NOTE

DRAFT NEW PUBLIC PROCUREMENT LAW -

BETWEEN ALIGNMENT WITH THE ACQUIS COMMUNAUTAIRE AND IMPROVING THE PUBLIC PROCUREMENT PROCESS

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Introduction

L Currently, public procurement is regulated by Law No. 131/2015 on Public Procurement (hereinafter Law No. 131/2015) and other related legislation. Law No. 131/2015 was adopted on July 3, 2015 and entered into force 9 months later on May 1, 2016. Law No. 131/2015 was drafted and adopted in order to transpose the EU Public Procurement Directives, a commitment made in 2014 when the Republic of Moldova signed the Association Agreement with the European Union. The Republic of Moldova had committed to make sustained efforts in three directions: (1) gradual harmonization of public procurement legislation with the acquis communautaire; (2) institutional reform in the field of public procurement; and (3) creation of an effective system of remedies for the award of public procurement contracts.

During more than 8 years of implementation of the law, it has been amended more than 20 times, either for the purpose of modifications, for example to adjust the thresholds of application of the law, or to modify or update some processes and provisions. For example, if in 2015 the law was adopted with the thresholds of 80,000 lei for goods and services (excluding VAT) and 100,000 lei for works (excluding VAT), then currently, after the amendment of the law in 2023 (by Law No. 7 of 02.02.2023, in force as of July 1, 2023), the thresholds for the application of the law constitute 300,000 lei for goods and services and 375,000 lei for works, respectively.

Another example is the amendment introduced by Law No. 169/2018, effective October 1, 2018. Thus, the notions of "certified specialist" and "public service providers" (outsourcing of public procurement) were introduced in Law no. 131/2015.Through this amendment, contracting authorities were given the right to delegate the tasks of the working group within the contracting authority to the certified procurement specialist.

The legal framework currently in force and implicitly Law No. 131/2015 is not fully aligned with EU Directives (Directive 2014/24/EU on public procurement, Directive 89/665/EEC and Directive 92/13/EEC on remedies against the award of contracts). Despite the fact that national procurement legislation has been adopted to align with EU standards and the acquis communicated, a

number of divergences and shortcomings still persist. These deficiencies have a negative impact on the transparency, integrity and efficiency of the public procurement process. In particular, the provisions of the current legal framework do not always ensure transparency at all stages of the procurement process, both in relation to economic operators interested in participating in the tender, and in relation to civil society and citizens as monitors of the procurement procedures.

In June 2022, the Republic of Moldova obtained the status of candidate country for EU accession. According to the commitments undertaken at the bilateral screening meeting with the EU Commission for Chapter 5 "Public Procurement", the Republic of Moldova is committed to align national legislation with the acquis communautaire, which implies the gradual integration of European norms into the internal legal order, ensuring compatibility and consistency with EU requirements.

In October 2023, by GD no. 829, the National Action Plan for Moldova's accession to the European Union for the years 2024-2027 was approved, which provides, among other things, the amendment of Law no. 131/2015. The transposition of Directive 2014/24/EU is also foreseen in other national public policy documents:

- Action no. 197 "Amendment of Law no.131/2015 on public procurement" from the Government Action Plan for 2024, approved by GD no. 887/2023.
- Action no. 1.2 of the Specific Objective 1 "Action 1.2. Elaboration and approval of the draft normative acts necessary to be adopted in order to harmonize the national legislation with the EU legislation and to address the existing shortcomings" of the National Program for the Development of the Public Procurement System for the period 2023-2026, approved by GD no. 625/2023

The draft of the new Public Procurement Law has been prepared and publicly consulted by the Ministry of Finance in accordance with the provisions of the framework for ensuring transparency in the decision-making process, namely Law No. 239/2008. Therefore, on August 21, 2024, the Ministry of Finance published the Announcement on the initiation of the preparation of the Draft Law. Subsequently, on December 3, 2024, the Announcement on the organization of public consultations was published with the annexed documents: the explanatory memorandum; the draft law and the correlation tables Directive 2014/24/EU, Directive 89/665/EEC and Directive 92/13/EEC, respectively. The main objective of the draft law is to transpose the EU Directives into national law.

It is worth noting that recently, on December 13, 2024, the European Commission launched a call inviting stakeholders to express their views on the extent to which the EU Procurement Directives have effectively achieved their objectives, including promoting a

high level of competition in the European Single Market, increasing SME participation in public procurement procedures, ensuring transparency and promoting a greener, more social and innovative economy. The evaluation will measure the performance and impact of the Directives across the EU, the extent to which they remain dedicated and fit for purpose, whether they achieve their stated objectives at minimum cost and are adequate to meet the current challenges in the procurement sector.

1. Scope of the law: value thresholds and concepts

Nr.	Article	Comments	Proposals
1	**Art. 1 - Scope, paras. (1)-(2)**	● Call for tenders - it is not clear why it is mentioned separately, given that it is a procurement procedure that ends with the award of a contract. ● Division of thresholds - there is no justification to differentiate thresholds between central and other contracting authorities. There should be equal treatment for all contracting authorities (Art.1(1)(b) and (d), similar (c) and (e)). ● Too many different categories of thresholds - over-categorization unnecessarily complicates the application of the law and can create confusion for contracting authorities. ● The high value of the thresholds - the 2-3 fold increase compared to the current law (131/2015) is significant. Statistical data for the first semester of 2024 shows that the average value of a contract is about 450,000 lei. With the new thresholds, a significant part of public procurement could take place outside the regulations of the law, affecting transparency, competition and efficiency.	1. Removal of the separate mention of a call for tenders, as this is already a type of procurement procedure. 2. Uniform thresholds for all contracting authorities, eliminating the differentiation between central and other contracting authorities 3. Simplifying the structure of the value thresholds, reducing the number of categories to avoid confusion and enforcement difficulties. 4. Reassess and adjust the value of the thresholds, taking into account the national context and the impact on transparency and competition. The thresholds should be set in such a way that they do not exclude a significant part of public procurement from the application of the legal rules.

2	**Art. 1 - Scope, paras. (3)-(4)**	• Par. (3): essentially reproduces the definition of public procurement, similar to the one already existing in Art. 1 of Law no. 131/2015. • Par. (4) lit. a) and b): It is not clear which categories of purchases or services are exempted. The term "services of general economic interest" is vague and should either be defined in this article or refer to a normative act setting out their scope. • The wording 'to exercise public functions themselves [...]' is ambiguous. It needs to be clarified what is meant by 'public functions' in this context and what are the specific obligations of contracting authorities.	1. Reword the text of paragraph (3) in Article 2 of the draft as the notion of "public procurement". 2. Including a clear definition for the term "services of general economic interest" or at least concrete examples to remove ambiguity and to allow authorities and economic operators to clearly understand the exceptions. 3. Rewording the provision "to exercise themselves public functions in relation to the provision, commissioning and organization of services of general economic interest" to explicitly indicate the situations or conditions under which contracting authorities may provide such services without being subject to public procurement rules.
3	**Art. 2 - Main concepts ("professional misconduct"**	The definition of "professional misconduct" is vague and can lead to subjective interpretations. • Terms such as 'professional credibility' and 'in the strict sense of the profession' are not clearly defined and do not provide objective criteria for application. There is a need to establish measurable and verifiable indicators. • The phrase "affects professional credibility" does not specify who and on what basis this damage is assessed, which may allow for discretionary applications. • Using the wording "such as" creates a non-exhaustive list, which leaves room for broad and unpredictable interpretations. The definition should be clear and complete or be supported by ancillary regulations. • It is not specified what kind of infringements of intellectual property rights can be considered professional misconduct and whether they need to affect "professional credibility" to justify the exclusion of an economic operator.	**There is a need for** a clear and objective redefinition of professional misconduct, eliminating vague and ambiguous formulations. To this end it is necessary to: • replaced the phrase "affects professional credibility", which is subjective, with precise wording such as "demonstrates the economic operator's inability to meet the integrity, competence or performance requirements specified in the tender documentation"; • to introduce clear indicators for the assessment of misconduct (e.g. decisions or sanctions issued by competent authorities; recognized breaches of quality, ethical or performance standards); • formulating a generic definition in the text of the law, without "such as" examples, and detailing possible deviations in ancillary regulations, such as methodological rules;

		● The phrase "strict sense of the profession" is ambiguous - it is not clear whether it refers to legal rules, professional regulations or specific usages. According to Directive 2014/24/EU, serious professional misconduct is defined as "breaches of professional ethics which call into question the integrity of the economic operator". The exclusion of an economic operator must be justified by clear evidence and must not leave room for discretionary decisions. EU standards allow Member States to detail these criteria, but this regulation must be clear, predictable and prevent abuse.	● clear definition of "infringements of intellectual property rights"; ● clarifying what is meant by the term 'rules of ethics in the strict sense of the profession' and including references to specific regulations, professional codes or other relevant documents; ● transposition of the definition in Directive 2014/24/EU, specifying that the infringements must be serious and affect the integrity of the economic operator. **Proposal for a revised definition:** "Professional misconduct is a serious and proven breach of the legal, ethical or contractual rules relevant to the economic operator's activity which undermines the integrity or ability of the economic operator to perform the requirements of the contract. This may include infringements of intellectual property rights or other similar acts, proven by an official decision of a competent authority, if they affect the economic operator's ability to participate in public procurement procedures."
4	**Art. 2 - Main concepts (central public authorities**	The proposed definition of 'central public authorities' is vague and incomplete, which may lead to subjective interpretations and inconsistent application of the law. ● Using general terms such as "organization" or "office" can be confusing and allow over-interpretation. ● The lack of a clear reference to the applicable legislation, such as Law No 98/2012 on the specialized central public administration, may lead to contradictions and difficulties in application.	● Creation of an exhaustive list of central public authorities, annexed to the law or managed by a centralized institution, similar to the model of Directive 2014/24/EU. The list should be regularly updated to reflect institutional changes. ● Establish a single register of contracting authorities, managed by the Public Procurement Agency. This register should include all central public authorities, local public authorities,

		● There is no clear and complete list of central public authorities, which complicates the identification of entities subject to the public procurement regime. In Directive 2014/24/EU, Member States have a specific annex (Annex No. 1) with a detailed list of central public authorities, ensuring transparency and clarity. The lack of a similar tool in the Republic of Moldova (either a list annexed to the law or a single register of contracting authorities) may lead to uneven application and abuses.	state-owned enterprises and other entities qualified as contracting authorities; it should be publicly accessible and regularly updated; ● Revise the current definition to make it clearer, more complete and in line with national and European legislation. **Proposed text for the revised definition:** "Central public authorities - state legal entities defined according to the legislation of the Republic of Moldova, which include: a) the ministries and other authorities provided for in Law no. 98/2012 on specialized central public administration, together with the structures subordinated to them; b) independent and autonomous authorities provided for by the legislation (e.g. Constitutional Court, courts of law, General Prosecutor's Office, Superior Council of Magistracy, Superior Council of Prosecutors, Competition Council); c) other central public entities defined by legislative acts in force, with national or regional competence, but which qualify as contracting authorities under this law."
5	**Art. 2 - Main concepts (inappropriate candidacy**	The definition seems inspired by Directive 2014/24/EU, but the use of the term 'unsuitable' is problematic because: ● The criteria and procedure for declaring an application as such are not clarified, which may lead to subjective interpretations. ● In European legislation, terms such as "economic operator not fulfilling the selection criteria" or "to be	**We recommend** specifying the exact criteria determining an "unsuitable application" or avoiding the term "unsuitable" if there is no clear justification and if it does not appear in European legislation. You can use "excluded application" or "economic operator not fulfilling the criteria".

		excluded" are used without being qualified as "unsuitable," thus avoiding subjective wording. ● There are already recognized terms such as "non-compliance" (for tenders) and "ineligibility" (for applications). Introducing a new term without clear justification may complicate the application of the law.	
6	**Art. 2 - Main concepts (public works contracts**	The definition of "public works contract" in Article 2 as currently worded is **confusing and may lead to ambiguities in application**. The distinction between (a) and (b) is not clear, which may lead to misinterpretation. In lit. a), it talks about the execution or design and execution of works related to the activities in Annex 1, but lit. b) refers to the same types of works, but does not specify whether they are related or not to the respective activities in the Annex.	**We recommend** amending letter b) so as to specify that it refers to the execution or design and execution of works that are not related to the activities set out in Annex no. 1, if this is the intention. Otherwise the two Articles unnecessarily overlap and risk creating confusion in the interpretation of the text.
7	**Art. 2 - Main concepts (non-compliant offer**	● The wording "shows signs of anti-competitive practices, unfair competition or corruption, or a reasonable suspicion thereof" raises a number of practical and legal problems: - in fact, the contracting authority is given the power to find certain illegalities, which will form the basis of the decision to declare the tender non-compliant; - Without clear criteria, each contracting authority could interpret "signs" differently; - it is not specified who determines and by what methodology that such "signs" exist; - The lack of a clear justification for the rejection of a tender can lead to legal disputes, especially from bidders who do not understand the reasoning behind the decision. ● EU practice offers a useful approach, based on two key principles:	**The reworded text of the definition could look like this:** "Non-compliant tender - a tender which does not comply with the requirements indicated in the tender documents, which was received late, which was considered by the contracting authority to be abnormally low or which raises reasonable suspicion of anti-competitive practices, unfair competition or corruption based on objective evidence. In such cases, the contracting authority may decide to exclude the tender and is obliged to forward the information to the competent bodies for further verification."

		- The role of contracting authorities to take provisional decisions on the basis of reasonable evidence. - The role of competent bodies to confirm or deny suspicions following a thorough investigation. ● In Directive 2014/24/EU, contracting authorities may exclude an economic operator even before a final decision by the courts or other competent bodies. However, in order to prevent abuse, Art. 57 provides that exclusion is possible only if the contracting authority can demonstrate by appropriate means that the economic operator has been guilty of grave professional misconduct affecting its integrity. These "appropriate means" include preliminary investigations, documentary evidence or other solid indications, even in the absence of a final judgment. ● In the case of the Republic of Moldova, the contracting authority could exclude a "suspect" tender if clear indications have been identified (e.g. abnormally low price, falsified documentation, obvious links between tenderers) and the operator could not provide plausible explanations. It is important to introduce a clear investigation procedure in which the contracting authority asks the economic operator to clarify its position, analyzes the reply and the justifications given, documents the reasons for the preventive exclusion decision and, if there are strong indications, referral to the competent bodies becomes mandatory.	

2. Calculating the estimated value of public contracts

	Article	Comments	Proposals
8	**Art. 4 - Rules for calculating the estimated value of public contracts, paragraph (2)**	• The notion of "separate operational unit" is not clearly defined in the draft, which may create confusion in application and allow subjective interpretations. Clarification is essential, as this concept influences the way the estimated value of contracts is calculated and thus the application of legal thresholds. • It is assumed that a separate operational unit is a subdivision with operational and budgetary autonomy, which decides independently on procurement and concludes contracts in its own name. However, it is not clear whether any internal subdivision of a contracting authority can be considered as such. • Without clear criteria, there is a risk that contracting authorities will fragment procurement, invoking the autonomy of some units to avoid legal thresholds. In EU legislation, this notion is used to a limited extent, and Directive 2014/24/EU provides that autonomy must be justified and verified to allow a separate calculation of the procurement value.	**We recommend** inserting an explicit definition in the law for "separate operational unit" and detailing it in the methodological norms, giving concrete examples of units that can be considered as separate operational units (individual hospitals in a centrally managed network, schools in a district directorate, etc.). **The text of the definition could look like this:** "Separate operational unit - a subdivision of a contracting authority which fulfills all the following conditions: a) it has operational and budgetary autonomy, with a separate budget line; b) it is responsible for planning and concluding procurement contracts from its own budget; c) it takes procurement decisions independently, without direct hierarchical approval of the main contracting authority."
9	**Art. 4 - Rules for calculating the estimated value of public contracts, paragraph (3)**	• The phrase "except where justified by objective reasons" is vague and open to misinterpretation. There is no clear definition of 'objective reasons', which allows subjective justifications for split purchases. • Without precise criteria, contracting authorities could fragment procurement to avoid applying value thresholds and using competitive procedures, undermining transparency and competition. • Under Directive 2014/24/EU, artificially split procurement is prohibited, but can be justified on technical or economic grounds. A good European practice is the obligation to document in detail the reasons for the	**Recommendations:** 1. Clear definition of "objective reasons" in the text of the law and a restrictive list of justified situations. 2. Detailed justification of the split of the purchase in the procedure documentation. 3. Introduce a control mechanism to prevent abuse.

		split and to demonstrate that the split is not aimed at circumventing legal thresholds.	

3. Exceptions specific to electronic communications

	Article	Comments	Proposals
10	**Art. 6 - Specific exceptions in the field of electronic communications, paragraphs (1) - (2)**	It is not clear how **mixed contracts** that include both activities excluded under this article and activities covered by this law will be treated. Example: if a contracting authority concludes a contract that includes electronic communications components as well as other activities covered by this law, which legal regime applies?	**We propose the** introduction of a paragraph establishing the legal regime for contracts that include both activities excluded under this article and activities covered by this law. **Article 6(3) could read as follows:** "(3) In the case of mixed contracts which include both the activities referred to in para. (1), as well as other activities covered by this Law, the applicable legal regime shall be determined in accordance with the provisions on mixed contracts in this Law."

4. Procurement contracts awarded according to international standards

	Article	Comments	Proposals
11	**Art. 7 - Public contracts awarded and design contests organized according to international rules, paragraphs (1) - (4)**	• Article 7 creates uncertainties regarding the application of national law when international procedures are incomplete or do not cover certain issues. It is not clear whether national rules can fill these gaps. • In para. (3) does not specify what happens if the parties do not agree on the applicable procedures, which may create uncertainty in co-financed projects. It is also not	1. Clarification on the application of national law - it is necessary to clarify that national law is additionally applicable in cases where international procedures are incomplete, provided that it does not contravene their rules. *Example text:* "Where the international procedures applicable to public

		clear what rules apply when international funding is below 50%. ● The system for settling disputes depends on the rules imposed by international organizations. In the case of procurement carried out exclusively under these procedures, national authorities have no competence to settle appeals. In contrast, for hybrid procedures, where national and international rules are combined (in the case of co-financed procurement), the National Agency for the Settlement of Complaints (ANSC) may have limited competence on issues covered by national law. ● In exceptional situations, where international rules do not provide clear mechanisms for redress or where serious breaches of national law are found, national authorities should have the right to intervene within the limits of the law. ● Clarifying these issues in national law is necessary to avoid overlapping competences and legal loopholes.	procurement contracts or design contests are incomplete or do not cover certain aspects, the provisions of this Law shall apply to the extent that they do not conflict with the applicable international rules." 2. Regulating disagreement on procedures in co-financing - it is proposed to establish a clear mechanism in case the parties cannot agree on the applicable procurement procedures in co-financing. *Example text:* "If the Parties do not reach an agreement on the applicable procurement procedures for contracts co-financed under para. (3), national procedures shall apply, unless the rules of the international donor provide otherwise." 3. Clarification of co-financing below 50% - a provision is needed to regulate situations where international funding is in the minority. *Example text:* "Where an international organization or international financial institution co-finances a project with less than 50%, national procedures shall apply, subject to the specific requirements of the funder." 4. Clarifying the handling of challenges in international procurement. These should provide for the following: ● Introduction of an article stipulating that in the case of public procurement governed by the procedures of international organizations or international financial institutions, challenges shall be resolved in accordance with the mechanisms established by them, subject to the respect of the financing agreements; ● Clarification that national authorities are not competent, unless specified in the financing

			agreement or if there are conflicts with national law (e.g. for issues not covered by international procedures); ● In the case of mixed procurement (covered partly by national law and partly by international rules), the legislation must specify which rules take precedence. Example text: "For co-financed procurements, the applicable challenge procedures shall be determined in accordance with the financing agreement. In the absence of specific provisions, national law shall apply"; ● Explicit specification of cases in which appeals will be dealt with by national authorities (e.g. in the absence of a mechanism foreseen by the funder); ● Providing a mechanism whereby all complaints resolved under international rules are notified to national authorities for follow-up; ● The legislation could require national authorities to cooperate with international organizations in the appeals process.

5. Exceptions for service contracts

	Article	Comments	Proposals
12	**Art. 8 - Specific exceptions for service contracts, paragraph (1)**	● Art. 8 transposes the exceptions provided for in the EU Directives, but some vague wording may allow abuses and avoid the application of public procurement rules. For example, lit. e) includes the phrase "other legal services connected, even occasionally, with the exercise of official authority," which is too general and may allow	1. The wording of the exceptions in the legal text must be specific and well delimited in order to avoid excessive interpretation and abuse. 2. In lit. e), we recommend redefining the exception to limit its applicability to legal services strictly related to the exercise of public authority, with a concrete

		the exclusion of some legal services without clear justification. ● Compared to Article 5 of Law No 131/2015, the draft eliminates several exceptions, such as: - h) services provided by the National Bank of Moldova; - r) contracts for the printing of ballot papers and other electoral documents, including teaching materials, the supply of materials and equipment for electoral bodies during the electoral period, the implementation of the information campaign and transportation services for the organization and conduct of elections, including training seminars; - s) contracts concluded by public authorities in the framework of measures, actions and instruments provided for in the Law on the recovery and resolution of banks; - y) public procurement contracts awarded by the authorities carrying out special investigative activities and counter-intelligence and external counter-intelligence and intelligence measures, which concern the purchase of computer programs and software, as well as special technical means, for the purpose of secretly obtaining information; etc. ● In the briefing note there is no justification for excluding these exceptions and why they are no longer "important" for national authorities and do not have a "special" procurement regime. Certainly, there should be as few exceptions to the rules of public procurement law as possible. However, it is imperative to have clarity in order to avoid problems that may arise when implementing the provisions of the law. If those	description of the types of services exempted. The redrafting should follow the example of Directive 2014/24/EU, which limits the exceptions to clearly defined legal services closely linked to the prerogatives of public authority. Example text: 'Legal services provided exclusively in the context of representation before courts or public authorities, where they are directly linked to the exercise of official authority.'. 3. In addition, in the text of the rule or in an explanatory note it is necessary to provide examples of legal services that are exempted, in order to reduce uncertainty and the risk of abuse. 4. For the sake of clarity, the author should provide in the explanatory memorandum of the draft law the reasons for removing each exception, which currently exist in Law No 131/2015, including an analysis of the impact on contracting authorities and the areas concerned. If there is a clear intention to reduce the number of exceptions in order to ensure transparency, this should be explicitly stated and reasoned. 5. Sensitive areas, such as those mentioned in Art. 5 lit. r), s), y) of Law 131/2015, should be analyzed separately. If the removal of exceptions is not adequately justified, they should be retained. 6. For less critical areas, the analysis can demonstrate that the general public procurement regime is sufficient. 7. It is important to seek feedback from the authorities responsible for the excluded areas, such as the Central Electoral Commission (for electoral procurement) or the Intelligence and Security Service (for procurement related to counter-intelligence investigations).

		exceptions were included previously, it must be made clear why they are no longer relevant or necessary. ● Removing exceptions without justification may suggest a lack of detailed impact analysis, but also that certain categories of procurement may not be adequately covered in the new law. Exceptions such as those for electoral purchases (e.g. ballot papers) or contracts related to counter-intelligence measures involve sensitive areas that require a specific regime to protect confidentiality and national security. Removing these exemptions may lead to administrative difficulties in the procurement process or problems in the context that "ostensibly" procurements in these areas are different from the standard ones. If the authorities have previously considered that certain types of contracts require a special procurement regime, the removal of these exceptions may create problems in the application of the new law, in particular for the areas mentioned (e.g. printing of ballot papers or procurement for counter-intelligence investigations).	

6. Contracts financed or subsidized by contracting authorities

	Article	Comments	Proposals
13	**Art. 11 - Contracts financed/subsidized by contracting authorities, paragraphs (1) - (2)**	● The term 'funded/subsidized' could be interpreted differently in the absence of a precise definition. ● The current text does not specify whether it also applies in the case of mixed funding (public and private funds), where public funds exceed 50%.	1. We recommend adding a definition for "direct funding/subsidy" in the definitions section of the law. The text could read as follows: "Direct financing/subsidy - the allocation of public funds in excess of 50% of the total value of the contract,

		• It is not clear how contracting authorities are obliged to demonstrate compliance with the law when they do not award the contracts themselves. • Article 11 para. (1) letter a) refers to the threshold of 1 million MDL, and letter b) refers to the threshold of 90 million MDL, both thresholds refer to works, although Article 11 paragraph (1) letter a) refers to financed/subsidized works, and Article 11 paragraph (1) letter b) refers to financed/subsidized services. • At the same time, in lit. a), reference is made to financed/subsidized works and the threshold of 1 000 000 MDL (para. (1)), specific to general contracts. In lit. b), reference is made to financed/subsidized services and the threshold of 90 000 000 MDL (para. (2)), specific to contracts with particular features. The use of thresholds in different paragraphs (para. (1) vs para. (2)) generates legal uncertainty on the application of the rule and differentiation of regulated situations. • The explanatory note does not explain the reasons why lit. a) and b) refer to different thresholds in different paragraphs, leaving room for subjective interpretation. This creates confusion in the application of the Article, as it is not clear what differentiates the situations covered.	including by means of transfers, grants, direct contributions or other forms of financial support." 2. We suggest adding clarification in the case of mixed funding. 3. It is important to clarify how contracting authorities demonstrate compliance with the law when they do not award contracts themselves. Reporting obligations or monitoring mechanisms could usefully be introduced. 4. Identify and correct inconsistencies in the references to thresholds for works and services in Art. 11, as the current text creates confusion by simultaneously referring to general thresholds (para. (1)) and thresholds for purchases with particularities (para. (2)). To avoid arbitrary interpretations, set a single threshold for works and one for services. If it is necessary to use different thresholds, make the criteria for this differentiation explicit in the text. 5. The information note should detail the reasons for using the thresholds and explain how the provisions of paragraphs (a), (b) and (c) are applied differently. (1) and para. (2). If the differentiation is necessary from a practical point of view (e.g. complexity, external funding), it must be explicitly justified.

7. Public procurement in the defense and security sector

	Article	Comments	Proposals
14	**Art. 13 - Defense and security, paragraphs (1) to (4)**	• Article 13 on defence and security procurement is confusing, with redundant wording, excessive reference to other articles and rules that leave room for arbitrary interpretation. The four paragraphs overlap in content and unnecessarily complicate application. Instead of providing clear criteria, the article is fragmented and repetitive. References to other articles in the draft or to other laws are not sufficiently explained, which may lead to confusion in application. There is no provision for checking the decisions of contracting authorities in applying the exceptions. • (1) affirms the applicability of the law, but immediately introduces exceptions. The reference to another law creates confusion, as it is not clear what remains within the scope. Moreover, there is not yet that "other" law, I know nothing about the drafting and adoption of a special defense and security procurement law. Point b) is ambiguous: what does it mean that "the provisions under Articles 8, 12 and 13 do not apply to them"? It is not clear whether this is a reference to another law or to articles in this draft. Furthermore, it is not explained why these categories of contracts are excluded and which rules apply to them. • The wording in paragraph (2) "the protection of essential interests [...] cannot be guaranteed by less intrusive measures" leaves room for wide and discretionary interpretation. What does "less intrusive measures" mean? The examples given are insufficient to clarify this term. Moreover, it is not specified who	*Paragraph (1)* • The scope and exceptions need to be clarified. Replace the general reference to 'other law' with a detailed explanation of the specific provisions applicable, or remove it if there is no adopted legislative framework, with a general reference such as 'the regulatory framework in force'. • Reword lit. b) to clearly indicate whether the reference is to articles in this draft or other legislation. Include clear justifications for the exclusion of those categories and establish explicit alternative rules. • If special legislation in the field of defense and security is to be drafted, it is necessary to introduce a transitional provision to ensure the applicability of this law until its adoption. *Paragraph (2)* • Define the term "least intrusive measures" and give concrete examples to guide contracting authorities. • Introducing a clear procedure for justifying the protection of essential interests, including a documented analysis of risks and alternatives, possibly with prior approval by a competent authority or by the opinion of a specialized body. *Paragraph (3)* • Remove subjective wording ("the contracting authority considers") and replace it with objective and verifiable requirements. • Introducing clear criteria for determining "information contrary to essential interests" and

		decides whether the measures are sufficient or whether the exception applies. ● The wording in paragraph (3) "the contracting authority considers" introduces a margin of uncontrolled subjectivity. It is not clear who checks this decision. In addition, there is no definition of what "information contrary to essential interests" means and no objective criteria for its determination. ● Paragraph 4 partially repeats the provisions of paras. (2) and (3), which may create confusion in application. The term 'special security measures' is not defined or exemplified.	specifying the supporting documents needed to apply the exceptions. *Paragraph (4)* ● Combining this paragraph with para. (2) and (3) to avoid repetition and to create a more coherent section. ● Define the term 'special security measures' and include examples.
15	**Art. 14 - Mixed procurement involving defense or security aspects, paragraphs (1) to (8)**	● The text of the article is confusing, redundant and has significant loopholes that could create problems in implementation. ● Paragraph 1 introduces the concept of mixed contracts, but does not provide a clear definition. It also does not sufficiently explain what are the "essential elements relating to State security." In addition, the reference to "this law" and "the law on the award of certain contracts in the field of defense and security" is vague and leaves room for contradictory interpretations. ● In paragraph (2) it is not clear how the contracting authority determines objective separability. The lack of criteria may lead to subjective interpretations. It is also unclear who validates the contracting authority's decision and whether it has to be justified. ● Paragraph (3) does not explain what is meant by the "characteristics of each party" or how they influence the choice of legal regime. It is not specified whether the decision has to be advised or documented.	*Paragraph (1)* ● Introduce a clear definition for mixed contracts in the definitions section of the law. *Paragraph (2)* ● Introduction of a justification mechanism and criteria for severability (Example: "The objective severability of the contract shall be determined on the basis of the following criteria: (a) the possibility of independent award of the component parts; (b) the absence of technical or economic interdependence between the parties.") *Paragraph (3)* ● Clarification of the criteria for determining which legal regime applies to each of the separate contracts for the separate parties. *Paragraphs (4) and (5)* ● Integration of para. (4) and (5) and clear definition of "objective reasons". *Paragraph (6)*

		• Both paragraphs (4) and (5) allow the award of a single contract, but the conditions are vague and apparently similar. The term 'objective reasons' is generic and needs clarification to prevent abuse. • The provision in para.(6) "The decision to award a single contract may not be taken [...] for the purpose of exempting [...] from the application of the provisions of this Law [...]" repeats a general obligation already implicit in the law. The text of the draft law does not specify what happens if the contracting authority takes a decision contrary to this prohibition. • Alin. (7) is an unnecessary repetition of para. (4) and (5). • In para. (8) is not clear what it means that the parties "cannot be objectively separated".	• Rewording to remove redundancies and introducing sanctions for decisions of this prohibition. *Paragraph (7)* • Exclusion of paragraph (7) *Paragraph (8)* • Clarification of the text stating that the parties "cannot be objectively separated".
16	**Art. 15 - Public procurement contracts and calls for tenders involving defence or security aspects that are awarded or organized according to international rules, paragraphs (1) - (3)**	• Article 15 para. (2) seems to be in contradiction with other articles in the draft which regulate similar cases (e.g. Art. 7 on contracts awarded according to international rules). It creates confusion in applicability. In addition, "full financing" is an insufficiently defined term. It is not clear what happens in case of majority but not full funding. • The term in paragraph (3) "the major part" is vague. It is not defined what percentage constitutes the "major part". This may lead to arbitrary interpretations. There is also a lack of clear rules for the "decision of the parties". It is not clear who decides, how the decision is documented and what happens if the parties do not reach an agreement. • It also does not specify which rules apply in the absence of an agreement between the parties.	*Paragraph 2:* • It should be expressly specified how para. (2) of Art. 15 interacts with Art. 7 or other relevant Articles to avoid contradictions and overlaps. • Add a clear explanation of what "full funding" means (e.g. "100% public funding") and how to deal with situations where funding is only majority but not full funding. In the case of majority funding (e.g. more than 50%), introduce specific rules governing the applicability of the article. *Paragraph 3:* • Replacing the term "most", which is open to interpretation, with a concrete percentage (e.g. "more than 75% of the total value") or a range (e.g. "between 50% and 90%"), but explaining the criteria for determining it. • Inserting a clear procedure for the parties' decision.

			• Establishing the applicable rule in the absence of an agreement (e.g. "If the parties fail to reach an agreement, the general rules of this law shall apply").

8. Provisions concerning the economic operator

	Article	Comments	Proposals
17	**Art. 17 - Economic operator, paragraphs (1) to (5)**	• The provision of paragraph (1) may create discriminatory situations between domestic and foreign economic operators, if the legislation applicable to them is different. • In paragraph (2), asking for names and other personal details may lead to confusion and data protection risks. • Paragraph (5) does not define when the conversion into a legal form is "necessary for the proper performance of the contract." Moreover, it remains unclear how much time the association has to comply.	1. Introduction of an additional paragraph specifying that the applicable legislation must be in line with the principles of non-discrimination and equal treatment provided by law. In addition, it is recommended to indicate that the applicability of the legislation must comply with international agreements to which the Republic of Moldova is a party, such as the WTO Government Procurement Agreement or other bilateral treaties. 2. Adding a clause expressly mentioning that the request, collection and processing of personal data must comply with the provisions of Law No 133/2011 on the protection of personal data and the General Data Protection Regulation (GDPR), if applicable. This may include the obligation for the contracting authority to protect the confidentiality of the data collected and to use it exclusively for the conduct of the procurement procedure. 3. Including concrete examples or objective criteria to determine when conversion into legal form is mandatory. It is important to specify a reasonable time limit for

			compliance (e.g. "30 days from the notification of the award decision") so that economic operators have predictability and sufficient time to make the necessary changes. Likewise, it is recommended to add provisions clarifying the consequences if the conversion is not completed within the deadline (e.g. "If the economic operator does not complete the conversion within the deadline, the contracting authority has the right to cancel the award decision").
18	**Art. 18 - Reserved contracts, paragraphs (1) - (2)**	• The terms "sheltered workshops," "social integration enterprises" and "disadvantaged groups" are not defined in the article or in the law. The lack of clarification may lead to difficulties in application. • Although the 30% threshold is reasonable, the article does not specify how compliance with this criterion is proven (e.g. supporting documents, checks).	We recommend: 1. Adding definitions in the section of terms for "Sheltered workshop", "Social integration enterprise" and "Disadvantaged categories". 2. Specifying the documents needed to comply with the 30% threshold.

9. Communication rules in public procurement

	Article	Comments	Proposals
19	**Art. 20 - Rules applicable to communications, paragraphs (1) to (13)**	• The article includes very detailed technical specifications (e.g. paragraphs 12 and 13), which could be better integrated in separate methodological rules. The presence of these details in the legal text may make it difficult to update the legislation, especially in the context of changing technology. • Although the article tries to cover various scenarios, some provisions are vague, which may lead to arbitrary interpretations. Examples: what does "necessary use" mean in para. 5 or "specific formats" in para. 3 lit. b).	1. In paragraph (1) it should be clearly specified that the use of electronic means is the general rule, subject to the exceptions provided for in this Article. 2. In para. (3) lit. b) replace "specific formats" with a concrete description, such as: "standardized file formats used at national or international level, such as PDF, XML, or others established by methodological standards." 3. In para. (3) and (4) to replace terms such as "specialized nature" or "specialized office equipment" with clearer descriptions or to refer to applicable technical standards.

		• There are no sanctions for breaches of communication rules, which reduces the accountability of contracting authorities. • Some provisions, such as those in para. 12 and 13 seem to repeat the same type of requirements, which creates redundancy. • In paragraph (1), the general wording "all communications" does not take into account the exceptions mentioned later in the Article, which creates contradictions. • In paragraphs (3) and (4), terms such as "specialized nature" or "specialized office equipment" are insufficiently defined, which may lead to broad and abusive interpretations. • In (5), it is not clear what is meant by "security breach"? Does it refer to a specific security incident, a proven breach or hypothetical risks? In addition, the measures necessary to remedy the security problem or to revert to the use of electronic means are not specified. • Paragraph (7) does not specify what constitutes "sufficient documentation" of verbal communications. Oral communications can be difficult to verify or challenge in the absence of a clear documentation process. • In (12) and (13) the technical details are too specific. Requirements such as "easy detection of infringement attempts" are more appropriate for methodological rules or technical specifications. At the same time, the provisions on alternative means of access are taken over, without significant differences, from (11).	4. In para. (5) to specify what constitutes a "security breach" by including a clear definition or reference to information security legislation (e.g. "Security breach refers to unauthorized access, loss, alteration or compromise of electronic data in connection with the procurement procedure.") 5. In para. (5) set out clear procedures for incident management (e.g. "In the event of a breach of security, the contracting authority is obliged to immediately inform the competent authorities, temporarily suspend the use of electronic means and take corrective measures in accordance with the applicable technical and security rules."). 6. In para. (7) to insert an explicit requirement regarding the documentation of verbal communications (e.g. "Verbal communications shall be documented by the drawing up of minutes signed by the parties involved or by other means of recording accepted by law.") 7. In para. (12) and (13) to combine similar provisions in a single concise paragraph (e.g. "The systems used for the electronic transmission of tenders must ensure integrity, confidentiality and the detection of attempted breaches of security, in accordance with the technical specifications laid down in the methodological rules.") 8. Provide that the detailed technical specifications should be developed and updated by methodological rules issued by the competent authority (e.g. Public Procurement Agency). At the same time, replace the technical details in the text of the law with a general reference to these rules, such as: "The technical specifications on the security and use of electronic means

			are regulated by methodological rules approved by the competent authority." 9. Including provisions on administrative or financial sanctions for failure to comply with the communication rules (e.g. "Failure to comply with the provisions of this article shall entail disciplinary, administrative or, where appropriate, civil liability, in accordance with the legislation in force.")
20	**Art. 21 - Nomenclature, paragraphs (1) to (3)**	It is not mentioned whether the CPV used is automatically synchronized with changes introduced at European level.	We recommend rewording to make direct reference to the European CPV (e.g. "Any reference to the nomenclature in the context of public procurement shall be made using the Common Procurement Vocabulary (CPV), used at European Union level and adapted by national regulations in force.").

10. Rules to avoid conflicts of interest

	Article	Comments	Proposals
21	**Art. 22 - Rules to avoid conflicts of interest, paragraphs (1) - (2)**	• The definition of conflict of interest in Art. 22 includes the term "perception" (*Conflict of interest is any situation in which members of the staff of the contracting authority or of a procurement service provider acting on behalf of the contracting authority, who are involved in the conduct of the procurement procedure or who may influence its outcome, have, directly or indirectly, a financial, economic or other personal interest which could be perceived as compromising their impartiality and independence in the context of the procurement procedure),* introduces subjectivity, without providing objective criteria for determination. In addition, it does not refer to the notion already regulated by Laws no.	2. Revise the definition of 'conflict of interest' to align the term with the existing legal framework and avoid subjectivity. 3. Including the obligation for working group members to file conflict of interest declarations, with a rethinking of this mechanism to make it efficient. 4. It should be noted that the prevention, identification and remedy of conflicts of interest in public procurement shall be carried out in accordance with this Law, Law No. 132/2016 on the National Integrity Authority and Law No. 133/2016 on the declaration of personal assets and interests.

		132/2016 and 133/2016, which may create confusion and overlap. 1. As a general remark, Art. 22 does not refer to Law no. 132/2016 on the National Integrity Authority and Law no. 133/2016 on the declaration of personal assets and interests, although they regulate the general framework of conflicts of interest and impose clear obligations on their declaration and management. ● Unlike the current Law No 131/2015 on Public Procurement, Art. 22 no longer requires the members of the working group to submit the Declaration of Confidentiality and Impartiality. This omission may lead to the loss of a preventive mechanism. However, if the declaration is reinserted, a more effective mechanism should be considered, or the current declaration is purely formal. ● Art. 22 imposes an obligation on contracting authorities to prevent, identify and remedy conflicts of interest, but does not provide details on the procedures and mechanisms necessary to fulfill these obligations. ● The text involves procurement service providers in managing conflicts of interest, but does not clarify their specific responsibilities or interaction with contracting authorities.	5. Specifying the responsibilities of procurement service providers in managing conflicts of interest. 6. Providing for control measures and sanctions for failure to comply with obligations to declare conflicts of interest.

11. Bribery in public procurement procedures

	Article	Proposals	Proposals
22	**Art. 23 - Bribery in public procurement**	● Art. 23 para. (1) provides that the contracting authority shall reject the tender in the event of a finding of corruption. This is a complex issue and calls into question who has the	1. Insertion of a provision allowing the contracting authority to reject the tender on reasonable indications. Example text: "The contracting authority

	procedures, paragraphs (1) - (4)	legal powers and who is legally competent to establish an act of corruption. ● The rejection of the tender on the basis of official findings issued by the competent bodies is legally correct, but impossible to apply in the context where criminal proceedings can take years and the public procurement procedure cannot wait that long. ● Public procurement law and practice in the EU has sought to strike a balance between the need to protect the integrity of the procurement process and to avoid abuse or undue delay. EU practice provides a useful approach, based on two key principles: 1) the role of contracting authorities to take provisional decisions on the basis of reasonable evidence; 2) the role of competent bodies to confirm or deny suspicions following a thorough investigation. To emphasize that there are safeguards in EU law to prevent abuse. ● Thus, if the draft law provides in Art.23 for a quick decision by the contracting authority in case of corruption in order not to block the procurement procedure, it is important that the rejection of the tender is decided by the contracting authority on the basis of reasonable indications of corruption (e.g. documents, testimonies, complaints). It is essential to clearly regulate what is meant by "reasonable indications" and to introduce a rigorous documentation obligation. At the same time, referrals are made to the competent bodies. The contracting authority immediately refers the case to the competent bodies (e.g. NAC, Public Prosecutor's Office) for criminal proceedings. ● Art. 23 para. (4) establishes that contracts obtained through corruption, confirmed by a final judgment, are null and void. However, the legal consequences and subsequent procedures for the return of goods or services already	may reject the tender of an economic operator where there are reasonable indications that the economic operator has directly or indirectly offered or consented to offer, directly or indirectly, a favour, an offer of employment or any other consideration to a person with authority or an employee of the contracting authority, or to any other person responsible or an employee of the contracting authority, as a reward for actions or decisions of advantage to him." 2. Clarification in the article that rejection must be evidence-based and formally documented. Example text: ""The decision to reject the tender shall be based exclusively on objective and verifiable evidence, such as documents, official statements or other supporting elements. Reasons must be given in writing, recorded in the record of the procedure and notified to the economic operator concerned. The economic operator shall have the right to request clarifications and contest the decision in accordance with the law." 3. The mention that the contracting authority's decision is valid until a final decision is taken by the competent bodies or courts. 4. Clarification of the effects of the nullity of the contract, including the recovery of damages caused, the return of goods or services already delivered, while respecting the rights of bona fide third parties, etc.

		provided and the recovery of damages by the contracting authority are not clarified. Thus, there are no provisions for the protection of bona fide third parties involved in the performance of the contract. Similarly, no mechanism is indicated to deal with situations where the contract is void but the goods/services have already been delivered.	

12. WTO Government Procurement Agreement provisions

	Article	Comments	Proposals
23	**Art. 24 - Conditions relating to the World Trade Organization Government Procurement Agreement and other international agreements**	• The text of Article 24 is limited to the obligation to grant equal treatment to international economic operators, but does not detail how this obligation is implemented in practice, what are the mechanisms for verifying compliance with the WTO Agreement and other international agreements, what happens in cases of conflict between national law and international obligations. • There is no mention of who verifies that contracting authorities respect the principle of equal treatment in accordance with international obligations. There are no details on the measures to be taken in case of complaints of discrimination against foreign economic operators. • The text includes general references to other international agreements, but does not provide concrete examples or criteria for their applicability. The lack of a list or clear indications may create confusion among contracting authorities, especially if different multilateral or bilateral agreements are involved.	1. Insert provisions clearly explaining how to apply the principle of equal treatment for international economic operators. This could include: specific procedures for verifying compliance with the WTO Agreement on Government Procurement and other applicable international agreements; obligation for contracting authorities to justify decisions that could affect international economic operators, etc. 2. Specify the authority responsible for monitoring compliance with the principle of equal treatment (e.g. Public Procurement Agency). 3. Establish clear procedures for handling complaints about discrimination (deadlines for lodging and settling complaints, mechanisms through which international economic operators can complain about breaches of equal treatment, redress mechanisms, etc). 4. Inclusion of a paragraph explicitly specifying how and under which conditions the various international agreements apply in the event of a conflict between the provisions of this law and the

			international obligations assumed by the Republic of Moldova. 5. Creation of a list of applicable international agreements. In addition, develop a guide for contracting authorities, including criteria and examples on the applicability of applicable international agreements and practical guidance for contracting authorities on compliance with international obligations. 6. Establishment of an obligation for contracting authorities to report regularly on measures taken to respect equal treatment and problems encountered in implementing international obligations. Including the provision of an audit or periodic evaluation mechanism for compliance with international agreements.

13. Open tender

	Article	Comments	Proposals
24	**Art. 26 - Open tender, paragraphs (1) to (9)**	• Par. (6) of Art.26 allows the time limit to be reduced to 15 days in urgent cases, but does not define the criteria of urgency justifying the reduction of time limits. There may be risks of abuse in the use of this exception. In addition, it does not specify measures to ensure competition in such situations, such as faster notification of interested economic operators. • Para. (7) allows the time limit to be reduced by 5 days if the documentation is available electronically, but this provision may be redundant, given that most procedures are already published in the electronic system. Practically any contracting authority using the	1. Introducing a definition or a list of specific situations that can be considered as "emergencies" to reduce the deadline to 15 days (e.g. natural disasters, public health emergencies, other force majeure situations, the need to prevent a significant disruption of an essential public service, etc.). 2. Review the appropriateness of maintaining para. (7), given that most procedures are already published in the electronic system. If this provision is retained, it is necessary to clarify the situations in which a reduction of the time-limit is justified and to require the contracting authority to document the reasons for the reduction.

		MTender platform could apply this reduction, which raises the question whether this rule is necessary or justified. ● As regards paras. (8) and (9), if the documentation is made available only 2 days before the deadline, bidders may encounter difficulties in preparing their bids.	3. Regulating additional protection for tenderers in case of late availability of tender documentation (paras. (8) and (9)). Example text: "If the tender documentation is made available less than 2 days before the deadline, the deadline will be automatically extended by a number of days equal to the time lost by tenderers due to the delay". In addition, it is necessary to insert an obligation for the contracting authority to notify the economic operators immediately of the modification of the deadline.

14. Framework Agreement

	Article	Comments	Proposals
25	**Art. 32 - Framework Agreement, paragraphs (1) to (10)**	● The exceptions in paragraph (3), which allow the standard 4-year duration of a framework agreement to be exceeded, are not sufficiently detailed, which may lead to subjective and abusive interpretations with risks of infringing procurement principles such as competition or transparency. ● Paragraph (5) prohibits a substantial modification of the terms and conditions originally laid down in the framework agreement, but does not provide clear criteria for defining what constitutes a "substantial modification".	1. Introducing clear and exemplifying criteria for exceeding the standard duration of 4 years (e.g.: a) complex projects involving implementation phases extending over time; b) other objective situations covered by methodological rules approved by the competent authority."). 2. Insertion of a clear definition of "substantial amendments" in framework agreements, in line with European practice: "Substantial amendments means any amendments which: a) introduce conditions which, had they been included in the initial procedure, would have allowed other candidates to be selected or tenders to be accepted; b) alter the

		• The lack of strict rules for adapting the terms of a contract awarded under a framework agreement to market circumstances (e.g. price fluctuations) can cause difficulties in implementation. • In para. (8) (b) and (c) do not specify details of the objective criteria that determine whether a procurement requires reopening the competition. • In para. (8) lit. c), the rules for mixed situations (procurement with and without re-competition) are vague and require further details on application. • In para. (10) lit. b) does not specify a minimum deadline for the submission of bids in the case of reopening of competition, which may affect fairness and competition.	economic balance of the framework agreement in favor of one of the economic operators; c) significantly extend the subject of the framework agreement or the contract awarded." 3. Insert specific requirement for price adjustment of contracts awarded on the basis of framework agreements. This may be done in line with market fluctuations, using official indicators such as consumer price indices or material cost indices, where appropriate. 4. Establishing objective and detailed criteria for situations requiring re-competition, such as: a) when technical requirements or exact quantities cannot be fully defined at the time of the initial award; b) when additional needs arise which were not initially foreseen but which are compatible with the subject matter of the framework agreement." 5. Introduce clear rules for managing mixed procurement. 6. Introducing a minimum deadline (e.g. 10 days) for the submission of tenders to ensure compliance with the principles of equal treatment and non-discrimination. 7. Develop a complementary methodological guide to detail the implementation of Art. 32 regulations, with practical examples and common scenarios.

15. Centralized purchasing

	Article	Comments	Proposals
26	**Art. 36 - Centralized procurement**	• Alin. (1) gives the Government the right to designate or create central procurement authorities, but does	1. Introduction in the text of the law of primary rules with clear criteria for the designation or creation of central

	activities, paragraphs (1) - (5)	not detail the criteria or conditions for designation, competences, resources, other primary rules on the designation/creation of central procurement authorities. ● Paragraph 1 indicates that central purchasing authorities deal with goods and services, but does not include the procurement of works, which is contrary to para. (2) and (3), which also include works. This inconsistency may cause confusion in the application of the law. ● Alin. (2) and (3) leave room for ambiguous interpretations of the obligations of contracting authorities using the services of the central purchasing authority. It is not clear how it is determined which activities remain the responsibility of the contracting authority; what happens if central purchasing authorities do not comply with the provisions of the law; whether the contracting authority is still liable. ● Paragraph (3) does not sufficiently detail the procedure by which contracting authorities interact with central purchasing authorities in the context of the award of contracts through dynamic systems (lit. a)) and the reopening of competition under framework agreements (lit. b)). ● The rule in paragraph (5) is not sufficiently clear and may be confusing, in particular with regard to "centralized procurement activities" and "ancillary procurement activities". The expression "a service procurement contract for the provision of centralized procurement activities" can be interpreted in several ways: does it refer to outsourcing services to a central	procurement authorities, such as: areas of competence (e.g. types of goods, services or works); technical capacity and resources needed (e.g. qualified staff, infrastructure); obligation to respect the principles of transparency and competition, etc. It would also be appropriate to establish a public consultation mechanism or a prior analysis to assess the need for a central procurement authority in a given area. 2. Revise para. (1) to explicitly state that central procurement authorities may also manage works procurement, ensuring consistency with para. (2) and (3). 3. Specify in paragraphs (2) and (3) which activities remain under the responsibility of the contracting authorities and which are fully taken over by the central purchasing authorities. Similarly, it is appropriate to lay down the legal liability in the event that the central purchasing authority does not comply with the legal provisions. 4. Clarification in paragraph (3) of the procedure for collaboration between contracting authorities and central purchasing authorities for the award of contracts through dynamic systems (e.g. who initiates and manages the process) and the reopening of competition in framework agreements (e.g. who sets the criteria, deadlines and evaluation arrangements). 5. Reword para. (5) to explain concretely what is meant by "centralized procurement activities" and "ancillary procurement activities." In addition, concrete examples need to be provided to facilitate the application of the rule in practice.

		purchasing authority or to contracting with such an authority for specific services? The text does not provide examples or details of what activities could be included in the category of "centralized procurement" or "ancillary procurement," which may affect its practical application.	

16. Occasional joint purchases

	Article	Comments	Proposals
27	**Art. 37 - Occasional joint purchases, paragraphs (1) to (5)**	• Article 37 does not define how collaboration between contracting authorities should be regulated. It is not clear what documents have to be concluded (e.g. collaboration agreement), how responsibilities are distributed in case of disputes, who appoints the leader of the procurement procedure and what powers he/she has. • Joint and several liability (para. (2) and (4)) may create problems when implementing the provisions in practice. It is not specified what happens if one of the contracting authorities does not comply with the legal obligations or how sanctions or liability for irregularities are shared. In addition, no clear criteria for the application of joint and several liability in joint parties are provided. • It is not clear how the responsibilities for joint versus individual parts (para. (4) and (5)) In practice, occasional collaborations could include overlapping activities, making it difficult to determine the liability of each contracting authority.	1. Introduce a formal framework for collaboration. To this end, an obligation to conclude a collaboration agreement between contracting authorities that have agreed to carry out specific purchases jointly could be established. The collaboration agreement should contain: the objectives of the collaboration; the roles and responsibilities of each authority; the procedure for appointing the leader of the procedure and its powers; mechanisms for settling possible disputes. 2. Clarification of joint and several liability in paras. (2) and (4), detailing the mechanisms by which joint and several liability is implemented, including: the criteria for applying liability to the joint parties to the procedure; the arrangements for sharing penalties or liability for irregularities; the procedure for appointing an authority to represent the joint interests in relation to the control authorities or in the event of disputes. Similarly, it is appropriate to insert provisions for cases where a contracting authority does not comply with its obligations (e.g. compensatory measures or penalties).

		• The provisions in paragraph (4) for only partially joint procurement are vague and open to interpretation. What mechanisms are needed to clearly document the contribution of each contracting authority? How are disputes handled in case of non-compliance by one of the authorities?	3. Clear delineation of responsibilities in paras. (4) and (5). For this purpose, objective criteria will be established for the demarcation of responsibilities between the common and the individual parts of the procurement. 4. Clarification of partially joint procurement (para. (4)). Mechanisms are needed to document the contribution of each contracting authority in the case of partial joint procurement. 5. Specify the competences of the procedure leader, such as: managing the common documentation; representing the contracting authorities in relations with economic operators and control bodies; responsibility for compliance with common deadlines and procedures, etc.

17. Procurement involving national and EU authorities

	Article	Comments	Proposals
28	**Art. 38 - Procurement involving national contracting authorities and contracting authorities from EU Member States, paragraphs (1) to (12)**	• Terms such as 'common entity' or 'specific responsibilities' are not explicitly defined, which can lead to confusion and risks in application. • Paragraph 2 provides that the Moldovan authorities may not use these mechanisms to avoid the application of national rules, but does not specify the monitoring and sanction mechanisms in such cases. • Paragraphs (9) and (11) allow a choice between Moldovan law and the law of an EU Member State. However, without clear criteria to guide this decision, situations of conflict between the legal regimes may arise. Choice of law can become a tool to avoid the application of strict rules in one jurisdiction. In	1. Introduce explicit definitions for terms such as "common entity" and "specific responsibilities" to avoid subjective interpretations. 2. Establish procedures in paragraph (2) whereby the Public Procurement Agency or another competent authority monitors the use of joint procurement mechanisms to prevent circumvention of national rules. At the same time, specific penalties may be provided for infringement of the provisions on the application of national rules. 3. Clarification of the criteria for the choice of applicable law in paras. (9) and (11)). Criteria could be indicated, such as: majority location of project beneficiaries; main source of

		addition, para. (9) does not clarify the mechanisms for monitoring or managing disputes. ● The article does not foresee specific procedures for joint procurement in emergency cases, which can be problematic in critical projects (e.g. public health or security).	funding (e.g. EU vs. national funds); obligations under international agreements, etc. 4. Clarification in Art.37 that the choice of the law of an EU Member State or national law may not be used to avoid the application of strict rules on competition, transparency or other fundamental legal requirements. 5. Introduction of a paragraph regulating joint procurement in emergency situations (e.g. public health, national security or natural disasters), detailing minimum requirements to ensure transparency and competition in such situations.

18. Splitting contracts into lots

	Article	Comments	Proposals
29	**Art. 45 - Division of contracts into lots, paragraphs (1) to (11)**	● Article 45 does not mention the possibility of applying batch splitting to prioritize green, digital or innovative procurement, although this is a common practice in the EU. ● While para. (1) indicates that division into lots is at the discretion of the contracting authority, para. (11) allows the Government to establish mandatory award by lots. This approach may lead to legislative inconsistencies and different interpretations between the rules in the law and those in the Government Decision, difficulties in application for contracting authorities and economic operators. A similar problem is also found in Law No. 131/2015, where contracting authorities have to justify the lack of lottization, but this obligation is not effectively	● Adding a paragraph requiring contracting authorities to consider splitting into lots when it can support national and international strategic objectives such as green transition, digitalization or innovation. If the contracting authority decides not to split the procurement into lots, it must justify the reason in the procedure documentation ● Integration into the law (Art.45) of all provisions regarding the division into lots and reducing the need for further regulations by Government decisions. ● Elimination of the provision allowing the Government to determine by decree the cases in which subdivision is compulsory. The competence of the Government should be limited to issuing technical and procedural regulations for the clear and uniform implementation of the primary rules laid down directly in the law.

		enforced, as there are no mechanisms for verification and accountability. In practice, contracting authorities do not provide clear justifications for non-allotment, and this omission is not sanctioned, except for possible challenges. It would be appropriate to clarify the mechanisms by which contracting authorities have to justify decisions to allocate or not to allocate, either through more detailed regulations for certain categories of products (e.g. food, medicines) or by introducing clearer criteria in the law. However, it is important to note that, under Directive 2014/24/EU, auctioning is a right of contracting authorities, not an obligation. • A conceptual problem also arises here. Leaving the regulation of the essential aspects of lot-splitting to the level of a government decision may create the risk of introducing primary rules by subsequent acts, which runs counter to the principles of legislative hierarchy and predictability. The law should provide a sufficiently detailed framework and government decisions should only be used for technical or implementation issues. Consequently, we consider it appropriate to incorporate the provisions into the main law, thus ensuring clarity and consistency. Reliance on Government decisions should be minimized. This approach would be more efficient and better respect the spirit and principles of Directive 2014/24/EU.	

19. Rules for the submission and receipt of tenders

	Article	Comments	Proposals
30	**Art. 46 - Rules on time limits for the submission and receipt of requests to participate and tenders, paragraphs (1) to (5)**	• Paragraph (1) does not specify in detail what is meant by "complexity" or "time required", creating discretion and leaving a wide margin of interpretation for the contracting authority. • Paragraph (3) does not precisely define "significant change". • The absence of a minimum deadline in para. (4) may lead to situations where the extension of the deadline is insufficient to allow economic operators to prepare or revise their tenders properly. • There are no clear criteria for "insignificant in terms of the design of the tenders" in (5). Economic operators could interpret this differently, which may give rise to disputes.	1. Introduce a clear definition for the terms "complexity" and "time needed" (paragraph (1)), so as to provide precise guidance for contracting authorities. 2. Specifying what constitutes a "significant change" in order to ensure uniformity in the application of the provisions of paragraph (3)(c). 3. Setting a minimum extension of the deadline, such as 5 working days, to ensure sufficient time for review of bids (paragraph (4)). 4. Introduce objective criteria to determine which changes are considered insignificant in paragraph 5.

20. Notice of Intent

	Article	Coemntarii	Proposals
31	**Art. 47 - Notice of intention, paragraphs (1) to (8)**	• The obligation to publish the notice in both systems (national and European) may generate additional costs and administrative effort for contracting authorities, in particular for lower-value purchases, where the interest of foreign economic operators is low. In this respect, it is necessary to set clear thresholds for publication in the Official Journal of the EU, so that this obligation only applies to contracts with a value high enough to attract the interest of the European market • The detailed notification of the Public Procurement Agency of the publication of the national notice (paras.	1. Explicitly set out in the text of the law the thresholds above which publication of the notice in the Official Journal of the EU becomes mandatory. A clarification of the categories of contracts requiring publication would also be useful in order to avoid a disproportionate application of this obligation to low-value purchases. 2. Simplification of the administrative process by eliminating detailed notifications to the Public Procurement Agency if they are automatically generated. To this end, the notifications referred to in paras. (4) and (5) shall be automatically integrated into the Information

		(4) and (5)) may become unnecessary and excessive if the information system "State Register of Public Procurement" automatically generates this data. Automation could reduce the administrative burden. ● Mandatory publication in the Official Journal of the EU for notices of intention used as contract notices (para. (7)) may create a mismatch between local and central authorities in terms of resources required. ● The extended period for social and other specific services in paragraph (8), without a justification, could create confusion. Moreover, the term 'specific services' is not clearly defined in this context and may lead to different or abusive interpretations. In the case of Directive 2014/24/EU, the term 'specific services' is often associated with the services included in the specific annex on social and other special services (Annex XIV of the Directive), but without a clear reference or an explicit list, its interpretation may be ambiguous.	System "State Register of Public Procurement", eliminating the need for manual intervention by contracting authorities. 3. Implementation of an automated module within the State Public Procurement Register information system to facilitate the transmission of notices of intent used as contract notices to the Official Journal of the EU, thus reducing the administrative burden and the risk of technical errors. In addition, specific training on publication requirements should be provided regularly for all contracting authorities. 4. Clearly justify in the text of the law why the period for "social and other specific services" can exceed 12 months, highlighting their unique characteristics (para. (8)). 5. Insertion of an explicit definition or direct reference to an annex or a specific list of services considered "specific".

21. Award documentation

	Article	Comments	Proposals
32	**Art. 52 - Electronic availability of the award documentation, paragraphs (1) to (7)**	● The wording "The Government shall have the right" in paragraph (7) indicates that the Government may or may not decide to adopt the mandatory forms and clauses. This ambiguity may affect the uniformity of procedures and may leave contracting authorities without clear guidance in drawing up tender documentation. If there is no firm obligation to adopt	1. Replace the text "The Government is entitled" with "The Public Procurement Agency (option no.2: Ministry of Finance) is obliged to adopt single forms of tender documentation, including the mandatory clauses of the public procurement contract." 2. Introducing a provision requiring the Public Procurement Agency / Ministry of Finance to adopt

		standard documents, contracting authorities could use different forms and clauses, leading to inconsistency in practice and difficulties for economic operators. At present, the existence of standard documents (forms, mandatory clauses) has significantly simplified and standardized the public procurement process, reducing errors and increasing transparency. • At the same time, we believe that the Public Procurement Agency or perhaps the Ministry of Finance is in a more flexible position and better placed to quickly adjust forms and clauses to changes in legislation or practice. Transferring this task to the Government may create rigidity, as approving and modifying documents by Government decision is a more time-consuming and bureaucratic process. In addition, if the Government does not adopt such documents in a timely manner, contracting authorities are left without guidance, which defeats the purpose of standardizing the process.	standard documents within 6-12 months from the entry into force of the law, in order to ensure continuity and avoid periods of uncertainty. 3. Establish an obligation for the Public Procurement Agency / Ministry of Finance to periodically review these documents, e.g. every 3-5 years, to take account of legislative changes or international best practice. 4. Addition of a paragraph emphasizing that the use of standard documents is intended to ensure consistency, simplicity and reduce legal risks for contracting authorities and economic operators.
33	**Art. 54 - Informing candidates and (1) - (4)**	The current wording of para. (4) would give the impression that the entire contract award information will not be communicated if it includes information relating to commercial secrecy, state secrecy or fair competition. This interpretation could lead to a total lack of transparency, which is contrary to the fundamental principles of public procurement.	We recommend a clear rewording of Article 54(4) to specify that only specific information that is protected by law (e.g. commercial or state secrets) will not be communicated, but that all other relevant information about the contract award must be communicated.

22. Selecting tenderers and awarding procurement contracts

	Article	Comments	Proposals

34	**Art. 55 - General provisions, paragraphs (1) to (5)**	• Paragraph 3 introduces a significant derogation, allowing award criteria to be applied before the qualification and selection criteria have been checked. This may give rise to risks, as tenderers may subsequently be excluded on grounds of ineligibility, even if their tenders are the most economically advantageous. • At the same time, the expression "the Government is within its rights" leaves room for the interpretation that the Government may never adopt the necessary regulations, which would create a significant regulatory gap in the application of public procurement procedures. Moreover, it is not clear why the specific cases and conditions under which the contracting authority may decide "exception" from paragraph (3) are not regulated by law, but are to be laid down in a Government decision.	1. Replacing the delegation to the Government with primary rules in the law directly regulating the specific cases and conditions under which the exception referred to in para. (3). This will ensure legislative coherence and eliminate the risk of regulatory gaps. In addition, it will reduce the risks of misinterpretation and subsequent exclusion of economic operators who submit advantageous tenders but do not meet the qualification criteria. 2. If the author will keep the delegation to the Government, the text needs to be reworded so as to impose an obligation on the Government to adopt the necessary regulations within a deadline.
35	**Art. 56 - Offer, paragraphs (9) - (12)**	While we consider it absolutely useful to regulate the obligation to request a tender guarantee for public procurement above certain thresholds. However, for lower-value public procurement involving lower risks, the tender guarantee could also be regulated in the form of a declaration of tender guarantee on own responsibility . This would facilitate the access of economic operators and in particular SMEs to public procurement procedures as tender guarantees in the form of bank guarantees or transfer to the account of the authority are costly and often a financial burden which prevents their participation in public procurement.	It should be noted that for contracts whose estimated value does not exceed (xxxx MDL) and involve low risks, the tenderer shall sign a bid guarantee declaration by which he undertakes: (i) not withdraw the offer during the period of validity of the offer (ii) If it has been informed that its tender has been declared successful: (a) undertake to sign the contract and (b) undertake to lodge a performance guarantee, if one has been provided.

23. Qualifying criteria

	Article	Comments	Proposals
36	**Art. 57 - Qualifying criteria, paragraphs (1) - (26)**	In para. (7) the delegation of the powers of detection to the contracting authority in some cases (lit. a) and c) and to the Competition Council in others (lit. e) may create inconsistency. The transfer of the decision to a specialized authority (the Competition Council) will render these rules ineffective, due to the long duration of the investigations concerned. In this case, it would be appropriate to allow the contracting authority to take a decision based on reasonable indications of the conclusion of agreements distorting competition, with the obligation to refer the matter to the Competition Council for subsequent confirmation.	1. The contracting authority should be empowered to take preliminary decisions based on reasonable indications in all the cases referred to in para. (7), including for situations under point (e) concerning distortion of competition. This would ensure consistency and efficiency in application. 2. Introducing a standardized procedure to be followed by the contracting authority before taking preliminary decisions (informing the economic operator, giving the possibility to submit a written explanation, etc.). 3. Establish a clear obligation for the contracting authority to refer the matter to the Competition Council for investigation and confirmation of the decision.

24. Award criteria

	Article	Comments	Proposals
37	**Art. 66 - Award criteria, paragraph (19)**	In para. (19) the minimum weighting to be given to the price element in the award criterion for the public procurement contract shall be laid down b) for public works contracts - 80%; The 80% weighting of the price element means a weighting of only 20% maximum for evaluation factors including quality, environmental and/or social aspects. In other words, even if an authority applies the award criterion value for money to the procurement of works, the price element is ultimately the defining element. This approach, which is also currently regulated in Law 131/2015, is one that does not provide sufficient legal	We propose to modify the quality-price award criterion for the purchase of works. It is recommended to modify it by decreasing the weighting of the price element when using the best value for money award criterion. It is therefore proposed that the minimum weighting of the price element in the application of the award criterion for public procurement contracts be reduced from 80% to 60%. Thus, Article 66, paragraph (19), letter b) shall be worded as follows: "b) for public works contracts - 60%"

		levers to increase the quality of works that are procured by public authorities and to provide advantages to tenders that take into account other environmental/social aspects, etc.	

25. The public procurement contract

	Article	Comments	Proposals
38	**Art. 70 - Public procurement contract, paragraphs (3), (9)**	• The rule in paragraph 3 is incomplete, not sufficiently clear and will therefore lead to discretion, risks and impediments in implementation. It is not clear what type of monitoring is envisaged and which entity/entities carried out the monitoring. At the same time, there is a lack of clarity on how it will be ensured that the CA closes the contract only after all monitoring findings have been remedied. • Paragraph (9), point b) is vague and will create implementation risks for both CAs and EOs. Such general regulations create risks of misinterpretation or misinterpretation, which may lead to challenges, failure to award contracts in time, etc. It is not clear what constitutes a "full life-cycle environmental impact" for a procurement contract.	1. In order to avoid uncertainties and bottlenecks in the implementation of contracts, it is necessary that the law clearly specifies the type of monitoring envisaged and the competent entities carrying it out. Also, a procedural mechanism should be established whereby the contracting authority confirms that the problems reported before the contract is signed have been remedied. 2. It is recommended to complete and clarify the rule by specifying the "negative environmental impact" and giving examples (e.g. construction works, road rehabilitation/maintenance; procurement of cars, means of transportation, electronics, furniture, street/road lighting, food/food services, etc.).
39	**Article 73. Modification of the contract during the period of validity, paragraphs (2) and (3)**	Paragraph (2) and (3) provide for a maximum limit of 50% for increases in the value of procurement contracts (both for additional goods, services or works and for increases in the initial value of the contract). Law no. 131/2015 currently regulates a maximum limit of 15% which, indeed, in certain specific and objectively justified cases, may be insufficient. However, setting a limit of 50% is far too permissive and will	Although Directive 2014/24/EU provides in Article 72 that no price increase shall exceed 50% of the value of the original contract. However, this is a maximum limit, and each country is to set this limit according to the national context, the nature and specifics of the procurement processes, and the related risks, including fraud and corruption.

		generate high risks of fraud and corruption in a highly vulnerable sector.	It is recommended to set a limit not exceeding 20/25% with the possibility for further adjustment in the law based on experience of subsequent application

26. Tasks of the Public Procurement Agency

	Article	Comments	Proposals
40	**Art. 84 - Public Procurement Agency, paragraphs (2), (4) and (5)**	In paragraph (2) regarding the powers of the Public Procurement Agency, there are 2 points that are unclear, contradictory and create uncertainty, in this case: e) draw up quarterly and annual statistical analyses on public procurement; h) issue annual reports on the public procurement system based on statistical monitoring and analysis; The difference between two types of documents (annual report and quarterly and annual statistical reviews) and their content is not clear. The provision in paragraph (4) does not contain a deadline by which the Agency will publish the annual report on its official website which creates uncertainty and contravenes the principles of transparency. Paragraph (5) sets out what type of data and information the Annual Reports on the Public Procurement System will contain. However, there is no reference to data and information useful for analyzing the data that would allow for evidence-based policy making in the sector and that are collected from the authorities through the award decision, the award notice, the award notice,	We propose to reword points e) and h) of para. (2), Article 84, by adding information on the type and more detailed content of the annual reporting and the quarterly and annual statistical analysis. *In paragraph (4* The rule needs to be supplemented with the following text "The annual reports on the public procurement system, based on statistical monitoring and analysis, shall be published on the official website of the Public Procurement Agency by the end of the first quarter of the immediately following year". *Paragraph (5)* It is recommended to add the following text: "the value and share of contracts awarded with the application of each of the 4 award criteria provided by law, in particular non-price award criteria; the value and share of public procurement with sustainable criteria including green, social, environmental, economic (this is also provided in the National Program on Procurement 2023-2026); the share of public procurements with lots;

			the rate of rejection of bids; the average duration of the contract award procedure; the average number of bids per type of procurement procedure and by subject (goods, services, works), including from the date of publication of the notice in the electronic system until the award of the contract.

27. Working group, certified specialist and service provider

	Article	Comments	Proposals
41	**Art. 87 - Working group, certified specialist and procurement service provider, paragraphs (1) - (13)**	• In many localities, human resources are limited and civil servants appointed to working groups often lack the expertise to manage complex procedures. The certified specialist can fill this gap and bring added professionalism to all types of procurement. • Limiting certified specialists only to low-value procedures, with some exceptions (paras. (8) and (9)), does not provide contracting authorities with sufficient flexibility and access to qualified expertise in particular for high value procedures . Some complex procurements might require the expertise of a certified specialist, even if they exceed the value thresholds mentioned. • The certified specialist should be used on the basis of competence, not just the value of the contract. The inclusion of certified specialists in all types of procedures can ensure uniform application of procurement rules and reduce the risks of errors, irregularities or challenges. In particular for small communities or local authorities with limited resources, access to certified specialists may be	1. We recommend rewording the provisions of paragraphs (8) and (9) to allow the involvement of certified specialists in all types of procurement procedures, regardless of the value of the contract, leaving the decision on the need for their involvement to the contracting authority. This would contribute to the professionalization and efficiency of public procurement. 2. Paragraph 3 to be completed with the following text "the contracting authority will involve the representative(s) of civil society at all stages of the procurement process and provide access to all information and documents related to the contract award process 3. in paragraph 4, after the words 'for each individual procurement procedure', the words 'or for several, as requested or decided by the Authority' are added

		the only option to carry out procurement procedures in compliance with the law. ● If a public authority considers it necessary to involve a certified specialist for complex procurement procedures, there is no legal or practical reason to limit this option. The certified specialist is already qualified and certified according to national standards, which gives them legitimacy. The decision to involve a certified specialist should be left to the discretion of the contracting authority. ● Including civil society representatives exclusively per procedure does not provide sufficient flexibility and full involvement of civil society through monitoring.	

28. Right to challenge

	Article	Comments	Proposals
42	**Art. 105 - Right to appeal, paragraphs (1) - (4)**	● Paragraph 1 grants a general right for any interested person to challenge the acts of the contracting authority, reflecting a fundamental principle of wide access to review procedures necessary for the transparency and legality of public procurement. However, para. (2) limits this right by specifying that only tenderers who have not been definitively excluded may challenge the acts of the contracting authority. This provision may affect the rights of economic operators, reducing the effectiveness of remedies and allowing abuses or errors in the procurement process. ● This restriction raises several problems:	1. Rewording para. (2) to ensure that economic operators excluded from the procedure have the right to challenge the exclusion decision itself. 2. Introducing a clear definition in the law for "permanently excluded," specifying that this status cannot be conferred until all remedies available to the bidder have been exhausted. 3. Indication that any interested person, including unsuccessful tenderers, may challenge the acts of the contracting authority if they consider that their rights have been affected. 4. Explain in the explanatory note to the law the reason for the inclusion of para. (2) and how it will be

		- Directive 2014/24/EU and CJEU case law emphasize the importance of equal access to legal remedies for all economic operators who consider that their rights have been infringed. The restriction imposed could be incompatible with obligations under international agreements, including the WTO Government Procurement Agreement. - It is not explained why the right to challenge is restricted and what is meant by "definitively excluded." This ambiguous wording may lead to situations where bidders are deprived of the possibility to challenge the exclusion decision itself. - The contracting authority could quickly exclude bidders in order to limit their right to challenge other acts in the procedure, which may jeopardize the fairness and fairness of public procurement. ● The article limits the right to challenge to the economic operators participating in the procedure, excluding the possibility for civil society representatives (e.g. NGOs) to intervene when public interests are affected, especially in cases of corruption or collusion between economic operators. ● Although Art. 108 para. (13) of the draft law allows civil society representatives to request the organization of an open hearing for complaints lodged by economic operators, this right is insufficient to ensure adequate protection of public interests. . Civil society representatives do not challenge even when they identify significant irregularities. ● In practice, civil society plays an essential role in monitoring public procurement, especially in situations where economic operators avoid challenging, either for	applied in accordance with the principles of fairness and transparency. 5. If there is no clear justification for restricting the right to challenge only to bidders "not definitively excluded," it is appropriate to remove this provision to avoid the risk of incompatibility with international rules. 6. Insertion in the article of a provision allowing civil society, represented by non-governmental organizations, to directly challenge acts of contracting authorities in cases where the public interest is affected (e.g. corruption, lack of transparency, serious irregularities) and no economic operator has lodged a challenge.

		fear of reprisals or because of tacit understandings. Limiting the right to challenge exclusively to economic operators reduces transparency and the possibility to correct irregularities affecting the public interest.	

29. Other comments and recommendations

General comments

1. Heavy text and unclear wording. The draft law uses excessively technical language, long sentences and complicated structures, which makes the rules difficult for contracting authorities and economic operators to understand. Many articles are overloaded with extensive paragraphs and unclear definitions, affecting the clarity and accessibility of the law. Ambiguities can lead to subjective interpretation, uneven application and risks of challenge.

2. Rigid transposition of provisions from EU Directives. Although the draft transposes European legislation, many provisions are copied without adaptation to the realities of the national public procurement system. The wording needs to be adjusted to be applicable and effective in the Republic of Moldova, avoiding ambiguities and redundancies. In some cases, the definitions and terms in the EU directives are clearer than in the draft law, which indicates the need to revise the text for consistency and applicability.

3. Excess of technical details in the text of the law. The draft contains technical specifications which should be covered by separate methodological rules or regulations. Including them directly in the law makes the legislation rigid and difficult to update, especially in fast-moving areas such as digitization of procurement.

4. Too general rules that require further regulation by Government Decisions. On the other hand, many essential issues are vaguely formulated and left for later regulation without a clear framework in the law. This approach may delay the application of the new rules and create legal uncertainty, especially in the transitional period.

5. Regulation of essential aspects by Government Decisions. Some fundamental provisions, such as the division into lots or the criteria for centralized purchasing authorities, are delegated to the Government. This can lead to the adoption of primary rules by subsequent acts, which is contrary to the principles of legislative hierarchy, legal stability and predictability. The law should provide a clear framework for these issues, and government decisions should be used only for technical and procedural details.

6. Division of competences between the Government, the Ministry of Finance and the Public Procurement Agency. The draft delegates the approval of documents necessary for the implementation of the law to different institutions, without a clear justification for this division. In addition, government decisions are more difficult to approve and amend compared to orders of a ministry, which may delay the adjustment of rules. A more careful analysis of the allocation of regulatory powers is needed to ensure efficiency and flexibility in law enforcement.

7. Elimination of the list of prohibition without justification. The draft no longer includes provisions for a debarment list of economic operators who have previously infringed the law, failed to comply with contracts or committed other serious misconduct. If this accountability tool is to be removed, the information note should contain a clear justification. In addition, effective alternatives should be proposed to prevent economic operators with a bad track record from participating in public procurement, either through new mechanisms or by taking over best practices from other countries.

Other rules missing from the draft law

The draft of the new law **excludes the Prohibition List in public procurement**, which will reduce the level of responsibility of economic operators in public procurement procedures, in particular at the stage of implementation of procurement contracts. The current Prohibition List is the only mechanism by which contracting authorities can hold liable an economic operator which submits false documents or fails to comply with contractual provisions and does not execute the public procurement contract, both in terms of quantity and quality. At the same time, this mechanism is appropriate to be kept in the context of the Republic of Moldova and in order to hold economic operators accountable and prevent violations at the stages of contract implementation (given the risk of being banned from tendering for a period of 3 years). In the context of the arguments presented, we propose the inclusion of an additional article regulating the functioning of the Prohibition List, in the formula of the current law, No. 131/2015.