The basic indicators have been classified into 4 categories:

- Risk indicators at pre-tender and planning stage
- Risk indicators at the procurement procedure stage
- Risk indicators at contract award stage
- Risk indicators at contract implementation stage

The following risk indicators have been identified at the pre-tender and planning stage:

1. Circumvention of the application of legal provisions in the procurement process in the planning process
2. Incorrect selection of the type of procedure
3. Misapplication of the rules for calculating estimated value
4. Incorrect description of the subject matter of the procurement procedure
5. Qualification criteria do not comply with the principles of equal treatment, proportionality and ensuring competition
6. Incorrect setting of evaluation criteria
7. Initiation of procurement procedures in the absence of resources or lack of certainty of allocation resources

Examples and case studies are provided in the study which relate to the identified risk indicators.

In the [Monitoring Report: Public Procurement under the "European Village / European Village Express" Program - Procurement Pulse](#) it is mentioned that out of the 65 monitored contracting authorities (the findings of the report are based on the collected data, up to June 15, 2024), 46 - do not have web pages. Out of 46 contracting authorities that do not have web pages, in the case of 2 contracting authorities - the annual procurement plans were published on the District Council's web pages.

Out of 19 contracting authorities with web pages, 13 contracting authorities *did not publish their annual procurement plans*. Out of the 6 contracting authorities that have published annual procurement plans, only 4 contracting authorities have included, including as a result of amendments, the monitored procurements in the annual plans.



During several monitoring missions carried out by AGER and IDIS "Viitorul" in the period 2022-2024, it was found that a significant number of contracting authorities - including municipalities in the districts of Cîmșlia, Cahul, Ocnita, but also municipal enterprises or educational institutions - either *did not publish the annual plan at all, or only partially, in a short term, in a format difficult to consult*. In some cases, the plans did not contain the minimum data required by HG no. 1419/2016 (e.g. estimated value, CPV code, source of funding), making it impossible to assess the subsequent consistency and legality of the awarded contracts.

A relevant example is the [Monitoring Report: public procurement carried out by the Chisinau City Hall, its subdivisions and municipal enterprises - Puls achizițiilor](#) conducted within the project "Public procurement in the Chisinau City Hall under the transparency lens". This report highlights significant shortcomings in the public procurement planning process, including *the lack of a clear strategy and proper needs assessment*, leading to inefficiencies and risks in the use of public funds.

Another issue noted by civil society is the *frequent, and often unjustified, modification of annual procurement plans*. According to an API report from 2023 under the European Village program, several municipalities (e.g. in Leova and Edinet) modified their plans as many as 5-7 times in one fiscal year, in some cases completely replacing the original targets or drastically changing the estimated values. These changes were not accompanied by clear explanations and the updated documents were not published within reasonable deadlines. This practice fosters a lack of predictability and creates suspicions of 'tailor-made' procurement for certain economic operators.

Civil society organizations also noted a *lack of correlation between approved plans and actual procurement*. CSO monitoring projects have found cases

where contracts actually awarded never appeared in the published plans. For example, in the case of a secondary school in the Hâncești district, the purchase of a photovoltaic system worth over 800 000 lei was not planned in any of the versions of the annual plan available online.

A constant structural problem is also the *lack of professional capacity of those responsible for developing procurement plans*. Many of the officials involved in this process have no formal training in public procurement, do not attend training courses and do not have access to methodological support. The IDIS and LEX XXI reports point out that in most small local authorities, planning is done "formally" by the accountant or secretary, without a real needs analysis or a correct estimation of values. This formalistic approach generates plans that are subsequently ignored in practice.

Another important element reflected in the civil society analysis is the *absence of a functioning post-factum reporting mechanism on the implementation of the plan*. At present, the Regulation does not require contracting authorities to report publicly on the degree of realization of the annual plan, which makes it impossible to monitor the quality of planning and assess deviations. In the absence of such reporting, "unplanned" purchases may become the norm and the annual plan loses its strategic role.

Also, some reports (including the one carried out by the IPA in partnership with TI Moldova in 2022) have signaled that *procurement planning is not linked to the budgetary priorities* or the sectoral strategic plans of the contracting authority. This leads to situations where procurements are planned for which there are no real budgetary allocations or which are contrary to the approved development strategies (e.g. procurement of new furniture when the building is in danger of collapse and in urgent need of capital repairs).

An important shortcoming is the *lack of regulations related to training and certification of staff responsible for procurement planning*. Currently, this responsibility often falls to staff who lack adequate training in public procurement. A modernized regulation should provide for competency requirements, training attendance and regular certification in line with international best practice.

At the same time, in order to meet the commitments to harmonization with the European Union, it is necessary to take on board modern strategic approaches, such as multi-annual planning, integration of social and environmental criteria in planning, and centralization of procurement where it is efficient. There are no provisions in the current regulation to enable these instruments to be applied.

In its current form, the Regulation does not require contracting authorities to report on the degree of implementation of annual procurement plans, which limits the possibility to assess the effectiveness and accuracy of planning. The introduction of regular reporting requirements and ex-post analysis would reinforce institutional learning and allow for the correction of bad practices in a timely manner.

Therefore, revising Government Decision No. 1419/2016 is essential to adapt the planning process to the current realities of the public procurement system, increase transparency, institutional accountability, and ensure efficient and fair use of public resources for the benefit of citizens.

In order to align Government Decision No. 1419/2016 on the planning process for public procurement contracts with EU Directives, in particular Directive 2014/24/EU on Public Procurement, a careful revision of several articles of the existing regulation is necessary. This Directive emphasizes transparency, competition, strategic planning, sustainability and efficient use of public resources.

Here are the key articles of HG No 1419/2016 that would require amendments or additions, together with the substantive arguments:

Article	Current form	Proposed form	Justification
Article 3 - Estimated value of purchases	No provides a clear methodology or explicit prohibitions on contract splitting for a avoid legal thresholds.	"Estimating the value contracts public procurement shall be carried out according to a standardized methodology approved by the Public Procurement Agency, which excludes the possibility of artificially splitting contracts in order to avoid the application of the legal thresholds advertising thresholds laid down by law."	Introduction A standardized methodology for estimating the value of contracts in line with Art. 5 of Directive 2014/24/EU, which regulates calculation methods and prohibits the splitting of contracts to avoid advertising thresholds. Harmonization of estimates will contribute to proper planning, prevent artificial fragmentation and will ensure the application of thresholds.
Article 4 - Development of the annual procurement plan	Provides for the development of the plan without references to centralized procurement or sustainable.	"Contracting authorities shall, when drawing up the annual plan of the opportunity to include joint, centralized or sustainable procurement (including green and social procurement), in line with h	Including provisions to require consideration of opportunities for centralized, joint or sustainable procurement (green procurement), in line with Art. 1 and Art. 67-70 of Directive 2014/24/EU. The EU Directive promotes a strategic approach to procurement planning, encouraging aggregation of demand and criteria

		the strategic priorities of the institution and national policy."	award criteria based on best value, not just lowest price.
Article 5 - Plan approval	Not provides for consultation interested parties.	"Before approving the annual procurement plan, the contracting authority shall sh all, where appropriate, consult centralized purchasing units, representatives society civil society, or other relevant contracting authorities, for ensure informed planning and participatory."	In line with EU principles on transparency and stakeholder participation, planning must be informed and validated in a participatory way. Thus was added the obligation for internal or external consultation (with centralized procurement, civil society or other contracting authorities) before final approval plan.
Article 6 - Publication of the annual plan	Provides for only the obligation to publish on the website of the contracting authority.	"The annual procurement plan, approved in accordance with this Regulation, shall be published within 5 working days of approval on the official website of the institution and in the MTender electronic system in a structured format (.xlsx/.json), in accordance with the Open Contracting Data Standard (OCDS) requirements, aggregable and accessible publicly accessible.	Directive 2014/24/EU requires pre-contractual transparency and open access to information on procurement planning and programming.
New Article - Ex-ante evaluation		"The contracting authority sh all establish a report	Directive EU encourages learning and effective use a

post of the realization plan		<p>Quarterly progress report on the implementation of the annual procurement plan, which will be published on the official website and sent to Agency Procurement Agency. The report will contain statistical data, compliance analysis and justifications for any deviations and the economic, social and budgetary impact of procurement implemented. "</p>	Procurement as a public policy tool.
Article 7 - Amendment of the plan	<p>Provides for the possibility of modification, with out detailed conditions.</p>	<p>"Amendments to the annual procurement plan shall be accompanied by an explanatory note stating the objective reasons for the amendment (e.g. budget adjustments, emergency situations, strategic priorities). Amendments will be approved by internal provision and published within 3 days in system MTender and on the Institution's home page.</p>	<p>It is essential to prevent arbitrary changes that may affect competition and the integrity of the procurement process, in line with the principles of Art. 72 of Directive 2014/24/EU on amendments contracts.</p>
New Article - Sustainable and innovative procurement		<p>"The annual procurement plan will prioritize, where possible, sustainable, social and innovative procurement, in line with EU policies on</p>	<p>The EU Directive allows and encourages inclusion of environmental, social and innovation criteria at all stages of the procurement cycle.</p>

		transition green, social inclusion and innovation in the sector public."	
Introducing the requirement to professionalize planning officers		"The preparation of the annual procurement plan shall be carried out by persons trained and certified in the field of procurement in accordance with the legislation in force. The nominal list of those responsible shall be published on the website of the authority contracting authority.	Directive 2014/24/EU, as well as the OECD Public Procurement Framework, recommends that key functions in the procurement cycle, in particular planning, should be managed by qualified and continuously trained staff in a professionalized framework.
Linking the annual plan to the institution's budget		"Each position in the annual plan will include the exact source of funding, budget code, and references to strategic priorities approved by acts administrative of the institution."	Correlation clear and documented linkage of the annual procurement plan with the institution's budget and strategies not only that ensure compliance with the principles of Directive 2014/24/EU, but also make an essential contribution to financial discipline; improving the quality and predictability of procurement; and enhancing public confidence in the way public funds are used.
Organizing public consultations on the draft plan (for large authorities)		"Contracting authorities with an annual procurement budget of more than 10 million lei shall publish for public consultation the draft annual procurement plan for 10 working days, prior to the approval	Although Directive 2014/24/EU does not expressly provide for an obligation to consult the procurement plan, the general principles of the Directive - transparency, proportionality, equal treatment and efficient use of public funds - are

		<p>final. Comments received will be analyzed and reflected in a consultation report published with the final plan."</p>	<p>Strongly supported by public consultation mechanisms. In addition, the consultation contributes to the implementation of the requirement for public procurement to reflect real needs and justified priorities, as stated in Article 18 of the Directive. This point will lead to alignment with European and international best practices (OECD, OGP, MAPS).</p> <p>OECD Recommendation on Public Procurement (2015) promotes explicitly involving stakeholders in all phases of the procurement cycle, including the</p> <p>The evaluation of MAPS Moldova (2021) highlighted the lack of of institutional culture of consultation and recommended strengthening the dialog between authorities and beneficiaries public services. The Open Government Partnership (OGP), to which the Republic of Moldova is party, includes public participation in policy making and planning as an essential principle.</p>
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Recommendations to improve public procurement planning

The need to amend [HG1419/2016](#) on how to plan public procurement contracts is based on several legislative, institutional and technological developments that have taken place in recent years in the Republic of Moldova and at the European level.

The procurement planning process has moved almost entirely into the digital space, in particular through the use of the MTender platform. The current regulation does not contain clear and detailed provisions on the mandatory use of this platform for electronic procurement planning, does not set standards for publishing annual plans in digital format and does not regulate their automatic integration with other government systems. This gap between practice and legislation creates uncertainty and allows arbitrary interpretations.

In this regard, HG No. 1419/2016 needs to be adapted to reflect the new requirements and objectives, Including:

1. Clarifying the difference between the Annual Procurement Plan and the Quarterly Procurement Plans, which is currently not applied in practice. Respectively, in order to optimize the processes, to analyze the option of excluding the Quarterly Plans and keeping exclusively the Annual Procurement Plan.
2. *Full digitalization of the planning process.* Mandatory integration of procurement planning into the Mtender electronic system, ensuring interoperability with other government systems and facilitating public access to information.
3. *Increased transparency and accountability.* Publishing annual procurement plans in a standardized and accessible format, ensuring open data format and avoiding pdf or scanned documents that do not allow for further use and analysis. As well as establishing clear mechanisms for justifying and documenting changes to plans.
4. *Professionalization of the staff involved.* Establishment of qualification and continuous training requirements for those responsible for the development and implementation of procurement plans, in line with the new legislative provisions.
5. *Rigorous monitoring and evaluation.* Introduction of regular reporting procedures on the implementation of procurement plans, allowing performance to be assessed and possible malfunctions to be identified.

Through these amendments, GD no. 1419/2016 will become an effective tool to support the implementation of the new legislative regulations on public procurement, contributing to the achievement of the strategic objectives assumed by the Republic of Moldova in the process of European integration.

The proposed amendments are based on: assessments and recommendations made by civil society; recurrent shortcomings found in the practice of contracting authorities; commitments undertaken by the Government in the National Program 2023-2026 and in the process of accession to the European Union; the need to align with EU directives, in particular Directive 2014/24/EU, which promotes transparency, competition and sustainable procurement.

The proposed amendments will contribute to the correct transposition of Directive 2014/24/EU in the field of procurement planning, strengthen transparency and accountability of public institutions and bring the Republic of Moldova closer to European standards in the field of public procurement.